

New Jersey State Tax news

a quarterly newsletter

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State Treasurer Sworn In

Elizabeth Maher Muoio was nominated by Governor Phil Murphy as State Treasurer and assumed the duties of Acting State Treasurer on January 16, 2018. On April 13, 2018, having received Senate confirmation, Muoio was officially sworn in as the Treasurer. Muoio is the second woman in New Jersey history to be confirmed to the Cabinet post.



Before becoming Treasurer, Muoio served as a member of the New Jersey General Assembly, representing the 15th Legislative District in Mercer and Hunterdon counties. She joined the Assembly in February 2015.

During her time in the Assembly, Muoio represented her constituents on the Assembly Budget, Judiciary, and Commerce and Economic Development committees where she focused on improving access for women's healthcare, closing the gender pay equity gap, protecting the environment, reducing exposure to hazardous lead, improving prison re-entry services, increasing literacy rates, fighting against concentrated poverty, and expanding economic opportunities for New Jerseyans.

As a result of her legislative efforts, Muoio was honored by the Sierra Club of New Jersey, the Trenton Chapter of the NAACP, the New Jersey Association of the Deaf, the Constitutional Officers Association of New Jersey, the National Congress of Black Women – Trenton/Mercer Chapter, and for her efforts to improve literacy by the Trenton Public School system.



Muoio also served as Director of the Mercer County Office of Economic Development and Sustainability from 2008 to January 2018.

The new Treasurer was a member of the Mercer County Board of Chosen Freeholders from 2000–2008, serving as Chair in 2004 and Vice Chair in 2003 and 2008. While Chair, she worked with the County Executive to enact one of the first countywide anti-pay-to-play ordinances in the nation and led the effort to ensure that the \$81 million Mercer County Courthouse was constructed to Leadership in Energy and Environmental Design (LEED) standards.

Muoio began her career as an elected official serving as a member of the Pennington Borough Council from 1997 to 2002 and has been involved in a number of community-based organizations including as a Troop Leader for the Girl Scouts of Delaware Valley, coach of youth basketball for the Hopewell Valley YMCA and the Hopewell Hoops Basketball League, and a member of the Princeton Regional Chamber of Commerce Board of Directors, the Pennington Public Library Board of Trustees, the ARC of Mercer Board of Trustees, and the League of Women Voters.

An attorney, Muoio received her JD from Georgetown University and her BA from Wesleyan University. She lives with her family in Pennington. 

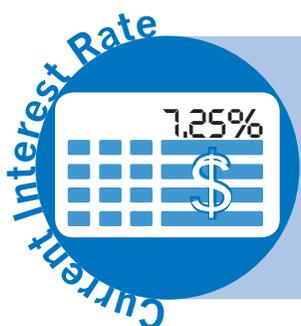
The Cost of Noncompliance

Most people file and pay their taxes voluntarily and on time. However, circumstances sometimes make it difficult for a taxpayer to make required payments. It is important that taxpayers understand the costs that may result if they do not file and/or pay on time and the steps they can take to reduce those costs.

If you are unable to pay your taxes, it is important that you still file your return by the due date. Failure to file your return on time significantly increases the penalty that can be assessed. A penalty of 5% of the tax liability is assessed each month until the penalty reaches 25% of the tax liability. A \$100 per month penalty also may be imposed for each month (or part of a month) the return is late.

Always pay what you can even if it's not full amount. The Division will accept a partial payment, and you will only be charged interest for the unpaid portion of your taxes. The annual interest rate is 3% above the prime rate. Interest is imposed on every month or part of a month the tax is unpaid, compounded annually at the end of each year.

If you file your return but do not pay the full amount due, the Division will send you a bill. The first bill will show two "Amount Due" figures. The first amount applies only if paid by the "Pay By" date shown on the bill. This amount consists of tax, interest, late filing penalty (5% per month up to 25%), and amnesty penalty, if applicable. The second amount applies if the bill is not paid by the "Pay By" date and includes a late payment penalty of 5% in addition to the items in the first amount due. The 5% late payment penalty will be imposed on all audit assessments.



The assessed interest rate on tax balances for Jan. 1, 2018, to Dec.31, 2018, is 7.25%

View information on [how it is calculated](#) or find the [historical rates](#).

If you do not respond to a bill by the due date, the account will be sent to our collection agency, and a referral cost recovery fee of 10.7% of the liability due will be added to your required payment.

When the debt is not resolved with the collection agency, a Certificate of Debt (COD) will be issued for the

outstanding liability, and a cost-of-collection fee will be imposed. Once the collection agency notifies you that a judgment was filed, you have 10 days to satisfy the debt. If you do not respond, the debt is referred back to the Division and assigned to our enforcement staff. Division employees will take steps to collect on the liability, which may include the following actions:

- Levies of bank accounts, rental income, account receivables or corporate distribution, or other identified assets;
- Wage garnishments;
- Seizure and auctions of real and personal property such as motor vehicles and boats.

As the level of enforcement action rises, the cost of collection may be increased.

It is in your best interest to file your return on time even if you cannot pay the full amount you owe. If you have a balance due and receive a bill, respond to the bill in a timely manner. Failure to do these things can substantially increase your debt. 📌

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Twelve persons passed the September 23, 2017, C.T.A. exam. They were issued tax assessor certificates on January 1, 2018. They are:

Bergen County: Sambamurty Arisetty, Washington Township; James O'Donnell, Lodi Borough.

Burlington County: Dawn Gorman, Delran Township.

Gloucester County: John Sheehan, Wenonah Borough.

Mercer County: Marjorie Abrams, Hamilton Township; Jonathan Gephart, Hamilton Township.

Middlesex County: Christopher Efstathiou, East Brunswick Township; Jacob Nieman, South Brunswick Township.

Monmouth County: Vilius Jankauskas, Eatontown Borough.

Morris County: David Glaser, Morris Plains Borough.

Somerset County: Kevin Palumbo, Hillsborough Township; William Raska, Bridgewater Township.

The next C.T.A. examination is scheduled for September 22, 2018. To apply, complete the Application for Admission to a Tax Assessor Certification Exam, **Form AC-1**. The deadline to file applications for this exam is August 23, 2018. The filing fee is \$10. If you have any questions regarding this exam, please contact Marilyn Gaines at 609-292-8823 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. 📌

LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1-

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1 million to State Tax Court.
- Percentage level of taxable value of real property established by the County Tax Boards.



- If appeal petition or complaint is filed April 1, or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Chosen Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and the Division of Taxation Director.

April 15–

- County Board of Taxation files Form SR-3A with Property Administration.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1 million to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

1st Business Day in May–

- County Tax Board to organize and elect a president for one year.

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's tax duplicates and Taxation Director's certification of second class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Division of Taxation Director; State Auditor; Director,

Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Division of Taxation Director a list of current members, the appointment and expiration dates of their terms of office, and the status of the required courses.
- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5 (on or before)–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the Division of Taxation Director requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15 (on or before)–

- County Board of Taxation certifies to Division of Taxation Director the number and total dollar amount of property tax and veterans' deductions allowed and disallowed for the current tax year on Forms PD-65.15 and VE-WVE-2.

The complete [2018 Work Calendar](#) is available.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration program to make the assessment of real property more precise by using technology-driven procedures. This was designed to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

April 1–

- Tax appeals are heard in February, March, and April.

May 5–

- Assessor to file final assessment lists and duplicates with County Tax Board.

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.
- County Tax Board to notify Division of Local Government Services Director when copy of budget resolution (in CY municipality) showing amount to be raised is not received.
- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor;

Division of Taxation; Local Government Services Director (two copies); and post a copy at the courthouse.



May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Division of Taxation Director; Tax Court; and Local Government Services Director (two copies).

May 31–

- General tax rates certified by County Tax Board.
- County Tax Board to file final SR-3A forms with Property Administration.

June 15–

- County Tax Board President to file annual appeal statistics report (Form TAS) with Division of Taxation Director.

The complete **2018 Monmouth County Work Calendar** is available. 

Criminal Enforcement

- On September 27, 2017, Brian Murphy of Hainesport, New Jersey, pleaded guilty to second-degree misapplication of entrusted property and third-degree failure to pay taxes. Murphy is a financial advisor who received hundreds of thousands of dollars from a client to invest. Instead, Murphy used the money to buy a car and luxury items and pay for dinner outings and other personal expenses. As a result of the plea, the State recommended a sentence of seven years in State prison. Murphy will also pay restitution of \$255,000 to the victim and \$55,197.86 in taxes, penalty, and interest to the State of New Jersey.
- On October 1, 2017, Sarah Coon of Lumberton, New Jersey, pleaded guilty to second-degree theft by deception and third-degree failure to pay taxes. Coon embezzled funds from her employer and used them to pay personal bills and expenses. As a result of the plea, the State recommended a sentence of five years in State prison. Coon must also pay \$438,000 in restitution to her former employer and \$43,588.14 in taxes, penalty, and interest to the State of New Jersey.
- On October 17, 2017, Hyunwook Koh, of Palisades Park, New Jersey, was arrested by agents from the Office of Criminal Investigations (OCI) after he accepted receipt and took possession of 12 large boxes from a mail shipping and receiving business in Palisades Park. A customs search had been conducted before delivery since the boxes were shipped from outside the United States. The search revealed that the boxes were packed with 498 cartons of cigarettes and 60 cartons of cigars. The cigarettes had no tax stamps and were seized as contraband and untaxed goods. Koh was charged in Bergen County Superior Court with one count of possession of more than 20,000 untaxed cigarettes, which is a crime of the third degree. He was released on his own recognizance. The arrest was the result of a joint operation between OCI special agents, U.S. postal inspectors, and special agents from U.S. Homeland Security Investigations. On October 25, 2017,

OCI special agents seized additional contraband items from a U.S. Postal Facility in Ridgefield, New Jersey, that were bound for the same address in Palisades Park, but that had not yet been claimed. Postal inspectors had intercepted the shipping boxes, and an inspection by special agents from U.S. Homeland Security Investigations revealed the boxes contained 1,026 cartons of untaxed cigarettes and 73 cartons of cigars.

- On October 19, 2017, OCI special agents performed an inspection of The Grove, a business in Irvington, New Jersey. Agents seized 381 untaxed tobacco products, Newport cigarettes with a Virginia tax stamp, and 12 loose cigarettes (loosies). Also, located during the inspection was a bag containing 368 glassine envelopes that were stamped “911” in red ink and packed with heroin, 75 aluminum foils containing crack cocaine, and \$1,092 in cash. The business owner, Shariyf Dunham, signed a Consent to Search his vehicle, which resulted in the seizure of two bags of marijuana. These items were turned over to the Irvington Police Department. Irvington police arrested Dunham and charged him with possession of heroin, intent to distribute, possession of cocaine, intent to distribute, and possession of marijuana. Additionally, OCI will be charging Dunham with possession of untaxed cigarettes, failure to maintain books and records, and the sale of loosies.
- On October 26, 2017, OCI special agents, U.S. postal inspectors, and special agents from U.S. Homeland Security Investigations approached Sungil Lee after he accepted receipt of numerous boxes at a Ridgefield postal facility. Lee was in the process of placing the boxes into his vehicle. U.S. Homeland Security Investigations special agents had previously conducted a search of the boxes and discovered they contained untaxed cigarettes. A total of 11 boxes containing 260 cartons of untaxed cigarettes were seized. Lee was taken into custody by OCI and charged with one count of possession of cigarettes without proper stamps. He was released on his own recognizance.
- On November 2, 2017, Yonglin Liu of Camden, New Jersey, was arrested by OCI special agents and processed for fourth degree hindering, possession of approximately 28 cartons of untaxed cigarettes, failure to maintain records, and dealing with an unlicensed person. The arrest resulted from an inspection of the New Shanghai Restaurant, in Camden, New Jersey, on August 15, 2017, at which time Liu was found to be in possession of Virginia tax-stamped cigarettes and untaxed tobacco. The suspect provided an expired Pennsylvania driver’s license as identification. Further examination of the license determined that he was not the individual pictured on the license. OCI agents returned with U.S. Homeland Security Investigations special agents and, through the use of a language interpreter and mobile technology, were able to determine his identity and that he was wanted on federal counts. During the follow-up investigation, OCI special agents found approximately 28 cartons of Virginia tax-stamped cigarettes concealed in numerous 4C Iced Tea containers. Also as a result of the August inspection, Liu pleaded guilty in Camden Municipal Court.
- On November 3, 2017, Ocean County Superior Court Judge Rochelle Gizinski sentenced Patrick A. Trushell II, of Toms River, New Jersey, to five years in State prison on charges of second-degree theft by deception and third-degree failure to file a State tax return. These charges were the result of a joint investigation conducted by the Ocean County Prosecutor’s Office Economic

Enforcement Summary Statistics
First Quarter 2018

Following is a summary of enforcement actions for the quarter ending March 31, 2018.

	Number	Amount
• Bank Levies	712	\$ 2,175,403
• Certificates of Debt	4,501	102,863,373
• Seizures	72	1,291,938
• Auctions	10	194,609
• Warrants of Satisfaction	3,922	

Crimes Unit and an OCI forensic auditor. Trushell used his employment at three different energy brokerage companies to obtain customer lists and accounts. He filtered that information to a fourth company, which paid him a commission, and to his own company, Chrono Energy, LLC. Because Trushell had exclusive employment agreements with all three companies from 2013 through 2014, his receipt of over \$250,000 in compensation was considered theft.

- On November 21, 2017, in Englewood Municipal Court, Mohammed Alsaïdi pleaded guilty to drug possession and paid a \$2,500 fine. Alsaïdi was arrested on October 19, 2016 after OCI seized 284 cartons of Virginia tax-stamped cigarettes and Englewood police seized small amounts of marijuana and drug paraphernalia.
- On November 29, 2017, after a 14-day trial in Passaic County, Thomas Weir was convicted of theft by deception, money laundering, and tax evasion. Weir worked part-time as a bookkeeper for a granite company with locations in Haledon and Bayville, New Jersey. He misappropriated nearly \$200,000 from the company's bank account by disguising the money as business expenses and using it to pay off personal credit card bills. This case was a result of a joint investigation between OCI and the Passaic County Prosecutor's Office.
- On January 26, 2018, OCI seized 1,224 cartons of untaxed cigarettes from Jojooly LLC, doing business as Smart Zone, located in Palisades Park, New Jersey. Disorderly persons offense charges were filed against Xiangji Jin of Palisades Park.
- On February 23, 2018, Kalpesh Patel of Bensalem, Pennsylvania, was arrested as a result of a compliance inspection the previous day at Felix Deli & Grocery in Trenton during which contraband cigarettes were discovered. A total of 20 cartons of counterfeit cigarettes, 19 cartons of out-of-state stamped cigarettes, and 1 carton of unstamped cigarettes were seized. Patel was processed with the assistance of the Mercer County Prosecutor's Office. 

Tax Briefs

Sales and Use Tax

Exemption for Breast Pumps, Supplies and Replacement Parts, and Maintenance and Repair — Effective May 1, 2018, sales of breast pumps, breast pump repair and replacement parts, breast pump collection and storage supplies, and certain breast pump kits are exempt from Sales Tax when sold to an individual purchaser for home use. Maintenance and repair services for such items also are exempt. Sellers and providers of maintenance and repair for the affected items should not charge Sales Tax on receipts of those products beginning May 1, 2018.

Breast Pumps. A breast pump is an electronically or manually controlled pump device used to express milk from a human breast during lactation. This includes the electronically or manually controlled pump device and any AC adaptor or other external power supply unit packaged and sold with the pump device at the time of sale to power the pump device.

Breast Pump Collection and Storage Supplies. Breast pump collection and storage supplies include, but are not limited to, breast shields and breast shield connectors; breast pump tubes and tubing adaptors; breast pump valves and membranes; backflow protectors and backflow protector adaptors; bottles and bottle caps specific to the operation of the breast pump; breast milk storage bags; and related items sold as part of a breast pump kit that has been prepackaged by the breast pump manufacturer.

Breast pump collection and storage supplies do not include: bottles and bottle caps not specific to the operation of the breast pump; breast pump travel bags and other similar carrying accessories, including ice packs, labels, and other similar products; and breast pump cleaning supplies. Although nursing bras, bra pads, breast shells, and other similar products are not covered by this new exemption, they are exempt from Sales and Use

Tax because they are clothing items. Creams, ointments, and other similar products that relieve breastfeeding symptoms or conditions of the breasts or nipples are not covered by this exemption, but may be exempt from Sales and Use Tax if they are drugs sold pursuant to a doctor's prescription or if they meet the definition of over-the-counter drugs.

Breast Pump Kits. A breast pump kit is a prepackaged set that contains one or more of the following items: breast pump; breast pump collection and storage supplies; and other items that may be useful to initiate, support, or sustain breastfeeding using a pump during lactation. The kit may also contain taxable items that may be useful to initiate, support, or sustain breastfeeding using a breast pump during lactation. If a breast pump kit contains both taxable and nontaxable items, the receipt from the sale of the kit is exempt from Sales Tax as long as the sales price of all taxable items in the kit is 10% or less of the total sales price of the entire kit.

Native American Tribal ID Cards — A Native American New Jersey resident taxpayer asked the Division if a tribal ID card containing a tax-exempt number would exempt him from paying New Jersey Sales and Use Tax.

Tribal ID cards prove membership in a tribe recognized under federal law and are generally considered a secondary document used to establish identity. A tribal ID offers information on its holder, including their photo, tribal enrollment number, date of birth, signature, tribal affiliation, and the tribe's contact information.

The Division responded that there are no provisions under New Jersey law to exempt individual Native Americans from Sales and Use Tax. Therefore, the Native American New Jersey resident taxpayer with a tribal ID card containing a tax-exempt number is not exempt from paying New Jersey Sales and Use Tax.

Veterinary Medication — A taxpayer inquired about the application of the New Jersey Sales and Use Tax to separately stated charges for veterinary medication. The taxpayer is a full-service veterinary hospital that administers medication when treating animals at the hospital. When the hospital issues an invoice to the customer, the charges for medications are itemized and separately stated from the veterinary services provided.

The Division responded that when veterinarians purchase medication for use in the medical treatment of animals, the purchase is taxable (N.J.S.A. 54:32B-3(a)). The veterinarian pays Sales Tax at the time of purchase because the veterinarian is considered the retail purchaser of medication he or she uses in performing professional services for clients. However, when the veterinarian separately states the charges for medication on the invoice to the customer, the veterinarian must charge Sales Tax. In that case, because the veterinarian is charging and collecting Sales Tax, he or she can purchase such medication without paying Sales Tax by issuing a fully completed resale certificate to the seller.

On the other hand, if the veterinarian gives the customer an invoice that merely states that medications were used in the performance of medical services but does not separately state the charges for them, the bill is not subject to tax. An example of this would be a bill that says: "Veterinarian services, including medication – \$100."

Realty Transfer Fee

No Mortgage and No Consideration — A taxpayer asked whether an LLC entity that is owned by two partners can transfer real estate to a single-member entity that is owned 100% by the LLC entity without paying the Realty Transfer Fee. The transfer will be done by deed and for no consideration. In addition, there is no mortgage on the real estate.

The Division responded that transfers where consideration is under \$100 are exempt from the Realty Transfer Fee in accordance with N.J.S.A. 46:15-10. The definition of consideration includes mortgages (N.J.S.A. 46:15-5(c)). Therefore, the taxpayer does not owe the Realty Transfer Fee because no mortgage exists and no consideration was paid. 

From the Legislature

Administration

Bulk Sales Notification Requirements for Homes and Seasonal Rentals — P.L. 2017, c.307, signed into law on January 16, 2018, and effective immediately, clarifies that the sale of a house and the sale of a seasonal rental unit are exempt from the bulk sale notification requirements if the seller of the property is an individual, trust, or estate, or any combination of these. These provisions are retroactive and applicable to sales, transfers, and assignments made on or after August 1, 2007.

Corporation Business Tax

Tax Credit for Drug Donation Programs — P.L. 2017, c.254, signed into law on January 8, 2018, and effective July 7, 2018, authorizes private entities to voluntarily establish drug donation programs to serve people who are indigent, uninsured, or underinsured. The law grants drug donors a Corporation Business Tax or Gross Income Tax credit equal to the sum of the cost of the donated over-the-counter drugs, prescription drugs, and administration supplies; and any verifiable cost incurred to make the donation of the drugs and supplies.

Treatment of Tax Credit Transfer Certificates — P.L. 2017, c.313, signed into law on January 16, 2018, and effective immediately with select sections being applicable to accounting and privilege periods beginning on and after January 1, 2017, revises tax credit transfer certificate provisions for the Grow New Jersey Assistance Act (GROW NJ) and the Public Infrastructure Project Tax Credit program. The time period for transferees to redeem the tax credit transfer certificates is identical to the period permitted for the original tax credit certificate holder. It also exempts from the 75% minimum value requirement the sale or assignment of a tax credit transfer certificate to an affiliate, regardless of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement. Additionally, the law excludes from taxation the gain or income derived from the sale or assignment of certain tax credit transfer certificates.

Document Submission for Business Incentive Programs — P.L. 2017, c.314, signed into law January 16, 2018, and effective immediately, extends document submission deadlines for the Economic Redevelopment and Growth Grant, Grow New Jersey Assistance, and Urban Transit Hub Tax Credit programs.

Gross Income Tax

Tax Credit for Drug Donation Programs — see Corporation Business Tax.

Local Property Tax

Real Property Assessment Practices — P.L. 2017, c.306, signed into law on January 16, 2018, and effective immediately, modifies the dates for the administration of the assessment of real property and any subsequent appeal. The property assessment appeal process will occur before the calculation of the local property tax rate. This allows a more accurate local property tax rate to reflect local budgetary needs.

Property Tax Exemption for Disabled Veterans — P.L. 2017, c.367, signed into law on January 16, 2018, and effective immediately, extends eligibility for the veterans' real property tax exemption to include veterans who became 100% disabled as the result of their service but who did not serve in a "theater of war."

Property Tax Relief Programs

Administrative Changes to the Senior Freeze (Property Tax Reimbursement) Program — P.L. 2017, c.370, signed into law on January 16, 2018, and effective immediately, changes the annual deadline for filing an application to October 31. Additionally, the law allows an individual who erroneously receives payment to set up an installment payment plan to repay any amounts owed. 

New Look, New Approach

The Division of Taxation has seen quite a few media changes in the past months. We have a new website, new publications, a new logo, and now a newly designed *State Tax News*. Of course, one thing that remains unchanged: our commitment to you.

While the new appearance of our material is designed to be fresh and modern, the real purpose is to reflect our new approach. What that means for you is that you'll receive the same great service, but with a renewed focus on making it easier to navigate the taxes administered by the Division. We are here to serve you. 🇯🇵

Public Auction



Information

Contact Us



This quarterly newsletter is designed to inform practitioners and interested members of our taxpaying community about general New Jersey tax topics. It is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director John J. Ficara

Contributors

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New Jersey State Tax news

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What's New for Tax Year 2017

There have been some important changes affecting the preparation of New Jersey Income Tax returns and applications for New Jersey's property tax relief programs for 2017.

Income Tax

- **Filing Deadline** — The filing deadline is Tuesday, April 17, 2018, for calendar-year taxpayers – matching the due date for the federal Form 1040. The due date is April 17 instead of April 15 because of the weekend and the [Emancipation Day](#) holiday in the District of Columbia.
- **Retirement Income Exclusions** — The pension and/or other retirement income exclusion amount is being increased over a four-year period. This year, you may be eligible for an exclusion of up to \$40,000 (filing status married/CU couple, filing jointly), \$30,000 (filing status single, head of household or qualifying widow(er)/surviving CU partner), or \$20,000 (filing status married/CU partner, filing separately). See chart on page 3.
- **Personal Exemption for Veterans** — You are eligible for a \$3,000 exemption if you are a military veteran who was honorably discharged or released under honorable circumstances from active duty in the Armed Forces of the United States on or any time before the last day of

the tax year. Your spouse (or civil union partner) also is eligible for an exemption if he/she is a veteran who was honorably discharged or released under honorable circumstances and you are filing a joint return. When completing your tax return, fill in the oval (resident return) or check the box (nonresident return) to indicate that the exemption is being claimed. Otherwise, the exemption(s) will be disallowed. You must [certify](#) that you were honorably discharged or released under honorable circumstances from active duty the first time you claim the exemption(s). **Note:** This exemption can only be claimed by qualifying veterans, it does not pass through to a surviving spouse.

- **Use Tax Due on Out-of-State Purchases** — New Jersey has reduced its Sales and Use Tax rate. The rate was 7% until January 1, 2017, when it fell to 6.875%. The rate fell to 6.625% on January 1, 2018. When calculating your Use Tax due on out-of-state purchases, you must use the rate in effect at the time of the purchase.
- **Schedule NJ-BUS-1 (Form NJ-1040NR only)** — The Division of Taxation updated NJ-BUS-1, Business Income Summary Schedule, for Form NJ-1040NR, to include a place to enter taxes that partnerships pay on behalf of nonresident individual partners. Form NJ-BUS-1 (for Form NJ-1040NR) is available [online](#).

- **Designated Contribution** — The New Jersey Yellow Ribbon Fund has been added to the list of organizations to which you can make a donation (contribution) on your tax return. The monies raised will be used to ease the burden of members of the Armed Forces on extended deployment. To donate to the new fund, you must specify code number “23” at the “Other Designated Contribution” line.

- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2017, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$142.38. The maximum employee disability insurance contribution was \$80.40. The maximum employee family leave insurance contribution was \$33.50. If you had two or more employers, you may have contributed more than the maximum amount(s). To claim credit on the tax return for excess withholding, complete Form NJ-2450. More information is available [online](#).
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2017 was 3.4741% (.034741) from January 1 to June 30, and 3.4654% (.034654) from July 1 to December 31.

Property Tax Relief Programs

- **2017 Senior Freeze (Property Tax Reimbursement)** — The Senior Freeze program reimburses eligible senior citizens or disabled persons for property tax increases. Eligible residents must file a 2017 Senior Freeze Application (Form PTR-1 or PTR-2). The

2017 applications are expected to be mailed by mid-February.

With very few exceptions, all income received during the year, including income that is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the Senior Freeze. For residents applying for reimbursements for Tax Year 2017, total annual income must be:

2016: \$87,007 or less, and

2017: \$87,268 or less

The limits apply regardless of marital/civil union status. However, if an applicant’s status is married/CU couple, combined income of both spouses/CU partners must be reported.

NOTE: Eligibility requirements, including income limits, and benefits available under this program are subject to change. Information for 2017 will be posted on the Division’s [website](#) as it becomes available.

- **Homestead Benefit Program** — Information about filing for benefits under the Homestead Benefit program is not yet available. Please continue to check our [website](#) as information will be posted as it becomes available.

Changes to Other Taxes

There also have been some important changes affecting other New Jersey taxes.

- **Sales and Use Tax** — Effective January 1, 2018, the New Jersey Sales and Use Tax rate decreased from 6.875% to 6.625%. The tax rate was reduced from 7% to 6.875% in 2017. Additional

New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:** John J. Ficara

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information on the [Sales and Use Tax](#) changes is available online.

- **Inheritance and Estate Tax** — The New Jersey Estate Tax was eliminated for the estates of resident decedents dying on or after January 1, 2018. Additional information on the [Estate Tax](#) changes is available online.
- **The Annual Property Tax Deduction for Veterans and Property Tax Exemption for Disabled Veterans** — Eligibility for the [deduction and exemption](#) has been extended to members of the United States Armed Forces assigned to the rescue and recovery mission at the World Trade Center. □

Canvassing Efforts

Canvassing businesses is an important part of the [Field Investigation](#) Branch’s work. The purpose of canvassing is to educate business owners about State tax laws and how to comply with them.

Investigators are constantly monitoring strip malls and main streets for new businesses while traveling between scheduled visits. When a new business is identified, investigators

stop in to verify that the business is properly registered and that the business owner understands his/her tax obligations.

Investigators also canvass transient sellers at flea markets, art shows, craft shows, entertainment venues, and other special events providing education about any New Jersey taxes for which the seller may be responsible and ensuring that he/she is properly registered. Other locations, such as construction sites and warehouses, are actively canvassed by investigators to verify registration and tax compliance.

To maintain a level playing field for New Jersey taxpayers, investigators work cooperatively with the New Jersey State Police, inspectors from the Motor Vehicle Commission, and local law enforcement agencies at weigh stations and vehicle emission sites to check both in-state and out-of-state commercial vehicles for tax compliance.

If necessary, an investigator can issue a [jeopardy assessment](#) (N.J.S.A. 54:49-5 and 54:49-7), which is an on-the-spot demand for immediate payment. Failure to satisfy the assessment can result in the immediate seizure of available assets.

Companies subject to the jeopardy assessment process have 90 days from the date of the action to appeal the assessment.

Since the inception of this project, the Field Investigation Branch has collected over \$250 million and registered over 15,000 businesses. □

LOCAL PROPERTY TAX

Assessors’ Calendar

January 1–

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.
- County Tax Board to complete hearings of added and omitted assessment appeals.
- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.
- Assessor to file one copy of each Farmland Assessment application (Form FA-1) with County Tax Board for tax administrator’s review.

Retirement Income Exclusions for Tax Year 2017 and After

Tax Year	Filing Status		
	Married/CU Couple, Filing Joint Return	Married, CU Partner, Filing Separate Return	Single, or Head of Household, or Qualifying Widow(er)/ Surviving CU Partner
2017	\$ 40,000	\$ 20,000	\$ 30,000
2018	60,000	30,000	45,000
2019	80,000	40,000	60,000
2020 and after	100,000	50,000	75,000

Note: Your total income for the entire year must be \$100,000 or less to qualify for the retirement income exclusions.



January 10–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.
- Assessor to file assessment list and duplicates with County Tax Board.
- Assessor to file estimated total amount of approved veteran and property tax deductions with County Tax Board.
- Assessor to file copies of Initial and Further Statements with County Tax Board.
- Assessor to file duplicate copy of municipal tax map with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal

budget cap increase, to County Tax Administrator.

- Assessor to file “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” with County Tax Board.
- Assessor to file two copies of Form SR-3A with County Tax Board.

January 25–

- Assessor to provide schedule of office hours and appointment availability to County Tax Administrator and post in the municipal building.

February 1–

- Assessor to notify taxpayer by mail of current assessment and prior year’s taxes.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to complete Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 and forward to County Tax Administrator.
- County Tax Administrator to furnish assessors’ office hours to Director, Division of Taxation.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10–

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax

Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

February 15–

- County Tax Administrator to review FA-1 forms for farmland assessment and forward to Property Administration in district order.

March 1–

- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services in the Department of Community Affairs (two copies); and post a copy at the courthouse.

March 10 (before)–

- County Tax Board to complete equalization table hearings.

March 10–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services in the Department of Community Affairs (two copies).

The complete [Work Calendar](#) is available on the Division’s website.

Monmouth County Assessment Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration program to make the assessment of real property more precise by using technology-driven procedures. This was designed to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the

Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2018 – December 31, 2018, will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%
1/1/17	6.50%
1/1/18	7.25%



first county to adopt this program, which began October 1, 2013.

The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

January 10–

- Assessor to file two copies of preliminary Form SR-3A with County Tax Board.

January 15–

- Deadline for taxpayers and taxing districts to file appeals of assessed valuations to County Tax Boards, or 45 days from the date the bulk mailing of notifications of assessment is completed, whichever is later. **Note:** Deadline for appeals of assessed valuations over \$1,000,000 to State Tax Court remains April 1 or 45 days from completion of bulk mailing notifications, whichever is later.
- If petition of appeal or complaint is filed on January 15, or during the 19 days next preceding January 15, taxpayer or taxing district has 20 days from the date of service of the petition or complaint to file a cross petition with the County Board of Taxation.

February 1–

- Tax appeals are heard February, March, and April.

The complete [Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

- On July 19, 2017, an Ocean County Grand Jury indicted Robert Cardell on 14 counts of fourth-degree unregistered home improvement contracting, 14 counts of third-degree theft by deception, one count of third-degree failure to file a tax return, and one count of third-degree failure to pay tax. Robert Cardell used his unlicensed businesses, Silver Lining Steel Coating & Striping, Silver Lining Contracting LLC, and Semper Fi Seal Coating & Striping, to take more than \$20,000 in customer money over an 18-month period without performing contracted services.
- On July 24, 2017, before Ocean County Superior Court Judge Rochelle Gizinski, Patrick Trushell II pleaded guilty to second-degree theft and third-degree failure to file New Jersey Income Tax returns for Tax Years 2013 and 2015. Mr. Trushell owned and operated ChronoEnergy while working for several other energy

companies with which he had signed non-compete clauses. It was determined that Patrick Trushell failed to report income for 2013 and 2015 and underreported income for 2014. Full restitution in the amount of \$267,000 was ordered, with \$13,488.25 due to the New Jersey Department of the Treasury for tax associated with the underreported income.

- On August 11, 2017, William Herring was ordered into a civil judgment by confession stemming from a guilty plea for third-degree failure to make required disposition and third-degree failure to pay or turn over taxes. The Cumberland County Superior Court ordered Mr. Herring to pay \$27,400.70 to the New Jersey Department of the Treasury and \$299,244 to J & C Auto Sales Inc., over his three year probationary period. Mr. Herring was ordered banned from casinos and other gambling institutions.
- On August 18, 2017, special agents from the Office of Criminal Investigation (OCI) Special Investigations Unit performed a compliance inspection at two Delta gas stations. A total of

Current Amnesty Program

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Texas

5/1/18 – 6/29/18

www.comptroller.texas.gov/tax-amnesty/

40 cartons of counterfeit tax-stamped cigarettes were seized, and the owner, Rajinder Chandi, was arrested. Chandi was charged with possession of counterfeit tax stamps, failure to keep books and records to evade taxes, dealing with an unlicensed person to evade taxes, and two counts of failing to file for a license. He was released on summons and has applied for Pretrial Intervention.

- On August 22, 2017, Samyon Gilstein, owner and operator of Sunrise Motors, Inc., a South Hackensack-based used car dealership, was arrested in Paramus, New Jersey, and charged with one count of second-degree misapplication of entrusted funds with a benefit greater than \$75,000, one count of second-degree failure to turn over collected withheld tax in an amount greater than \$75,000, second-degree misconduct by a corporate official with a benefit greater than \$75,000, and one count of third-degree filing a fraudulent tax return. His wife, Alexandra Gilstein, was arrested on August 23, 2017, and charged with one count of second-degree misapplication of entrusted funds with a benefit greater than \$75,000

and one count of third-degree filing a fraudulent tax return. In December 2016 and January 2017, the Bergen County Prosecutor's Office and the South Hackensack Police Department received customer complaints regarding the operation of Sunrise Motors, Inc. An investigation conducted by representatives from the New Jersey Motor Vehicle Commission and OCI's Special Investigations Unit revealed that Samyon and Alexandra Gilstein had conspired to collect New Jersey Sales Tax on retail automobile sales, falsely report the value of the tax collected, and steal the funds accumulated as a result of the false reporting. Between January 1, 2013, and December 31, 2016, the Gilsteins collected more than \$1.6 million in New Jersey Sales Tax but falsely reported that the business had only collected approximately \$360,000. The total theft, which took place over a period of four years, was more than \$1.24 million. The matter is proceeding to trial.

- On September 5, 2017, Rehan Zuberi was sentenced to eight years in prison with two years and

eight months of parole ineligibility. Zuberi pleaded guilty in 2015 to charges of first-degree money laundering and second-degree conspiracy to commit commercial bribery. He was ordered to pay \$1 million in restitution. Zuberi owned several medical imaging facilities throughout the state and paid hundreds of thousands of dollars to medical practitioners for patient referrals to his facilities. Zuberi's spouse, Humara Paracha, was sentenced to two years of probation.

- On October 13, 2017, in Passaic County Superior Court, Soo Hyun Kang pleaded guilty to failure to pay Gross Income Tax for Tax Years 2014 and 2015. Soo Hyun, the receptionist and wife of Dr. Byung Kang, was placed on probation and ordered to pay \$43,198, or \$1,750 a month, in restitution, penalties, and interest. Soo Hyun and Byung, both residents of New Jersey, filed jointly in 2014 and 2015 and underreported the income from the sales of oxycodone prescriptions. The couple was indicted on March 1, 2017, for crimes related to the unnecessary sales of oxycodone to patients and taxation-related charges. Michael Justice, a Kang patient, died on December 6, 2014, as a result of taking oxycodone prescribed by the doctor. The combined efforts of OCI's Financial Crimes Unit and Deputy Attorney General Heather Hausleben of the New Jersey Division of Criminal Justice Gangs and Organized Crime Bureau led to the indictment of Soo Hyun Kang for second-degree committing conspiracy, first-degree money laundering, third-degree filing a fraudulent tax return, and third-degree failure to pay Gross

Enforcement Summary Statistics

Fourth Quarter 2017

Following is a summary of enforcement actions for the quarter ending December 31, 2017.

	Number	Amount
• Bank Levies	750	\$ 3,361,502
• Certificates of Debt	2,535	45,649,492
• Seizures	88	1,201,714
• Auctions	12	428,014
• Warrants of Satisfaction	3,490	



Income Tax. The couple is being tried separately as Dr. Byung Kang faces a first-degree charge of strict liability for drug-induced death. His trial date has not been scheduled. □

Tax Briefs

Partnerships

Debt-Financed Distributions — A partnership refinanced its partnership properties by replacing existing debt obligations with new debt obligations with different terms and then converting the equity and appreciation in the properties into cash. The partnership distributed the cash from the refinancing to its partners. This transaction is termed a “debt-financed distribution.” After using the proceeds from the debt-financed distribution for his personal use, an individual partner asked the Division if the interest expense on the new debt obligation is deductible on his New Jersey Gross Income Tax return.

While a partnership is not subject to New Jersey Gross Income Tax, an individual is liable for the tax on his or her distributive share of partnership income. Distributive share for partners includes all income, gain, expense, or loss that the partnership realizes from all sources in the ordinary course of business. A partner can generally deduct all unreimbursed business expenses incurred in the conduct of the partnership’s business. However, an individual can only deduct the interest expenses he or she incurs from financing the capital contribution required by the partnership for participation in the partnership and/or ordinary interest expenses in connection with the operation of an investment partnership.

Therefore, the Division answered that the interest expense on the new debt obligation used to finance a cash distribution to the partners for personal use is not deductible for New Jersey Gross Income Tax purposes.

Sales and Use Tax

Henna (Mehndi) Temporary Tattooing Applications — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to charges for henna (Mehndi) tattooing applications. The taxpayer stated that the tattoo application is temporary, usually lasting between one and three weeks.

The Act imposes Sales Tax on charges for “Tattooing, including all permanent body art and permanent cosmetic make-up applications, except such services provided pursuant to a doctor’s prescription in conjunction with reconstructive

breast surgery.” N.J.S.A. 54:32B-3(b)(10).

The Division responded that charges for tattoo applications that are not permanent are not subject to Sales Tax under N.J.S.A. 54:32B-3(b)(10). Accordingly, henna and any other tattoo applications that are temporary in nature are not subject to tax. □

In Our Legislature

Corporation Business Tax

Tax Credits Provided for Certain Business Headquarters — P.L. 2017, c.282, signed into law on January 11, 2018, and effective immediately, establishes the Transformative Headquarters Economic Assistance Program through the New Jersey Economic Development Authority. This allows New Jersey to grant tax credits to qualifying businesses that

NJ WebFile – File your New Jersey return for free.

NJ WebFile lets you prepare and file your New Jersey Income Tax return using your own computer without buying commercial tax preparation software. Check to make sure you are eligible.

NJ Fill’nFile – Free fillable tax form.

This is an electronic version of Form NJ-1040 and its accompanying worksheets and schedules. Fill’nFile does most of the calculations for you, but only offers basic guidance and error checking. You must be comfortable doing your taxes yourself to use this service.

File with approved third-party software.

You can file your Income Tax return using commercial tax preparation software. Information is available for:

- Individuals;
- Practitioners.



locate a headquarters in New Jersey, create at least 30,000 full-time jobs, and make capital investments of at least \$3 billion. Applications for the tax credits are due July 1, 2019. A business can apply for one six-month extension of this deadline.

Gross Income Tax

Unclaimed Property Administrator Authorized to Treat a Payment as a Refund of Tax in Certain Circumstances — P.L. 2017, c.159, signed into law July 21, 2017, and effective immediately, authorizes the Unclaimed Property Administrator to treat an unclaimed property payment as a refund of tax for the limited purpose of satisfying debts, if any, through the Setoff of Individual Liability (SOIL) program.

Checkoff for Boy Scouts of America Councils in New Jersey Fund — P.L. 2017, c.158, signed into law July 21, 2017, effective immediately, and applicable to tax years beginning on or after January 1, 2018 establishes the Boy Scouts

of America Councils Fund in New Jersey. It also allows taxpayers to donate to the fund by specifying that a certain amount of their Income Tax overpayments should go to that fund or by enclosing a contribution with their tax returns.

Gold Star Family Counseling Tax Credit — P.L. 2017, c.174, signed into law July 21, 2017, and effective January 1, 2018, establishes the Gold Star Family Counseling program and provides a Gross Income Tax credit to mental health care professionals who provide counseling through the program. The Department of Military and Veterans Affairs (DMAVA) will determine annually the amount of the tax credit a health care professional can claim and will supply documentation to the provider verifying that amount. DMAVA will limit the cumulative hours authorized for the credit to a minimum of 20 hours and a maximum of 40 hours per year, per professional. The amount of the credit cannot reduce a taxpayer's

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#).

Gross Income Tax liability to an amount less than zero.

Insurance Premium Tax Tax Credits Provided for Certain Business Headquarters — See Corporation Business Tax.

Sales and Use Tax Exemption for Breast Pumps — P.L. 2017, c.276, signed into law January 8, 2018, provides a Sales and Use Tax exemption for the sales of breast pumps, breast pump collection and storage supplies, and certain services to maintain and repair breast pumps. This law applies to all sales made and services rendered on and after May 1, 2018. □

Pay NJ Taxes Electronically
www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

John Smith
 Jane Smith
 123 Main Street
 Trenton, NJ 08611

1234
 15-09000000

DATE _____

PAY TO THE ORDER OF _____ \$ _____

Anyplace Bank
 Trenton, NJ 08611

Routing number: 20202086
 Account number: 1234

For (250250029) 20202086 1234

Do not include the check number

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).






Tax Calendar

The following three calendars provide listings of filing and payment dates for Tax Year 2017 (January 1, 2017 – December 31, 2017) and Tax Year 2018 (January 1, 2018 – December 31, 2018) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service



Center at 609-292-6400 for the appropriate filing deadline.

[2017](#) [2018](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2017](#) [2018](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2017](#) [2018](#) □



*important
phone
numbers*

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline	
for Homeowners.....	1-888-238-1233
Property Tax Reimbursement	
Hotline.....	1-800-882-6597
Earned Income Tax Credit	
Information.....	609-292-6400
Business Paperless Telefiling	
System	609-341-4800
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals	
& Dissolutions.....	609-292-5323
Director’s Office	609-292-6400
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax	
Refunds	609-633-8870
Public Utility Tax.....	609-633-2634



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our social networks*

Information on Novel Coronavirus

November 18, 52203

Have general questions about COVID-19?

The NJ Poison Control Center and 211 have partnered with the State to provide information to the public on COVID-19:

Call: 2-1-1

Call (24/7): 1-800-962-1253

Text: NJCOVID to 898-211

Visit <https://covid19.nj.gov/> or nj.gov/health for additional information

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[SHBP/SEHBP COVID-19 Update](#)



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COVID-19 RELATED Information

Beginning on March 18th and continuing at least through March 31st, all walk-in services at Division of Taxation regional and Trenton offices will be closed to the public as a precaution to safeguard public health. We anticipate reopening on April 1st.

[Call centers](#) and [email servicing](#) remain operational for any inquiries. However, staffing is extremely limited to mitigate the spread of COVID-19. You may experience significant wait times or delays in response to telephone inquiries, emails or general correspondence.

You can file for free at [New Jersey Online Income Tax Filing System](#). Download [Income Tax forms](#) or [make payments](#) from this website.

We apologize for any inconvenience this may cause you. We remain committed to continuing to provide the best service we can and we thank you for your patience.

[Home](#) / NJ Division of Taxation - Paperless Filing Methods

NJ Division of Taxation - Paperless Filing Methods

- [New Jersey Online Income Tax Filing](#)
- NJ E-File
 - for [Individuals](#)
 - for [Practitioners](#)
- NJ WebFile (The NJ WebFile program was permanently discontinued on October 16, 2019.)

Last Updated: Friday, 02/21/20



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NJ Fill'nFile

New Jersey offers two ways to more accurately file your 2017 return!

Use a fillable form, type in your tax information, then:

1. **Save a stamp** and file it without paper
or
2. Download, print it and mail it

[File My NJ-1040 Electronically](#)

[Download NJ-1040 and File Paper Return](#)

- Availability 24 hours a day, 7 days a week.
- Refunds can be made via direct deposit.
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- Fast and Easy Filing
- Providing a secure connection for all users.

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Last Updated: Monday, 01/29/18



OPRA | Open
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Hurricane
Relief

How We Can Help

New Jersey State Tax news

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Fall 2017

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Correction: On Demand Streaming and Downloadable Videos Subscription, see page 7.

Homestead Benefit Filing Under Way

New Jersey homeowners are now filing their 2015 Homestead Benefit applications. The Division of Taxation mailed worksheets and instructions for the homeowner benefit to more than 1.1 million New Jersey residents over a three-week period that began in mid-September 2017. During the same period, the Division sent emails containing instructions for downloading the application packet to an additional 84,000 residents. The homeowners who received emails had filed online in a prior year and indicated that they wanted to receive future applications electronically.

To be eligible for the Homestead Benefit, applicants had to be New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2015, paid property taxes on that home, and had 2015 New Jersey gross income of \$75,000 or less (\$150,000 or less for homeowners 65 or older or blind or disabled).

Benefit amounts vary based on the applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or blind or disabled.

Most homeowners can file their applications either online or by phone (1-877-658-2972). Applicants should read the instructions in the packet before attempting to file. Homeowners who sold or plan

to sell their home should pay particular attention to the instructions for their situation to ensure they complete the application correctly.

The filing deadline for 2015 Homestead Benefit applications is November 30, 2017. More information on the Homestead Benefit, including eligibility requirements, is available [online](#). □

Small Business Outreach

Over the next several months, the Division of Taxation will be increasing its door-to-door outreach to familiarize small business owners with State tax laws and how to comply with them. This outreach, also referred to as canvassing, is an ongoing part of the Division's mission to promote voluntary compliance.

The focus of the outreach will be on educating newly registered businesses and businesses that have not yet filed a tax return. Personnel from the Division's Collection and Enforcement Branch will explain the New Jersey taxes for which a business may be responsible and what the business owner needs to do to meet those responsibilities. Each business also will be provided with an investigator's direct contact information in case there are follow-up questions.

This expanded educational effort is part of a series of initiatives announced by the Department of

the Treasury last spring. The purpose is to make it easier for taxpayers to understand their tax obligations. □

Small Business Workshops

The Division of Taxation provides free workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type;
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development;
- Determining what is taxable and what is exempt for New Jersey Sales Tax purposes;
- Procedures for collecting and remitting various New Jersey taxes;
- Filing Sales and Use Tax returns;
- Meeting employer responsibilities;
- Reporting business income.

To attend a workshop, review the schedule and register with the contact person listed for each event. The contact person can also provide the time of the workshop, parking information, and directions to the event. The Division does not manage the registration process.

The current [workshop schedule](#) is available online. The Division updates the schedule as new workshops are added. □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Twelve persons passed the March 25, 2017, C.T.A. exam. They are:

Atlantic County: Neil McGettigan, Absecon City; Charles Woolson, Hammonton Town.

Burlington County: Douglas Standriff, Ho-Ho-Kus Borough.

Camden County: Abrina Carson, Pennsauken Township; Patrick Dymond, Collingswood Borough.

Essex County: Carol Callahan, Livingston Township; Jason Weinstein, Maplewood Township.

Monmouth County: Taras Olesnycky, Manalapan; Howard VanSalisbury, Matawan Borough.

Ocean County: Barbara Bielawne, Forked River.

Sussex County: Kristen Umansky, Stockholm.

Warren County: William Kanyuck, Stewartsville.

The next C.T.A. examination is scheduled for March 24, 2018. To apply, complete the Application for Admission to a Tax Assessor Certification Exam, [Form AC-1](#). The

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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deadline to file applications for this exam is February 22, 2018. The filing fee is \$10. If you have any questions regarding this exam, please contact Marilyn Gaines at 609-292-8823 or write to Property Administration, PO Box 240, Trenton, NJ 08695-0240. □

**LOCAL PROPERTY TAX
Tax Assessors’
Calendar**

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Committee (F.E.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Initial Application, Form F.S.1, for blast or radiation fallout shelter exemption filed with tax assessor.
- Initial Application, Form WS-1, for water supply and sewage disposal facilities exemption filed with tax assessor.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).

- \$250 veteran’s property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens (age 65), disabled persons, or surviving spouses/civil union partners (age 55) eligibility established (pretax year). Age or disability status established by December 31 (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected to be granted, etc., certified by assessor.

- Exempt real property sold to nonexempt owner or any real property improved after October 1 and before January 1 valued and assessed as of the first day of the month following completion or sale of property.
- True taxable value of improvement, conversion, or construction of property for which the owner has applied for exemption and/or abatement determined by assessor.

October 1 (after)–

- Assessor notified of structural material depreciation occurring after October 1 and before January 1.

October 25 (on or before)–

- Added Assessment Certification for Fire Districts, Form CNC-3, provided by assessor/collector.

November 1 (on or before)–

For Monmouth County, see *Monmouth County Assessment Demonstration Program* below.

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Assessor completes Form CNC-3 and forwards original to tax collector.

Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction’s website.

Ohio	1/1/18 – 2/15/18	www.tax.ohio.gov
Rhode Island	12/1/17 – 2/15/18	www.taxamnesty.ri.gov



November 15–

For Monmouth County, see *Monmouth County Assessment Demonstration Program* below.

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Deadline for taxing districts’ appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date

collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 20 (on or before)–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans’ deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

The complete [2017 Work Calendar](#) is available on the Division’s website.

Monmouth County Assessment Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration program to make the assessment of real property more precise by using technology-driven procedures. This was designed to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013.

The following dates on the assessors’ calendar have been revised for municipalities in Monmouth County:

November 1 (on or near)–

- Legal advertisement of availability of Tax List for public inspection.

November 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).

November 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year’s taxes (pretax year).

November 25 (on, before, or after)–

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

End of November–

- Deadline for taxing districts’ appeals of Table of Equalized Valuations to New Jersey Tax Court.

The complete [2017 Monmouth County Work Calendar](#) is available on the Division’s website. □

Interest 6.50%

The interest rate assessed on amounts due for the period January 1, 2017 – December 31, 2017, will be 6.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%
1/1/17	6.50%

Criminal Enforcement

- On April 27, 2017, special agents from the Office of Criminal Investigation (OCI) conducted an inspection at Kaman Mini Market in Lodi, New Jersey, which is owned by Aziz Kanan and his brother, Mawarfaq Kanan. The inspection resulted in the seizure of 21 cartons of contraband cigarettes and more than 2,000 untaxed cigars. Both owners were arrested and charged with indictable offenses. The Kanan brothers were transported to the Lodi Police Department, where



they were processed by OCI and released without incident.

- On April 28, 2017, OCI special agents arrested the target of an ongoing investigation into contraband cigarette offenses related to the possession of 19 cartons of untaxed cigarettes. The cigarettes were discovered during a retail compliance inspection on March 10, 2017. Five cartons contained unstamped cigarettes, and 14 cartons had counterfeit New Jersey tax stamps. The suspect was taken to the U.S. Homeland Security Office in Newark, New Jersey, for processing by OCI, and was released on his own recognizance.
- On May 4, 2017, OCI conducted joint Quality of Life sweeps with Jersey City officials. As a result, numerous cartons of contraband cigarettes, untaxed tobacco, and packages of illegally imported hookah tobacco were seized. Charges were filed by OCI against each of the local businesses where the seizures occurred.
- On May 5, 2017, S&K Wholesaler LLC (formally S&K Imports, Inc.), located in Philadelphia, was denied a New Jersey nonresident cigarette distributor license. The cigarette supply company changed ownership last year, and neither the Pennsylvania Department of Revenue nor the New Jersey Division of Taxation were properly informed. However, when the company submitted its license application this year, background research revealed that certain principals had a criminal history. As a result, the company was ineligible for a license.

- On May 5, 2017, Alex Frank, owner of Hammer Maintenance LLC and/or Hammer Equipment LLC; Sonny Frank, owner of Hydraulic Breaker Services, LLC; and Rocky Frank, owner of Trinity Hydraulic Services LLC and/or Trinity Machine LLC, each waived indictment (accusation) on charges of third-degree failure to file NJ-1040 and third-degree failure to file Sales and Use Tax returns. Alex Frank failed to file NJ-1040s for Tax Years 2010–2014, and Sales and Use Tax returns for the quarters ending March 30, 2011, through December 31, 2015. Sonny Frank failed to file an NJ-1040 for Tax Year 2014, and Sales and Use Tax returns for the quarters ending March 30, 2011, through December 31, 2015. Rocky Frank failed to file NJ-1040s for Tax Years 2012–2014, and Sales and Use Tax returns for the quarters ending March 30, 2011, through December 31, 2015. The request to be tried by accusation was granted. The three defendants entered into the Pretrial Intervention (PTI) program and a consent judgment was agreed upon. They will collectively pay to the New Jersey Department of

the Treasury a total of \$803,874.50. This was a cooperative investigation with the New Jersey Division of Criminal Justice, the Social Security Administration, and OCI’s Freehold Financial Investigations Unit.

- On May 19, 2017, Donald Horner, Denise Horner, and Dianna Horner were accepted into the Pre-Trial Intervention program. All three had been arrested on charges of filing false tax returns for Tax Years 2010–2013. Their arrests were the result of a joint operation with the Burlington County Prosecutor’s Office and OCI’s Freehold Financial Investigations Unit. Donald and Denise Horner also were charged with failure to pay Income Taxes based on \$178,890 in unreported income for those years. Dianna Horner filed amended tax returns. Donald and Denise Horner filed amended tax returns and paid taxes due of \$11,375.
- On May 23, 2017, more than \$100,000 was seized from an illegal lottery operation in New Jersey. The seizure was the result of information elicited from a confidential informant by an OCI Task Force Officer while

Enforcement Summary Statistics *Third Quarter 2017*

Following is a summary of enforcement actions for the quarter ending September 30, 2017.

	Number	Amount
• Bank Levies	850	\$ 2,225,467
• Certificates of Debt	3,633	70,463,769
• Seizures	73	936,773
• Auctions	15	158,093
• Warrants of Satisfaction	4,368	

the latter was on assignment with the U.S. Homeland Security Investigations (HSI) Financial Unit. The seizure stopped the outbound transfer of U.S. currency to the Dominican Republic. OCI's continued involvement with HSI contributes to the protection of State revenue, and in this case, helped reduce the erosion of the State Lottery program caused by a competing illegal lottery.

- Alexandra Masso, along with her husband Leonardo, used her position as an office manager to embezzle money from Miller Dental Arts. On May 26, 2017, Alexandra Masso pleaded guilty to second-degree theft by unlawful taking and third-degree failure to pay. Leonardo Masso pleaded guilty to second-degree theft by unlawful taking. This investigation was conducted by the Hudson County Prosecutor's Office in conjunction with OCI's Freehold Financial Investigations Unit.
- On June 7, 2017, special agents from OCI conducted a compliance inspection of Mina Tobacco in Jersey City. Agents seized 40,452 cigars, 2,090 tobacco wraps, 24 hookah boxes, 225 cans of snuff, and 48 loose tobacco pouches. Two business officers, Mina A. Abdelaziz and Mar J. George, were arrested and

charged with the following: filing a false return (third degree); failure to pay (third degree); failure to maintain books/records (third degree); offering false information to a public officer (disorderly person); falsifying records (fourth degree); possession of untaxed tobacco (disorderly person); and failure to keep tobacco records (disorderly person). After OCI processed the defendants, they were released on their own recognizance. This investigation was conducted by OCI's Special Investigations Unit.

- On June 26, 2017, six people were arrested in Lakewood, on State and federal charges involving benefit fraud. The charges allege that the defendants misrepresented their income when they submitted applications for government assistance programs – declaring inaccurate amounts that were low enough to qualify. They are accused of manipulating their tax returns and related business accounts to commit this fraud. The arrests were the result of a joint operation, dubbed Operation Blue Claw, with the Federal Bureau of Investigation, the New Jersey Office of the State Comptroller, the Ocean County Prosecutor's Office, and OCI. □

the Division if this income, which is reportable for federal income tax purposes in 2017, is subject to New Jersey Gross Income Tax at that time even though he is now a nonresident.

The Division responded that any compensation earned from or for services rendered in New Jersey by a nonresident is subject to Gross Income Tax in accordance with N.J.S.A. 54A:5-8a(2). It is reportable to New Jersey at the same time that it is reportable for federal income tax purposes under N.J.S.A. 54A:8-3(c). These two statutory sections provide that New Jersey sourced income earned in a prior period and reportable in a subsequent period is subject to Gross Income Tax, regardless of the residency of the taxpayer when reported.

Therefore, the taxpayer must source to New Jersey the IRC Section 457A deferred compensation income that is attributable to services performed in the State and report this income for New Jersey Gross Income Tax purposes in the same tax year as reported for federal income tax purposes.

Errors and Omissions on Form GIT/REP-3 — An attorney asked if an error on a completed Form GIT/REP-3 that accompanied a deed at recording would invalidate that deed and impair title to the property, even though there were no errors made on the recorded deed itself.

The Division cited N.J.S.A. 54A:8-10(g), which states:

“If a deed is recorded notwithstanding an omission or inaccuracy in the form prescribed pursuant to subsection a. of this section or in any certification by the transferor on such form or a deficiency in the

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.

Tax Briefs

Gross Income Tax

Deferred Compensation Received by a Nonresident Hedge Fund Manager Under IRC Section 457A

— A hedge fund manager, who while a resident of New Jersey and performing services in this state, deferred a portion of his compensation into an account in an offshore bank under IRC Section 457A. He asked



payment of estimated gross income tax required by this section, the recording of such deed shall not be invalidated by reason of such omission, inaccuracy, erroneous certification or deficiency nor shall the title founded on such deed be impaired thereby.”

Therefore, the fact that a completed Form GIT/REP-3 contained errors does not invalidate the recorded deed transferring title from the sellers to the buyers. If a buyer, seller, or some other third party wishes to challenge the validity of the deed on some other grounds, they should consult their own independent legal counsel.

Sales and Use Tax

Fishing and Hunting Licenses Issued by Governmental Agencies

— A taxpayer inquired if charges for State hunting licenses, State fishing licenses, and federal duck stamps issued by the United States Fish and Wildlife Service are subject to New Jersey Sales and Use Tax.

The Division responded that sales of services or property not ordinarily

sold by private persons are exempt from Sales and Use Tax when sold by federal or New Jersey governmental agencies. N.J.S.A. 54:32B-9(a). Therefore, charges for State hunting licenses, State fishing licenses, and federal duck stamps issued by the United States Fish and Wildlife Service are exempt from Sales and Use Tax.

Medical Grade Glue — A taxpayer, who provides medical services, inquired if Sales or Use Tax is due when purchasing medical grade glue that will be used by the taxpayer when providing medical services to treat patients. Medical grade glue is a medical adhesive that is used in lieu of stitches or staples to join the edges of a wound together or to close minor wounds.

The New Jersey Sales and Use Tax Act imposes tax on charges for retail sales of tangible personal property, unless a valid exemption exists. One of those exemptions is for charges for prosthetic devices for human use. N.J.S.A. 54:32B-8.1(a)(4). A “prosthetic device” is defined as a replacement, corrective, or supportive

device including repair and replacement parts for same worn on or in the body in order to: artificially replace a missing portion of the body; or prevent or correct a physical deformity or malfunction; or support a weak or deformed portion of the body. N.J.S.A. 54:32B-8.1(b).

The Division responded that medical grade glue meets the definition of a prosthetic device because it artificially replaces a missing portion of the body (skin), it corrects a deformity or malfunction (open wound), and it supports a weak or deformed portion of the body (closes the open wound and allows it to heal). Therefore, charges for the taxpayer’s purchases of medical grade glue are exempt from Sales and Use Tax.

Correction: On Demand Streaming and Downloadable Videos Subscription

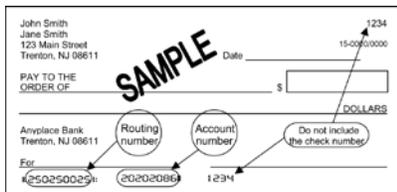
— On page 8 of the [Spring 2017](#) issue of the *New Jersey State Tax News*, the Division addressed the taxability of a lump-sum charge for a subscription that provides both streaming and downloadable videos and television shows on demand. Although the Division correctly concluded that the charge was subject to Sales Tax because the sales price consisted of taxable and nontaxable products sold together for one price, the article included this incorrect sentence: “The Division responded that streaming videos are not considered specified digital products and are not subject to Sales Tax.” The correct sentence should have stated: “The Division responded that streaming videos are considered specified digital products, but are exempt from tax based on the facts provided because they are only accessed and are not delivered to the purchaser.” We regret the error. □

Pay NJ Taxes Electronically

Individuals: www.state.nj.us/treasury/taxation/payments-notice.shtml

Businesses: www.state.nj.us/treasury/taxation/payments-notice.shtml

Electronic Check (E-Check)



Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).



In Our Legislature

Corporation Business Tax

Garden State Create Zones — P.L. 2017, c.221, signed into law on August 7, 2017, and effective immediately, establishes Garden State Create Zones under the Grow New Jersey Assistance program, and provides increased tax credits for certain businesses that have collaborative research relationships with colleges or universities located in New Jersey.

Funds for County Farmland Preservation Grants — P.L. 2017, c.225, signed into law on August 7, 2017, and effective immediately, appropriates \$32.5 million from constitutionally dedicated Corporation Business Tax revenues to the State Agriculture Development Committee for planning incentive grants to counties for farmland preservation purposes.

Funds for Municipal Farmland Preservation Grants — P.L. 2017, c.226, signed into law on August 7, 2017, and effective immediately, appropriates \$7.5 million from constitutionally dedicated Corporation Business Tax revenues to the State Agriculture Development Committee for planning incentive grants to municipalities for farmland preservation purposes.

Gross Income Tax

Checkoff for NJ Memorials to War Veterans Maintenance Fund — P.L. 2017, c.190, signed into law on August 7, 2017, effective immediately, and applicable to tax years beginning on or after January 1, 2018, establishes the NJ Memorials to War Veterans Maintenance Fund. It also allows taxpayers to donate to the fund by specifying that a certain amount of their Income Tax overpayments should go to that fund

or by enclosing a contribution with their tax returns.

Checkoff for Jersey Fresh Program Fund — P.L. 2017, c.197, signed into law on August 7, 2017, effective immediately, and applicable to tax years beginning on or after January 1, 2018, establishes the Jersey Fresh Program Fund. It also allows taxpayers to donate to the fund by specifying that a certain amount of their Income Tax overpayments should go to that fund or by enclosing a contribution with their tax returns.

Checkoff for NJ World War II Veterans' Memorial Fund — P.L. 2017, c.203, signed into law on August 7, 2017, effective immediately, and applicable to tax years beginning on or after January 1, 2018, allows taxpayers to donate to the NJ World War II Veterans' Memorial Fund by specifying that a certain amount of their Income Tax overpayments should go to that fund or by enclosing a contribution with their tax returns.

Property Tax Assessment Concerning Depreciation — P.L. 2017, c.228, signed into law on August 7, 2017, and effective immediately, amends P.L. 1945, c.260. It revises dates used by assessors in the Property Assessment Demonstration program for determining the value of property following material depreciation that occurs during a certain period of time. Currently, this only effects Monmouth County.

Property Tax Relief Programs Installment Payment Plan — P.L. 2017, c.207, signed into law on August 7, 2017, and effective immediately, allows an individual who is age 65 or older or blind or disabled to set up an installment payment plan

to repay any amounts owed for the Homestead Benefit or Senior Freeze (Property Tax Reimbursement) programs. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for Tax Year 2017 (January 1, 2017 – December 31, 2017) and Tax Year 2018 (January 1, 2018 – December 31, 2018) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2017](#) [2018](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2017](#) [2018](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2017](#) [2018](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
..... 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Senior Freeze
Hotline 1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- Business Paperless
Telefiling System..... 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director's Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8870
- Public Utility Tax 609-633-2634
- Report Tax Fraud 609-588-2001

New Jersey State Tax news

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Taxation Boot Camp

The Division of Taxation welcomed 171 new hires in May of 2017. Taxation University, the Division's Education and Outreach Unit, conducted the first-ever Taxation Boot Camp to prepare the employees for their new roles.

This intensive four-week training was coined "Boot Camp" because of its structure and mission as the first step in the Division's transition to a more customer-focused agency. The program was designed to prepare new hires for their job assignments by introducing them to the core mission and major taxes administered by the Division. In addition to teaching tax basics and organizational responsibilities, we equipped them with a new vision for the Division of Taxation: Make it easy for the public to file and pay taxes.

After graduation from Boot Camp, our newest taxpayer service representatives, auditors, and investigators continued their education with specialized training in their own Activities.

The new workforce is now on the job and here to help make your Taxation experience better by improving:

- Hold times at our Customer Service Center;
- Our website's look and usability;
- Billing and Notice language;

- Audit and Investigation experiences;
- Updates on legislation and legal rulings.

The Division is proud to have such resourceful and knowledgeable new employees join the team, and we look forward to making it easier for you to voluntarily comply with your tax responsibilities. □

Senior Freeze Checks in the Mail

In mid-July, the Division of Taxation began mailing checks for the 2016 Senior Freeze to qualified senior and disabled homeowners who filed applications by the original filing deadline of June 1, 2017. We will issue checks as quickly as possible to homeowners who file their applications between the original June 1 deadline and the extended deadline of October 18, 2017.

The State Budget has set the following qualifications for Senior Freeze payments: Applicants are eligible if their income did not exceed \$87,007 for 2015 and \$70,000 for 2016, as long as they meet all other requirements. Residents whose income was more than \$70,000 but was \$87,007 or less will not receive checks for 2016. We will notify them that they are not eligible. However, those residents can establish a "base year" for future reimbursements by filing an application by the deadline. This

continued on page 2



Pictured left to right: Senior Special Agent Lloyd Martin, Special Agent Nelson Avery, and Supervising Special Agent Marijane Lamattina.

senior freeze checks – from page 1

also ensures that we will mail them applications next year.

Additional information on the Senior Freeze program is available on our [website](#). □

Public Service Award

On April 19, 2017, Dana Boente, U.S. Attorney for the Eastern District of Virginia, presented Supervising Special Agent Marijane Lamattina, Senior Special Agent Lloyd Martin, and Special Agent Nelson Avery with the U.S. Attorney's Public Service Award.

The agents, members of the Office of Criminal Investigation (OCI), were recognized for their work on an investigation into a transnational cigarette trafficking operation that

involved New Jersey residents. Their efforts resulted in the shutdown of the \$9.5 million smuggling ring that defrauded four jurisdictions of various taxes.

During the investigation, the OCI agents worked with U.S. Homeland Security Investigations and Task Force Officers from the Northern Virginia Financial Initiative. They reviewed thousands of pages of business records from wholesale clubs and storage facilities; cellphone, motor vehicle, and EZ Pass records; and a host of documents that targeted the perpetrators and their cohorts, including records from local law enforcement organizations located along the Northeast Corridor.

As a result of the agents' significant contributions to this case, the three conspirators pleaded guilty and were sentenced accordingly. □

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**New Jersey Division of Taxation
Taxpayer Services
Taxpayer Communications Unit
PO Box 281
Trenton, NJ 08695-0281**

The *State Tax News* is published on the Division of Taxation's website.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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GROSS INCOME TAX

Credit for Taxes Paid to Philadelphia

If a taxpayer paid tax to Philadelphia on income earned there and that income also is subject to New Jersey tax in the same year, the taxpayer may be eligible for a credit for taxes paid to another jurisdiction on his/her New Jersey Income Tax return.

A common problem in calculating a credit for Philadelphia is that taxpayers often include income that was not taxed by both New Jersey and Philadelphia. For example, 401(k) retirement contributions are taxable for Philadelphia purposes but are not taxable for New Jersey purposes. Since income must be subject to tax by both jurisdictions, the amount of the 401(k) contributions must be deducted from the income earned in Philadelphia when calculating the credit.

To determine the proper amount of income to include when calculating the credit, the taxpayer must first divide the wage tax paid by the Philadelphia tax rate. The result is the amount of income actually taxed by Philadelphia. This amount cannot exceed the income reported on Line 14 of the NJ-1040. Individuals who worked only in Philadelphia must then deduct the full 401(k) contribution amount. Individuals who worked both inside and outside Philadelphia must deduct the 401(k) contributions made while working in Philadelphia. Information about the Philadelphia wage tax rate is available on the Philadelphia Revenue Department's [website](#).

For additional information, see [GIT-3W](#), *Credit for Taxes Paid to*

Other Jurisdictions (Business/Non-wage Income) and [GIT-3B](#), Credit for Taxes Paid to Other Jurisdictions (Wage Income). □

LOCAL PROPERTY TAX
Tax Assessors' Calendar

July 1–

- If County Board of Taxation cannot hear and determine appeals within the time prescribed in [N.J.S.A. 54:3-26](#), the Board may apply to the Director, Division of Taxation, for an extension at any time.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for Tax Year 2018 together with a notice that the completed form must be filed with assessor by August 1, 2017, to claim continuance of Farmland Assessment.
- Disallowed Property Tax Deduction recipients granted a filing extension required to pay back tax deductions previously granted. If unpaid, become real property liens.

2nd Tuesday in July–

- State Equalization Table prepared.

July 15–

- Senior Freeze (Property Tax Reimbursement) payments mailed to eligible claimants who filed by June 1.

August 1–

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the

assessor to have land assessed under Farmland Assessment Act for Tax Year 2018.

August 5–

- All SR-1A forms showing sales transactions to be used in compiling 2017 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to file annual appeal information and statistics report (Form TAS) with Director, Division of Taxation.

August 25–

- State Equalization Table completed by Director, Division of Taxation.

September 1–

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for Tax Year 2018 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for Tax Year 2018 for machinery, apparatus or equipment directly used to manufacture petroleum products from crude oil.



assessors' calendar – from pg. 3

September 10–

- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

September 13–

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders.

The complete [2017 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration program to make the assessment of real property more precise by using technology-driven procedures. This will benefit municipalities by reducing the number of successful

appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013.

The summer dates on the Monmouth County assessors' calendar coincide with the dates of the regular assessors' calendar with one exception: the July provision for the extension of the time to hear and determine an appeal(s) does not apply to the Monmouth County Assessment Demonstration program.

The complete [2017 Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

- On January 24, 2017, a Hudson County Grand Jury returned a five-count indictment against Alexandra and Leonardo Masso. This indictment follows a criminal investigation that was conducted by the Hudson County Prosecutor's Office in conjunction with the Office of Criminal Investigation's Financial Investigation Unit. The investigation revealed that Alexandra, along with her husband Leonardo, used her position as office manager to embezzle money from Miller Dental Arts. Alexandra and Leonardo Masso were indicted on second-degree theft by unlawful taking, second-degree conspiracy, third degree forgery, third-degree filing a fraudulent return, and third-degree failure to pay.
- On February 2, 2017, an Office of Criminal Investigations (OCI) intelligence officer received

information that New Jersey State Police (NJSP) had made a motor vehicle stop in Carneys Point, New Jersey. One of the charges filed was transportation of untaxed cigarettes. NJSP contacted OCI per protocol, and OCI picked up and examined the contraband cigarettes. A total of seven cartons of Maryland state tax-stamped cigarettes were transferred to OCI. Additionally, Detective Long of the Moorestown Station charged each of the three individuals with theft, use of fictitious credit cards, possession of fraudulent credit cards, trafficking the personal identities of victims, possession of a controlled dangerous substance, and transporting contraband cigarettes. OCI will also file charges for failure to maintain records of cigarette purchases with the intent of evading State Cigarette Tax.

- On February 9, 2017, the U.S. Food and Drug Administration (FDA), Center for Tobacco Products, Office of Compliance and Enforcement began cooperating with OCI in enforcement activities. The FDA contracts with the New Jersey Department of Health to provide tobacco age-of-sale and related civil product compliance when contractors buy cigarettes and other tobacco products in New Jersey. OCI will now receive photographs of the purchased cigarette packs to ensure the presence of a legitimate New Jersey tax stamp as well as other data to be used to meet the due diligence requirement under the Master Settlement Agreement.
- On February 16, 2017, NJSP conducted a motor vehicle stop

Interest 6.50%

The interest rate assessed on amounts due for the period January 1, 2017 – December 31, 2017, will be 6.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%
1/1/17	6.50%



criminal enforcement – from page 4

of Abdulfatah Alsaïdi of Virginia Beach, Virginia, who was in possession of 270 cartons of Virginia-stamped cigarettes. OCI responded and seized the cigarettes. Alsaïdi was charged with transportation of contraband cigarettes, knowingly or purposely possessing a controlled dangerous substance, and possessing 20,000 or more cigarettes to which the New Jersey tax stamp has not been applied.

- On March 9, 2017, U.S. District Court Judge Robert E. Payne sentenced Eyad Salahedin of Elmwood Park, New Jersey, to the maximum of five years in federal prison, followed by three years of supervised release. Salahedin pleaded guilty in November 2016 to one count of federal conspiracy to traffic contraband cigarettes in the Eastern District of Virginia, which is a felony offense. He began his prison term May 16, 2017. Salahedin was also ordered to pay restitution of \$5,622,021 to the State of New Jersey. He must pay \$150 per month or 25% of his gross monthly income, whichever is greater. The guilty plea was the result of a three-year contraband cigarette trafficking investigation. Between March 2014 and August 2015, Salahedin and his co-conspirators used fictitious businesses and stolen and false identities to purchase \$9.6 million in cigarettes from big box stores (e.g., Sam’s Club, Costco) in Virginia. Salahedin provided conspirators with false identities, vehicles, and cash to make the purchases, and the cigarettes were smuggled north to be resold in the northern New Jersey and metro New York area. In this region, a

carton of cigarettes can be sold for up to double the Virginia purchase price, making cigarette trafficking a highly lucrative but illegal trade. Throughout the course of this investigation, OCI used various investigative tools to target Salahedin, including conducting surveillance operations from New Jersey to Virginia, effectively bringing an end to the cigarette smuggling ring. The case was investigated by OCI, with assistance from the New Jersey Office of Homeland Security and Preparedness (OHSP), U.S. Homeland Security Investigation–Newark (HSI), and Washington–Baltimore HIDTA Task Force’s Northern Virginia Financial Initiative.

- On March 10, 2017, an undercover sale of counterfeit and out-of-state cigarettes was arranged in Woodbridge, New Jersey. After the transaction took place, OCI special agents entered the location and identified all individuals inside. They arrested the two subjects and proceeded with a compliance inspection of the business. Tejashkum Patel was identified as the owner of the business and was charged with multiple indictable and disorderly persons offenses.

Darshanku Patel was also charged with indictable offenses. Both sets of charges allege violations of the Cigarette Tax Act and the Tobacco Products Wholesale Sales and Use Tax Act. The men were processed and released on summons complaints. A total of 135 cartons of counterfeit-stamped and out-of-state stamped cigarettes were seized. In addition, 1,903 cigars were seized after the suspects were unable to show that Tobacco Tax had been paid, and \$8,631 of U.S. currency was seized pending forfeiture by the courts.

- On March 28, 2017, OCI special agents arrested Richard Yanuzzi of Belleville, New Jersey, after a compliance inspection of his business, Cigar Emporium, on Ridge Road in Lyndhurst. He was charged with 12 third-degree counts of failure to file and failure to pay for reporting periods following his indictment on similar charges in September 2016. He was also charged with two disorderly persons offenses: possession of untaxed goods and failure to display a license. None of the tobacco products

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Enforcement Summary Statistics Second Quarter 2017

Following is a summary of enforcement actions for the quarter ending June 30, 2017.

	Number	Amount
• Bank Levies	805	\$ 2,481,837
• Certificates of Debt	2,655	38,204,301
• Seizures	81	1,059,635
• Auctions	11	56,310
• Warrants of Satisfaction	3,315	

criminal enforcement – from pg. 5

purchase invoice records located during the inspection indicated Tobacco Products Tax paid. A total of 37,098 untaxed cigars were seized. Yanuzzi is awaiting adjudication of the other Tobacco Products Tax counts and Sales and Use Tax counts from prior cases.

- On March 29, 2017, the founder and director of the School for Children with Hidden Intelligence (SCHI) in Lakewood, New Jersey, was indicted on charges that he misappropriated over \$630,000 in public tuition funds, using a purported fundraising foundation for the school in his alleged schemes to steal and launder money. The private school's founder and director, Rabbi Osher Eisemann, of Lakewood, was indicted along with the purported fundraising foundation for the school, Services for Hidden Intelligence, LLC, on second-degree charges of theft by unlawful taking, misapplication of entrusted property and property of government, and money laundering. The State Grand Jury indictment also charges Eisemann with second-degree misconduct by a corporate official. The indictment is the result of an ongoing joint criminal

investigation by the Division of Criminal Justice and OCI. □

Tax Briefs

Corporation Business Tax
S Corporations Responsible for Payment of NJ Income Taxes Owed by Nonconsenting Shareholders — S corporations generally do not make direct payments of New Jersey Income Taxes. Instead, the corporation's earnings or losses are divided among and passed through to the corporation's shareholders. Shareholders are responsible for paying any tax owed. All initial shareholders must agree to pay taxes to New Jersey in this manner when they form an S corporation and register it in the State. When an S corporation registered in New Jersey alters or expands its ownership, new shareholders also are responsible for reporting taxable gains and losses. However, some new shareholders may not consent to file a New Jersey Income Tax return.

Under N.J.S.A. 54:10A-5.22(b)(3): “If shareholders *that are not initial shareholders*” fail to consent to pay New Jersey taxes on New Jersey S corporation results, the State shall “have the right and jurisdiction to collect a payment...*directly from the corporation*....In such case, the corporation shall have the right but not the obligation to recover payments made by the corporation...from each nonconsenting shareholder.” (Emphasis added.)

In addition, under N.J.A.C. 18:7-20.1(c)(1)(iii): “With respect to nonconsenting shareholders, the corporation and consenting shareholders consent to the corporation assuming any tax liabilities of the non-consenting shareholder as may

be required pursuant to N.J.S.A. 54:10A-5.22b.” An existing shareholder whose percentage of stock ownership changes is not considered a new shareholder. The election to consent to taxation is made on Form CBT-2553.

There is a limited exemption to the procedures set forth above when a nonconsenting, nonresident shareholder elects to participate in a composite return under N.J.A.C. 18:35-5.2, which states, in part, that: “(a) A general partnership, a limited partnership, a limited liability partnership (LLP), a limited liability company (LLC), a New Jersey electing S corporation, an estate, a trust, or a professional athletic team (as defined in N.J.A.C. 18:35-5.1) doing business or conducting activities in New Jersey, or having income derived from or connected with sources within New Jersey may file a composite New Jersey Nonresident Gross Income Tax Return (Form NJ-1080-C) on behalf of its qualified nonresident individual partners, members, shareholders, or beneficiaries, as the case may be, who elect to file such return....”

Tax payments made by an S corporation on behalf of its nonconsenting shareholders on Form NJ-1080-C will satisfy the corporation's requirement to make tax payments under N.J.S.A. 54:10A-5.22(b)(3) for the participating shareholders. The filing of Form NJ-1080-C by an S corporation does not relieve the corporation from making payments on behalf of nonconsenting shareholders that do not elect or qualify to participate on Form NJ-1080-C.

This entire procedure is avoided if the shareholder consents to taxation

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



tax briefs – from page 6

in New Jersey of the earnings from a New Jersey-registered S corporation. The Division encourages all shareholders of an S corporation registered in New Jersey to consent to taxation in New Jersey in order to avoid additional tax filings and paperwork.

Property Tax Relief Programs
Operation Uphold Democracy in Haiti — A taxpayer wrote to the Division questioning why the military service period known as Operation Uphold Democracy in Haiti is not included when determining whether someone is eligible for the New Jersey Veteran’s Property Tax Deduction and the Disabled Veteran’s Property Tax Exemption. The taxpayer noted that such service qualifies a veteran for hiring preference for New Jersey civil service purposes.

The Division acknowledged that the provision of the Civil Service Act that relates to veterans’ preferences for employment purposes specifically includes Operation Uphold

Democracy in Haiti (N.J.S.A. 11A:5-1b(12)). However, the laws (N.J.S.A. 54:4-8.10 and 54:4-3.33a, respectively) that define active service in time of war periods for purposes of the Veteran’s Property Tax Deduction and the Disabled Veteran’s Property Tax Exemption do not include Operation Uphold Democracy in Haiti as one of the qualifying wartime service periods.

As a result, service during Operation Uphold Democracy in Haiti does not qualify a veteran for the Veteran’s Property Tax Deduction or the Disabled Veteran’s Property Tax Exemption.

As an administrative agency, the Division of Taxation is required to administer and enforce the tax laws enacted by the New Jersey Legislature and has no authority to deviate from the specific language and intent of any statutory provision. Only the Legislature can change the definition of active service in time of war for the purposes of determining eligibility for the Veteran’s Property

Tax Deduction or the Disabled Veteran’s Property Tax Exemption. □

In Our Legislature Administration

New Jersey Open Data Initiative — P.L. 2017, c.2, signed into law on February 6, 2017, and effective May 7, 2017, requires that certain information be provided on the internet to public and State agencies. The law implements the creation of a standard dataset (a named collection of related, digitally stored data) format to be used by all agencies under the direction of a Chief Data Officer.

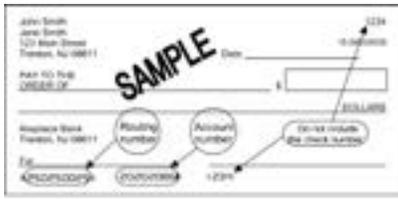
Corporation Business Tax Emerging New Jersey Technology Holding Companies Investments — P.L. 2017, c.40, signed into law on May 1, 2017, effective immediately, and applicable retroactively to qualified investments made for tax years beginning on or after January 1, 2012, amends the New Jersey Angel Investor Tax Credit Act to allow a tax credit against the Corporation Business Tax and Gross Income Tax for qualified investments in a New Jersey emerging technology business holding company. The bill provides that for the tax credit to be allowed, 100% of the taxpayer’s qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business.

Gross Income Tax Emerging New Jersey Technology Holding Companies Investments — See Corporation Business Tax.

Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)



Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).








in our legislature – from page 7

Wounded Warrior Caregivers Relief Act — P.L. 2017, c.67, signed into law on May 11, 2017, effective immediately, and applicable to tax years beginning on or after January 1, 2018, provides an Income Tax credit to family caregivers of certain armed service members with physical disabilities. A qualified family caregiver is eligible for an Income Tax credit equal to 100% of the federal veteran disability compensation or \$675, whichever is less.

Miscellaneous

Small Business Bonding Readiness Assistance Program — P.L. 2016, c.84, signed into law on January 4, 2017, effective immediately, and inoperative for 30 days following the date of enactment, establishes the Small Business Bonding Readiness Assistance program in the New Jersey Economic Development Authority (EDA). The EDA will maintain the program, which provides support services to small businesses and assists small businesses in securing surety bonding so they can bid on public works projects or perform contracts offered by the State or federal government. The EDA would enter into an agreement with a non-profit business advocacy association to provide this assistance. □

– December 31, 2017) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2016](#) [2017](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2016](#) [2017](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2016](#) [2017](#) □



*important
phone
numbers*

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline for Homeowners.....	1-888-238-1233
Property Tax Reimbursement Hotline.....	1-800-882-6597
Earned Income Tax Credit Information.....	609-292-6400
Business Paperless Telefiling System	609-341-4800
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director’s Office	609-292-6400
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax Refunds	609-633-8870
Public Utility Tax.....	609-633-2634

Tax Calendar

The following three calendars provide listings of filing and payment dates for Tax Year 2016 (January 1, 2016 – December 31, 2016) and Tax Year 2017 (January 1, 2017

New Jersey State Tax news

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Safe Harbor and Extension Requirements

If you are not able to file your New Jersey Income Tax return by the due date, you can apply for an extension of time to file. To qualify for an extension, you must:

1. File New Jersey Form NJ-630 or a federal application for automatic extension, and
2. Have paid at least 80% of the actual tax liability shown on your return (Form NJ-1040, Line 42; Form NJ-1040NR, Line 40; Form NJ-1041, Line 28) through withholdings, estimated payments, or other payments by the original due date of the return.

There is confusion about the requirements for requesting an extension and the safe harbor provisions. Safe harbor refers to the provision that eliminates interest on the underpayment of estimated taxes if 100% of the previous year's tax liability has been paid (110% for certain taxpayers). *Safe harbor does not apply to extensions of time to file.* If, when you file your return, 80% of the tax liability had not been paid by the original due date, your extension request will be denied. This is true even if you had paid 100% of the previous year's liability.

For example, you are requesting an extension of time to file your 2016 Form NJ-1040. Your tax is \$2,500 and you had withholdings of \$1,800. To meet the requirement

for an extension, you must pay at least \$2,000 (80% of \$2,500) by the original due date of April 18, 2017. Therefore, you must pay an additional \$200 by the due date even if you have already paid 100% of the previous year's liability.

More information about the extension requirements is available on our [website](#). □

INHERITANCE/ESTATE TAX **IRA Waiver Requirements**

Assets belonging to a resident decedent, with certain exceptions, cannot be transferred without the written consent of the Director of the Division of Taxation. This consent is known as a waiver. In general, if an asset comprising an IRA would not normally require a waiver (e.g., annuity), then a waiver is not needed for the IRA and will not be issued. These assets should still be reported on the Inheritance Tax Return, Schedule B (1): All Other Property.

If, however, an asset comprising an IRA would normally require a waiver (e.g., CD, brokerage account), then a waiver is required for the IRA. For Inheritance Tax purposes, and for Estate Tax returns filed using the Column A method, the asset should be reported on Schedule B (1): Bank Accounts/Brokerage Accounts of the New Jersey Inheritance Tax return. When no New Jersey Inheritance

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Supervising Special Agent Marijane Lamattina receiving her Command & Leadership Academy graduation certificate.

ira waiver requirements – from page 1

Tax return is filed, but an Estate Tax return is filed using the Column B method, waivers should be requested on Schedule E-5, Waiver Request Schedule. Named beneficiaries and their respective shares should be reported, but are not required to appear on the waivers. Due to the nature of IRAs, blanket waiver provisions do not normally apply.

In the event that the IRA must be transferred before a return can be filed, a preliminary return, Form L-4, may be completed to request a waiver.

If there is no requirement to file a return, Form L-8 may be used to request a waiver for the IRA as long as all the requirements for the use of the form are met.

For further assistance, contact the [Transfer Inheritance and Estate Taxes Branch](#). ☐

Command & Leadership Academy

Supervising Special Agent Marijane Lamattina, who commands the North Jersey region of the Office of Criminal Investigation (OCI), graduated from the New Jersey State Association of Chiefs of Police (NJSACOP) Command and Leadership Academy on January 17, 2017, at a ceremony in East Windsor, New Jersey. The ceremony, which was attended by graduates and their Chiefs, was the culmination of months of extensive classroom and off-duty time that was dedicated to the successful completion of demanding course objectives.

Lamattina, who joined OCI in August 2004 after her tenure with the United States Secret Service Uniformed Division at the White House,

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**Division of Taxation
Acting Director:** John J. Ficara

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academy – from page 2

was nominated by Special Agent in Charge Charles Giblin in recognition of her continued leadership. She joins Giblin and Supervising Special Agent Bruce Stuck as one of three current OCI special agents to have completed the program.

The academy was developed in 1993 by the NJSACOP in collaboration with the United States Military Academy at West Point. It is a unique blend of theory and application. Candidates with the greatest leadership potential are selected for this highly competitive program from all areas of the State.

OCI continues to assure the highest level of professionalism for its sworn personnel by assigning its special agents to advanced in-service training through the various law enforcement academies and programs in the region. □

LOCAL PROPERTY TAX
Tax Assessor
Certificates

The Tax Assessor Examination is held biannually per N.J.S.A. 54:1-35.25, which requires anyone taking office as a tax assessor to hold a tax assessor certificate.

Ten persons passed the March 19, 2016, C.T.A. exam, and six persons passed the September 24, 2016, C.T.A. exam. They are:

Atlantic County: Salvatore Arena, Hammonton Town; Kathleen Wohlman, Ventnor City.

Burlington County: Dawn Moretti, Bordentown Township; Sean Gaskill, Tabernacle Township.

Essex County: Aaron Wilson, Maplewood Township.

Middlesex County: Suzanne Portera, East Brunswick Township; Vivian Garzone, Woodbridge Township.

Mercer County: Stephanie Prettyman, Ewing Township; Jennifer Carabelli, Hamilton Township.

Monmouth County: Elina Veyberman, Marlboro Township; Diane Trugman, Red Bank Borough; Anne Longo, Wall Township.

Morris County: Daniel Keough, Mendham Borough.

Passaic County: Evelyn Trujillo, Clifton City.

Somerset County: Tim Hoffman, Warren Township.

Union County: Joseph Baldoni, Cranford Township.

The next C.T.A. examination is scheduled for September 23, 2017. To apply, complete the Application for Admission to a Tax Assessor Certification Exam, Form AC-1. The deadline to file applications for this exam is August 24, 2017. The filing fee is \$10. If you have any questions regarding this exam, please contact Marilyn Gaines at 609-292-8823 or write to Property Administration, PO Box 240, Trenton, NJ 08695-0240. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities

to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.

- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Chosen Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- County Board of Taxation files Form SR-3A with Property Administration.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or when assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.



assessors' calendar – from pg. 3

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration dates of their terms of office, and the status of the required courses.

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 15 (on or before)–

- County Board of Taxation certifies to Director, Division of Taxation, the number and total dollar amount of property tax and veterans' deductions allowed and disallowed for the current tax year on Forms PD-65.15 and VE-WVE-2.

The complete [2017 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

April 1–

- Tax appeals are heard February, March, and April.

May 5–

- Assessor to file final assessment lists and duplicates with County Tax Board.

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.

- County Tax Board to notify Director, Division of Local Government Services, when copy of budget resolution (in CY municipality) showing amount to be raised is not received.

- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

May 31–

- General tax rates certified by County Tax Board.
- County Tax Board to file final SR-3A forms with Property Administration.

Interest 6.50%

The interest rate assessed on amounts due for the period January 1, 2017 – December 31, 2017, will be 6.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%
1/1/17	6.50%



assessors' calendar – from page 4

June 15–

- County Tax Board President to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

The complete [2017 Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

- On September 30, 2016, in the Mercer County Superior Court, Richard Yanuzzi, owner of Sparroween, LLC, with locations in Lyndhurst and West Caldwell, New Jersey, was indicted on multiple charges. Third-degree charges included failure to file New Jersey resident tax returns, failure to file New Jersey Sales Tax returns, failure to remit Sales Taxes in the amount of approximately \$115,000, failure to file Tobacco Products Tax returns, Failure to Pay Tobacco Products Tax in the amount of approximately \$327,000, and tampering with records or information and falsifying or tampering with records. Additional charges included second-degree misconduct by a corporate official, second-degree theft by unlawful taking, second-degree misapplication of entrusted property, and

fourth-degree failure to register his second place of business with the State of New Jersey. The investigation was conducted by the Office of Criminal Investigation (OCI) and detectives in the New Jersey State Police Official Corruption North Squad. The case was presented to the State Grand Jury by the Division of Criminal Justice's Corruption and Government Fraud Bureau.

- OCI received information from the U.S. Treasury that Indian tobacco products were being offered for sale at Action Auto, an auto repair business. OCI conducted an investigation, and special agents seized a large quantity of Indian tobacco and Indian beedies on October 11, 2016. The tobacco products were owned by a known New Jersey businessman. All contraband was confiscated by OCI and transported to an evidence facility. The subject was charged with Title 54 criminal offenses for the possession of untaxed tobacco and cigarettes. A total of 46,487 packets of Indian tobacco, with an estimated value of \$50,000, were seized. A total of 5,325 cartons of beedies, estimated to be worth \$481,486, were also seized.
- OCI conducted a joint investigation with the Division of Criminal Justice into two companies: Colmyer and Sons Construction

and Rayne Construction Management Services.

On October 11, 2016, Jeffrey Colmyer and Tiffany Cimino of Little Egg Harbor, New Jersey, were arrested on charges including theft, money laundering, misconduct by a corporate official, failure to pay taxes, and filing a fraudulent tax return. Colmyer and Cimino stole hundreds of thousands of dollars from their victims, who paid to have their homes repaired, elevated, and rebuilt in the wake of Superstorm Sandy. Colmyer and Cimino used the funds to pay personal expenses, including payments for new cars, jewelry purchases that included a \$17,000 diamond ring, and hundreds of thousands of dollars that Colmyer gambled at multiple casinos in Atlantic City. The case is pending trial.

- The Hunterdon County Prosecutor's Office (HCPO) requested a joint investigation with OCI into a Pittstown, New Jersey, couple that was receiving thousands of dollars in social services benefits they were not eligible to collect. Christopher and Catherine Pennetta were arrested by HCPO and OCI on October 12, 2016. The couple was charged with theft by deception, conspiracy to commit theft by deception, hindering apprehension or prosecution, failure to pay taxes, failure to file

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Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Pennsylvania 4/21/17 – 6/19/17 www.revenue.pa.gov/taxamnesty



criminal enforcement – from pg. 5

tax returns, falsifying or tampering with records, and violation of contractor’s registration. Mr. Pennetta was running a contracting business and working on properties when he was collecting benefit payments for being permanently disabled and unable to work. The case is pending trial.

- On October 18, 2016, search warrants were executed at the office of Novy & Associates LLC and the residence of Robert Novy. This investigation was led by the Division of Criminal Justice with assistance from OCI. Approximately 70 boxes of records were confiscated and \$3.5 million of Novy’s assets were frozen. Witnesses were also interviewed by OCI special agents. Novy allegedly stole more than \$1.2 million from his clients during the period 2010 through 2015. This income was not reported by Novy for Income Tax purposes on his NJ-1040. Novy is currently being held on \$500,000 bail and has been charged with first-degree money laundering, second-degree theft by unlawful taking, and second-degree misapplication of

entrusted property. Charges for filing a fraudulent return and failure to pay are pending subpoena response and review of records from the search warrant.

- On October 19, 2016, OCI special agents performed a compliance inspection at the Delta Gas station in East Orange, New Jersey. As a result, 11 cartons of cigarettes bearing counterfeit New Jersey revenue stamps were seized, as well as 3,505 untaxed Other Tobacco Products (OTP). The manager of the business, Clement Ouedraogo of East Orange, New Jersey, was arrested by OCI special agents and charged in Essex County Superior Court with possession of 2,000 or more cigarettes bearing counterfeit New Jersey revenue stamps, failure to maintain records, and dealing with persons not licensed by the State of New Jersey. Special agents returned to this location the next day and seized an additional 14 cartons of cigarettes bearing counterfeit New Jersey revenue stamps, as well as 1,502 untaxed OTP. Charges will be filed against the owners of the business, Gian S. Jaswal of New Hyde Park, New York, and Gurjinder S. Jaswal of

Montville, New Jersey. Charges will include those filed against Ouedraogo, as well as possession of untaxed goods (OTP), failure to maintain records (OTP), and failure to display a license.

- On October 19, 2016, OCI was contacted by the Englewood Police Department after the execution of a search warrant at a shed. Inside the shed was 284 cartons of Virginia-stamped cigarettes. OCI arrested Mohammed Alsaïdi of Kew Gardens, New York. Alsaïdi was charged with possession of 100 cartons or more of cigarettes, failure to maintain books and records, and dealing with people not properly registered with the Division of Taxation. Bail was set at \$30,000, no 10%. Alsaïdi was remanded to the Bergen County Jail.
- On October 25, 2016, OCI special agents observed an individual later identified as Amit Jaitly, of South Plainfield, New Jersey, loading packages from his business in Edison, New Jersey, into a passenger van. Jaitly is a registered tobacco wholesaler with the State of New Jersey. Based on information received, Jaitly was suspected of selling untaxed tobacco and beedies. Beedies are commonly known as Indian cigarettes. Upon entering the business, a large package was observed near and under the control of Jaitly. That package was later inspected and found to contain beedies. Jaitly explained he was giving the beedies to the men in the van. Jaitly gave consent for OCI to be escorted to his other two storage areas in order to inspect the tobacco. Among the

Enforcement Summary Statistics

First Quarter 2017

Following is a summary of enforcement actions for the quarter ending March 31, 2017.

	Number	Amount
• Bank Levies	751	\$ 1,997,887
• Certificates of Debt	3,732	84,091,328
• Seizures	88	974,163
• Auctions	9	289,517
• Warrants of Satisfaction	3,510	



criminal enforcement – from page 6

three locations, a total of 4,506 packages of Indian tobacco and 1,442 cartons of beedies were inventoried and seized. The products were deemed contraband, as Jaitly could not produce a single invoice or Tobacco Products Tax return for the products. The beedies' value exceeded \$130,430, with an estimated Cigarette Tax loss to New Jersey of \$38,947. Charges are pending.

- On November 1, 2016, OCI special agents executed a search warrant in Fairfield, New Jersey, where Mohammed Alsaqur, Suad Huzein, and Mike Eadeh were found operating a cigarette smuggling/counterfeit stamp operation. They were arrested by OCI special agents and charged with second-degree counterfeiting marks and conspiracy along with several Title 54 charges. Bail was set at \$75,000, no 10%. The matter is pending trial. □

Tax Briefs

Gross Income Tax

Signing Bonus — A nonresident athlete inquired about the taxability for Gross Income Tax purposes of a signing bonus he received from a New Jersey sports team. The

Division responded that in accordance with N.J.A.C. 18:35-5.1(b)4ii, total compensation for services rendered as a member of a professional athletic team includes a bonus paid for signing a contract with a professional athletic team and must be included in the nonresident's total compensation. The nonresident athlete's New Jersey source income is then determined by apportioning his or her total compensation based on the number of duty days the athlete spent in New Jersey and the total number of duty days for the taxable year.

There is, however, an exception to the above in N.J.A.C. 18:35-5.1(b)4iv(2). If the signing bonus meets all three of the following conditions, it will not be included in the nonresident's total compensation: (A) the payment of the signing bonus is not conditional on the signer playing any games for the team, performing any subsequent services for the team, or even making the team; (B) the signing bonus is payable separately from the salary and any other compensation; and (C) the signing bonus is nonrefundable.

A nonresident athlete's signing bonus that meets all three of the above conditions is not taxable in New Jersey. If, however, the bonus does not meet all conditions, it is included in the athlete's total compensation and apportioned based on duty days spent in New Jersey.

Realty Transfer Fee

Cooperatives Created Prior to the Cooperative Recording Act — A taxpayer inquired if the Realty Transfer Fee imposed under N.J.S.A. 46:15-5 et seq. is due from transfers of cooperative unit shares and transfers of proprietary leases of cooperatives that were created prior

to the effective date of the Cooperative Recording Act (Act).

The Cooperative Recording Act, N.J.S.A. 46:8D-1 et seq., imposes the Realty Transfer Fee on transfers of cooperative units in cooperatives formed after May 7, 1988, the effective date of the Cooperative Recording Act. This includes the transfers of proprietary leases in such cooperative units pursuant to N.J.S.A. 46:15-5.

The Division of Taxation responded that transfers of cooperative unit shares of cooperatives that were created prior to the effective date of the Cooperative Recording Act are not subject to the Realty Transfer Fee in accordance with *Drew Associates of NJ, LP v. Travisano*, 122 N.J. 249 (1991). In *Drew*, the New Jersey Supreme Court upheld the Act, which phased in a recording and taxing system applicable to cooperatives created after the effective date of the Act. The Court held that imposing the Realty Transfer Fee on transfers of cooperative shares of cooperatives created after the effective date, but not on transfers of cooperatives created before the effective date, did not violate the Equal Protection Clause of the U.S. Constitution. The Court also ruled that the provisions of the Act are applicable only to cooperatives created after the effective date of the Act.

Based on the above, transfers of cooperative unit shares of cooperatives created prior to May 7, 1988, the effective date of the Act, are not subject to the Realty Transfer Fee. Transfers of cooperative unit shares and transfers of proprietary leases of cooperatives formed after that date are subject to the fee.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



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Sales and Use Tax

On Demand Streaming and Downloadable Videos Subscription

A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a fee for a subscription that provides both streaming and downloadable videos and tv shows on demand.

New Jersey imposes Sales Tax on the receipts from retail sales of tangible personal property and specified digital products, unless a valid exemption exists. “Specified digital product” means an electronically transferred digital audio-visual work, digital audio work, or digital book. Receipts from sales of a specified digital product that is accessed, but not delivered electronically to the purchaser, are exempt from the tax.

The Division responded that streaming videos are not considered specified digital products and are not subject to Sales Tax. Downloaded videos are considered specified digital products and are subject to Sales Tax. Although the company’s

subscription consists of both non-taxable and taxable products, the charge for the subscription is subject to Sales Tax because when taxable and nontaxable products are sold together for one price, the sales price is subject to Sales Tax. N.J.S.A. 54:32B-24.4. □

In Our Courts

Sales and Use Tax

Separately Stated Charges – *Premier Netcomm Solutions, LLC v. Director, Division of Taxation*; decided October 25, 2016; Tax Court Docket No. 016307-2012; motion for reconsideration decided January 9, 2017.

Premier Netcomm Solutions, LLC (Plaintiff), a company that provides information technology solutions, was audited by the Division of Taxation for the period January 1, 2004, to December 21, 2010. The resulting Sales Tax assessment was based on a review of sampled invoices that did not break down the taxable and nontaxable charges. Instead, Plaintiff included all charges on one line of the invoice, which made the entire

invoice subject to Sales Tax. In addition, Plaintiff did not provide any invoices or other evidence that it had paid Sales Tax on purchases it made, resulting in the Division making a Use Tax assessment.

Plaintiff argued that some of its purchases were not taxable because it was obvious from the invoice that the purchase was for resale. Plaintiff also argued that because lessors and certain sellers (e.g., Radio Shack, Home Depot, and Best Buy) always collect Sales Tax on their sales, Plaintiff must have paid Sales Tax. The Court upheld the Use Tax assessment noting that Plaintiff failed to provide evidence of resale and that although there is an assumption that certain sellers always charge Sales Tax, that assumption does not constitute proof.

The Court stated that when taxable and nontaxable charges are on the same invoice and are not separately stated, the entire charge is presumed to be taxable, but that presumption can be overcome. In this case, some of the invoices showed that the sales were destined for out-of-state customers. Because out-of-state sales are exempt under N.J.S.A. 54:32B-3(b), the Court ruled that those out-of-state sales were not subject to Sales Tax even though taxable and nontaxable charges were not separately stated.

In its decision, the Court held that charges for services performed in connection with prewritten computer software prior to October 1, 2005, were exempt from Sales and Use Tax because the law stating that prewritten computer software was tangible property was not enacted until October 2005. The Division filed a motion for reconsideration

Pay NJ Taxes Electronically
www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).



in our courts – from page 8

contending that the Court erred in so concluding because the law enacted in October 2005 simply enumerated what was always taxable. After conducting an in-depth review of the Division’s relevant publications, notices, and regulations, the Court reversed its decision, finding that the October 2005 law simply restated the existent law in 2004 that prewritten computer software was tangible personal property. □

In Our Legislature

Gross Income Tax

Checkoff for Autism Programs Fund — P.L. 2017, c.24, establishes the Autism Programs Fund. It also allows taxpayers to donate to the fund by specifying that a certain amount of their Income Tax overpayments should go to that fund or by enclosing a contribution with their Gross Income Tax returns. The law is applicable to tax years beginning on or after January 1, 2018.

Local Property Tax

Boldface Print Annual Assessment — P.L. 2017, c.16, amends N.J.S.A. 54:4-38.1 to require that any notice of a change in assessment and the notice of annual assessment issued to a property owner must contain the deadline to file an appeal in boldface type.

Sales and Use Tax

Changes for Certain Limousine Services — P.L. 2017, c.27, amends certain provisions of the Sales and Use Tax Act to eliminate the tax charged on receipts from transportation services that originate in this State and are provided by a limousine operator on or after May 1, 2017. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2016 (January 1, 2016 – December 31, 2016) and tax year 2017 (January 1, 2017 – December 31, 2017) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2016](#) [2017](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2016](#) [2017](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2016](#) [2017](#) □



important phone numbers

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline for Homeowners.....	1-888-238-1233
Property Tax Reimbursement Hotline.....	1-800-882-6597
Earned Income Tax Credit Information.....	609-292-6400
Business Paperless Telefiling System	609-341-4800
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director’s Office	609-292-6400
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax Refunds	609-633-8870
Public Utility Tax.....	609-633-2634

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2016 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
5	5/27/16	Provides that, for a specified period, casino gaming properties in Atlantic City are exempt from property taxes and must make payments in lieu of tax.	LPT	S-1715
9	6/30/16	Revises the payout schedule for Business Employment Incentive program tax credits to 5% in year 1; 20% in year 2; and 25% in years 3, 4, and 5.	MULT	A-4002
51	9/7/16	Increases the tax credits available under the Economic Redevelopment and Growth Grant (ERGG) program.	MULT	S-2041
56	10/14/16	Revises the New Jersey Transportation Trust Fund Authority Act of 1984 and establishes State Transportation Infrastructure Bank. Also mandates that all revenues generated from the Motor Fuels Tax and the Petroleum Products Gross Receipts Tax are deposited into the Transportation Trust Fund.	MULT	A-10
57	10/14/16	Decreases the Sales and Use Tax, phases out the Estate Tax, creates/increases various credits and exclusions for Gross Income Tax, and increases the Petroleum Products Gross Receipts Tax.	MULT	A-12
63	11/14/16	Allows certain National Guard and United States Reserve members to temporarily defer mortgage loan payments and Property Tax payments.	LPT	A-766
65	11/21/16	Clarifies and reaffirms that stadiums and arenas owned by government entities are entirely exempt from property taxation.	LPT	A-2574
66	11/21/16	Allows a refund of Petroleum Products Gross Receipts Tax and a credit for Motor Fuel Tax on certain bad debts from the sale of fuel for certain fuel dealers and distributors.	MULT	A-3988

2016 TAX LAWS

***Legend for 2016 Tax Laws**

ABT	=	Alcoholic Beverage Tax	LPT	=	Local Property Tax
ADS	=	Admissions Surcharge	MFT	=	Motor Fuel Tax
ALL	=	All Taxes Administered by the Division	MISC	=	Miscellaneous
CAS	=	Casino Taxes and Fees	MHUA	=	Meadowlands Regional Hotel Use Assessment
CBT	=	Corporation Business Tax	MULT	=	Multiple Taxes
CIG	=	Cigarette Tax	PPT	=	Petroleum Products Gross Receipts Tax
CMC	=	Cape May County Tourism Sales Tax	PTRP	=	Property Tax Relief Programs
CMPT	=	Cosmetic Medical Procedures Gross Receipts Tax	PUT	=	Public Utility Taxes
DSF	=	Domestic Security Fee	RTF	=	Realty Transfer Fee
ENV	=	Environmental Taxes	S&U	=	Sales and Use Tax
ERF	=	9-1-1 System & Emergency Response Fee	SCC	=	Spill Compensation & Control Tax
FBT	=	Financial Business Tax	TEFA	=	Transitional Energy & Facility Assessment
GIT	=	Gross Income Tax	TIR	=	Motor Vehicle Tire Fee
HMO	=	Hotel Motel Occupancies	TIT/ET	=	Transfer Inheritance & Estate Tax
IPT	=	Insurance Premium Tax	TPT	=	Tobacco Products Tax
LIT	=	Litter Control Fee			

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What's New for Tax Year 2016

There have been some important changes affecting the preparation of New Jersey Income Tax returns and applications for New Jersey's property tax relief programs for 2016. In addition, there are several important legislative changes coming for tax year 2017.

Income Tax

- **Filing Deadline** — The filing deadline is April 18, 2017, for calendar year taxpayers, the same day the federal Form 1040 is due. The due date is April 18 instead of April 15 because of the Emancipation Day holiday in the District of Columbia.
- **Driver's License Number** — The Division of Taxation is asking taxpayers to provide a Driver's License or State Non-Driver Identification card number on the tax return. Providing this information is voluntary. The Division may use it to validate the taxpayer's identity in an effort to combat identity theft and fraudulent filing.
- **Earned Income Tax Credit** — The New Jersey Earned Income Tax Credit (NJEITC) amount increases to 35% of the applicant's federal benefit for tax year 2016 and after.
- **Achieving a Better Life Experience Program (ABLE) Accounts** — Earnings on qualified

distributions from ABLE accounts are exempt from tax. However, earnings on nonqualified distributions are taxable and must be included as income.

- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2016, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$138.56, the maximum employee disability insurance contribution was \$65.20, and the maximum employee family leave insurance contribution was \$26.08. Those who had two or more employers may have contributed more than the maximum amount(s). They must complete Form NJ-2450 to claim credit on the New Jersey tax return for the excess withheld.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2016 was 3.4828% (.034828) from Jan. 1 to June 30, 2016, and 3.4741% (.034741) from July 1 to Dec. 31, 2016.
- **Alternative Business Calculation Adjustment** — Taxpayers who have losses in certain business-related categories of income may be able to use those losses to calculate an adjustment to taxable income. In addition, they can carry forward unused losses in those categories for 20 years to calculate future

continued on page 2

what's new - from page 1

adjustments. For tax year 2016 and after, the percentage used to calculate the Alternative Business Calculation Adjustment on Schedule NJ-BUS-2 is 50%, up from 40% in 2015. The percentage was phased in over a five-year period that began in 2012.

- **Designated Contributions** — The Fund for the Support of New Jersey Nonprofit Veterans Organizations has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new fund, taxpayers must specify code number “22” at the “Other Designated Contribution” line.

Property Tax Relief Programs

- **2016 Property Tax Reimbursement (Senior Freeze)** — The Senior Freeze (Property Tax Reimbursement) Program reimburses eligible senior citizens or disabled persons for Property Tax increases. Eligible residents must file a 2016 Property Tax Reimbursement Application (Form PTR-1 or PTR-2) by June 1, 2017. The 2016 applications are expected to be mailed in mid to late February.

With very few exceptions, all income received during the year, including income that is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the Property Tax Reimbursement. For residents applying for reimbursements for tax year

2016, total annual income must be:

2015: \$87,007 or less, and

2016: \$87,007 or less

The limits apply regardless of marital/civil union status. However, if an applicant’s status is married/CU couple, combined income of both spouses/CU partners must be reported.

NOTE: Eligibility requirements, including income limits, and benefits available under this program are subject to change. Information for 2016 will be posted on the Division’s [website](#) as it becomes available.

- **Homestead Benefit Program** — Information about filing for benefits under the Homestead Benefit Program is not yet available. Please continue to check our [website](#) as information will be posted as it becomes available.

Changes Coming for Tax Year 2017 and After

- **Retirement Income Exclusions** — Qualified taxpayers will be able to exclude more pension and other income on the New Jersey return. The increased exclusion amounts will be phased in over a four-year period. See chart on page 3.
- **Personal Exemption for Veterans** — Veterans who were honorably discharged or released under honorable circumstances from active duty in the Armed Forces of the United States will be eligible for an additional \$3,000 exemption.

New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Changes to Other Taxes

There have also been some important changes affecting the Petroleum Products Gross Receipts Tax, Sales Tax and the Estate Tax. P.L. 2016, c.57, which was signed into law on Oct. 14, 2016, provides tax relief for New Jersey residents and funding for the Transportation Trust Fund.

- **Petroleum Products Gross Receipts Tax** — Effective Nov. 1, 2016, the tax rate increased, a number of new exemptions were added and certain reporting requirements were changed. More information on the [Petroleum Products Gross Receipts Tax](#) changes is available online.
- **Sales and Use Tax** — The New Jersey Sales and Use Tax rate will be reduced in two phases between 2017 and 2018. The tax rate decreased from 7% to 6.875% for Jan. 1 to Dec. 31, 2017. The rate will decrease to 6.625% on Jan. 1, 2018. Additional information on the [Sales and Use Tax](#) changes is available online.
- **Inheritance and Estate Tax** — The New Jersey Estate Tax will be phased out over a two-year period.

The exemption will increase from \$675,000 to \$2 million for the estates of resident decedents dying on or after Jan. 1, 2017, but before Jan. 1, 2018. The tax will be eliminated for the estates of resident decedents dying on or after Jan. 1, 2018. Additional information on the [Estate Tax](#) changes is available online. □

INHERITANCE/ESTATE TAX

Making Portability and QTIP Elections

On Sept. 27, 2016, the Internal Revenue Service (IRS) released Revenue Procedure 2016-49, which provides guidance on making portability and Qualified Terminable Interest Property (QTIP) elections. Taxpayers have asked the Division if New Jersey follows the federal procedures for Estate Tax purposes.

“Portability” of the estate tax exemption allows a spouse to inherit the unused estate tax exemption of their deceased spouse. The QTIP election creates a type of trust that enables the grantor to provide for a surviving spouse and to maintain control of how the trust distributes assets once the surviving spouse dies.

Previously, under Revenue Procedure 2001-38, the IRS would disregard unnecessary QTIP elections for federal estate tax purposes. For example, if a decedent’s estate was under the applicable exclusion amount, the IRS would disregard a QTIP election made solely to preserve the deceased spouse’s unused exclusion amount under the portability rules.

Revenue Procedure 2016-49 modifies and supersedes Revenue Procedure 2001-38. The new procedure respects QTIP elections of estates that properly made a portability election, regardless of the Estate Tax value before the QTIP election. It allows estates that make a portability election to also make a valid QTIP election even if the election is not necessary to reduce the estate tax liability. The procedure confirms that the estate can elect portability when assets pass to a surviving spouse through a QTIP trust.

If a taxpayer makes an election for federal estate tax purposes, he or she must also make that election for New Jersey purposes. Therefore, New Jersey follows federal treatment regarding portability and

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Retirement Income Exclusions for Tax Year 2017 and After

Tax Year	Filing Status		
	Married/CU Couple, Filing Joint Return	Married, CU Partner, Filing Separate Return	Single, or Head of Household, or Qualifying Widow(er)/ Surviving CU Partner
2017	\$ 40,000	\$ 20,000	\$ 30,000
2018	60,000	30,000	45,000
2019	80,000	40,000	60,000
2020 and after	100,000	50,000	75,000



portability and QTIP - from pg. 3

QTIP elections pursuant to Revenue Procedure 2016-49.

If a federal estate tax return is not filed and/or not required to be filed, the estate tax representative may make a QTIP election in accordance with the provisions of the Internal Revenue Code for New Jersey Estate Tax purposes.

For New Jersey and federal tax purposes, Revenue Procedure 2016-49 was effective immediately. □

Small Business Workshops

The Division of Taxation provides free workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

Interest 6.50%

The interest rate assessed on amounts due for the period Jan. 1, 2017 – Dec. 31, 2017, will be 6.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%
1/1/17	6.50%

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services and Department of Labor and Workforce Development.
- Determining what is taxable and what is exempt for New Jersey Sales Tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.
- Filing Sales and Use Tax returns.
- Meeting employer responsibilities.
- Reporting business income.

To attend a workshop, review the schedule and register with the contact person listed for each event. The contact person can also provide the time of the workshop, parking information and directions to the location. The Division does not manage the registration process.

The current [workshop schedule](#) is available online. The Division updates the schedule as new workshops are added. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

Jan. 1–

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.
- County Tax Board to complete hearings of added and omitted assessment appeals.

- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.
- Assessor to file one copy of each Farmland Assessment application (Form FA-1) with County Tax Board for tax administrator's review.

Jan. 10 –

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1 for valuation by assessor as of Jan. 1.
- Assessor to file assessment list and duplicates with County Tax Board.
- Assessor to file estimated total amount of approved veteran and Property Tax deductions with County Tax Board.
- Assessor to file copies of Initial and Further Statements with County Tax Board.
- Assessor to file duplicate copy of municipal tax map with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" and "Five-Year Limited Exemption Report" with County Tax Board.
- Assessor to file two copies of Form SR-3A with County Tax Board.



assessors' calendar - from page 4

Jan. 25-

- Assessor to provide schedule of office hours and appointment availability to County Tax Administrator and post in the municipal building.

Feb. 1-

- Assessor to notify taxpayer by mail of current assessment and prior year's taxes.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to complete Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 and forward to County Tax Administrator.
- County Tax Administrator to furnish assessors' office hours to Director, Division of Taxation.

Feb. 1 (after)-

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

Feb. 10-

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax

Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

Feb. 15-

- County Tax Administrator to review FA-1 forms for farmland assessment and forward to Property Administration in district order.

March 1-

- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services in the Department of Community Affairs (two copies); and post a copy at the courthouse.

March 10 (before)-

- County Tax Board to complete equalization table hearings.

March 10-

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services in the Department of Community Affairs (two copies).

The complete [Work Calendar](#) is available on the Division's website.

Monmouth County Assessment Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

Jan. 10-

- Assessor to file two copies of preliminary Form SR-3A with County Tax Board.

Jan. 15-

- Deadline for taxpayers and taxing districts to file appeals of assessed valuations to County Tax Boards, or 45 days from the date the bulk mailing of notifications of assessment is completed, whichever is later. **Note:** Deadline for appeals of assessed valuations over \$1,000,000 to State Tax Court remains April 1 or 45 days from completion of bulk mailing notifications, whichever is later.

Feb. 1-

- Tax appeals are heard February, March and April.

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Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Pennsylvania 4/21/17 – 6/19/17 www.revenue.pa.gov/taxamnesty



assessors' calendar - from pg. 5

The complete [Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

- On July 9, 2016, the Office of Criminal Investigation (OCI) seized 266 cartons of Virginia-stamped cigarettes from Elmore T. Spencer, Jr. of Pompton Lakes, New Jersey. OCI special agents charged Spencer with: possession of 100 cartons or more of out-of-State stamped cigarettes; failure to maintain records of cigarette purchases; engaging in conduct requiring licensure without registration or licensure; transportation of contraband cigarettes; possession of unstamped, out-of-State stamped and/or counterfeit tax-stamped cigarettes; failure to maintain records; and failure to obtain a New Jersey cigarette retail dealer's license. OCI had received intelligence that Spencer was a Virginia-to-New Jersey trafficker. He is awaiting trial in Superior Court.
- On July 13, 2016, OCI special agents, supported by the Essex

County Prosecutor's Office and U.S. Homeland Security Investigations (HSI), executed an arrest warrant on Miguel O. Martinezbrito for money laundering, falsifying or tampering with records, misconduct by a corporate official, false swearing on a return, failure to collect or withhold tax, failure to maintain books and records, filing a false return and failure to file a return. Search warrants were executed on Martinezbrito's residence, his business's box truck and his business's storage unit. The search resulted in the seizure of \$10,357 in cash subject to forfeiture, 24,734 cigars and various business records. The warrants were executed as part of an ongoing tax evasion investigation related to the sale of tobacco products by Martinezbrito, who had been previously arrested by OCI special agents.

- On July 13, 2016, OCI staff assisted Middlesex County police in executing search warrants involving Hector's Towing, a business in New Brunswick, and the residence of Hector Perez, the business owner, in East Brunswick. Hector's Towing and Hector Perez are accused of filing

false tax returns and failing to file tax returns for the tax years 2011 to the present. During the search, various business records were recovered, which will help further OCI's investigation, as well as narcotics that were allegedly offered for sale at the business. As a result of the search, the business owner was arrested and processed on both OCI charges and municipal police department counts relative to the possession and sale of narcotics.

- On July 22, 2016, Steven W. Turner of New Hope, Pennsylvania, was sentenced on one count of failure to pay New Jersey State taxes (in excess of \$75,000), a third-degree offense. The charges were the result of his failure to pay New Jersey Personal Income Taxes for 2008. Turner was convicted at a jury trial. Mercer County Superior Court Judge Pedro Jiménez sentenced Turner to 364 days in county jail and three years' probation and ordered him to make full restitution of \$344,806.39 within two years. If Turner fails to make full restitution, he will be required to serve the 364-day sentence. OCI investigated and charged Turner, and Mercer County Assistant Prosecutor James Scott prosecuted for the State.
- On July 29, 2016, Thomas Fagan was convicted of multiple counts of tax evasion. Fagan was the president and CEO of the companies Energex Systems and Arbios Systems. He was found guilty of failure to file Gross Income Tax returns for tax years 2007, 2008 and 2009. Fagan failed to report income of \$402,857.80 in 2007,

Enforcement Summary Statistics Fourth Quarter 2016

Following is a summary of enforcement actions for the quarter ending Dec. 31, 2016.

	Number	Amount
• Bank Levies	728	\$ 2,702,172
• Certificates of Debt	2,800	97,799,596
• Seizures	73	857,126
• Auctions	6	156,551
• Warrants of Satisfaction	3,184	



criminal enforcement - from page 6

\$601,440 in 2008 and \$275,514 in 2009. Fagan, the only authorized officer for Energex Systems, was found guilty of failure to file the New Jersey Corporation Business Tax returns of Energex Systems for the tax years 2008, 2009, 2010 and 2011. Additionally, as the only authorized officer for Arbios Systems, Fagan was found guilty of failure to file the New Jersey Corporation Business Tax returns of Arbios Systems for the tax years 2009, 2010 and 2011. The jury was unable to reach a unanimous verdict on counts of misapplication of entrusted property, theft, money laundering and misconduct by a corporate official, which are all second-degree crimes. Sentencing for Fagan is pending. The Division of Criminal Justice is considering a retrial for the counts on which the jury could not reach a unanimous verdict. This case was handled exclusively by OCI special agents.

- On Aug. 4, 2016, Walter Reyes-Gutierrez was arrested without incident at his apartment in Elizabeth, New Jersey. He was secured, taken into custody and transported to the Middlesex County Correctional Facility for processing. He was charged with six indictable offenses including

first-degree money laundering and conspiracy. Bail was set at \$500,000, no 10%. OCI began this investigation into the trafficking of contraband cigarettes and counterfeit cigarette tax stamps two years ago. Several undercover purchases of New Jersey counterfeit tax stamps were made, resulting in 256,320 counterfeit tax stamps purchased from Gutierrez and a tax loss diversion in the amount of \$692,064. The case is pending in Union County Superior Court.

- On Aug. 23, 2016, OCI special agents inspected YES Supermarket in Newark, New Jersey. The inspection resulted in the seizure of 11,626 containers of untaxed alcohol, 86 cartons of contraband cigarettes and 17 loose cigarettes. The owner of the business, Delia N. Sarango, will be charged with: possession of 10 or more counterfeit tax-stamped cigarettes, tax upon alcoholic beverages involved in illegal acts, failure to maintain books and records and purchasing cigarettes from an unlicensed vendor. This case dismantled a speakeasy (after-hours club) in Newark located in a set of buildings with a maze of connections unknown to local law enforcement. OCI continues to see an increase in untaxed alcohol in urban areas connected with untaxed cigarette/tobacco seizures.
- On Sept. 19, 2016, Dr. Michael H. Rieber, former Deputy Mayor of Livingston, New Jersey, pled guilty to one count of failing to pay New Jersey Income Tax for the years 2009, 2010 and 2011. Dr. Rieber utilized fraudulent partnerships and claimed overinflated expenses, which resulted in

large losses that he used to offset legitimate partnership income. Dr. Rieber paid \$250,000 restitution to New Jersey's Department of the Treasury and was admitted into the Pretrial Intervention Program.

- On Sept. 20, 2016, OCI received a request for assistance from the Newark Police Department's Major Crimes Unit. Newark Police detectives responded to an emergency call about a carjacking and assault that involved shots fired and aggravated assault. While securing the scene in the driveway and garage in Newark, New Jersey, detectives observed an unusual volume of cigarettes and notified OCI. Special agents responded and obtained search warrants for the premises and two vehicles located there from the Essex County Superior Court. Upon execution of the warrant, OCI seized: 525 cartons of cigarettes with counterfeit New Jersey tax stamps, out-of-State stamped and unstamped cigarettes; 75,736 counterfeit New Jersey tax stamps, 8,445 counterfeit New York tax stamps; \$18,722 cash, subject to forfeiture; as well as two vehicles. The homeowner, Merysol Mendez-Reyes, was charged in Essex County Superior Court with seven indictable counts regarding the possession of untaxed cigarettes, counterfeit tax stamps and distribution of same. □

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.

Tax Briefs

Property Tax Relief Programs
Corporate Inversion, No Income Received — A taxpayer asked if the Division would require him to report

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a corporate inversion transaction on his Property Tax Reimbursement (PTR) Application.

The taxpayer is a shareholder of a company that went through a corporate inversion. A corporate inversion is a transaction in which domestic corporations move their tax residence overseas to countries with lower taxes. In this case, the corporation acquired a smaller company based in Ireland, a foreign country with a lower tax rate. The company then located the residence of the combined corporation to Ireland for tax purposes. The taxpayer did not actually receive any income from the transaction because the value of the stock sold in the transaction did not exceed its basis.

Generally, New Jersey treats a corporate inversion transaction as a taxable sale of shares that must be reported on the PTR application. However, in this case, the taxpayer received no reportable income. The Division cited the holding in *Hawe vs. Director, Division of Taxation*,

26 NJ Tax 349 (2012), which stated “The Legislature expressly conditioned eligibility for a homestead property tax reimbursement on an applicant’s ‘annual income’ and not on the assets a homeowner has available in a particular tax year for the payment of local property taxes.” Based on the above, the taxpayer was advised that he was not required to report the corporate inversion transaction on his PTR application.

Railroad Disability Retirement

— A disabled taxpayer who is not yet 65 asked the Division if he was eligible to receive a Property Tax Reimbursement (PTR) because he was receiving railroad disability retirement benefits.

The Division responded that under N.J.S.A. 54:4-8.67 an applicant must be 65 or more years of age or be a “disabled person.” For purposes of the Homestead Property Tax Reimbursement Act a disabled person is defined as an individual receiving monetary payments under the federal Social Security Act established under Title 42 of the U.S. Code. Although railroad disability retirement

benefits mirror the disability benefits paid under the Social Security Act, the former are established under Title 45 of the U.S. Code. Based on this, an individual receiving railroad disability retirement benefits cannot be considered a disabled person for PTR purposes. As a result, the taxpayer is not eligible to receive a Property Tax Reimbursement. □

In Our Courts Administration

Timely Filing Requirement – *Graziano, Thomas and Bonnie v. Director, Division of Taxation*, decided Sept. 30, 2016, Tax Court Docket No. 001914-2014.

On Feb. 22, 2012, the Division issued a request for information to Thomas and Bonnie Graziano (Plaintiffs) regarding their 2008 Gross Income Tax return. The Plaintiffs failed to respond, and the Division issued an arbitrary notice of deficiency (notice) by certified mail on April 5, 2012, to the Plaintiffs’ last known address. The Division received the certified mail return receipt, which was signed by “Bonnie” on April 12, 2012.

On Nov. 7, 2013, Plaintiffs received a collection letter from Pioneer Credit Recovery on behalf of the Division. On that same date, Plaintiff Thomas sent a letter to the Division’s Conference and Appeals Branch alleging that he never received the notice of deficiency. He later claimed that he had forwarded it to the accountant who had filed the return at issue to resolve the notice. After learning that the accountant did not timely challenge the notice, Thomas hired a new accountant who

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protested the notice and requested a hearing on Nov. 22, 2013.

On Dec. 13, 2013, the Conference and Appeals Branch issued a final determination denying the Plaintiff's protest as untimely and explaining his appeal rights. On March 13, 2014, Plaintiffs filed a complaint in Tax Court claiming that the Division incorrectly calculated the deficiency, and that plaintiffs should not be penalized because their accountant did not file a timely protest.

The Tax Court found that both the protest letter and the complaint were untimely. Consequently, the Court held that it did not have subject matter jurisdiction to hear the merits of the case and that the assessment is final.

Local Property Tax

Property Tax Exemption – *Galloway Township v. Lucienne Duncan*, decided Nov. 14, 2016; Tax Court.

Lucienne Reed Duncan served on active duty from Aug. 21, 2006, to Sept. 30, 2010, as a neurologist in the United States Air Force. She was stationed at Andrews Air Force Base in Maryland and provided medical diagnostic support in the special medical care unit. During her active duty tour, she treated military personnel injured in combat, including exposure to and suffering injury from explosive blasts, gunfire and artillery fire. Duncan treated service members who suffered shrapnel wounds, dismembered extremities, traumatic brain injuries, eye injuries, paralysis and spinal and head injuries. She described her corp's mission as that of a support force providing air medical evacuation for all branches.

Dr. Duncan explained that medical treatment has changed since the days of the Korean and Vietnam conflicts. During that time, surgical units were deployed close to the battlefield. Now, injured personnel are evacuated to more comprehensive medical facilities. Andrews Air Force Base is used as such for injured soldiers before they are transported to the Walter Reed/Bethesda Medical Center System. Duncan testified that 80–85% of the injured soldiers would see their first doctor at Andrews, and that the percentage of medical doctors on evacuation flights was less than 5%.

After her service in the military, Dr. Duncan went into private practice with AtlantiCare Medical Facility in Galloway Township. Due to her experiences during active duty in the Armed Forces, she was unable to continue her career as a neurologist. In April of 2013, she was declared to have a service-connected 100% permanent disability by the United States Veterans Administration (VA). The parameters for the VA to establish a service-connected disability are defined by federal statute.

Dr. Duncan served in the United States during Operation Enduring Freedom. For this statutory wartime service period, Dr. Duncan's service must not only be in the "theater of operation" but must also be in "direct support" of the operation.

The issue of "theater of operation" was considered first by the Tax Court. The Court found that Dr. Duncan's service at Andrews Air Force Base was in a "theater of operation" of Operation Enduring Freedom. The Court referenced *Wellington v. Township of Hillsborough*, 27 N.J. Tax 37 (2012). As in *Wellington*, where the service

member suffered injuries from chemical agents collected in the battlefield while serving in the United States, so too was Dr. Duncan exposed to the dangers of war through her experience and direct contact with death and trauma from the battlefield.

Concerning the issue of "direct support," the Court explained:

The fact that she was in a permanent facility in the United States, instead of some medical tent in a war zone in Iraq, does not minimize the "direct support" she provided in treating severely wounded soldiers of battle. Moreover, the distance of her stationed facility did not diminish the severity of torn limbs and other injuries she treated such that her service was not an experience of war.

The Court concluded that Dr. Duncan qualifies for the disabled veterans' Property Tax exemption.

Sales and Use Tax

Sales Tax Collected is Sales Tax Stated on the Invoice – *Dick Greenfield Dodge, Inc. v. Director, Division of Taxation*, decided April 28, 2016, Tax Court Docket No. 010644-2012.

Dick Greenfield Dodge (Plaintiff) is a car dealership that also operates a service department that repairs and services cars. During the course of a Sales Tax audit, the auditor found that the amount of Sales Tax the Plaintiff showed on its service invoices was higher than the amount of Sales Tax posted in the Plaintiff's internal sales ledger. Because the amount indicated as collected was more than the Plaintiff remitted, the

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auditor issued an assessment for the unpaid Sales Tax.

According to Plaintiff, before performing work on a customer's vehicle, Plaintiff would provide an invoice that stated the estimated charges for labor and parts and the amount of Sales Tax due for those charges. After the work was completed, Plaintiff would provide the customer with a final invoice that stated the total charges for labor and parts, the amount of Sales Tax on the total charges and, in some cases, a discount. The separately stated Sales Tax was not reduced to reflect any discount. The final invoice included some coding that Plaintiff purports is the allocation of the discount between parts/services and Sales Tax. Plaintiff posted a corresponding journal entry in its ledger for each invoice that allocated the discount between parts, service and Sales Tax. Plaintiff remitted the amount in the Sales Tax account to the Division.

Plaintiff asserts that the Sales Tax amount stated on the invoice was not actually collected and, therefore, Plaintiff did not have to remit it. N.J.S.A. 54:32B-12(a) requires that on the receipt given to the customer the Sales Tax be stated, charged and shown separately. N.J.S.A. 54:32B-18 requires that all Sales Tax collected by the seller must flow through to the Division, even if the amount collected constitutes an overpayment. The Tax Court held that Plaintiff must remit the amount of Sales Tax stated on the customer's invoice as the amount being collected. Although Plaintiff argued that the invoice included a Sales Tax discount, the invoice

did not specifically show that. The coding that Plaintiff purports as the allocation of the discount to the tax was not decipherable by anyone except the Plaintiff. The Court found that a seller who is collecting tax on behalf of the State is required to turn square corners when dealing with the taxpaying public.

The Court determined that the requirement that a seller turn over to the Division all tax amounts that it informed customers would be collected satisfies a number of policy considerations:

1. The taxpaying public must have confidence in the tax system. Allowing the use of written documents that don't accurately reflect the tax paid undermines that confidence;
2. Accepting a seller's claim that the printed invoices don't reflect reality could lead to "mischief" by the seller;
3. Including the Sales Tax discount with another discount misleadingly inflates the discount the seller is giving the customer and can skew the market;
4. Allowing proof of anything other than what the invoice shows as having been collected for taxes would "introduce an administrative and adjudicatory quagmire" to determine the actual amount of tax that is due; and
5. The amount of separately stated Sales Tax can be used for other tax purposes, such as federal tax deductions. If the amount stated on an invoice is inflated, then the corresponding deductions may be overstated as well. □

In Our Legislature

Local Property Tax

Atlantic City Alliance Abolishment — P.L. 2016, c.5, provides that beginning with calendar year 2017, and for the succeeding nine calendar years, casino gaming properties located in Atlantic City are exempt from local property taxation on real property and existing improvements, including accessory hotels, conference centers, parking garages and other appurtenant facilities, and are now responsible for making P.I.L.O.T. (Payments-in-Lieu-of-Tax) payments.

Deferred Mortgage Loan and Property Tax Payments — P.L. 2016, c.63, allows certain National Guard and United States Reserve members to temporarily defer mortgage loan payments and Property Tax payments while in service on federal active duty. The mortgage loan deferment remains in effect for 60 days after release from federal active duty. The deferment for Property Tax payments remains in effect for 90 days after release from federal active duty.

Stadium and Arena Property Tax Exemption — P.L. 2016, c.65, clarifies and reaffirms that stadiums and arenas owned by government entities are entirely exempt from property taxation. The bill reaffirms that when government entities enter into private-public arrangements and lease property to for-profit entities to achieve stadium and arena uses that such property, including any leasehold interest in such property, remains entirely tax-exempt.

Multiple Taxes

Economic Redevelopment and Growth Grant (ERGG) Clarification — P.L. 2016, c.51, authorizes

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the Economic Development Authority (EDA) to award an additional \$90 million in tax credits under the Economic Redevelopment and Growth Grant (ERGG) Program and clarifies section 6 of P.L. 2009, c.90, by reconciling three recent enactments of the Legislature, each of which amended that section of the law. Section 6 of P.L. 2009, c.90, imposes limits on the overall amount of tax credits the EDA may approve under the ERGG Program and allocates funding to specific geographic regions and categories of projects. Prior to the recent amendments to this statute, this provision of the law limited the overall amount of tax credits that the EDA may approve under the ERGG Program to \$600 million.

Revised New Jersey Transportation Trust Fund Authority Act — P.L. 2016, c.56, revises the New Jersey Transportation Trust Fund Authority Act of 1984. It establishes the State Transportation Infrastructure Bank within the New Jersey Environmental Infrastructure Trust and renames the Trust. The amendments also provide that all revenues generated from the Motor Fuels Tax and the Petroleum Products Gross Receipts Tax are now deposited into the Transportation Trust Fund.

Adjustments to Specified State Taxes — P.L. 2016, c.57, amends and supplements specified State taxes. It decreases the Sales and Use Tax rates, phases out the Estate Tax, increases the Gross Income Tax pension and retirement income exclusions, increases the New Jersey Earned Income Tax Credit (NJEITC), establishes a new veteran's personal exemption and creates

a cents-per-gallon rate on Petroleum Products Gross Receipts Tax.

Sales and Use Tax

Effective Jan. 1, 2017, this law amends section 3 of P.L. 1966, c.30 (C.54:32B-3) to decrease the Sales and Use Tax rate from 7 percent to 6.875 percent. On Jan. 1, 2018, the law further reduces the rate to 6.625 percent.

Estate Tax

The law phases out the New Jersey Estate Tax over two years by increasing the tax exclusion threshold of \$675,000 to \$2 million for resident decedents dying on or after Jan. 1, 2017. No Estate Tax will be imposed on the transfer of an estate of a resident decedent who dies on or after Jan. 1, 2018.

Gross Income Tax

Pension and Retirement Income Exclusion. The law increases the New Jersey Gross Income Tax pension and retirement income exclusions over four years for certain retired New Jersey taxpayers. See [chart](#) on page 3 for exclusion amounts. The exclusion is only allowed if the taxpayer's gross income for the tax year is not more than \$100,000.

Earned Income Tax Credit. The law increased the New Jersey Earned Income Tax Credit (NJEITC) to 35 percent of the federal benefit amount beginning in tax year 2016. The NJEITC, which piggybacks on the federal EIC program, previously provided a refundable Earned Income Tax Credit equal to 30 percent of the federal benefit amount.

Veteran's Personal Exemption. This law provides a personal exemption of \$3,000 for any veteran who is honorably discharged or released under honorable circumstances from

active duty in the Armed Forces of the United States, a reserve component thereof or the National Guard of New Jersey in a federal active duty status.

Petroleum Products Gross Receipts Tax

The law provides for increases in the Petroleum Products Gross Receipts Tax. Previously, the Petroleum Products Tax was imposed at the rate of 2.75 percent on gross receipts from the first sale of petroleum products in New Jersey. In the case of motor fuels, aviation fuels and heating fuels (home heating fuels are exempt), this rate is converted to \$0.04 per gallon.

The new law increases the base rate on petroleum products, other than highway fuel and aviation fuel, from 2.75 percent to 7 percent of gross receipts and increases the base rate on highway fuel from 2.75 percent to 12.85 percent of gross receipts. The new tax rates for highway fuel, other than diesel fuel, went into effect Nov. 1, 2016. The rate increase on diesel fuel will occur in two steps: (1) 70 percent of the rate increase took effect on Jan. 1, 2017, and (2) the full rate increase will take effect on July 1, 2017.

The 12.85 percent tax on gasoline (which excludes aviation gasoline), gasoline equivalents and liquefied petroleum gas is converted to a cents-per-gallon rate based on the retail price of gasoline before the imposition of State and federal tax. The 12.85 percent tax on diesel fuel, diesel fuel equivalents and kerosene (other than aviation grade kerosene) is converted to a cents-per-gallon rate based on the retail price of number 2 diesel before tax. The diesel and kerosene rate increased on Jan. 1, 2017, to 70 percent of the 12.85



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percent rate. On and after July 1, 2017, diesel and kerosene will be taxed at the full 12.85 percent rate. These cents-per-gallon rates can be adjusted quarterly but cannot fall below the rates determined on July 1, 2016.

Each fiscal year from 2018 through 2026, the State Treasurer may determine an adjusted tax rate to be imposed beginning each Oct. 1 so that taxes collected from the Motor Fuels Tax on highway fuel and Petroleum Products Tax on highway fuel do not exceed the highway fuel cap amount for any fiscal year.

The 7 percent tax on fuel oil (excluding fuel oil used for home heating use) is converted to a cents-per-gallon rate based on the pretax retail price of number 2 fuel oil. The rate can be adjusted quarterly but cannot fall below the rate determined on July 1, 2016. Initially, the highway fuels will be subject to an additional cents-per-gallon rate of four cents. On and after July 1, 2017, the additional rate on diesel fuel and kerosene will be raised to eight cents per gallon.

Review Council

The bill establishes a three-member review council composed of the State Treasurer, the Legislative Budget and Finance Officer and a third public member selected by both. The review council will report to the Governor and the Legislature by Jan. 15, 2020, on the council’s consensus estimate of the increase or decrease in State revenues caused by each section of this law during the three prior fiscal years compared to the estimates at the time of enactment.

The review council will monitor the actions of the Legislature on an ongoing basis for interference with the implementation of the provisions of the bill. If implementation of this law is impeded, the council may certify this interference to the Director of the Division of Taxation, triggering the cessation of imposition of one of the components of the Petroleum Products Gross Receipts Tax and ending collection of that part of the tax.

Motor Fuel Bad Debt — P.L. 2016, c.66, provides certain fuel dealers and distributors refunds of Petroleum Products Gross Receipts Tax and credits against Motor Fuel Tax for certain bad debts from sales of fuel. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) and tax year 2017 (Jan. 1, 2017 – Dec. 31, 2017) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2016](#) [2017](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2016](#) [2017](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2016](#) [2017](#) □



**important
phone
numbers**

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline	
for Homeowners.....	1-888-238-1233
Property Tax Reimbursement	
Hotline.....	1-800-882-6597
Earned Income Tax Credit	
Information.....	609-292-6400
Business Paperless Telefiling	
System	609-341-4800
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals	
& Dissolutions.....	609-292-5323
Director’s Office	609-292-6400
Inheritance Tax	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax	
Refunds	609-633-8870
Public Utility Tax.....	609-633-2634



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State Treasurer Sworn In



The Hon. Glenn A. Grant, Judge in the Appellate Division, administered the oath on Sept. 20, 2016, to Ford M. Scudder to serve as State Treasurer. The Treasurer's wife, Cristina, held the Bible during the swearing-in ceremony, which was attended by Division Directors and members of the Senior Staff. Treasurer Scudder was confirmed by the State Senate, following approval by the Senate Judiciary Committee. He had previously served as Acting State Treasurer since Nov. 9, 2015. He and Cristina reside in Little Silver with their two daughters.

Homestead Benefit Filing Under Way

New Jersey homeowners are now filing their 2014 Homestead Benefit Applications. The Division of Taxation mailed applications for the 2014 homeowner benefit to more than 1.1 million New Jersey residents over a three-week period that began in mid-September 2016. During the same period, the Division sent emails containing instructions for downloading the 2014 application packet to an additional 85,000 residents. The homeowners who received emails had filed online in a prior year and

indicated that they wanted to receive future applications electronically.

The filing deadline for 2014 Homestead Benefit Applications is Nov. 30, 2016. At the time this newsletter was published, almost 457,000 homeowners already had filed their applications.

To be eligible for the 2014 homestead benefit, applicants had to be New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on Oct. 1, 2014, paid property taxes on that home and had 2014 New Jersey

homestead benefit - from page 1

gross income of \$75,000 or less (\$150,000 or less for homeowners 65 or older or blind or disabled).

Benefit amounts vary based on the applicant's income, filing status, property taxes and whether the applicant was age 65 or older or blind or disabled.

Most homeowners can file their applications either online or by phone (1-877-658-2972). Applicants should read the instructions in the application packet before attempting to file. Homeowners who sold or plan to sell their home should pay particular attention to the instructions for their situation to ensure they complete the application correctly.

More information on the homestead benefit, including eligibility requirements, is available on the Division of Taxation's website. □

Correction

2014 Homestead Benefit Worksheet

The 2014 Homestead Benefit Worksheet in the center of the 2014 Homestead Benefit Application packet contains a printing error. The web address in the top, left-hand corner of the Worksheet is incorrect. There should not be a period between "nj" and "taxation" in the address. The Division of Taxation regrets any inconvenience this error may have caused.

File your 2014 Homestead Benefit Application [online](#).

LOCAL PROPERTY TAX

Revaluation Initiative

In November of 2015, the Division of Taxation initiated a review of all towns and counties in New Jersey to ensure that they were in compliance with the uniformity clause of the State Constitution, which requires a uniform distribution of the tax burden. The Division performed detailed statistical analyses, including review of assessment to sales ratios and coefficients of deviation, for 32 towns that had not had a revaluation in 25 years or more. Public hearings were held, and based on the data and all other relevant materials, four municipalities were ordered by the Director of the Division of Taxation to perform a revaluation. The Union and Hudson County Boards of Taxation ordered two additional towns in each of their counties. Because of the Division's initiative, the Middlesex County Board of Taxation recently announced that it will order two municipalities to conduct revaluations. All counties are now actively ordering needed revaluations one year after the Division's efforts to ensure fairness and equity for taxpayers. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

Oct. 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

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New Jersey State Tax news

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assessors' calendar - from page 2

- Initial Application, Form F.S.1, for blast or radiation fallout shelter exemption filed with tax assessor.
- Initial Application, Form WS-1, for water supply and sewerage disposal facilities exemption filed with tax assessor.

Oct. 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens (age 65), disabled persons or surviving spouses/civil union partners (age 55) eligibility established (pretax year). Age or disability status established by Dec. 31 (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.

- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.
- Exempt real property sold to nonexempt owner or any real property improved after Oct. 1 and before Jan. 1 valued and assessed as of the first day of the month following completion or sale of property.
- True taxable value of improvement, conversion or construction of property that has applied for exemption and/or abatement determined by assessor.

Oct. 1 (after)–

- Assessor notified of structural material depreciation occurring after Oct. 1 and before Jan. 1.

Oct. 25 (on or before)–

- Added Assessment Certification for Fire Districts, Form CNC-3, provided by assessor/collector.

Nov. 1 (on or before)–

For Monmouth County, see *Monmouth County Assessment*

Demonstration Program below.

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Assessor completes Form CNC-3 and forwards original to tax collector.

Nov. 15–

For Monmouth County, see *Monmouth County Assessment Demonstration Program* below.

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

Dec. 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

Dec. 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2016 – Dec. 1, 2016, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%



assessors' calendar - from pg. 3

Dec. 20 (on or before)–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

Dec. 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

The complete [Work Calendar](#) is available on the Division's website.

Monmouth County Assessment Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

Nov. 1 (on or near)–

- Legal advertisement of availability of Tax List for public inspection.

Nov. 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).

Nov. 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year's taxes (pretax year).

Nov. 25 (on, before or after)–

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

End of November–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

The complete [2016 Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

- On April 1, 2016, as a result of a joint criminal investigation between the Office of Criminal Investigation (OCI) and the Burlington County Prosecutor's Office, defendants Donald, Denise and Dianna Horner were arrested on charges of filing false tax returns for the years 2010 through 2013. Donald and Denise Horner were also charged with failure to pay income taxes based on \$178,890 of unreported income related to the Delran Emergency Squad during the years 2010 through 2013. The case awaits application for Pretrial Intervention by the defendants.
- On April 11, 2016, in Middlesex County Court, Henry De La Rosa, owner of the Busanka Restaurant in Port Reading, New Jersey, was sentenced to three years' probation and ordered to pay restitution of \$53,391 for failure to file and remit Sales and Use Taxes to the State of New Jersey for tax years 2010 through 2014. This case was prosecuted by the Middlesex County Prosecutor's Office and investigated by OCI's Financial Investigations Unit.
- On April 12, 2016, Elizabeth Harris was arrested outside her residence in Paterson, New Jersey and charged with two counts

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Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Pennsylvania 4/21/17 – 6/19/17 www.revenue.pa.gov/taxamnesty



criminal enforcement - from page 4

of filing a fraudulent return, one count of providing false information and one count of theft relating to her 2014 and 2015 NJ-1040 tax filings. This case was a direct result of cooperation among various units within the Division of Taxation and information developed from an OCI search warrant.

- On April 26, 2016, Fort Lee Police conducted a motor vehicle stop that resulted in the seizure of 22.0 cartons of contraband cigarettes, two receipt books, various phones and \$10,040 in U.S. currency. All evidence was seized by OCI special agents of the Special Investigations Unit. Jose L. Delosangeles and Jose G. Delosangeles, both of New York City, were arrested and charged with third-degree possession of counterfeit New Jersey cigarette stamps, third-degree failure to maintain records and fourth-degree engaging in conduct requiring licensure without registration. Both subjects were issued summons complaints and released without incident. Fort Lee Police also charged the subjects with fourth-degree transportation of contraband cigarettes.
- On April 27, 2016, the State Grand Jury returned a multiple-count indictment against 10 alleged members and associates of the New York-based Genovese organized crime family on charges including first-degree racketeering for allegedly reaping millions of dollars in New Jersey through loansharking, unlicensed check cashing, gambling, money laundering, including laundering of drug proceeds, and tax evasion. Another defendant was

charged in connection with the laundering of drug money, and the wives of three of the defendants were charged with tax fraud and failure to pay tax. This was a joint investigation by the New Jersey Division of Criminal Justice and the Waterfront Commission of New York Harbor conducted with assistance from the New York and Queens County District Attorneys' Offices and other law enforcement agencies, including OCI.

- On April 29, 2016, Steven Turner of New Hope, Pennsylvania, was convicted of one count of third-degree failure to pay taxes as a result of his failure to pay his income tax liability for 2008. Restitution totals \$248,731.39. Third-degree crimes carry a sentence of three to five years in State prison and a criminal fine of up to \$15,000. Members of OCI's Technical Enforcement Unit conducted the investigation and the Mercer County Prosecutors Office prosecuted the case.
- On May 23, 2016, Dr. Michael H. Rieber, former Deputy Mayor of Livingston, New Jersey, was indicted on three counts of filing

fraudulent New Jersey Gross Income Tax returns and one count of failing to pay New Jersey income tax for the years 2009, 2010 and 2011. All the counts were third-degree crimes. It is alleged that Michael Rieber utilized fraudulent partnerships, claiming overinflated expenses, resulting in large losses to offset legitimate partnership income. As agreed in the application for Pretrial Intervention, Dr. Rieber is to pay the State \$250,000 (tax, interest and penalty). This case was investigated by OCI and prosecuted by the New Jersey Division of Criminal Justice.

- On June 16, 2016, OCI special agents and the Division of Criminal Justice, after a joint investigation into allegations of identity theft, Social Security fraud and New Jersey tax violations, executed a search warrant on six locations (five personal residences and one business). Maria Frank and Shirley Frank were arrested for identity theft and Social Security fraud while Sonny Frank, Rocky Frank and Alex Frank were issued complaint

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Enforcement Summary Statistics *Third Quarter 2016*

Following is a summary of enforcement actions for the quarter ending Sept. 30, 2016.

	Number	Amount
• Bank Levies	743	\$ 2,623,038
• Certificates of Debt	3,065	52,536,796
• Seizures	66	2,144,924
• Auctions	16	90,269
• Warrants of Satisfaction	3,695	

criminal enforcement - from pg. 5

summonses on the tax code violations. All subjects are members of the same family. For the period 2010 through 2014, Sonny, Rocky and Alex Frank, along with their wives, are alleged to have filed fraudulent NJ-1040s and failed to pay tax due, and Alex Frank failed to file NJ-1040s. Bank accounts containing more than \$2 million were frozen, four safe deposit boxes were searched and their contents seized. This included more than \$500,000 in cash, high-end jewelry and a variety of silver, gold and platinum coins. Agents from OCI's Special Investigations Unit participated in the execution of search warrants. OCI's Financial Investigations Unit led the investigation into the tax evasion charges.

- On June 16, 2016, one of two defendants in an OCI cigarette smuggling case was accepted into a Pretrial Intervention Program and the other defendant was indicted by a Grand Jury. Sentencing is pending. A compliance inspection at the Krauszer's in Riverside, New Jersey, on Oct. 2, 2015, revealed a large inventory of untaxed tobacco products and a large sum of cash believed to be the proceeds of the prima facie

contraband activity. OCI charged two owners of the business with failure to file a tax return and failure to maintain records. The judge ordered the defendants to pay a total of \$4,575.11 in tax restitution based on the inventory of tobacco products seized during the inspection. Additionally, the Court ordered that half of the \$20,736 cash seized during the inspection be forfeited.

- A New Jersey-based criminal case initiated by OCI special agents involving multiple jurisdictions was brought to the attention of the U.S. Attorney's Office. On June 16, 2016, Laila Alayat of Elmwood Park, New Jersey, pled guilty to conspiracy to traffic in contraband cigarettes and witness tampering for her part in a transnational cigarette smuggling operation centered in New Jersey. The scheme allegedly used shell businesses to purchase at least \$9.5 million worth of Virginia-stamped cigarettes and transport them to New Jersey for illegal resale. Alayat, 37, faces up to 15 years in prison when sentenced.

Complaints filed in U.S. District Court in Virginia in February 2016 alleged Alayat and Eyad Salahedin, also of Elmwood Park, along with others acting on their behalf, purchased millions of dollars worth of cigarettes from Virginia wholesale club stores using cash and keeping each purchase below \$10,000 so federal forms reporting their names would not be required. The government alleged that of 1,735 cash transactions between March 2014 and August 2015 at Virginia Sam's Club stores totaling \$6.3 million, none exceeded \$10,000. The defendants were offered a

plea deal on Jan. 7, 2016, but it expired without either of them accepting it. Alayat was warned that any attempt to leave the U.S. would be construed as an attempt to flee prosecution. She was arrested Feb. 11, 2016, at JFK International Airport attempting to board a flight to Amman, Jordan. Salahedin was arrested shortly after dropping Alayat off at the airport. OCI coordinated with the U.S. Department of Homeland Security and Port Authority Police in the arrests. Alayat and Salahedin were indicted March 2, 2016. Alayat also pled guilty in August to attempting to corruptly persuade a cooperating witness to lie to law enforcement about her identity by promising to pay \$500. Alayat has been sentenced to a one-year prison term. Salahedin's trial is set to begin Nov. 13, 2016.

This was a complex and multilevel, multistate transnational criminal case developed and carried out by OCI special agents with the assistance of the federal government. □

Tax Briefs

Gross Income Tax

No Credit for Pennsylvania Local Services Tax — A taxpayer asked the Division if he was permitted to claim a credit for taxes paid to another jurisdiction on his New Jersey Gross Income Tax return for the amount he paid for the Pennsylvania local services tax (LST).

New Jersey resident taxpayers may claim a credit on their resident income tax return for taxes paid to any other state or political subdivision in

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



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accordance with N.J.S.A. 54A:4-1. N.J.S.A. 54A:4-1(a) provides that a “resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state...”

The LST is a local tax payable by all individuals who hold a job or profession within a taxing jurisdiction in Pennsylvania that imposes the tax. It is similar to an occupational privilege tax. Each individual who works in a taxing jurisdiction for any length of time during the tax year is liable for the LST.

The Division responded that because the LST is not an income tax or a wage tax, the taxpayer cannot claim a credit for taxes paid to another jurisdiction on his New Jersey Gross Income Tax return for the LST.

Litter Control Fee

Related-Company Transactions —

The Division received an inquiry from a taxpayer that purchases products from suppliers, then resells those products to a related company that is wholly owned by the same individuals or companies that own the taxpayer. The related company then sells the products to its customers in its retail stores. The taxpayer wanted to know whether the transactions between the related companies are subject to the Litter Control Fee.

The Litter Control Fee is a user fee imposed on all gross receipts from sales of litter-generating products sold in New Jersey by any manufacturer, wholesaler, distributor or retailer of litter-generating products engaged in business in the State. A retailer with less than \$500,000 in

annual sales (both retail and wholesale) of litter-generating products is exempt from the Litter Control Fee. N.J.S.A. 13:1E-216. In order for the exemption to apply, the annual amount of all sales of goods defined as “litter-generating” products that are made within New Jersey for use and consumption within New Jersey must be less than \$500,000.

The Division advised the taxpayer that a sale of litter-generating products by one company to a related company that is wholly owned by the same individuals or companies is not subject to the Litter Control Fee. The company making the wholesale sales may take such sales as a deduction on the Litter Control Fee return (Form LF-5).

Sales and Use Tax

Exempt Organizations: Occasional Fundraising Sales —

A taxpayer asked whether a nonprofit organization that has a valid Exempt Organization Certificate (Form ST-5) is exempt from collecting New Jersey Sales Tax for occasional fundraising sales.

The Division answered that the nonprofit organization is not required to collect Sales Tax if it makes only occasional fundraising sales, the sales events are relatively short in duration and all of the proceeds go to the exempt organization. N.J.A.C. 18:24-9.11. Examples of qualifying occasional fundraising sales are: an annual book and/or greeting card sale lasting a few weeks; a gift merchandise sale or a plant or craft sale that occurs several times a year and lasts one or two days.

Eyelash Extension Services —

A salon owner inquired if charges for eyelash extension services

performed in a salon are subject to New Jersey Sales Tax.

The New Jersey Sales and Use Tax Act imposes Sales Tax on the retail sale of enumerated services, unless an exemption or exclusion applies. N.J.S.A. 54:32B-3(b). Personal services are exempt from Sales Tax because these are not considered a “retail sale” under the Act. A personal service is one that involves the transfer of tangible personal property as an inconsequential element of the service, for which no separate charge is made. N.J.S.A. 54:32B-2(e)(4)(A).

The Division advised the salon owner that eyelash extension services performed in the salon are exempt from Sales Tax as a personal service. However, the salon owner was advised that the salon must pay Sales Tax on the supplies and equipment used to provide the eyelash extension services.

Thrift Store Exemption: NJ Work First Community Work Experience Program —

The Division received an inquiry from an exempt organization that was considering opening a thrift shop. The organization was planning to use workers from the NJ Work First Community Work Experience Program (CWEP) at the thrift store and wanted to know whether CWEP participants would be considered volunteers for purposes of the thrift shop exemption for nonprofit organizations.

An exempt organization that continuously operates a store, or the equivalent of a store, such as a mail-order or Internet business, is required to collect Sales Tax. N.J.S.A. 54:32B-9(c)(2). There is, however,



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an exemption for a qualifying thrift store or shop. An exempt organization that operates a store or shop is exempt from collecting Sales Tax on sales of *donated* merchandise if:

- At least 75% of the store merchandise consists of donated items, and
- At least 75% of the work to operate the store is performed by volunteers.

Based on information provided by the New Jersey Department of Human Services, Division of Family Development, the CWEP gives individuals an opportunity to acquire skills, training, knowledge and work habits necessary to secure unsubsidized employment. The placements are limited to nonprofit government agencies or not-for-profit community-based employers. The participants receive public assistance in return for their work activity. Thus, the participants are compensated for their work, even though the employers they are placed with do

not directly pay them for the work performed.

The Division advised that since the program participants that are placed through the CWEP are compensated for their work activity with public assistance benefits, they cannot be considered volunteers for purposes of meeting the thrift store exemption for exempt organizations. □

In Our Courts

Administration

Untimely Complaint – *Joy L. DeMaio v. Director, Division of Taxation*; decided May 25, 2016; Tax Court Docket No. 011697-2015.

On May 7, 2009, the Division issued a notice of assessment for unpaid Cigarette Tax and Sales and Use Tax to Joy DeMaio (Plaintiff). Plaintiff did not protest, appeal or pay the assessment. The Division issued a notice and demand for payment of tax on Nov. 1, 2011.

On Dec. 15, 2011, Plaintiff protested the notice and demand for payment

of tax, claiming that she did not purchase the cigarettes. On Jan. 20, 2012, the Division issued a protest denial notice to Plaintiff, which stated that the period to protest or appeal the original notice of assessment expired in August 2009 (90 days after it was issued). The denial notice, which was sent by certified mail, advised Plaintiff that she had 90 days to appeal the Division's decision to Tax Court. The return receipt was signed but the date was not identified. On Jan. 26, 2012, the Division filed a certificate of debt. Plaintiff then sent letters to the Division in February and April of 2012 claiming that she never received the notice of assessment and did not know why the certificate of debt was filed against her.

On July 23, 2015, Plaintiff filed a complaint with the Tax Court challenging the notice of assessment and protest denial notice. The Division moved to dismiss Plaintiff's complaint due to untimely filing.

The Court reviewed the sequence of events and found Plaintiff's complaint was untimely filed by more than three years. As such, the Court did not have jurisdiction to hear the case. The Court noted that the protest denial notice provided Plaintiff with the address for filing the complaint and the telephone number of the Tax Court Management Office to address any questions regarding filing the complaint.

Gross Income Tax

Erroneous Refunds – *Robert H. Hill and Sarah K. Hill v. Director, Division of Taxation*; decided June 17, 2016; Appellate Division Docket No. A-1980-13T1, affirming Tax Court 27 N.J. Tax 311 (2013).

Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).





in our courts - from page 8

Robert Hill and Sarah Hill (Plaintiffs) were two minors who resided in Pennsylvania. Both were beneficiaries of New Jersey resident trusts created by their grandparents. The trustee paid New Jersey tax on behalf of each Plaintiff on the income from the trusts for tax years 2006 and 2007. The Plaintiffs' father filed a refund claim for each, claiming that neither Plaintiff received New Jersey source income in either 2006 or 2007. The Division initially denied the refunds but subsequently approved and issued them in 2008.

In 2010, a tax audit determined that Plaintiffs received New Jersey source income from the trusts in tax years 2006 and 2007. As a result, the Division issued a notice of deficiency to each Plaintiff.

The Tax Court determined that the trust income was taxable to New Jersey and that N.J.S.A. 54A:9-4(c)(4) permitted the Division to recover the previously issued refunds because they resulted in an underpayment of Gross Income Tax. Based on prior court decisions pertaining to the Corporation Business Tax Act, the judge limited the Division's ability to recoup erroneous Gross Income Tax refunds to situations where the refunds were paid as a result of purely clerical errors rather than judgment errors. The Court noted that *Lennox, Inc. v. Director, Division of Taxation*, 20 N.J. Tax 464, 475 (Tax 2002) defined an error in judgment to refer "only to an erroneous final determination of the merits of a taxpayer's liability for tax, resulting from a mistaken interpretation of substantive law or a misunderstanding of the facts relating to the determination." Because the Division did not issue final

determinations to the Plaintiffs, the Tax Court held that the refunds were recoverable as they were the result of clerical errors.

Plaintiffs appealed the Tax Court decision. The Appellate Division affirmed substantially for the reasons expressed in the Tax Court opinion, finding the decision was well-reasoned and based on controlling precedent.

Earned Income Tax Credit – *Nnebe v. Director, Division of Taxation*; decided May 23, 2016; Tax Court Docket No. 000024-2015.

In 2010, Ebere Nnebe (Plaintiff) and his wife, who at the time were living in Hamilton, New Jersey, entered into a separation agreement whereby they would live apart but not divorce. Plaintiff gave sole and exclusive use of the home to his wife, and they shared joint custody of their children. Plaintiff filed his 2012 NJ-1040 Gross Income Tax return using the Hamilton address, reporting his filing status as head of household, claiming his third child as his dependent and claiming the New Jersey Earned Income Tax Credit (NJEITC). In 2014, the Division audited Plaintiff's NJ-1040 and denied his NJEITC and his head of household filing status, finding that Plaintiff did not maintain a New Jersey residence for more than six months and that his principal residence was New York.

Plaintiff argued that because the Internal Revenue Service (IRS) did not deny his federal 2012 Earned Income Credit (EIC), he was entitled to the NJEITC. The Tax Court responded that even though the IRS did not deny the federal EIC, the Division was not prevented from

challenging and denying a claim for the NJEITC.

The Tax Court ruled that a taxpayer has the burden of proving that he is entitled to a tax credit. The federal EIC requires that a claimant have a qualifying child who qualifies as a dependent and shares the same principal place of abode with the claimant for more than six months of the year. Additionally, a claimant who is married must qualify to file his/her return with the filing status of married filing jointly or head of household. Plaintiff testified that all three children stayed with their mother every night and that he lived in New York during the week. Because the child for whom Plaintiff claimed the NJEITC lived with his wife, the child did not share Plaintiff's abode. Consequently, the Court found that Plaintiff did not qualify to file his return using the head of household filing status. As a result, he was not eligible for the NJEITC. The Court dismissed Plaintiff's complaint and upheld the Division's denial of the NJEITC. □

In Our Legislature **Multiple Taxes**

Business Employment Incentive Program (BEIP) Revised Payout Schedule — P.L. 2016, c.9, revises the payout schedule for the Business Employment Incentive Program (BEIP) tax credits originally established by P.L. 2015, c.194. Under chapter 194, a business that was previously approved for a BEIP grant could elect to convert its grant to a tax credit. Under this new law, the credit for grant amounts accrued but not paid during calendar years 2008 through 2013 is to be paid in

continued on page 10



in our legislature - from page 9

five installments over a five-year period beginning in 2017 as follows: 5 percent of the accrued amount in year one, 20 percent of the accrued amount in year two and 25 percent of the accrued amount in years three, four and five. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) and tax year 2017 (Jan. 1, 2017 – Dec. 31, 2017) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2016](#) [2017](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2016](#) [2017](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2016](#) [2017](#) □



*important
phone
numbers*

Customer Service Ctr....609-292-6400
Automated Tax Info ...1-800-323-4400
.....609-826-4400
Homestead Benefit Hotline
for Homeowners.....1-888-238-1233
Property Tax Reimbursement
Hotline.....1-800-882-6597
Earned Income Tax Credit
Information.....609-292-6400
Business Paperless Telefiling
System609-341-4800
Alcoholic Bev. Tax609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions.....609-292-5323
Director’s Office609-292-6400
Inheritance Tax.....609-292-5033
Local Property Tax.....609-292-7974
Motor Fuels Tax
Refunds609-633-8870
Public Utility Tax.....609-633-2634

New Jersey State Tax news

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“Senior Freeze” Checks in the Mail

The State Budget for Fiscal Year 2017 provides funding for the Property Tax Reimbursement (Senior Freeze) Program.

In mid-July, the Division of Taxation began mailing checks for the 2015 reimbursement to qualified senior and disabled homeowners who filed applications by the original filing deadline of June 1, 2016. We will issue checks as quickly as possible to homeowners who file their applications between the original June 1 deadline and the extended deadline of Oct. 17, 2016.

Only applicants whose 2015 income was not more than \$70,000 are eligible, provided they met all other requirements. Residents whose income was more than \$70,000 but was \$87,007 or less will not receive checks for 2015. We will notify them that they are not eligible. Those residents can establish a “base year” for future reimbursements by filing an

application by the deadline. This also ensures that we will mail them applications for 2016.

Additional information on the [Senior Freeze Program](#) is available on our website. □

LOCAL PROPERTY TAX

Taxation Orders Three Revaluations

Revaluations may be needed when properties in a municipality are not being assessed at the same rate of true market value and/or are being assessed substantially below or above true market value. Because revaluations impact the local community, the decision to revalue is usually made by local authorities, particularly the County Tax Boards.

However, on April 4, 2016, the New Jersey Division of Taxation issued Revaluation Orders to three municipalities: Jersey City, Dunellen and Elizabeth. This exceptional action was necessary to compel county

continued on page 2

2014 Homestead Benefit Applications

The Division of Taxation will begin to mail 2014 homestead benefit applications in mid-September. Additional information is available on our [website](#).

County	Delivery Expected to Begin
Atlantic, Bergen, Cumberland, Warren	Sept. 15
Cape May, Mercer, Ocean	Sept. 19
Monmouth, Somerset, Union	Sept. 22
Hunterdon, Middlesex, Passaic, Sussex	Sept. 24
Camden, Hudson, Morris	Sept. 27
Burlington, Essex, Gloucester, Salem	Sept. 29



three revaluations - from page 1

and local officials to comply with the Uniformity Clause of the State Constitution.

These Orders followed a four-month investigation that culminated in public hearings the Division of Taxation held to elicit public sentiment regarding property valuation in certain taxing districts.

Jersey City has not had a revaluation in 28 years, Dunellen Borough in 34 years and Elizabeth City in 40 years.

The Division also initiated investigations of five other towns based on objective criteria. As a result, the Hudson County Board of Taxation ordered East Newark Borough and Harrison Town, and the Union County Board of Taxation ordered Winfield Township and Westfield Town to revalue. The Middlesex County Board of Taxation declined to order South River Borough to perform a revaluation. Middlesex County has the only tax board in the State that has not ordered an involuntary revaluation in more than 20 years. The Division is undertaking the investigation because of lax oversight by Middlesex County.

A public hearing on property taxes will be held in South River on Aug. 17, 2016. The hearing was originally scheduled for July 26. □

Business Assistance Tax Clearance

Businesses can now apply for a Business Assistance & Incentive Clearance certificate through the State of New Jersey's Premier Business Services portal. The online clearance eliminates the paper application

(Form Gtb-10) and waives the processing fee.

Businesses that meet the clearance requirements can immediately print the clearance certificate through the portal. Businesses not eligible to receive the clearance certificate are directed to the Division of Taxation's Business Assistance Tax Clearance Unit for assistance, where staff will work directly with the business to meet all clearance requirements.

The Business Assistance & Incentive Clearances are valid for the following programs:

- Board of Public Utilities (Clean Energy Program)
- Department of Community Affairs
- Department of Health
- Department of Labor and Workforce Development (Labor Training Programs)
- Economic Development Authority
- New Jersey Casino Reinvestment Development Authority
- New Jersey Commerce, Economic Growth & Tourism Commission
- New Jersey Commission on Science & Technology
- New Jersey Department of Children and Families
- New Jersey Department of Human Services
- New Jersey Department of the Treasury (Angel Investor Tax Credit, Grow NJ Tax Credit)
- New Jersey Housing and Mortgage Finance Agency
- New Jersey Secretary of State

Visit our [website](#) for details. □

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:** John J. Ficara

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Referral Cost Recovery Fee Increase

The Division of Taxation’s Compliance and Enforcement Activity (C&E) has partnered with Pioneer Credit Recovery (PCR), a private debt collection company, to improve efficiency and reduce the cost of our collection efforts. While PCR has been our vendor for 10 years, recent procedural changes have increased the number and types of cases assigned to the vendor.

PCR is assigned the majority of deficient (money owed) and delinquent (return due) accounts that have not responded timely to the Division’s initial outreach. PCR conducts collection efforts under the supervision of C&E staff.

All cases referred to PCR are subject to a Referral Cost Recovery Fee (RF). Effective July 1, 2016, PCR’s reimbursement rate is contracted at 10.7%. This means the RF assessed on debt referred to PCR will increase

from 10% to 10.7%. The RF is not compensation paid to PCR. This fee is assessed to cover the expense incurred by the Division when taxes are not filed and paid in a timely manner or not resolved upon the issuance of an initial bill.

Assessing this fee mitigates the expense associated with PCR’s debt collection services. Debts that PCR is unable to collect are subject to the filing of a certificate of debt, and become the responsibility of C&E’s staff to resolve.

This joint effort in combating non-compliance has proven to be very successful. Over the past two fiscal years, combined collections were greater than \$1.2 billion. C&E staff members were also able to conduct higher level collection and enforcement initiatives. □

BEIP Grant to Tax Credit Conversion

The Business Employment Incentive Program (BEIP), created in 1996, was designed to promote job growth in New Jersey. The program, which is jointly administered by the New Jersey Economic Development Authority (EDA) and the New Jersey Division of Taxation, awards grants to qualified businesses based on the number of new jobs they have created in the State.

The New Jersey Economic Opportunity Act of 2013 (P.L. 2013, c.161) streamlined New Jersey’s five existing economic development incentive programs, including BEIP, into two: the Grow New Jersey Assistance (Grow NJ) Program and the Economic Redevelopment and Growth (ERG) Program. Grow NJ is now the State’s main job creation

and retention incentive program. The EDA no longer accepts applications for BEIP assistance, and the Legislature has not appropriated funding for the program since 2013.

Legislation approved Jan. 11, 2016, (P.L. 2015, c.194), allows certain businesses that were previously approved for a BEIP grant to direct the EDA to convert the grant to a refundable tax credit. The conversion is voluntary, but the decision to do so is irrevocable. Businesses had until July 11, 2016, to make the election.

The credits issued can be applied to a tax liability under the Corporation Business Tax or Insurance Premiums Tax. Businesses that are not subject to these taxes must sell or assign the tax credit to a business with such a liability. For more information, see the [EDA’s Business Incentive Program Tax Credit Conversion FAQs](#).

The Grant Credit Review Unit within Taxation’s Office of Legislative Analysis and Disclosure will audit, process and distribute the BEIP tax credits. □

GROSS INCOME TAX

COJ Limited to Foreign-Sourced Income

If a taxpayer paid a tax on income to another jurisdiction and that income is also subject to New Jersey tax in the same year, the taxpayer may be eligible for a credit for taxes paid to the other jurisdiction (COJ) dependent upon its New Jersey allocation factor.

Partnership income allocated to New Jersey is defined as the portion of the

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2016 – Dec. 1, 2016, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%



COJ on income - from page 3

partnership income that is allocated to New Jersey by the allocation factor of the partnership. Partnership income not allocated to New Jersey is equal to total partnership income less partnership income allocated to New Jersey by the allocation factor.

On Nov. 14, 2013, the Tax Court of New Jersey addressed the limitations of the credit allowed for partnership income in an unpublished decision, *David E. and Janice Berliner v. Director, Division of Taxation*, Tax Court of New Jersey, Docket No. 000057-2008, 2013.

N.J.S.A. 54A:4-1(a) states, “A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.”

Judge DeAlmeida opined in *Jenkins v. Director, Division of Taxation*, 4 NJ Tax 127, 133 (Tax 1982), “the objective of N.J.S.A. 54A:4-1 is to avoid double taxation of the same income by providing a credit against New Jersey gross income tax for tax paid to another jurisdiction on the same income.” Judge DeAlmeida went on to state, “We conclude that the intent of the act is to avoid double

taxation of foreign income by relinquishing all or part of the New Jersey tax on the foreign income, but not to relinquish New Jersey tax on income earned in New Jersey.”

Judge DeAlmeida stated further that, “When enacting N.J.S.A. 54A:4-1, the Legislature did not intend to relinquish income tax on New Jersey source income.

“The resident credit is a reflection of legislative grace. Where a New Jersey resident earns income in other States and municipalities and pays income tax on that income to those jurisdictions, New Jersey will yield its right to fully collect its income tax. However, where another State or jurisdiction extends the reach of its taxing authority to income earned in New Jersey by a New Jersey resident, the credit is not available. This is a perfectly reasonable legislative determination.”

As a result, credit is not allowed for any tax imposed by another jurisdiction on partnership income that is properly allocated to New Jersey. □

INHERITANCE/ESTATE TAX

Intangible Assets and Out-of-State Property Credit

Both real property and tangible personal property located outside the State of New Jersey are eligible for an out-of-State tax credit when

computing the New Jersey Estate Tax. Such items must be included in the gross estate, and a proportional credit may be granted against any Estate Tax that is calculated.

Intangible property is not eligible for this credit. The Division considers intangible property owned by a resident decedent to be located in New Jersey no matter where such accounts may originate, the financial institution’s offices are located or a corporation is incorporated. Common examples of intangible property include bank accounts, trusts, stocks, securities, LLCs and shares in a co-op. Because intangible property is considered to be located in the state in which the decedent was domiciled, the out-of-State property credit cannot be applied against such assets.

There are exceptions. For example, trusts are considered intangible property. However, non-New Jersey real estate held by a trust retains its identity as real property. Accordingly, it qualifies for an out-of-State property credit in New Jersey. On the other hand, an out-of-State property credit cannot be taken on non-New Jersey properties owned by corporations, partnerships and LLCs. Assets owned by these entities do not retain their individual identity as real or tangible property and are considered a part of the entity and are intangible property. This would include assets such as farmland, apartments,

continued on page 5

Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction’s website.

Alabama

6/30/16 – 8/30/16

<http://alabamataxamnesty.com>



intangible assets - from page 4

condominiums or business property held by a co-op. □

INHERITANCE/ESTATE TAX

Qualified Domestic Trust (QDOT)

A qualified domestic trust (QDOT) enables a non-U.S. citizen married to a U.S. citizen to be eligible for a marital deduction for estate tax purposes. There are four primary requirements for a QDOT imposed under IRC §2056A.

1. At least one trustee must be a U.S. citizen or a domestic corporation.
2. No principal distribution may be made from the QDOT unless the U.S. trustee has the right to withhold the tax payable pursuant to IRC §2056A.
3. The trust instrument provides that the trust will meet the requirements of any future regulations to ensure the collection of tax by the government.
4. The executor of the decedent's estate elects to treat the trust as a QDOT.

If the QDOT is not properly drafted or at any point fails to meet the QDOT requirements, a New Jersey Estate Tax will be imposed. Certain taxable events as defined by IRC §2056A will also trigger a New Jersey Estate Tax. This includes a nonhardship principal distribution from the QDOT.

If an estate elects a QDOT, the trustees of the QDOT must submit to the State of New Jersey a written affidavit certifying that they are responsible for reviewing the transactions of the trust annually and

are guaranteeing timely payment of Estate Taxes due.

In general, the New Jersey Estate Tax due from a taxable QDOT distribution or event is equal to the additional Estate Tax due as if the size of the taxable estate of the first spouse to die were increased by the amount of the QDOT property subject to tax in accordance with the provisions of the Internal Revenue Code in effect on Dec. 31, 2001.

If a taxable distribution or event occurs pursuant to IRC §2056A, Federal Form 706-QDT must be filed with the State of New Jersey. Additionally, a written statement must be filed indicating the name, address and taxpayer identification number of both the U.S. Trustee and the QDOT. Treatment is the same for both a Federal QDOT and a New Jersey only QDOT.

In general, filing and payment is due no later than April 15th of the year following any calendar year in which a taxable distribution has occurred. If the surviving spouse died during the year or the trust ceased to qualify as a QDOT, filing and payment is due within nine months from date of death or the failure to qualify. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

July 1–

- If County Board of Taxation cannot hear and determine appeals within the time prescribed in R.S. 54:3-26, the Board may apply to the Director, Division of Taxation, for an extension at any time.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2017 together with a notice that the completed form must be filed with assessor by Aug. 1, 2016, to claim continuance of Farmland Assessment.
- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted. If unpaid, become real property liens.

2nd Tuesday in July–

- State Equalization Table prepared.

continued on page 6

**Enforcement Summary Statistics
Second Quarter 2016**

Following is a summary of enforcement actions for the quarter ending June 30, 2016.

	Number	Amount
• Bank Levies	641	\$ 2,727,436
• Certificates of Debt	3,003	45,759,980
• Seizures	120	1,820,330
• Auctions	8	181,195
• Warrants of Satisfaction	3,537	



assessors' calendar - from page 5

July 15-

- Property tax reimbursement (Senior Freeze) payments mailed to eligible claimants who filed by June 1.

Aug. 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2017.

Aug. 5-

- All SR-1A forms showing sales transactions to be used in compiling 2016 Table of Equalized Valuations for State School Aid to be received by Property Administration.

Aug. 15-

- County Board of Taxation Presidents to file annual appeal information and statistics report (Form TAS) with Director, Division of Taxation.

Aug. 25-

- State Equalization Table completed by Director, Division of Taxation.

Sept. 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines

failure to file by Aug. 1 was due to owner's illness or death or the death of an immediate family member.

- Local exchange telephone, telegraph and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2017 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2017 for machinery, apparatus or equipment directly used to manufacture petroleum products from crude oil.

Sept. 10-

- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

Sept. 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks and Clerk of Board of Freeholders.

The complete [2016 Work Calendar](#) is available on the Division's website.

Monmouth County Assessment Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County

was the first county to adopt this program, which began Oct. 1, 2013.

The summer dates on the Monmouth County Assessors' calendar coincide with the dates of the regular Assessors' Calendar with one exception: the July provision for the extension of the time to hear and determine an appeal(s) does not apply to the Monmouth County Assessment Demonstration Program.

The complete [2016 Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On Oct. 6, 2014, Samer Jamal was arrested in Montvale, New Jersey, for possession of 456 cartons of contraband cigarettes. On Oct. 26, 2015, in Montvale Municipal Court, Jamal was entered into a Pretrial Intervention (PTI) Program. As a condition of PTI, Jamal was required to plead guilty to possession of goods without paying tax. He was also required to pay restitution to the State of New Jersey in the amount of \$12,333.60.
- On Jan. 15, 2016, Lisa Marie Matto of Barnegat, New Jersey, was sentenced on one count of conspiracy and one count of receiving stolen property (in excess of \$75,000); both second-degree offenses. The charges were based on Matto's participation in a scheme during 2008 in which she and an accomplice submitted numerous fraudulent New Jersey income tax returns along

continued on page 7

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



criminal enforcement - from page 6

with fraudulent W-2s, resulting in thousands of dollars of illegally obtained refunds. Under a plea arrangement, Matto was sentenced as a third-degree offender to five years' probation and ordered to pay restitution in the amount of \$47,692.81. The restitution was paid at the time of sentencing.

- On Jan. 16, 2016, Office of Criminal Investigation (OCI) special agents responded to a motor vehicle stop by the Riverdale Police Department (Morris County). The agents arrested two individuals for various contraband cigarette charges. The 723 cartons of cigarettes found in the individuals' possession were examined forensically and determined to be legitimate product that was most likely purchased in a jurisdiction that does not have Cigarette Tax stamps.
- On Jan. 22, 2016, Mark Begley of Cherry Hill, New Jersey, was sentenced to four years in State prison for deceiving ten people and two banks out of about \$183,000 in connection with a mortgage and loan scheme. Begley was sentenced by Superior Court Judge Terrence R. Cook. Under a plea agreement reached in October, He pled guilty to charges of second-degree theft by deception and third-degree failure to pay taxes. Begley, a purported loan specialist, was arrested in July and accused of taking and keeping for his personal use \$146,000 from Burlington County residents who were seeking mortgage and loan assistance. He was charged by OCI special agents with multiple counts of theft by deception, misapplication

of entrusted property, filing a fraudulent or false income tax return, failure to file a tax return and failure to pay/remit taxes. Begley claimed that his services included assistance with reverse mortgage procurement, mortgage refinancing and assorted loan modifications. He prepared documents for clients to sign to convince them he was working with lenders and mortgage companies on their behalf, but instead, he kept the money. Begley filed a false or fraudulent personal income return in 2011, failed to file a personal income return in 2012 and failed to pay personal income taxes in 2011 and 2012. Judge Cook also sentenced him to four years in prison for the charge of failure to pay taxes, a term that is to be served concurrently with the theft by deception offense. The State did not object to Begley's attempting to be accepted into the State's intensive supervision program. This program gives certain nonviolent offenders who are sentenced to prison an opportunity to work their way back into the community under intensive supervision. Judge Cook ordered that Begley not be permitted to serve in the mortgage industry or as a financial consultant during any term of supervision or parole.

- On Saturday, Feb. 6, 2016, OCI special agents received reliable information that a target of their multistate cigarette smuggling investigation, Laila Alayat, had purchased an airline ticket for Jordan with the intent of avoiding prosecution. Both Alayat and Eyad Salahedin of Elmwood Park, New Jersey, had been warned by the U.S. Attorney's Office not to leave the country

pending trial. Based on the information, the special agents requested and received a federal warrant for the arrest of both subjects. With the cooperation of U.S. Department of Homeland Security, both subjects were arrested on Thursday, Feb. 11, 2016, as Alayat attempted to board a Jordan-bound flight at John F. Kennedy International Airport in Queens, New York. Salahedin attempted to leave the airport after dropping off Alayat. His vehicle was stopped, and he was arrested without incident. Both were processed in Jamaica, New York. They were taken to the hospital, at their request, where they were treated for preexisting medical conditions. After seeing a doctor, both were determined fit for confinement. They were transported to the U.S. Marshals Service without incident. Alayat pled guilty and is scheduled to be sentenced on Sept. 15, 2016. Salahedin's trial is set for Aug. 29, 2016.

- On Tuesday, Feb. 16, 2016, Todd Costello, of Jackson, New Jersey, was indicted in Monmouth County Superior Court for filing false New Jersey tax returns and failure to pay taxes due to the State of New Jersey for tax years 2010 to 2014. OCI's investigation determined that he owes restitution in the amount of \$29,746, including penalty and interest.
- Based on an active warrant for criminal charges from OCI's Technical Enforcement Unit, on Feb. 10, 2016, the Princeton Police Department arrested Salvatore Mazzella at his place of business (Massimo's, Princeton, LLC). The active arrest warrant



criminal enforcement - from pg. 7

was a result of Mazzella's failure to appear for a scheduled court appearance in the Trenton Municipal Court. Mazzella was released after he posted bail of \$10,000. As of this publication, the matter has not been rescheduled. □

Tax Briefs

Cigarette Tax

Electronic Cigarettes, Liquid Nicotine and Nicotine Vapor Products

— A taxpayer inquired if electronic cigarettes, liquid nicotine and nicotine vapor products are subject to Cigarette Tax, Tobacco Products Wholesale Sales and Use Tax and Sales and Use Tax.

Electronic cigarettes are battery-powered devices that provide inhaled doses of nicotine by delivering a vaporized solution using cartridges or other chemical delivery systems. Nicotine vapor products are any noncombustible products containing nicotine or other substances that employ a heating element, power source, electronic circuit or other

electronic, chemical or mechanical means to produce vapor from nicotine. Vapor products include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form intended for use with or in an electronic cigarette, electronic cigarillo, electronic pipe or similar product or device.

“Cigarette” is defined in the Cigarette Tax Act at N.J.S.A. 54:40A-2(a) as “any roll for smoking made wholly or in part of tobacco, or any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco. A ‘single cigarette’ is a cigarette sold or offered for sale individually.”

“Tobacco product” is defined in the Tobacco Products Wholesale Sales and Use Tax Act at N.J.S.A. 54:40B-2 as “any product containing any tobacco for personal consumption including, but not limited to,

cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and dry and moist snuff, but does not include cigarette as defined in section 102 of the ‘Cigarette Tax Act,’ P.L.1948, c.65 (C.54:40A-1 et seq.)”

Because they do not contain any tobacco and are not made of or rolled in tobacco, electronic cigarettes, liquid nicotine and vapor products are not subject to either the Cigarette Tax or the Tobacco Products Wholesale Sales and Use Tax. These items are, however, subject to the 7% sales tax as tangible personal property because there is no statutory exemption for them in the Sales and Use Tax Act. N.J.S.A. 54:32B-1, et seq.

Gross Income Tax

Reporting the Estimated Tax Paid From the Sale of Real Property on Form NJ-1041

— A taxpayer inquired where on Form NJ-1041, Gross Income Tax Fiduciary Return, a trust can claim the estimated tax payment it made with Form GIT/REP-1, Nonresident Seller's Tax Declaration, in connection with the sale of real property in New Jersey. The taxpayer also asked whether the Division could credit the estimated payment made with Form GIT/REP-1 to the beneficiary of the trust.

The Division responded that an estimated tax payment made with Form GIT/REP-1 is treated like any other estimated payment and should be reported as “income tax previously paid.” For the 2015 Form NJ-1041, income tax previously paid is reported on Line 31 and includes the total of estimated payments made for 2015, including any payments made in connection with the sale

Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

1234
15-09900000

PAY TO THE ORDER OF \$

Anyplace Bank
Trenton, NJ 08611

Routing number: 20202088
Account number: 1234

For #2502500251

Do not include the check number.

DOLLARS

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).





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or transfer of real property in New Jersey. A copy of the GIT/REP-1 should be included with the return.

Any payment made by the trust must be claimed by the trust on Form NJ-1041. Estimated payments made in connection with a sale or transfer of real property in New Jersey cannot be credited to a beneficiary.

Sales and Use Tax

Electronic Cigarettes, Liquid Nicotine and Nicotine Vapor Products — See Cigarette Tax.

Rental of RV Campsites and the Atlantic City Luxury Tax — A taxpayer inquired if the New Jersey Sales and Use Tax and the Atlantic City Luxury Sales Tax apply to charges for the rental of an RV campsite located in Atlantic City. The campsite offers amenities such as electric hookups and bathroom/shower facilities. The campsite charges both nightly rates and long-term or seasonal rates.

The Division replied that the New Jersey Sales and Use Tax Act imposes Sales Tax on the rent for every occupancy of a room or rooms in a hotel in this State. N.J.S.A. 54:32B-3(d). Hotel is defined in N.J.S.A. 54:32B-2 as “a building or portion of it which is regularly used and kept open as such for the lodging of guests.” The Atlantic City luxury tax is only imposed on hotel rooms as defined in N.J.S.A. 54:32B-2.

N.J.A.C. 18:24-3.5 provides examples of facilities that are not considered to be hotels and are not subject to the tax imposed on rent received for hotel occupancy. Included in the list of examples are “campsites available for trailers, recreational vehicles, or tent camping.”

Because an RV campsite is not a hotel, it is not subject to the New Jersey sales tax or Atlantic City luxury tax.

Taxability of Charges by a Sailboat Rental Club — A sailboat rental club inquired if it must collect sales tax on charges for initiation fees and rental fees, and if tax is due, whether it should charge the full tax rate (7%) or apply the partial Sales Tax exemption for boats (3.5% effective Feb. 1, 2016).

A sailboat rental club charges members an initiation fee to join the club. Members then have the right to pay a separate charge to rent a sailboat for a specified period. The amount of the rental charge depends on which sailboat the member rents, the length of the rental and whether the sailboat is rented during the week or on the weekend. The club does not operate a marina.

The Division responded that the Sales and Use Tax Act imposes tax on “charges in the nature of initiation fees, membership fees or dues for access to or use of the *property or facilities* of a health and fitness, athletic, sporting or shopping club or organization in this State, except for (1) membership in a club or organization whose members are predominantly age 18 or under.” N.J.S.A. 54:32B-3(h) (emphasis added). Because the club does not maintain property or facilities (i.e., a marina) as the statute requires, the initiation fee the club charges simply gives the member the right to rent a sailboat. Therefore, the charge for the initiation fee is not subject to tax.

The charge for the rental of a boat is taxable. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f). However, the Sales and Use Tax Act was recently amended to provide a partial Sales

and Use Tax exemption (3.5%) on the sale, lease or rental of new and used boats or other vessels (including sailboats) and to cap the amount of Sales and Use Tax due on a transaction at \$20,000. Because the rental fee the club is charging is for qualifying sailboats, the rental charge is eligible for the partial Sales Tax exemption and, if applicable, the \$20,000 sales tax cap.

Tobacco Products Tax

Electronic Cigarettes, Liquid Nicotine and Nicotine Vapor Products — See Cigarette Tax. □

In Our Courts

Administration

Filing Date of Complaint – *Smart Publications, LLC and Anthony Lombardo v. Director, Division of Taxation*; decided April 6, 2016; Appellate Division, Docket No. A-3516-13T4, affirming Tax Court, Docket No. 012506-2013, revised April 29, 2014.

The Division issued a final determination to taxpayer, Smart Publications, LLC (Plaintiff), on May 6, 2013. The final determination, which was sent by certified mail, advised Plaintiff that a complaint should be filed with the Tax Court of New Jersey if Plaintiff did not agree with the notice. The notice clearly stated that the Tax Court must receive the complaint within 90 days from the date of the notice. Plaintiff’s counsel mailed the complaint by certified mail to the Tax Court on Aug. 6, 2013. The Tax Court received the complaint on Aug. 9, 2013, 95 days after the date of the final determination (May 6, 2013). The Division moved to dismiss the complaint as untimely, and the Tax Court granted

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the motion. Plaintiff filed a motion for reconsideration, which the Court denied.

Plaintiff filed an appeal with the Appellate Division arguing that the complaint was mailed on Aug. 6, 2013, and therefore timely filed on Aug. 6, 2013, under the “timely mailed, timely filed rule.” In support of this argument, Plaintiff relied on N.J.S.A. 54:49-3.1, which states that the date mailed is the date of receipt for tax returns, protests and other documents that are “delivered by United States mail to the director, bureau, office, officer or person with which or with whom the document is required to be filed.” The Appellate Division ruled that this statute pertained to appealing an action to the Division, not an action to the Tax Court.

The Appellate Division found that case law has established that the filing of a complaint is completed when the Court receives the complaint rather than when it was actually mailed. The Appellate Division found that both N.J.S.A. 54:51A-14(a) and Tax Court procedure Rule 8:4-1(b) require that “complaints shall be filed within 90 days after the date of the action to be reviewed.” In this case, the complaint was filed when the Tax Court received the complaint on Aug. 9, 2013, which was not within the 90-day window and therefore untimely.

The Appellate Division rejected Plaintiff’s other arguments without discussion. In particular, Plaintiff Anthony Lombardo (the sole member of Smart Publications, LLC) claimed that his mother was not authorized to accept certified mail at his home and that the date he reviewed the letter should be the

date of receipt. The Court concluded that these positions lacked sufficient merit to warrant discussion.

Local Property Tax

Disabled Veteran’s Exemption – *Krystal and David Fisher vs. City of Millville*, decided March 21, 2016; Tax Court, Nos. 014080-2014 and 007736-2015.

The issue is whether a disabled veteran qualifies for property tax exemption on her principal residence. More specifically, the issue is whether Krystal Fisher provided “direct support” in the “theatre of operation.”

Krystal Fisher enlisted for active duty in the United States Army on June 4, 2002. The military was engaged in Operation Enduring Freedom during her enlistment. She trained for active deployment to Afghanistan as part of the Combat Aviation Brigade.

Ms. Fisher was injured during training, which eventually resulted in her being 100% permanently disabled. Despite her injury, she completed her training and was transferred to her active duty station at Fort Stewart, Georgia, serving from March 12, 2003, through Dec. 28, 2003. Her duties while a part of the Rear Detachment included: shipping weapons, food, clothing and processed supplies; keeping inventory of weapons; assembling protective shield units for military vehicles for the overseas portion of her unit; and military police training for deployment to Afghanistan.

Ms. Fisher applied to the City of Millville for a disabled war veteran’s property tax exemption pursuant to N.J.S.A. 54:4-3.30. The Millville tax assessor denied the exemption because Ms. Fisher did not serve the

required minimum of 14 days in the actual combat zone.

Ms. Fisher appealed to the Cumberland County Board of Taxation, which denied the appeal. She then made a timely appeal with the Tax Court.

Ms. Fisher argued that Operation Enduring Freedom is not confined to a specific geographic area but is worldwide. The plaintiff pointed to the provision of the legislative enactment that generally requires participation in the “theatre of operation” rather than a specific geographic area. However, the statutory provision in question does not merely require support but, more specifically, requires direct support. In *Wellington v. Township of Hillsborough*, 27 NJ Tax 37, the Court found that Mr. Wellington was indeed entitled to benefits because he sustained injury testing hazardous chemical agents collected from the battlefield while serving at a laboratory in the United States. The injuries sustained in the testing were in direct support of the military operation.

In clarifying the legislative intent of the statute, the Tax Court noted the tightening and narrowing of the eligibility requirements for later missions in terms of specific service in geographic regions, length of service and service in direct support of the military operation.

The Court declined to address the nature and extent of the theatre of operation because it held the overriding issue was whether “direct support” was provided by the veteran.

The Court concluded that Ms. Fisher completed her training at Fort Leonard Wood, Missouri, and was then

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transferred to her active duty assignment at Fort Stewart, Georgia, as part of the Rear Detachment for the portion of her unit deployed in Afghanistan.

The Court opined that while the Rear Detachment does indeed provide support to a deployed unit, Ms. Fisher was never directly exposed to the dangers or potential dangers of the battlefield. The activities of the Rear Detachment generally do not rise to the level of “direct support” that the Legislature envisioned necessary to satisfy the requisites of exemption from taxation. The direct support requirement can be satisfied by the service member’s exposure to danger, not whether the member handled materials that are ultimately shipped to a dangerous locale. While exposure to danger is not the sole consideration for direct support, the Legislature did not intend the “direct support,” requirement to be merely dependent upon the final destination of material that a service member handles.

The property tax exemption on the principal residence of the disabled veteran was denied. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) and tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2015](#) [2016](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2015](#) [2016](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2015](#) [2016](#) □



important phone numbers

Customer Service Ctr....609-292-6400
 Automated Tax Info ...1-800-323-4400
 609-826-4400
 Homestead Benefit Hotline
 for Homeowners.....1-888-238-1233
 Property Tax Reimbursement
 Hotline.....1-800-882-6597
 Earned Income Tax Credit
 Information..... 609-292-6400
 Business Paperless Telefiling
 System609-341-4800
 Alcoholic Bev. Tax 609-633-7068
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions..... 609-292-5323
 Director’s Office 609-292-6400
 Inheritance Tax..... 609-292-5033
 Local Property Tax..... 609-292-7974
 Motor Fuels Tax
 Refunds 609-633-8870
 Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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Homestead Benefit Payments for 2013 Coming in May

Most New Jersey homeowners who were eligible and filed for a 2013 homestead benefit will receive their benefit as a credit on their May 2016 property tax bills. However, homeowners will receive their benefit in the form of a check (or direct deposit) in early May if their home was a unit in a co-op or a continuing care retirement community, or they indicated when filing that they no longer owned the home that was their principal residence on Oct. 1, 2013.

To be eligible for a 2013 homestead benefit, applicants had to be New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on Oct. 1, 2013, paid property taxes on that home and had 2013 New Jersey gross income of \$75,000 or less (\$150,000 or less for homeowners 65 or older or blind or disabled).

Benefit amounts vary based on the applicant's income, filing status, property taxes and whether the applicant was 65 or older or blind or disabled.

The 2013 benefit is based on the 2006 property taxes for the applicant's Oct. 1, 2013, principal residence. If no property taxes were assessed on the home for 2006, the Division of Taxation determines the amount of property taxes that would have been due.

Homeowners can check the status of their homestead benefit [online](#). Additional information about the [Homestead Benefit Program](#), including information on how the benefit is calculated, is also available on our website. □

SALES AND USE TAX

Reporting Tax on Boat/Vessel Sales

Recent legislation (P.L. 2015, c.170) amended the Sales and Use Tax Act to: (1) provide a 50 percent Sales and Use Tax exemption on the sale of new and used boats or other vessels and (2) cap the amount of sales tax or use tax due on an individual sale at \$20,000.

These changes affect how businesses that sell, rent or lease new and used boats or other vessels that are "eligible" for the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap complete and file their Sales and Use Tax returns. See [page 9](#) for more information. The *Frequently Asked Questions on Boats and Other Vessels* in that section include the definition of an "eligible boat or other vessel" as well as examples of "noneligible" watercraft.

For filing periods beginning on and after Feb. 1, 2016, businesses that make eligible sales of boats or other vessels must file all Sales and Use Tax returns and remittance

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boat/vessel sales - from page 1

statements (if applicable) online and make payments electronically.

These businesses will complete new, online returns (ST-50B, ST-350B, ST-450B or UZ-50B) and must provide information about the number of eligible boats or other vessels sold, rented or leased during the filing period and the total gross receipts for those transactions. This information is needed to ensure that the amount of tax due on these transactions is properly calculated.

Businesses that sell, rent or lease eligible boats or other vessels must use the new "B" returns for any filing period (month or quarter) in which they made "eligible" sales. These businesses will also report on the "B" return any sales that are subject to sales tax at the regular rate.

Businesses that *do not* sell, rent or lease "eligible" boats or other vessels will continue to file the quarterly/monthly returns they have in the past (ST-50, ST-350, ST-450 or UZ-50).

"Noneligible" sales, rentals or leases involve items to which the partial sales tax exemption (3.5%

sales tax rate) and the \$20,000 sales tax cap *do not apply*. Examples include: canoes, kayaks, paddleboards, paddleboats (other than mechanically powered), rowboats, rafts, surfboards and inflatable rafts with oars. Sales, rentals and leases of these "noneligible" items are subject to the full sales tax rate of 7%, unless another exemption provision applies. For example, sales, leases or rentals of canoes or kayaks made by qualified sellers in Salem County or in an Urban Enterprise Zone are subject to tax at the reduced rate of 3.5% that applies to certain sales of tangible property in those locations.

The Sales and Use Tax return a business must file depends on where it is located and whether or not it sells, rents or leases "eligible" boats or other vessels. See the "Which Form to File" chart below.

Online Filing for Cape May County Businesses

For filing periods beginning on and after Feb. 1, 2016, taxpayers required to file Cape May County Tourism Sales Tax and Tourism Assessment monthly returns that make eligible sales of boats or other vessels (i.e., they sell, rent or

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New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Businesses That Sell, Rent or Lease Boats or Other Vessels Which Sales and Use Tax Return to File				
Business sells, rents, or leases...	Statewide (Except Salem County)	Salem County	Cape May County (certain municipalities)	UEZ/UEZ-Impacted Business District (qualified businesses)
Eligible boats or other vessels only	ST-50B	ST-450B	ST-350B	UZ-50B
Both eligible and noneligible boats or other vessels	ST-50B	ST-450B	ST-350B	UZ-50B
Noneligible boats or other vessels only	ST-50	ST-450	ST-350	UZ-50



boat/vessel sales - from page 2

lease boats or other vessels that are eligible for the partial sales tax exemption and the sales tax cap) must file the ST-350B return **online** and make payments electronically. *These Cape May County businesses can no longer use a paper Form ST-350.*

The Division of Taxation is phasing out the paper Form ST-350 monthly returns at the end of 2016. For filing periods beginning on and after Jan. 1, 2017, **all** taxpayers that file Cape May County Tourism Sales Tax and Tourism Assessment monthly returns will be required to file online and make payments electronically. However, businesses that file Form ST-350 can begin to file online and make payments electronically immediately if they wish. □

Pioneer Credit Recovery

Pioneer Credit Recovery, Inc. (PCR) is a company contracted by the

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2016 – Dec. 1, 2016, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%

Division of Taxation through the public bidding process to assist in the collection of deficient (underpaid) and delinquent (unfiled) State taxes, as permitted under P.L. 1992, c.172. PCR is the Division’s authorized collection agency and is overseen by the Division’s Compliance Branch.

PCR and its employees who work on this contract are bound by the same confidentiality rules in the State Tax Uniform Procedure Law (N.J.S.A. 54:50-8 and N.J.S.A. 54:50-9), the Internal Revenue Code (U.S.C. §§6103, 7213) and the State ethics guidelines and procedures required of all other Division employees. Violators of these laws are subject to prosecution.

If you are contacted by PCR, respond directly to that caseworker to expedite your case.

The Collection Process

After you file a tax return, if you do not pay the balance in full, the Division sends a billing notice for the amount due. This amount includes any penalties and interest. If you fail to make payment within 30 days of the billing notice, your account/tax liability will be forwarded to PCR for debt collection.

If you fail to file a tax return, your account is considered to be delinquent, and your tax liability will be arbitrarily assessed. If you fall into this category, it is imperative that you file all missing returns. This will ensure that the Division’s records reflect your true liability.

After your account is forwarded to PCR, the collection process proceeds as follows:

- PCR reviews the debt and assigns the account to a caseworker.

- The caseworker mails an initial contact letter along with an updated Schedule of Liabilities detailing the current balance due.
- PCR will attempt to contact the taxpayer (or their authorized representative) in an effort to resolve the matter.
- If the debt remains unresolved after 30 days, PCR will issue a “Notice of Demand for Payment” via certified mail. This official notification allows taxpayers either 30 days (for deficient items) or 90 days (for delinquent items) to resolve the issue. It is important that taxpayers with delinquent returns are aware that penalties and fees assessed on delinquencies are higher than if a return had been filed timely.
- If the debt is still outstanding, a Certificate of Debt (COD) is entered with the Clerk of the New Jersey Superior Court. A COD has the same force and effect as a Docketed Judgment adjudicated in any court of law. If a COD is issued for the outstanding liability, a cost of collection fee is added to the docketed judgment and becomes part of the outstanding liability.
- Once the COD is in place, the case is returned to the Division for further collection action.
- All cases with CODs are assessed a cost of collection fee, which is in addition to a referral cost recovery fee.

Referral Cost Recovery Fee

Beginning in October 2003, the Division began imposing a referral cost recovery fee as authorized by

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N.J.S.A. 54:49-12.3 and N.J.A.C. 18:2-2.5(d).

In cases in which any State tax remains unpaid and your account is referred to PCR for collection, a referral cost recovery fee of 10% of the amount referred will be assessed and added to the tax liability. This fee is in addition to any interest or penalties imposed. If your returns have not been filed (account is delinquent), and your tax liability has been arbitrarily assessed, the referral cost recovery fee will be 10% of the assessed amount.

The referral cost recovery fee is not compensation paid to PCR. This fee is assessed to cover the expense incurred by the Division when taxes are not filed and paid in a timely manner or not resolved upon the issuance of an initial bill. Generally, each payment sent to Pioneer will have 10% of that payment applied to the referral cost recovery fee items until all referral cost recovery fee items are satisfied.

Cost of Collection

If any State tax is not paid within the time prescribed by law, and the Director of the Division of Taxation issues a Certificate of Debt pursuant to R.S.54:49-12, a fee for the cost of collection of the tax may be imposed. The fees imposed pursuant to the statute are in addition to any interest or penalties, or both, otherwise allowed by law. □

LOCAL PROPERTY TAX

Tax Deferment for Deployed Military Personnel

P.L. 2015, c.277, approved Jan. 19, 2016, provides a deferment from property taxes that are due while a military servicemember is deployed for active service in time of war.

The deferment begins on the tax due date and ends 90 days after the end of deployment. No interest is charged when the amount due is paid on or before the first day following the 90-day grace period. However, interest will accrue from the original due date on any amount that is unpaid after the first day following the grace period.

The deferment is limited to property owned solely by the deployed military servicemember or owned with a spouse/civil union partner. Property owned by a corporation or with others (parents, siblings or children) does not qualify for the deferment. The law permits a person acting on behalf of the servicemember to file the application for deferment with the tax collector of the municipality where the property is located.

The Director of the Division of Taxation will prescribe the application form and make it available on the Division’s website. To qualify, the deployed servicemember must submit the application, military orders and a DD Form 214. The municipal tax

collector will review the application and determine eligibility.

In order to avoid an unfunded mandate, the law requires that the State annually pay each municipality the total amount deferred plus 2% administrative costs in the same manner as is currently done for the veterans’ property tax deduction. The municipal tax collector is required to reimburse the State upon receipt of the deferred payment from each qualified military servicemember, along with any interest collected for payments made after the deferment period. □

LOCAL PROPERTY TAX

Nonresidential Development Fee

The following information has been promulgated by the Department of Community Affairs, Local Planning Services:

“The Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.8, was established by P.L. 2008, c. 46. The first moratorium on the fee, which ended on July 1, 2010, was instituted by P.L. 2009, c. 90. The moratorium was extended by P.L. 2011, c. 122 for projects receiving site approval prior to July 1, 2013 and a construction permit as of January 1, 2015.” (That moratorium extension has not been renewed by

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Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction’s website.

Massachusetts 4/1/16 – 5/31/16 <http://www.mass.gov/dor/>



development fee - from page 4

the New Jersey Legislature and is currently expired.)

“Thus, as of July 1, 2013 all municipalities are required to impose a Non-Residential Development Fee of 2.5 percent of the equalized assessed value on projects receiving site approval after that date pursuant to the Statewide Non-residential Development Fee Act, N.J.S.A. 40:55D-8.6.

“The NRDF Certification/Exemption Form (Form N-RDF rev. 1/2016) has been updated to include an exemption for developments that received both appropriate site plan approval prior to July 1, 2013 and a construction permit prior to January 1, 2015. All previous exemptions or exclusions under the Non-Residential Development Fee Act remain.” (Form N-RDF is available on the Division’s [website](#).)

If a developer is claiming an exemption from the Nonresidential Development Fee, then the assessor determines if the exemption is justified. If not exempt, the assessor must prepare an estimated assessment based on a review of the documentation submitted by the developer with the construction permit application. Once notified that the property is ready for a final assessment, the assessor enters the assessed value of the completed construction on the form and calculates the Nonresidential Development Fee due on the project.

If the municipality is participating in the Fair Housing Act, payment is remitted to the town. If the municipality is not a Fair Housing Act participant, payment is made to the State Treasurer. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Chosen Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks and Director, Division of Taxation.

April 15–

- County Board of Taxation files Form SR-3A with Property Administration.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State

Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

May 20–

- Table of Aggregates completed by County Tax Board from assessor’s Tax Duplicates and Taxation Director’s certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration dates of their terms of office and the status of the required courses.
- Assessors’ Property Tax Deduction Disallowance Notices, Form PD4, sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

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assessors' calendar - from page 5

June 15 (on or before)–

- County Board of Taxation certifies to Director, Division of Taxation, the number and total dollar amount of property tax and veterans' deductions allowed and disallowed for the current tax year on Forms PD-65.15 and VE-WVE-2.

NOTE: Complaints (appeals) from County Tax Board judgments must be filed with the Tax Court within 45 days of service.

The complete [2016 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.

April 1–

- Tax appeals are heard February, March and April.

May 5–

- Assessor to file assessment lists and duplicates with County Tax Board.

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.
- County Tax Board to notify Director, Division of Local Government Services, when copy of budget resolution (in CY municipality) showing amount to be raised is not received.
- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

May 31–

- General tax rates certified by County Tax Board.

- County Tax Board to file final SR-3A forms with Property Administration.

June 15–

- County Tax Board President to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

The complete [2016 Monmouth County Work Calendar](#) is available on the Division's website. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On Sept. 11, 2015, Henry R. De La Rosa, t/a Busanka Restaurant LLC, was indicted in Middlesex County Court for failure to file New Jersey sales tax returns (Form ST-50) for the first quarter of 2010 through the fourth quarter of 2014 and failure to remit sales taxes to the State of New Jersey for the first quarter of 2010 through the fourth quarter of 2014. An Office of Criminal Investigation (OCI) auditor determined that De La Rosa owes restitution in the amount of \$74,719, including penalty and interest.
- On Oct. 8, 2015, OCI arrested Osama Rawashdeh, owner of the Grab and Go in Paterson, New Jersey. Seized were 58.5 cartons of New Jersey counterfeit-stamped cigarettes. New Jersey State Fire Marshals assisted with the inspection using their tobacco K-9, Scout.
- On Nov. 13, 2015, Vivian Farney of Middletown, New Jersey, was sentenced to probation on four



criminal enforcement - from page 6

counts of filing a fraudulent tax return. A joint investigation between OCI and the Monmouth County Prosecutor's Office revealed that she made numerous cash deposits into her bank account (funds allegedly embezzled from her employer) that she did not claim on her tax returns during the years 2007 through 2010. Farney was ordered to pay \$8,000 in restitution to the New Jersey Division of Taxation. Ms. Farney's common-law husband, William Seward, pled guilty to failure to file a tax return for the years 2007 through 2010. He was also put on probation on the condition that he file the delinquent returns within 90 days of sentencing.

- On Nov. 17, 2015, OCI special agents performed a compliance inspection with the Englewood Police Department at Crown Fish and Chicken, LLC in Englewood, New Jersey. The inspection resulted in the seizure of 5.1 cartons of Virginia-stamped cigarettes, 5,148 untaxed tobacco products and 190 loosies. During the search, agents also found multiple bags of marijuana, brass knuckles and possible bags of

synthetic marijuana, to which the agents alerted the members of the municipal police department. The two employees of the store were placed under arrest. One of the employees present at the time of inspection lived in the apartment located directly behind the business. He was asked if he would sign a "consent to search" his apartment, to which he agreed. A search was conducted by the special agents that resulted in the seizure of 99.7 cartons of Virginia-stamped cigarettes, 11,245 untaxed tobacco products and 7 pieces of paperwork/invoices. The owner of the store, Manfooz Khan, has been charged with all of the contraband cigarette and tobacco counts.

- On Dec. 3, 2015, an Ocean County Grand Jury handed up indictments on two separate cases referred to the Prosecutor's Office and jointly investigated with the New Jersey State Comptroller's Office, Medicaid Fraud Division and OCI. Peter Cerruto and his wife, Lisa Cerruto, of Barnegat, New Jersey, were indicted on charges of theft by deception, Medicaid fraud, tampering with government records, filing fraudulent tax returns and failure

to pay tax. It is alleged that the Cerrutos provided false information on their applications for New Jersey Family Care, a Medicaid program, and received benefits totaling approximately \$69,000 between February 2010 and July 2013. The tax counts cover the tax years of 2010 through 2013. The general nature of the allegations is that income was understated in both the Medicaid and tax matters. All counts of the indictment were in the third degree, and the defendants face up to five years in State prison.

- On Dec. 3, 2015, an Ocean County Grand Jury handed up a second indictment on Yosaf Laskin and his wife, Gila Neger, of Lakewood. Mr. Laskin was indicted for theft by deception, Medicaid fraud and tampering with government records. It is alleged that he provided false information on his applications for New Jersey Family Care and received benefits of approximately \$148,000 between November 2010 and July 2013. Ms. Neger was indicted for theft by deception and tampering with government records. It is alleged that she filed a false application for food stamps under the Supplemental Nutritional Assistance Program (SNAP) and received approximately \$8,000 in benefits. Both Laskin and Neger were also indicted for filing fraudulent tax returns for tax years 2010 and 2011. The general nature of the allegations is that income was understated in the Medicaid, SNAP and tax matters. Mr. Laskin faces up to 10 years in State prison on the second-degree charge of theft by

Enforcement Summary Statistics

First Quarter 2016

Following is a summary of enforcement actions for the quarter ending March 31, 2016.

	Number	Amount
• Bank Levies	643	\$ 1,975,891
• Certificates of Debt	3,686	51,151,283
• Seizures	117	1,562,453
• Auctions	14	185,952
• Warrants of Satisfaction	4,313	

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deception. The remaining counts are all third-degree charges, and the defendants face up to five years in prison.

- On Dec. 7, 2015, in Mercer County Superior Court, former New York Giants football star Plaxico Burress agreed to serve 5 years of probation and 364 days in jail for failing to pay \$46,000 in taxes on his \$1 million income in 2013. In exchange for the guilty plea, prosecutors dropped an additional charge of issuing a bad check or electronic funds transfer, a third-degree felony. Burress must repay his back taxes, with penalty and interest, by the time the probation period ends or face jail time. Burress filed his 2013 income tax return with the New Jersey Division of Taxation, but the electronic payment failed. Burress was alerted to the nonpayment by the Division of Revenue and Enterprise Services, but he did not respond. A criminal complaint came in February 2015 after additional efforts by OCI to

reach Burress were unsuccessful. Under a 2014 bill signed by Governor Christie, New Jersey allows criminal penalties to be imposed on people who send insufficient e-payments just as if those payments were bounced checks. Burress was sentenced on Feb. 5, 2016. This case was a joint investigation between OCI's Technical Enforcement Unit and the Mercer County Prosecutor's Office. □

Tax Briefs

Controlling Interest Transfer Tax

No De Minimis Exception – A tax practitioner inquired as to whether there is a de minimis exception to the Controlling Interest Transfer Tax (CITT) when one owner purchases a five percent interest in an entity owning Class 4A commercial property from the other owner, which results in the purchaser having a controlling interest. In this case, taxpayers A and B each own a 50 percent share in entity C. Taxpayer A buys an additional five percent of entity C from

taxpayer B for \$1,200,000. Taxpayer A now owns a controlling interest (55 percent) in entity C.

The Division responded that when there is a sale or transfer of an ownership/membership interest in an entity that owns Class 4A commercial property, and the purchaser/transferee gains a controlling interest as a result of the sale or transfer, the CITT is due if the consideration for the purchase of the interest is in excess of \$1,000,000 in accordance with N.J.S.A. 54:15C-1.

Because the purchase by taxpayer A resulted in his owning a controlling interest in entity C, he now owes the CITT even though the interest purchased was not itself a controlling interest. As long as consideration for the purchase exceeds \$1 million, there is no de minimis exception for a purchase/transfer that results in the purchaser/transferee owning a controlling interest.

Partnerships

Claiming a Federal Tax Credit on Form NJ-1065 – A taxpayer inquired as to whether the research and development credit authorized under I.R.C. §41 and taken on federal Form 6765 is allowed as a deduction for partnerships on the NJ-1065 return.

As required in the instructions for the NJ-1065, for New Jersey purposes, the partnership's income reported on Line 1 of Form NJ-1065 is the amount of ordinary income or loss derived from the partnership's trade or business activities. This will be the amount reported on Line 1, Schedule K, federal Form 1065.

There is no provision in the New Jersey Gross Income Tax Act that allows the use of federal tax credits

Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

1234
15-099-0000

PAY TO THE ORDER OF \$

Anyplace Bank
Trenton, NJ 08611

Routing number: 20202088
Account number: 1234

For: 2502500250

Do not include the check number.

DOLLARS

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).



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or an adjustment of income for New Jersey Gross Income Tax purposes when a partnership takes a federal credit.

Therefore, the research and development credit under I.R.C. §41 is not available as a deduction at the partnership or individual level, and partnerships are required to report ordinary income on Form NJ-1065 in the same manner as reported for federal purposes.

Sales and Use Tax

Partial Exemption (3.5% Tax Rate) and \$20,000 Tax Cap for Sales and Uses of Boats and Vessels; Grace Period for Use Tax Imposition – Amendment to the Sales and Use Tax Act, enacted Dec. 9, 2015.

P.L. 2015, c.170 amends the Sales and Use Tax Act to provide a 50 percent sales and use tax exemption on the sale of new and used boats or other vessels (including motorboats, sailboats, yachts and cruisers) and caps the amount of Sales and Use Tax so that the most the State can collect on a particular sale is \$20,000. As a result, the Sales and Use Tax rate goes from 7 percent to 3.5 percent. There is no further reduction of the Sales and Use Tax rate on sales in an urban enterprise zone or in Salem County. The exemption and cap apply to purchases occurring on and after Feb. 1, 2016. Because rental/lease transactions are treated as retail sales under the Sales and Use Tax Act, these changes also apply to rentals and leases of boats or other vessels.

In addition to the exemption and cap, for uses on or after Jan. 1, 2016, the law allows a grace period for certain boats or other vessels purchased out of State by a New Jersey resident to

be used in New Jersey for up to 30 days in a calendar year without triggering use tax so long as:

1. The boat or other vessel is legally operated by the resident purchaser and meets all current requirements pursuant to applicable federal law or pursuant to a federally approved numbering system for boats and vessels adopted by another state; and
2. The resident purchaser is not engaged in or carrying on in this State any employment, trade, business or profession in which the boat or vessel will be used in this State.

Frequently Asked Questions: Boats and Other Vessels – Partial Sales Tax Exemption (3.5% Sales Tax rate); \$20,000 Sales Tax Cap

Q1. *What is the definition of “boat or other vessel”?*

A. Based on legislative intent, a “boat or other vessel” is a means of conveyance for travel on water and propelled otherwise than by muscular power, such as a motorboat, sailboat, yacht and cruiser.

Q2. *Does the new law apply to leases and rentals of boats or other vessels?*

A. Yes. The statutory definition of “sale” includes leases and rentals, so the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap (maximum amount of Sales and Use Tax the State can collect on an eligible sale) also apply to leases and rentals of boats or other vessels.

Q3. *Does the new law apply only to noncommercial boats or other vessels?*

A. No. The new law does not distinguish between commercial and

noncommercial boats or other vessels, so the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply to both commercial and noncommercial boats or other vessels. (**NOTE:** Several types of commercial boats and vessels are currently exempt from sales tax in full.)

Q4. *Do the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply to sales, leases and rentals of personal watercraft?*

A. Yes. The partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply to sales, leases and rentals of personal watercraft.

“Personal watercraft” means a power vessel defined as a Class “A” vessel by the United States Coast Guard, and that:

- a. Is designed to be operated from a sitting, standing or kneeling position;
- b. Is equipped with an internal combustion engine that powers a water jet pump; and
- c. Cannot be operated in a manner so as to disengage the pump so as to prevent the vessel from making headway (N.J.S.A. 12:7-62).

Q5. *Do the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply to sales, leases and rentals of canoes and kayaks?*

A. No. Based on the definition in question 1, the Division has determined that canoes and kayaks are not entitled to the partial sales tax

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exemption (3.5% sales tax rate) or the \$20,000 sales tax cap. Thus, sales, rentals and leases of canoes and kayaks are subject to the full sales tax rate of 7% unless another exemption provision applies (e.g., sales of tangible property made by qualified sellers in Salem County or in an urban enterprise zone).

Q6. *Do the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply to used and brokered boats or other vessels?*

A. Yes. The new law does not distinguish between new and used boats or other vessels, so brokered sales (in which a dealer acts as a go-between for the seller and the purchaser) and casual sales (sales between individuals with no broker) are eligible for the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap.

Q7. *Does the partial sales tax exemption (3.5% sales tax rate) apply to services, parts and labor?*

A. No. The new law only applies to sales, rentals and leases of boats or other vessels. Therefore, charges for all services (repairs, maintenance, etc.), parts and supplies are subject to the full sales tax rate of 7% unless another exemption provision applies (e.g., sales of tangible property made by qualified sellers in Salem County or in an urban enterprise zone).

Q8. *What are examples of items that are not entitled to the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap?*

A. The partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap do not apply to sales, rentals and leases of canoes, kayaks,

paddleboards, paddleboats (other than mechanically powered), rowboats, rafts, surfboards and inflatable rafts with oars. Thus, sales, rentals and leases of these items are subject to the full sales tax rate of 7% unless another exemption provision applies (e.g., sales of tangible property made by qualified sellers in Salem County or in an urban enterprise zone).

Q9. *Do the partial sales tax exemption (3.5% sales tax rate) and \$20,000 sales tax cap apply to new boats or other vessels sold as packages with trailers, motors and accessories?*

A. Trailers are separate and distinct from the boat or other vessel and are not eligible for the partial sales tax exemption (3.5% sales tax rate) or the \$20,000 sales tax cap; therefore, the price for the trailer must be separately stated on the invoice for the boat or other vessel or the entire sales price will be subject to the full sales tax rate of 7%.

If the accessories and motors are included in the sales price of the boat or other vessel and are affixed thereto at the time of purchase, the partial sales tax exemption (3.5% sales tax rate) and the \$20,000 sales tax cap apply.

Q10. *What is the tax treatment of sales of boats and other vessels that occurred prior to the Feb. 1, 2016, effective date of the new law?*

A. The statutory definition of “sale” is any transfer of title or possession for consideration. If the boat or other vessel is sold and physical delivery or transfer of title took place before Feb. 1, 2016, the sales tax rate is 7%. If the boat or other vessel is sold but physical delivery or transfer of title takes place on or after Feb. 1, 2016, the sales tax rate is 3.5%. This

applies whether or not payment has been made in whole or in part prior to delivery.

Q11. *What is the tax treatment if the sale of the boat or other vessel occurs in Salem County or an urban enterprise zone?*

A. Qualified sales of boats and other vessels in Salem County or in an urban enterprise zone are already entitled to a partial sales tax exemption (3.5% sales tax rate). The new law does not allow a further reduction of this already reduced rate. However, sales of boats and other vessels in Salem County or in an urban enterprise zone are entitled to the \$20,000 sales tax cap.

Q12. *Can a purchaser obtain a refund of sales tax if the purchaser was incorrectly charged more than the 3.5% sales tax rate or an amount that exceeded the \$20,000 sales tax cap on an eligible purchase of a boat or other vessel?*

A. Yes. If a purchaser was charged more than the 3.5% sales tax rate or an amount that exceeded the \$20,000 sales tax cap on an eligible purchase of a boat or other vessel, the purchaser may apply for a refund of tax paid to either the seller or the State of New Jersey. The Division of Taxation will refund the tax so long as the tax was “erroneously, illegally or unconstitutionally collected or paid.” To request a refund from the Division, the purchaser must file a Claim for Refund ([Form A-3730](#)) within four years from the date of payment of the sales tax. The purchaser must enclose all supporting documentation of the sales tax paid in order to substantiate the claim. □

In Our Courts

Gross Income Tax

S Corporation Distributions – *Morris & Charlotte Cohen v. Director, Division of Taxation*, decided June 9, 2015; Appellate Division, Docket No. A-5827-12T4.

Morris Cohen (Plaintiff) is a New Jersey resident who was a 25% shareholder in Conway Stores (Conway), a New York S corporation. During tax year 2003, Plaintiff received a distribution of \$554,292 from Conway but did not report this distribution on his NJ-1040. Plaintiff believed that because he had been unable to use S corporation losses to reduce his taxable income in prior years, the losses could not be used to reduce his New Jersey accumulated adjustments account (NJ AAA) below zero, and the distribution was not taxable. The Division issued a notice of deficiency to Plaintiff that reclassified the distribution as a taxable dividend under N.J.S.A. 54A:5-14.

Plaintiff argued that based on the principles in *Koch v. Director, Division of Taxation*, 157 N.J. 1 (1999), losses that are passed through to a shareholder but that cannot be used to offset income cannot reduce NJ AAA because they provide no tax benefit. The Tax Court declined to address the argument because the taxpayer did not comply with the rules for properly calculating the NJ AAA. The Court denied Plaintiff's motion for summary judgment and upheld the Division's position that the distribution is to be taxed as a dividend.

Plaintiff appealed the Tax Court's decision. The Appellate Court found that the statute expressly requires the application of federal principles to

calculate AAA and found no basis in the statute or case law to support Plaintiff's argument that NJ AAA should not be reduced by S corporation losses. Plaintiff filed a motion for reconsideration, which the Appellate Court denied.

New Jersey Residents Not Entitled to Credit for Taxes Paid to Other Jurisdiction – *Ravinder Palwai v. Director, Division of Taxation*, decided Nov. 18, 2015; Tax Court, Docket No. 017418-2010.

Ravinder Palwai and his wife (Plaintiffs) closed on the purchase of their home in New Jersey in 2005 and moved into the State in 2006. They filed a joint 2006 NJ-1040 and did not claim a credit for taxes paid to another jurisdiction. Plaintiffs also filed a 2006 Form IT-203 (New York Nonresident and Part-Year Resident Income Tax Return) reporting a zero tax liability after deducting allowable New York state refundable credits.

After reviewing Plaintiffs' return, the Division of Taxation adjusted their New Jersey gross income as follows: (1) increased wage income for New York wages that were not reported to New Jersey; (2) added back a deduction for an IRC Section 125 cafeteria plan; and (3) denied the credit for taxes paid to New York because Plaintiffs reported \$0 tax was due to New York after deducting the credit for taxes paid to other jurisdictions.

Plaintiffs filed a timely administrative protest but failed to participate in the process, so the Division's determination was upheld. Plaintiffs filed a timely complaint with the Tax Court. After numerous adjournments, the Division filed a summary judgment motion to dismiss the

complaint. The Tax Court granted the motion finding that: (1) Plaintiffs were New Jersey residents and were subject to tax on all earnings regardless of where earned, so the New York wages were reportable to New Jersey; (2) Plaintiffs failed to provide any documentation to prove that the contributions to the IRC Section 125 cafeteria plan qualified to be excluded from gross income; and (3) a resident is allowed a credit for taxes paid to another jurisdiction only if the income is actually taxed in New Jersey and the other jurisdiction. Their New York return showed \$0 tax due; therefore, Plaintiffs are not entitled to a credit for taxes paid because the income earned in New York was not actually taxed. □

In Our Legislature

Gross Income Tax

Achieving a Better Life Experience (ABLE) Program for Persons With Certain Disabilities — P.L. 2015, c.185, signed into law on Jan. 11, 2016, and effective on the first day of the tenth month after enactment, allows persons with certain disabilities to establish ABLE accounts, which may be used for certain qualifying disability expenses. Earnings on qualified distributions from qualified ABLE accounts will be exempt from State income taxation. In addition, ABLE accounts will not be considered when determining income eligibility for State assistance programs.

Checkoff for New Jersey Yellow Ribbon Fund — P.L. 2015, c.278, signed into law on Jan. 11, 2016, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2017, allows taxpayers to



in our legislature - from page 11

donate to the New Jersey Yellow Ribbon Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their Gross Income Tax returns.

Local Property Tax

Tax Deferment for Deployed Military Personnel — P.L. 2015, c.277, signed into law on Jan. 19, 2016, and effective immediately, allows New Jersey residents enlisted in any branch of the United States Armed Forces to defer the amount of any property tax bill for taxes assessed on property they own alone or with a spouse that becomes due during the period of their deployment for active duty in time of war. The deferment begins on the due date for the property tax payment and ends 90 days after the end of the resident’s deployment. No interest will be charged if the property taxes owed are paid in full before the expiration of this 90-day grace period. Any portion of the property taxes not paid before the grace period expires will be subject to interest from the original due date until paid in full. The Act requires the State to annually pay each municipality the total amount of property taxes deferred. Tax collectors must reimburse the State when they receive payment of the deferred taxes.

Multiple Taxes

Business Employment Incentive Program — P.L. 2015, c.194, signed into law on Jan. 11, 2016, and effective immediately, allows certain businesses that have previously been approved for a grant under the Business Employment Incentive Program to direct the New Jersey Economic Development Authority to convert the grant to a tax credit. The Act

establishes a priority schedule for the issuance of tax credits that favors older, outstanding grant obligations over grants that will become payable in future years. The tax credits issued can be applied to reduce a business’s tax liability under the Corporation Business Tax or Insurance Premiums Tax prior to all other credits and payments. If the tax credit issued exceeds the amount of the tax liability otherwise due from a business that pays tax under the Corporation Business Tax, the amount of the excess may be treated as an overpayment of tax and refunded to the business.

Economic Incentive Programs — P.L. 2015, c.217, signed into law on Jan. 11, 2016, and effective immediately, modifies and clarifies provisions of the GROW NJ Assistance Program, the Economic Redevelopment and Growth Grant Program (ERG) and a tax credit program for redevelopers that provide public infrastructure to government entities. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) and tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) for businesses and individuals:

• **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

• **Alphabetical Summary of Due Dates by Tax Type**

[2015](#) [2016](#)

• **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2015](#) [2016](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
- for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
- Hotline..... 1-800-882-6597
- Earned Income Tax Credit
- Information..... 609-292-6400
- Business Paperless Telefiling
- System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
- Refunds 609-633-8870
- Public Utility Tax..... 609-633-2634

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2015 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
19	2/5/15	Creates the New Jersey Meadowlands Tax Relief Act, which imposes a Meadowlands Regional Hotel Use Assessment of 3% of the rent charged for the occupancy of every room in hotels located in the Meadowlands District. Also consolidates the New Jersey Meadowlands Commission and the New Jersey Sports and Exposition Authority, reestablishes the Hackensack Meadowlands Transportation Planning District and revises the funding method for the intermunicipal tax sharing program in the New Jersey Meadowlands.	MHUA	A-3969(3R)
26	3/23/15	Establishes the Fund for the Support of New Jersey Nonprofit Veterans Organizations and provides for voluntary contributions by taxpayers on Gross Income Tax returns.	GIT	A-2313(1R)
69	7/6/15	Amends the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c.90) to allow municipal redevelopers to receive Economic Redevelopment and Growth Grant Program tax credits for certain mixed-use parking projects.	MULT	S-2458 (3R)
73	7/6/15	Increases the benefit under the New Jersey Earned Income Tax Credit Program from 20 percent of the federal credit amount to 30 percent beginning in tax year 2015.	GIT	A-4602(1R)
88	8/10/15	Requires State agencies to periodically review permits they issue and make necessary changes to expedite and facilitate permitting.	MISC	S-1813(2R)
113	10/1/15	Allows retail dealers, during a state of energy emergency, to sell higher grade motor fuel at the same price as the lowest grade motor fuel if their supply of the lowest grade motor fuel is exhausted.	MFT	A-1733
170	12/9/15	Provides a 50 percent Sales and Use Tax exemption on sales of boats and other vessels; caps the amount of tax on a particular sale or use at \$20,000; and establishes grace period for use tax imposition on certain boats and vessels used by resident purchasers.	S&U	A-3213(2R)
185	1/11/16	Allows persons with certain disabilities to establish Achieving a Better Life Experience (ABLE) accounts, which may be used for certain qualifying disability expenses. Earnings on qualified distributions from qualified ABLE accounts will be exempt from State income taxation. In addition, ABLE accounts will not be considered when determining income eligibility for State assistance programs.	GIT	S-2770

2015 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
194	1/11/16	Allows certain businesses that are eligible to receive a grant under Business Employment Incentive Program to instead receive a tax credit. The tax credit can be applied towards the business's Corporation Business Tax or Insurance Premiums Tax liability.	MULT	S-3232 (1R)
217	1/11/16	Modifies and clarifies provisions of the GROW NJ Assistance Program, the Economic Redevelopment and Growth Grant Program (ERG) and a tax credit program for redevelopers that provide public infrastructure to government entities.	MULT	A-4518 (1R)
277	1/19/16	Allows New Jersey residents on active duty in any branch of the United States Armed Forces to qualify for deferment of any property tax amount that comes due during their deployment in time of war.	LPT	A-2935
278	1/19/16	Establishes the New Jersey Yellow Ribbon Fund and provides for voluntary contributions by taxpayers on Gross Income Tax returns to support active duty members of United States Armed Forces, Reserve components thereof and National Guard from New Jersey.	GIT	A-2943(1R)

*Legend for 2015 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ADS = Admissions Surcharge	MFT = Motor Fuel Tax
ALL = All Taxes Administered by the Division	MISC = Miscellaneous
CAS = Casino Taxes and Fees	MHUA = Meadowlands Regional Hotel Use Assessment
CBT = Corporation Business Tax	MULT = Multiple Taxes
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax
LIT = Litter Control Fee	

New Jersey State Tax news

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Ford M. Scudder Sworn in as Acting State Treasurer

Ford M. Scudder assumed the duties of Acting State Treasurer effective Nov. 9, 2015.

For the past decade, Mr. Scudder worked in the private sector for Laffer Associates, a macroeconomic research firm, serving as Chief Operating Officer there before joining State government.

Mr. Scudder is a holder of the right to use the Chartered Financial Analyst® designation. He also has analyzed and invested in public equities as a senior analyst at Laffer Investments, a global asset manager. In addition, he has experience investing in private equity, serving as an observer or proxy on the boards of directors of a number of privately held companies.

He was born in Princeton, New Jersey, and his family has a long history in the State. He graduated magna cum laude from Princeton University, earning a bachelor's degree in economics while also receiving certificates in finance and political economy. He earned his M.B.A. from Vanderbilt University's Owen Graduate School of Management. Mr. Scudder serves as a member of the national Annual Giving Committee at Princeton University.

Mr. Scudder is married to the former Cristina Hession. They have one daughter and reside in Red Bank. □

John J. Ficara Sworn in as Acting Director

New Jersey State Treasurer Ford M. Scudder appointed John J. Ficara as the new Acting Director of the Division of Taxation. Mr. Ficara was sworn in as Acting Director on Jan. 4, 2016.

Mr. Ficara has over four decades of experience as a tax professional, including seven years with Ernst & Young. He was previously Director of Tax and Tax Counsel for Columbus McKinnon Corp. and Corporate Tax Counsel for BASF. He also was an Adjunct Professor of Tax in the Fairleigh Dickinson University Graduate Tax program.

A licensed Certified Public Accountant and attorney, Mr. Ficara earned his juris doctor degree from Fordham University School of Law and his Master's in Tax Law from New York University Graduate Law School. Mr. Ficara and his wife Janet live in Mountain Lakes and have two grown children. □

Reply to Notices Electronically

The New Jersey Division of Revenue and Enterprise Services (DORES) announced development of a new electronic service. The New Jersey Online Notice Response Service, NJ ONRS (pronounced Honors), enables you to electronically transmit

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reply electronically - from page 1

your reply to a Notice of Adjustment and/or Statement of Account received from the Division of Taxation. The transmission of information and data occurs directly through one of the State's secure servers.

When you respond to a notice using NJ ONRS, you can compose a letter (up to 2,000 characters) directly through the application or you can upload one, as well as all supporting documentation, securely from your home or business computer. Before uploading your confidential information and documents to NJ ONRS, you must convert the material into PDF, JPG, JPEG, PNG or TIFF format. Helpful tips for converting files into one of these formats is provided in the application.

Once your response is successfully transmitted to the State, NJ ONRS immediately issues you a confirmation email. Your letter then goes into our existing Correspondence Tracking System (CTS) to be answered in the order in which it was received.

DORES expects to launch NJ ONRS on or about Feb. 15, 2016. Notices will be clearly marked to indicate that you may use NJ ONRS for your reply. Initially, NJ ONRS will be available only for notices and statements that involve Individual Income Tax, the Homestead Benefit Program, the Property Tax Reimbursement Program and certain business taxes. More information on [NJ ONRS](#) is available online. □

What's New for Tax Year 2015

There have been some important changes affecting the preparation of New Jersey income tax returns and

applications for New Jersey's property tax relief programs for 2015. In addition, this year brings several other legislative and administrative changes.

Customer Service Center

- **Extended Hours on Mondays** — The Customer Service Center now offers extended hours every Monday on two of their customer service phone lines (609-292-6400 and 609-943-5000). In addition to the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, except State holidays), representatives are available on Mondays from 8:30 a.m. until 6:00 p.m. to assist with your tax questions. When State offices are closed on Monday due to a State holiday, the phone lines will remain open until 6:00 p.m. on the following Tuesday.

Income Tax

- **Earned Income Tax Credit** — The New Jersey Earned Income Tax Credit (NJEITC) amount increased to 30% of the applicant's federal earned income tax credit for tax year 2015 and after.
- **Filing Deadline** — The filing deadline is Monday, April 18, 2016, for calendar year taxpayers, the same day the federal Form 1040 is due. The due date is April 18 instead of April 15 because of the Emancipation Day holiday in the District of Columbia.
- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2015, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$136.00, the maximum employee disability

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New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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insurance contribution was \$80.00, and the maximum employee family leave insurance contribution was \$28.80. If you had two or more employers, you may have contributed more than the maximum amount(s). You must complete Form NJ-2450 to claim credit on your New Jersey tax return for the excess withheld.

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2015 was 3.4915% (.034915) from Jan. 1 to June 30, 2015, and 3.4828% (.034828) from July 1 to Dec. 31, 2015.
- **Alternative Business Calculation Adjustment** — If you have losses in certain business-related categories of income, you may be able to use those losses to calculate an adjustment to your taxable income. In addition, you can carry forward unused losses in those categories for 20 years

to calculate future adjustments. For tax year 2015, the percentage used to calculate the Alternative Business Calculation Adjustment on Schedule NJ-BUS-2 is 40%, up from 30% in 2014. The percentage is being phased in over a five-year period and will reach a maximum of 50% for tax year 2016 and after.

- **Designated Contributions** — Six new funds have been added to the list of organizations to which you can contribute on the New Jersey tax return. To donate to the new funds, you must specify the “code number” at the “Other Designated Contribution” line. The new funds that have been added for 2015 are: Homeless Veterans Grant Fund (16), The Leukemia & Lymphoma Society – New Jersey Fund (17), Northern New Jersey Veterans Memorial Cemetery Development Fund (18), New Jersey Farm to School and School Garden Fund (19), Local Library Support Fund (20) and ALS Association Support Fund (21).

Reimbursement Application (Form PTR-1 or PTR-2) by June 1, 2016. The 2015 applications were mailed in mid-February.

With very few exceptions, all income received during the year, including income that is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2015, total annual income must be:

2014: \$85,553 or less, and

2015: \$87,007 or less

The limits apply regardless of marital/civil union status. However, if an applicant’s status is married/CU couple, combined income of both spouses/CU partners must be reported.

NOTE: Eligibility requirements, including income limits, and benefits available under this program are subject to change. Information for 2015 is posted on the Division’s [website](#).

- **Homestead Benefit Program** — Information about filing for benefits under the Homestead Benefit Program is not yet available. Please continue to check our [website](#) as information will be posted as it becomes available.

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2016 – Dec. 1, 2016, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%
1/1/16	6.25%

Partnerships

- **New Forms for Partnership Filing** — The Division of Taxation has developed new returns and payment vouchers for entities required to file partnership returns with New Jersey (see article [page 4](#)).

Property Tax Relief Programs

- **2015 Property Tax Reimbursement (Senior Freeze)** — The Senior Freeze (Property Tax Reimbursement) Program reimburses eligible senior citizens or disabled persons for property tax increases. Eligible residents must file a 2015 Property Tax

Corporation Business Tax

E-File Mandate — For tax years beginning on or after Jan. 1, 2016, all Corporation Business Tax (CBT) returns, whether self-prepared or

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prepared by a paid tax practitioner, must be filed electronically, and all payments must be made electronically. A business cannot opt out of this mandate. More information on the [CBT E-File and E-Pay Mandate](#) is available online. ☐

New Jersey Earned Income Tax Credit

The New Jersey Earned Income Tax Credit (NJEITC) Program, in existence since tax year 2000, provides credits for certain residents who work and have earned income. The credit reduces the amount of New Jersey tax applicants owe or increases their refunds. It may provide a refund even if the applicant has no tax liability to New Jersey.

Most residents who are eligible and file for a federal earned income

credit are also eligible for the New Jersey earned income tax credit. To receive the NJEITC, applicants must file a New Jersey resident income tax return. This is true even if they are not otherwise required to file a return.

The amount of the NJEITC is based on the amount of the federal earned income credit. For 2015, the NJEITC increased to 30% of the federal credit. For example, if an applicant's federal earned income credit is \$2,000, the amount of the NJEITC will be \$600 (federal EIC x 30% = 2015 NJEITC).

More information on the NJEITC is available on the Division of Taxation's [website](#). Information on eligibility requirements for the federal earned income credit is available on the [IRS's website](#).

If you need help completing your New Jersey income tax return to

apply for the NJEITC, call the Division's Customer Service Center at 609-292-6400 or visit a [Regional Office](#). Certain taxpayers may also be eligible for free [tax preparation](#) services. ☐

New Partnership Returns for 2015

For tax years beginning on or after Jan. 1, 2015, the Division has created two new partnership tax returns: Form NJ-1065, Partnership Return – Gross Income Tax and Form NJ-CBT-1065, Partnership Return – Corporation Business Tax.

The New Jersey Gross Income Tax (GIT) Act (N.J.S.A. 54A:8-6) requires entities classified as partnerships for federal income tax purposes having a resident owner or having income derived from

continued on page 5

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NJFastFile



new partnership returns - from page 4

New Jersey sources to file a Gross Income Tax return, Form NJ-1065. Partnerships with more than two owners and income or loss from New Jersey sources may also be subject to a filing fee. Beginning with tax year 2015, the fee is computed and reported on the new Form NJ-1065.

The Corporation Business Tax (CBT) Act (N.J.S.A. 54:10A-15.11) imposes a tax on certain partnerships that have nonresident owners. Partnerships subject to the provisions of the CBT Act must file the new Form NJ-CBT-1065. These forms have been developed to help distinguish the differences that exist between the requirements of the Gross Income Tax and Corporation Business Tax Acts.

The 2015 Form NJ-1065 remains similar to the Form NJ-1065 for prior years, except that the filing fee is now reported directly on the return. Form PART-100, Partnership Filing Fee and Tax Payment Return, which partnerships previously used to report both the GIT filing fee and the tax for nonresident partners required under the CBT Act, has been eliminated. The filing fee is now remitted with the new Partnership Payment Voucher, Form NJ-1065-V.

If a partnership is also required to compute and report tax for nonresident partners, it must complete and file Form NJ-CBT-1065. If the entity has a balance due, it must remit payment with the new Corporation Business Tax-Partnership Payment Voucher, Form NJ-CBT-V.

Copies of the 2015 partnership forms are available on the Division's [website](#). □

Ponzi Scheme Losses

New Jersey and the IRS treat losses resulting from investments in Ponzi schemes differently.

According to IRS Revenue Ruling 2009-9, issued in March 2009, an investor with a loss resulting from an investment in a Ponzi scheme is entitled to claim a theft loss under Internal Revenue Code Section 165 rather than a capital loss. The theft loss is deductible in the year it is discovered.

The New Jersey Gross Income Tax (GIT) Act makes no provision for theft losses. Therefore, a loss from an investment in a Ponzi scheme is not deductible for New Jersey Gross Income Tax purposes.

In *John M. Dalton and Cathy M. Dalton v. Director, Division of Taxation*, Tax Court Docket No. 020540-2010, decided Nov. 10, 2011, the Court ruled that, for New Jersey Gross Income Tax purposes, a net loss in the IRS year of discovery would not be allowed. However, since the income reported to the investor represented phantom income, the investor could file amended returns to remove that income from any previously filed New Jersey income tax returns that were within the statute of limitations.

Judge Menyuk opined, "In its April 15, 2010 notice, the Division asserted that 'taxpayers who invested with Madoff can only claim an investment loss in accordance with N.J.S.A. 54A:5-1(c),' that is, in the category of gross income for net gains or income from the disposition of property. Neither the notice nor the Director's motion papers or its

counsel at oral argument explained how property that never existed and that was not actually or constructively received by the plaintiffs can be converted into a loss that must be reported pursuant to N.J.S.A. 54A:5-1c."

"The (Division's) notice, then, is self-contradictory, because it advises taxpayers that they must follow federal procedure for theft losses, even though the GIT Act does not recognize theft losses. Moreover, while (IRS) Rev. Rul. 2009-9 states that the Madoff Ponzi scheme losses are not investment losses, the Director's notice nevertheless directs taxpayers to treat the same losses as investment losses. There is no principled reason why taxpayers should be required to use a federal procedure that relies upon federal tax code concepts that are not recognized by the GIT Act."

"Plaintiffs received no economic gain from the dividend and gains income reported on their 2005, 2006, and 2007 GIT returns. They were nevertheless taxed on it. The court can find no statutory basis for prohibiting them from recovering the tax paid on that phantom income. They derive no GIT benefit from the larger loss resulting from application of Rev. Proc. 2009-20. There is no statutory reason that they should be compelled to utilize that procedure for GIT purposes."

As a result, taxpayers who are victims of Ponzi schemes recognized by the IRS may amend their New Jersey Gross Income Tax returns that are within the three-year statute of limitations to remove the associated income and recover the taxes paid on that phantom income. □

OLAD Hosts Summer Interns

Three college students participating in the Governor's Summer Internship Program were assigned to the Division of Taxation's Office of Legislative Analysis and Disclosure (OLAD) in the summer of 2015. Their time with the Division was spent learning about State government, tax policy, auditing, tax legislation and legal implementation of tax laws.

The interns worked on projects with OLAD's Grant and Credit Monitoring Unit and the Disclosure Office. Their work involved various facets of accounting, data sampling and data modeling. They did research for Memoranda of Understanding initiatives, revised information guides for State incentive programs and designed databases to track program data.

The interns also completed short-term assignments with other units within the Division. They spent

time with attorneys in the Office of Regulatory Services, who provided insight into how New Jersey's tax laws are implemented. They accompanied auditors to observe field audits. The interns also accompanied the Compliance Boat Patrol to observe compliance reviews of boaters and went along with investigators who were canvassing the docks.

Participating in the Governor's Summer Internship program was mutually beneficial for both the Division and the students. The students gained valuable work experience while bringing their energy and enthusiasm to the Division. □

OCI Special Agents Complete Training

On Jan. 18, 2015, Acting Director Dennis Shilling administered the oath of office to four new special agents in the Office of Criminal Investigation: Nelson Avery, John Kuti, Kyle Mullane and Steven Raimondo.

The four special agent recruits were assigned to complete the Basic Course for Investigators, which is designed for New Jersey's nonuniformed law enforcement personnel such as OCI's special agents, county prosecutors, detectives, parole officers and detectives from the Attorney General's Office. The course is mandated by the Police Training Commission.

The Basic Course for Investigators, which runs for nearly 20 weeks, consists of an intense physical and academic regimen. The curriculum includes classroom sessions and physical training in defensive tactics, emergency vehicle operations, firearms, use of force and emergency medical skills. This basic law enforcement training is conducted at the New Jersey Division of Criminal Justice Academy in a state-of-the-art facility at the New Jersey National Guard camp in Sea Girt, New Jersey.

At this Academy session, OCI's special agents received two of the five awards presented for outstanding accomplishment. In a class of 37 graduates, Special Agent John Kuti achieved the highest score in physical training, and Special Agent Steven Raimondo was awarded the Police Training Commission Merit Award. The Merit Award is a classmate-voted award that is based on ethics, character and determination shown during the training cycle.

This is the first time that a swearing-in ceremony was conducted in the presence of friends and family. After the oath of office, retired Supervisory Special Agent Nelson Avery presented his son, Nelson Avery, his special agent badge. OCI Supervising Forensic Auditor Mike Mullane presented his son, Kyle Mullane, his



Acting Director Dennis Shilling (right) swears in new OCI special agents (from left) Nelson Avery, Kyle Mullane, Steven Raimondo and John Kuti.

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oci training - from page 6

special agent badge. Special Agent in Charge Charles Giblin presented badges to Special Agents Steven Raimondo and John Kuti.

Each of the new Special Agents is assigned to a Senior Special Agent who will act as his Field Training Officer. All four are assigned to the Special Investigations Unit of OCI. □

LOCAL PROPERTY TAX ***Tax Deductions*** ***Certified***

The 2015 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses/civil union partners and veterans was delivered to the State Treasurer on Sept. 15, 2015.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on Nov. 1, 2015.

The total amount of property tax deductions for senior and disabled persons and surviving spouses/civil union partners for 2015 was \$11,932,824. That amount represents a decrease of 6.7% from 2014. The total number of property tax deductions for senior and disabled citizens and surviving spouses/civil union partners for 2015 was 45,620. When compared to tax year 2014, the number of deductions decreased 6%.

For tax year 2015, the amount of veterans' deductions was \$52,472,247. That amount represents a decrease of 5.4% from 2014. The total number of veterans' deductions for 2015

was 206,450. When compared to tax year 2014, the number of deductions decreased 5%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as required by law. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

Jan. 1–

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.
- County Tax Board to complete hearings of added and omitted assessment appeals.
- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.

- Assessor to file one copy of each Farmland Assessment application (Form FA-1) with County Tax Board for tax administrator's review.

Jan. 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1 for valuation by assessor as of Jan. 1.

Jan. 10–

- Assessor to file assessment list and duplicates with County Tax Board.
- Assessor to file estimated total amount of approved veteran and property tax deductions with County Tax Board.

- Assessor to file copies of Initial and Further State-ments with County Tax Board.
- Assessor to file duplicate copy of municipal tax map with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate and allowable municipal budget cap increase to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" and "Five-Year Limited Exemption Report" with County Tax Board.

- Assessor to file two copies of Form SR-3A with County Tax Board.

Jan. 25–

- Assessor to provide schedule of office hours and appointment availability to County Tax Administrator and post in the municipal building.

Feb. 1 (before)–

- Assessor to notify taxpayer by mail of current assessment and prior year's taxes.

Feb. 1–

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to complete Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 and forward to County Tax Administrator.
- County Tax Administrator to furnish assessors' office hours to Director, Division of Taxation.



assessors' calendar - from page 7

Feb. 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

Feb. 10–

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

Feb. 15–

- County Tax Administrator to review FA-1 forms for farmland assessment and forward to Property Administration in district order.

March 1–

- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor;

Division of Taxation; Director, Local Government Services in the Department of Community Affairs (two copies); and post a copy at the courthouse.

March 10 (before)–

- County Tax Board to complete equalization table hearings.

March 10–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services in the Department of Community Affairs (two copies).

The complete [Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program, which annually assesses real property using technology driven procedures to keep assessments at or near market values and modifies the assessment calendar so losses due to appeals no longer

fall primarily on the municipality. Monmouth County was the first to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

Jan. 10–

- Assessor to file two copies of preliminary Form SR-3A with County Tax Board.

Jan. 15–

- Deadline for taxpayers and taxing districts to file appeals of assessed valuations to County Tax Boards, or 45 days from the date the bulk mailing of notifications of assessment is completed, whichever is later. **Note:** Deadline for appeals of assessed valuations over \$1,000,000 to State Tax Court remains April 1 or 45 days from completion of bulk mailing notifications, whichever is later.

Feb. 1–

- Tax appeals are heard Feb., March and April. □

Criminal Enforcement

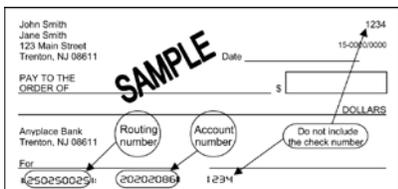
Criminal enforcement over the past several months included:

- On June 30, 2015, New Jersey State Police (NJSP) stopped a vehicle in Elizabeth, New Jersey, and found a total of 613 cartons of contraband cigarettes that were being smuggled from Virginia. Mohamed Mozeb was detained until an Office of Criminal Investigation (OCI) special agent and an OCI investigator met with NJSP personnel, and the evidence was transferred to OCI.

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Pay NJ Taxes Electronically
www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)



Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).





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Mozeb was charged by OCI with possession of untaxed cigarettes exceeding 100 cartons, failing to maintain records with intent to evade taxes and engaging with an unlicensed dealer with intent to evade taxes. NJSP charged him with transportation of untaxed cigarettes. On Oct. 7, 2015, Mohamed Mozeb was approved for Pretrial Intervention (PTI) by the Union County Prosecutor’s Office and was ordered to perform 60 hours of community service as he was a first-time offender with no prior criminal history. The contraband cigarettes were forfeited to the State.

- On July 15, 2015, OCI received a referral from the Hawaii Department of Taxation’s Law Enforcement Unit. A joint investigation revealed that a group of individuals based in northern New Jersey was operating a comprehensive, organized tax fraud scheme for the 2012 tax year, and the scheme was still active. The investigation revealed that the individuals operating out of the State of New Jersey managed to defraud the State of Hawaii of more than \$275,000. OCI has a Stolen Identity Refund

Fraud Task Force that works with the New Jersey State Police’s Cyber Crimes Unit to combat online tax refund fraud. The referral from Hawaii provided probable cause to search a tax preparation business and personal residence in northern New Jersey. Hawaii Department of Taxation’s law enforcement personnel traveled to New Jersey to participate in the execution of the search warrant. Significant evidence was seized as a result. During the debriefing, the owner of the tax business stated, “People are not selling drugs anymore because of the risk. They file taxes instead.” The individuals involved have ties to North Jersey gangs. Some are gang members and have also been identified and charged in narcotics activities. OCI is still reviewing the evidence seized in this case and its connection to other criminal enterprises.

- On Aug. 12, 2015, Kam Wa Chan and his wife, Yuet Kai Wong, were arrested at their residence in Parlin, New Jersey, by OCI and other law enforcement authorities. They were charged with counterfeiting, money laundering and conspiracy at the time of their arrest. Both Kam Wa Chan and

Yuet Kai Wong were involved in an international counterfeit watch trafficking ring. More than \$15,000,000 in counterfeit watches and watch parts were seized from their residence during the execution of a search warrant. Financial records recovered from their residence are being reviewed to determine if there will be any additional criminal counts filed.

- On Aug. 13, 2015, Gang Gao, Shufen Li and Zusheng Li were arrested by OCI special agents at New Chinese Gourmet in Elizabeth, New Jersey, for possession of 42 cartons of Virginia tax-stamped cigarettes, sales of loose cigarettes (“loosies”) and presenting invalid receipts to conceal the criminal activity. OCI seized \$12,844 in U.S. currency which is pending forfeiture by the courts. Indictable charges were filed in Union County Superior Court.
- On Aug. 17, 2015, Joe Zheng satisfactorily completed the terms and provisions of the Pretrial Intervention (PTI) program. As a result, there will be no further proceedings in the matter. Joe Ming Zheng was arrested on July 22, 2014, by OCI for trafficking 915 cartons of Virginia tax-stamped cigarettes and sentenced to one year of PTI. PTI is permitted usually for first-time offenders.
- On Aug. 18, 2015, OCI performed an inspection at Al Quds Shop, in Paterson, New Jersey, and seized 15.8 cartons of contraband cigarettes, 269 untaxed cigars and 1 false receipt. Indictable charges were filed against the owner of

Enforcement Summary Statistics

Fourth Quarter 2015

Following is a summary of enforcement actions for the quarter ending Dec. 31, 2015.

	Number	Amount
• Bank Levies	530	\$ 2,425,991
• Certificates of Debt	3,131	42,925,611
• Seizures	110	1,653,717
• Auctions	10	283,697
• Warrants of Satisfaction	5,681	

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criminal enforcement - from pg. 9

the business, Nader Awadallah, in Passaic County Superior Court.

- On Aug. 19, 2015, in Logan Township Municipal Court, Suk-chain Singh pled guilty to failure to maintain records showing that the tax was paid for tobacco products and was fined a total of \$1,158. He was also ordered to pay restitution to the State of New Jersey in the amount of \$8,000 for the tobacco products that were seized by OCI special agents at his gas station. On May 13, 2015, agents seized a total of 32,777 cigars and other tobacco products at Singh's gas station in Swedesboro, New Jersey. Singh failed to provide agents with invoices showing that tobacco products tax was paid. Singh's attorney forwarded tobacco invoices to OCI's supervisory special agent for examination. An examination of the records revealed that the invoices accounted for only 5% of the tobacco products seized. This calculation was explained to Singh and his attorney. Singh and his attorney accepted the plea agreement for the fine and restitution.
- On Aug. 25, 2015, Manoj Patharkar was indicted, arrested by OCI special agents and detectives

from the New Jersey Division of Criminal Justice and charged with various criminal acts including conspiracy, money laundering, theft by deception, tax evasion and records tampering. A joint investigation revealed schemes to generate cash by adding "phantom employees" to payroll and diverting business income into personal accounts. Mr. Patharkar, a pain management doctor and sole officer of Pain Management Associates of Central Jersey and Prospect Pain Management Associates, has been under investigation since 2011.

- On Sept. 17, 2015, Qadeer Safarzada, t/a Sahill, Inc., entered into a 36-month PTI agreement for failure to provide records showing that tobacco products tax was paid. As a condition of PTI, he was ordered to serve 40 hours of community service. He is also responsible for full restitution. On July 11, 2013, OCI special agents seized a total of 23,305 cigars from Safarzada's wholesale business in Trenton, New Jersey. It was discovered that Safarzada was selling tobacco products to retail customers without collecting and remitting tobacco products tax (TPT). He was also providing hand written receipts to customers and was not collecting the proper business address and contact information. Sahill, Inc. was registered to collect TPT but did not file any returns.
- On Sept. 30, 2015, Geoffrey A. Hammell was indicted by a Mercer County Grand Jury on charges of failure to pay New Jersey personal income tax for years 2009 through 2012, which is a crime of the third degree. Over the four-year period, Mr.

Hammell accrued an outstanding tax liability of over \$405,000. Criminal charges were filed in the Trenton Municipal Court. The case resulted from the efforts of OCI and the Mercer County Prosecutor's Economic Crime Unit. □

Other OCI Activities

Over the past several months OCI personnel engaged in various activities which included:

- On Aug. 3, 2015, OCI began implementation of the Info Share case management system for its law enforcement and criminal investigative responsibilities. The application's modules make it possible to better track investigative reports, court results, evidence control and communications with field personnel and to provide real-time measurements of activities.
- On Sept. 9, 2015, OCI's special agent in charge was asked to give a presentation to Deputy U.S. Marshalls from across the United States during a conference at Princeton University. The primary purpose was to expose the U.S. Marshalls Service to the concept of involving State revenue law enforcement agencies to help dismantle criminal enterprises groups, particularly gangs, by using financial crime investigations with tax implications.
- On Sept. 26, 2015, two OCI special agents successfully completed the New Jersey Top Gun training conducted by the New Jersey Office of the Attorney General. Top Gun is the most in-demand advanced school for New

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.

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other oci activities - from page 10

Jersey law enforcement. OCI is unique in having nearly 100% of its special agents complete this highly demanding training.

- On Sept. 26 and Sept. 27, 2015, during the Pope’s visit to Philadelphia, which also affected the City of Camden, OCI special agents were assigned to the State Emergency Operations Center (EOC) as part of the Treasury Emergency Response Unit. OCI also coordinated the continuity of operations (COOP) for Division of Taxation personnel assigned to field offices and emergency access into Camden for all Treasury assets. OCI represented Treasury and Taxation in law enforcement and intelligence planning with the Joint Operations Command, which consisted of local, county, State and federal agencies.
- Special agents were assigned to the State EOC in anticipation of Hurricane Joaquin. The detail lasted 2½ days. During the State EOC activation, OCI’s special agent in charge, along with the coordinator of the Emergency Response Unit, had the opportunity to brief the State Treasurer during his visit to the EOC.
- On Oct. 19, 2015, OCI’s special agent in charge (SAC) gave a new presentation he was asked to create for the New Jersey Attorney General’s Advocacy Institute, which offers programs for deputy attorneys general, assistant prosecutors and related law enforcement officers. This session was the Division of Criminal Justice’s yearly Public Official Corruption Training. The SAC developed a curriculum to promote joint

criminal investigations that use taxation statutes in financial cases where public corruption is identified. □

Tax Briefs

Gross Income Tax

Three Questions About Form GIT/REP-3 – The Division has received numerous inquiries regarding the recently revised Form GIT/REP-3, Seller’s Residency Certification/Exemption. Below are answers to some of the most common questions:

Q. *When does a seller use the new Box 14 under Seller’s Assurances?*

A. Box 14 states that the seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet or closing disclosure form. Thus, Box 14 is for a seller who, at closing, uses all the proceeds from the sale to pay the balance of the mortgage or who has to pay additional money to the bank. In both cases, the seller is not receiving any money as evidenced by the settlement statement or closing disclosure form.

Box 14 may also apply when the seller either cosigned the mortgage for the property being sold or where their interest represented on the deed is residual in nature and the seller is not receiving a share of the consideration for the property. Before the addition of Box 14, if this seller was not eligible for any of the exceptions listed on Form GIT/REP-3 or Form GIT/REP-4A, Waiver of Seller’s Filing Requirement of GIT/REP Forms and Payment, the seller would either have to request a waiver or pay the 2% nonresident withholding.

Q. *What is the difference between the “Seller’s Percentage of Ownership” and the “Owner’s Share of Consideration”?*

A. The Seller’s Percentage of Ownership is the seller’s share or interest in the property being sold or transferred, expressed as a percentage. The Owner’s Share of Consideration is the amount of consideration that the seller will receive based on their percentage of ownership in the property being sold. Generally, the owner’s share of consideration is their percentage of ownership multiplied by the total consideration for the sale, but there are situations where that is not the case. For example, a seller may have cosigned the mortgage or is listed on the deed as a cosigner but is not receiving any proceeds from the sale because they are not an owner.

Q. *Can a nonresident seller use Form GIT/REP-3 if one of the boxes on the form applies to them?*

A. Yes, a nonresident seller can use Form GIT/REP-3 as long as they satisfy one of the Seller’s Assurances.

Meadowlands Regional Hotel Use Assessment

Permanent Resident Exemption

– A taxpayer asked the Division whether the permanent resident tax exemption under the Sales and Use Tax Act applies to the Meadowlands Regional Hotel Use Assessment.

The New Jersey Meadowlands Tax Relief Act (N.J.S.A. 5:10A-82 through 5:10A-85) imposes a Meadowlands Regional Hotel Use Assessment of 3% of the rent charged for the occupancy of every room in hotels located in the Meadowlands District, including hotels located on State-owned land. N.J.S.A.

5:10A-85. Hotels located within the Meadowlands District are required to collect and remit the hotel use assessment on the rent charged for every room occupancy that is subject to the sales tax.

The New Jersey Sales and Use Tax Act provides an exemption from tax for the rent charged for a room occupancy when the room is occupied by a “permanent resident.” A permanent resident is any person who occupies a room in a hotel for at least 90 consecutive days. N.J.S.A. 54:32B-2(m). The exemption also applies to the State Occupancy Fee and the Municipal Occupancy Tax.

Since the Meadowlands Regional Hotel Use Assessment is only imposed on rent charged for a room occupancy that is also subject to sales tax, if sales tax is not imposed on the rent charged for a room occupied by a permanent resident, then the assessment is not to be imposed.

Based on the above, a permanent resident is eligible for a refund of the Meadowlands Regional Hotel Use Assessment, sales tax, State Occupancy Fee and Municipal Occupancy Tax (if any) collected prior to becoming a permanent resident. If the hotel operator does not refund the amounts collected, the permanent resident may request a refund directly from the Division by filing a Claim for Refund, Form A-3730.

Partnerships

Disregarded Entity is a Nonresident Partner Subject to Withholding – A taxpayer inquired as to whether the Division treats a New Jersey single-member LLC/disregarded entity whose sole member is a non-New Jersey corporation as a nonresident partner subject to the nonresident

partner withholding tax or as a resident partner. The taxpayer also asked whether the LLC/disregarded entity or corporate partner is the partner named on Schedule NJK-1 and what code should be used to identify the partner’s residency status and type in the Partners Directory.

The partnership tax relative to nonresident partners is set forth at N.J.S.A. 54:10A-15.11 that states, in part, that:

A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

The statute then goes on to define nonresident corporate partner as “a partner that is not an individual, an

estate or a trust subject to taxation pursuant to the ‘New Jersey Gross Income Tax Act,’ N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L. 1945, c.162 (C. 54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office.”

The Division responded that residency status is determined based on whether the LLC/disregarded entity has its own regular place of business in New Jersey under N.J.S.A. 54:10A-15.11. The LLC/disregarded entity cannot use the corporate shareholder’s regular place of business as its regular place of business. Because it meets the definition of a nonresident corporate partner (i.e., it is not an individual, estate, or trust, is not a corporation exempt from tax under N.J.S.A. 54:10A-3, and does not maintain a regular place of business in New Jersey), a partner that is a disregarded entity is subject to withholding at the applicable rate of 9%.

A New Jersey single-member LLC/disregarded entity whose sole member is a non-New Jersey corporation should name the LLC as the partner on Schedule NJK-1. The taxpayer should enter the code for the LLC/disregarded entity as FC (non-New Jersey corporation) or FCM (non-New Jersey corporation with a regular place of business in New Jersey) in the Partners Directory.

Sales and Use Tax

Gift of a Boat From a Boat Dealer – A New Jersey boat dealer inquired as to whether sales or use tax is due when the dealer gifts a boat from its inventory. Because the dealer originally purchased the boat with a

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resale certificate, the dealer did not remit sales or use tax to New Jersey at the time of purchase.

The Division responded that the question being posed actually involves two separate transactions: the first is the withdrawal of the boat from inventory, and the second is the gifting of the boat.

When the dealer removes or withdraws the boat from inventory, a taxable “use” occurs. Use means the exercise of any right or power over tangible personal property by the purchaser and includes, but is not limited to, the receiving, storage, keeping, or retention for any length of time, or withdrawal from storage of such property. N.J.S.A. 54:32B-2(h). Since the dealer paid no tax at the time of purchase, use tax is due when the boat is withdrawn from inventory. N.J.S.A. 54:32B-6. Once the dealer remits the use tax to the Division, the dealer can then gift the boat. The recipient of the gift is not liable for sales or use tax.

As a result of P.L.2015, c.170 (see *In Our Legislature* on [page 15](#)), which was signed into law on Dec. 9, 2015, if the dealer removed the boat from inventory on or after Feb. 1, 2016, the use would be eligible for the partial exemption and would be charged tax at the rate of 3.5%. □

In Our Courts

Gross Income Tax

Undistributed Trust Income – Residuary Trust A u/w/o Fred E. Kassner; Michelle Kassner, Trustee v. Director, Division of Taxation, decided May 28, 2015; Appellate Division, Docket No. A-3636-12T1.

The Residuary Trust (Plaintiff) was created by decedent Fred Kassner’s will. The trust owned no assets in New Jersey. The trustee resided in New York where the trust was administered. Plaintiff owned shares in four companies, all of which were New Jersey S corporations. On its 2006 New Jersey Gross Income Tax return, the trust reported and paid tax on its net pro rata share of the S corporations’ income, but it did not pay tax on income that was allocated to other states. In 2009, the Division issued an assessment against the trust for tax year 2006 on the undistributed trust income, on the basis that the undistributed trust income was taxable in New Jersey, because the trust owned assets located in the State.

The Tax Court held that New Jersey cannot tax a trust’s undistributed non-New Jersey income if the trustee, assets and beneficiaries are all located outside New Jersey because the trust lacks minimum contacts with the State. The Court also concluded that the owner of stock in an S corporation does not own the underlying assets of the corporation. Thus, even though Plaintiff owned shares of S corporations located in this State, Plaintiff did not own assets in New Jersey.

In the Winter 1999 (Vol. 28, No. 4) issue of the *State Tax News*, the Division advised taxpayers that undistributed trust income would not be taxable in New Jersey if the trustee was not a New Jersey resident and all of the trust assets and beneficiaries were located outside of the State. The Division modified that position in 2011 to indicate that tax would be imposed on retained income or undistributed income if the trust has any income from New Jersey sources. However, the Tax

Court held that imposing tax on Plaintiff’s 2006 income based on guidance not published until 2011 violates the square corners doctrine.

The Appellate Division affirmed the Tax Court’s decision.

Local Property Tax

Property Tax Exemption – AHS Hospital Corp., d/b/a Morristown Memorial Hospital, v. Town of Morristown, decided June 25, 2015, 28 N.J. Tax 456 (Tax 2015).

At issue was whether modern hospitals still meet the nonprofit criterion for property tax exemption. This was the first time a nonprofit hospital’s entire property tax exemption had been challenged before the Tax Court of New Jersey.

N.J.S.A. 54:4-3.6 provides for a property tax exemption for property “used in the work of associations and corporations organized exclusively for hospital purposes” as long as such property and “the associations, corporations or institutions using and occupying them...are not conducted for profit.” Under the statute, any area leased to a profit-making enterprise or otherwise used for any other nonexempt purpose is not entitled to the exemption.

The Court ruled that Morristown Memorial satisfied two prongs of the three-part exemption test. It was owned by an entity organized exclusively for a tax-exempt purpose, and nearly all of its facilities were actually used for hospital purposes. However, it failed the third prong: the profit test.

The Court upheld the County Tax Board’s denial of a property tax exemption on all but a few areas of

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Morristown Memorial Hospital's facilities for tax years 2006, 2007 and 2008. The auditorium, fitness center and visitors' parking garage remained exempt.

Judge Bianco also addressed the portions of the hospital used by Aramark Healthcare Support Services, which provided food and linens. These areas were not exempt from property taxes since the company's contract provided for it to receive bonuses based on cost savings. In addition, the gift shop did not meet the use test since it was not used to perform a core hospital purpose. It served only as a convenience for hospital visitors.

Judge Bianco's 91-page opinion provided an extensive look into the history and evolution of American hospitals dating back to the mid-18th century. He noted that historically, American hospitals have been exempt from property taxes, and other taxes, based upon their origins intricately founded in religious and charitable traditions.

The Judge determined that non-profit hospitals today bear little, if any, resemblance to hospitals in the 18th, 19th and early 20th centuries. He found no support for the contention that contemporary nonprofit hospitals operate today as they did in 1913 at the time New Jersey first adopted a specific tax exemption for all buildings actually used for hospital purposes.

Judge Bianco wrote:

...commingling of effort and activities with for-profit entities was significant, and a substantial benefit was conferred upon for-profit entities as a result...

(B)y entangling its activities and operations with those of for-profit entities, the Hospital allowed its property to be used for profit...

He concluded:

Today's non-profit hospitals have evolved into labyrinthine corporate structures, intertwined with both *non-profit* and *for-profit* subsidiaries and unaffiliated corporate entities...If the property tax exemption for modern non-profit hospitals is to exist at all in New Jersey going forward, then it is a function of the Legislature and not the courts to promulgate what the terms and conditions will be...

Morristown Memorial Hospital and the Town of Morristown resolved the matter without filing further appeal by negotiating a settlement agreement. The hospital's real property total tax assessment had been set at \$63,596,200, and the hospital could have been responsible for back taxes in the amount of approximately \$2.5 to \$3 million per year. Under the agreement, the hospital was given a taxable value of \$40 million for 24% of its property, with an annual tax payment of \$1.05 million per year from 2016 through 2025. In addition, \$5.5 million in penalties and interest will be paid in annual installments of \$550,000 over that period. The penalties and interest will be adjusted so that the hospital makes an annual payment of \$1.6 million each year.

Hospital industry representatives and legislators are discussing ways that nonprofit hospitals might make property tax payments, such as P.I.L.O.T. (Payments-in-Lieu-of-Tax) payments, to municipalities. They are looking for a solution that

can satisfy both local governments and hospitals.

An analysis by Moody's Financial Services revealed that the *Morristown* opinion could have a positive effect on the bond ratings of municipalities that pursue hospital property taxes. On the other hand, the ruling is credit negative for nonprofit hospitals and other nonprofit organizations in New Jersey if their property tax exempt status is revoked. Since corporate structures are not unique to the healthcare field, other nonprofit organizations may have their property tax exemptions reexamined.

Senate Bill S-3299, introduced Dec. 7, 2015, offers a possible legislative remedy. The bill maintains a property tax exemption for certain nonprofit hospitals with on-site for-profit medical providers, requires these hospitals to pay community service contributions to host municipalities and establishes the Nonprofit Hospital Community Service Contribution Study Commission.

Sales and Use Tax

Purchased Parts Assembled and Shipped Out of State – *J&J Snack Food Sales Corp. v. Director, Division of Taxation*, decided Oct. 16, 2015, Appellate Division Motion for Reconsideration No. M-000780-15; decided Sept. 18, 2015, Appellate Division Docket No. A-2609-13T2; decided Dec. 31, 2013, Tax Court Docket No. 004986-2012.

Plaintiff (J&J) manufactures soft pretzels and distributes them both frozen and unfrozen to food service providers (Providers). Plaintiff developed the Model 2000 pretzel warmer (Warmer), which was designed to thaw frozen pretzels, warm them and keep them warm. Plaintiff

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loans the Warmers to those Providers who purchase a required volume of pretzels. Providers who purchase below that threshold must purchase the Warmer from Plaintiff. The Warmers are made as needed, so Plaintiff does not maintain an inventory and reflects the cost for parts and labor as a marketing expense rather than costs of goods sold. Plaintiff paid use tax on the Warmers it sold or loaned to its New Jersey customers, but did not pay tax on the parts purchased for the Warmers and received in New Jersey. The Division of Taxation issued an assessment for use tax on all the Warmer parts, even if the assembled Warmers were shipped out of the State. Plaintiff protested the assessment, lost and then appealed the Final Determination to the Tax Court. The Division filed for summary judgment, which the Tax Court granted, upholding the assessment. Plaintiff appealed.

On appeal Plaintiff argued that the Warmer parts were purchased for resale and, therefore, it was error for the Tax Court to presume that the Warmer parts purchases were a retail sale pursuant to N.J.S.A. 54:32B-6(A). The Appellate Division declined to consider this argument because Plaintiff did not raise it in Tax Court.

Plaintiff then argued that it detrimentally relied upon the 1992 audit of its predecessor wherein the Division concluded that sales or use tax was only due on marketing and promotional equipment delivered to New Jersey customers for use in New Jersey. The Appellate Division found that Plaintiff's reliance was credible but did not rise to the required level for estoppel, nor were

the facts enough to invoke laches. The Appellate Division affirmed the Tax Court decision, concluding that the "Tax Court correctly held that the audit failed to provide the extraordinary or extreme circumstances which outweigh the strong public and governmental interest in the collection of the tax imposed by the Legislature."

Plaintiff subsequently filed a motion for reconsideration, which the Appellate Division denied without comment. □

In Our Legislature

Motor Fuel Tax

Motor Fuel Sales During a State of Energy Emergency — P.L. 2015, c.113, signed into law on Oct. 1, 2015, and effective immediately, applies to sales of certain motor fuel during a state of energy emergency, as declared by the governor. During a state of energy emergency, a retail motor fuel dealer that exhausts its supply of lowest grade motor fuel may sell any remaining supply of higher grade motor fuel at the same price as the lowest grade motor fuel.

Sales and Use Tax

Boat and Other Vessel Partial Sales and Use Tax Exemption/Cap — P.L. 2015, c.170, signed into law on Dec. 9, 2015, amends the Sales and Use Tax Act to provide a 50 percent Sales and Use Tax exemption on the sale, lease or rental of new and used boats and other vessels; and caps the amount of Sales and Use Tax imposed at \$20,000. In addition, residents who purchase boats outside of New Jersey may use the boat in this State for 30 days before incurring a use tax obligation. The law is effective immediately, and the exemption and cap apply to sales

and uses on or after Feb. 1, 2016. The grace period for the imposition of use tax applies to uses on or after Jan. 1, 2016. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) and tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2015](#) [2016](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2015](#) [2016](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey Gross Income Tax is a "weekly payer" if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2015](#) [2016](#) □



*important
phone
numbers*

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline	
for Homeowners.....	1-888-238-1233
Property Tax Reimbursement	
Hotline.....	1-800-882-6597
Earned Income Tax Credit	
Information.....	609-292-6400
Business Paperless Telefiling	
System	609-341-4800
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals	
& Dissolutions.....	609-292-5323
Director's Office	609-292-6400
Inheritance Tax	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax	
Refunds	609-633-8870
Public Utility Tax.....	609-633-2634

New Jersey State Tax news

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Homestead Benefit Applications Mailed

The Division of Taxation mailed applications for the 2013 homeowner benefit to almost 1.2 million New Jersey residents over a three-week period that began in late August 2015. In addition, the Division sent emails containing instructions for downloading the 2013 application packet to another 89 thousand residents. The homeowners who received emails had filed online in a prior year and indicated that they wanted to receive future applications electronically. (These email notifications also went out beginning in late August.)

To be eligible for the 2013 homestead benefit, an applicant must be a New Jersey resident who owned and occupied a home in this State that was their principal residence on Oct. 1, 2013, paid property taxes on that home, and met certain income limits. The income limit (2013 New Jersey gross income) for homeowners under age 65 and not blind or disabled is \$75,000, and \$150,000 for homeowners age 65 or older or blind or disabled.

The amount of the benefit is based on an applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or eligible to claim an exemption as blind or disabled for tax year 2013. Amounts received under the Homestead Benefit Program are in addition

to the State's other property tax relief programs. The total amount of all property tax relief benefits received (homestead benefit, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant's principal residence for the same year.

Most homeowners can file their applications either [online](#) or by phone (1-877-658-2972). Applicants should read the instructions in the application packet before attempting to file. Homeowners who sold or plan to sell their home should pay particular attention to the instructions for their situation to ensure they complete their applications correctly.

The filing deadline for 2013 Homestead Benefit Applications has been extended to Dec. 31, 2015. The original filing deadline was Oct. 30, 2015. More information on the homestead benefit, including eligibility requirements, is available on the Division of Taxation's [website](#). □

Small Business Workshops

The Division of Taxation provides free workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout

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business workshops - from pg. 1

the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development.
- Determining what is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

To attend a workshop, review the schedule and register with the contact person listed for each event. The contact person can also provide the time of the workshop, parking information and directions to the location. The Division does not manage the registration process.

The current [workshop schedule](#) is available online. The Division updates the schedule as new workshops are added. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

Oct. 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland

Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Initial Application, Form F.S.1, for blast or radiation fallout shelter exemption filed with tax assessor.

Oct. 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens (age 65), disabled persons or surviving spouses/civil union partners (age 55) eligibility established (pretax year). Age or disability status established by Dec. 31 (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).

New Jersey State Tax
news

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Technical Information Branch
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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation
Acting Director: Dennis Shilling

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continued on page 3



assessors' calendar - from page 2

- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.
 - Exempt real property sold to nonexempt owner or any real property improved after Oct. 1 and before Jan. 1 valued and assessed as of the first day of the month following completion or sale of property.
 - True taxable value of improvement, conversion or construction of property that has applied for exemption and/or abatement determined by assessor.
- Oct. 1 (after)–**
- Assessor notified of structural material depreciation occurring after Oct. 1 and before Jan. 1.

Oct. 25 (on or before)–

- Added Assessment Certification for Fire Districts, Form CNC-3, provided by assessor/collector.

Nov. 1 (on or before)–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Assessor completes Form CNC-3 and forwards original to tax collector.

Nov. 15–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

Dec. 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

Dec. 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.

- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

Dec. 20 (on or before)–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

Dec. 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

The complete [Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2015 – Dec. 1, 2015, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%

assessors' calendar - from pg. 3

Nov. 1 (on or near)–

- Legal advertisement of availability of Tax List for public inspection.

Nov. 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).

Nov. 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year's taxes (pretax year).

Nov. 25 (on, before or after)–

- Assessor to file certification of bulk mailing of Notification of Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

End of November–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

The complete [Work Calendar](#) for the Monmouth County Demonstration Program is available on the Division's website.

Criminal Enforcement

Criminal enforcement over the past several months included:

- An investigation at Easton Convenience Stop in New Brunswick, New Jersey, on April 30, 2015, resulted in the seizure of 31.5 cartons of contraband cigarettes, 4.25 cartons of Beedies and 4,015 untaxed tobacco products. Large amounts of synthetic marijuana and counterfeit DVDs were also found and seized. Warrants were issued for the owner of the store, Alaa Hussein, in the amounts of \$50,000 no 10% bail (Treasury warrants) and \$75,000 no 10% bail (New Brunswick warrants). Special agents from the New Jersey Division of Taxation's Office of Criminal Investigation (OCI) arrested Alaa Hussein on June 4, 2015, at the Easton Convenience Stop. While executing the arrest warrant, the agents found additional violations resulting in the seizure of 18 cartons of contraband cigarettes, 558 untaxed tobacco products and 14 loose cigarettes also known as "loosies." The owner was charged with additional offenses.
- Three separate compliance inspections were performed at H&S Gas Station, G&S Gas Station and G&R Fuel Corp, all owned by Sukhjinder Singh Jaswal. These inspections resulted in the seizure

of a total of 152.8 cartons of counterfeit New Jersey tax-stamped cigarettes and 12,263 untaxed tobacco products. Jaswal was charged with multiple cigarette- and tobacco-related offenses and arrested on May 28, 2015, by OCI special agents. He was processed at the Newark Police Department and released on his own recognizance.

- OCI special agents conducted an undercover sting that resulted in the seizure of 28,800 counterfeit New Jersey tax stamps and 20 cartons of counterfeit tax-stamped cigarettes. As a result of the operation, Sureshbhai Patel was arrested and signed a Consent to Search the residence where he lives. The home search resulted in the seizure of an additional 114.1 cartons of counterfeit tax-stamped cigarettes, as well as multiple irons and glue material. Bail was set at \$150,000, no 10%. Patel was transported to the Middlesex County jail by OCI special agents.
- On June 15, 2015, Gilberth Navarro Umana pled guilty to various counts of his indictment: count one, conspiracy; count two, identity theft; count six, insurance fraud; count ten, failure to file tax return; count eleven; failure to file tax return; and count fourteen, insurance fraud. All offenses were

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Current Amnesty Programs

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Louisiana

12/1/15 – 12/31/15

<http://ldrtaxamnesty.com/>



criminal enforcement - from page 4

third-degree charges or downgraded to third-degree charges. The State is recommending that Mr. Umana, as a third-degree offender, be sentenced to probation conditioned upon his serving 364 days in jail. The defendant will pay restitution to New Jersey Manufacturers Insurance Company and to the State of New Jersey for taxes due for calendar years 2010 and 2011. Sentencing was scheduled for July 2015. An OCI forensic auditor worked with New Jersey's Office of Insurance Fraud Prosecutor during this joint investigation.

- On June 17, 2015, Michael Jones, a former Atlantic City Police Officer, was sentenced by Atlantic County Superior Court Judge Kyran Connor to a seven-year prison sentence for official misconduct. Jones will have to serve a minimum of five years before being eligible for parole. He also received a four-year prison sentence for filing fraudulent tax returns and failing to pay taxes due, which will run consecutively with the seven-year prison term for the misconduct charge. Judge Connor also ordered Jones to pay

\$12,760.02 in restitution for outstanding taxes and fines related to his failure to pay taxes and filing fraudulent tax returns.

- On June 18, 2015, OCI special agents assisted New York Taxation and Finance law enforcement personnel with the arrest of New Jersey residents Yuderquis Guerrero and Edwin Guerrero for filing false New York tax returns.
- On June 23, 2015, OCI special agents performed surveillance on a storage unit known to be frequented by a cigarette trafficker, Jose Nunez. (A year ago, an OCI special agent had arrested Nunez and seized 800 cartons of contraband cigarettes and 60,000 counterfeit tax stamps.) OCI received information from Virginia and Maryland revenue agencies that Nunez had been recently arrested in Maryland for attempting to smuggle 2,100 cartons of contraband cigarettes. This intelligence-sharing provided vital, real-time information describing a storage unit in northern New Jersey. OCI immediately began to work with this information and identified an associate, Jeremias Acosta, who had also been previously arrested

by OCI for possession of counterfeit tax-stamped cigarettes. OCI set up surveillance, which culminated in the arrest of both Jeremias Acosta and Juan Polanco. The investigation resulted in the seizure of 227.9 cartons of counterfeit New Jersey tax-stamped cigarettes, 925 cartons of Virginia-stamped cigarettes and 62,120 counterfeit New Jersey tax stamps. A total of \$71,645 in U.S. currency was also seized. Indictable charges have been filed.

- On June 25, 2015, an investigation of 307 Valley Convenience LLC (7-Eleven convenience store) in Wayne, New Jersey, resulted in the seizure of 118.9 cartons of counterfeit New Jersey tax-stamped cigarettes and 0.4 cartons of unstamped cigarettes. Both the owner, Nael A. Abukwaik, and the manager, Ahmad M. Alsabagh, were arrested by OCI special agents and then processed at the Wayne Police Department. Indictable charges were filed in Passaic County. The subjects were released on their own recognizance.
- On June 26, 2015, The Port Authority Police Department requested assistance from OCI in connection with a box truck that was pulled over for a traffic violation at the George Washington Bridge. The truck was found to contain 3,380 cartons of unstamped Canadian Tribal Nation cigarettes. All of the untaxed cigarettes and the box truck were seized. As a result of OCI's investigation, the driver, Corey J. O'Neil, and co-driver, Curtis Zolner, both of Salamanca, New

Enforcement Summary Statistics

Third Quarter 2015

Following is a summary of enforcement actions for the quarter ending September 30, 2015.

	Number	Amount
• Bank Levies	646	\$ 2,420,196
• Certificates of Debt	3,399	51,455,084
• Seizures	93	1,782,575
• Auctions	12	274,493
• Warrants of Satisfaction	4,562	

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criminal enforcement - from pg. 5

York, were arrested. The owner of the truck and the contraband cigarettes, Jaymee Minner, later arrived at the Port Authority police station to inquire about the seizure and was also arrested by OCI special agents. The seized contraband cigarettes have a retail value of \$291,694.

- On July 13, 2015, William K. Herring pled guilty to charges of third-degree theft and third-degree failure to pay or turn over taxes. William Herring admitted before Judge Cristen D'Arrigo that he used his position at J&C Auto Sales Inc. to steal cash and cars from their inventory in excess of \$299,000 and failed to report the income on his personal tax returns. Total restitution to the State is \$27,400.06 (tax, penalty and interest). The investigation was conducted by an OCI forensic auditor, the Vineland Police Department and the New Jersey Motor Vehicle Commission. The case was prosecuted by Cumberland County Assistant Prosecutor Charles Wettstein. Mr. Herring was scheduled for sentencing on Oct. 2, 2015.
- On July 14, 2015, Gennaro Dicecilia of Toms River, New

Jersey, pled guilty to a second-degree charge of failure to turn over collected New Jersey sales tax before Mercer County Superior Court Judge Timothy P. Lydon. On Oct. 16, 2015, Dicecilia was sentenced to three years in State prison and must pay restitution of \$220,797, representing the sales tax he failed to remit plus penalty and interest. Dicecilia was charged in a Nov. 14, 2013, indictment that resulted from an investigation by OCI and the Division of Criminal Justice. In pleading guilty, Dicecilia, the owner of Automotion LLC, admitted that he collected \$156,564 in sales tax from car buyers that he purposely failed to turn over to the State of New Jersey. In November 2011, Division of Taxation compliance personnel conducted a routine canvas of used car dealerships in Ocean County to identify dealerships that were not properly registered or licensed. During the canvas, it was determined that Dicecilia had failed to file any sales tax returns or remit any sales tax for Automotion since the dealership opened in 2007. The Division of Taxation demanded payment of the dealership's outstanding sales tax, and Dicecilia subsequently filed sales tax returns. However, an investigation by an OCI special agent revealed that he deliberately hid information about the number of cars sold and the sales tax that he collected. Based on vehicle title transfer records from the New Jersey Motor Vehicle Commission, it was determined that Dicecilia had collected \$205,157 in sales tax, while he had remitted only \$48,593 during the civil audit.

- On July 20, 2015, New Jersey State Police (NJSP) troopers stopped a motor vehicle operated by Carla Ward and passenger Tyrone Rice on the New Jersey Turnpike in East Greenwich, New Jersey. The troopers found 150 cartons of Virginia tax-stamped Newport cigarettes in the vehicle. They detained Carla Ward and Tyrone Rice, who were transported to the NJSP barracks in Moorestown and charged with transportation of contraband cigarettes. OCI special agents were summoned to the NJSP barracks and conducted the investigation. As a result, both Ward and Rice were charged with possession of 100 cartons or more of Virginia tax-stamped cigarettes, failure to maintain records and engaging in a cigarette transaction with an unlicensed person. Carla Ward and Tyrone Rice were released on a summons complaint pending their appearance in court. □

Tax Briefs

Gross Income Tax

IRS Form 1099-Q – A taxpayer who received IRS Form 1099-Q inquired as to whether the distribution reported thereon was subject to New Jersey gross income tax. Taxpayer is the designated beneficiary of a qualified tuition plan (QTP).

A designated beneficiary of a QTP receives Form 1099-Q from the administrator of the plan when he or she makes a withdrawal from the plan or transfers funds between accounts.

All distributions that were made during the taxable year from a Coverdell

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



tax briefs - from page 6

ESA Plan or a 529 Plan are reported on Form 1099-Q. The portion of the distribution that represents the amount paid or contributed to the plan is a return of the investment (Box 3, Form 1099-Q) and is not included in income. Distributions (including earnings) that are used to pay qualified educational expenses are not subject to New Jersey gross income tax. No portion of a distribution is subject to tax unless the total of the beneficiary's QTP distributions for the year exceeds his or her adjusted qualified education expenses. When that occurs, the taxpayer must report some or all of the earnings (Box 2, Form 1099-Q) on his or her tax return.

Instructions for determining adjusted qualified education expenses and the taxable portion of a QTP distribution can be found in IRS Publication 970, *Tax Benefits for Education*. □

In Our Courts

Gross Income Tax

Time to File Amended Return – *John N. Backos v. Director, Division of Taxation*, decided May 22, 2015; Tax Court, Docket No. 000031-2014.

On April 15, 2009, Backos (Plaintiff) and his wife requested an extension of time to file their joint 2008 New Jersey gross income tax return. On Aug. 26, 2009, plaintiff filed the return showing tax due of \$8,639. Plaintiff filed an amended return on April 17, 2012, which again showed tax due of \$8,639, and did not request a refund. On Nov. 19, 2012, Plaintiff filed another amended return, this time requesting a refund of \$4,881. The Division denied the refund claim as being untimely.

N.J.S.A. 54A:9-8 states that refund claims must be filed within the later of three years from the date the return was filed or two years from the time the tax was paid. The Tax Court held that the refund request was untimely because the amended return requesting a refund, which was filed on Nov. 19, 2012, was filed three years and eighty-five days after the initial return was filed (Aug. 26, 2009).

Cigarette Tax

Unstamped, Untaxed Cigarette Purchases – *Sandy Smith v. Director, Division of Taxation*, decided April 13, 2015; Tax Court, Docket No. 000143-2013.

Sandy Smith (Plaintiff) purchased 278 cartons of unstamped cigarettes online from an unlicensed, out-of-State seller. The seller did not collect sales tax, and the Plaintiff did not pay use tax. The Division issued a notice of assessment for use tax and cigarette tax to Plaintiff, which she protested. The Division upheld the assessment and issued a final determination. The Plaintiff contested the assessment claiming that: (1) the

assessment was untimely, (2) the seller should be liable, (3) she presumed that all taxes were included in the purchase price and was unaware of her tax and reporting obligations and (4) her Chapter 7 discharge preempted the assessments.

The Tax Court held that Plaintiff was liable for the cigarette tax. The facts indicated that the out-of-State seller was not licensed in New Jersey and had not purchased cigarette stamps, so cigarette tax had not been paid at the time of purchase. Additionally, the Court found that Smith was a consumer. Under the Cigarette Tax Act, a consumer is someone who purchases unstamped cigarettes for use or consumption in New Jersey. The Act requires that a consumer apply for a consumer's license, file reports with the Division and pay the tax due on any cigarette purchases. Plaintiff did not do any of these things. The Court noted that cigarette tax can be imposed on the user or the consumer, and Plaintiff's failure to obtain a license and file reports did not relieve her of liability to pay the

continued on page 8

Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

DATE _____ 15-09-0000

PAY TO THE ORDER OF \$ _____ DOLLARS

Anyplace Bank
Trenton, NJ 08611

Routing number: 020202086
Account number: 1234

For: #250250025

Do not include the check number

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).

in our courts - from page 7

cigarette tax. Because Plaintiff did not file the required reports with the Division, there was no statute of limitations within which Taxation had to assess the tax, and the Chapter 7 bankruptcy discharge provisions would not apply. Finally, the Court found that Smith's ignorance of the cigarette tax law was not a defense.

With respect to the sales and use tax assessment, the Court found Smith liable for use tax because purchasers that don't pay sales tax must pay use tax and file a return within 20 days of the purchase.

Although the Court was sympathetic to Smith's claims that she was unable to pay and that she did not intend to defraud, the Court found the Division's assessment to be valid and dismissed Smith's complaint.

Standing – *Thomas Giles v. Director, Division of Taxation*, decided Feb. 27, 2015; Tax Court, Docket No. 002387-2013.

On Dec. 7, 2012, the Division issued a notice of assessment to Margaret A. Giles for excise tax and sales and use tax on the purchase of untaxed cigarettes. Thomas Giles (Plaintiff) filed a complaint challenging this assessment on March 15, 2013.

The Division moved to dismiss the complaint on the basis that Thomas Giles did not have standing to challenge the assessment against Margaret Giles. In general, a plaintiff does not have standing to file a complaint on behalf of a third party. In New Jersey, to have standing requires that the "party must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to

the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision."

The Court found that Thomas Giles did not have standing to file a complaint in this case. The Division issued the assessment to Margaret Giles, not to Thomas. Although Margaret and Thomas have the same last name, Plaintiff did not explain the relationship between them. Additionally, the Court found that a letter attached to the complaint indicated that Thomas is not financially responsible for the assessment against Margaret. Plaintiff did not present anything that suggested he had any personal interest in the outcome of the case.

Because Plaintiff did not have standing, the Court dismissed the complaint. □

In Our Legislature

Miscellaneous

State Agency Permit Review — P.L. 2015, c.88, signed into law on Aug. 10, 2015, and effective immediately, amends N.J.S.A. 52:14B-26 and requires each State agency to periodically identify and review all permits it issues and submit a written report of its findings to the Secretary of State. The frequency of this review is to be determined by the Secretary of State.

The review must identify all permits that:

1. Can be administered through an expedited process and/or processed online;
2. Should be eliminated because they are obsolete, no longer

necessary or cost more to administer than the benefits they provide; and

3. Can lawfully and practicably be extended.

The agency's written report to the Secretary of State must include:

1. A description of each permit the agency issues;
2. A description of recent actions taken by the agency with respect to 1 – 3 above and any recent actions taken to reduce the number of permits backlogged (if any);
3. Recommendations and explanations with respect to 1 – 3 above for the agency's permits for which no recent actions have been taken; and
4. A list of any rules, regulations and statutes that need to be revised or eliminated to accomplish those recommendations. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) and tax year 2016 (Jan. 1, 2016 – Dec. 31, 2016) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2015](#)

[2016](#)

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tax calendar - from page 8

• **Alphabetical Summary of Due Dates by Tax Type**

2015 2016

• **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

2015 2016 □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
- for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
- Hotline1-800-882-6597
- Earned Income Tax Credit
- Information..... 609-292-6400
- Business Paperless Telefiling
- System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax 609-292-7974
- Motor Fuels Tax
- Refunds 609-633-8870
- Public Utility Tax 609-633-2634

New Jersey State Tax news

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“Senior Freeze” Checks in the Mail

The State Budget for Fiscal Year 2016 provides funding for the Property Tax Reimbursement (Senior Freeze) Program.

In mid-July, the Division of Taxation began mailing checks for the 2014 reimbursement to qualified senior and disabled homeowners who filed applications by June 1, 2015. We will issue checks as quickly as possible to homeowners who file after June 1 but no later than the extended filing deadline of Oct. 15, 2015.

Only applicants whose 2014 income was not more than \$70,000 are eligible, provided they met all other requirements. Residents whose income was more than \$70,000 but was \$85,553 or less will not receive checks for 2014. The Division will notify them that they are not eligible. Those residents can establish a “base year” for future reimbursements by filing an application by the deadline. This also ensures that the Division will mail them applications for 2015.

Additional information on the [Senior Freeze Program](#) is available on the Division’s website. □

GROSS INCOME TAX **Correction: 2013 Form NJ-1040-H Mailing**

An article in the [Spring 2015](#) issue of the *New Jersey State Tax News* entitled “2013 Property Tax Credit

Applications” stated that the Division of Taxation would mail applications for the 2013 property tax credit to certain homeowners later in the year. However, this mailing is no longer necessary. An amendment to the State Budget for Fiscal Year 2016 now corrects the Budget to reflect that the homestead benefit will apply to benefit year 2013, rather than 2014.

The Division will begin to mail 2013 homestead benefit applications in late August 2015. More information will be posted to our [website](#) when it becomes available. □

Small Business Workshops

The Division of Taxation provides free workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development.

continued on page 2



business workshops - from pg. 1

- Determining what is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and re-mitting various New Jersey taxes.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

The next workshop will take place on Tuesday, Sept. 16, 2015, at the New Jersey Small Business Development Center of Northwest Jersey in Hackensack, New Jersey. If you want registration information or details about the workshop, including parking facilities and directions, contact Mary Adelman at 908-269-8475 or www.nw-njsbdc.com. The Division does not manage the registration process.

The current [workshop schedule](#) is available on the Division's website. The Division updates the schedule as new workshops are added. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

- July 1-**
- MOD IV Master file sent to Property Administration via appropriate medium.
 - Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2016 together with a notice that the completed form must be filed with assessor by Aug. 1, 2015, to claim continuance of Farmland Assessment.
 - Disallowed property tax deduction recipients granted a filing extension required to pay back tax

deductions previously granted. If unpaid, become real property liens.

- If County Board of Taxation cannot hear and determine appeals within the time prescribed in R.S. 54:3-26, the Board may apply to the Director, Division of Taxation, for an extension at any time.

2nd Tuesday in July-

- State Equalization Table prepared.

July 15-

- Property tax reimbursement (Senior Freeze) payments mailed to eligible claimants who filed by June 1.

Aug. 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2016.

Aug. 5-

- All SR-1A forms showing sales transactions to be used in compiling 2015 Table of Equalized Valuations for State School Aid to be received by Property Administration.

Aug. 15-

- County Board of Taxation Presidents to file annual appeal information and statistics report (Form TAS) with Director, Division of Taxation.

Aug. 25-

- State Equalization Table completed by Director, Division of Taxation.

Sept. 1-

- Extension to file Application for Farmland Assessment

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director: Dennis Shilling**

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assessors' calendar - from page 2

(Form FA-1) where assessor determines failure to file by Aug. 1 was due to owner's illness or death or the death of an immediate family member.

- Local exchange telephone, telegraph and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2016 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2016 for machinery, apparatus or equipment directly used to manufacture petroleum products from crude oil.

Sept. 10–

- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

Sept. 13–

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks and Clerk of Board of Freeholders.

The complete [2015 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013.

The summer dates on the Monmouth County assessors' calendar coincide with the dates of the regular assessors' calendar with the exception of the July provision for the extension of the time to hear and determine an appeal(s). That provision does not apply to the Monmouth County Demonstration Program.

The complete [2015 Work Calendar](#) for the Monmouth County Demonstration Program is available on the Division's website. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On Dec. 5, 2014, Jennifer Irizarry was arrested, processed and released on her own recognizance in Monmouth County. The arrest was based on a complaint filed by an elderly woman who claimed she was exploited by Ms. Irizarry, a housekeeper/home care attendant for the woman. The woman claimed that from 2012 to 2014 Ms. Irizarry wrote checks to herself from the woman's account in the amount of approximately \$10,000 in 2012, \$116,051 in 2013 and \$32,850 in 2014. Although no theft charges were brought against Ms. Irizarry, she was charged with not claiming the monies on her 2012 and 2013 tax returns. On Feb. 26, 2015, Ms. Irizarry pled not guilty in Monmouth County Superior Court, where she applied for and was accepted into the Pretrial Intervention Program. An OCI auditor has calculated that the total restitution amount, based on the addition of the funds to her 2012 and 2013 tax returns, will be approximately \$8,424.
- On March 2, 2015, Jorge A. Robles was sentenced to serve five years in a New Jersey State prison after pleading guilty to a charge of second-degree counterfeiting. His ex-wife, Ana Del LaMota, was placed on probation for three years and was ordered to make restitution. She pled guilty to one count of third-degree counterfeiting. The couple's daughter, Rossy Robles, was admitted to the Pretrial Intervention (PTI) Program after pleading guilty to a third-degree counterfeiting charge. On Dec. 22, 2014, the U.S. Department of Homeland Security, the New Jersey Division

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2015 – Dec. 1, 2015, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%



criminal enforcement - from pg. 3

of Taxation's Office of Criminal Investigation (OCI) and the Middlesex County Prosecutor's Office executed search warrants in the MAC cosmetics counterfeiting investigation. Jorge A. Robles, Ana Del LaMota and Rossy Robles were arrested on first-degree money laundering and second-degree counterfeiting and conspiracy charges. Execution of the search warrant resulted in the seizure of over 1,000 counterfeit cosmetics as well as over \$20,000 in cash. Bank accounts were also seized, resulting in another \$8,000 in seized property. On Jan. 2, 2015, all three defendants pled guilty and forfeited all property seized in the case.

- On March 23, 2015, in the Camden County Superior Court, Joseph H. Kayati was entered into the Pretrial Intervention Program. He will serve 24 months of noncustodial probation and make restitution to the Monarch Life Insurance Company. Further, as a condition to being accepted into the Program, Mr. Kayati signed a consent judgment for State income taxes in the amount \$756.33 for tax years 2012 and 2013. This was a joint investigation by

the New Jersey Insurance Fraud Prosecutor and OCI.

- On March 25, 2015, New Jersey resident Cynthia Perella was sentenced to five years of Drug Court probation. OCI and the Gloucester County Prosecutor's Office investigated Perella for alleged theft and tax evasion. On Sept. 17, 2014, as a result of the investigation, Perella was indicted on charges for forgery, theft, official misconduct and tax evasion. Perella was employed by the Harrison Township Fire Commission and used her position as business administrator to embezzle more than \$86,000. As part of a plea agreement, Perella pled guilty to official misconduct.
- On March 26, 2015, Carl and Denise Monto, of Beachwood, New Jersey, appeared before Superior Court Judge Anthony J. Mellaci, Jr. in Monmouth County. Carl Monto pled guilty to second-degree theft by deception and third-degree failure to pay taxes. Denise Monto applied for the Pretrial Intervention (PTI) Program. The charges were the result of an investigation by the Division of Criminal Justice and OCI, with assistance from the New Jersey Division of Consumer Affairs and the New Jersey Motor Vehicle

Commission. The investigation revealed that the Montos evaded more than \$500,000 in State sales tax by fraudulently claiming exemptions on 120 luxury cars that were purchased as part of an illegal business to acquire vehicles for overseas buyers. They also claimed exemptions for 56 of the cars by falsely buying them in the name of a charity for children with cancer. On May 15, 2015, Judge Mellaci sentenced Carl Monto, to seven years in State prison. The State agreed not to oppose Denise Monto's application for Pretrial Intervention, and Judge Mellaci admitted her to the program on May 11, 2015. For purposes of restitution, the Montos are required to forfeit \$537,784 in assets seized by the State in August 2014 when they were arrested on theft charges.

- On April 17, 2015, Mercer County Superior Court Judge Timothy P. Lydon sentenced Gregory Cobbs to five years of probation. Cobbs pled guilty on March 25, 2015, after a jury was selected in the case, to a charge of third-degree failure to pay taxes. With penalty and interest, Cobbs owes the Division of Taxation \$386,000. Cobbs must pay the Division \$150,000

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Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction's website.

Arizona	9/1/15 – 10/31/15	www.azdor.gov/Home.aspx
Indiana	9/15/15 – 11/16/15	www.in.gov/dor/amnesty/
Maryland	9/1/15 – 10/30/15	www.marylandtaxes.com
Missouri	9/1/15 – 11/30/15	http://dor.mo.gov/
Oklahoma	9/14/15 – 11/13/15	http://www.ok.gov/tax/#



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during his probation. If he does not pay his obligations, the Court made it clear that it would impose the jail sentence. Cobbs, who is listed as a New Jersey Top Tax Debtor, was prosecuted through a joint investigation between OCI's Technical Fraud Unit and the Mercer County Prosecutor's Office Economic Crime Unit.

- On April 21, 2015, Augusto Mayorga was sentenced to one year of probation and ordered to pay restitution to the State of New Jersey in the amount of \$33,997. Mr. Mayorga is the sole owner of Sunshine Metal Finishing, a company that applies anticorrosion finishes on metal parts. An investigation into the New Jersey tax filings of Mr. Mayorga and Sunshine Metal Finishing revealed that he significantly underreported business income and claimed false and fraudulent business expenses. On Jan. 30, 2015, Augusto Mayorga pled guilty to failing to file New Jersey tax returns with intent to defraud the State of New Jersey.
- On April 22, 2015, former NFL player Plaxico Burress, of Totowa, New Jersey, was indicted by a Mercer County Grand Jury for a

failed electronic funds payment and failure to pay New Jersey State income tax. This is the first prosecution under a new criminal code statute that makes the treatment of a failed electronic funds transfer (EFT) the same as the treatment of an actual bad check. The indictment charges Burress with one count of issuing a failed electronic funds transfer and one count of failure to pay State taxes, which are crimes of the third degree carrying a maximum penalty of up to five years in State prison and/or a \$15,000 fine. Burress filed his 2013 income tax return with the State of New Jersey and claimed a liability of \$47,903. To pay the tax liability he submitted a one-time electronic funds transfer payment of \$47,903, which failed and was never replaced by Mr. Burress. The Division generated an automatic letter requesting that he submit full payment. Mr. Burress did not respond, and the case was referred to OCI. Subsequent letters and outreach to Mr. Burress continued to go unanswered, even after his tax preparer was informed about the seriousness of the situation. On Feb. 4, 2015, OCI filed a criminal complaint charging Mr. Burress

with issuing a bad EFT and failure to pay New Jersey income tax. The charges are a result of an investigation led by OCI's Technical Enforcement Unit and the Senior Assistant Prosecutor, Chief of the Mercer County Prosecutor's Office Economic Crime Unit.

- Bergen County Prosecutor John L. Molinelli announced multiple indictments of several defendants as a result of criminal investigations focused on interdiction of interstate contraband cigarette trafficking activities. Indictments were returned on April 30, 2015, on a total of six defendants in four separate criminal investigations into money laundering activities and possession or transportation of untaxed cigarettes through the State of New Jersey. In the contraband cigarettes case, OCI special agents filed criminal counts against the defendants. The additional indictments highlight a recognized pattern of criminal activities in which U.S. currency is transported to low-cigarette tax states such as Virginia and North Carolina coupled with the intended return of contraband cigarettes to the New York/New Jersey area, resulting in illegal higher profits. OCI has encouraged uniformed law enforcement agencies to utilize the same techniques usually applied to narcotics investigations where undocumented funds are intended to be used to purchase contraband. Two of these cases are a direct result of this effort.
- On May 5, 2015, after a seven-day trial before Atlantic County Superior Court Judge Kyran

Enforcement Summary Statistics Second Quarter 2015

Following is a summary of enforcement actions for the quarter ending June 30, 2015.

	Number	Amount
• Bank Levies	535	\$ 2,868,253
• Certificates of Debt	4,058	57,234,598
• Seizures	122	1,637,442
• Auctions	25	47,123
• Warrants of Satisfaction	3,961	

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criminal enforcement - from pg. 5

Connor, a jury found Michael Jones, a former 12-year veteran of the Atlantic City Police Department, guilty of second-degree official misconduct, third-degree theft by deception, third-degree filing fraudulent tax returns, and third-degree failure to pay State tax. The Federal Bureau of Investigation's Public Corruption Task Force, the Atlantic County Prosecutor's Office Official Corruption Unit and OCI initiated a joint investigation after learning that Officer Jones' lease in Stanley Holmes Village was terminated by the Atlantic City Housing Authority for failure to comply with the terms of the Live-In Police Officer Program. The investigation revealed that Jones made \$95,787.74 in cash deposits to his personal checking account between 2005 and 2011. OCI determined those cash deposits were income that Jones failed to report on his tax returns from 2005 through 2011. That income resulted in a failure to pay \$4,962.15 in State income tax.

- On May 11, 2015, Rehan Zuberi pled guilty to first-degree financial facilitation and second-degree conspiracy to commit commercial bribery before Morris

County Superior Court Judge Stuart Minkowitz. He also pled guilty to second-degree conspiracy to commit theft by deception before Bergen County Superior Court Judge James Guida. Humara Paracha, Zuberi's wife, pled guilty to third-degree conspiracy to commit commercial bribery. Zuberi and Paracha were identified as ringleaders in the case by a joint investigation between OCI and the Office of the Insurance Fraud Prosecutor called Operation Ray Scam. Zuberi will receive a 10-year State prison sentence with a four-year parole ineligibility. Paracha will receive three years of probation. They are also required to pay restitution in the amount of \$1,000,000. Zuberi and Paracha were originally charged with failure to file NJ-1040 gross income tax returns for the years 2009 through 2013 and failure to pay gross income tax due for the years 2008 through 2013. The total tax due was \$311,165. □

Tax Briefs

Gross Income Tax

Sale of New Jersey Property by a Nonresident Alien – A group of real estate professionals inquired as to what to do when a nonresident alien (non-U.S. citizen) is selling real property in New Jersey but does not have a social security number and is not eligible for one.

Any nonresident individual who sells real property in New Jersey must pay estimated income tax (either through a prepayment or withholding at the closing) on the gain from the sale. They must complete a form (usually the GIT/REP-1) that must be filed with the deed when it is submitted for recording. An

identification number is necessary to complete the form and to match a payment to the individual.

The Division responded that a nonresident alien individual without a social security number must apply to the IRS for an individual taxpayer identification number (ITIN) using Form W-7. If the individual who is selling real property in New Jersey has applied to the IRS for an ITIN but has not received it at the time of the closing, the individual should attach a copy of the completed Form W-7 that was submitted to the IRS to the GIT/REP-1, and submit it with the deed for recording.

Reporting IRC Section 457 Plan Payments – A taxpayer asked the Division how to report distributions from an IRC Section 457 nonqualified deferred compensation retirement plan for New Jersey gross income tax purposes.

The Division responded that because contributions to a 457 Plan are included in New Jersey income when made, only the portion of a distribution that is in excess of those contributions is taxable. However, the manner in which the taxpayer must report the taxable amount of the distribution on the New Jersey income tax return depends on whether the 457 Plan is for government employees or nongovernment employees.

A distribution from a 457 Plan for government employees is reported to the taxpayer on Form 1099-R. The taxpayer should report the taxable portion of the distribution as pension income. For information on how to calculate the taxable portion, see Tax Topic Bulletin GIT-1, *Pensions and Annuities*.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



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In contrast, a distribution from a 457 Plan for nongovernment employees is reported to the taxpayer as wages on Form W-2. The taxpayer must report the amount from the “State wages” box on the “wages” line of Form NJ-1040 (or on the “wages” line in Column A, Form NJ-1040NR). □

In Our Courts

Gross Income Tax

Time to File Complaint – *Roger J. & Anita Kamien v. Director, Division of Taxation*, decided March 20, 2015; Tax Court, Docket No. 015084-2014.

The Division sent Roger and Anita Kamien (Plaintiffs) a Final Determination (FD) dated July 17, 2014, via certified mail. The FD, which included information about the Plaintiffs’ right to file an appeal with the Tax Court, was sent to Plaintiffs’ last known address and was received and signed for on July 21, 2014. Plaintiffs filed a complaint with the Tax Court on Oct. 22, 2014, contesting the FD. The Division moved to dismiss the complaint for lack of subject matter jurisdiction because it was not filed within the prescribed time limit.

The Court found that the complaint was not filed timely because it was filed after the 90-day limitations period following receipt of the Final Determination. N.J.S.A. 54A:9-10. As a result, the Court dismissed the complaint for lack of jurisdiction.

Sales & Use Tax

Wrapping Supplies Exemption – *Burlington Coat Factory Warehouse Corp. v. Director, Division of Taxation*, decided Dec. 2, 2014; Tax Court, Docket No. 007007-2013.

Burlington Coat Factory Warehouse Corp. (Plaintiff) is a Delaware corporation with a principal office in Burlington, New Jersey. Plaintiff is a member of an affiliated group of entities that owns and operates retail stores in the United States. Plaintiff receives and stores merchandise from manufacturers and suppliers, then uses various wrapping supplies to pack the merchandise and ship it by common carrier to its affiliated retail stores. Plaintiff filed a claim for refund of the sales and use tax it paid on the wrapping supplies citing the exemption for wrapping supplies provided in N.J.S.A. 54:32B-8.15. The Division denied the refund on the basis that the supplies were not eligible for the exemption because they were purchased for internal use and were not used in a separate transaction as required.

N.J.S.A. 54:32B-8.15 exempts wrapping supplies from sales tax when their use is incidental to delivery of personal property. In *Global Terminal v. Director, Division of Taxation*, 9 N.J. Tax 152 (1987), the Tax Court held that in order for the

exemption to apply, the wrapping supplies had to be used in a second transaction that was separate from the purchase of those supplies. Based on that decision, the Division published a tax brief in the [Winter 2001](#) issue of the *New Jersey State Tax News* which stated that the purchaser of the wrapping supplies did not need to use them in a sale transaction in order for the exemption to apply and could claim the exemption if the purchaser was using the supplies to deliver property even if the purchaser is not selling the property being delivered. However, the tax brief went on to state that the exemption only applies when the second transaction is an identifiable transaction involving another party. Because Plaintiff was using the wrapping supplies to deliver merchandise to its affiliated retail stores, the Division found that the supplies were not incidentally used in a separate transaction, so they were not eligible for the exemption.

The Tax Court found that the affiliated retail stores were not related parties because they were separate

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Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).



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legal entities, and that Plaintiff’s use of the wrapping supplies was incidental to the delivery of personal property. Plaintiff was, therefore, entitled to a refund for the sales and use tax paid on the wrapping supplies. □

In Our Legislature Gross Income Tax

Earned Income Tax Credit Increase — P.L. 2015, c.73, signed into law on July 6, 2015, and effective immediately, amends the New Jersey Gross Income Tax Act to increase the amount of the New Jersey earned income tax credit from 20 percent of the federal earned income credit to 30 percent for tax years beginning on and after Jan. 1, 2015.

Miscellaneous

Economic Redevelopment and Growth Grant Program Tax Credits for Parking Projects — P.L. 2015, c.69, signed into law on July 6, 2015, and effective immediately, amends the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c.90) to allow municipal redevelopers, including municipalities, redevelopment agencies, municipal parking authorities and developers, to receive Economic Redevelopment and Growth Grant Program tax credits when they develop certain mixed-use parking projects. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) and tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2014](#) [2015](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2014](#) [2015](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2014](#) [2015](#) □



important phone numbers

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
..... 609-826-4400
Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
Property Tax Reimbursement
Hotline.....1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
Business Paperless Telefiling
System 609-341-4800
Alcoholic Bev. Tax 609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director’s Office 609-292-6400
Inheritance Tax 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-633-8870
Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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- [List of 2014 Legislation](#)
- [Division Organization Chart](#)

Homestead Benefits for 2012 on the Way

Most New Jersey homeowners who were eligible and filed for a 2012 homestead benefit received their benefit as a credit on their May 2015 property tax bills. However, homeowners received their benefit in the form of a check (or direct deposit) in early May if their home was a unit in a co-op or a continuing care retirement community, or they indicated when filing that they no longer owned the home that was their principal residence on Oct. 1, 2012.

To be eligible for a 2012 homestead benefit, applicants had to be New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on Oct. 1, 2012, paid property taxes on that home, and had 2012 New Jersey gross income of \$75,000 or less (\$150,000 or less for homeowners 65 or older or blind or disabled).

As a result of the amount appropriated in the State Budget for property tax relief programs, only homeowners who met the eligibility requirements, including the income requirements, received homestead benefits for 2012.

Benefit amounts vary based on the applicant's income, filing status, property taxes, and whether the applicant was 65 or older or blind or disabled.

The 2012 benefit is based on the 2006 property taxes for the applicant's Oct. 1, 2012, principal residence. If no property taxes were assessed on the home for 2006, the Division of Taxation determines the amount of property taxes that would have been due.

Homeowners can check the status of their homestead benefit [online](#). Additional information about the [Homestead Benefit Program](#), including information on how the benefit is calculated, is also available on our website. □

2013 Property Tax Credit Applications

The Division of Taxation will mail property tax credit applications for tax year 2013 later this year to certain homeowners who may be eligible but did not claim the credit.

In most tax years, senior and disabled homeowners who are not required to file a New Jersey income tax return receive their property tax credit automatically as part of their homestead benefit. However, no homestead benefits were issued for tax year 2013. These homeowners will need to apply for a property tax credit using the 2013 Property Tax Credit Application, Form NJ-1040-H.

Homeowners can file the 2013 Form NJ-1040-H only if they:

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property tax credit - from page 1

- Were 65 or older or blind or disabled on Dec. 31, 2013; **and**
- Had 2013 New Jersey gross income that was \$20,000 or less (\$10,000 or less if filing status is single or married/civil union partner, filing separate return); **and**
- Have not filed a 2013 New Jersey income tax return (Form NJ-1040)

OR

Filed a 2013 resident return but did not claim a property tax credit on Line 49.

The due date for filing a 2013 property tax credit application is April 17, 2017.

For more information on the 2013 property tax credit, see the [2013 New Jersey resident return instructions](#). □

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Nine persons passed the March 20, 2014, C.T.A. exam, and five persons passed the Sept. 20, 2014, exam. They are:

Atlantic County: Johanna Casey, Margate City; Mandi Johnson, Egg Harbor City.

Bergen County: Richard Seibel, Fair Lawn Borough.

Camden County: Kirsten Sherwin, Haddon Township.

Cape May County: Alexandra Fasy, Upper Township.

Essex County: Bryan Flynn, Newark City.

Gloucester County: Robin Hague, East Greenwich Township.

Hunterdon County: Michael Pierce, Clinton Township.

Middlesex County: Robert Morrison, Woodbridge Township.

Monmouth County: Gregory McPhillips, Belmar Borough; Amanda Norakus, Tinton Falls Borough; Nicholas Spracklen, Wall Township.

Morris County: Joseph John Norcia, East Hanover Township; Matthew Petracca, Pequannock Township.

The next C.T.A. examination is scheduled for Sept. 26, 2015. The deadline to file applications for this exam is Aug. 27, 2015. The filing fee is \$10. If you have any questions regarding this exam, please contact Marilyn Gaines at 609-292-8823, or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, [Form AC-1](#), is available on the Division's website. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1-

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Editor: Colleen McAllister



assessors' calendar - from page 2

appeals of assessed valuations over \$1,000,000 to State Tax Court.

- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks and Director, Division of Taxation.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

1st Business Day in May–

- County Tax Board to organize and elect a president for one year, or until his successor is elected.

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration

dates of their terms of office and the status of their required courses.

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

NOTE: Complaints (appeals) from County Tax Board judgments must be filed with the Tax Court within 45 days of service.

The complete [2015 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

April 1–

- Tax appeals are heard February, March and April.

May 5–

- Assessor to file assessment lists and duplicates with County Tax Board.

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2015 – Dec. 1, 2015, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%



assessors' calendar - from pg. 3

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.
- County Tax Board to notify Director, Division of Local Government Services, when copy of budget resolution (in CY municipality) showing amount to be raised is not received.
- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

May 31–

- General tax rates certified by County Tax Boards.
- County Tax Board to file final SR-3A forms with Property Administration.
- Tax rate set by County Tax Board.

June 15–

- County Tax Board Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

The complete [2015 Work Calendar](#) for the Monmouth County Demonstration Program is available on the Division's website. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- OCI's Special Investigations Unit continues to assist the Excise Tax Branch in their ongoing project to issue cigarette wholesale dealer licenses to existing cigarette distributors that sell directly to retailers. This process is intended to close a reporting gap between the two license tiers. OCI has been providing background information for company officers not on the original cigarette distributor licenses.
- Seneca Distributions LLC, located in Bradford, Pennsylvania, was approved for a New Jersey nonresident cigarette distributor license. This new company will replace Canadian Agricultural Depot and Everything Tobacco as the supplier of Seneca brand cigarettes and filtered cigars to New Jersey retailers. Seneca Distributions LLC is a subsidiary

of Grand River Enterprises Six Nations Ltd., a manufacturer of tribal brand cigarettes that has, thus far, been compliant with the provisions of the Master Settlement Agreement.

- On Jan. 22, 2015, OCI's special agent in charge was a speaker at the Agostino & Associates-sponsored continuing education for tax practitioners program concerning OCI's criminal enforcement activities. One of OCI's cases involving the successful use of the New Jersey money laundering statute in an identity theft-entrusted funds criminal tax case was highlighted.
- On Jan. 23, 2015, Pine State Trading Company, located in Gardiner, Maine, was approved for a New Jersey nonresident cigarette distributor license. This company holds cigarette tax stamping licenses in seven other states along the Eastern Seaboard and has the ability to buy product from all of the major cigarette manufacturers.
- On Dec. 2, 2014, the Office of Criminal Investigation (OCI) became a participant in the Real Time Crime Center, which is a joint operation between the Newark Police Department and the New Jersey State Police. The operation focuses on the greater Essex/Passaic area and provides high-level direct intelligence for street-level law enforcement personnel.
- On Dec. 23, 2014, special agents responded to a motor vehicle stop by the Lakehurst Police Department. The special agents arrested and criminally charged

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under [Auction Information](#). Select the name of the business from the list for details about that auction.



criminal enforcement - from page 4

Louis Rondinella of Toms River, New Jersey, for possession of Delaware-stamped cigarettes.

- On Jan. 2, 2015, Hatim Mohamed of Richmond, Virginia, was stopped by the Mahwah Police Department. Police found 252 cartons of Virginia-stamped cigarettes in the trunk of his vehicle. OCI special agents responded and charged Mohamed with possession of 100 or more cartons of out-of-State cigarettes; failure to maintain records; engaging in a transaction with an unlicensed person; failure to obtain a New Jersey cigarette retail dealer license; and individuals in possession of contraband cigarettes.
- Bobbi J. Medley, Tamika Crump, Chanel Bostic and Pierre Borders were indicted on March 28, 2014, on charges related to a New Jersey income tax refund fraud scheme for the tax year 2008. Each individual received a tax refund using false employer information and cashed the refund checks at an Atlantic City check casher in 2009. On Jan. 9, 2015, in Atlantic County Superior Court, Bobbi J. Medley was admitted into the Pretrial Intervention Program

(PTI). As a condition of the civil judgment entered on Nov. 14, 2014, Ms. Medley agreed to make restitution of \$984. On Jan. 23, 2015, in Atlantic County Superior Court, Tamika Crump was sentenced to 24 months of noncustodial probation. As a condition of the civil judgment entered on Dec. 5, 2014, and filed on Jan. 26, 2015, Ms. Crump agreed to make restitution of \$1,983. On Jan. 23, 2015, Chanel Bostic entered a guilty plea to a charge of fourth-degree false reporting to law enforcement authorities in violation of N.J.S.A. 2C:28-4. Bostic was sentenced as a disorderly person and ordered to pay a \$250 fine. Pierre Borders was sentenced on Feb. 27, 2015, to the State recommendation of a period of noncustodial probation. Borders was ordered to pay restitution to the State of New Jersey in the amount of \$434.20, and a civil consent judgment was entered against him for that amount.

- On March 29, 2014, OCI filed charges against Burlington county resident and former Willingboro police officer Brian Lewis for failing to file corporation business tax returns and failure to pay corporation business taxes for

the years 2008 through 2013. Lewis owned and operated Lewis Lawn Care & Landscaping Inc. but did not file any of the required tax returns. On Jan. 16, 2015, Brian Lewis was sentenced to five years in State prison for his involvement in several schemes in which he defrauded his victims out of \$101,000. Lewis was charged with two counts of third-degree theft by deception, one count of second-degree theft by extortion and one count of failure to file business tax returns. As part of his sentencing, Lewis is required to file all of his missing tax returns.

- On Jan. 30, 2015, special agents performed a compliance inspection in Paterson, New Jersey. During the course of the inspection, agents found and seized 10.4 cartons of contraband cigarettes, 1,422 contraband tobacco products and multiple prescription legend drugs. The owner of the store was arrested and charged with various indictable offenses. □

Tax Briefs

Sales and Use Tax

Reiki Touch Therapy – A taxpayer inquired as to whether charges for Reiki touch therapy are subject to New Jersey sales and use tax.

The Division responded that the New Jersey Sales and Use Tax Act imposes sales tax on the retail sale of massage, bodywork or somatic services that are rendered in the State except when provided pursuant to a doctor's prescription. N.J.S.A. 54:32B-3(b)(9); N.J.A.C. 18:24-33.2; N.J.A.C. 18:24-33.4(a). To qualify for the prescription

Enforcement Summary Statistics

First Quarter 2015

Following is a summary of enforcement actions for the quarter ending March 31, 2015.

	Number	Amount
• Bank Levies	697	\$ 2,120,429
• Certificates of Debt	4,074	53,155,511
• Seizures	127	1,833,326
• Auctions	14	82,381
• Warrants of Satisfaction	4,007	

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tax briefs - from page 5

exception, the doctor’s prescription must be in writing; must contain the name of the patient and the name and signature of the referring doctor; and must state the purpose of the referral and describe the conditions to be addressed by the prescribed treatment. N.J.A.C. 18:24-33.4(b).

“ ‘Massage, bodywork and somatic services’ means systems of activity of structured touch, which include holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying massage, bodywork or somatic principles. Such application may, for example, include the use of therapies, such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications and external application of herbal or topical preparations.” N.J.A.C. 18:24-33.3(a). Reiki touch therapy is generally understood to be a form of therapy that uses simple touch, no-touch and visualization techniques for the purpose of improving the flow of life energy in a person.

Based on the above, Reiki touch therapy falls within the definition of massage, bodywork and somatic services. Therefore, receipts from charges for those services are subject

to New Jersey sales tax, except when performed pursuant to a doctor’s prescription.

Sale of Airline Tickets – A taxpayer inquired as to whether charges for the sale of airline tickets are subject to New Jersey sales and use tax.

The Division responded that the New Jersey Sales and Use Tax Act imposes sales tax on the receipts from every sale (except for resale) of certain enumerated services unless an exemption exists. N.J.S.A. 54:32B-3(b). Receipts from charges for the transportation of persons or property are exempt from tax except for: delivery charges; transportation services provided by a limousine operator; and the transportation of energy. N.J.S.A. 54:32B-8.11.

Based on the above, receipts from charges for the sale of airline tickets are exempt from sales and use tax whether purchased to transport persons or property. □

In Our Courts **Gross Income Tax**

Loss Carryforward – *Constance Dinallo v. Director, Division of Taxation*, decided Aug. 16, 2013; Tax Court Docket No. 013971-2010.

Dinallo (Plaintiff) was a limited partner in Empire, Ltd. (Empire), which was a limited liability partnership

whose only asset was a single piece of land. The land was sold in 2004.

Plaintiff received a 2004 New Jersey K-1 from Empire which showed a \$2,533,468 distributive share of partnership income. On her 2004 New Jersey gross income tax return, Plaintiff offset the partnership income by \$1,749,716 of partnership losses from prior years. In 2005, Plaintiff received a New Jersey K-1 from Empire which showed a \$5,678 loss. The Division audited Plaintiff’s 2004 return and disallowed the use of the partnership losses from prior years because losses in any category of income can only be applied against gains in that same category of income in the same year. N.J.S.A. 54A:5-2.

At issue was whether the Plaintiff could carry forward pre-2004 partnership losses to offset the 2004 partnership income and whether the New Jersey Supreme Court’s holding in *Koch v. Director, Division of Taxation*, 157 N.J. 1 (1999) applied. In *Koch*, the Court held that the Director cannot use a federal adjusted basis if it results in a taxpayer being taxed on a return of capital. In other words, a taxpayer can use losses from prior years to ensure that he is only taxed on the economic gain resulting from a sale.

The Tax Court determined that N.J.S.A. 54A:5-2 did not permit

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Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction’s website.

Maryland 9/1/15 – 10/30/15

www.marylandtaxes.com

Missouri 9/1/15 – 11/30/15

<http://dor.mo.gov/>



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losses from prior years to be carried forward and that *Koch* did not apply because Plaintiff's partnership interest was not sold, exchanged or disposed of in 2004 even though the partnership sold its only asset in 2004.

Plaintiff appealed the Tax Court's decision. The appeal was recently dismissed.

Statute of Limitations Regarding Credit for Taxes Paid to Other Jurisdictions – *Frederic W. Bernard v. Director, Division of Taxation*, decided Oct. 31, 2013, and supplemented Dec. 4, 2013; Tax Court Docket No. 014563-2012, affirmed, Appellate Division Docket No. A-1445-13T4, decided Feb. 23, 2015.

Bernard (Plaintiff) filed his 2002 New Jersey gross income tax return on April 15, 2003, but did not claim a credit for taxes that he paid to New York state and city in that year. In 2004, New York assessed additional income taxes against Plaintiff for tax year 2002. The matter was settled in 2006. In 2008, Plaintiff filed an amended New Jersey return for the 2002 tax year, claimed a credit for taxes paid to New York and requested a refund. The Division denied the refund because Plaintiff did not claim the credit on his 2002 return and filed his amended return more than three years after the date he filed the original return.

In general, the statute of limitations for claiming a refund of gross income tax is the later of three years from when the return was filed or two years from when the tax was paid. N.J.S.A. 54A:9-8. However, N.J.S.A. 54A:4-1(e) provides an exception to the three-year limitation

when there is a readjustment of the tax due to another state. The Tax Court has previously determined that, as used in that statute, the word "readjustment" means "when a tax has been paid to another state and a credit taken on the New Jersey return for the subject year and the tax paid is later increased or decreased by the other state." See *Bonanno v. Director, Division of Taxation*, 12 N.J. Tax 552 (Tax 1992). In this case, the Tax Court found that Plaintiff's amended return did not qualify for an exception to the three-year statute of limitations because he did not claim a credit for taxes paid to New York on his original 2002 New Jersey return. Hence, the credit for taxes paid on the amended 2002 New Jersey return was not a readjustment.

Plaintiff appealed the Tax Court decision to the Appellate Division, which affirmed. The Appellate Court emphasized the plain language of the statute and the strong policy of strictly construing limitation periods to provide finality and predictability of state and local revenues.

Limitation on Credit for Taxes Paid to Other Jurisdictions – *Michael & Inge Trachtenberg v. Director, Division of Taxation*, decided Nov. 21, 2013; Tax Court Docket No. 008689-2008.

Michael and Inge Trachtenberg (Plaintiffs) were New Jersey residents who reported the sale of real property located in New York on their nonresident New York income tax return. On their NJ-1040, Plaintiffs were able to use capital losses to offset the capital gain from the sale of the New York property, but they were not permitted to do so on their New York return. However, Plaintiffs were able to deduct rental losses on their New York return that were not deductible on the New Jersey return. The total gross income reported to New Jersey was \$4,738,325. Plaintiff used the total New York income subject to tax of \$9,810,462 in the numerator of the credit calculation and contended that they should receive a credit for all of the New York taxes paid because their New York income was greater

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation/

Credit Card
1-888-673-7694 www.state.nj.us/treasury/taxation/

Select "Electronic Services"
to make a payment directly
from your bank account



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than their New Jersey income. The Division limited the numerator of the credit calculation to \$4,349,471, which was the amount of income taxed by both New York and New Jersey.

The Tax Court stated that the purpose of the credit is to provide relief from New Jersey taxes where income is taxed by both New Jersey and another jurisdiction, not to provide a credit for taxes on income that is not subject to tax in New Jersey. The credit statute “is not designed to ameliorate the effects of decisions by other States to tax income that is not subject to tax in New Jersey. The resident credit is not a panacea for the taxing practices of other jurisdictions. The statute is designed to address the limited circumstances in which both New Jersey and another State tax the same income earned by a New Jersey resident.” The Court held that the Division’s calculation of the credit accurately reflected the intent of the statute.

Plaintiff appealed the Tax Court’s decision. The appeal was recently dismissed.

Cigarette Tax
Untaxed Cigarette Purchases – *Rosa Jovanovic v. Director, Division of Taxation*, decided Sept. 23, 2014; Tax Court Docket No. 016785-2011.

As required by the federal Jenkins Act, Smart Smoker, an out-of-State seller of cigarettes, provided the Division of Taxation with information concerning the purchase of cigarettes that they shipped into New Jersey. The information provided included cigarette purchases made by Jovanovic (Plaintiff). The cigarettes did not contain a New Jersey tax

stamp; therefore, neither cigarette tax nor sales tax was charged or paid on these purchases. The Division of Taxation assessed Plaintiff for both the excise tax per carton of cigarettes and the sales tax due on each purchase.

Plaintiff claimed that she did not make the purchases, never received the cigarettes and that she was a victim of identity theft. Plaintiff claimed to have disputed the charges for the cigarette purchases and canceled the credit card in question. At the trial, it was revealed that Plaintiff continued using the credit card in question and paid the amount due on the credit card statements for the purchases made. The credit card company did refund some money, but not for the cigarette purchases.

The Tax Court affirmed the Division’s assessment finding that the testimony of Plaintiff and her husband lacked credibility.

Corporation Business Tax
Taxes Included in Determining Entire Net Income – *Duke Energy Corporation v. Director, Division of Taxation*, decided Dec. 2, 2014; Tax Court Docket No. 010448-2008.

N.J.S.A. 54:10A-4(k)(2)(C) of the Corporation Business Tax Act requires that a taxpayer must add back certain taxes when determining New Jersey entire net income, including taxes on or measured by profits or income or business presence or business activity that were deducted for federal tax purposes. In this case, the Division required Duke Energy Corporation (Plaintiff) to add back electrical utility taxes. At issue was whether the (1) North Carolina tax imposed on electrical utilities and/or (2) South Carolina tax imposed

on electrical utilities must be added back to determine New Jersey entire net income for tax years 2000 through 2003.

The North Carolina utilities tax is imposed on an electric power company’s taxable gross receipts from furnishing products such as electricity, current or power and contained a sale for resale exemption. The Court found that the tax is measured by gross receipts and not profits as it does not allow for a deduction of costs. Additionally, the Court stated that the tax did not apply to all corporations and did not have broad application to in-State business activities. Consequently, the Court ruled that the taxpayer was not required to add back this tax to determine New Jersey entire net income.

The South Carolina utilities tax is imposed on the fair market value of property owned and used by utilities and electrical cooperatives and on gross sales of electricity services. The Court noted that according to N.J.A.C. 18:7-8.7(f), property taxes are not considered business presence or business activity taxes. Thus, the taxpayer was not required to add back this tax to determine New Jersey entire net income. □

In Our Legislature

Gross Income Tax
Checkoff for New Jersey Nonprofit Veterans Organization Fund — P.L. 2015, c.26, signed into law on March 23, 2015, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2016, allows taxpayers to donate to the New Jersey Nonprofit Veterans Organization Fund by specifying that

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a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Meadowlands Regional Hotel Use Assessment

Hackensack Meadowlands Agency Consolidation Act, Hackensack Meadowlands Transportation Planning District Act of 2015 and New Jersey Meadowlands Tax Relief Act — P.L. 2015, c.19, was signed into law on Feb. 5, 2015, and took effect immediately.

The law consolidates the New Jersey Meadowlands Commission and the New Jersey Sports and Exposition Authority, reestablishes the Hackensack Meadowlands Transportation Planning District and revises the funding method for the intermunicipal tax sharing program in the New Jersey Meadowlands.

Sections 82 through 85 of P.L. 2015, c.19, comprise the New Jersey Meadowlands Tax Relief Act. The Act imposes a 3% Meadowlands Regional Hotel Use Assessment on the rental charge for a room in a hotel, motel or similar facility in the Meadowlands district, including any hotel located on land owned by the State. The assessment is imposed on room rentals that are subject to the New Jersey sales tax and is in addition to any other tax or fee imposed by statute or local ordinance, including the hotel/motel State occupancy fee and municipal occupancy tax. The assessment applies to all hotel occupancies that occur on or after March 1, 2015. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) and tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2014](#) [2015](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2014](#) [2015](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2014](#) [2015](#) □

NJ TaxFax Discontinued

Effective June 1, 2015, the NJ TaxFax Service was discontinued. [Forms](#) and [Publications](#) are available on our website.



**important
phone
numbers**

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
..... 609-826-4400
Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
Property Tax Reimbursement
Hotline.....1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
Business Paperless Telefiling
System 609-341-4800
Alcoholic Bev. Tax 609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director’s Office 609-292-6400
Inheritance Tax 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-633-8870
Public Utility Tax..... 609-633-2634

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2014 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
4	5/15/14	Establishes the Northern New Jersey Veterans Memorial Cemetery Development Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-126(1R)
13	6/30/14	Adjusts and clarifies certain State tax compliance standards and restricts certain State tax benefits.	MULT	A-3486
38	8/25/14	Establishes the New Jersey Farm to School and School Garden Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-2641(1R)
45	9/10/14	Amends the law to include electronic funds transfers within the scope of the statute concerning issuing or passing bad checks.	ALL	A-1153
46	9/10/14	Amends the law to include electronic funds transfers in the process for recovering dishonored payments.	ALL	A-1162
47	9/10/14	Establishes the Local Library Support Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-1314(1R)
63	10/24/14	Creates the Economic Opportunity Act of 2014, Part 3, which modifies laws concerning incentives for certain economic development projects.	MISC	A-3213(5R)
80	12/11/14	Establishes the ALS Association Support Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-3290

*Legend for 2014 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ADS = Admissions Surcharge	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuel Tax
CAS = Casino Taxes and Fees	MIS = Miscellaneous
CBT = Corporation Business Tax	MULT = Multiple Taxes
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax

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What's New for Tax Year 2014

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Property Tax Deduction/Credit** — Homeowners applying for the property tax deduction/credit must enter new information on Lines 37b and 37c of the 2014 resident return, Form NJ-1040. Residents must report the following information about the principal residence they owned and occupied on Dec. 31, 2014: block number, lot number and qualifier (condominiums only) for the property, and county/municipality code for the location of that residence. Those who were not homeowners on Dec. 31 must provide information for the last home they owned and occupied in New Jersey during 2014. In addition, homeowners must fill in the oval on Line 37c if they completed Worksheet F-1, which can be found in the instructions for Form NJ-1040, to calculate the total property taxes paid amount for Line 37a.
- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2014, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund

contribution was \$133.88, the maximum employee disability insurance contribution was \$119.70 and the maximum employee family leave insurance contribution was \$31.50. If you had two or more employers, you may have contributed more than the maximum amount(s). You must complete Form NJ-2450 to claim credit on your New Jersey tax return for the excess withheld.

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2014 was 3.495% (.03495) from Jan. 1 to June 30, 2014, and 3.4915% (.034915) from July 1 to Dec. 31, 2014.
- **Alternative Business Calculation Adjustment** — If you have losses in certain business-related categories of income, you may be able to use those losses to calculate an adjustment to your taxable income. In addition, you can carry forward unused losses in those categories for 20 years to calculate future adjustments. For tax year 2014, the percentage used to calculate the Alternative Business Calculation Adjustment on Schedule NJ-BUS-2 is 30 percent, up from 20 percent in 2013. The percentage is being phased in over a five-year period and will reach a maximum of 50 percent for tax year 2016 and after.

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what's new - from page 1

- **E-Filing Opt Out** — If your tax preparer is required to file all returns electronically, you can still choose to file by paper as long as you fill out Form NJ-1040-O, E-File Opt-Out Request Form. Beginning this year, you must include the form with your return when you file, and your preparer must indicate that it is enclosed by filling in the oval in the section where he or she signs your return.

Property Tax Relief Programs

- **2014 Property Tax Reimbursement (Senior Freeze)** — The Senior Freeze (Property Tax Reimbursement) Program reimburses eligible senior citizens or disabled persons for property tax increases. Eligible residents must file a 2014 Property Tax Reimbursement Application (Form PTR-1 or PTR-2) by June 1, 2015. The 2014 applications were mailed in mid-February.

With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2014, total annual income must be:

2013: \$84,289 or less, and

2014: \$85,553 or less

These limits apply regardless of marital/civil union status. However, if your filing status was married/CU couple, and you lived in the same household, you must combine your incomes for that year.

NOTE: As a result of the amount appropriated in the State Budget for property tax relief programs, only certain applicants received reimbursement payments for 2013. Applicants who were eligible to receive reimbursement payments for 2013 were those whose 2012 income did not exceed \$82,880 and whose 2013 income did not exceed \$70,000, provided they met all the other program requirements. The amount appropriated for property tax relief programs may likewise affect eligibility for 2014 reimbursements.

Homestead Benefit Program — Information about filing for benefits under the Homestead Benefit Program is not yet available. Please continue to check our [website](#) as information will be posted as it becomes available. □

New Grant and Credit Monitoring Unit Formed

Responsibility for administering certain tax incentives and grants available under State programs offered by the New Jersey Economic Development Authority now resides with the Office of Legislative Analysis and Disclosure (OLAD). A new Grant and Credit Monitoring Unit within OLAD, referred to as the “Credit Team,” was created to review and process applications for tax credits and grants submitted to the Division under the various programs.

Tax incentive grant programs have become an essential tool used by government and businesses to stimulate economic activity in blighted and contaminated areas and to help

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New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
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new unit formed - from page 2

spur development and create jobs within the State. The Credit Team currently handles tax credits and/or grants under the following programs: Angel Investor Tax Credit, Brownfield and Contaminated Site Remediation Program, Business Employment Incentive Program (BEIP), GROW NJ Assistance Program, Economic Redevelopment and Growth Grant Program (ERGG) and Urban Transit Hub Tax Credit Program. In addition, the Unit processes applications for Urban Enterprise Zone (Form UZ-6) and Salem County (Form SC-6) energy exemption certificates.

OLAD's Credit Team is working to streamline the process of monitoring these grants, including the verification and tracking of tax credits and reimbursement payments to developers. □

New Laws for EFT Payments That Fail

Recent legislation amended existing civil and criminal statutes to treat failed electronic funds transfer (EFT) payments the same way as bad checks, drafts or money orders.

This means that a taxpayer commits a crime if he or she authorizes an electronic funds transfer knowing that the payment will not be honored because of insufficient funds or because the taxpayer does not have an account at the financial institution on which the payment is drawn. Likewise, a taxpayer who makes a dishonored EFT payment is also subject to the provisions of civil law that provide for the recovery of funds and payment of damages.

These new laws will be of particular help to the Division of Taxation in recovering money due to the State of New Jersey. The Technical Enforcement Unit within the Division's

Office of Criminal Investigation is responsible for recouping funds owed as a result of EFT payments that are dishonored by financial institutions. This Unit now has the tools necessary to take the same actions, including criminal prosecution, against taxpayers who initiate bad EFT payments as they can against those who issue bad checks.

Now that fraudulent EFT payments can be treated as bad checks, violators who fail to pay after they have been notified by the Division that their EFT payment was dishonored can be charged with a crime ranging from a disorderly persons offense to a crime of the second degree. The degree of the crime and the associated penalties depend on the amount of the dishonored payment. In addition, the Division can also bring a civil action to recover the unpaid amount plus damages. These civil and criminal actions are in addition

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new laws for EFT - from page 3

to the penalties and interest that are imposed whenever tax is paid after the due date.

These new laws, P.L. 2014, c.45 and c.46, signed into law on Sept. 10, 2014, do not increase existing penalties for making a dishonored payment; they simply apply the existing provisions to dishonored payments made by electronic funds transfer. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On May 12, 2014, the State, by an order of forfeiture, seized \$75,407.25 from Gary Conover, property that has been, or was intended to be, used in criminal activity. Based on the distributive share analysis in N.J.S.A. 2C:64-4, an allocation of \$25,000 was determined to be the share for the New Jersey Department of the Treasury. This case was a joint

investigation with the Division of Criminal Justice and the Office of Criminal Investigation (OCI) into allegations that Mr. Conover was taking bets and paying out bets without filing the appropriate W-2 forms and other paperwork associated with income taxes on gambling winnings.

- On July 16, 2014, the Monmouth County Grand Jury returned a 20-count indictment against Anthony Gagliardi and a 10-count indictment against Richard Crossan. These indictments followed a criminal investigation conducted by the Monmouth County Prosecutor’s Office in conjunction with the Somerset County Prosecutor’s Office, the Monmouth County Sheriff’s Office, OCI and various police departments. The investigation revealed that both suspects were engaged in illegal gambling and financial activity, which included money laundering and tax evasion. Gagliardi was indicted on the following charges: second-degree racketeering conspiracy, first- and third-degree financial facilitation of criminal activity, third-degree promoting gambling, third-degree failure to file returns, third-degree failure to pay and third-degree filing a fraudulent return. Crossan was indicted on the following charges: second-degree racketeering conspiracy, first-degree financial facilitation of criminal activity, third-degree financial facilitation of criminal activity, third-degree promoting gambling, third-degree failure to pay and third-degree filing a fraudulent return.
- On Aug. 11, 2014, Mohammad Shafiq was sentenced to 57 months in prison on four counts of federal cigarette trafficking

violations brought by the U.S. Attorney’s Office and five years of supervised release on unrelated mortgage fraud charges brought by the Federal Bureau of Investigation. He was ordered to pay restitution in the amount of \$4,046,382 to the State for unpaid cigarette tax and an additional \$1,405,000 for the mortgage fraud. OCI initiated this investigation and requested the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives from June 2011 until Mohammad Shafiq’s arrest in February 2012.

- On Aug. 12, 2014, Robert Greco, Jr., owner of East Creek Manor in Eldora, New Jersey, was indicted in Cape May County Superior Court on charges of second-degree theft by failure to make required disposition, third-degree failure to file return and third-degree failure to pay. Mr. Greco is accused of using funds from a resident’s bank accounts for his personal gain as well as business expenses associated with East Creek Manor.
- On Aug. 21, 2014, OCI special agents arrested Othello Alferd of Old Bridge, New Jersey, following an investigation into his illegal import of counterfeit Newport cigarettes. The investigation also resulted in the seizure of 93.4 cartons of counterfeit cigarettes imported from mainland China. Alferd was processed and incarcerated in lieu of \$25,000 bail, no 10%.
- On Aug. 26, 2014, Stevens Castor of East Orange, New Jersey, was arrested by OCI special agents for various violations of

continued on page 5

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2015 – Dec. 31, 2015, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%
1/1/15	6.25%



criminal enforcement - from page 4

the Cigarette Tax Act relative to cigarette sales via the Internet. Each sale was for a legitimate product; however, the cigarettes were stolen from a drugstore where Castor was employed as a security guard. Special agents have begun to monitor Internet sales of tobacco, cigarettes and counterfeit products for Master Settlement Agreement violations.

- On Sept. 15, 2014, OCI was notified of a suspect's receiving a carload of suspected untaxed cigarettes. The vehicle delivering the cigarettes had Virginia license plates. OCI agents responded to the scene and observed cigarettes through the open back doors of two vans. A total of 690 cartons of Virginia-stamped cigarettes and \$2,202 in U.S. currency were seized. Special agents arrested Hany M. Faltas of Hatfield, Pennsylvania, and Fateh Alwesh Sabbagh of Brooklyn, New York, and transported them to the Jersey City Police Department South for processing. The suspects were charged with third-degree possession of out-of-State stamped cigarettes, fourth-degree engaging in conduct requiring licensure without registration or license, third-degree failure to maintain records and fourth-degree engaging in a cigarette transaction with an unlicensed person with the intent to evade the State cigarette tax. Additionally, the vehicle used to illegally transport the cigarettes was seized pending forfeiture by OCI.
- On Sept. 17, 2014, Cynthia Perella was indicted on tax charges in Gloucester County. A joint investigation conducted by the

Gloucester County Prosecutor's Office and the Office of Criminal Investigation revealed that she failed to report all of her income on her New Jersey resident tax returns for tax years 2012 and 2013. While employed by the Harrison Township Fire District, Perella negotiated unauthorized checks made payable to herself and failed to report the checks as income on her New Jersey tax returns. Perella was charged with filing a fraudulent tax return and failure to pay. In addition to the tax charges, Perella was charged with forgery, theft by unlawful taking and official misconduct.

- On Oct. 1, 2014, an OCI Technical Enforcement Unit Investigator provided testimony to the Mercer County Grand Jury that resulted in a three-count indictment of Kalpesh M. Patel. He was charged with three separate counts of theft by deception illegal retention, misapplication of entrusted government property and failure to pay New Jersey State taxes. The charges are the result of an investigation into Mr. Patel's failure to replace dishonored payments of sales and use tax totaling

\$91,035.55 for the six businesses that he operates in New Jersey. If convicted, this will be a second conviction of the same nature as Mr. Patel pled guilty to similar charges in 2013 in the Trenton Municipal Court.

- On Oct. 6, 2014, an OCI special agent performed a compliance inspection at a business in Montvale, New Jersey, which resulted in the seizure of 437.7 counterfeit-stamped and out-of-State stamped cartons of cigarettes. The owner of the business was arrested and charged with multiple cigarette- and forgery-related crimes.
- On Oct. 21, 2014, Vito Alberti, Domenick Pucillo, Robert Spagnola, Manuel Rodriguez, Abel J. Rodriguez and John W. Trainor were arrested and charged with first-degree racketeering, first-degree money laundering, first-degree conspiracy and various other charges. Following their arrests, the defendants were jailed and bail was set at \$400,000 each. This ongoing criminal investigation is being conducted by the New Jersey Division of Criminal Justice in conjunction with the

continued on page 6

Enforcement Summary Statistics **Fourth Quarter 2014**

Following is a summary of enforcement actions for the quarter ending Dec. 31, 2014.

	Number	Amount
• Bank Levies	531	\$ 2,987,724
• Certificates of Debt	2,540	30,899,021
• Seizures	90	1,398,092
• Auctions	11	251,121
• Warrants of Satisfaction	4,678	



criminal enforcement - from pg. 5

New York County District Attorney's Office, Queens County District Attorney's Office, U.S. Department of Homeland Security, Florida Department of Financial Services, New York City Police Department, Internal Revenue Service, New Jersey Department of Banking and Insurance, New Jersey State Police, El Dorado Task Force and the Office of Criminal Investigation's Forensic Auditor.

- On Oct. 28, 2014, OCI seized a total of 763.4 cartons of counterfeit New Jersey tax-stamped cigarettes (485.4 cartons) and Virginia tax-stamped cigarettes (278.0 cartons) discovered by the Newark Police Department during an unrelated narcotics investigation. OCI also seized 59,400 counterfeit New Jersey tax stamps, 44,722 counterfeit Pennsylvania tax stamps, \$20,872 in U.S. currency and a minivan. The owner of the business, Kelvin Nunez, was arrested by special agents in Newark along

with his father, Jose Nunez, who was later arrested at his home in Bloomfield, New Jersey. Both were charged with 13 offenses comprised of Title 54 and Title 2C related charges.

- An OCI auditor on the Stolen Identity Refund Fraud Task Force worked in collaboration with the U.S. Postal Inspection Service in an ongoing fraud investigation. He confirmed that four fraudulent New Jersey income tax refund checks in the amount of \$5,672 were suspicious based on the proximity of their addresses. In addition, three fraudulent paid preparers were blocked from submitting returns in the future. The paid preparers' addresses were in Philadelphia, Pennsylvania; Bronx, New York; and Queens, New York. The preparer from Queens submitted 151 fraudulent income tax returns for the 2013 tax year that represented \$126,584 in requested refunds. The procedures put in place by the Special Frauds Unit prevented 96 percent of this amount from being released. □

Tax Briefs

Gross Income Tax

Employee Death Benefits & 9/11 Victims' Compensation – A taxpayer inquired whether an employee death benefit is subject to tax and required to be reported on the New Jersey income tax return (Form NJ-1040).

The taxpayer received a payment as a result of her husband's death. Her husband was a firefighter who died in the 9/11 terrorist attack and the payer is the Fire Pension Fund. She will receive a payment every year for life. The taxpayer received Form 1099-R with an amount in Box 7, Distribution Code 4 (Death).

N.J.S.A. 54A:6-4(b) provides that "employees' death benefits, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee" are excluded from gross income.

The Division responded that a death benefit payment that is reported on Form 1099-R, in Box 7, Distribution Code 4 (Death), and paid by the Fire Pension Fund due to the death of the taxpayer's husband as a firefighter in the 9/11 terrorist attack, is excluded from New Jersey gross income.

Additionally, payments from the September 11th Victim Compensation Fund and other qualified disaster relief payments that are excluded from income when received by a victim are also excluded when received as a survivor annuity by a child, spouse, or former spouse of a public safety officer. This exclusion applies to the amount of the annuity based on the decedent's service as a public safety officer. For this purpose, the term "public safety officer" includes police and law enforcement officers,

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Account number: 1234

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Credit Card

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www.state.nj.us/treasury/taxation/





tax briefs - from page 6

firefighters and rescue squad and ambulance crews.

Sales and Use Tax

Donation Made Through a Crowdfunding Website – The Division received an inquiry as to whether a donation made through a “crowdfunding” website is subject to sales and use tax.

Crowdfunding websites provide a platform for filmmakers, musicians, artists, authors, designers and others to solicit donations for their projects. For example, an author located in New Jersey who wants to raise money to publish a book may agree to provide a copy of the finished book to his or her contributors in return for a \$10 donation to the project.

The New Jersey Sales and Use Tax Act imposes tax on the retail sale of tangible personal property unless a valid exemption exists. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-6. The Division concluded that there is no “retail sale” of tangible personal property when a donation is made through a crowdfunding website. Therefore, in the example above, the \$10 donation to the author is not subject to sales or use tax. The fact that, in return for a donation to the project, the author agrees to provide a copy of the finished book to contributors at a later date does not change this conclusion. However, the author is required to pay either sales or use tax (depending on the circumstances) on the books given to contributors.

Taxability of Walk-In Bathtubs – A taxpayer, who is a seller of walk-in bathtubs, inquired whether sales tax must be collected on retail sales of walk-in bathtubs to customers. The taxpayer described the walk-in

bathtubs as having built-in powered bath chairs and lifts. These walk-in bathtubs are specially designed for individuals who cannot use conventional bathtubs due to a disability or chronic illness. The built-in powered bath chairs and lifts aid individuals to raise or lower themselves in and out of the water.

The Division responded that the New Jersey Sales and Use Tax Act imposes tax on retail sales of tangible personal property unless a valid exemption exists. N.J.S.A. 54:32B-3(a). Sales of mobility enhancing equipment sold by a doctor’s prescription for human use are exempt from tax. N.J.S.A. 54:32B-8.1(a).

Mobility enhancing equipment is defined in N.J.S.A. 54:32B-8.1(b) as “equipment, other than durable medical equipment, that:

1. is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle; and
2. is not generally used by persons with normal mobility; and
3. does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.”

Based on the above, sales of walk-in bathtubs that contain built-in powered bath chairs and lifts are exempt from tax as mobility enhancing equipment, so long as the purchaser presents a doctor’s prescription to the seller.

Sales of walk-in bathtubs which do not have built-in powered bath chairs and lifts are taxable because they are generally used by people with normal mobility and do not, therefore, satisfy the requirements for exemption from tax. □

In Our Courts

Administration

Bankruptcy – *Daniel P. McGlone v. Director, Division of Taxation*, decided June 25, 2014; Tax Court, Docket No. 006378-2003.

McGlone was the President and 100% shareholder of a construction company incorporated in New Jersey (the Company) which filed for bankruptcy in 1990. The Division filed a timely priority claim estimating that the Company owed \$100,000 in various taxes, including employer withholdings of gross income tax, which is a trust tax. In 1997, a final decree was entered in Bankruptcy Court on the Chapter 7 liquidation.

continued on page 8

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in our courts - from page 7

In 2001, McGlone filed the Gross Income Tax Reconciliation of Tax Withheld (Form NJ-W-3) for 1988, 1989 and 1990 on behalf of the Company. Three months later the Division issued a Notice of Finding of Responsible Person Status to McGlone that assessed \$175,071 for unpaid gross income tax withholdings plus penalty and interest for 1988 through 1990.

McGlone filed a complaint in Tax Court alleging that the Division filed the 2001 assessment after the statute of limitations had expired, and that the liability for the assessment expired at the end of the bankruptcy proceedings in 1997.

The Tax Court first addressed McGlone's claim that the Division's assessment was beyond the statute of limitations. The Court found that the Division's 2001 Notice of Finding of Responsible Person Status was timely because the 1988, 1989 and 1990 NJ-W-3s were filed in 2001, which was when the three-year statute of limitations began to run (N.J.S.A. 54A:9-4(a)).

With respect to McGlone's contention that the Company's tax debt and his responsibility for that debt expired at the end of the bankruptcy proceedings, the Court ruled that

because the debt was for trust fund taxes it was not dischargeable in bankruptcy. The Court cited a case decided by the Supreme Court of the United States that held that trust fund tax debts are not dischargeable under any circumstances. Additionally, as a responsible person, McGlone was personally liable for any withholding taxes that were not remitted by the Company.

Penalties – *United Parcel Service General Services Co. v. Director, Division of Taxation*, decided Dec. 4, 2014; New Jersey Supreme Court No. A-16/17 September Term 2013, 072421.

The New Jersey Supreme Court (Court) affirmed the New Jersey Tax Court and the Appellate Division on the issue of whether late payment penalties and amnesty penalties applied.

The Court concurred with the New Jersey Tax Court and the Appellate Division that the Division should have waived the late payment penalties because the taxpayer had "reasonable cause" for not paying the tax. In writing, the Division stated that one of the United Parcel companies demonstrated "reasonable cause in this matter." Additionally, there was no "directly pertinent legal authority" in existence regarding the issue.

The Court concurred with the Appellate Division's affirmance of the New Jersey Tax Court conclusion that the Division improperly assessed amnesty penalties under the 1996 and 2002 tax amnesty statutes. (N.J.S.A. 54:53-17, -18). After reviewing the statutes, the Court found that neither amnesty statute addressed a taxpayer who was found to owe additional taxes pursuant to an audit and who paid all its

reported tax liabilities on its timely filed tax returns. The Court relied on the legislative history and the State Treasurer's testimony concerning the 1996 amnesty statute. During that testimony, the Treasurer stated that the penalty would not be applied to taxes found on a routine audit of a compliant taxpayer in which a question of law or fact exists.

Corporation Business Tax Taxes Included in Determining Entire Net Income – *PPL Electric Utilities Corporation v. Director, Division of Taxation*, decided Oct. 2, 2014; Tax Court, Docket No. 000005-2011.

N.J.S.A. 54:10A-4(k)(2)(C) of the Corporation Business Tax Act requires that when determining New Jersey entire net income a taxpayer must add back certain taxes, including taxes on or measured by profits or income or business presence or business activity that were deducted for federal tax purposes. In this case, the relevant taxes that the Division required the taxpayer to add back include taxes paid to Pennsylvania that are measured by profits or income or business presence or business activity. At issue was whether the (1) Pennsylvania Gross Receipts Tax (PAGRT) and/or (2) Pennsylvania Capital Stock Tax (PACST) must be added back to determine New Jersey entire net income for tax years 1999 and 2000.

The PAGRT is measured solely on the amount of electricity sold, and the tax is passed on to the consumer of electricity. The Court ruled that the PAGRT is an excise tax, and the taxpayer was not required to add it back to determine entire net income because the tax is not measured by

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under "[Auctions](#)." Select the name of the business for details about that auction.

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in our courts - from page 8

business presence or business activity or income or profits.

The PACST is determined by using the taxpayer’s average accumulated book income over five years and the taxpayer’s net worth. In examining the PACST, the Court found that the Pennsylvania courts have held that the PACST resembles a property tax. The Tax Court decided that the taxpayer was not required to add back the PACST because it is measured by the value of the company’s assets, and therefore not a tax measured by profits or income or business presence or business activity. □

In Our Legislature

Gross Income Tax

Checkoff for ALS Association Support Fund — P.L. 2014, c.80, signed into law on Dec. 11, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the ALS Association Support Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Miscellaneous

Economic Opportunity Act of 2014, Part 3 — P.L. 2014, c.63, was signed into law on Oct. 24, 2014, and took effect immediately.

This act modifies laws concerning incentives for certain economic development projects. It makes tax credit transfer certificates under the “Urban Transit Hub Tax Credit Act” and the “Grow New Jersey Assistance Act” (GROW NJ) more widely available by reducing the minimum amount of the credits that may be transferred from \$100,000 to \$25,000. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) and tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2014](#) [2015](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2014](#) [2015](#)



important phone numbers

Customer Service Ctr.... 609-292-6400
 Automated Tax Info ...1-800-323-4400
 609-826-4400
 Homestead Benefit Hotline
 for Homeowners..... 1-888-238-1233
 Property Tax Reimbursement
 Hotline.....1-800-882-6597
 Earned Income Tax Credit
 Information..... 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
 System 609-341-4800
 Alcoholic Bev. Tax 609-633-7068
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions..... 609-292-5323
 Director’s Office 609-292-6400
 Inheritance Tax..... 609-292-5033
 Local Property Tax..... 609-292-7974
 Motor Fuels Tax
 Refunds 609-633-8870
 Public Utility Tax..... 609-633-2634

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax it withheld during the previous tax year was \$10,000 or more.

[2014](#) [2015](#) □

Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the jurisdiction’s website.

Massachusetts 3/16/15 – 5/15/15

www.mass.gov/dor/breaking-news/amnesty/tax-amnesty-info.html

New Jersey State Tax news

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Fall Outreach a Success

The Division of Taxation received over 35,000 payments for outstanding liabilities from a recent outreach to taxpayers owing back taxes to New Jersey.

From Oct. 1 to Nov. 17, 2014, the Division offered businesses and individuals the opportunity to pay outstanding tax liabilities with reduced or eliminated penalties, decreased interest, no costs of collection and no recovery fees. The offer covered liabilities for tax periods 2005 through 2013.

Taxpayers responded in record numbers to the Division's offer to clear their accounts at a substantial savings, and most of them made their payments electronically. The Division's Customer Service Center and Regional Offices answered over 9,700 calls, with the offices handling over 1,000 walk-in visits from taxpayers seeking information or assistance.

Initially, the Division contacted taxpayers with known tax debt from 2005 through 2013. However, any taxpayer who owed back taxes for that period could participate.

As a result, both deficient taxpayers — those who had filed returns but still owed tax — and delinquent taxpayers — those with unfiled returns — voluntarily came forward to pay outstanding tax liabilities. The Division will notify these taxpayers if they owe any additional amounts.

Taxpayers who took advantage of this payment opportunity entered into a closing agreement with the Division, which stipulated that the matter was closed, and waived their right to any further administrative review or judicial appeal.

Those who failed to take advantage of the opportunity remain on record as owing their full liability, including penalties, interest, collection costs and/or recovery fees. □

Taxation Collects Back Taxes From Boat Owners

Over the past two years, investigators from the Division of Taxation have recovered \$2.3 million in sales and use taxes from boat owners in New Jersey.

The Division, along with the New Jersey State Police and other agencies, actively search the waterways of New Jersey to find people or businesses attempting to evade sales or use tax on their vessels.

Taxation investigators patrol New Jersey's intercoastal waterways, lagoons and marinas to search for possible tax evaders who have failed to pay tax on their vessels at the time of purchase or first use in New Jersey.

Boats purchased by New Jersey residents from an in-State dealer are subject to 7% sales tax. Boats purchased from an out-of-State dealer

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are subject to use tax the first time they are used in New Jersey. Boats purchased from a nondealer are subject to sales tax if they are required to be registered in New Jersey. Out-of-State residents are subject to sales tax if they own property in New Jersey and have not paid sales tax of at least 7% to their home state.

Investigators also receive referrals from other states regarding boat purchases made by New Jersey residents. Some people purchase a boat in another state but fail to pay the required use tax when they bring it back to New Jersey.

The following are examples of recent enforcement action taken against boat owners who failed to comply with New Jersey sales and use tax laws:

- A Pennsylvania resident who docked his vessel in Wildwood, New Jersey met the New Jersey registration requirement but failed to remit use tax on his vessel. Investigators from the Division of Taxation, accompanied by the New Jersey State Police, seized the vessel until the owner was able to pay \$4,222, including penalty and interest, to release the vessel.
- A Taxation investigator observed a Delaware-registered vessel near the Canyon Club Resort Marina in Cape May, New Jersey. Investigators advised the vessel's owner that he was not in compliance with New Jersey tax laws. He agreed to pay \$14,496.
- Investigators canvassing a marina in Cape May discovered the owner of a charter fishing boat had taken an improper sales tax

exemption when he registered his vessel as a head boat. In order for a vessel to be tax-exempt as a head boat, the following conditions must be met: passengers must pay individually and board first come, first served; the vessel must be certified by the U.S. Coast Guard to carry more than six passengers; anglers must be permitted to fish at any time; and the vessel must be primarily engaged in sport fishing and sail on a daily fishing schedule for a designated species set by the captain. The investigators determined that the vessel operated as a charter fishing boat and, as such, was subject to use tax. The owner paid \$13,020 in back taxes.

- A New Jersey resident was found to have formed a Delaware corporation to purchase a vessel he docked in the Garden State in an attempt to evade sales tax. Because the company had no other purpose than to shield the buyer from paying sales tax, the owner was assessed tax plus penalty and interest totaling \$87,143.

For additional information about the taxability of boats and vessels visit the Division's [website](#) or send an email to TaxRevOps@treas.nj.gov. □

State Investigators Recover Unpaid Business Taxes

New Jersey Division of Taxation investigators engaged in various enforcement actions during July.

- On July 1, 2014, Taxation investigators from the Northfield and Neptune Revenue Opportunity

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation

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unpaid business taxes - from page 2

Teams participated in a joint truck surveillance detail with the New Jersey State Police and the New Jersey Motor Vehicle Commission. About two dozen out-of-State businesses were inspected in Carneys Point, Salem County, and six companies were assessed \$68,860 in back taxes.

- The State Police teamed up with the same Taxation investigators again on July 9, 2014, to inspect out-of-State businesses at the Carneys Point Weigh Station. They canvassed 46 out-of-State businesses, assessed seven companies \$38,500 in back taxes and secured two new business registrations. Five of the businesses that had previously been inspected and assessed for not paying taxes were found to be in compliance and paying all appropriate taxes.
- A Taxation field investigator secured \$60,466 in use tax from a Long Branch, Monmouth County,

businessman who was abusing dealer plates on three classic cars purchased as an investment. The vehicles had dealer tags that were being used improperly to avoid paying sales tax. The owner of the vehicles paid the tax after being informed of the law regarding dealer tags.

- On July 15, 2014, Taxation investigators from the Northfield Regional Office seized a restaurant in Egg Harbor Township, Atlantic County, for failure to pay State taxes. Division staff entered the establishment, served warrants of execution, secured the business and demanded full payment. The owner paid the warrant amount due of \$65,000, and the restaurant was allowed to remain open. □

Partnership Filing Requirements

Every partnership that has income or loss derived from New Jersey sources, or that has a New Jersey resident partner during the tax year, must file a New Jersey partnership return and pay any required filing fee and nonresident partner tax even if its principal place of business is outside of New Jersey. This article lists the New Jersey forms partnerships must use to file returns, submit payments and request extensions, along with their due dates.

Filing Returns

Form NJ-1065: The New Jersey Partnership Return is an annual tax return which partnerships use to report the number of partners and any nonresident partner tax. For calendar year filers, the 2014 NJ-1065 is due by April 15, 2015. Fiscal year filers must file their returns by the 15th day of the fourth month following the

close of the fiscal year. For example, a partnership with a fiscal year of July 1, 2014 – June 30, 2015, must file by Oct. 15, 2015.

Submitting Payments

Form PART-100: Partnerships that file Form NJ-1065 may also be required to file Form PART-100, Partnership Filing Fee and Tax Payment Return, which is submitted with payment of the partnership’s filing fee and/or the nonresident partner tax. The partnership is required to file the PART-100 and remit the taxes and/or fees on or before the original due date of the New Jersey partnership return.

If Line(s) 24 and/or 25, Form NJ-1065, reflect nonresident partner tax, the partnership has not satisfied all of its filing and payment requirements when it files *only* the partnership return, Form NJ-1065. Partnerships that are subject to the filing fee and/or the nonresident partner tax must also file Form PART-100 and remit any balance due. Partnerships may be subject to the filing fee if they have three or more partners and to the nonresident partner tax if they have nonresident partners. Payments made on behalf of the partnership by any tiered partnerships are also reported on the PART-100.

Requesting Extensions

Form NJ-1065: To receive a five-month extension of time to file Form NJ-1065, a partnership that obtained an extension of time to file the federal Form 1065 must include a copy of the federal application for extension, Form 7004, with the New Jersey partnership return when filed, and check the box labeled “Application for Federal Extension

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2014 – Dec. 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

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is attached” at the top of Form NJ-1065.

Partnerships that do not obtain a federal extension are required to submit the federal Form 7004 to New Jersey as their extension request on or before the original due date of Form NJ-1065. **Note:** A federal extension filed with New Jersey will only extend the filing deadline of the New Jersey partnership return.

Form PART-100: Partnerships that are required to file Form PART-100 may request a five-month extension of time to file by filing the PART-200-T, Partnership Application for Extension of Time to File Return PART-100, on or before the original due date of PART-100. For an extension to be considered valid, the partnership must have paid at least 80% of their total fee and/or nonresident tax by the original due date.

Electronic Filing Mandate

Beginning with tax year 2011, partnerships that use the services of a paid preparer must electronically file *all* their returns completed by that practitioner. This includes Forms NJ-1065, PART-100 and PART-200-T. Payments must be made electronically either by the partnership or the paid tax preparer. In addition,

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s website under “**Auctions.**” Select the name of the business for details about that auction.

partnerships with 10 or more partners must also file all returns and submit all payments electronically whether or not they use the services of a paid preparer.

For additional information on the partnership filing fee and nonresident partner tax, see Technical Bulletin **TB-55(R)**, *Partnership Filing Fee and Nonresident Partner Tax*. For additional information on partnership filing requirements, see the instruction booklets for the New Jersey Partnership Return, Form **NJ-1065**, and the Partnership Filing Fee and Tax Payment Return, **PART-100**. □

LOCAL PROPERTY TAX

Tax Assessors’ Calendar

Oct. 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

Oct. 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran’s property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens (age 65), disabled persons, or surviving spouses/civil union partners (age 55) eligibility established (pretax year). Age or disability status established by December 31 (pretax year).

- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.

Nov. 1 (on or before)–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.

Nov. 15–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.

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- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

Dec. 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

Dec. 1 (on or before)–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations or reassessments.
- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

Dec. 20 (on or before)–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

Dec. 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates

on the assessors' calendar have been revised for municipalities in Monmouth County:

Nov. 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).

Nov. 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year's taxes (pretax year). □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On May 21, 2014, Office of Criminal Investigation (OCI) special agents arrested four individuals in the City of Newark who were involved in trafficking, sales and possession of 7.9 cartons of New Jersey counterfeit-stamped cigarettes, 27,327 cigars and 223 pouches of cigarette tobacco to be used for roll-your-own cigarettes. Three subjects were processed at the Newark Police Department, charged with indictable offenses relative to the contraband and remanded to Essex County Jail. The fourth subject was released for a later appearance before the Court.
- On May 21, 2014, OCI special agents, with the assistance of the Camden County Sheriff's and Prosecutor's Offices, executed search warrants after a surveillance operation of an open air contraband market in a Camden City strip mall, which led to the search of storage units, homes and a vehicle. Three individuals

**Enforcement Summary Statistics
Third Quarter 2014**

Following is a summary of enforcement actions for the quarter ending Sept. 30, 2014.

	Number	Amount
• Bank Levies	579	\$ 3,188,512
• Certificates of Debt	3,397	53,812,302
• Seizures	63	1,134,368
• Auctions	7	240,478
• Warrants of Satisfaction	4,098	

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were arrested. One had an outstanding warrant for failing to register as a sex offender, and another was transported to the Essex County Jail for outstanding criminal warrants. The third subject was released on his own recognizance pending a court appearance. More than 60 cartons of Delaware-stamped cigarettes, over 5,000 pirated DVDs, a DVD manufacturing device and related equipment were seized. OCI received assistance from the motion picture antipiracy group.

- On May 22, 2014, OCI special agents arrested a resident of Colonia, New Jersey, who was supplying New Jersey counterfeit-stamped cigarettes to retailers in central New Jersey. The subject was found in possession of 766.9 cartons bearing counterfeit New Jersey and Virginia stamps and legitimate Virginia stamps. A total of 1,700 counterfeit New Jersey stamps along with related application paraphernalia were seized. Additionally, \$41,350 in U.S. currency was seized. Numerous sheets from which counterfeit stamps had already been transferred to packs were recovered as evidence. The subject was processed at the Woodbridge Police Department. Indictable charges related to counterfeiting tax indicia and contraband possession have been filed in Superior Court. This arrest was a result of an OCI undercover operation.
- On May 30, 2014, OCI special agents arrested two subjects associated with a Newark, New Jersey, wholesaler and charged the owner with indictable counts related to possession of contraband

tobacco, failure to keep books and records and failure to file returns. A second subject was charged with related disorderly persons offenses and released pending a court appearance.

- On May 30, 2014, two Virginia residents were stopped by the New Jersey State Police while traveling on the New Jersey Turnpike. The subjects were in possession of 418 cartons of Virginia-stamped cigarettes. Both were charged by OCI special agents with four indictable crimes, each relative to violations of the Cigarette Tax Act, which will be heard in Burlington County Superior Court. The cigarettes were valued at \$36,073.40 and the tax due to New Jersey is \$11,286.
- On June 5, 2014, Joseph H. Kayati Jr. of Camden, New Jersey, was charged in a 33-count indictment for allegedly stealing more than \$48,000 by continuing to cash his father's annuity checks for more than two years after his death. He was charged with 26 counts of forgery, 2 counts of failure to pay taxes and 1 count each of theft by deception, identity theft, theft by failure to make required disposition of property received, failure to file income tax returns and filing a false or fraudulent NJ-1040 tax return. All of the counts were third-degree charges. The State Grand Jury indictment alleges that between Nov. 21, 2011, and Dec. 23, 2013, Kayati Jr. stole \$48,382 in annuity checks from Monarch Life Insurance Company. It was alleged that he failed to report that his father had died in 2011. Over the course of more than a year, Kayati Jr. allegedly took 26 annuity checks

out of his father's post office box and cashed them, forging his father's signature on each check. It was also alleged that he failed to report the annuity proceeds as taxable income to the New Jersey Department of the Treasury. Third-degree crimes carry a maximum sentence of five years in State prison and a criminal fine of up to \$15,000. This case was a joint effort with the Office of the Attorney General, the Office of Insurance Fraud Prosecutor, New Jersey State Police Private Detective Unit, Waterford Police Department and the Office of Criminal Investigation.

- On June 18, 2014, OCI performed a compliance inspection at Downtown Trader LLC located on Market Street in Newark, New Jersey. Seized were 32.7 cartons of contraband cigarettes. The owner of the business was arrested and processed at the Newark Police Department. OCI filed indictable charges to be heard in Superior Court.
- On June 19, 2014, OCI performed a compliance inspection at Fresh Wok restaurant located on Stuyvesant Avenue in Newark, New Jersey. The inspection resulted in the seizure of 207.9 cartons of unstamped/out-of-State cigarettes, 16 Marlboro "loosies," 1,639 cigars and 5 pouches of cigarette tobacco. The owner was arrested and charged with indictable offenses in Superior Court.
- On June 19, 2014, during an inspection at Abdul Mini Market in Newark, New Jersey, OCI special agents found contraband tobacco products as well as various bags and boxes of suspected controlled

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dangerous substances (CDSs). Some of the pouches contained suspected synthetic marijuana. The Newark Police Department Narcotics Unit seized the CDSs. The respective agencies arrested and charged the subject for the CDSs and contraband tobacco.

- On July 4, 2014, OCI special agents responded to information related to importation of untaxed/counterfeit Newport cigarettes from mainland China. Agents recovered 43 cartons as well as evidence tying an Old Bridge, New Jersey, resident to an ongoing contraband operation in central New Jersey. The investigation resulted in the arrest of Othello Alferd of Old Bridge, New Jersey, on Aug. 21, 2014. During his arrest an additional 93.4 cartons of counterfeit cigarettes were seized. The subject was remanded to Middlesex County Jail in lieu of \$25,000 cash.
- On July 22, 2014, OCI staff assisted in a multi-agency investigation of contraband cigarettes originating in Virginia and trafficked over several state lines. The subject was observed loading suspected contraband cigarettes into his vehicle at another suspect's home in Winchester, Virginia. As a result of a motor vehicle stop in New Jersey, the subject gave consent to search his vehicle, where 915 cartons of Virginia-stamped cigarettes valued at \$79,788 were found. OCI special agents arrested the subject and charged him with violations of the Cigarette Tax Act.
- On July 24, 2014, an OCI special agent was ordered by the

presiding Judge to arrest two defendants who failed to appear in the City of Passaic Municipal Court on various charges for contraband cigarette cases. Ambioris Y. Genoa was arrested at his business that afternoon and brought before the Court. A second defendant, Francis C. Robles, turned himself in to the Passaic Police Department later that evening.

- On July 24, 2014, Brian K. Lewis, appeared at the Burlington County Courthouse in Mount Holly, New Jersey, on charges of tax evasion and theft by deception. Lewis was arrested in Riverside, New Jersey, for the tax charges on a warrant issued by the Prosecutor's Office. A victim later came forward with an additional complaint alleging Lewis had agreed to do repair work on his home for more than \$30,000 and did not fulfill the contract. An auditor from OCI testified in Court on July 18, 2014, that Lewis had not paid any taxes since 2002 and was on probation since January 2014 for unregulated contracting. During subsequent hearings, Superior Court Judge Susan L. Claypoole set Lewis's bail at \$100,000, no 10 % cash option, for the tax charges, and Judge Jeanne T. Covert set bail at \$20,000, 10 % cash option, for the theft charges. Lewis is being held at the Burlington County Jail in Mount Holly. In June 2013, he was arrested for allegedly impersonating a police officer to extort an immigrant worker out of \$15,000. Court records show he pled guilty to charges of theft through illegal retention in 2011 and charges of theft by deception in August 2013. For the latter charge, he was sentenced to four years' probation.

- On July 30, 2014, OCI executed a search warrant against the owner of M & K Snacks in Clifton, New Jersey. Seized were 8 cartons of Virginia-stamped Newport cigarettes, 2 cartons of counterfeit New Jersey-stamped Marlboro cigarettes, 62,568 cigars, 1,011 pouches of cigarette tobacco, 27 cans of snuff, 164 Cialis pills, 210 Viagra pills, 198 African Superman pills, various receipts, books and records. Also seized were a 2005 Honda Accord and \$44,195 in U.S. currency. The owner of the business and his son were arrested.
- On July 31, 2014, an OCI special agent responded to the Newark Police Department Vice Unit's inquiry about the discovery of possible sheets of counterfeit New Jersey stamps. Upon examination, the agent arrested the store owner for possession of counterfeit New Jersey stamps. The subject was charged with two third-degree crimes, a fourth-degree crime and disorderly persons offenses. The subject was also selling loose cigarettes and was in possession of 2.4 cartons of Virginia and New Jersey counterfeit-stamped cigarettes. □

Tax Briefs

Gross Income Tax

National Guard Pension – A taxpayer asked whether a National Guard pension should be reported on the NJ-1040 and whether it is subject to New Jersey gross income tax.

The Division responded that for tax years beginning on or after Jan. 1, 2001, New Jersey law excludes from

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gross income “military pension payments or military survivor’s benefit payments paid to individuals by the United States with respect to service in the Armed Forces of the United States.” N.J.S.A. 54A:6-26.

While the New Jersey Gross Income Tax Act does not define “Armed Forces of the United States,” Internal Revenue Code §7701(a)(15) provides that the term “Armed Forces of the United States” includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and the Coast Guard. Members of these forces include commissioned officers and personnel below the grade of commissioned officers.

The exclusion for military pensions applies to pensions resulting from service in the Army, Navy, Air Force, Marine Corps or Coast Guard. This exclusion does not apply to civil service pensions or annuities, even

if the pension or annuity is based on credit for military service. Most military pensions and survivor’s benefit payments are paid by the U.S. Defense Finance and Accounting Service, while a civil service annuity is paid through the U.S. Office of Personnel Management.

New Jersey considers the New Jersey National Guard to be part of the “Armed Forces of the United States” because they are subject to the regulations and jurisdiction of the Army and Navy. Consequently, military pensions paid to noncivilian members by the U.S. Defense Finance and Accounting Service are excluded from New Jersey gross income. However, payments from a National Guard civilian’s pension made through the U.S. Office of Personnel Management or from any source other than the U.S. Defense Finance and Accounting Service are to be included in New Jersey gross income and are subject to tax because that pension is not a military pension.

Sales and Use Tax

Breast Radiation Treatment Catheter Device – The taxpayer, a manufacturer of medical devices, inquired about whether sales of breast radiation treatment catheter devices to hospitals and physicians are subject to sales tax. The taxpayer stated that the device is used in the following manner:

Brachytherapy, also known as internal radiation, is a means to deliver radiation therapy. Instead of aiming radiation beams from outside the body, radioactive seeds or pellets are placed into the breast tissue next to the cancer. A device is put into the space left from breast-conserving surgery and is left in place until treatment is complete. The device goes into the breast as a small catheter (tube). The end of the device inside the breast is then expanded so that it stays securely in the right place for the entire treatment. The other end of the catheter sticks out of the breast. For each treatment, one or more sources of radiation (often pellets) are placed down through the tube and into the device for a short time and then removed. Treatments are given twice a day for five days as an outpatient. After the last treatment, the device is collapsed down again and removed.

The retail sale of tangible personal property is subject to tax unless a valid exemption applies. N.J.S.A. 54:32B-3(a). The Sales and Use Tax Act contains an exemption for the sale of a prosthetic device. N.J.S.A. 54:32B-8.1. “Prosthetic device” means a replacement, corrective, or

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Routing number: 20202088
Account number: 1234

For: 2502500291

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supportive device (including repair and replacement parts for same) worn on or in the body in order to: (1) artificially replace a missing portion of the body; (2) prevent or correct a physical deformity or malfunction; or (3) support a weak or deformed portion of the body.

The Division responded that because the breast radiation treatment catheter device is worn in the body and is part of the radiation treatment used to correct a physical deformity or malfunction it is considered to be a prosthetic device and is exempt from tax.

Charges for Services Offered in Connection With the Sale of a Cellular Phone – A cellular phone retailer inquired as to whether charges for the following services performed in connection with the sale of a cellular phone are subject to sales and use tax:

1. Activation of the phone on a new plan;
2. Assistance in changing phone numbers;
3. Data transfer from one phone to another; and
4. Troubleshooting various issues associated with a phone's use.

The Division responded as follows:

1. Activation of the phone is necessary to complete the sale of the phone. Thus, the charge for activation is taxable as part of the sales price of the phone. N.J.S.A. 54:32B-2(oo).
2. The charge to assist customers in changing a phone number is not subject to tax.

3. The charge to transfer data from one phone to another is not subject to tax.
4. The charge to troubleshoot and resolve issues associated with the phone is taxable as the servicing of tangible personal property. N.J.S.A. 54:32B-3(b)(2).

Postage Sold in Connection With Printed Advertising Material – A taxpayer who sells printed advertising material inquired about the taxability under the Sales and Use Tax Act of each of the following methods for selling postage to its customers:

1. The taxpayer collects a prepayment deposit from its customer for the cost of the postage for the mailings, procures the postage and mails the material;
2. The customer, using its own postal permit, deposits an amount equal to the estimated cost of the postage in its own United States Postal Service (USPS) account; and
3. The customer, using its own postal permit, allows the USPS to direct debit the cost of the postage from the customer's account.

The Division responded that sales tax is imposed on sales of printed advertising material as well as printed advertising material processing services. There are exemptions in

the Act for printed advertising material delivered to out-of-State recipients, and for the processing services performed in connection with such material. N.J.S.A. 54:32B-8.39; N.J.S.A. 54:32B-3(b)(5). Processing services are described as addressing, separating, folding, inserting, sorting and packaging advertising material and transporting to the point of shipment.

The definition of "sales price" includes delivery charges. N.J.S.A. 54:32B-2(oo)(1)(D). The definition of "delivery charges" includes postage since postage is the means by which printed advertising material is delivered (delivery is part of the processing service). N.J.S.A. 54:32B-2(rr). Thus, postage charged to a customer as part of the sales price for printed advertising material and processing services where the material is delivered to a location in New Jersey is taxable. The postage expense is part of the taxable sales price whether or not separately stated to the customer. However, postage charged to a customer as part of the sales price for printed advertising material and processing services where the material is delivered out-of-State is not taxable. N.J.S.A. 54:32B-8.39.

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Delivery charges only refer to charges made by the seller of goods and services. The purchase of postage directly from the USPS is not taxable.

Starting with the premise that the charges for the printed advertising material are taxable, the Division responded to the taxpayer as follows:

1. The prepayment deposit is taxable because the taxpayer is purchasing the postage and the postage expense is part of the sales price of the printed advertising material and processing services;
2. The charge for the customer using its own postal permit is not taxable since the postage is purchased directly from the USPS; and
3. The charge for the customer using its own postal permit and allowing the USPS to direct debit the cost of the postage from the customer's account is not taxable because the customer makes payment directly to the USPS. □

In Our Courts

Sales & Use Tax

Bankruptcy – *Glenn B. Slater v. Director, Division of Taxation*, cert. denied, April 21, 2014; United States Supreme Court, Docket No. 13-925.

Taxation issued plaintiff/petitioner (Slater) a Notice of Finding of Responsible Person Status for sales and use taxes owed by his business. Slater did not challenge this notice. Two years later, Slater filed a petition for Chapter 11 bankruptcy. Taxation filed proof of claims for sales and use tax, which were later expunged as untimely. The Court never issued

an order that the claims were discharged or dischargeable. In 2002, the Bankruptcy Court dismissed Slater's bankruptcy petition without there being a discharge as to any debt in the bankruptcy proceeding. In 2008, Slater filed a complaint in Tax Court seeking a refund of sales and use tax and argued that Taxation was barred from collecting because Taxation's claims were expunged by the Bankruptcy Court. Taxation moved to dismiss the complaint on the grounds that it was not filed within 90 days.

The Tax Court dismissed Slater's complaint for lack of subject matter jurisdiction, thereby denying Slater's refund claim. The Appellate Division affirmed, stating that Taxation's claims "were not discharged or deemed dischargeable in the bankruptcy proceeding and, because plaintiff's petition was dismissed, the order expunging the Director's claims was vacated as a matter of law. See 11 U.S.C.A. §349. Plaintiff was therefore mistaken in his belief that the Director's claims were disposed of in the bankruptcy proceeding and, because he did not file his claim for a refund on a timely basis, it was properly dismissed." Slater petitioned higher courts but both the New Jersey Supreme Court and United States Supreme Court declined to hear Slater's appeal. □

In Our Legislature

Administration
State Agencies Required to Post Certain Rule-Making Procedures and Documents Online — P.L. 2013, c.259, was signed into law on Jan. 17, 2014, and took effect immediately, but was inoperative until July 1, 2014.

This law amends several provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to require State agencies to use various electronic technologies in rule-making procedures. Thus, each agency is required to post various documents (or URL address links thereto) to its website including, but not limited to, the text of all rule proposals, notices of rule adoptions, and the complete and current text of all agency rules.

The new law codifies the 30-day advance notice requirement for rule proposals to interested parties.

Dishonored Electronic Funds Transfers Criminalized — P.L. 2014, c.45, signed into law on Sept. 10, 2014, and effective immediately, provides that a person commits a crime if they issue or pass a check or similar payment of money knowing that it will not be honored by the drawee. The new law amends N.J.S. 2C:21-5 to specifically include payments made by electronic funds transfer (EFT). Thus, a person commits a crime if he/she authorizes an EFT knowing that it will not be honored. The degree of the crime and the associated penalties depend on the amount of the payment.

Dishonored Payments Recovery Process — P.L. 2014, c.46, signed into law Sept. 10, 2014, and effective immediately, provides a process for payees to recover payments which were dishonored for lack of funds or because the maker does not have an account with the drawee. Prior to the enactment of this law, the statute only applied to payments made by checks, drafts and orders of withdrawal. The new law amends N.J.S. 2A:32A-1 to specifically include payments made by electronic funds transfer (EFT).

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This new law does not increase penalties; it merely takes existing provisions and applies them to dishonored payments made by EFT.

Gross Income Tax

Checkoff for Homeless Veterans Grant Fund — P.L. 2013, c.239, signed into law on Jan. 17, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Homeless Veterans Grant Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for Leukemia & Lymphoma Society – New Jersey Fund — P.L. 2013, c.244, signed into law on Jan. 17, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Leukemia & Lymphoma Society – New Jersey Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for New Jersey Farm to School and School Garden Fund — P.L. 2014, c.38, signed into law on Aug. 25, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the New Jersey Farm to School and School Garden Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for Local Library Support Fund — P.L. 2014, c.47, signed into law on Sept. 10, 2014,

effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Local Library Support Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Local Property Tax

Certain Blue Acres Properties Exempt From Taxes — P.L. 2013, c.261, signed into law on Jan. 17, 2014, took effect immediately and is retroactive to Oct. 29, 2012, the date on which Superstorm Sandy made landfall in New Jersey.

The new law exempts certain designated blue acres properties acquired by municipalities from county, school and fire district taxes. A blue acres property is a parcel of real property acquired by a municipality using funds made available under a federal, county, municipal or State program for the acquisition of property situated in flood-prone areas of the municipality. The property becomes tax-exempt on the date it is acquired by the municipality.

Previously, any municipality that acquired a blue acres property before Oct. 1 was required to pay the taxes for the remainder of the year. If the municipality acquired the property after Oct. 1, it was required to pay the taxes not only for the remainder of that year but for all of the following year as well. This exemption will allow municipalities to take advantage of grants for acquiring properties in flood-prone areas without having to pay the associated tax liabilities.

Multiple Taxes

Certain State Tax Compliance Standards and Benefit Restrictions

— P.L. 2014, c.13, was signed into law on June 30, 2014, and took effect immediately, except that sections 1, 2 and 3 apply to privilege periods ending on or after July 1, 2014, and section 4 applies to sales made, services rendered and uses occurring on or after July 1, 2014. The new law restricts certain State tax benefits and clarifies existing law in order to protect revenue. These modifications were warranted as a result of recent Tax Court decisions.

Operational Income. Section 1 of the law revises the definition of operational income in response to the Tax Court's decision in *McKesson Water Products Co. v. Director, Div. of Taxation*, 200 N.J. 506 (N.J. 2009). Previously, operational income was defined as income from real or tangible property if the acquisition, management *and* disposition of the property constitute integral parts of the taxpayer's trade or business operations. The Court held that all three factors must be satisfied in order for income to be deemed operational. Under the new law, income will meet the definition of operational income as long as any one of the three factors (acquisition, management *or* disposition of the property) is an integral part of the taxpayer's regular trade or business operations.

Refunds of Partnership Payments.

Section 2 of the law clarifies the circumstances in which the tax paid by a partnership on behalf of its non-resident partners may be claimed in response to the Tax Court decision in *BIS LP, Inc. v. Director, Div. of Taxation*, 2014 N.J. Tax (App. Div. April 11, 2014).

in our legislature - from page 11

In 2002, legislation was enacted to require New Jersey partnerships to make payments on behalf of their nonresident partners. In the *BIS* decision, the Court interpreted this language to mean that a nonresident that was determined to have no filing obligation could be entitled to a refund of tax the nonresident did not pay, but that was paid on the nonresident's behalf. This new law clarifies that these payments are only refundable to a nonresident partner who files a New Jersey tax return and reports income that is subject to tax in this State. In that case, the nonresident partner may apply the tax that was paid by the partnership and credited to the nonresident partner's partnership account against the partner's tax liability. The law also provides that a partnership that pays tax pursuant to this section is not entitled to claim a refund of payments credited to any of its nonresident partners.

Parity with IRC Section 108. Section 3 of the law provides corporation business tax parity with the federal tax treatment of net operating losses (NOLs) when an entity receives discharge of indebtedness in certain circumstances.

The Internal Revenue Code excludes certain categories of debt cancellation from income (such as discharges in bankruptcy). Instead, IRC Section 108(b) calls for a reduction of certain "tax attributes," including NOLs. The New Jersey Corporation Business Tax Act provides no such reduction. The new law requires that a net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period must be reduced by the amount excluded from

federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC Section 108, for the privilege period of the discharge of indebtedness.

Sales and Use Tax: Click-Through Nexus. Section 4 of the law creates the presumption that a remote seller making sales to New Jersey customers of tangible personal property, specified digital products or services taxable under the Sales and Use Tax Act has nexus with New Jersey and is required to collect and remit New Jersey sales tax if that seller enters into an agreement to pay a commission or other consideration to an independent contractor or other representative located in this State who refers customers to that seller, whether by a link on a website or otherwise. The independent contractor or other representative is deemed to be soliciting customers on behalf of the remote seller through such links, thereby creating nexus. If more than \$10,000 in New Jersey sales is achieved through such links, nexus is established and registration and remittance is required. This presumption may be rebutted by proof that the independent contractor or representative with whom the seller has an agreement did not engage in any solicitation in the State on behalf of the person that would satisfy the nexus requirements of the United States Constitution.

Sales and Use Tax Exemption for Certain Tattooing With Reconstructive Breast Surgery — P.L. 2013, c.193, signed into law on Jan. 17, 2014, took effect immediately and applies to medically prescribed services provided on or after that date.

The law, called "Jen's Law," amends N.J.S.A. 54:32B-3 to eliminate the

imposition of sales tax on certain permanent cosmetic make-up applications (i.e., tattooing) provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery. These procedures are clearly distinguishable from purely aesthetic tattooing, including permanent body art and permanent cosmetic application, which is taxable under N.J.S.A. 54:32B-3(b)(10). □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) and tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2014](#) [2015](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2014](#) [2015](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2014](#) [2015](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director's Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

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Taxation Investigators Recover \$1.2 Million in Unpaid Business Taxes

New Jersey Division of Taxation investigators recovered nearly \$1.2 million in back taxes from unregistered companies operating illegally in the State during Fiscal Year 2014.

During the past two months alone, investigators from the Newark, Neptune, and Northfield offices recovered more than \$170,000 in back taxes. The operations, in conjunction with the New Jersey State Police, involved truck stops in which officers investigated whether out-of-State businesses were properly registered to do business in New Jersey.

The operations are part of the Division's efforts to investigate the State's underground economy and ensure that businesses are in compliance with New Jersey tax laws. The Division of Taxation is part of the State Department of the Treasury.

Taxation investigative teams focus on transient out-of-State vendors with business activities in New Jersey that create "nexus" and trigger a tax obligation. Investigators work cooperatively with local and State law enforcement officials as well as U.S. Customs. The teams monitor construction sites, warehouses, and weigh stations to uncover unregistered or noncompliant vendors.

Individuals who are part of an out-of-State corporation, partnership, limited liability company, or sole proprietorship conducting business

in the Garden State could have nexus with New Jersey.

A business has nexus with New Jersey if it maintains a temporary or permanent presence (employees, service personnel, or independent sales/service agents) or property (inventory, offices, or warehouses) or has employees travel to the State to call on customers, conduct retail or wholesale sales, attend trade shows, or consign inventory to warehouses. If so, that company should register with the Division of Taxation.

Business owners can obtain information about registering a business on the Division's [website](#) or by contacting the Division's Nexus Audit Group at 609-984-5749. They can also register their business [online](#).

To request information about voluntary compliance for an unregistered business, send an email to TaxRevOps@treas.nj.gov ☐

"Senior Freeze" Checks on the Way

The State Budget for Fiscal Year 2015 provides continued funding for the Property Tax Reimbursement (Senior Freeze) Program, meaning checks will soon be on the way to eligible homeowners.

Checks for the 2013 reimbursement are scheduled to be mailed

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“senior freeze” - from page 1

in mid-July to qualified senior and disabled homeowners who filed applications by June 2, 2014. The deadline for filing was extended to Sept. 15, 2014, and checks for applicants who file after the original June 2 due date will be issued as quickly as possible.

Only applicants whose 2013 income did not exceed \$70,000 are eligible, provided they met all other requirements. Residents whose income was more than \$70,000 but was \$84,289 or less will not receive checks for 2013. The Division will notify those residents that they are not eligible. However, by filing an application by the due date, those residents can establish a “base year” for future reimbursements for which they may be eligible and ensure they will be mailed an application for 2014.

Additional information on the [Senior Freeze Program](#) is available on the Division’s website. □

SALES AND USE TAX

Tattooing With Reconstructive Breast Surgery

The Sales and Use Tax Act imposes tax on charges for “tattooing, including all permanent body art and permanent cosmetic make-up applications.” N.J.S.A. 54:32B-3(b)(10).

P.L. 2013, c.193 amended N.J.S.A. 54:32B-3(b)(10) to exclude from tax charges for tattooing, including all permanent body art and permanent cosmetic makeup applications, provided pursuant to a doctor’s prescription in conjunction with reconstructive breast surgery.

Thus, effective on and after Jan. 17, 2014, sellers of tattooing, permanent body art, or permanent cosmetic makeup application services should not charge sales tax when such services are provided in conjunction with reconstructive breast surgery if the customer provides a doctor’s prescription to the seller.

If a seller incorrectly charged sales tax for a qualifying service performed on or after Jan. 17, 2014, the customer may apply for a refund of the tax from either the seller who performed the service or from the Division of Taxation. To request a refund from the Division, a Claim for Refund ([Form A-3730](#)) must be filed. A claim for refund must be filed within four years from the date the sales tax was paid. □

TRANSFER INHERITANCE TAX

IRS Enrolled Agents to Prepare Returns

The New Jersey Judiciary’s Committee on the Unauthorized Practice of Law issued [Opinion 51](#), on March 21, 2014, wherein the committee found that it is in the public’s interest to permit enrolled agents licensed by the Internal Revenue Service (IRS) to prepare and file New Jersey transfer inheritance tax returns on behalf of clients.

In 1972 the Committee determined that because of the legal principles involved, the preparation and filing of New Jersey transfer inheritance tax returns is the practice of law and can only be performed by lawyers. In 1986, the New Jersey Supreme Court agreed but held that a licensed

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation

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irs enrolled agents - from page 2

certified public accountant (CPA) may do so if the client has been notified that review of the return by a lawyer would be advisable.

In reaching its recent opinion, the Committee reviewed the requirements necessary for an enrolled agent to obtain and maintain a license from the IRS. Enrolled agents are licensed by the Internal Revenue Service through background evaluation and examination. Licensed agents are required to complete continuing education courses and comply with the duties listed in IRS Circular 230 (Regulations Governing Practice before the Internal Revenue Service). The Committee found that, like CPAs, enrolled agents are capable of filing New Jersey transfer inheritance tax returns, and, as long as enrolled agents follow the same client notification requirements that New Jersey CPAs are required to follow under N.J.A.C. 18:26-12.2, the public interest is protected.

Under the provisions of N.J.A.C. 18:26-12.2(a)1.iv, before beginning work on a New Jersey transfer inheritance tax return, CPAs (and now enrolled agents) must notify the client in writing that “review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return.” A copy of the properly executed notification must be filed with the transfer inheritance tax return. The Division of Taxation is in the process of revising the regulation to indicate that it applies to enrolled agents.

More information on the [Enrolled Agent Program](#) is available on the IRS’s website. □

INSURANCE PREMIUMS TAX
Retaliatory Tax Credit

A retaliatory tax is an additional tax imposed by a state on out-of-state insurance companies operating in its jurisdiction. A state charges the retaliatory tax in exactly the same way that the out-of-state insurance company’s home state taxes domestic insurance companies operating within its borders.

New Jersey allows a retaliatory tax credit, pursuant to N.J.S.A. 54:18A-2(c) and 54:18A-3(c), which permits a domestic insurance company to reduce its insurance premiums tax liability by a portion of the retaliatory tax incurred in other states.

Beginning with tax year 2013, a domestic insurance company can reduce its insurance premiums tax liability by 5% of any retaliatory tax incurred for the same filing period. The percentage reduction will increase 1% annually for 10 years

until it reaches 15% for tax year 2023 and after.

Domestic insurance companies report the tax liability reduction on Line 19, Other Credits, of Schedule A, [Form DEXM](#). □

Small Business Workshops

The Division of Taxation provides free workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development.
- Determining what is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

The next workshop is scheduled for Thursday, Oct. 9, 2014, at Raritan Valley Community College in Branchburg, New Jersey. If you want registration information or details

continued on page 4

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2014 – Dec. 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%



business workshops - from pg. 3

about the workshop, including parking facilities and directions, contact Allison Gill at 908-526-1200, ext. 8516 or sbdc@raritanval.edu. The Division does not manage the registration process.

The current [workshop schedule](#) is available on the Division's website. The Division updates the schedule as new workshops are added. □

LOCAL PROPERTY TAX
Tax Assessor
Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Twenty-one persons passed the March 24, 2012, C.T.A. exam; nine persons passed the Sept. 29, 2012, exam; seven persons passed the March 23, 2013, exam; and ten persons passed the Sept. 28, 2013, exam. They are:

Atlantic County: Keith Szendrey, Linwood City.

Bergen County: Edmund Brown, Fair Lawn Borough; Jonathan E. Fischer, Englewood City.

Burlington County: Thomas J. Hall, Evesham Township; Donn C. Lamont, Cinnaminson Township.

Camden County: Melissa D. Pollitt, Collingswood Borough.

Cumberland County: Jill H. Sungenis, Bridgeton City.

Essex County: Christopher L. Murray, Short Hills/Millburn Township.

Gloucester County: Nicholas Canizares, Woodbury City; Michelle R. Cozens, Mantua Township.

Hudson County: John A. Peneda, Kearny Town; Laura Fabiola Tacuri, Jersey City.

Mercer County: Ryan T. Delaney, Ewing Township.

Middlesex County: Albert F. Chanese, Woodbridge Township; David B. Medell, Edison Township; Alex J. Worth, Plainsboro Township.

Monmouth County: Erick Aguiar, Tinton Falls Borough; Jason Alenceiwick, Tinton Falls Borough; Jane P. Casagrande, Wall Township; Annette Dawn Crozier, Neptune Township; Michael DelRe, Neptune Township; William F. Laird, Wall Township; Jessica Lanna, Howell Township.

Morris County: William N. Bradley, Lincoln Park Borough; Keith Friedman, Parsippany-Troy Hills Township; Joseph Stephen Hiller, Florham Park Borough; Anna Maria McDougal, Long Valley/Washington Township; Timothy J. O'Connor, Randolph Township.

Ocean County: Nancy D'Amico, Lacey Township; Michael A. Kingsbury, Brick Township; Barbara E. Raney, Pine Beach Borough.

Passaic County: Irene Stefanacci, Bloomingdale Township.

Somerset County: Charles Eader, Bedminster Township; Brandon M. Frank, Bridgewater Township; Dawn Guttschall, Bridgewater Township; Melonie Krisza Marano, Green Brook Township; George A. Rodelius III, Bedminster Township.

Sussex County: George F. Conway, Highland Lakes/Vernon Township; Kristy L. Lockburner, Wantage Township.

Union County: Pavel Pilcik, Hillside Township; Michael J. Timoni, Clark Township.

Warren County: Donna J. Re, Independence Township.

Other: Robert Brescia, Clarkstown, New York; Robert Gilberg, Wynnewood, Pennsylvania; Stephen S. Hardy, Burlington, Connecticut; Gynt Grube, Tolland County, Connecticut; Eugenia H. Flynn, New Smyrna Beach, Florida.

The next C.T.A. examination is scheduled for Sept. 20, 2014. The

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Note: Effective June 1, 2015, the NJ TaxFax Service will be discontinued.

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assessor certificates - from page 4

deadline to file applications for this exam is Aug. 20, 2014. The filing fee is \$10. If you have any questions regarding this exam, please contact Marilyn Gaines at 609-292-8823, or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, [Form AC-1](#), is available on the Division's website. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

July 1-

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2015 together with a notice that the completed form must be filed with assessor by Aug. 1, 2014, to claim continuance of Farmland Assessment.
- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted.

If unpaid, become real property liens.

- If County Board of Taxation cannot hear and determine appeals within the time prescribed in R.S. 54:3-26, the Board may apply to the Director, Division of Taxation, for an extension at any time.

2nd Tuesday in July-

- State Equalization Table prepared.

July 15-

- Property tax reimbursement (Senior Freeze) payments mailed to eligible claimants.

Aug. 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2015.

Aug. 5-

- All SR-1A forms showing sales transactions to be used in compiling 2014 Table of Equalized Valuations for State School Aid to be received by Property Administration.

Aug. 15-

- County Board of Taxation Presidents to file annual appeal information and statistics

report (Form TAS) with Director, Division of Taxation.

Aug. 25-

- State Equalization Table completed by Director, Division of Taxation.

Sept. 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by Aug. 1 was due to owner's illness or death or the death of an immediate family member.

- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2015 with the assessor for taxing district in which property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2015 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

Sept. 10-

- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

Sept. 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders.

**Enforcement Summary Statistics
Second Quarter 2014**

Following is a summary of enforcement actions for the quarter ending June 30, 2014.

	Number	Amount
• Bank Levies	766	\$ 3,143,149
• Certificates of Debt	4,420	56,691,358
• Seizures	90	1,607,762
• Auctions	15	139,424
• Warrants of Satisfaction	4,353	

continued on page 6



assessors' calendar - from page 5

NOTE: The complete [2014 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013.

The summer dates on the Monmouth County Assessors' calendar coincide with the dates of the regular Assessors' Calendar with the exception of the July provision for the extension of the time to hear and determine an appeal(s). That provision does not apply to the Monmouth County Demonstration Program. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On Jan. 29, 2014, at the close of a six-month joint investigation with the Bureau of Alcohol, Tobacco, Firearms and Explosives, Jose Fortuna was sentenced to 30 months in federal prison and 36 months' probation for federal violations of the Prevent All Cigarette Trafficking Act. Fortuna was scheduled to be taken into custody and transported to the Federal Detention Center in Philadelphia. As a condition of his sentencing, Fortuna was also ordered to pay \$2,169,358 in restitution to the State for unpaid cigarette taxes.
- On Feb. 26, 2014, Office of Criminal Investigation (OCI) special agents Russell Glenn and Nicole Schwartz participated with other Division employees in a Rutgers University criminal justice career/recruiting event. The agents gave an overview of OCI's role within the Division.

- On March 29, 2014, OCI met with representatives of the Pennsylvania Department of Revenue, Bureau of Motor Fuel Taxes, Enforcement Division, including their Director and management team. They gave OCI an overview of their program along with training videos, and also displayed equipped vehicles used in their enforcement program.
- On April 11, 2014, Mark Imbimbo was sentenced in Monmouth County Superior Court by Judge Vernioia according to a plea agreement made on Feb. 24, 2014, in which Imbimbo pled guilty to money laundering. He was sentenced to five years in State prison and ordered to pay restitution to the State for taxes due in the amount of \$52,835.66. On Aug. 21, 2013, the Monmouth County Prosecutor's Office requested to engage in a joint investigation with OCI. Imbimbo was allegedly involved in an online phishing scheme in which he would steal personal information from victims. Subsequently, Imbimbo opened joint bank accounts in both his name and his victims' names. He then transferred money from his victims' bank accounts into the joint accounts and from there into accounts held solely by him. The theft resulted in taxable income that Mark Imbimbo failed to report on his New Jersey resident tax returns.

- OCI has expanded its participation in the Federal Stolen Identity Refund Fraud Task Force by assigning additional personnel to the program. OCI works in conjunction with the U.S. Postal

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Inspection Service, U.S. Marshals Service, and IRS Criminal Investigation, along with other federal law enforcement agencies on these matters. □

Tax Briefs

Corporation Business Tax

Grow NJ — A taxpayer inquired whether both individuals and corporate members may use Grow New Jersey tax credits available to an LLC if the LLC elects to be taxed as a flow-through organization. The taxpayer then asked what the recourse would be if an individual member cannot take advantage of the credit. Is the only recourse to sell the credit, and if so, is it the LLC that would sell it?

The New Jersey Economic Opportunity Act of 2013 merged five incentive programs into two: the Grow New Jersey Assistance Program (GROW NJ) and the Economic Redevelopment and Growth Grant Program (ERGG). GROW NJ is the State’s job creation and retention incentive program, which offers transferable tax credits. ERGG is the State’s incentive program for developers to close project financing gaps and build public infrastructure critical to redevelopment projects. Both of these incentive programs are administered by the New Jersey Economic Development Authority (EDA).

Under the terms of the program, GROW NJ grants credits for the corporation business tax and the insurance premiums tax, which are business taxes. Therefore, the LLC may use the credit against the corporation business tax but not the gross income tax. As a result, an individual

is not able to use the credit. The LLC may choose to sell the credit.

Rental Properties — Taxpayer is an S corporation that owns three rental properties, which are its only activity. Each property is in a different state, one of which is New Jersey. The taxpayer asked whether it must treat the net income from each property as nonoperational income and allocate 100% to the state where the property is located, or combine the incomes and treat them as operational income to be apportioned using the prescribed apportionment formula.

Pursuant to N.J.S.A. 54:10A-6.1, income is treated as operational if the income arises from the taxpayer’s regular trade or business operations. Income is only treated as nonoperational if the taxpayer demonstrates with clear and convincing evidence that the income is not operational.

Because the management of the rental properties constitutes an integral part of the trade or business of the corporation, and the corporation has not demonstrated that the income

is not operational, the income from the management of the properties is operational income and must be apportioned using the prescribed apportionment formula.

Sales and Use Tax

City of Camden Motor Vehicle Parking Surcharge Ordinance

New Jersey imposes a 7% sales tax on the receipts from parking, storing, or garaging a motor vehicle, excluding charges for residential parking; employee parking when provided by an employer or at a facility owned or operated by the employer; municipal parking, storing, or garaging; the parking fee at Atlantic City casino hotels; and such receipts subject to tax pursuant to any other law or ordinance. N.J.S.A. 54:32B-3(i).

The City of Camden recently enacted a Motor Vehicle Parking Surcharge Ordinance that imposes “a surcharge of seven percent (7%) on fees paid for the commercial parking, garaging or storing of motor vehicles in the City of Camden, other than fees paid by a tenant for

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Pay NJ Taxes Electronically

www.state.nj.us/treasury/taxation/payelect.shtml

Electronic Check (E-Check)

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

DATE _____ 15-09-2000

PAY TO THE ORDER OF _____ \$ _____

Anyplace Bank
Trenton, NJ 08611

Routing number: 02020886
Account number: 1234

For: 1234

1234

Make a payment directly from your bank account online or by phone (609-292-6400).

Credit Card Pay online or by phone (1-888-673-7694).






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parking in a lot or garage which is part of premises occupied solely as a residence.” The ordinance took effect on April 1, 2014.

Since receipts from the sales of commercial parking, storing, or garaging of a motor vehicle in Camden are now subject to the municipal surcharge, they are exempt from New Jersey sales tax.

Floating Boat Dock Installation —

A taxpayer asked whether charges for the installation of a floating dock to already existing pilings are subject to sales and use tax. The taxpayer states that the prior floating boat docks, which were held in place by pilings, were destroyed during Hurricane Sandy. The taxpayer contracted with a dock manufacturing company to produce and install the new floating dock to already existing pilings. The manufacturer required the taxpayer to pay sales tax on the charges for the purchase and installation of the docks.

The Division responded that the Sales and Use Tax Act imposes tax on the retail sale of tangible personal property, enumerated services, and specified digital products unless a valid exemption exists. N.J.S.A. 54:32B-3. The installation of tangible personal property is also taxable.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s website under “[Auctions](#).” Select the name of the business for details about that auction.

N.J.S.A. 54:32B-3(b)(2). Charges for installation services that result in capital improvements, with certain exceptions, are exempt from sales tax. N.J.S.A. 54:32B-3(b)(2), (4); N.J.A.C. 18:24-5.6(b)(3).

To determine whether services result in a capital improvement the Division will look at whether the improvement results in an increase in the value of the real property and whether the improvement results in a significant increase in the useful life of the real property. N.J.A.C. 18:24-5.6(c). “Real property, property, or land” means land and any structure or appurtenance affixed permanently thereto. N.J.A.C. 18:24-5.2. New Jersey considers the installation of tangible personal property to be a capital improvement when the item installed is permanently affixed to the real property and it increases the value and/or useful life of the real property.

A floating dock is not permanently affixed to the land because it is buoyant, rising and lowering with the change in water level. In order for the floating dock to float, it must be free to rise and fall as the water level does. However, to prevent the floating dock from drifting away, it also must be anchored or attached to land in some way. That attachment, due to the nature of the movement of the floating dock, is not permanent. According to the taxpayer, the floating dock attaches to pilings to prevent it from drifting away. The attachment to the pilings, usually a piling hoop, allows the dock to float while maintaining its location relative to the land. The dock can be removed from the pilings (either to move the dock, or replace the piling), simply by removing the hoops. Therefore, the addition of a floating dock to already existing pilings does not constitute

an exempt capital improvement to real property, and the installation is subject to sales and use tax. N.J.S.A. 54:32B-3(b)(2). □

In Our Courts

Corporation Business Tax Corporate Partner Entitled To Refund — *BIS LP, Inc. v. Director, Division of Taxation*; decided April 11, 2014; Appellate Division, Docket No. A-1647-12T3.

BIS, a limited partnership, filed a New Jersey corporation business tax (CBT) return and reported tax due. The monies were remitted by an affiliated entity on BIS’s behalf. Thereafter, BIS sought a refund on the grounds that it lacked sufficient nexus with New Jersey to be subject to CBT.

The Appellate Division upheld the Tax Court decision, agreeing that BIS did not have sufficient nexus with New Jersey to be subject to CBT, but remanded to the Tax Court the issue of whether the refund should be paid to BIS or to the affiliate that remitted the tax on BIS’s behalf. On remand, the Tax Court decided that BIS was entitled to the refund of taxes paid on its behalf pursuant to N.J.S.A. 54:10A-15.7, -15.11, and N.J.A.C. 18:7-17.6. The Appellate Division affirmed. □

In Our Legislature

Gross Income Tax Northern New Jersey Veterans Memorial Cemetery Development Fund — P.L. 2014, c.4, enacted on May 15, 2014, effective immediately, and applicable to taxable

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in our legislature - from page 8

years beginning on or after Jan. 1, 2015, establishes the Northern New Jersey Veterans Memorial Cemetery Development Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their tax returns in support of the development and operation of the Northern New Jersey Veterans Memorial Cemetery. □

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2013](#) [2014](#) □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2013 (Jan. 1, 2013 – Dec. 31, 2013) and tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2013](#) [2014](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2013](#) [2014](#)



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
Hotline 1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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Spring 2014

A Quarterly Newsletter

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Also in this issue:

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- [List of 2013 Legislation](#)
- [Division Organization Chart](#)

Voluntary Disclosure Initiatives

The Division of Taxation is conducting two voluntary disclosure initiatives that will run from March 15 through May 15, 2014. The following taxpayers will be able to participate:

- Companies that have nexus with New Jersey because they derived income from the use of intangible assets in this State, and
- Partnerships with income from New Jersey sources and individual partners with New Jersey tax obligations.

Intangible Asset Nexus Initiative

Companies that own intangible assets and derived income from the use of those assets in New Jersey can voluntarily come forward and comply with their corporation business tax filing requirements. In addition to the standard procedures and requirements for [voluntary disclosure agreements](#) (VDAs) for business taxes, the following principles apply:

- The lookback period is limited to periods beginning after July 1, 2010, or the date business commenced, whichever is later. Returns for prior periods are not required.

- The taxpayer must file all required returns and remit payment of the full tax liability reported within 45 days of the execution of its VDA.
- The Division will waive all penalties.
- The taxpayer must remit payment of interest within 30 days of assessment.
- Operating companies or those companies that have paid royalties and added those royalties back to their New Jersey entire net income may submit amended returns for any period for which the statute of limitations remains open in order to claim an exception to the addback.
- All returns are subject to audit with respect to issues not specifically covered in the VDA.

Taxpayers can submit requests for disclosure to:

NICHOLAS J. SOLIMANDO, AUDITOR
OFFICE AUDIT BRANCH
PO Box 269
TRENTON, NEW JERSEY 08695-0269

For questions, contact Mr. Solimando at 609-633-7837 or Nicholas.Solimando@treas.state.nj.us. Taxpayers can also address questions to Lee Evans, Chief, Office Audit Branch, at 609-292-5927 or Lee.Evans@treas.state.nj.us.

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voluntary disclosure - from pg. 1

Partnership Tax and Partner Fees Initiative

Partnerships that had income from New Jersey sources and have not filed the relevant forms (PART-100, PART-200-T, NJ-1065) and/or remitted the tax and fees due can voluntarily come forward and comply with their corporation business tax and gross income tax requirements. Individual partners that have not satisfied their New Jersey filing and tax remittance requirements can also come forward and become compliant.

In addition to the standard procedures and requirements for voluntary disclosure agreements (VDAs) for [partnerships](#) and [individuals](#), the following terms apply:

- The lookback period is limited to periods beginning on or after January 1, 2010.
- The taxpayer must file all required returns and remit payment of all taxes and fees due within 45 days of the execution of its VDA.
- The Division will waive all penalties.
- The taxpayer must remit payment of interest within 30 days of assessment.
- All returns remain subject to audit with respect to issues not specifically covered under the terms of the VDA.

Taxpayers can submit requests to participate in this disclosure initiative to:

WILLIAM BITTNER, CHIEF
GROSS INCOME TAX BRANCH
PO Box 288
TRENTON, NEW JERSEY 08695-0288

For questions, contact Mr. Bittner at 609-984-8275 or Bill.Bittner@treas.state.nj.us. □

Prescription Drugs for Animals

Veterinarians commonly prescribe drugs which are formulated for human use but are also used to treat animals. The New Jersey Sales and Use Tax Act provides an exemption from tax on the sale of prescription drugs sold pursuant to a doctor's prescription for *human use* (N.J.S.A. 54:32B-8.1(a)(1)). However, the sale of drugs sold pursuant to a veterinarian's prescription to treat animals is subject to sales tax even though the same drug is exempt when sold for human use.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

- (1) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- (2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (3) Intended to affect the structure or any function of the body.

N.J.S.A. 54:32B-8.1(b).

Pharmacies are required to collect and remit sales tax when selling prescription drugs prescribed by a veterinarian for use in the treatment of animals.

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New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Director:** Michael J. Bryan

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drugs for animals - from page 2

Veterinarians are required to collect and remit sales tax on retail sales of drugs if the bill to the customer separately states the charge for the drugs to the customer as opposed to merely listing the items used in the performance of medical services.

Consumers who do not pay sales tax when purchasing prescription drugs prescribed by a veterinarian for use in the treatment of animals must pay use tax.

For more information on the sale of prescription drugs by veterinarians and pharmacies see publication [ANJ-12, Veterinarians & New Jersey Sales Tax](#), and Technical Bulletin [TB-63\(R\), Health Care Products: Drugs, Grooming and Hygiene Products, Prosthetic Devices, Durable Medical Equipment, and Mobility Enhancing Equipment](#). For information on how to remit and pay use tax see publication [ANJ-7, Use Tax in New Jersey](#). □

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2014 – December 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

1st Business Day in May–

- County Tax Board to organize and elect a president for one year, or until his successor is elected.

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration dates of their terms of office, and the status of their required courses.
- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.



assessors' calendar - from pg. 3

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

NOTE: Complaints (appeals) from County Tax Board judgments must be filed with the Tax Court within 45 days of service.

The complete [2014 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

April 1–

- Tax appeals are heard for February, March, and April.

May 5–

- Assessor to file assessment lists and duplicates with County Tax Board.

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.
- County Tax Board to notify Director, Division of Local Government Services, when copy of budget resolution (in CY municipality) showing amount to be raised is not received.
- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

May 31–

- General tax rates certified by County Tax Boards.
- County Tax Board to file final SR-3A forms with Property Administration.
- Tax rate set by County Tax Board.

June 15–

- County Tax Board Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On November 13, 2013, Philip R. Kossoy of Freehold Township, New Jersey, pled guilty before State Superior Court Judge Anthony J. Mellaci Jr. to third-degree charges of theft by failure to make required disposition of property received and failure to pay taxes for his cleaning business, Absolutely Spotless Home Cleaning Professionals, Inc. Kossoy sought to conceal and disguise revenue from his business by taking cash payments from customers and depositing them into multiple personal bank accounts, rather than his business account. He also sought to disguise the source of these funds by having customers make checks payable to him personally and not to the business. In addition, the State's investigation revealed 192 instances of Kossoy altering customer checks by blacking out the memo section of the checks, which referenced the true business purpose of the check. To further conceal income, Kossoy deposited more than \$1 million in cash and checks into personal accounts created using another person's social security number. The case was investigated for the Office of Criminal Investigation (OCI) and the Department of Law and Public

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under "[Auctions.](#)" Select the name of the business for details about that auction.



criminal enforcement - from page 4

Safety's Division of Criminal Justice's Financial and Computer Crimes Bureau. The Division of Criminal Justice's Deputy Attorney General handled the State's criminal forfeiture action and the Division of Consumer Affairs provided valuable assistance. On January 9, 2014, Kossoy was sentenced to 364 days in county jail and two years' probation by Superior Court Judge Anthony J. Mellaci Jr. in Monmouth County Superior Court. Under a plea agreement, Kossoy paid the State \$1.1 million in restitution of \$900,000 in unpaid taxes, penalties, and interest plus a \$200,000 anti-money laundering penalty. He forfeited \$424,000 from bank accounts seized by the State and paid the remaining \$676,000 at the plea hearing.

- On November 14, 2013, Mahmoud Salim Alsoub of Eatontown, New Jersey, was arrested and charged with two counts each of distribution of a controlled dangerous substance (CDS) and of possession of a CDS with intent to distribute within 500 feet of a park. A three-month joint

investigation by the Monmouth County Prosecutor's Office, Monmouth County Sheriff's Office, OCI, and the Eatontown Police Department uncovered large quantities of synthetic marijuana being sold at Alsoub's Main Street convenience store. Alsoub kept the synthetic marijuana, known as K-2, out of the view of store patrons, but when asked for the substance by a "code word," he would retrieve the synthetic marijuana and sell it to the patron. Special agents and detectives seized a large amount of cash from the store, along with merchandise Alsoub illegally purchased out of State for resale in the store. Additionally, OCI charged him with 12 counts of failure to file a tax return, one count of failure to maintain books or records, and one count of failure to collect sales tax. Alsoub was processed at the Eatontown Police Department and transported to the Monmouth County Correctional Institution. He posted \$50,000 bail with no 10% option as set by Monmouth County Superior Court Judge Richard W. English.

- On November 20, 2013, William K. Herring of Vineland, New

Jersey, was indicted on charges of second-degree theft, fourth-degree falsifying or tampering with records, third-degree failure to pay or turn over taxes, and third-degree filing or preparing a false or fraudulent tax return. The indictment comes from a report submitted by OCI to the Cumberland County Prosecutor's Office alleging unreported income by Herring. It is alleged that he used his position at J & C Auto Sales, Inc. to steal in excess of \$375,000 in cash and cars from their inventory. The investigation was conducted jointly by OCI, Vineland Police Department, and the New Jersey Motor Vehicle Commission.

- On November 21, 2013, Keansburg residents Conrad Levulis and Carrie Ann Chapman were arrested by OCI special agents and charged with multiple counts of cigarette smuggling. Members of the Keansburg Police Department assisted the agents in executing a search warrant at their residence. Levulis was the subject of an investigation by OCI for allegedly trafficking in contraband cigarettes as well as sales of Virginia-stamped cigarettes from his home. He allegedly sold contraband cigarettes to a State undercover agent on two different occasions. Levulis and Chapman were arrested as they returned from Virginia where they had allegedly purchased cartons of cigarettes and transported them back to New Jersey for resale. Investigators alleged that the defendants carried out this smuggling pattern for several months. The Monmouth County Prosecutor's

Enforcement Summary Statistics

First Quarter 2014

Following is a summary of enforcement actions for the quarter ending March 31, 2014.

	Number	Amount
• Bank Levies	879	\$ 3,632,726
• Certificates of Debt	4,515	57,101,882
• Seizures	76	1,194,218
• Auctions	3	470,489
• Warrants of Satisfaction	2,976	

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criminal enforcement - from pg. 5

Office assisted OCI in the investigation, and the Monmouth County Sheriff's Office K-9 unit also assisted with the search warrant. A total of 70 cartons of Virginia-stamped cigarettes were seized along with cell phones, a laptop computer, and various records which allegedly recorded the illegal business activity. The defendants were processed at the Keansburg Police Headquarters, and both were charged with ten violations of the New Jersey Cigarette Tax Act, including third- and fourth-degree crimes. Additionally, under legislation that took effect on August 19, 2013, a civil penalty of \$1,000 per carton may be imposed by the courts. Levulis was remanded to the Monmouth County Correction Institution with bail set at \$42,500, no 10% cash option. Chapman posted \$5,000 bail.

- On December 12, 2013, the Union City Police Department and OCI arrested Ahmad Chacha. Drugs such as Cialis and Viagra were

seized from Chacha and an individual with him, Mervat Maher. Both were charged with distribution of a prescription legend drug, distribution of a controlled dangerous substance (CDS) 500 feet from public property, CDS near or on school property, and possession of a prescribed CDS in a container not dispensed in. Maher was also charged for possession of a CDS in a motor vehicle. Judge Macias set bail at \$10,000 cash with no 10%. Additionally, OCI had observed Chacha selling untaxed cigars to a business in Newark, and charged him with indictable offenses in Essex County Superior Court.

- On December 13, 2013, Acting Attorney General John Hoffman announced that Brian P. Mohen, formerly of Far Hills Borough, who ran a now-defunct insurance brokerage company, Arden Financial Services Inc., had been sentenced to State prison for his role in a scheme to misappropriate more than \$660,000 by failing to remit insurance premiums to insurance companies. He was

sentenced to five years in State prison by Superior Court Judge Julie M. Marino in Somerset County. The sentence was based on Mohen's guilty plea, filed on October 28, 2013, to second-degree misapplication of entrusted property and two counts of third-degree failure to file an income tax return. Mohen's wife, Lisa A. Stanko-Mohen, who also ran the company, previously pled guilty to one count of third-degree misapplication of entrusted property and two counts of third-degree failure to file an income tax return. She was sentenced to five years' probation. In addition, the defendants will execute consent judgments that will require them to pay a total of \$660,446 in restitution and \$116,451 in unpaid taxes, including interest and penalties.

- On December 13, 2013, Tariq Mehmood, of Atlantic City, was sentenced in Atlantic County Superior Court to 364 days in Atlantic County Correctional Facility and three years' probation. On November 4, 2013, Mehmood pled guilty to seven of the 16 charges related to counterfeit cigarettes and distribution of a counterfeit legend drug he was indicted under in Superior Court. The Honorable Judge Mark Sandson ordered Mehmood to pay restitution to the State of New Jersey as well as the Rite Aid and CVS pharmacies. He was also ordered to pay \$9,607.31 in taxes he owed to New Jersey. This investigation was led by an OCI special agent and a detective of the Atlantic City Police Department Special Investigations Section. The

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criminal enforcement - from page 6

Atlantic County Prosecutor's Office handled the prosecution.

- On January 10, 2014, Anthony Foti, Jr., owner of Wheels Are Us Auto Sales, was sentenced to two years' probation and ordered to pay restitution of \$500 monthly to the Division of Taxation under a consent judgment for \$60,610.12 that includes \$37,211.03 for sales tax, \$1,760.55 for interest, and \$21,638.54 for penalty. Foti operated the business from February 1, 2006 to March 28, 2008, selling used vehicles. Foti collected sales tax but never filed sales and use tax returns or remitted sales tax to New Jersey.
- On January 16, 2014, OCI performed a sweep in Roselle Park with the assistance of the Roselle Park Police Department. OCI inspected 14 stores and seized a combined total of 2,051 cigars and 52 containers of hookah tobacco. OCI will file disorderly person's offenses for the seized tobacco. Additionally, Roselle Park Police seized 228 prescription legend drugs and 2,500 items of related paraphernalia.
- On January 30, 2014, OCI special agents arrested Ankurkuma G. Rana, and Bharatkum L. Shah, for possession of 34.8 cartons of counterfeit-stamped cigarettes at their store in Passaic. Also seized was a 2002 Honda Accord and \$118,536 in U.S. currency. Rana was charged with third-degree possession of 2,000 or more cigarettes with counterfeit New Jersey stamps, fourth-degree dealing with a person not properly licensed or registered, third-degree failure to maintain books or records as

required, fourth-degree transportation of contraband cigarettes, and a disorderly persons offense for possession of untaxed goods. Shah was charged with third-degree possession of 2,000 or more cigarettes with counterfeit New Jersey stamps, fourth-degree dealing with a person not properly licensed or registered, and third-degree failure to maintain books or records. Both were processed at the Passaic Police Department and their bail was set at \$15,000 with 10% by Judge Karen Brown. Rana and Shah were released after meeting their bail requirement. Additional charges are pending further investigation.

- On January 31, 2014, Daryl Turner was sentenced to seven years in State prison and his wife, Robyn Bernstein, was sentenced to five years' probation for their roles in a scam operated by their vacation travel club companies. Turner and Bernstein are required to pay approximately \$2.6 million in restitution to their victims. They were previously indicted

by a State Grand Jury on April 23, 2013. Turner's indictment was for the failure to file New Jersey gross income tax returns for tax years 2008–2011. Bernstein's indictment was for the failure to file a 2011 New Jersey gross income tax return. As part of Turner's plea agreement, he was required to file his returns by the sentencing date of January 31, 2014. He had a total tax liability of \$43,844 plus penalties and interest. Per the plea agreement, the failure to file an income tax return charge against Bernstein was dismissed at sentencing. □

Tax Briefs

Gross Income Tax

Overtime Pay — A taxpayer asked how the Division of Taxation treats overtime payments for gross income tax purposes. The Division responded that overtime payments are treated in a manner similar to other supplemental wages (bonuses, commissions, tips, awards, etc.).

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When an employer pays supplemental wages at the same time as regular wages, the income tax withheld should be determined as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year. However, if income tax has been withheld from the employee's regular wages, the employer may withhold from the supplemental wages without any allowance for exemptions. If vacation pay is paid in addition to regular wages for the vacation period, such vacation pay is to be treated as a supplemental wage payment.

Litter Control Fee

Gross Receipts From Sales of Cigarettes — A business that distributes cigarettes asked the Division whether, for purposes of calculating the litter control fee, its gross receipts from sales of cigarettes should include the amount that the business pays for its cigarette stamps. When the distributor sells the cigarettes, the amount charged to the buyer includes the seller's cost

of the cigarette stamps paid for the cigarette tax.

The Litter Control Act imposes a fee on gross receipts from the sales of litter-generating products, which include cigarettes and tobacco products. N.J.S.A. 13:1E-216. The litter control fee regulation at N.J.A.C. 18:38-1.3 defines gross receipts as "all receipts, of whatever kind and in whatever form, derived from sales of litter-generating products, without any deduction therefrom on account of any item of cost, expense or loss." Based on this definition, the distributor may not deduct from gross receipts the amount paid for the cigarette tax stamps.

Because the distributor indicated that 50% of its sales were wholesale sales (sales made for the purpose of resale), the Division treats the distributor as a wholesaler for the purposes of the litter control fee. N.J.S.A. 13:1E-216(a) provides that a sale by a wholesaler or distributor to another wholesaler or distributor is not subject to the litter control fee. Therefore, when calculating the litter control fee, the distributor should deduct any receipts from sales to other "wholesalers."

Sales and Use Tax

Charges for Admission to a Museum Owned by an Exempt Organization — A nonprofit museum which has a valid Form ST-5 (exempt

organization certificate) inquired whether charges for admission to its museum are exempt from sales tax.

N.J.S.A. 54:32B-9(f)(1) generally exempts admission charges if all the admission proceeds exclusively benefit an exempt organization that has a valid Form ST-5. The exemption does not apply to admission charges for carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation, and certain athletic competitions. Accordingly, when a qualified exempt organization charges for admission to its museum and retains the receipts for its own use, the admission charges are exempt from sales tax. □

In Our Courts

Gross Income Tax

Time to File for Refund — *Edward Alon v. Director, Division of Taxation*, decided August 6, 2013; Tax Court, Docket No. 007087-2011.

Plaintiff (Alon) filed his 2002 NJ-1040 on August 6, 2004, claiming a credit of \$7,644 to be applied to future tax liabilities. Alon filed his 2003 tax return (due in 2004) in May 2009, his 2004 and 2005 tax returns (due in 2005 and 2006, respectively) in March 2010, his 2006 and 2007 tax returns (due in 2007 and 2008, respectively) in April 2010, and his 2008 tax return (due in 2009) in May 2010. He requested refunds totaling \$13,595, resulting from estimated tax payments made during those years and the credit claimed on his 2002 return. Although the plaintiff claimed that the returns were all filed late due to personal hardships, he never requested an extension of time to file.

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The Tax Court held that, under the provisions of N.J.S.A. 54A:9-8(a), Alon had three years from the filing of a timely tax return to file for a refund. Plaintiff failed to timely file his returns and, consequently, failed to make timely refund requests. Alon's failure to file for a refund before the deadline prevented him from recovering a refund. The Court held further that, even if a refund claim is filed within the three-year period, the amount of refund or credit cannot exceed the portion of tax paid within the three years immediately preceding the filing of the claim, plus any extension of time for filing the return. Because the plaintiff did not make any payments in the three years immediately preceding the filing of the respective year's return, he is not entitled to any refund.

Credit for Taxes Paid to Other Jurisdictions – *David E. and Janice Berliner v. Director, Division of Taxation*, decided November 14, 2013; Tax Court, Docket No. 000057-2008.

For tax years 2004 and 2005, David Berliner was a New Jersey resident and a partner in a New York City partnership. Along with filing a New Jersey resident income tax return in both years, the plaintiff filed multiple out-of-State returns to report partnership income. In 2004 he received an NJK-1 that reported a total distribution of \$330,798, \$6,994 of which was attributable to New Jersey. Plaintiff correctly reported the full \$330,798 as the distributive share of partnership income on his 2004 NJ-1040. In tax year 2005 he reported \$507,769 on his NJ-1040, \$10,897 of which was sourced to New Jersey.

Pursuant to N.J.S.A. 54A:4-1, a resident taxpayer is entitled to a credit

against their New Jersey tax for the amount of any income tax or wage tax imposed by another jurisdiction with respect to income which is also subject to tax under the Act, except as provided by subsections (c) and (d) of this section. The credit is not a dollar for dollar credit and must be determined in accordance with the Director's regulations.

For both 2004 and 2005, the plaintiff calculated a credit for taxes paid to other jurisdictions. He included the full partnership distribution amount in the numerator of the credit calculation. By including the New Jersey portion of the partnership income in the numerator, the calculated credit exceeded the limitations imposed by the statute. The Division reduced the numerator by the amount of income attributable to New Jersey sources. Plaintiff maintains that because the partnership was located in New York and the entire distribution was taxed there, he is entitled to a credit for the entire amount of the distribution.

In granting the Division's motion for summary judgment, the Court cited *Jenkins v. Director, Division of Taxation*, 4 N.J. Tax 127, 133 (Tax 1982), which explained that "the objective of N.J.S.A. 54A:4-1 is to avoid double taxation of the same income by providing a credit against New Jersey gross income tax for tax paid to another jurisdiction on the same income." It goes on to state that "the intent of the act is to avoid double taxation of foreign income by relinquishing all or part of the New Jersey tax on the foreign income, but not to relinquish New Jersey tax on income earned in New Jersey."

Sales Tax

Remote Controls and Converters – *Comcast of South Jersey, Inc., et al. v. Director, Division of Taxation*,

decided February 20, 2013; Tax Court, Docket Nos. 001153-2004, 001157-2004, 001160-2004, 001163-2004, 001165-2004, 001168-2004, 001170-2004, 001171-2004, 001173-2004, 001175-2004, 001177-2004, 001178-2004, 001179-2004, 001180-2004.

Plaintiff provides cable television services in New Jersey. At issue is whether purchases of converters and remotes are exempt from use tax under N.J.S.A. 54:32B-8.13(e) of the Sales and Use Tax Act as sales of machinery, apparatus, or equipment to a provider of cable program services for use in the transmission of television information. If either or both are found to be taxable, is the plaintiff subject to late payment and amnesty penalties? Plaintiff requests that the Division pay litigation costs and fees pursuant to N.J.S.A. 54:51A-22.

Converters are used to transmit and convert signals that are sent through coax cable from the cable company to customers' televisions. Via lease agreements, the plaintiff supplies converters to its customers to be connected at the customers' locations in order to convert the signal for viewing. The customers use the remotes to interact with the converters.

In *RCN Telecom Services, Inc. v. Dir., Div. of Taxation*, 23 N.J. Tax 520 (Tax 2007), also known as *RCN II*, the Court ruled that converters were used directly and primarily in the transmission of cable television signals and were therefore exempt. Here, the Division argued that there is additional evidence, not available at the time of the *RCN II* case, that the primary function of the converters was security and not

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transmission, making the purchases taxable. Even though the plaintiff's own documents identified converters as signal security devices, the Court determined that the converter's primary purpose was transmission and ruled that the purchase of converters was exempt.

Remotes send infrared signals to the converter to tune, convert, and transmit the signal for a specific channel. They also were used to access parental controls and the television guide, as well as order video on demand. The Court held that the remotes were not exempt under N.J.S.A. 54:32B-8.13(e) because they communicated by infrared signal and were therefore not part of the transmission process.

Plaintiff claimed that it should not be subject to late payment penalties because it had reasonable cause to believe that the remotes were exempt under the plain meaning of N.J.S.A. 54:32B-8.13(e) as well as previous court cases (*RCN I* and *RCN II*). The Court opined that the plaintiff should have known from its own documents and witnesses that there was no transmission involved in the remotes and that they were not even referenced as part of its cable system. Therefore, the Court upheld the late payment penalty stating that "Comcast's misunderstanding or misjudgment is not good cause for its failure to pay taxes" on the remotes.

As to the issue of whether amnesty penalties were properly assessed, it was agreed by both parties that the Court reserves its decision until the Appellate Division issues a decision on amnesty penalties in the case of *United Parcel Service*.

N.J.S.A. 54:51A-22 allows for a prevailing taxpayer to be awarded reasonable litigation costs not to exceed \$15,000. The statute defines "prevailing taxpayer" to be one who establishes that the position of the State was without reasonable basis in fact or law. In denying the plaintiff's request, the Court held that the Division was not unreasonable because it was sufficient that the Court determined that remote controls are taxable and not exempt. Furthermore, the Division provided additional evidence as to the transmission function of converters that was not in the RCN cases.

Marine Terminal Facility – *Ironbound Intermodal Industries, Inc. v. Director, Division of Taxation*, decided July 19, 2013; Tax Court, Docket No. 012089-2008.

Plaintiff is a New Jersey corporation located in Newark that provides storage, maintenance, and repair services to the shipping industry at Port Newark with respect to intermodal containers and chassis. When provided at a marine terminal facility, charges for such services are exempt from sales and use tax. The Division of Taxation determined that the plaintiff does not meet the definition of a "marine terminal facility" and issued assessments of sales tax on the plaintiff's storage services and chassis repair services.

The legislation that authorized the marine terminal exemption did not include a definition of marine terminal facility. The Division maintained that because plaintiff's facilities were not located at Port Newark, did not contain piers or wharves, and were not capable of loading and unloading containers on and off vessels (i.e., stevedoring), they were

not a marine terminal facility and not eligible for the exemption. The Court determined that plaintiff is a marine terminal facility as intended by the Legislature because it does all the same things as businesses located within Port Newark and its employees belong to the same union as workers located at the marine terminals. The Court concluded that the definition of marine terminal facility is general and broad in nature and not limited to Port Authority jurisdiction or location. Plaintiff's storage and chassis repair services for customers of the Port of Newark are entitled to the exemption provided in N.J.S.A. 54:32B-8.12.

The Tax Court granted the plaintiff's motion for summary judgment and denied the Director's cross-motion, which resulted in a reversal of the Director's sales tax assessment. The Court further determined that since the plaintiff is a marine terminal facility, there was no need to analyze the parties' alternative arguments regarding the chassis repair services.

On October 31, 2013, the Court denied the Director's motion for reconsideration but clarified the earlier decision by stating that the chassis repair services are exempt under N.J.S.A. 54:32B-8.12 as "other services rendered with respect to such loading, unloading and handling of cargo at a marine terminal facility."

Unstamped Cigarette Purchases – *Kimberly Steele v. Director, Division of Taxation*, decided October 16, 2013; Tax Court, Docket No. 019582-2012.

In accordance with the requirements of the Federal Jenkins Act (15 U.S.C. §375), the Division of Taxation received information from Smoker's

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Den (an out-of-State mail-order cigarette vendor) that the plaintiff (Steele) purchased 134 cartons of unstamped cigarettes between June 2006 and June 2009. The Jenkins Act requires any person or entity shipping cigarettes in interstate commerce to file a monthly report with the tax administrator of that state. The report must contain the name of each purchaser, the shipment date, shipping address, and the brand and quantity of cigarettes purchased.

On October 31, 2011, the Division of Taxation sent the plaintiff a letter advising that she was liable for excise tax and sales tax totaling \$3,646.73 for the purchase of 134 cartons of unstamped cigarettes. Plaintiff did not respond. On July 3, 2012, the Division issued a notice of assessment which included penalties and interest. After an administrative hearing held at the plaintiff's request, the Division issued a final determination upholding the assessment. Taxpayer appealed to Tax Court. Taxpayer did not deny purchasing cigarettes from Smoker's Den but stated that she only purchased 116 cartons, not 134 cartons, but she had no documentation or evidence to show the purchases she made. The Division moved for summary judgment.

Under the provisions of the Cigarette Tax Act, taxpayers can purchase stamped or unstamped cigarettes. Taxpayers who purchase stamped cigarettes are not required to pay tax because the stamps indicate that taxes have already been paid, but taxpayers who purchase unstamped cigarettes for consumption, use, or storage in New Jersey must obtain a

license, report their purchases, and pay the tax. Plaintiff failed to do so and the Division estimated and assessed the tax due based on the information it had. Plaintiff argued that it was unfair for her to be held responsible for a tax of which she claims she was unaware.

In granting the Division's motion for summary judgment, the Court held that the plaintiff's lack of awareness did not relieve her of her liability to pay the taxes due. In addition, the Court held that the burden was on the plaintiff to provide evidence showing that the Division's assessment was based on untrue or inaccurate data, and she did not meet that burden. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2013 (January 1, 2013 – December 31, 2013) and tax year 2014 (January 1, 2014 – December 31, 2014) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2013](#) [2014](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2013](#) [2014](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2013](#) [2014](#) □



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Hotline..... 1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
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Business Paperless Telefiling
System 609-341-4800
Alcoholic Bev. Tax 609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director's Office 609-292-6400
Inheritance Tax 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-633-8878
Public Utility Tax 609-633-2634

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2013 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
13	1/29/13	Establishes the 2014 NJ Special Olympics Home Team Fund and provides for voluntary contributions by taxpayers on gross income tax returns for tax years 2012 and 2013.	GIT	S-1855
14	1/31/13	Provides a New Jersey Angel Investor Tax Credit for use against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.	CBT/GIT	S-581(1R)
15	1/25/13	Establishes a real property assessment county demonstration program.	LPT	S-1213
20	1/25/13	Authorizes the use of fraud prevention contractors by the Division of Taxation.	MIS	A-3027
43	4/15/13	Revises certain provisions of the Farmland Assessment Act of 1964.	LPT	SCS(4R) for S-589
55	5/9/13	Clarifies trustee's discretionary authority concerning income tax liability.	MIS	S-765
60	6/6/13	Requires a review of corporation business tax and gross income tax credit programs for payments to interns as it pertains to increasing long-term employment for future college graduates.	CBT/GIT	A-1271(1R) Corrected Copy
61	6/6/13	Expands the Neighborhood Revitalization State Tax Credit.	CBT/GIT	A-3206(1R)
73	6/27/13	Clarifies that charitable contributions are not a factor in determining a person's domicile for New Jersey gross income tax purposes.	GIT	S-2532
84	7/17/13	Revises the permitted amount of the surcharge on admission charges at certain major places of amusement.	ADS	A-3848
92	8/7/13	Creates a craft distillery license.	ABT	SCS(2R) for S-2286 and S-463
98	8/7/13	Prohibits imposition of corporation business tax on certain foreign corporations carrying passengers into and out of State in motor vehicle or motorbus.	CBT	A-1887(1R)
145	8/19/13	Increases penalties for unstamped and counterfeit cigarettes and cigarette smuggling, and establishes the transfers of counterfeit cigarettes as a crime.	CIG	S-2516(2R)
161	9/18/13	Establishes the New Jersey Economic Opportunity Act of 2013 which merges five current incentive programs into the Grow New Jersey Assistance Program (GROW NJ) and the Economic Redevelopment and Growth Grant program (ERGG).	MIS	ACS(4R) for A-3680

2013 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
166	10/16/13	Creates the Common Sense Shared Services Pilot Act.	MIS	SCS(2R) for S-533
171	12/27/13	Increases the compensation for wrongful imprisonment and excludes it from New Jersey gross income tax.	GIT	S-1219(2R)
193	1/17/14	Exempts cosmetic makeup services provided in conjunction with reconstructive breast surgery from sales tax.	S&U	S-374(1R)
259	1/17/14	Amends the Administrative Procedure Act to require State agencies to use various electronic technologies in rule-making procedures.	MIS	A-3321(1R)
261	1/17/14	Exempts certain properties acquired by municipalities from county, school, and fire district taxes.	LPT	A-3362(2R)

*Legend for 2013 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ADS = Admissions Surcharge	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuel Tax
CAS = Casino Taxes and Fees	MIS = Miscellaneous
CBT = Corporation Business Tax	MULT = Multiple Taxes
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax

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What's New for Tax Year 2013

New Jersey income tax return processing started January 31 due to the delayed opening of the tax season for Federal returns.

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Excludable Pensions, Annuities, and IRA Withdrawals (Line 19b)** — There is a new line on the resident return, Form NJ-1040, on which you must report the excludable portion of any distribution from a pension, annuity, or IRA to which you made contributions.
- **Designated Contribution** — The Girl Scouts Councils in New Jersey Fund has been added to the list of organizations to which you can contribute on your New Jersey tax return. To donate to the new fund, you must specify code number "16" at the "Other Designated Contribution" line.
- **Change of Address** — A change-of-address indicator has been added to the name and address section on all New Jersey income tax returns. Mark the indicator if your address has changed since you last filed a New Jersey return or if any of the address information on your label is incorrect.

Enter the current (or corrected) address information on your return.

- **Check Amount Boxes** — A new check amount field has been added to the first page on all New Jersey income tax returns. If you owe tax and are enclosing a check or money order with your return, you must enter the amount of your payment in the boxes provided. If you pay by credit card or e-check, leave the check amount boxes blank.
- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2013, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$131.33, the maximum employee disability insurance contribution was \$111.24, and the maximum employee family leave insurance contribution was \$30.90. If you had two or more employers, you may have contributed more than the maximum amount(s). You must complete Form NJ-2450 to claim credit on your New Jersey tax return for the excess withheld.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2013 was 3.4985% (.034985) from January 1 to June 30, 2013, and 3.495% (.03495) from July 1 to December 31, 2013.

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- **Alternative Business Calculation Adjustment** — If you have losses in certain business-related categories of income, you may be able to use those losses to calculate an adjustment to your taxable income. In addition, you can carry forward unused losses in those categories for 20 years to calculate future adjustments. For tax year 2013, the percentage used to calculate the Alternative Business Calculation Adjustment on Schedule NJ-BUS-2 is 20 percent, up from 10 percent in tax year 2012. The percentage is being phased in over a five-year period and will reach a maximum of 50 percent for tax year 2016 and after.
- **E-Filing Requirement for Practitioners** — Preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.
- **Printing and Mailing of Forms NJ-1041 and NJ-1065 Discontinued** — With the continued growth of electronic filing and the need to reduce costs, the Division of Taxation will no longer print and mail instruction booklets and forms for either the New Jersey Gross Income Tax Fiduciary Return, [Form NJ-1041](#), or the New Jersey Partnership Return, [Form NJ-1065](#).

- **Email Policy** — Due to privacy and security concerns, the Division of Taxation will no longer address specific tax account concerns through email. You can [email](#) general State tax questions to us; however, you should not include confidential information such as social security or Federal tax identification numbers, liability or payment amounts, dates of birth, or bank account numbers. The Division will not provide any information about the status of your income tax refund, homestead benefit, or property tax reimbursement by email. For answers to confidential questions, including specific account information or changes to your account, call 609-292-6400, write to the New Jersey Division of Taxation at PO Box 281, Trenton, NJ 08695-0281, or visit one of the Division's [regional offices](#) and speak to a representative in person.
- **Identity Theft** — The Division of Taxation has introduced a new form, the Identity Theft Declaration, [Form IDT-100](#), for taxpayers who suspect that their identity has been used fraudulently or who believe they are at risk due to a lost or stolen wallet or questionable credit card activity or credit report. Once an affected taxpayer files Form IDT-100, the Division of Taxation can take immediate steps to mark their tax account and identify any questionable activity.

Property Tax Relief Programs

- **Homestead Benefit Program** — Information about the 2013 Homestead Benefit Program is not yet available. Please continue

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New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Director:** Michael J. Bryan

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to check our [website](#) as information will be posted as it becomes available.

- **2013 Property Tax Reimbursement (Senior Freeze)** — The Senior Freeze (Property Tax Reimbursement) Program reimburses eligible senior citizens or disabled persons for property tax increases. Eligible residents must file a 2013 Property Tax Reimbursement Application (Form PTR-1 or PTR-2) by June 2, 2014. The 2013 applications are expected to be mailed in mid to late February.

With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying

for reimbursements for tax year 2013, total annual income must be:

2012: \$82,880 or less, and

2013: \$84,289 or less

These limits apply regardless of marital/civil union status. However, if your filing status was married/CU couple, and you lived in the same household, you must combine your incomes for that year.

NOTE: For 2012 the State Budget limited reimbursement payments to certain applicants. Only those applicants whose 2011 income did not exceed \$80,000 and whose 2012 income did not exceed \$70,000 (the original limit was \$82,880) were eligible to receive reimbursement payments for 2012, provided they met all the other program requirements. The State Budget may apply

similar limitations for 2013. □

Requesting Copies of Tax Returns

You can obtain a copy of a tax return filed with the New Jersey Division of Taxation by completing and submitting [Form DCC-1](#). If the return was filed electronically, you will receive a transcript of the information entered on the return.

A fee of \$1 per page (side) must be submitted with Form DCC-1. A copy of a paper return will include all pages submitted, including attachments (schedules, W-2 forms, etc.). A transcript of an electronically filed income tax return contains six pages. Payment must be made by check or money order. *Cash and credit cards will not be*

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How to
Get Your NJ Income Tax Refund
FASTER!

Go Green, New Jersey! Skip the Paper.



NJWebFile

Use your computer to file your return.
Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.



NJFile

Use tax software or ask your tax preparer.
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www.njfastfile.com



NJFastFile
the way to a faster refund.

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accepted. Make the check or money order payable to the New Jersey Division of Taxation. Write your social security number or New Jersey taxpayer identification number and “Form DCC-1” on the payment.

Mail Form DCC-1 with your payment and any other enclosures to:

NEW JERSEY DIVISION OF TAXATION
DOCUMENT CONTROL CENTER
PO BOX 269
TRENTON, NJ 08695-0269

Allow three weeks for delivery of the returns you requested.

Gross Income Tax Returns. In addition to submitting Form DCC-1 by mail, you can also obtain copies of previously filed gross income tax returns (Forms NJ-1040, NJ-1040NR, NJ-1041, or NJ-1040X) in person by completing Form DCC-1 at a Division of Taxation [regional office](#).

Regional office staff will provide copies *only* to the person(s) who signed the requested tax return or to the taxpayer’s representative who provides a properly completed [Form M-5008-R](#). A photo ID (driver’s license or other government-issued photo ID) of the taxpayer or the taxpayer’s authorized representative is required when

making in-person requests for copies of personal income tax returns.

If the person making an in-person request for a copy of a gross income tax return is not the person who signed the return (or is not the taxpayer’s authorized representative), the request cannot be completed at the regional office. Instead, the Division will send the return copies requested on Form DCC-1 to the person who signed the return at the address on file with the Division.

Business Tax Returns. When requesting copies of returns filed for a business (e.g., corporation business tax, sales and use tax, or employer withholding returns), you must also include a request letter on company stationery signed by an officer of the company.

The Division can provide return copies only to the person who signed the return unless a signed release form or a [Form M-5008-R](#), Appointment of Taxpayer Representative, which authorizes the release of the return(s) being requested is enclosed with Form DCC-1.

To request copies of returns for any tax other than personal income tax, you must submit Form DCC-1 to the Division of Taxation by mail as explained above. You cannot request copies of business tax returns in person at the Division’s [regional offices](#). □

LOCAL PROPERTY TAX Tax Assessors’ Calendar

January 1–

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.

- County Tax Board to complete hearings of added and omitted assessment appeals.
- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.
- Assessor to file one copy of each Farmland Assessment application (Form FA-1) with County Tax Board for tax administrator’s review.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Assessor to file copies of Initial and Further Statements with County Tax Board.
- Assessor to file duplicate copy of municipal tax map with County Tax Board.
- Assessor to file estimated total amount of approved veteran and property tax deductions with County Tax Board.
- Assessor to file assessment list and duplicates with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file “U.E.Z. Exemption Report” and “Five-Year

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s website under “[Auctions](#).” Select the name of the business for details about that auction.

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assessors' calendar - from page 4

Limited Exemption Report" with County Tax Board.

- Assessor to file two copies of Form SR-3A with County Tax Board.

January 25-

- Assessor to provide schedule of office hours and appointment availability to County Tax Administrator and post in the municipal building.

February 1 (before)-

- Assessor to mail notices of current assessment and preceding year's taxes to each taxpayer.

February 1-

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to complete Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 and forward to County Tax Administrator.
- County Tax Administrator to furnish assessors' office hours to Director, Division of Taxation.
- County Tax Board to certify amount to which each qualified Highlands municipality is entitled to Division of Taxation and State Treasurer.

February 1 (after)-

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10-

- Assessor to file certification of bulk mailing of Notification of

Assessment with the County Tax Board within 10 days of completion of mailing. If County Tax Board completes bulk mailing, the County Tax Administrator prepares the certification within 10 days of the date the bulk mailing was completed.

March 1-

- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

March 10 (before)-

- County Tax Board to complete equalization table hearings.

March 10-

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of

real property more precise by using technology driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

January 10-

- Assessor to file two copies of preliminary Form SR-3A with County Tax Board.

January 15-

- Deadline for taxpayers and taxing districts to file appeals of assessed valuations to County Tax Boards, or 45 days from date the bulk mailing of notifications of assessment is completed, whichever is later. **Note:** Deadline for appeals of assessed valuations over \$1,000,000 to State Tax Court remains April 1 or 45 days from completion of bulk mailing of notifications, whichever is later. □

Enforcement Summary Statistics

Fourth Quarter 2013

Following is a summary of enforcement actions for the quarter ending December 31, 2013.

	Number	Amount
• Bank Levies	900	\$ 3,668,386
• Certificates of Debt	3,934	46,385,051
• Seizures	101	1,177,350
• Auctions	9	185,579
• Warrants of Satisfaction	3,558	



Criminal Enforcement

Criminal enforcement over the past several months included:

- On August 21, 2013, Nicholas Bidic was sentenced in Cumberland County Superior Court to five years of probation as part of his plea agreement for his role in the theft of \$1,237,269.65 in sales tax during the years 2008 through 2010. At the time of sentencing, Bidic provided the State with a check for \$700,000 and a second check for \$60,404.73 for payment towards his sales tax liability. An additional \$39,595.27 was applied to his sales tax liability from a seized bank account. As per his sentencing, Bidic will be required to make monthly payments of \$9,000 to the State of New Jersey for his outstanding sales tax liability plus penalties and interest. He also forfeited nine motor vehicles to the State of New Jersey as part of the criminal forfeiture proceedings. This is the result of a joint investigation with the Division's Office of Criminal Investigation (OCI) and the New Jersey Division of Criminal Justice.
- On August 23, 2013, a mail carrier, Miguel E. Duran of Paterson, was sentenced to three years in State prison for using his mail

route to aid in the theft of fraudulent State and Federal tax refunds. Duran pled guilty to second-degree theft by unlawful taking. He admitted to intercepting State and Federal income tax checks and delivering them to his co-conspirators for \$200 per check. This case was prosecuted by New Jersey Division of Criminal Justice Deputy Attorney General Denise Grugan. The sentencing was a result of a joint investigation with OCI and the New Jersey Division of Criminal Justice.

- On August 24, 2013, Chaudhry Iqbal was entered in the Pretrial Intervention (PTI) Program for one year. Iqbal was arrested by a special agent from OCI on August 20, 2012, at JFK Convenience store, located at 3814 Ventnor Ave., Atlantic City, New Jersey. There was a warrant for his arrest for possession of synthetic marijuana, which was seized during a prior inspection by the special agent on March 20, 2012. Iqbal was also found in possession of 12.44 cartons of contraband cigarettes during the initial inspection. Subsequent to Iqbal's arrest, an additional 11.8 cartons of contraband cigarettes were seized as well as \$2,583. Bail was set at \$12,000, no 10%, by the Honorable Judge Ward of the Atlantic City Municipal

Court. As a condition of PTI, the seized cash was awarded to the State by Atlantic County Superior Court.

- OCI special agents participated in the New Jersey Attorney General's "TIDE" detail, which addressed violent crime and weapons in the City of Trenton. During the detail, OCI found that gangs have taken over some legitimate businesses in the city of Trenton, and are operating them as outlets for counterfeit goods such as high-end sneakers, sports team jerseys, DVDs, and music CDs. None of these businesses are in compliance with Title 54. OCI made 34 contraband seizures as well during the operation and filed numerous criminal charges against individuals and businesses. The OCI special agents received commendations from the New Jersey State Police for their work during this operation.
- On September 4, 2013, OCI special agents arrested Gregorio A. Cordero of Jersey City, New Jersey, for numerous violations involving counterfeiting of New Jersey cigarette tax stamps as well as New Jersey Motor Vehicle Commission (MVC) inspection stickers. Agents seized a computer and printer used to produce counterfeit items, which have been submitted to the Regional Computer Forensics Lab for examination. Additionally, \$4,910 in U.S. currency was seized and action for forfeiture has been entered. Cordero was processed and lodged in the Hudson County Jail on \$15,000 bail pending his hearing. OCI special agents were complimented by the MVC

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Commissioner in the media for their work.

- On September 12, 2013, former Assemblyman Albert Coutinho pled guilty to third-degree theft by unlawful taking and a fourth-degree charge of falsifying or tampering with records before Superior Court Judge Gerald J. Council in Mercer County. As a result of his guilty plea, Coutinho will be permanently barred from holding public office or public employment in New Jersey. In pleading guilty, Coutinho admitted to misappropriating donations and contributions to his family’s charitable foundation, the Bernardino Coutinho Foundation, between 2008 and 2012. Coutinho admitted to taking and using those donations for his own personal benefit and for purposes unrelated to any legitimate, foundation-related business. In connection with the second charge, Coutinho separately admitted that he also failed to disclose in his legislative Financial Disclosure Statements for calendar years 2008 through 2012 the income he received as a consequence of his theft and misappropriation of foundation funds. The charges resulted from a joint investigation by the Division of Criminal Justice Corruption Bureau and OCI. Coutinho was sentenced to three years’ probation. He was also ordered by Superior Court Judge Gerald Council in Mercer County to perform 50 hours of community service and repay the \$32,500 he stole from the Bernardino Coutinho Foundation.

- On September 18, 2013, an Atlantic County Grand Jury indicted Tariq Mehmood, the owner of the 24 Seven Food Mart on Atlantic Avenue in Atlantic City. Mehmood was indicted on two counts of fourth-degree possession of ten cartons or more of counterfeit-stamped cigarettes, two counts of third-degree distribution and/or manufacturing of counterfeit New Jersey cigarette stamps, two counts of third-degree failure to maintain records of cigarette purchases with the intent to evade the State cigarette tax, two counts of fourth-degree engaging in a cigarette transaction with an unlicensed person with the intent to evade the State cigarette tax, and one count of third-degree distribution of a prescription legend drug. On January 31, 2013, Tariq Mehmood was picked up on a search warrant granted by Atlantic City Judge Warner. OCI’s special agent arrested Mehmood without incident with assistance from the Atlantic City Police Department’s VICE Unit. Mehmood was given bail of \$15,000, no 10%. Mehmood posted bail two days later.
- On September 27, 2013, Brian Lewis, of Pleasantville, New Jersey, a former Atlantic City Housing Authority employee, was sentenced to five years in State prison for official misconduct, theft, and New Jersey State tax fraud. Lewis fraudulently billed and received payments from the Atlantic City Housing Authority through five shell companies he owned and operated for housing repairs already performed by other companies. Lewis was guilty of defrauding and stealing a total of nearly \$290,000 from

the Housing Authority and the State of New Jersey. Based on an agreement with the Prosecutor’s Office, charges against Lewis’s wife, Shellie Williams, were dismissed upon the filing of amended tax returns. The investigation concluded that the couple failed to pay over \$36,600 in State taxes by not reporting the money they fraudulently received from the Atlantic City Housing Authority.

- On October 27, 2013, Burlington County Prosecutor Robert D. Bernardi announced that a former Willingboro man was sentenced to five years in prison for filing several false tax returns that resulted in a \$545,000 refund from the New Jersey Treasury Department. Kenneth Costello received the five-year sentence from the Honorable Jeanne T. Covert in Superior Court in Mount Holly. Judge Covert indicated the sentence took into consideration the

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2014 – December 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%



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defendant’s history of psychiatric treatment and his lack of a criminal record. Costello must serve two years in New Jersey State prison before becoming eligible for parole. Costello, formerly of Willingboro and also Barnegat Township, pled guilty in September 2013 to financial facilitation of criminal activity, a first-degree crime more commonly known as money laundering. The investigation revealed that Costello filed four fraudulent tax returns for the 2008 tax year resulting in a refund from the State of New Jersey in the amount of \$545,384. Costello eventually diverted the funds to multiple financial institutions. He purchased a \$40,000 vehicle and used some of the money for living expenses. Costello was indicted in June 2012 and arrested in November at a train station in Washington, D.C. The investigation was conducted by the New Jersey Treasury Department’s OCI and the Burlington County Prosecutor’s Office Financial

Crimes Unit. The investigation into Costello’s actions began after he complained to the Willingboro bank where he deposited the refund that someone had withdrawn money without his permission. The complaint resulted in criminal charges against bank teller Lisa Jarvis, of Norcross, Georgia. Jarvis acknowledged that she created an unauthorized debit card for Costello’s account in November 2009 and used it to steal nearly \$100,000 over a two-year period. Jarvis had moved from Willingboro to Georgia and made more than 100 purchases before pleading guilty in October 2012 to computer theft and related charges. She was sentenced to three years in New Jersey State prison. In addition to filing the returns that yielded the \$545,000 payment, Costello unsuccessfully filed another return that would have given him an additional refund of \$228,000 had it not been denied by the Treasury Department. Nearly \$300,000 has been recovered. □

In Our Legislature

Gross Income Tax

Compensation for Wrongful Imprisonment — P.L. 2013, c.171, signed into law on December 27, 2013, and effective immediately, increases compensation for wrongful imprisonment and excludes such compensation from New Jersey gross income.

The new law increases the amount of damages for wrongful imprisonment, if awarded, from \$20,000 to \$50,000 for each year of incarceration. If damages exceed \$1 million, the court can order that the award be paid out as an annuity over a maximum of 20 years. The law also requires the court to award reasonable attorney fees and reimbursement of litigation costs and permits the court to award the claimant services such as counseling, tuition assistance, vocational training, housing assistance, and health insurance coverage. Once the claimant is awarded damages, any lien filed against the defendant for Public Defender services will be discharged and considered void.

Miscellaneous

Common Sense Shared Services Pilot Act — P.L. 2013, c.166, signed into law on October 16, 2013, and effective immediately, revises current law to assist in the implementation of shared services agreements by allowing abrogation of tenure rights of certain personnel, including local assessors, who may be affected by those agreements. These shared services agreements are defined in the “Uniform Shared Services and Consolidation Act,” P.L.2007, c.63 (C.40A:65-1 et seq.).

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123 Main Street
Trenton, NJ 08611

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Account number: 1234

For \$50250025

Do not include the check number

1234

Select “Electronic Services” to make a payment directly from your bank account

Credit Card

1-888-673-7694

www.state.nj.us/treasury/taxation/





in our legislature - from page 8

The Division of Taxation maintains oversight of the municipal and county assessment process. Prior to the enactment of this law, statutory requirements called for every municipality to appoint certain local officials to assess land and property values. Now, sharing of those personnel under a shared services agreement or joint contract for a joint meeting entered into pursuant to the provisions of the Uniform Shared Services and Consolidation Act may fulfill these requirements.

New Jersey Economic Opportunity Act of 2013 — P.L. 2013, c.161, signed into law on September 18, 2013, and effective immediately, merges five current incentive programs into two: the Grow New Jersey Assistance Program (GROW NJ) and the Economic Redevelopment and Growth Grant Program (ERGG). Both of these incentive programs are administered by the New Jersey Economic Development Authority (EDA). GROW NJ is the State’s job creation and retention incentive

program, which offers transferable tax credits. The Act expands the areas of the State within which businesses can qualify for those credits and reduces the capital investment and employment requirements. These changes will allow New Jersey to better match or surpass the financial incentive packages offered by neighboring and competing states and provide bonuses to drive development to smart growth areas in the State. ERGG, which is the State’s incentive program for developers, grants tax benefits based on annual incremental State and local taxes in an effort to close project financing gaps and build public infrastructure critical to redevelopment projects. In addition, ERGG will provide bonuses to achieve public policy objectives such as bringing fresh produce to urban “food deserts,” and rebuilding tourism destinations damaged or destroyed due to the effects of Hurricane Sandy.

The law phases out the Business Retention and Relocation Assistance Grant Program (BRRAG), Business Employment

Incentive Program (BEIP), and the Urban Transit Hub Tax Credit Program (HUB) and incorporates many of their elements into GROW NJ and ERGG. The EDA will only process applications for BRRAG, BEIP, or HUB that were submitted to that agency on or before September 18, 2013, the date the Act went into effect. The EDA must approve any BRRAG, BEIP, or HUB applications in the pipeline on or before December 31, 2013 (some HUB approvals could be rendered 120 days from September 18, 2013). Supporting documentation for HUB grants approved prior to December 31, 2013, may be submitted no later than April 26, 2017. Current reviews of BEIP, BRRAG, and HUB proposals that were received by the EDA before September 18, 2013, will not be adversely impacted. Existing BEIP, BRRAG, and HUB grants which were to be claimed over multiple years are unaffected by the Act.

Noteworthy changes include:

- The maximum aggregate value of all HUB tax credits that may be awarded in a single year increases from \$250 million to \$260 million.
- Businesses that submitted an application under GROW NJ or ERGG before the enactment of the Act may amend their application to receive more favorable terms under the provisions of the Act.
- The maximum value of tax credits that the EDA can approve for the State portion of ERGG redevelopment incentive grant agreements is set at \$600 million. Tax credits awarded under this program may

Save The Date

2014 NESTOA Conference

North Eastern States Tax Officials Association

September 28, 2014 - October 1, 2014

**Hyatt Regency
Two Albany Street
New Brunswick, NJ 08901**



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be transferred and may not be sold or assigned for an amount less than 75% of their value.

- All GROW NJ or ERGG proposals must be submitted on or before July 1, 2019. The law requires the EDA to approve any submitted GROW NJ applications on or before July 1, 2023 (a three-year approval window with two six-month extensions).
- There are a number of newly designated geographical areas eligible for grants and tax credits, including areas not located within a distressed municipality or priority area, also including an aviation district; Planning Area 3 (as designated in the State Plan); certain portions of the Meadowlands, Pinelands, and Highlands; and certain portions of Planning Areas 4A, 4B, and 5 (also as designated within the State Plan).

In addition to the areas described above targeted for incentive financing, a newly designated targeted growth area, the Garden State Growth Zone, which consists of the four poorest urban areas in the State (Camden, Trenton, Paterson, and Passaic), as defined and designated in the current State Plan, would be eligible for incentive grants. □

Tax Calendar

The following links provide access to calendars listing filing and payment dates for tax year 2013 (January 1, 2013 – December 31, 2013) and tax year 2014 (January 1, 2014 – December 31, 2014) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2013](#) [2014](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2013](#) [2014](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2013](#) [2014](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
Hotline..... 1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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Homestead Benefit Applications Mailed

The Division of Taxation mailed 2012 homestead benefit applications to New Jersey homeowners beginning in early October. Below is a schedule of the homeowner benefit application expected delivery dates by county. Homeowners who filed last year's homestead benefit application online and indicated that they wanted to receive this year's application electronically received an email containing instructions for downloading their 2012 application packet. These email notifications were also sent out by county according to the delivery schedule below.

To be eligible for the 2012 homestead benefit, an applicant must be a New Jersey resident who owned and occupied a home in this State that was their principal residence on October 1, 2012, paid property

taxes on that home, and meets certain income limits. For the 2011 homestead benefit, the income limit for homeowners under age 65 and not blind or disabled was \$75,000 (\$150,000 for homeowners age 65 or older or blind or disabled). However, the State Budget (that must be adopted by July 1, 2014) may affect the homestead benefit eligibility and amounts for 2012. Applicants can file an application regardless of their income, but if the amounts exceed the limits determined by the State Budget, the application will be denied.

The amount of the benefit is based on an applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or eligible to claim an exemption as blind or disabled for tax year 2012. Amounts received under the Homestead Benefit Program are in addition to the State's other property tax

continued on page 2

County	Delivery Expected to Begin
Camden, Hudson, Hunterdon, Salem, Somerset	Thursday, Oct. 10
Bergen, Burlington, Cumberland, Warren	Saturday, Oct. 12
Morris, Ocean	Tuesday, Oct. 15
Atlantic, Essex, Monmouth, Sussex	Friday, Oct. 18
Cape May, Union	Saturday, Oct. 19
Gloucester, Mercer, Middlesex, Passaic	Tuesday, Oct. 22

homestead applications- from pg. 1

relief programs. The total amount of all property tax relief benefits received (homestead benefit, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant's principal residence for the same year.

Most homeowners can file their applications either [online](#) or by phone (1-877-658-2972). Applicants should read the instructions before attempting to file the application. Homeowners who sold or plan to sell their home should pay particular attention to the related instructions to ensure they complete their applications correctly.

The filing deadline for 2012 Homestead Benefit Applications has been extended to December 31, 2013. The original filing deadline was November 22, 2013. More information on the homestead benefit, including eligibility requirements is available on the Division of Taxation's [website](#). □

Tax Rates for Form NJ-1080C

The New Jersey Administrative Code at N.J.A.C. 18:35-5.2 requires income taxation on the New Jersey Income Tax Nonresident Composite Return (Form NJ-1080C) at the highest rate. However, for tax years beginning on or before December 31, 2012, the Division will continue to allow the use of two rates in order to encourage nonresident individuals to elect to participate in a composite return.

Entities preparing and filing the NJ-1080C return for participating

taxpayers with New Jersey sourced income from the entity of less than \$250,000 will apply the 6.37% rate. For participating taxpayers with New Jersey sourced income of \$250,000 or more, entities will apply the highest tax rate, which was 10.75% in 2009 and 8.97% in 2010, 2011, and 2012.

As a result of the review of the composite return policy, the regulation at N.J.A.C. 18:35-5.2 will be enforced for tax years beginning on and after January 1, 2013. Thus, all entity members who elect to participate in the composite return filing will be required to pay tax at the highest rate.

Participation in a composite return is elective. If the nonresident individual does not believe that the benefits derived from the composite return outweigh the additional tax paid, they can file an individual nonresident return, Form NJ-1040NR.

As a result of the enforcement of the regulation, some filing entities may receive a notice for failure to make the required estimated payments. If the filing entity believes the correct estimated payments were remitted using the two-tiered tax rate calculation, they should write to the New Jersey Division of Taxation, ITAB – Composite Return, PO Box 288, Trenton, NJ 08646-0288. □

Change in Email Policy

New Jersey is committed to protecting the privacy of taxpayers' information. In an effort to protect taxpayers' privacy and comply with State confidentiality laws, the Division of Taxation has changed its policy on the kind of information we

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New Jersey State Tax news

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Technical Information Branch
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Subscribe to *NJ Tax E-News* on our website to be notified when new issues become available.

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Director:** Michael J. Bryan

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e-mail policy - from page 2

provide by email. We will no longer provide confidential personal and financial information. This means that we cannot provide any information about the status of income tax refunds, Homestead Benefits or Property Tax Reimbursements by email. No confidential information, such as Social Security or Federal Tax Identification numbers, liability or payment amounts, dates of birth or bank account numbers should be included in email sent to the Division.

Taxpayers who want to discuss confidential information, such as the status of their income tax refund, should call 609-292-6400, write to New Jersey Division of Taxation, PO Box 281, Trenton, NJ 08695-0281, or visit one of our Regional Information Centers. A list of Regional Information Centers is available on our [website](#).

This new policy also extends to email inquiries from tax practitioners. Practitioners can also call 609-292-6400 or inquire about clients' accounts by writing to New Jersey Division of Taxation, PO Box 281, Trenton, NJ 08695-0281. When submitting an account inquiry by mail, the practitioner must include a completed Appointment of Taxpayer Representative (Form [M-5008-R](#)) signed by the taxpayer. □

Identity Theft

Identity theft is one of the fastest-growing crimes in the United States. Most people have heard about identity thieves targeting credit card companies and financial institutions, but criminals are also using personal information to file tax returns and

acquire fraudulent refunds. Often taxpayers don't even realize that their information has been compromised until they receive a notice about their tax account from the Division of Taxation or the IRS.

If a taxpayer suspects that their identity has been used fraudulently or believes that they're at risk due to a lost or stolen wallet or questionable credit card activity or credit report, the taxpayer should file an Identity Theft Declaration, [Form IDT-100](#), so the Division of Taxation can take immediate steps to mark the tax account and identify any questionable activity.

When filing Form IDT-100 taxpayers must include the following:

- Statement explaining the problem and how the taxpayer became aware of it; and
- Copy of a government issued ID such as a driver's license, U.S. passport, U.S. military ID card, or other valid ID issued by a State or Federal agency; and
- Address verification for the tax year(s) in question such as a copy of a utility bill, lease agreement, or bank statement; and
- Copy of any notice received from the New Jersey Division of Taxation, if applicable.

Identity theft may affect a taxpayer's current, past, or future tax records and the Division is committed to identifying and stopping tax identity theft wherever possible.

Affected taxpayers also need to take steps with the IRS to safeguard their Federal tax records. Information is available online at www.IRS.gov.

Additional identity theft resources are available on the Division's [website](#). Taxpayers can also contact the Customer Service Center at 609-292-6400 for assistance. □

Taxation Plans to CATCH Tax Cheats

Do you know of a person or business that is not paying their fair share of New Jersey taxes? Reporting to the Division is now faster, easier, and more convenient. The Division's CATCH (Citizens Against Tax CHEats) Program's new online form, available 24 hours a day, 7 days a week, allows taxpayers to report possible tax avoidance issues electronically. The Division forwards reports that have merit to the appropriate Branch within Taxation or to another State agency for follow-up. The referrals often lead to the discovery of unreported tax liabilities and collection of unremitted payments.

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2014 – December 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

CATCH tax cheats - from page 3

Examples of businesses or individuals who may be in violation of New Jersey tax laws include:

- Retailers who do not charge sales tax when they should;
- Employers who do not withhold payroll taxes;
- Businesses that neither charge the required taxes nor pay their business and personal taxes; and
- Individuals who are dishonest in completing their New Jersey tax returns or do not file at all.

Each year millions of New Jersey tax dollars remain uncollected. To help identify and locate tax avoiders, the Division encourages citizens to submit the CATCH Program's [online form](#) to report businesses or individuals who may be cheating on their New Jersey taxes. Citizens can also mail information about the suspected individual or business to the New Jersey Division of Taxation, PO Box 195, Trenton, NJ 08695-0195, or call the Division's Customer Service Center at 609-292-6400. The report should contain as much of the following information as possible about the suspected tax cheat:

- Name, address, and telephone number.
- Social Security Number or Taxpayer Identification Number.
- Tax(es) and tax year(s) involved.
- Other information regarding the complaint.

Complainants should also include their email address and phone number for follow-up purposes, but they do not have to give their name. All information provided remains confidential. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year). Age or disability status established by December 31 (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.

- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.
- Exempt real property sold to nonexempt owner or real property improved after October 1 and before January 1 assessed as of the first day of the month following completion or sale.
- True taxable value of an improvement, conversion, or construction of property that has applied for exemption and/or abatement determined by assessor.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed

continued on page 5

Update:

NJ/NY Cooperative Interstate Tax Program

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from pg. 4

property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.

November 1 (on or before)–

For Monmouth County, see *Monmouth County Demonstration Program* [below](#).

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.

November 15–

For Monmouth County, see *Monmouth County Demonstration Program* [below](#).

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

December 1 (on or before)–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.
- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 20 (on or before)–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by

using technology-driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

November 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).
- Revaluation assessment notices mailed by assessor in towns undergoing revaluation (pretax year).

November 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year's taxes (pretax year). □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On May 6, 2013, U.S. Magistrate Judge Madeline Cox Arleo sentenced singer Lauryn Hill to three months in Federal prison for failing to pay income taxes. In the hours before sentencing, Hill paid more than \$970,000 in back taxes and penalties to the Federal government and the State of New Jersey. Ms. Hill was ordered to report to prison on July 8, 2013.
- In early May, the Office of Criminal Investigation (OCI), Excise

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under "[Auctions](#)." Select the name of the business for details about that auction.



criminal enforcement - from pg. 5

Tax Branch, and Division of Revenue assisted Wawa, Inc. with a corporate restructuring, which included an issuance of a cigarette distributor license to their newly formed company, Wawa Procurement, Inc. Though the process was partially handled as a new license, the corporate officers and performance bond were the same, allowing the Division to consider the transaction a transfer as well. Because of these factors, Wawa was granted permission to use their remaining cigarette tax stamps purchased with the former license while ordering new stamps with the new license. As Wawa is a major cigarette retailer, this prevented a brief interruption of revenue for both the State and the company.

- On May 24, 2013, Craig L. Trabucco agreed to a consent judgment for four counts of failure to file New Jersey State income tax returns for tax years 2007–2010. On June 20, 2013, Mr. Trabucco was sentenced to five years’ probation, to run concurrently, and was ordered to pay restitution of \$128,140.83. Helen M. Trabucco entered the Pre-Trial Intervention Program. This case originated from an investigation of Mr. Trabucco by the New Jersey State Police Cargo Theft Unit and encompassed tax years 2003–2010.
- At the request of the Atlantic City Tourism District, OCI conducted law enforcement operations there, which were coordinated with the Atlantic City Police Department and New Jersey Division of Consumer Affairs. They conducted inspections of 36 businesses and seized contraband from 12

locations. There were 39.4 cartons of contraband cigarettes seized along with 11,332 untaxed cigars, 131 “loosies” cigarettes, 42 packages of pipe tobacco, 13 cans of chewing tobacco, 23 hookah packages, 428 cans of Indian chewing tobacco, 476 counterfeit DVDs, \$28,035 in U.S. currency, and numerous invoices of cigarette and tobacco products purchased. A DVR security surveillance system, 18 Family First cards, and an ATM machine with a printout of receipts totaling \$30,730 in U.S. currency were also seized.

- An 18-month joint investigation conducted by the Monmouth County Prosecutor’s Office, along with various State agencies including the Department of the Treasury, Office of Criminal Investigation, culminated on June 24, 2013, with the execution of search and arrest warrants, arrest of 22 individuals, seizure of a dozen vehicles and more than \$500,000 in cash, and the freezing of financial accounts used to facilitate criminal activities, including money laundering and the

sale and distribution of marijuana and prescription drugs.

- On July 5, 2013, Anthony Foti Jr. of Ogdensburg, New York, pled guilty to the charge of failure to remit sales and use taxes while owner of Wheels Are Us Auto Sales. Mr. Foti failed to remit \$37,211 in sales tax collected from his customers. A consent judgment was entered in favor of the Division of Taxation for \$60,610.12.
- On July 25, 2013, OCI received a check from the U.S. Department of Justice in the amount of \$500,105 as the result of a successful joint investigation between the U.S. Department of Justice; Bureau of Alcohol, Tobacco, Firearms and Explosives; North Carolina Department of Revenue; and OCI. The check represents the amount of tax that would have been due to the State of New Jersey on contraband cigarettes sold in the course of the joint investigation. Omar Nijim was sentenced on December 13, 2011, to 33 months in prison. On January 12, 2012, Emad Hasan Tawiq Wshah and

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Enforcement Summary Statistics **Third Quarter 2013**

Following is a summary of enforcement actions for the quarter ending September 30, 2013.

	Number	Amount
• Bank Levies	941	\$ 5,206,618
• Certificates of Debt	3,800	54,570,757
• Seizures	112	803,173
• Auctions	5	117,846
• Warrants of Satisfaction	3,951	



criminal enforcement - from pg. 6

Nabil Nafiz Mustafa received sentences of 26 and 20 months, respectively. The defendants are jointly and severally liable for payment of restitution. All the defendants remain incarcerated.

□

Tax Briefs

Gross Income Tax

Qualified Conservation Contribution Deduction for Business Entities – The Division published guidance in the **Winter 2001** (Vol. 30, No. 4) issue of the *State Tax News* regarding the qualified conservation contribution deduction pursuant to N.J.S.A. 54A:3-6. The article stated that “The Legislature made no provisions in the amendment for S corporations or partnerships to flow this deduction out to their shareholders or partners.”

This statement was not meant to prohibit eligible partnerships or S corporations from taking the qualified conservation contribution deduction as a charitable deduction at the entity level, thereby reducing the individual taxpayer’s distributive share of partnership income or net pro rata share of S corporation income in accordance with *Sabino v. Director, Division of Taxation*, 296 N.J. Super 269, 686 A.2d 1197 (Appellate Division 1996) and *Adler v. Director, Division of Taxation*, 20 N.J. Tax 537 (Tax 2003).

The individual taxpayer may not take the qualified conservation contribution deduction again on his or her personal income tax return as doing so would result in a double benefit.

Sales and Use Tax

Fund for Ill Child and Exempt Organization Status – A taxpayer asked the Division whether a fund established for the benefit of a child recently diagnosed with a serious illness could obtain status as an organization exempt from sales and use tax.

The Division responded that a fund established to benefit one particular individual or family does not qualify as a nonprofit organization exempt from sales and use tax. See N.J.S.A. 54:32B-9(b) and N.J.A.C. 18:24-9.6.

Persons involved in fundraising activities in New Jersey should contact the New Jersey Office of Charities Registration at 973-504-6215 to ensure that their activities are in compliance with State requirements.

Purchases of Gym Equipment by a Health Club – A taxpayer who operates a health club and collects sales tax from members on charges for membership fees inquired as to whether he must pay sales or use tax on purchases of gym equipment to be used by the members.

The Sales and Use Tax Act imposes tax on “charges in the nature of initiation fees, membership fees or

dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except for membership in a club or organization whose members are predominantly age 18 or under.” N.J.S.A. 54:32B-3(h). In addition, the Act imposes tax on sales of tangible personal property unless a valid exemption exists. N.J.S.A. 54:32B-3(a). Therefore, purchases of treadmills and other gym equipment by a health club or gym are subject to tax.

Because sales tax is a transactional tax, the fact that a taxpayer is required to collect sales tax from members on charges for membership fees has no effect on its obligation to pay sales tax on purchases of gym equipment. These are two separate transactions and tax is imposed under different sections of the law and on different taxpayers. □

In Our Courts

Corporation Business Tax Regulation Subsequent to Division Notice

– *Shree Ram Investments, Inc. v. Director, Division of Taxation*, decided August 9, 2013, Appellate Division, Docket No. A-0600-11T4.

In May 2001, Shree Ram Investments, Inc. (SRI) filed an election to be treated as an S corporation in New Jersey. The Division returned

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Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the websites listed below.

Arkansas

9/01/13 – 12/31/13

<http://www.sos.arkansas.gov/BCS/Pages/FTAmnesty.aspx>

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the election form to SRI because it had not registered as a New Jersey or foreign corporation and stated that SRI could apply for S corporation status once it had registered. SRI registered and obtained its certificate of authority but did not refile its S corporation election. Regardless, SRI filed its New Jersey returns as an S corporation commencing in 2001 and through 2005.

In March 2006, the Division issued a notice of deficiency for tax years 2003 and 2004. In May 2006, SRI filed its S corporation election with the Division and requested retroactive S corporation status. The Division granted S corporation status as of January 1, 2006, but denied retroactive status and sent a notice to SRI. The notice included information about the taxpayer's protest and appeal rights, the option for filing a Claim for Refund of Paid Audit Assessment, Form A-1730, and the requirements therefor.

In February 2007, SRI paid the deficiency less the penalties that the Division had abated at the taxpayer's request. Thereafter, SRI filed Form A-1730 contending that it had filed an S corporation election in May 2001. In June 2007, the Division denied the refund claim on the grounds that the entire assessment had not been paid because the penalties were abated and that SRI neither timely protested nor appealed its initial May 2001 denial of S corporation election status.

On September 4, 2007, the Division proposed a regulation to authorize retroactive S corporation status. On September 24, 2007, SRI filed a complaint with the Tax Court

challenging the denial of the refund. The proposed retroactive S corporation status regulation was adopted and became effective as of January 7, 2008 (N.J.A.C. 18:7-20.3).

The Tax Court granted summary judgment to the Division on the same basis that the Division denied the Form A-1730 refund claim. The Court added that the denial was proper because there was neither a statute nor regulation authorizing retroactive S corporation elections at the time.

SRI appealed to the Appellate Division on the grounds that it was entitled to retroactive S corporation status based on the regulation that was adopted after they appealed the case to Tax Court. The Appellate Division found that this issue was not properly before the Court because the Division did not first address this claim. The Appellate Division stated: "We are not aware of any authority for a court to determine, in the first instance, whether a taxpayer is entitled to a benefit available pursuant to a newly-adopted regulation before the taxpayer has sought that benefit in the Division." Therefore, the Appellate Division did not consider N.J.A.C. 18:7-20.3 and affirmed the Tax Court's opinion.

Gross Income Tax
S Corporation Accumulated Adjustment Account – *Cohen, Morris et al. v. Director, Division of Taxation*, decided May 23, 2013, Tax Court, Docket No. 003854-2009.

Morris Cohen (Cohen) was a New Jersey resident who was a 25% shareholder in an S corporation known as Conway Stores. During tax year 2003, Cohen received a distribution of \$554,292 from

Conway Stores that he did not report as taxable because he maintained a positive balance in the Accumulated Adjustment Account (AAA) that was in excess of the distribution. During an audit, the Division determined that this distribution was a taxable dividend pursuant to N.J.S.A. 54A:5-14 because the AAA contained a negative balance at the time of the distribution.

At issue was whether the New Jersey AAA should be reduced by losses of the S corporation when the losses are not allowed for New Jersey gross income tax purposes. The Division determined that the AAA balance was negative \$356,395, whereas Cohen claimed that the AAA balance was a positive \$575,988. The difference resulted from Cohen's having used a beginning balance in 1998 (negative \$1,073,648) that was different from the 1997 ending balance (negative \$2,006,031). This difference of \$932,383 resulted in a positive \$575,988 AAA balance for tax year 2003 prior to the distribution. The Tax Court decided that the Division's calculation was correct because Cohen did not carry the 1997 ending balance forward to the 1998 beginning balance and provided no proofs as to the discrepancy.

The Court determined that the 2003 AAA ending balance was a negative amount and that the entire distribution was a taxable dividend pursuant to N.J.S.A. 54A:5-14.

Cohen has appealed this decision to the Appellate Division.

Settlement Payments, Refunds, and Claim of Right Doctrine – *Joseph J. Murphy and Diane Fitzmyer-Murphy v. Director, Division of Taxation*, decided

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in our courts - from page 8

June 12, 2013, Appellate Division, Docket No. A-0111-12T3.

Mr. Murphy was an officer and employee of Refco, Inc. (Refco). On their 2005 New Jersey gross income tax return, Form NJ-1040, the Murphys reported capital gain income from the sale of a portion of his stock interest in Refco in the amount of \$4,142,000 and dividend income of \$381,558 from the public sale of Refco stock.

Refco later filed a voluntary petition for bankruptcy. In 2008 Mr. Murphy paid \$10 million to the bankruptcy trustee and the Federal government to settle any fraudulent and preferential transfers and forfeiture action claims against him.

In June 2009, the Murphys amended their 2005 NJ-1040 by filing an NJ-1040-X to report a change in income related to sale of the Refco stock. The Murphys claimed that the \$10 million payment represented repayment of 2005 reported income and sought a tax refund. The Division denied the refund request and advised that any deductions associated with repayment had to be claimed in the year of repayment.

The Murphys filed a complaint in Tax Court. The Court decided that the Murphys were not entitled to a refund because they properly included the income on the 2005 return

(the year in which it was received), and there were no inaccuracies in the original filings. The Murphys appealed this decision claiming that the Tax Court erroneously relied on the Federal claim of right doctrine and that their amended return properly reported a change in income.

The Appellate Division opined that the sole issue was whether the Murphys' refund request was based on an error in the original income reported or an error in the calculation of taxes paid on their 2005 NJ-1040. Noting that the \$10 million settlement was far in excess of the 2005 reported capital gain income involving Refco, the Appellate Division found that it was impossible to determine from the evidence presented whether the settlement related to the income activity reported in 2005 or any amount thereof. Furthermore, there was no legal authority presented to support the argument that a settlement was a decision to forfeit any portion of income. Therefore, the Appellate Division affirmed the Tax Court concluding that the 2008 settlement payment was not a basis to recalculate their 2005 taxable income.

Nonbusiness Bad Debt – *Harlan W. Waksal and Carol Waksal v. Director, Division of Taxation*, decided August 13, 2013, New Jersey Supreme Court, Docket No. A-103-11.

In 2002, Harlan Waksal loaned his brother \$14.7 million and executed

a promissory note. When it became clear by early 2005 that the brother would not be able to make any payments on the loan, the plaintiffs (Waksals) reported a short-term capital loss from the loan on their 2004 Federal income tax return. On their 2004 New Jersey gross income tax return, the Waksals reported a loss from “the sale, exchange or other disposition of property” and used that loss to offset capital gains realized from other property. Pursuant to an audit, the Division denied the loss and issued a notice of deficiency for gross income tax in the amount of \$1.3 million plus interest and penalties.

The Waksals appealed to the Tax Court. The Tax Court held that the failure to repay the loan did not constitute a “sale, exchange, or other disposition of property” within the meaning of the New Jersey Gross Income Tax Act and upheld the deficiency assessment. The Appellate Division affirmed.

The New Jersey Supreme Court also affirmed, finding that regardless of their Federal tax reporting, the worthless nonbusiness debt is not a “sale, exchange or other disposition of property” for New Jersey gross income tax purposes. The Court observed that the New Jersey Gross Income Tax Act does not incorporate every provision of the Internal Revenue Code and, in fact, there is no New Jersey provision authorizing a deduction for worthless nonbusiness debt. The Court also found that neither the New Jersey Gross Income Tax Act nor the New Jersey Supreme Court's holding in *Koch*, 157 N.J. 1 (1999), concerning “federal methods of accounting,” required application

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of Federal loss provisions to the nonbusiness bad debt at issue.

Local Property Tax Assessment Appeal and Chapter 91 Request – *Paramus Associates, LLP/Home Depot, USA, Inc., v. Borough of Paramus*, decided August 2, 2013, New Jersey Tax Court, Docket No. 002755-2012.

The plaintiff, Paramus Associates, LLP/Home Depot, USA, Inc., disputed the municipal assessor's dismissal complaint for failure to comply with Chapter 91. Paramus Associates, LLP, owned property listed as Block 5201, Lot 3 and Lot 8 on the tax map of the Borough of Paramus. Lot 8 is the site of the retail store and Lot 3 contains the adjacent parking lot and access road. A single lease agreement between Paramus Associates, LLP, and Home Depot USA, Inc., was used to govern the property, which consisted of both of these lots. On October 1, 2011, the assessor mailed two Chapter 91 requests for income and expense information. Paramus Associates, LLP, completed only one request form which included information for both lots and submitted it to the assessor's office for review.

A letter dated September 11, 2012, which was sent to the tenant, Home Depot, USA, Inc., gives a description of how the property was combined. The letter stated:

In 2004 we combined the lots and in accordance with the approvals from the Town, the Home Depot Bath and Tile building that was previously subject to a separate lease were demolished on Lot 3. Also at that time an extension to the

existing Home Depot was built on lot 8. Accordingly we now have one lease for the building which is on lot 8. Lot 3 is only a parking lot and access road into the property. The income and expense report filed with the Town reflects all of our income on both lots 3 & 8.

The Borough of Paramus objected to the letter suggesting that it was inaccurate because Paramus Associates, LLP/Home Depot, USA, Inc., had not submitted yearly expense information. The Borough of Paramus urged the Court to recognize that the single lease agreement did not excuse Paramus Associates, LLP/Home Depot, USA, Inc.'s failure to respond to the Chapter 91 request for Lot 3. The Borough of Paramus argued that, given these circumstances, two things must be reported:

1. Income received from a single tenant to account for value of the improved land (Lot 8); and
2. Income received from the parking area (Lot 3), regardless of the fact that such income may be subsumed within Lot 8.

Using N.J.S.A. 54:4-34, the Borough of Paramus concluded that due to absent reported income for each lot, the taxpayer's appeal is subject to dismissal because the information was not accurate or timely.

Paramus Associates, LLP/Home Depot, USA, Inc., opposed this motion saying that dismissal of the present appeal was not necessary. They contended that there was indeed timely, relevant income information presented for both lots in one document. Furthermore, the two tax parcels were so intertwined as one financial unit that it was virtually

impossible to determine the specific income and expenses per parcel. Paramus Associates, LLP/Home Depot, USA, Inc., also stated that it received two redundant requests for the same income and expense information. The plaintiff argued that the request was ambiguous and there was no documentation to clarify that both requests were to be completed and sent back, thereby making the Chapter 91 request deficient.

The issue before the Court was whether a taxpayer that receives two Chapter 91 requests for two separate lots governed by a single lease agreement has failed or refused to respond pursuant to N.J.S.A. 54:4-34 having submitted income and expense information for both tax parcels in the form of a single response.

The defendant's motion was denied. The Court found that the plaintiffs did not ignore the assessor's information request, but provided a timely, sufficient response in sending the Lot 8 form. The Court also found that the Borough of Paramus sent identical forms for both lots but did not fashion the request for Lot 3 in language directed towards the parking lot and access road. In fact, it noted that the form specifically excludes consideration of the parking lot, and if there is room for reasonable doubt as to whether an owner of an income-producing property can understand an assessor's request to include specific information, the benefit of the doubt goes to the property owner. It is also noted that a property owner who receives a Chapter 91 request that is ambiguous may not have its appeal dismissed for failure to respond in a timely manner to such a request.

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Property Tax Relief Programs Homestead Rebate Ownership Percentage – *Marcelino v. Director, Division of Taxation*, decided June 19, 2013, Tax Court, Docket No. 017330-2012.

Mr. and Mrs. Marcelino originally owned their home as tenants by the entirety. A few years before their 2007 divorce they changed the deed to Jovencio D. Marcelino and Celia Marcelino as tenants in common. The judgment of divorce stated that Mr. Marcelino shall continue to reside in the residence and be solely liable for the expenses related to the home, including the payment of property taxes, and that Mr. Marcelino can take credit for all taxes and expenses on his Federal and State income tax returns. The judgment also stated: “The parties acknowledge and agree that they shall share equally (50%/50%) the net proceeds from the sale of the marital residence.”

Mr. Marcelino filed his 2008 homestead benefit application indicating that he owned 100% of the property. He thought that because his divorce judgment stated that he was able to take credit on his New Jersey gross income tax return for all property taxes paid, he was entitled to claim that he was the sole owner of the home.

The Court ruled that even though Mr. Marcelino was responsible for paying 100% of the property taxes under the terms of the divorce, he was not entitled to claim 100% ownership of the property. N.J.S.A. 54:4-8.59(a) specifically states that:

If title to a homestead is held by more than one individual as joint tenants or tenants in

common, each individual shall be allowed a homestead rebate or credit pursuant to this section only in relation to the individual’s proportionate share of the property taxes assessed and levied against the homestead.

Under the terms of the divorce decree, Mr. Marcelino owned 50% of the home; therefore, his homestead benefit must be based on 50% ownership of the property and calculated on 50% of the property taxes paid. □

In Our Legislature

Admissions Surcharge
Surcharge on Certain Admission Charges — P.L. 2013, c.84, signed into law on July 17, 2013, and effective immediately, revises the permitted amount of the surcharge on admission charges at certain major places of amusement. The surcharge is now set at an amount up to 5% of the admission charge, allowing authorized municipalities to collect a surcharge that is less than 5% of the admission charge. The law applies to places of amusement, as defined under the Sales and Use Tax Act, at which admission charges are regularly paid and which seat at least 10,000 patrons. The surcharge may not be imposed at motion picture theaters, amusement parks, or places of amusement owned by, or located on property owned by, the State or an independent State authority.

Alcoholic Beverage Tax
Craft Distillery License — P.L. 2013, c.92, signed into law on August 7, 2013, and effective on the first day of the fourth month after enactment (December 1, 2013), creates a craft distillery license.

Subject to rules and regulations, the holder of a craft distillery license is

entitled to manufacture up to 20,000 gallons of distilled alcoholic beverages per year and to make certain sales. The holder of this license cannot sell food or operate a restaurant on the licensed premises. A holder of this license who certifies that not less than 51% of the raw materials used in the production of distilled alcoholic beverages are grown in this State or purchased from providers located in this State may, consistent with all applicable Federal laws and regulations, label these distilled alcoholic beverages as “New Jersey Distilled.”

Cigarette Tax
Unstamped and Counterfeit Cigarettes and Cigarette Smuggling Penalties — P.L. 2013, c.145, signed into law on August 19, 2013, and effective immediately, increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling. The law also establishes as a crime of the third degree importing, selling or distributing, transporting or possessing with intent to sell counterfeit cigarettes. Civil penalties for specified offenses are doubled and certain maximum county jail terms are doubled.

The law requires the Director of the Division of Taxation to publish monthly reports on the Division’s website that list the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.

Corporation Business Tax
Credits for Payments to Interns — P.L. 2013, c.60, signed into law on June 6, 2013, and effective immediately, requires that the Commissioner of the Department of

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Labor and Workforce Development undertake a review of corporation business tax and gross income tax credit programs for payments to interns and report any findings and recommendations directly to the Governor no later than 12 months from the date of enactment. Specifically, the Commissioner must examine the impact of, and make recommendations on, tax credit programs for interns as they pertain to increasing long-term employment for future college graduates.

Motor Vehicle and Motorbus Services — P.L. 2013, c.98, signed into law on August 7, 2013, effective immediately, and applicable to privilege periods beginning on or after January 1, 2013, prohibits the imposition of the corporation business tax on foreign (out-of-State) corporations that would otherwise be subject to the tax, if their only contact with the State of New Jersey is carrying passengers into the State in a motor vehicle or motorbus operated over the public highways,

delivering those passengers to a destination in the State, and returning those passengers to a location outside the State.

Gross Income Tax

Credits for Payments to Interns — See Corporation Business Tax.

Neighborhood Revitalization Tax Credit — P.L. 2013, c.61, signed into law on June 6, 2013, effective immediately, and applicable to tax years beginning on or after January 1, 2012, expands the availability of the Neighborhood Revitalization State Tax Credit to include gross income taxpayers. A business entity that contributes financial assistance to a nonprofit sponsor may be granted a tax credit certificate that may be applied against tax liability on business income. The tax credits may be granted in an amount up to 100% of the approved assistance provided to a nonprofit organization to implement a qualified project that is part of an approved neighborhood preservation and revitalization plan. Per taxable year, the credit allowed to a business entity may not exceed

\$1 million or the total amount of tax otherwise due. Additionally, the credit may not exceed statutory limits established under the particular tax for which it is claimed.

The credit may be claimed by gross income taxpayers for tax years beginning on or after January 1, 2012; however, N.J.S.A. 52:27D-492e sets forth that the Commissioner of the Department of Community Affairs must specifically issue a certificate and the tax credit must be claimed for that tax year, effectively guaranteeing that no gross income tax credit can be claimed prior to tax year 2013. The available credit shall be a percentage of the taxpayer's gross income tax liability equal to the percentage of the taxpayer's gross income (before exclusions or deductions) attributable to the business through which the qualified project funding was provided. The credit cannot exceed the taxpayer's total liability for that year.

Charitable Contributions and New Jersey Domicile — P.L. 2013, c.73, signed into law on June 27, 2013, and effective immediately, specifies that, for New Jersey gross income tax purposes, donors' contributions to charities are not a factor in determining where a person is domiciled for the purpose of defining tax residency.

Local Property Tax Real Property Assessment County Demonstration Program — P.L. 2013, c.15, signed into law on January 25, 2013, and effective immediately, creates a real property assessment demonstration program. The current system is in place for all counties except Gloucester. Not more than four counties may participate in the program as demonstration

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation/

SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Date: 15-09-00000

1234

PAY TO THE ORDER OF \$

Anyplace Bank
Trenton, NJ 08611

Routing number: 20202086

Account number: 1234

For: 1502500294

Do not include the check number

Select "Electronic Services" to make a payment directly from your bank account

Credit Card

1-888-673-7694 www.state.nj.us/treasury/taxation/

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counties. There are strict criteria that a county must meet and information a county must provide to the Director of the Division of Local Government Services in the Department of Community Affairs (DLGS) and to the Director of the Division of Taxation in order to implement the program as a demonstration county.

The demonstration program is a collaborative effort between the county tax board and municipal assessors to address the issues of cost effectiveness and the accurate process of assessment.

The demonstration program is based on the utilization by all of a demonstration county's municipalities of the same property assessment software. All future revaluations and reassessments of real property by municipalities in a demonstration county will be performed on the county system, and the system will also be used for other assessment-based functions. The county board of taxation in a demonstration county will absorb the cost of assessment data conversion through assessment appeal filing fees collected by the board.

On October 1, 2013, the demonstration counties are to begin the demonstration program under a plan developed by each county's tax administrator, approved by each county's board of taxation, and submitted to both the Director of the Division of Taxation and the Director of the DLGS not less than 60 days prior to October 1.

Farmland Assessment Act Revisions — P.L. 2013, c.43, signed into law on April 15, 2013, and effective for tax years 2015 and after, makes

various revisions to the Farmland Assessment Act of 1964.

The law increases the minimum gross sales and payments standard for typical agricultural or horticultural lands to qualify for farmland assessment on the first five acres of land from the current \$500 to \$1,000. This change does not apply to woodland managed under a woodland management plan, which will continue to qualify for farmland assessment with minimum gross sales and payments of \$500, nor does it apply to land subject to a forest stewardship plan, which has no minimum income qualifying standard for farmland assessment. The State Farmland Evaluation Committee now must review these minimums every three years or sooner and adopt regulations to raise the amount of those minimums to levels the committee determines appropriate.

The new law establishes a civil penalty of up to \$5,000 for a gross and intentional misrepresentation on an application to qualify for farmland assessment. The penalties collected are to be divided equally between the municipality or county and the State and dedicated to administering and enforcing the Farmland Assessment Act of 1964.

New, stringent standards to qualify for farmland assessment are now codified, and the State Board of Agriculture and the Department of Agriculture are to develop guidelines describing generally accepted agricultural and horticultural practices. These guidelines are to be distributed to, and may be used by, municipal and county tax assessors, county tax administrators, and other appropriate local government officials to assist them in

determining whether land may be deemed to be in agricultural use, horticultural use, or actively devoted to agricultural or horticultural use pursuant to the Farmland Assessment Act of 1964.

The Division of Taxation, after consultation with the State Board of Agriculture, must include with each farmland assessment application a letter or other document explaining any changes to the law, rules, regulations, and guidelines for farmland assessment that have occurred in the prior tax year and which take effect in the tax year for which the application is being submitted. A landowner whose farm management unit is less than seven acres in size is now required to submit with the application a narrative and a sketch relating to the agricultural or horticultural uses on the farm management unit, including information on the number of acres that will be actively devoted to such uses. The Division, in conjunction with the Department of Agriculture, is also required to offer, at such time intervals as may be established by the Division but at least biennially, a continuing education course to municipal and county tax assessors, county tax administrators, and other appropriate local government officials explaining the guidelines. Effective January 1, 2018, in any county or municipality in which farmland-assessed properties are located, the assessor, as a condition of relicensing, must provide proof of having taken the continuing education course at least once in the prior three years.

Multiagency consultation in the disciplines of woodland management or forest stewardship is also required. In addition, the State Farmland

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Evaluation Advisory Committee (see N.J.S.A. 54:4-23.20), whose membership is comprised of the Director of the Division of Taxation; the Dean of the College of Agriculture, Rutgers, The State University of New Jersey; and the Secretary of Agriculture, will have enhanced administrative responsibilities in the valuation of land devoted to agricultural or horticultural use as a result of this law.

Miscellaneous

Trustee’s Discretionary Authority Concerning Income Tax Liability — P.L. 2013, c.55, signed into law on May 9, 2013, effective immediately, and applicable to any trust created on or after the effective date, specifies that the trustee’s discretion to pay taxes of the trust creator should not be considered the kind of right that would make the assets of the trust subject to the claims of the creditors of the trust’s creator.

The trust creator is not considered to have the right to receive income or principal of the trust solely because the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator is entitled to reach any trust property based on the discretionary powers of the trustee. □

Tax Calendar

The following links provide access to calendars listing filing and payment dates for tax year 2013 (January 1, 2013 – December 31, 2013) and tax year 2014 (January 1, 2014 – December 31, 2014) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2013](#) [2014](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2013](#) [2014](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2013](#) [2014](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
..... 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

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Taxation Joins Sandy Fraud Task Force

The Division of Taxation has joined the Monmouth County Superstorm Sandy Fraud Task Force that was established by the Monmouth County Prosecutor's Office to protect residents from being victimized by fraudulent contractors, salespersons, and others looking to profit from the disaster.

The Task Force is made up of law enforcement officers and regulatory officials from local, State, and Federal agencies, including, among others, the Monmouth County Prosecutor's and Sheriff's Offices, the New Jersey Division of Consumer Affairs, the New Jersey Department of Health, the Internal Revenue Service, and the Federal Bureau of Investigation.

On March 8, 2013, Director Michael Bryan signed a Memorandum of Understanding with the Monmouth County Prosecutor's Office outlining the areas of cooperation and information sharing between their agencies with respect to Taxation's participation as a member of the Task Force.

The mission of the Task Force is both to educate residents on how to protect themselves from storm-related fraud and to provide those who may have been victims of unscrupulous home improvement contractors or other scam artists with a single point of contact to report such fraud.

Members of the countywide Task Force meet regularly to review complaints submitted by homeowners and others and refer them to the appropriate agency for action. In some cases several agencies may take action on the same complaint.

Investigators from the Division of Taxation's Compliance and Enforcement Activity look into complaints referred by the Sandy Fraud Task Force to determine whether or not the business operating here is actually registered in New Jersey and remitting all the required State taxes.

Relying on their experience in dealing with dishonest contractors, the investigators will secure the registration or update the business's existing registration information. If warranted, the investigator will refer the business for audit. In situations where it is necessary to protect the State's interest (i.e., if there is a risk the taxpayer may flee the State), the investigator may issue an on-the-spot jeopardy assessment and demand immediate payment of the tax due. Failure to comply with the assessment will result in immediate seizure of the business's available assets. □

"Senior Freeze" Deadline Extended

The deadline for filing 2012 property tax reimbursement ("Senior Freeze") applications, Forms PTR-1

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and PTR-2, has been extended to September 16, 2013. The original deadline was June 3, 2013.

For more information about the “Senior Freeze” Program, or to obtain an application, visit our [Web site](#), or call 1-800-882-6597, 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

Small Business Workshops

The Division of Taxation provides free small business workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development.
- Determining what is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

To attend a workshop, review the schedule and register with the contact

person listed for each event. The contact person can also provide the time of the workshop, parking information, and directions to the location. The Division does not manage the registration process.

The current workshop schedule is available on the Division’s Web site at: www.state.nj.us/treasury/taxation/sbwsched.shtml. The schedule is updated as new workshops are added. □

LOCAL PROPERTY TAX Tax Assessor Exam

New Jersey Tax Assessors must hold a Tax Assessor Certificate when they take office. Certificates are granted only to those who pass the tax assessor examination.

Exams are offered twice a year, in March and September. Michael J. Bryan, Director of the Division of Taxation, said the purpose of the Assessor Certification and Tenure Act, which became law in 1967, is to ensure that assessors and administrators are properly trained in property tax laws, and that the State has sufficient numbers of trained, career professionals to ensure a uniform and fair property tax system.

The next New Jersey certified tax assessor examination will be held on Saturday, September 28, 2013. Applications to take the exam must be filed by Thursday, August 29, 2013. The test will be given at the Richard J. Hughes Justice Complex in Trenton.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division’s [Web site](#) or by calling

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**Division of Taxation
Director:** Michael J. Bryan

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Marilyn E. Gaines at 609-292-8823, or writing to Property Administration, PO Box 240, Trenton, NJ 08695-0240. A \$10 fee must accompany the completed application. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

July 1-

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2014 together with a notice that the completed form must be filed with assessor by August 1, 2013, to claim continuance of Farmland Assessment.
- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted. If left unpaid, these become real property liens.

2nd Tuesday in July-

- State Equalization Table prepared.

July 15-

- Property tax reimbursement (Senior Freeze) payments will begin to be issued to eligible claimants.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2014.

August 5-

- All SR-1A forms showing sales transactions to be used in compiling 2013 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25-

- State Equalization Table completed by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
 - Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2014 with the assessor for taxing district in which property is located.
 - Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2014 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.
- September 10-**
- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2013 – December 31, 2013, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%

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Update:
NJ/NY Cooperative Interstate Tax Program

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from page 3

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- Office of Criminal Investigation (OCI) special agents, along with other Division and Department personnel, were recognized by the Treasurer for their work during Superstorm Sandy.
- Charles Giblin, Special Agent in Charge, participated in a criminal tax symposium at Bergen County Community College presenting an overview of OCI. The event was attended by CPAs and lawyers who specialize in tax crime defense. Rutgers School of Law and various law firms sponsored the event. IRS Criminal Investigation participated as well. There were many questions about enforcement relating to Top 100 Tax Debtors as well as failed electronic funds transfers and bad checks.
- On January 17, 2013, search warrants were issued in Bloomfield and Passaic, New Jersey. This was a three-month joint investigation with OCI and the Passaic Police Department. Members of the Passaic County Prosecutor's Office, Bloomfield Police Department, and Paterson Police Department

assisted in the operation. A search warrant was executed at the Bloomfield, New Jersey residence of Juan Polanco. Seized were 2,129 cartons of cigarettes with counterfeit New Jersey tax stamps as well as Virginia tax stamps affixed to them, 56,806 counterfeit New Jersey tax stamps, 13,395 counterfeit New York tax stamps, and \$209,109 in U.S. currency. Polanco was charged and bail was set at \$75,000, no 10%. Additional search warrants were executed at the Passaic residence of Victor Matos, who was arrested and released on his own recognizance. Seized were 21 cartons of counterfeit New Jersey-stamped cigarettes, 160 counterfeit New Jersey tax stamps, and \$3,765 in U.S. currency. Another search warrant was executed in Passaic at

the residence of Ambioris Genao, who was arrested and released on his own recognizance. Seized were 50 cartons of counterfeit New Jersey-stamped cigarettes and \$4,271 in U.S. currency. Also arrested were Berto Estevez and Rafael Grullon. Estevez had 40 cartons of counterfeit New Jersey tax-stamped cigarettes in his vehicle and \$4,722 on his person. He was released on his own recognizance. Seized from Grullon were four cartons of counterfeit New Jersey tax-stamped cigarettes, \$1,237 in U.S. currency, and his vehicle. He posted \$100,000 bail, no 10%.

Additional inspections were performed in Paterson and Passaic that led to seizures of cigarettes, tobacco products, and currency. Follow-up investigations resulted

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**Enforcement Summary Statistics
First Quarter 2013**

Following is a summary of enforcement actions for the quarter ending March 31, 2013.

	Number	Amount
• Bank Levies	924	\$ 3,787,470
• Certificates of Debt	3,741	47,158,715
• Seizures	132	2,037,079
• Auctions	12	137,762
• Warrants of Satisfaction	3,420	

Second Quarter 2013

Following is a summary of enforcement actions for the quarter ending June 30, 2013.

	Number	Amount
• Bank Levies	987	\$ 2,801,147
• Certificates of Debt	3,689	50,595,901
• Seizures	121	1,655,832
• Auctions	21	107,829
• Warrants of Satisfaction	3,983	



criminal enforcement - from page 4

in seizures and contraband charges being filed in the City of Passaic. The investigation culminated when Juan R. Polanco turned himself in to authorities on January 24, 2013. Polanco was identified as the main figure in a bi-state contraband cigarette smuggling operation. All subjects were charged with various violations of Title 54 and Title 2C concerning possession of counterfeit tax stamps, possession of untaxed cigarettes, failure to file tax returns due, and failure to maintain books and records with intent to evade taxes. The operation resulted in the seizure of over 3,188 cartons of untaxed cigarettes, 7,850 untaxed cigars, 56,806 counterfeit New Jersey cigarette tax stamps valued at \$153,376, and 13,395 counterfeit New York State cigarette tax stamps valued at \$58,268. Two vehicles used in the operation were also seized. Special agents seized over \$227,000 in U.S. currency used in the scheme, which will be shared with the cooperating agencies.

- Members of OCI's Financial Investigations Unit recently attended the "Stolen Identity Refund Fraud" symposium provided

by the U.S. Department of Justice (USDOJ) regarding Tax Division Directive 144. The USDOJ Tax Division has defined a subset of identity theft cases, known as Stolen Identity Refund Fraud Cases (SIRF), which specifically target fraudulent tax refund claims involving the use of stolen identities. To provide Federal law enforcement officials the ability to timely address SIRF cases and to streamline SIRF investigations, the Tax Division issued Directive 144, which delegates to the U.S. Attorneys' Offices the authority to take action without approval from the Tax Division's Criminal Enforcement Sections.

- On January 23, 2013, Herlindo Garcia-Merlos was sentenced to eight years in State prison as a result of a plea deal he entered on November 28, 2012. Garcia-Merlos was also ordered to pay \$135,462 in restitution to the New Jersey Department of the Treasury. The restitution is a result of unreported corporation business tax due to Garcia-Merlos's failure to file tax returns for his two businesses, Orients Construction and Melrose Construction. The investigation is for tax years 2006 through 2010.
- On February 12, 2013, a State Grand Jury indictment charged Carrie Ann Manerchia and Lisa Marie Matto with second-degree conspiracy, money laundering, and receiving stolen property for the theft of 36 New Jersey gross income tax refund checks totaling \$73,995.44 and 20 United States Treasury checks totaling \$23,978.97. The conduct occurred between March 20, 2008, and October 30, 2008. The total theft was just under \$98,000. The

returns in question were all filed electronically or using the Division's NJ WebFile program and contained similar taxpayer information, such as wage amounts, New Jersey withholdings in excess of 10%, employers, and check mailing addresses. An OCI investigation determined that the individuals whose social security numbers were used without their knowledge were victims of identity theft in a scheme by Manerchia and Matto to defraud the State of New Jersey and the Federal government of tax refunds. Summonses have been issued for Manerchia and Matto and bail has been set at \$100,000, 10%.

- On February 14, 2013, Michael L. Jones, a former Atlantic City police officer, was indicted on charges of official misconduct, theft by deception, filing fraudulent tax return, and failure to pay State tax. Jones used his position as a police officer to obtain housing from the Atlantic City Housing Authority through the "Safe Neighborhood" program at a substantially reduced rate. Mr. Jones then sublet the housing to others, collected rent from those tenants, and failed to include the rental income on his New Jersey gross income tax resident return for the years 2005 through 2011. The total tax due is \$6,393.70.
- On February 21, 2013, Brian S. Lewis and Shellie Williams were indicted on charges of official misconduct, theft by deception, false claims to government, public servant doing business with self, unsworn falsification, filing fraudulent return, and failure

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions.](#)" Select the name of the business for details about that auction.

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to pay tax. Lewis is a former Atlantic City Housing Authority (ACHA) employee and is married to Williams. The couple allegedly created fraudulent companies and collected payments for work performed by real companies. Lewis and Williams failed to report the payments received from the ACHA on their New Jersey gross income tax resident returns for the years 2009 through 2011. The total tax due is \$22,019. On April 23, 2013, Mr. Lewis pled guilty to five counts including second-degree official misconduct, second-degree theft, third-degree theft, third-degree filing a fraudulent tax return, and third-degree failure to pay State tax. Lewis and Williams were charged with the tax offenses as a result of a thorough investigation into the couple's finances by the Office of Criminal Investigation.

- On April 3, 2013, Benjamin H. Isaiah Brown and Ernestine Centeno, both of New York, were

indicted in Somerset County and charged with third-degree failure to maintain books and records with intent to evade taxes, fourth-degree conduct requiring license without license to evade payment, fourth-degree dealing with unlicensed person to evade payment of taxes, etc., and fourth-degree possession of 2,000 or more unstamped cigarettes. Arraignment for Brown is scheduled to take place in Somerset County on July 31, 2013, before the Honorable Judge Julie M. Marino. Centeno is currently a fugitive and a Bench Warrant has been issued for her arrest.

- On April 12, 2013, in Essex County Superior Court, Maritza Torres-Falu and her husband, Luis A. Velez, were indicted by a Grand Jury for filing false tax returns, failure to file tax returns, and money laundering for the years 2008 through 2011. Torres-Falu, a former Newark City Hall staffer, now considers herself a tax preparer and insurance broker. The companies operated by the

couple and cited in the indictment are Latin Eagles, LLC; Impact 2000, Inc.; and L. Velez General Contracting, LLC. □

Tax Briefs

Gross Income Tax

Rental Income From Property Rented Less Than 15 Days A Year

— A taxpayer inquired about an exclusion from New Jersey gross income for rents received from a property the taxpayer used as a home but rented less than 15 days during the year.

For Federal income tax purposes, if a taxpayer uses a dwelling unit as a home and rents it for less than 15 days during the year, the taxpayer does not include the rent received in income or deduct any associated expenses. However, for New Jersey gross income tax purposes, net gains or net income derived from or in the form of rents, royalties, patents, and copyrights must be included in gross income. N.J.S.A. 54A:5-1(d). Additionally, N.J.A.C. 18:35-1.1(c) (3) states that rental income of a taxpayer which is not received in the conduct of a trade or business must be taken into account in determining the taxpayer's net gains or net income from rents, royalties, patents, and copyrights described in N.J.S.A. 54A:5-1(d).

Because New Jersey law does not provide an exclusion for rental income received from a property used as a home but rented less than 15 days during the year, the taxpayer must include such rental income in gross income.

Practitioners' E-File Mandate

Preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail](mailto:nj.taxation@treas.state.nj.us) us at nj.taxation@treas.state.nj.us

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Litter Control Fee

Product Category of Soft Drinks and Carbonated Waters — A grocery store inquired about the treatment of sales of bottled water under the litter control fee. One of the product categories subject to the litter control fee is “Soft drinks and carbonated waters.” N.J.S.A. 13:1E-215.3e.

The litter control fee regulations, N.J.A.C. 18:38-3.1(b)14, provide:

Soft drinks and carbonated waters means all beverages, whether carbonated or noncarbonated, except alcoholic beverages, including fruit juices, milk, carbonated water and all mixtures or dilutions of nonalcoholic beverages, but does not include noncarbonated water.

The Division explained to the store that sales of unsweetened noncarbonated water are not subject to the litter control fee. However, if the noncarbonated water contains natural or artificial sweeteners, it is subject to the fee as a soft drink.

Sales and Use Tax

Charges for Tables Provided by a Casino-Style Gaming Company — A taxpayer provides a casino-style gaming entertainment service at events held on the premises of its customer and provides the customer with a gaming table and an operator. The customer does not have possession or control of the table; rather the table is used by the operator to provide a nontaxable entertainment service. The taxpayer inquired as to whether a charge for gaming tables used in the performance of providing the service is taxable when billed to the customer.

The Sales and Use Tax Act contains the following definition of “sales price,” at N.J.S.A. 54:32B-2(oo):

(1) “Sales price” is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller’s cost of the property sold;
- (B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (C) Charges by the seller for any services necessary to complete the sale;
- (D) Delivery charges;...

The Division responded that the entertainment service provided by the taxpayer is not subject to sales tax. The tables provided by the taxpayer are not subject to tax because they are part of the sales price of the nontaxable entertainment service. Because the taxpayer is using the tables in the performance of the service, the taxpayer is required to pay sales or use tax when purchasing the tables. N.J.S.A. 54:32B-3(a). □

In Our Courts

Gross Income Tax

Trust: Undistributed Income – Residuary Trust A u/w/o Fred E. Kassner; Michele Kassner; Trustee v. Director, Division of Taxation, decided January 3, 2013; Tax Court, Docket No. 000364-2010.

A New Jersey resident testamentary trust was administered by a trustee who resided in New York and administered the trust exclusively outside of New Jersey. The trust did not make any distributions in 2006,

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Electronic Check (E-Check)

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SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

PAY TO THE ORDER OF _____ \$ _____

Anyplace Bank
Trenton, NJ 08611

For _____

Routing number: 080202086
Account number: 1234

Do not include the check number

**Select “Electronic Services”
to make a payment directly
from your bank account**

Credit Card

1-888-673-7694 www.state.nj.us/treasury/taxation/

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the year at issue. The trust owned shares of four S corporations that conducted some business in New Jersey. Therefore, the S corporations issued a Schedule NJ-K-1 to the trust, reporting the trust's share of S corporation income allocated to New Jersey and outside of New Jersey.

The trust filed a 2006 New Jersey gross income tax fiduciary return and paid tax on its net pro rata share of allocated New Jersey S corporation income but did not pay tax on interest income and net pro rata share of S corporation income allocated outside of New Jersey. As a result of an audit, the Division determined that because it was a resident trust, it was also subject to tax on its net pro rata share of S corporation income allocated outside of New Jersey and the interest income.

On a summary judgment motion, the Court held that New Jersey could not tax the undistributed income from outside New Jersey or the interest income because the trust had insufficient contacts with New Jersey. The Court started its analysis with two prior New Jersey Tax Court cases, *Pennoyer* and *Potter*, where it held that the Due Process Clause of the Fourteenth Amendment prevents New Jersey from taxing undistributed income of a trust if the location of the trustee, assets, and beneficiaries are outside of New Jersey.

Addressing the location of the beneficiaries, the Court relied on the fact that the Final Determination and a winter 1999 *New Jersey State Tax News* article stated that the Division interpreted *Pennoyer* and *Potter* to mean that all trust assets and trustees must be located outside New Jersey to avoid taxation; however, neither

document included the location of the beneficiaries as a requirement.

The Court found that the trustee was a resident of New York and that the trust was not administered in New Jersey. The Court also stated that it would not consider out-of-State authority where there is relevant New Jersey case law, and that even using a New Jersey address on the New Jersey tax return was not enough for the Court to distinguish the holding in *Pennoyer*.

The Court also determined that ownership of stock in an S corporation does not constitute ownership of or holding title to the S corporation assets.

Finally, the Court found that although N.J.A.C. 18:35-1.5 would subject a resident S corporation shareholder to tax on income from all sources, the Court would not apply N.J.A.C. 18:35-1 as it was written because it would be a violation of constitutional due process based on the lack of sufficient contacts with New Jersey.

The Division filed an appeal with the New Jersey Appellate Division.

Sales and Use Tax Evidence That Sales Were Originated and Completed in Urban Enterprise Zone – *NFF Construction, Inc. v. Director, Division of Taxation*,

decided December 26, 2012; Tax Court, Docket No. 011330-2009.

During the period at issue, the plaintiff (NFF) had a certificate of authority to collect sales tax at the reduced rate of 3% on sales of tangible property at NFF's Pleasantville, New Jersey location within the urban enterprise zone. NFF sold building materials to a subcontractor for use in the construction of a hotel in Atlantic City and collected 3% sales tax. As a result of an audit, the Division of Taxation determined that such sales did not qualify for the 3% rate and were subject to the full 6% rate.

The law allows a certified vendor to charge 50% of the sales and use tax rate on retail sales made from a place of business located in a designated urban enterprise zone where the business is regularly operated for making retail sales. N.J.A.C. 18:24-31.4 provides that the place of business must regularly exhibit and offer tangible property for retail sale. In addition, delivery of goods must be taken at the vendor's place of business or may be delivered by the vendor to the purchaser if the sale has been completed in person at the zone location.

The corporation business tax returns reflected that NFF did not maintain an inventory. The purchase order

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terms were “F.O.B. Jobsite” and shipping instructions were to ship to the subcontractor in Atlantic City. A witness testified that the truck first delivered the goods to the Pleasantville location where items were counted and inspected without ever being removed from the truck.

The Court determined that NFF was not entitled to collect tax at the reduced rate because it did not produce credible evidence to prove that the transactions originated and were completed in an urban enterprise zone. The judge opined that the witness was not entirely credible, that documentation submitted into evidence actually contradicted the witness, and that witness testimony was not corroborated by testimonial or documentary evidence. Additionally, the Court concluded that NFF could not rely on the Director’s certificate of authority to collect sales tax at a reduced rate where NFF did not comply with the Director’s regulations setting forth the transactional requirements for the reduced rate.

Bankruptcy – *Glenn B. Slater v. Director, Division of Taxation*, decided February 25, 2013; Appellate Division, Docket No. A-4579-11T4.

In February 1997, plaintiff Slater received a Notice of Finding of Responsible Person Status for sales and use tax due from his corporation. Slater did not file an administrative protest or appeal to Tax Court.

In September 1999, Slater filed a petition for Chapter 11 bankruptcy with the United States Bankruptcy Court. The Director filed untimely proof of claims which were ultimately

expunged. However, the Court didn’t enter an order that these claims were discharged or dischargeable. In April 2002, Slater’s bankruptcy petition was dismissed without a discharge as to any of the debts.

In October 2008, Slater filed a complaint with the Tax Court requesting a refund of sales and use tax and asking that the Division be barred from pursuing its claims because the claims were expunged in the bankruptcy proceeding. The Director moved to dismiss the complaint as untimely and the Tax Court dismissed the complaint for lack of subject matter jurisdiction.

The Appellate Division affirmed the Tax Court and noted that the Director’s claims were not disposed of in Bankruptcy Court. Furthermore, the refund claim was dismissed as untimely because the order expunging the Division’s claims was vacated as a matter of law when the petition was dismissed. Thus, the assessment was neither expunged nor discharged. Slater filed a notice of petition for certification with the New Jersey Supreme Court.

Failure to Maintain Adequate Books and Records – *Custom Lawn Sprinkler Co., LLC v. Director, Division of Taxation and Jose Rosario and Sherri Rosario v. Director, Division of Taxation*, decided December 5, 2012, Tax Court, Docket Nos. 010929-2007 and 010928-2007.

Custom Lawn Sprinkler Co., LLC (Custom Lawn) is a limited liability company of which Jose Rosario is the sole shareholder and principal. The business provides the installation, maintenance, and repair of lawn sprinkler systems; snow removal;

and demolition and debris removal.

Custom Lawn failed to maintain adequate books and records during the relevant tax years. The taxpayer did not issue invoices to its customers and did not obtain ST-8 forms, which are required by regulation. Custom Lawn did not collect, complete, or maintain any documentation with respect to the tax-exempt status of its customers as required by regulation.

Using the information provided, the conferee determined that 42% of the overall receipts for tax year 2004 were subject to New Jersey sales and use tax. The conferee then applied this ratio to the adjusted gross receipts to calculate the taxpayer’s sales tax liability for the periods at issue.

By applying the calculated error ratio to the reported gross receipts, the conferee determined that Custom Lawn had additional (unreported) income for each of the years examined. The unreported income was deemed a constructive distribution to the shareholder, Jose Rosario.

In both cases, the Tax Court granted summary judgment in favor of the Division which affirmed the taxes, penalties, and interest against both the business and the shareholder individually. □

Tax Calendar

The following links provide access to calendars listing filing and payment dates for tax year 2012 (January 1, 2012 – December 31, 2012) and tax year 2013 (January 1, 2013 – December 31, 2013) for businesses and individuals:



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- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2012](#) [2013](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2012](#) [2013](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2012](#) [2013](#)



*important
phone
numbers*

- Customer Service Ctr....609-292-6400
- Automated Tax Info ...1-800-323-4400
-609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-6400
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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Superstorm Sandy Outreach Events



Marita Sciarrotta, Acting Assistant Director of the Division's Technical Services Activity, provides assistance at an outreach event.

The State Treasurer's Office asked the Division of Taxation to conduct a series of outreach events to provide tax assistance in municipalities most affected by Superstorm Sandy, which pummeled New Jersey in October 2012.

One of the most powerful storms ever to strike New Jersey, Sandy caused widespread power outages, massive flooding, infrastructure collapse, and destruction of entire buildings. The storm washed away homes and businesses along with sidewalks, boardwalks, bridges, and railroad tracks. Cars, trucks, personal and business records, jobs, and the stability communities had enjoyed for generations were swept away.

To help residents who suffered storm damage, Marita Sciarrotta, Acting Assistant Director, Technical Services Activity, assembled a team consisting of representatives from both government and the private sector, including Taxation, the IRS, the Treasurer's and Governor's offices, the Division of Revenue and Enterprise Services, the New Jersey Department of Labor and Workforce Development, and New Jersey Natural Gas. The team traveled to Atlantic, Bergen, Monmouth, and Ocean Counties, where they conducted thirteen outreach sessions during February and March. The events were held evenings and weekends

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outreach events - from page 1

in libraries, municipal buildings, and other centrally located sites to make it as easy as possible for storm victims to attend.

During the sessions over 500 residents were able to speak one-on-one with team members about dozens of issues including: local property tax assessments, casualty loss determinations, small business loans, grant applications, motor vehicle and vessel replacement, contractor responsibilities, capital improvements versus repairs, personal and business filing obligations, property tax relief, and obtaining copies of destroyed tax documents.

IRS representatives gave an overview of how to claim a casualty loss on the Federal income tax return using Form 4684 and discussed strategies for maximizing tax deductions. The IRS presentation also included a Question & Answer period.

"This program was great," said one Little Egg Harbor resident. "They told us so much and I have confidence in what they said. If I have any questions later, they gave me reference materials with phone numbers I can call to get the right answers," she said.

"The reps gave us a lot of information on a wide range of topics," said a 38-year resident of Toms River who attended one of the sessions with her husband. "They gave everyone clear answers to their questions and pointed you in the right direction," she added. "The Q&A session was also valuable," said her husband. "It prompted me to consider questions I hadn't thought about before," he said. "This was certainly valuable for people who need help," both husband and wife agreed. "It would

be worthwhile having it again," they said.

"The purpose of these events was to bring government to the people," Sciarrotta said after the program. "We were able to connect with people, to look into their eyes and share in their pain. We provided assistance directly to hundreds of people who were frustrated and angry. I felt very humbled and honored to have been a part of this outreach program." □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Director:** Michael J. Bryan

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Editor: Linda B. Hickey

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assessors' calendar - from page 2

assessors, municipal clerks, and Director, Division of Taxation.

May 1-

- Residential properties identified by assessors and certified to County Tax Board.
- Extended deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

1st Business Day in May-

- County Tax Board to organize and elect a president for one year, or until his successor is elected.

May 10-

- Form TL-45 filed with Property Administration by County Tax Board.

May 20-

- Table of Aggregates completed by County Tax Board from asses-

sor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.

- General tax rates certified by County Tax Boards.

May 23-

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1-

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration dates of their terms of office, and the status of their required courses.
- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form

PD4, for nonfiling or late filing Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

NOTE: Complaints (appeals) from County Tax Board judgments must be filed with the Tax Court within 45 days of service.

The complete [2013 Work Calendar](#) is available on the Division's Web site. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- With the creation of the Prevent All Cigarette Trafficking Act (PACT Act), New Jersey has seen an increase in both cigarette manufacturers and distributors. Cigarette brands that were previously smuggled untaxed are now

continued on page 4

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2013 – December 31, 2013, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%

Update:

NJ/NY Cooperative Interstate Tax Program

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



criminal enforcement - from pg. 3

in compliance with the New Jersey Cigarette Tax Act. This month the Virginia Carolina Corporation has been granted a New Jersey cigarette manufacturer's license and the Boss and Diva brands will soon become available to New Jersey customers.

- Treasurer Andrew Sidamon-Eristoff assigned OCI special agents to the New Jersey State Police and the New Jersey Office of Homeland Security and Preparedness for operational support during Superstorm Sandy. Special agents carried out their previously established post-strike damage and security assessment of nine Taxation facilities, some of which were in significantly damaged areas where law enforcement resources were minimal. This function was conducted twice a day until a location was established as secure and operational. OCI special agents established a resource management system in coordination with Division of Purchase and Property personnel in the State Emergency Operations Center (SEOC) at the Regional Operations Intelligence Center (ROIC). They manned the SEOC 24 hours a day starting on October 29, 2012, until the operational level was reduced and

carried out various other law enforcement and support missions for other State agencies during the storm and into the recovery phase.

- In our joint program with private parcel carriers a total of 13,000 pouches of untaxed tobacco products were intercepted before delivery to a New Jersey business.
- After a seizure of a business by Compliance investigators, OCI was contacted to evaluate potential counterfeit products before they could be sold at auction to satisfy the tax liability. As a result, special agents seized 2,733 counterfeit DVDs and CDs, and charged the business owner with criminal possession of counterfeit goods. These products are part of an increasing underground activity where the products are considered untaxed goods and no taxes are collected for their sale.
- On November 28, 2012, chiropractors Christopher Montana and Fernando Barrese pled guilty to accepting cash payments in exchange for referrals. This case was a joint investigation with the Office of the Insurance Fraud Prosecutor (OIFP) into violations of New Jersey's anti-running

statue. Montana and Barrese each pled guilty to two counts of third-degree use of runners and third-degree filing false and fraudulent tax returns. On December 19, 2012, Montana and Barrese were each sentenced to seven years in State prison by Superior Court Judge Thomas V. Manahan in Morris County. Under the plea agreements, each defendant was also ordered to pay restitution of a total of \$200,000 to the involved insurance carriers and to amend their respective tax returns. In addition, Mr. Barrese was ordered to pay \$135,593.33 in back taxes plus \$104,858.11 in penalties and interest for a total of \$240,451.44 to the New Jersey Division of Taxation for tax years 2007–2009. Mr. Montana was ordered to pay \$40,058.20 for back taxes plus \$30,974.60 in penalties and interest for a total of \$71,032.80 for tax years 2008 and 2009. Each defendant's chiropractic license was suspended for 18 months.

- On December 7, 2012, in the Mercer County Courthouse before Honorable Thomas M. Brown, Wayne Dunich Kolb was sentenced to four years in State

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions.](#)" Select the name of the business for details about that auction.

Enforcement Summary Statistics Fourth Quarter 2012

Following is a summary of enforcement actions for the quarter ending December 31, 2012.

	Number	Amount
• Bank Levies	797	\$ 3,052,733
• Certificates of Debt	1,818	32,142,150
• Seizures	97	1,441,588
• Auctions	3	10,050
• Warrants of Satisfaction	3,191	

criminal enforcement - from page 4

prison for stealing \$189,787 in checks that small business clients wrote to pay their taxes. Mr. Kolb, acting as a tax preparer, failed to remit his clients' payments of sales tax or payroll withholding taxes to the State of New Jersey, New York State, and the Internal Revenue Service. Instead, he deposited their payments into his personal bank accounts. He admitted he stole \$129,278 in checks written to pay taxes to the State of New Jersey, \$7,151 in checks intended for the State of New York, and \$53,358 in checks for the Federal government. At the time of sentencing, he wrote checks in the amounts of \$80,000 and \$34,000 to the State of New Jersey and \$53,358.87 to the U.S. Treasury. □

Tax Briefs

Gross Income Tax

Employer Withholding for New Jersey Resident Employed Totally Outside New Jersey — An employer asked the Division whether they have to withhold New Jersey gross income tax for a New Jersey resident employee employed totally outside of this State.

Under the New Jersey Gross Income Tax Act, residents of New Jersey are subject to tax on all their income taxable under the law derived from all sources during the taxable year. N.J.S.A. 54A:2-1. All compensation paid to a resident of New Jersey is subject to withholding, even though some or all of the services may have been rendered outside of New Jersey.

Every employer that maintains an office or transacts business within New Jersey and pays wages subject

to the New Jersey gross income tax to an employee must deduct and withhold tax computed in such manner as to result in withholding of an amount for the calendar year that is substantially equivalent to the tax reasonably estimated to be due based on the inclusion in the employee's New Jersey income of wages received during that calendar year. N.J.S.A. 54A:7-1.

In the event a New Jersey resident is employed totally outside New Jersey and is subject to the withholding tax of the state within which he or she is employed, the employer is not obligated to withhold New Jersey gross income tax, provided that the withholdings required by the other state equal or exceed the withholdings required for New Jersey purposes. Where the required New Jersey income tax withholdings are greater, the employer must withhold and remit the difference between the amount required for New Jersey purposes and the amount withheld for income tax purposes in such other states. For information on withholding New Jersey gross income tax

see the publication *New Jersey Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings* ([NJ-WT](#)).

Employers required to withhold New Jersey State income tax are liable for that tax with interest and penalty if they fail to withhold under N.J.S.A. 54A:7-5.

Partnership/LLC Technical Termination — A taxpayer inquired about a partnership/LLC that undergoes a technical termination wherein 50 percent or more of the ownership interests are sold to new members (but the entity itself is not legally terminated or dissolved) and whether New Jersey follows the same treatment as for Federal purposes. The taxpayer asked whether a short period return should be filed by the old entity and a succeeding short period return filed by the new entity or whether one return should be filed for the entire 12-month period with attached copies of the two short period returns

continued on page 6

Practitioners' E-File Mandate

Preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail](mailto:nj.taxation@treas.state.nj.us) us at nj.taxation@treas.state.nj.us



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filed with the Internal Revenue Service. The taxpayer also asked how to calculate the \$150 per partner filing fee and the 50 percent prepayment of the filing fee for the following year for the short period returns.

The Internal Revenue Code provides that the partnership's year will close for the partnership and for all the partners if there is an actual or deemed termination of the partnership. Under IRC §708(b)(1)(B), a partnership is deemed to terminate if, within a 12-month period, there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. The partnership's tax year ends on the date of a termination.

For New Jersey purposes, the standard for determining which method of accounting to use is set forth in N.J.S.A. 54A:8-3, which provides that a taxpayer's accounting method under this Act shall be the same as the accounting method for Federal income tax purposes. In the absence of any accounting method

for Federal income tax purposes, New Jersey taxable income shall be computed under such method as, in the opinion of the Director, clearly reflects income. The statute further states that if a taxpayer's accounting method is changed for Federal income tax purposes, the accounting method shall be similarly changed for New Jersey purposes.

Consequently, if the partnership is filing multiple short period returns with the Federal government, then the partnership is required to file multiple short period returns with New Jersey.

The requirement to pay the per partner filing fee for the current year and the installment payment of 50 percent of the fee for the succeeding year is set forth at N.J.S.A. 54A:8-6(b)(2). With respect to the per partner filing fee, the statute states that: "Each entity classified as a partnership for federal income tax purposes, other than an investment club, having any income derived from New Jersey sources ... that has more than two owners shall at

the prescribed time for making the return required under this subsection make a payment of a filing fee of \$150 for each owner of an interest in the entity ..." N.J.S.A. 54A:8-6(b)(2)(4).

Therefore, a partnership that files multiple short period returns is required to pay the filing fee separately with each Form NJ-1065. For example, a partnership with three partners that files two short period returns in one year would pay \$1125 (\$900 in current filing fees and \$225 as prepayment) with the first return. The partnership will not be required to pay the 50 percent installment payment with the second short period return.

The installment payment that was paid with the first short period return will be credited to the second short period return and applied to the succeeding year's return. □

In Our Legislature Corporation Business Tax

New Jersey Angel Investor Tax Credit Act—P.L. 2013, c.14, signed into law on January 31, 2013, and effective for privilege periods and taxable years beginning on or after January 1, 2012, revives the expired Small New Jersey Based High Technology Business Investment Tax Credit by establishing credits against corporation business and gross income taxes for individuals or entities investing in New Jersey emerging technology businesses. Subject to certain limitations, the credits equal 10% of qualified investment in an emerging technology company as approved by the Economic Development Authority, subject to a \$25 million annual cap.

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Pay NJ Taxes Online

Electronic Check (E-Check)

Credit Card

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

PAY TO THE ORDER OF

Date 1234
15-00000000

AMOUNT \$ DOLLARS

Anypace Bank
Trenton, NJ 08611

Routing number: (202020000)

Account number: (1234)

For: (150250029)

Do not include the check number






www.state.nj.us/treasury/taxation/

Select "Electronic Services" to make a payment directly from your bank account (E-Check) or to pay by credit card.



in our legislature - from page 6

Tax credit recipients cannot claim credits for that part of an investment in a single company that exceeds \$500,000. For gross income tax purposes it is a refundable credit, while corporation business taxpayers may choose between a refund and a 15-year carryforward credit.

Angel investments are equity placements by high net worth individuals into high-risk start-up ventures.

Gross Income Tax

2014 NJ Special Olympics Home Team Fund — P.L. 2013, c.13, signed into law on January 29, 2013, and effective for tax years 2012, 2013, and 2014, establishes the 2014 NJ Special Olympics Home Team Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns to support New Jersey athletes participating in the 2014 Special Olympics USA Games.

New Jersey Angel Investor Tax Credit Act — See Corporation Business Tax.

Miscellaneous

Fraud Prevention Contractors — P.L. 2013, c.20, signed into law on January 25, 2013, and effective immediately, authorizes the use of fraud prevention contractors by the Division of Taxation. It provides that the Director may enter into agreements with one or more private persons, companies, associations, or corporations providing fraud prevention services. It further provides that the Director may provide such taxpayer information as is necessary for the provider of fraud prevention services to fulfill its obligations under the fraud prevention agreement, provided that such disclosure is not contrary to the provisions of subsection (a) of Section 6103 of the Internal Revenue Code of 1986, 26 U.S.C. §6103.

The law is designed to expand the Division’s ability to employ subcontractors to assist in activities specifically related to fraud prevention. All persons, companies, associations, or corporations providing fraud prevention services, and their employees, would be specifically subject to the confidentiality provisions of N.J.S.A. 54:50-8. Each entity is required to furnish the Director with the affidavit attesting to each employee’s acknowledgement of the confidentiality provisions noted in the law. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2012 (January 1, 2012 – December 31, 2012) and tax year 2013 (January 1, 2013 – December 31, 2013) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2012](#) [2013](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2012](#) [2013](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2012](#) [2013](#) □

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NJ TaxFax

NJ Tax Forms & Publications
24 Hours – 7 Days a Week





*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline**
- for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement**
- Hotline.....1-800-882-6597
- Earned Income Tax Credit**
- Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling**
- System 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director's Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax**
- Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

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2012 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
35	8/7/12	Increases amount of tax credits authorized to be issued under the Urban Transit Hub Tax Credit Program and extends application deadline.	MIS	S-1562(1R)
40	8/7/12	Establishes grant program to provide rebate of sales and use tax paid for purchase of certain materials and supplies used for construction of certain off-track wagering facilities.	S&U	S-2078
47	9/19/12	Revises privileges of limited and restricted breweries.	ABT	ACS for A-1277(1R)

*Legend for 2012 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuel Tax
CAS = Casino Taxes and Fees	MIS = Miscellaneous
CBT = Corporation Business Tax	MULT = Multiple Taxes
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax
LIT = Litter Control Fee	

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Director Bryan Sworn In



Michael J. Bryan was sworn in as Director of the Division of Taxation on January 15, 2013, by the Honorable Judge Patrick DeAlmeida while the Director's wife, Rebecca Bryan, looked on.

What's New for Tax Year 2012

New Jersey income tax return processing will start January 30 due to delayed opening of tax season for Federal returns.

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Alternative Business Calculation Adjustment** — Beginning with tax year 2012, taxpayers who have losses in certain business-related categories of income can utilize those losses to calculate

an adjustment to their taxable income ("Alternative Business Calculation Adjustment"). In addition, taxpayers can carry forward unused losses in those categories for a period of 20 years to calculate future adjustments. This change applies to residents, nonresidents, and estates and trusts.

Income/losses in the following four categories are included in the calculation of the adjustment: net profits from business; net gains or net income from rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of

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what's new - from page 1

S corporation income. Taxpayers with income and/or losses in any of these categories must complete two new return schedules: Schedule NJ-BUS-1, Business Income Summary Schedule, and Schedule NJ-BUS-2, Alternative Business Calculation Adjustment, to calculate the amount of their adjustment or loss carryforward. The percentage used to calculate the adjustment is being phased in over five years. The percentage will increase from 10 percent for tax year 2012 to 50 percent for tax year 2016 and after.

NOTE: The Alternative Business Calculation Adjustment does not change the way income is reported on the New Jersey income tax return. **A net loss in any category of income cannot be reported as such on Form NJ-1040, Form NJ-1040NR, or Form NJ-1041.** When reporting income on the return, a net loss in one category of income cannot be applied against income or gains in another, and no carryback or carryforward of losses is allowed.

- **Use Tax** — A new worksheet has been developed (Worksheet G, Use Tax Calculation) to make it easier for New Jersey residents to determine the amount to report on Line 45, Use Tax Due on Internet, Mail-Order, or Other Out-of-State Purchases.
- **Deceased Taxpayers** — A new oval has been added below the signature line that must be filled in if a copy of a deceased taxpayer's death certificate is enclosed with the return. This oval should be filled in and a copy of the death certificate enclosed only if there is a refund due and the check needs to be issued to the decedent's surviving spouse/civil union partner or estate.
- **Designated Contributions** — Three new funds have been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new funds, taxpayers must specify the "code number" at the "Other Designated Contribution" line. The new funds that have been added for 2012 are: Boys and Girls Clubs in New Jersey Fund (12), NJ National Guard State Family Readiness Council Fund (13), and American Red Cross-NJ Fund (14).
- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2012, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$128.78, the maximum employee disability insurance contribution was \$60.60, and the maximum employee family leave insurance contribution was \$24.24. Taxpayers with two or more employers who have contributed more than the maximum amount(s), must complete Form NJ-2450 to claim credit on their New Jersey tax return for the excess withheld.
- **Roth IRAs** — Taxpayers who converted an existing IRA to a rollover Roth IRA during tax year 2010 and made a Federal election to report the income in equal installments in 2011 and 2012 must report one-half of the amount that is taxable for New Jersey purposes on their income tax return for 2012.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Director:** Michael J. Bryan

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- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2012 is 3.4985% (.034985).

Property Tax Relief Programs

- **Homestead Benefit Program** — Information about the 2012 Homestead Benefit Program is not yet available.

Homeowners. New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2012, may be eligible for a homestead benefit provided the 2012 property taxes were paid and certain income limits are met. *The homestead benefit application for homeowners is not included in the NJ-1040 booklet.*

Information about the 2012 homestead benefit will be posted on our [Web site](#) as it becomes available.

Tenants. There is no tenant rebate application available for 2012 since tenant rebates for 2009 through 2011 were suspended by the State Budget.

- **2012 Property Tax Reimbursement (Senior Freeze)** — The property tax reimbursement application has been redesigned for tax year 2012 to make it easier for New Jersey residents to complete. In addition, the method of reporting pension and retirement benefits (including IRA and annuity income) for property tax reimbursement purposes has changed as a result of a recent court decision.

With very few exceptions, all income received during the year, including income which is not

required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2012, total annual income must be:

2011: \$80,000 or less, and

2012: \$82,880 or less

These limits apply regardless of marital/civil union status. However, if an applicant's status is married/CU couple, combined income of both spouses/CU partners must be reported.

NOTE: Eligibility requirements, including income limits, and benefits available under this program are subject to change by the State Budget. The eligibility requirements and benefit amounts for 2012 property tax reimbursements will not be finalized until the completion of the State Budget that must be adopted by July 1, 2013. □

**GROSS INCOME TAX
2012 NJ-2450
Correction**

The printed version of Form NJ-2450, Employee's Claim for Credit for Excess UI/WF/SWF, Disability Insurance, and/or Family Leave Insurance Contributions for Calendar Year 2012, that appears in the 2012 New Jersey resident return instruction booklet contains incorrect line number references. The instructions at Lines 4, 5, and 6 of Form NJ-2450 that indicate where to enter excess UI/WF/SWF, disability insurance, and family leave insurance contribution amounts on the Form NJ-1040 resident return list the wrong line numbers.

The instructions for Lines 4, 5, and 6 of Form NJ-2450 should read as follows:

4. Deduct Line 3 Col. A from Line 2 Col. A. Enter on Page 3, **Line 52 of the NJ-1040.**
5. Deduct Line 3 Col. B from Line 2 Col. B. Enter on Page 3, **Line 53 of the NJ-1040.**
6. Deduct Line 3 Col. C from Line 2 Col. C. Enter on Page 3, **Line 54 of the NJ-1040.**

Taxpayers who use the printed Form NJ-2450 contained in the NJ-1040 resident return booklet must be careful to enter any excess contribution amounts on the correct lines of Form NJ-1040.

Nonresident taxpayers who complete Form NJ-2450 must enter the amount of excess contributions on the nonresident return as follows: UI/WF/SWF on Line 48, Form NJ-1040NR, disability insurance on Line 49, Form NJ-1040NR, and

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2013 – December 31, 2013, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%

nj-2450 correction - from page 3

family leave insurance on Line 50, Form NJ-1040NR.

A corrected version of the [2012 Form NJ-2450](#) is available on the Division's Web site. □

CORPORATION BUSINESS TAX

Electronic Filing for CBT Returns

In November 2012, the New Jersey Division of Revenue and Enterprise Services began offering an enhanced electronic filing service to the business community for New Jersey corporation business tax (CBT) returns. The system, which is based on Federal/State Modernized e-File (MeF) program, will support the submission and processing of most CBT schedules and forms.

Authorized E-File providers, also known as Electronic Return Originators (EROs) can submit returns to the MeF system for processing. New Jersey returns can be submitted with a Federal return, or as a "State Only" submission. New Jersey will accept returns electronically from any IRS approved software provider.

For 2012, Form CBT-100 and Form CBT-100S returns, as well as most related schedules, can be filed electronically. In addition to accepting returns for tax year 2012, the New Jersey CBT E-File system will also allow the processing of 2011 filings. Electronic filing for CBT returns first became available in June 2012 for the 2011 tax year, and to date almost 1,600 returns for 2011 have been filed.

As of January 2013, software products from three developers have passed the testing procedures

established by the Division of Revenue and Enterprise Services for participating in CBT E-File for 2012: Thomson Reuters (2 products), Online Taxes, and TaxSlayer. Three additional developers are currently in the process of testing their CBT E-File products, and two others have expressed interest in developing a product. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

January 1-

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.
- Hearings of added and omitted assessment appeals completed by County Tax Board.
- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.
- One copy of each Farmland Assessment application (Form FA-1) filed with County Tax Board by

assessor for tax administrator's review.

January 10 (before)-

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10-

- Copies of Initial and Further Statements filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.

continued on page 5

Update:

NJ/NY Cooperative Interstate Tax Program

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from page 4

- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.

January 25–

- Assessor’s schedule of office hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)–

- Notices of current assessment and preceding year’s taxes mailed to each taxpayer by assessor.

February 1–

- MOD IV Master file sent to Property Administration via appropriate medium.
- Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 to be completed by assessor and forwarded to County Tax Administrator.
- Assessors’ office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Amount to which each qualified Highlands municipality is entitled certified to Division of Taxation

and State Treasurer by County Tax Board.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10–

- Certification of bulk mailing of Notification of Assessment filed with the County Tax Board by assessor within 10 days of completion of mailing. If bulk mailing completed by County Tax Board, certification prepared by the County Tax Administrator “within 10 days” of the date the bulk mailing was completed.

March 1–

- County Tax Administrator to submit copy of equalization table to: County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On July 30, 2012, Marcus Shelton of Brooklyn, New York, pled guilty to possession of untaxed tobacco products. He was sentenced to 45 days in jail and fined \$250.
- The Office of Criminal Investigation (OCI), along with the National White Collar Crime

Center (NW3C) and the Burlington County Prosecutor’s Office, sponsored an intelligence-sharing conference relative to Interstate 95 cigarette smuggling activity. Over 130 law enforcement officers from 43 law enforcement agencies from Virginia to Maine attended. The primary purposes were to develop a standard intelligence-gathering tool which NW3C can utilize as a U.S. Department of Justice-approved intelligence agency and to discuss smuggler tradecraft as uncovered by the law enforcement personnel in attendance.

- On August 20, 2012, an OCI special agent arrested Chaudry Iqbal of Atlantic City based on outstanding warrants from prior OCI cases. An inspection of Hajiwala LLC of Atlantic City resulted in the seizure of 11.8 cartons of Virginia-stamped cigarettes along with 101 counterfeit DVDs and several boxes of Black Ant and Street Overlord, so-called street supplements, which contain prescription legend drugs, as well as some pills believed to be a controlled dangerous substance. Iqbal was charged previously by OCI on March 12, 2012, for contraband cigarettes. He failed to appear on those matters. A total of \$2,583 in U.S. currency was seized. The Atlantic City Court set bail based on the special agent’s arrest of Iqbal at \$12,000, no 10%. He was incarcerated pending the posting of bail.
- OCI is coordinating with U.S. Customs & Border Protection, and an investigation by OCI special agents resulted in the seizure of 400 cartons of contraband

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “[Auctions.](#)” Select the name of the business for details about that auction.



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cigarettes (unstamped) illegally imported for sale into New Jersey. OCI continues its aggressive enforcement against illegal imports.

- On August 23, 2012, Frank Johnson of New York, New York, was indicted by a Gloucester County Grand Jury for contraband cigarette smuggling of 292 cartons of Virginia-stamped cigarettes after his arrest by OCI special agents in October 2011. Two other individuals arrested at the same time were not indicted as Johnson took responsibility for the cigarettes.
- Wawa finalized their transition this month from nonresident to resident New Jersey cigarette distributor. Though Wawa's new Carney's Point, New Jersey, facility has been up and running with logistics partner McLane, OCI personnel were present at their Wawa, Pennsylvania, location, along with an auditor from the Pennsylvania Department of Revenue, to wrap up nonresident operations. OCI coordinates with other revenue law enforcement agencies to ensure smooth transitions with industries regulated by the Division.

- Ocean County Prosecutor Marlene Lynch Ford announced on August 29, 2012, the arrest of a Wall Township developer, several of his family members, and a business associate in connection with a mortgage fraud investigation conducted over the past year, dubbed "Operation Family Affair." The following people were taken into custody: Christopher "Chris" Colatrella, John T. Colatrella, Alexis Colatrella, Vincent Veritas, Delores Cittadino, and Martin Damato. These defendants are charged with theft by deception and/or conspiracy. It is alleged that Chris Colatrella sold condominium units located at 114 Center Street in Lakehurst, New Jersey, which were owned by his company, CMC Holdings, to the above-referenced family members and business associates. These individuals obtained mortgage loans in order to purchase these properties, and it is alleged they falsified and misrepresented their employment, income, and assets on the applications in order to obtain approval for the loans. All of the condo units involved in these transactions subsequently went into foreclosure, causing substantial financial loss to the

lender. However, as the initial seller of these properties, Chris Colatrella allegedly realized receipts in excess of \$2 million. An auditor from OCI participated in this investigation.

- On September 14, 2012, Dorian Munoz, pursuant to his guilty plea, was sentenced by the Honorable N. Peter Conforti in Sussex County Superior Court to five years' probation and ordered to pay restitution in the amount of \$40,744 to the State of New Jersey. Mr. Munoz pled guilty to theft by failure to make required disposition of property received (3rd degree) and failure to pay or turn over sales and use taxes (3rd degree) while operating the business Spartan Cutting Edge Landscaping, Inc.
- On September 14, 2012, Wayne Dunich-Kolb pled guilty in the Mercer County Courthouse before the Honorable Thomas M. Brown to theft by failure to make required disposition of property received. Mr. Kolb, acting as a tax preparer, failed to remit his clients' payments of sales taxes, payroll taxes, and withholdings to the State of New Jersey, New York State, and the IRS. Instead, he deposited their payments into his personal bank accounts. At the time of his sentencing on November 16, 2012, Mr. Kolb was required to pay restitution in the amount of \$189,789.07, including \$129,278.73 to the State of New Jersey, \$7,151.47 to the State of New York, and \$53,358.87 to the IRS. Also, as a result of the plea agreement Mr. Kolb is required to file credible and honest New Jersey resident income tax returns

Enforcement Summary Statistics

Third Quarter 2012

Following is a summary of enforcement actions for the quarter ending September 30, 2012.

	Number	Amount
• Bank Levies	1,028	\$ 3,159,060
• Certificates of Debt	2,825	40,471,210
• Seizures	150	1,362,273
• Auctions	12	158,304
• Warrants of Satisfaction	4,480	

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for tax years 2005 to the present. He is to cease preparing tax returns other than his own. This was a joint investigation with IRS Criminal Investigations and was conducted by members of OCI's Financial Investigations Unit.

- On September 26, 2012, Adebowale Sheba and Johnson Coker were sentenced to five years each in State prison. Adebowale Sheba pled guilty on June 28, 2012, to two counts of second-degree theft by deception. Sheba will be ordered to pay restitution to the lenders for mortgage fraud in an amount to be determined by the Court. Johnson Coker pled guilty on June 28, 2012, to one count of second-degree conspiracy and third-degree receipt of stolen property. Coker was ordered to pay restitution of \$55,206 to the State. The financial investigation was conducted by an auditor of OCI's Special Frauds Unit.
- OCI continues to see an increase in other tobacco products being

smuggled into New Jersey and sold at retail stores. There has also been a large increase in other tobacco products and synthetic marijuana being stored and sold together. OCI special agents have charged a record number of retailers and individuals and continue to seize these untaxed cigars and loose tobacco along with the currency connected to the criminal activity, successfully moving for forfeiture in the courts. □

Tax Briefs

Administration

Bulk Sales Notification Requirements: Federal Foreclosure and Transfer of U.S. Marshal's Deed Exempt — The Division received an inquiry concerning whether the bulk sales requirements of N.J.S.A. 54:50-38 apply in the context of Federal judicial foreclosures. The Division replied that such foreclosures are exempt from the bulk sales requirements.

The bulk sales law, N.J.S.A. 54:50-38, requires the purchaser of any

business assets to notify the State at least 10 business days in advance of the transfer. An escrow account is established for the seller's tax liabilities to the Division of Taxation. After final payments of State tax debts are remitted to the State, the Division will authorize the release of the remaining portion, if any, in escrow to the seller by issuing the Division's clearance letter.

In view of the holding in *New Jersey Hotel Holdings, Inc. v. Director, Div. of Taxation*, 15 N.J. Tax 428 (Tax 1996), the Division of Taxation has exempted sheriff's sales in foreclosure from the bulk sales requirements of N.J.S.A. 54:50-38.

Federal law provides that for lien purposes a Federal court judgment must be treated the same as a State court judgment. 28 U.S.C. §1962, The Uniform Enforcement of Foreign Judgments Act, adopted by the New Jersey Legislature and codified at N.J.S.A. 2A:49A-25 et seq., provides that a foreign judgment refers to any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the State of New Jersey. See N.J.S.A. 2A:49A-26. When read together, these provisions indicate that there is no basis to distinguish between a sheriff's sale and a foreclosure in Federal court.

Under the bulk sales law there is no distinction between a State court foreclosure judgment and a Federal foreclosure judgment for enforcement purposes; so there is no basis to make a distinction between a State sheriff's deed and a U.S. Marshal's deed. Therefore, the exemption from the bulk sales requirements for sheriff's sales will also apply to U.S. Marshal's deeds transferred in

Practitioners' E-File Mandate

Preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

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Federal foreclosures. The transfer of a deed in lieu of foreclosure, however, is subject to the bulk sales notification requirements of N.J.S.A. 54:50-38. See *New Jersey Hotel Holdings, Inc. v. Director, Div. of Taxation*, 15 N.J. Tax 428 (Tax 1996).

Corporation Business Tax Partnerships and the Grow New Jersey Tax Credit — A taxpayer inquired about the Grow New Jersey Assistance Program established under N.J.S.A. 34:1B-244 that is effective in 2012. The program allows the New Jersey Economic Development Authority to grant tax credits to businesses that meet the eligibility qualifications of the grant program. The taxpayer specifically asked how a partnership can take this tax credit if it is only applicable to entities subject to the New Jersey

corporation business tax and to insurance companies.

The Division responded that under the Grow New Jersey Assistance Program “business” means a corporation that is subject to the tax imposed pursuant to N.J.S.A. 54:10A-5, a corporation that is subject to the tax imposed under N.J.S.A. 54:18A-2, N.J.S.A. 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5, or a partnership, an S corporation, or a limited liability corporation. A business also includes an affiliate of the business if that business applies for a credit based upon any capital investment made by, or full-time employees of, an affiliate. N.J.S.A. 34:1B-243.

Pursuant to N.J.S.A. 34:1B-247(c) (2), a business that is a partnership may not claim the credit directly, but the amount of the credit shall be allocated to partners of the partnership

in proportion to their share of the partnership. If a corporation or an insurance company is a partner in a partnership that is claiming the Grow New Jersey Tax Credit, such corporation or insurance company can claim their share of the credit against their corporation business tax or insurance premiums tax. Therefore, the credit flows through to the partners and is applied to the appropriate tax.

Sales and Use Tax

Billing by a Contractor for the Performance of a Taxable Service — A landscaper inquired about how to charge and collect tax from a customer for a taxable tree installation service. The landscaper purchases a tree for \$100 and pays \$7 in sales tax. The landscaper separately charges the customer for materials

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and labor. The landscaper typically charges \$200 for tree installation services. The landscaper inquired whether he could put his profit in the materials portion of the bill so that his labor charge would not be increased, allowing him to inflate his normal profit margin.

The Division responded that under the Sales and Use Tax Act, sales of materials and supplies to contractors are taxable because the contractor is considered the final consumer (or end user) of these items. A contractor is not considered a retailer or reseller of materials. Thus, when a contractor performs work on the real property of a customer, he should not charge the customer sales tax on the cost of materials and supplies used for the job. In other words, a contractor should not be charging a property owner tax on the materials portion of the bill whether the service performed is an exempt capital improvement, a taxable capital improvement, a repair, or a maintenance service. The only time

that the customer will pay tax on the materials charge is when the bill is stated as a lump sum for a taxable job without separating the charge for materials from the charge for labor.

If the contractor chooses to separately itemize the materials and labor portion of the bill for a taxable service transaction, the only amount deductible from the taxable receipt for sales tax purposes is the separately stated pass-through of the actual cost of materials. This amount may include the sales tax paid by the contractor when the materials and supplies were purchased. The remainder of the customer's bill relates to the labor and is subject to sales tax. Thus, tax is charged on the "profit" if the job is a taxable service transaction.

Therefore, if the landscaper chooses to separately charge for labor and materials when performing a taxable job, he should charge the customer \$107 for materials. This amount is not subject to tax. The remainder of the customer's bill is deemed to be for labor and is subject to sales tax.

Purchase of Handheld Radios by Security Guard Company to be Used on the Premises of a Client — A security guard company inquired whether their purchase of handheld radios to be used by security guard employees on the premises of a client is subject to sales and use tax. The company provides taxable security guard services for the client. The security guard company leases the handheld radios from a leasing company and the security guard company's client reimburses them for the monthly lease. Since the security guard company is charged sales tax on the monthly lease by the leasing company, they inquired whether they should charge tax on the reimbursement bill to the client.

The Division responded as follows:

The definition of "sales price" which is set forth at N.J.S.A. 54:32B-2(oo) (1) (*italics added*) states that:

- (1) Sales price is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller's cost of the property sold;
- (B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and *any other expense of the seller*;...

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Although a seller may generally purchase goods and services that will be resold to their customer without the payment of tax by issuing a resale certificate to the seller, under the above facts the security guard company is not reselling the radios to the client. Instead, the security guard company is using the radios in the performance of the security service and, therefore, the security guard company must pay tax when leasing the radios from the leasing company. N.J.S.A. 54:32B-2(f); N.J.S.A. 54:32B-3(a). Since the radios will be used by security guard employees on the premises of the client, the lease of the radios is an expense that the security guard company incurs in order to provide the security service (e.g., an overhead expense of the seller). The charge for the radios to the client becomes part of the receipt for the taxable security service and is therefore subject to tax (e.g., the charge to the client for the radios follows the taxability of the service provided). Thus, since the transaction is for a taxable security service, then the charge for the radios is also subject to tax. N.J.S.A. 54:32B-3(b) (11); N.J.S.A. 54:32B-2(xx). This is the case whether the amount is stated as a pass-through, a markup, or as one lump-sum charge coupled with the charge for the taxable security service.

Purchase of Washers and Dryers by a Taxpayer That Manufactures, Sells, and Rents Linens — A taxpayer that manufactures, sells, and rents linens inquired whether they are required to pay sales tax on the purchase of washers and dryers used in their business.

The Sales and Use Tax Act provides an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). Tangible personal property is used “directly” in the production process only when it is used to initiate, sustain, or terminate the process of transforming raw materials into finished products. N.J.A.C. 18:24-4.4(c). According to N.J.A.C. 18:24-4.4(b), “production is limited to those operations commencing with the introduction of raw materials into a systematic series of manufacturing, processing, assembling, or refining operations, and ceases when the product is in the form in which it will be sold to the ultimate consumer...” Thus, production begins with the introduction of raw materials into the process and ceases when the product is in the form in which it will be sold to the ultimate consumer. “Primarily” means that the manufacturer uses the tangible personal property more than 50% of the time directly in manufacturing, processing, assembling, or refining. N.J.A.C. 18:24-4.4(d).

The Division responded that the exemption would apply if the taxpayer uses the washers and dryers more than 50% of the time to launder newly manufactured linens since the linens are not in the form which they will be sold to the ultimate consumer until they are laundered. On the other hand, the exemption does not apply if the taxpayer uses the washers and dryers more than 50% of the time in the regular laundering of rented items. □

In Our Courts

Administration

Interest – *IGT (as Successor-In-Interest to Anchor Coin, Inc.) v. Director, Division of Taxation*, decided July 13, 2012; New Jersey Tax Court, Docket No. 006886-2010.

On July 26, 2006, the Division issued a corporation business tax assessment that included the application of the throwout provision and other adjustments. But for the adjustments attributable to the throwout provision the plaintiff (IGT) would have been entitled to a refund.

On October 23, 2006, IGT filed a timely protest challenging the throwout adjustment and related penalties. On February 25, 2010, the Division issued a final determination upholding the throwout adjustments. Plaintiff filed a complaint with the Tax Court. Thereafter, the parties agreed that IGT would be refunded \$41,498 with interest.

The issue in this case concerns the proper date from which interest on the agreed refund should be paid.

IGT’s position is that its entitlement to the refund matured on October 23, 2006, when it filed its protest challenging the throwout adjustments because it would have been entitled to a refund had those adjustments not been made. Plaintiff contends that it could not file a refund claim because N.J.S.A. 54:49-14a states that a taxpayer may not file a refund claim when a protest has been filed. The Division’s position is that entitlement to a refund would not have matured until the final determination was issued because N.J.S.A. 54:49-14a disallows the filing of a refund claim until the “protest or appeal has been finally determined.”



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N.J.S.A. 54:19-15.1 provides in pertinent part that:

Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund or requested adjustment, the date of the payment of the tax, or the due date of the report or the return thereof; ...

The Court determined that the statutes did not directly address the facts of this case; however, the Court opined that IGT's position best comported with the controlling statutes. Therefore, the Court concluded that IGT effectively filed a refund claim on October 23, 2006, when it made clear in its protest that it was not challenging the adjustments that were not related to the throwout adjustments.

The Court also noted that the prohibition in N.J.S.A. 54:49-14a against filing a refund claim after a protest has been filed or appeal proceedings have commenced until the protest or appeal has been finally determined only covers situations where the refund claim would concern the same adjustments in the protest or appeal.

Gross Income Tax

Qualified Small Business Stock – *Emilia A. Aciu v. Director, Division of Taxation*, decided October 9,

2012; New Jersey Tax Court, Docket No. 020999-2010.

Judge Menyuk granted the Division's motion for summary judgment.

On her originally filed New Jersey resident income tax return, the taxpayer reported the sale of 16,970 shares of common stock in Vision Research. She reported a gain of \$11,776,851 on New Jersey Schedule B.

The taxpayer filed an amended NJ-1040 after realizing that the stock was a "qualified small business stock." IRC §1202 allows for a 50 percent exclusion from the gain on the sale of a qualified small business stock held for more than five years. The Division disallowed the exclusion because it is not authorized under the Gross Income Tax Act.

Plaintiff argued that N.J.S.A. 54A:5-1(c) provides for the incorporation of Federal tax principles and concepts in the calculation of net gains on the disposition of property and that the Federal exclusion allowed by IRC §1202 should be applied.

The judge stated that "Section 5-1(c) explicitly incorporates three federal tax concepts that are to be used in determining net gains from the disposition of property: (1) the method of accounting used for federal income tax purposes; (2) the use of the federal adjusted basis; and (3)

the exclusion of gains to the extent federal rules require nonrecognition." She went on to say that the "plain words of 5-1(c) do not require the exclusion of half the gain on a sale of qualified small business stock. IRC §1202 is not a method of accounting, it does not affect the calculation of the basis of the VR shares, and it is not concerned with the recognition or nonrecognition of income."

S Corporation Credit Limitation

– *Svetozar Beljakovic, et al. v. Director, Division of Taxation*, decided August 1, 2012; New Jersey Tax Court, Docket No. 004551-2010.

Judge Narayanan denied the Division's motion for summary judgment and granted the plaintiff's motion.

Taxpayer is a resident of New Jersey who was a 100% shareholder of an electing New Jersey S corporation. The S corporation did business in New York State and New York City but did not maintain a regular place of business outside New Jersey. The S corporation filed a New York State corporate return reporting the minimum franchise tax and a New York City corporate return and paid \$26,499. Because the S corporation did not have a regular place of business outside New Jersey, pursuant to N.J.S.A. 54:10A-6 it was required to allocate 100% of its income to New Jersey on Form CBT-100S.

The taxpayer reported S corporation income of \$510,328 (the pro rata share of the S corporation's income allocated to New York) on his individual New York State IT-203 return and paid tax to New York State of \$34,390. On his NJ-1040 the taxpayer claimed credit for the income taxes paid to New York State.

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The Division disallowed the credit in accordance with N.J.S.A. 54A:4-1(c), which provides that no credit is allowed for S corporation income allocated to New Jersey, which in this case was 100%.

The Court began by affirming that the purpose of N.J.S.A. 54A:4-1 is to prevent multiple taxation of the same income, then rejected the Division's argument that N.J.S.A. 54A:4-1(c) prohibits the credit for taxes paid for S corporation income allocated 100% to New Jersey. The Court determined that the plaintiffs were entitled to a credit for S corporation income allocated or sourced outside New Jersey and not for income properly allocated to New Jersey.

In rejecting the Division's other arguments, the Court found that both Section 8 relief available under the Corporation Business Tax Act for income tax imposed by other states, and the references to "foreign State" or "another State" in N.J.A.C. 18:7-8.3(b) include political subdivisions. To do otherwise would lead to the conclusion that "the GIT credit would never be available for S corporation income allocated to a taxing jurisdiction which is not a State. Such a construction would clearly violate N.J.S.A. 54A:4-1(a) which grants the resident credit for any income taxes paid to 'another state... or political subdivision of such state' as well as the Director's own regulation which reads, 'N.J.S.A. 54A:4-1(b),(c), and (d) provide for a limitation on the credit for tax paid to another state or political subdivision.' N.J.A.C. 18:35-4.1(a) (3) (emphasis added)."

Claim of Right Doctrine – *Joseph J. Murphy and Diane Fitzmyer-Murphy v. Director, Division of*

Taxation, decided July 24, 2012; New Jersey Tax Court, Docket No. 005608-2011.

Judge DeAlmeida granted the Division's motion for summary judgment upholding a refund denial of \$157,535 for tax year 2005.

On their 2005 NJ-1040, the Murphys reported wages in the amount of \$4,142,000 from Mr. Murphy's employer and dividends of \$381,558. In 2008, Mr. Murphy reached an agreement with the Federal government to pay \$10,000,000 to the Federal government and bankruptcy trustees due to an ongoing investigation of fraudulent reporting by the company for which Mr. Murphy had worked. Mr. Murphy was not charged with any crime. The payments were made in 2008.

That year, the Murphys filed an amended 2005 NJ-1040, reducing their income by the amount of the payments made to the Federal government and claiming a refund of \$157,535. The claim for refund was denied. Plaintiffs filed a protest on January 27, 2010, and argued the "claim of right doctrine" during the hearing. On January 21, 2011, the Director issued a final determination rejecting the refund request, maintaining that the claim of right doctrine requires that money that is repaid only be used as a deduction in the year of repayment.

The Court found that N.J.S.A. 54A:5-2 did not permit a 2008 event (the repayment), whether it is a loss, a deduction, or some other legally significant transaction, to be applied to offset 2005 income. The denial of the refund was upheld.

The Murphys have appealed this decision to the New Jersey Appellate Division.

Workmen's Compensation – *Fred-eric J. Sa v. Director, Division of Taxation*, decided May 31, 2012; New Jersey Tax Court, Docket No. 000047-2011.

Judge Narayanan denied the Division's motion for summary judgment and granted the plaintiff's motion.

Taxpayer is a resident of New Jersey who was injured in the line of duty while working for the Union Township Police Department. During 2006 and 2007 Mr. Sa was absent from work for extended periods due to surgeries related to his injuries. He received his full salary during those periods.

Mr. Sa reported the full amount of wages he received from Union Township on his 2006 and 2007 NJ-1040s. Mr. Sa later amended the returns reducing the wages by the wage amounts he received during his absences. For 2006, he reduced his wages by \$29,173 (the amount of pay he received during his time out of work from March 2, 2006, to July 23, 2006). For 2007, Mr. Sa reduced his wages by \$6,665 (the amount of pay he received during his time out of work from October 15, 2007, to November 11, 2007.)

Per the collective bargaining agreement between Union Township and its Police Department, Mr. Sa was entitled to his regular pay while on leave. The Township was reimbursed by its insurance company at the rate of \$650 per week which was the amount Mr. Sa would have been able to collect under the Workmen's Compensation Act.

The Court found that the portion of the payments which were reimbursed to Union Township was

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excludable from Mr. Sa's income because it represents an amount received as workmen's compensation under the Workmen's Compensation Act.

Therefore, Mr. Sa was able to deduct \$650 per week for the period from March 2, 2006, through July 23, 2006, but not his full pay. However, for tax year 2007, no deduction was granted since no documentation from the Township was provided to show reimbursements from the insurance company.

**Local Property Tax
Disabled Veteran's Property Tax
Exemption** – *R.J. Wellington & C.A. Pangilinan v. Township of Hillsborough*, decided October 24, 2012; Tax Court.

Plaintiff, R.J. Wellington, disputed the municipal assessor's denial of his claim for a disabled veteran's property tax exemption. Reginald Wellington was a member of the United States Navy from September 24, 1997, until September 24, 1999, the date on which he was honorably discharged. Wellington was stationed with the Marine Corps during Operation Northern Watch and Southern Watch, in which the U.S. enforced a no-fly zone and United Nations sanctions in Iraq. Wellington's job was to test chemical agents being used by the enemy and to develop protection for members of the U.S. military in service in the Arabian Peninsula. The U.S. military determined that as a result of his exposure to enemy chemical agents, Wellington developed multiple sclerosis and lost use of his hands and feet. The U.S. Department of Veterans Affairs declared Wellington 100% permanently disabled as a result of his military service.

Wellington purchased a residence in Hillsborough Township on May 19, 2007. The deed showed that he owned the property jointly with the right of survivorship with plaintiff Catherine A. Pangilinan, his former wife. On March 9, 2009, Wellington filed a claim with the Hillsborough Township tax assessor for a tax exemption for the residence pursuant to N.J.S.A. 54:4-3.30, which provides an exemption from local property taxes for the dwelling house and lot of any citizen and resident of this State honorably discharged from active military service, in time of war, who has 100% permanent service-related disability. On March 24, 2009, the tax assessor denied Wellington's exemption claim for two reasons: (1) Wellington did not serve a minimum of 14 days "in the actual combat zone" and (2) Wellington held only partial ownership of the property.

The denial notice provides that pursuant to N.J.S.A. 54:3-21, plaintiff's time to appeal to the County Board of Taxation expired April 1, 2009, or, if the denial was issued "too late" to file an appeal by April 1, then the plaintiff was entitled to file an appeal by April 1, 2010. Wellington met neither appeal deadline and instead filed a petition of appeal with the Somerset County Board of Taxation on March 28, 2011. On June 5, 2011, the County Board issued a judgment denying the exemption for the tax year 2011. On August 11, 2011, Wellington filed a complaint with the State Tax Court challenging the County Board's judgment as well as disputing the property's value.

On March 2, 2012, the municipality moved for summary judgment in its favor. The township argued that Wellington did not suffer a disability as a result of "active service in time

of war" since his disability arose in the United States and not in the actual "combat zone." Additionally, the joint ownership of his residence with his former wife precludes an exemption. The municipality also argued that Wellington cannot seek relief in the Court without having first filed a written exemption claim with the tax assessor for tax year 2011.

On May 10, 2012, Wellington opposed the municipality's motion and cross-moved for summary judgment in his favor on the exemption claim. Wellington argued that his military service in California satisfies the criteria for an exemption set forth in N.J.S.A. 54:4-3.30 and N.J.S.A. 54:4-8.10 because the legislature does not specify a geographical limitation on eligibility for service-related disabilities arising from Operation Northern Watch and Southern Watch. He contended that the "theater of operation" of that conflict was brought to him in California when dangerous weapons were removed from the battlefield and delivered to his laboratory. In addition, Wellington argued that nothing in the statute requires a written application to be filed with the tax assessor or precludes the award of an exemption to a disabled veteran who jointly owns his residence with another person.

The pivotal question before the Court was whether Wellington's 100% permanent disability arose "from active service, in time of war." The Court noted that the statutory language for Northern Watch and Southern Watch does not establish a strict geographic service requirement like the Peacekeeping Missions, but rather requires service "in the theater of operation,

continued on page 14

including in the Arabian peninsula and the Persian Gulf and in direct support of that operation,” but not limited to those areas. Therefore, the fact that Wellington’s disability arose from service in California does not, in itself, exclude him from eligibility for exemption. The Court reasoned further that plaintiff was no less endangered by Iraqi chemical weapons at his California lab than servicemen and women on the actual battlefield. He suffered permanent disability through contact with those weapons. Under the facts of this case plaintiff falls within the parameters of the exemption.

The Court, citing *Hennefeld v. Twp. of Montclair*, 22 N.J. Tax 166 (2005), found that Wellington is entitled to an exemption in a percentage that reflects his proportionate share of ownership in the subject property. The township’s motion for summary judgment was denied. Wellington’s motion for summary judgment was granted in part. The Court will enter an order declaring Mr. Wellington eligible for the subject property for tax year 2011.

Property Tax Relief Programs
Property Tax Reimbursement (Senior Freeze) – *Rita J. Hawe v. Director, Division of Taxation*, decided May 29, 2012; New Jersey Tax Court, Docket No. 019191-2011.

The Tax Court held that, for the purposes of N.J.S.A. 54:4-8.67, annual income does not include distributions from an annuity that represent a taxpayer’s original investment. Only the interest generated by the annuity is to be included in income when determining eligibility for a property tax reimbursement benefit. □

In Our Legislature

Alcoholic Beverage Tax

Microbreweries and Brewpubs — P.L. 2012, c.47, signed into law on September 19, 2012, and effective immediately, revises N.J.S.A. 33:1-10 regarding limited breweries, commonly known as microbreweries, and restricted breweries, commonly known as brewpubs.

The law now permits limited breweries to sell and distribute their products to a consumer on the licensed premises of the brewery: (1) for consumption on the premises only in connection with a tour of the brewery; (2) in an amount of up to 15.5 fluid gallons for consumption off the licensed premises; and (3) for sampling only if the brewery has obtained an annual permit from the Director of the Division of Alcoholic Beverage Control (ABC). These licensees are prohibited from selling food or operating a restaurant on the licensed premises.

Each year a restricted brewery may produce up to 10,000 barrels of malt alcoholic beverages. The fee for a restricted brewery license is \$1,250 to brew 1,000 barrels annually. The fee for each additional 1,000 barrels is \$250. A restricted brewery may sell its products to the public through the three-tier system described in the Act. A licensee may also offer samples of its products at charitable or civic events off the licensed premises if the licensee obtains an annual permit issued by the Director of the ABC.

A single licensee may acquire up to 10 restricted brewery licenses. A restaurant with a restricted brewery license is now permitted to sell malt alcoholic beverages produced by the restricted brewery for consumption off the licensed premises.

The Act creates an “at rest” provision applicable to holders of plenary brewery licenses and limited brewery licenses. Those licensees may deliver their malt alcoholic beverage products from inventory in a warehouse located within the State. These “at rest” provisions allow for employees of the ABC and other law enforcement officials to conduct certain inspections to ensure compliance with current law. The “at rest” provisions also enable applicable tax collection administration.

Miscellaneous

Urban Transit Hub Tax Credit Caps Increased — P.L. 2012, c.35, signed into law on August 7, 2012, and effective immediately, amends the Urban Transit Hub Tax Credit Act to increase the cap on the total amount of tax credits authorized under the Act by \$250 million to a total of \$1.75 billion. It also extends the application deadline to July 1, 2014, to maintain consistency with the Grow New Jersey Assistance Act, except that the deadline for applications for tax credits for wind energy facilities established under P.L. 2010, c.57 (N.J.S.A. 34:1B-209.4) is not extended.

The Act also restores the cap to \$200 million for the Grow New Jersey Assistance Program (N.J.S.A. 34:1B-247).

Sales and Use Tax

Rebate for Off-Track Wagering Facilities — P.L. 2012, c.40, signed into law on August 7, 2012, and effective immediately, establishes a grant program to provide a one-time rebate of the sales and use tax paid for the purchase of certain materials and supplies used for the construction of certain off-track wagering facilities.



in our legislature - from page 14

The amount of the rebate is equal to the sales and use tax collected from the retail sale or use of construction materials and construction supplies used by (1) a contractor of a person who is, as of January 1, 2012, a lessee of a racetrack owned by the New Jersey Sports and Exposition Authority (NJSEA), or (2) a contractor of certain joint ventures for the construction of an off-track wagering facility licensed by the New Jersey Racing Commission in accordance with applicable law.

The contractor purchasing the construction materials and construction supplies is responsible for completing a form or certification identifying the type and location of the construction, the construction materials and supplies purchased, and the purchase price and sales tax paid. This document must be filed with the Director on a quarterly basis.

The State Treasurer is responsible for establishing a special nonlapsing account in the General Fund for purposes of receiving amounts equal to the taxes collected in connection with eligible purchases, and is responsible for paying amounts credited to the account to eligible lessees or joint ventures upon certification from the NJSEA that the construction of the off-track wagering facility is complete.

A lessee or joint venture will not be allowed more than one grant for the construction of each off-track wagering facility nor will a grant be paid for the construction of an otherwise eligible facility that is completed after June 30, 2022. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2012 (January 1, 2012 – December 31, 2012) and tax year 2013 (January 1, 2013 – December 31, 2013) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2012](#) [2013](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2012](#) [2013](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2012](#) [2013](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ... 1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement Hotline 1-800-882-6597
- Earned Income Tax Credit Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System 1-877-829-2866 (609-341-4800 as of Feb. 1, 2013)
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

New Jersey State Tax news

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Division Hires New Employees

In September 2012 the Division of Taxation hired almost 140 trainee investigators, auditors, taxpayer service representatives, and special agents. The trainee class also includes a number of current employees who are moving into positions in other areas of the Division. This recent recruitment effort aims to restore the ranks of the Division's professional staff in the wake of the retirements that have occurred at an accelerated pace over the last year.

The trainees have been assigned to Audit Activity, Compliance & Enforcement Activity, Technical Services Activity, Office of Criminal Investigation, Property Administration, and the Office of Counsel Services' Conference & Appeals Branch. Each area is conducting most of the training for its own employees.

The new employees will help the Division improve performance in its core mission areas. Also, the additional staff will enable all Activities to improve service to members of the public, whether individual taxpayers or tax practitioners, and increase tax compliance.

In concrete terms, this means the amount of time it takes the Division to complete audits, resolve protests of audit determinations, issue refunds, and answer inquiries (by phone, e-mail, or in writing)

will be reduced. In addition, improved enforcement of the State's tax laws levels the playing field for businesses and individuals who are meeting their New Jersey tax responsibilities.

For example, the new employees in Compliance Enforcement will first be assigned to established investigation teams to work on routine matters. This will allow experienced staff members to focus on more complex cases, and pursue other initiatives, such as investigations of businesses operating in the underground economy. Meanwhile the new staff will gain knowledge about the work and necessary procedures that will lead them to become well-functioning investigators.

The recruits assigned to the Office of Criminal Investigation include nine special agent trainees, as well as one auditor and one investigator trainee. They will be trained to conduct investigations of financial crimes that have tax compliance implications. In addition, the special agent trainees will attend training at the New Jersey Division of Criminal Justice Academy beginning in January 2013.

With increased professional staffing at the Division, the public can expect to experience greater customer service in all areas. □

Mail Destroyed in Truck Fire

On Tuesday, September 11, 2012, a delivery truck carrying U.S. mail addressed to the New Jersey Division of Taxation was involved in a two-truck collision on the New Jersey Turnpike and caught fire. The contents of the truck were destroyed beyond recognition, with the exception of a small number of certified mail pieces, some of which could be identified as mail intended for Taxation and other State agencies.

Governor Chris Christie ordered State agencies to provide all required assistance to New Jerseyans who may have been affected by the loss of hundreds of pieces of mail that were destroyed by the blaze and firefighting efforts.

The mail that was lost came from ZIP codes starting with 070 to 076, 078, 079, 088 or 089. The letters and parcels were most likely collected September 7 – 10 from street collection boxes in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren counties.

New Jerseyans who believe they may have had letters or packages bound for government offices on the truck should check with the appropriate State agency to determine the status of their filings, payments, and applications.

The Division of Taxation cannot determine which returns, payments, correspondence, or other submissions were destroyed in the fire. Taxpayers who mailed a tax return, payment, or sent other correspondence to the Division of Taxation from North Jersey in early September and who think their mailing

may have been affected by the September 11 mail truck fire should proceed as described below.

Taxpayers can choose to allow more time to see if their original submission is processed, or they can resubmit a duplicate of the mailing immediately. The Division advises taxpayers to allow two bank statement cycles for payments to be processed. However, taxpayers can submit a duplicate payment sooner if they choose. The Division will waive late filing and late payment penalties on filings and payments received on or before October 15, 2012.

Many returns and payments, including estimated payments, can be filed electronically through the Division's Web site at:

- [Estimated Payments – Gross Income Tax \(Individuals, Estates and Trusts\)](#)
- [Estimated Payments – Corporation Business Tax](#)
- [Other Filings and Payments](#)

Taxpayers who decide to stop payment on their original payment check must contact their bank to find out how to place a stop-payment order and the amount of the charges, if any, that would apply.

Anyone who receives a billing notice from the Division of Taxation for late filing and/or payment because of mail destroyed in the fire must respond to the notice in writing to request an abatement of the penalties. Write "September 11 Mail Truck Fire" in the subject line of the response and explain the circumstances. Indicate when and where the original package was mailed and provide any other pertinent details. If a payment check was enclosed with the original

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director: Michael J. Bryan**

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mail destroyed in fire - from page 2

mailing, a copy of that check, if available, should be included with the response. Otherwise, include a copy of the portion of the checkbook or check register that shows the date of the original payment.

Taxpayers who have additional questions can call the Division's Customer Service Center at 609-292-6400 or [e-mail](#) the Division.

Governor Christie ordered State commissioners and agency heads to post information on their Web sites explaining how affected citizens can obtain assistance with issues resulting from the destruction of mail in the September 11 truck fire.

To find an agency's Web site, go to the [Governor's Web site](#) and click on the link at the top that says "Departments/Agencies," and then choose the appropriate agency's link. Information is also available by calling the Governor's Constituent Relations Office at 609-777-2500. □

Practitioner Institutes

The New Jersey Division of Taxation, the Internal Revenue Service, and the New Jersey Association of Public Accountants (NJAPA) invite all New Jersey tax practitioners to attend this year's Tax Practitioner Institutes. These institutes are being cosponsored by the cooperating colleges and a portion of the registration fee is donated to the college's scholarship fund.

Topics for the one-day institutes will include new legislation and an overview of tax law changes for both New Jersey and Federal taxes. Registration desks will open at 8:00 a.m. Each session begins at 8:30 a.m., includes lunch, and concludes at 4:30 p.m. Please contact the individual coordinator listed below if you would like registration information or details about the location, including parking facilities and directions. □

Intangible Asset Nexus Initiative

Recognizing that there are companies that have nexus with New Jersey as a result of having derived income from the use of intangible assets in this State that have not fulfilled their tax filing responsibilities, the Division of Taxation will be offering a limited voluntary disclosure initiative.

Beginning on September 15, 2012, and running through January 15, 2013, companies that own intangible assets and derived income from the use of those assets in New Jersey will have the opportunity to come forward and voluntarily comply with their corporation business tax filing requirements. In addition to the standard procedures and requirements for [voluntary disclosure agreements \(VDAs\) for business taxes](#) the following principles will apply:

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2012 TAX PRACTITIONER INSTITUTES SCHEDULE

Date	Location	Contact for Registration
October 25 (Thursday)	Montclair University	Ray Peche 973-790-1181 or Rpeche729@verizon.net
October 27 (Saturday)	County College of Morris	Frank Kopicki 973-827-2793 or Kopic2@embarqmail.com
October 30 (Tuesday)	Middlesex County College	Burt Zocks 732-738-0770 or blzocks@verizon.net
November 2 (Friday)	Gloucester County College	LeRoy Thumlert 856-589-7272 or rthump@aol.com
November 8 (Thursday)	Mercer County Community College	John Duffy 609-586-1990 or jackduffy929@aol.com
November 15 (Thursday)	Georgian Court University	Anthony Morro 732-919-1380 or ammorro_paea@yahoo.com
November 16 (Friday)	Kean University	Alice Weinstein 973-379-3275 or alvid@aol.com

nexus initiative - from page 3

- The lookback period will be limited to the periods beginning after December 31, 2003, or the date business commenced, whichever is later. Returns for prior periods will not be required.
- The taxpayer must file all required returns and remit payment of the full tax liability reported within 90 (ninety) days of the execution of its VDA.
- The Division will waive all penalties except that a 5% amnesty penalty will be assessed for all returns due prior to February 1, 2009.
- The taxpayer will remit payment of interest and the amnesty penalty within 30 (thirty) days of assessment.
- The Division will consider discretionary throwout relief by averaging a throwout receipts fraction with a nonthrowout receipts fraction.
- Operating companies or those companies that have paid royalties

and added same back to their New Jersey entire net income may submit amended returns for any period for which the statute of limitations remains open in order to claim an exception to the add back.

- All returns will be subject to routine audit with respect to issues not specifically covered in the VDA.
- Any settlement with respect to the throwout issue will be binding on the taxpayer and the Division. The taxpayer may not file a claim for refund in the event that the application of any future Court decisions would suggest a different result.
- If the disclosure candidate does not wish to settle the throwout issue, the Division will hold the issue for a future determination. The Division would conduct an audit on the returns filed under the disclosure agreement to make the required throwout determination.

Requests for disclosure or questions should be submitted to Nicholas J.

Solimando, Auditor, in writing at New Jersey Division of Taxation, Office Audit Branch, P.O. Box 269, Trenton, New Jersey 08695-0269, by phone at 609-633-7837, by fax at 609-633-2681, or by [e-mail](#). Questions may also be addressed to Lee Evans, Chief, Office Audit Branch, by phone at 609-292-5927 or [e-mail](#). □

LOCAL PROPERTY TAX**Tax Assessors' Calendar****October 1 (on or before)–**

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with

Update:**NJ/NY Cooperative Interstate Tax Program**

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from page 4

Property Administration and the County Tax Board.

- Exempt real property sold to nonexempt owner or real property improved after October 1 and before January 1 assessed as of the first day of the month following completion or sale.
- True taxable value of an improvement, conversion, or construction of property that has applied for exemption and/or abatement determined by assessor.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected

to be granted, etc. certified by assessor.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year) in cases where assessed values reflect revaluation of all property.

December 1 (on or before)–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.
- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax

bills for the omitted assessments, whichever is later.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2013 must be filed with assessor during the pretax year, thereafter with collector during the tax year.
- Last date for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2012 to be filed with collector. □

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2012 – December 31, 2012, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%

Criminal Enforcement

Criminal enforcement over the past several months included:

- On March 16, 2012, Jimmy Tovar entered a guilty plea with the New Jersey Superior Court, Middlesex County. A Deputy Attorney General of the Office of the Insurance Fraud Prosecutor (OFIP) prosecuted the case, which included charges of conspiracy, acting as a runner, and failure to file New Jersey income tax returns. The tax charges levied against him related to \$50,500 of income derived in

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criminal enforcement - from pg. 5

2010 working as a “runner” for Dr. Scott Greenberg. There are other “runners” identified in the main case who are to be charged in the same manner. On May 14, 2012, Tovar was sentenced to three years in State prison by Superior Court Judge Bradley J. Ferencz in Middlesex County. Tovar has been in custody since his arrest in July 2011. He executed a consent judgment for \$1,854.70 in back taxes owed from the money he made from his “running” activities in 2010. Tovar’s sentence was based on his March 16 guilty plea to the charges of conspiracy to commit running activity, acting as a runner, and failure to file a tax return, all in the third degree. Tovar admitted that in 2010 he was paid \$50,500 for soliciting people following automobile accidents for treatment at Central Jersey Chiropractic and Rehabilitation Centres, which is owned by Dr. Greenberg. Tovar failed to file a New Jersey income tax return in 2010 to report this income.

- The Office of Criminal Investigation (OCI) conducted sweeps in the City of Asbury Park and

Neptune Township. Of the 20 businesses inspected, 16 had violations, including business entities that have never been registered. Some press inquiries resulted, and the Treasurer’s Public Information Office addressed those inquiries. Contraband cigarettes and tobacco were seized as well. Various weapons were also seized and turned over to local police departments for action.

- Jesse Watkins, of New York, was sentenced in U.S. District Court as a result of his arrest in a joint investigation with OCI and the Federal Bureau of Investigation in 2010. The subject was sentenced to one day of imprisonment, three years’ Federal probation, and ordered to pay restitution to the State of New Jersey in the amount of \$3,105,285 for conspiracy to traffic contraband cigarettes. James Brown, a coconspirator of Watkins, was sentenced to six months in the custody of the Federal Bureau of Prisons and ordered to pay restitution to the State of New Jersey in the amount of \$190,410. Xavier Ray, the third conspirator in this case, was sentenced to a term of 37 months in the custody of the Federal Bureau of Prisons and ordered to pay

restitution to the State of New Jersey in the amount of \$1,778,775. For all parties involved, the sentences ordered a total restitution of \$5,074,470 (cigarette tax) and a total of 43 months and 1 day of incarceration.

- OCI participated in the Atlantic City Tourism Zone initiative with the Department of Law and Public Safety’s Division of Consumer Affairs (DCA). OCI made a number of arrests and 11 different seizures during the operation. At that time, Charles Giblin, Special Agent in Charge, met with the Acting Director of the DCA on various issues and potential conflicts, in particular the motor fuels enforcement initiative. OCI anticipates that this will lead to future endeavors with DCA. Part of that discussion covered the exchange of information that could result in license suppression for individuals and businesses who are not tax compliant but who have a professional license with DCA. The need for cooperation with other civil agencies became apparent when OCI conducted the Asbury Park initiative and found, for example, barbershops, which fall under DCA jurisdiction, that were not tax compliant. Expanding that relationship is a priority for OCI as it benefits not only criminal enforcement efforts but also voluntary compliance.
- On June 27, 2012, Dwayne Spears, of Monmouth County, pled guilty to participating in a scheme in which a State corrections officer, a leader of the Nine Trey Gangsters set of the Bloods gang, and members of the Lucchese organized crime family

Enforcement Summary Statistics Second Quarter 2012

Following is a summary of enforcement actions for the quarter ending June 30, 2012.

	Number	Amount
• Bank Levies	1,043	\$ 3,689,367
• Certificates of Debt	3,946	50,485,270
• Seizures	122	996,910
• Auctions	8	195,701
• Warrants of Satisfaction	4,652	

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criminal enforcement - from page 6

smuggled drugs and cell phones into East Jersey State Prison. Spears pled guilty to a charge of second-degree racketeering before Superior Court Judge Thomas V. Manahan in Morris County. Under the plea agreement, the State will recommend that Spears be sentenced to five years in State prison. The guilty plea stems from Operation Heat, an investigation by the Division of Criminal Justice Gangs and Organized Crime Bureau that led to the arrest and indictment of those involved in the smuggling scheme as well as numerous members of the New York-based Lucchese organized crime family. As a result of Operation Heat, the Division of Criminal Justice indicted two ruling members of the Lucchese crime family and 32 other members and associates, including the alleged current and former top New Jersey capos, Ralph V. Perna and Nicodemo Scarfo Jr., on first-degree charges of racketeering and predicate offenses on May 14, 2010. The prison smuggling scheme allegedly involved Spears' brother, inmate Edwin B. Spears, and Michael T. Bruinton, a corrections officer at East Jersey State Prison. It is charged that Edwin Spears, who holds a leadership position as a "five-star

general" in the Nine Trey Gangsters, formed an alliance in the smuggling operation with Joseph M. Perna, a member of the Lucchese crime family, and Michael A. Cetta, a Bonnano crime family associate linked to the Lucchese crime family through marriage.

- On June 28, 2012, in Mercer County Superior Court, Adeebowale Sheba pled guilty to two counts of second-degree theft by deception, and Johnson Coker pled guilty to second-degree conspiracy and third-degree receipt of stolen property. The two men, along with two others charged in December 2009, were involved in a scheme to fraudulently obtain at least 585 State income tax refund checks totaling \$435,577. Sentencing for Sheba and Coker was scheduled for September 26, 2012. The investigation began when auditors from the Division of Taxation's Office of Criminal Investigation detected numerous refund checks payable to multiple taxpayers that were coendorsed with the same name. The income tax returns associated with the refund checks had similar taxpayer information, including filing status as head of household, one or two dependent children, wages ranging from \$7,000 to \$16,500 with no payroll tax withholdings, and business losses reported on an accompanying Federal Schedule C. Wages were reported on identical Form W-2s, apparently produced from the same software package. In all instances, the taxpayers completed the Earned Income Tax Credit Schedule with income levels that qualified for the earned income tax credit. Division of Taxation auditors expanded the scope of their review

by identifying and investigating checks that were coendorsed with different names but fit the suspicious pattern. This case was referred to the Division of Criminal Justice.

- OCI Investigators have visited or made contact with 113 licensed New Jersey cigarette wholesalers. Though most were inspected for reporting and record keeping requirements, some locations did not have correct business addresses, some were out of business, and a few had personal and/or business problems that prevented them from meeting with investigators. OCI will revisit the wholesalers once their issues are resolved. The project, intended to gauge through unannounced inspections wholesalers' voluntary compliance with requirements under both the New Jersey Cigarette Tax Act and New Jersey Administrative Code, was very successful. OCI found the majority of license holders were compliant. Some fell short and were provided a brief opportunity to resolve any issues. Those who were unable to do so will be criminally charged. This project was intended to increase proper reporting and ensure that wholesalers were reminded of the requirements of the Tobacco Products Wholesale Sales and Use Tax Act. It also cross references licensee identifiers.
- After years of shipping untaxed mail-ordered cigarettes directly to New Jersey residents, Grand River Enterprises, the maker of Seneca brands, will comply with the Prevent All Cigarette Trafficking Act by shipping and selling

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "**Auctions.**" Select the name of the business for details about that auction.



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their cigarettes into New Jersey through legitimate industry channels. Grand River Enterprises, an Ontario, Canada-based business, has made their brands Master Settlement Agreement (MSA) compliant by registering them with the New Jersey Office of the Attorney General as a nonparticipating manufacturer. They have partnered with a Florida-based company, Canadian Agricultural Depot LLC (CAD), who will serve as both licensed New Jersey manufacturer/importer and New Jersey nonresident distributor (stamper) for the cigarettes. CAD has also secured a Carlstadt, New Jersey-based business, Nash Distributors Inc., to be their primary New Jersey cigarette wholesaler. CAD will receive cigarettes from Canada, affix New Jersey tax stamps, and ship them via common carrier to Nash Distributors Inc., a long established beer distributor, which will test the New Jersey market with the Grand River Enterprises

cigarette brands. Should they find this business beneficial, they plan to apply for their own distributor license and take over the stamping function from CAD. CAD will then serve solely as an importer/licensed cigarette manufacturer. Canadian Agricultural Depot LLC has recently been issued a New Jersey nonresident cigarette distributor license. Nash Distributors will soon be issued a New Jersey cigarette wholesale license. This initiative was a cooperative effort between OCI and the Excise Tax Branch, which protects the State's "due diligence" requirements under the MSA. □

Tax Briefs

Corporation Business Tax Research and Development Tax Credit — A taxpayer corporation inquired as to whether the New Jersey corporation business tax research and development tax credit will be allowed if the Federal research and development tax credit described in

Internal Revenue Code Section 41 expires for the 2012 tax year.

The Division responded that N.J.S.A. 54:10A-5.24(a) provides for a corporation business tax research and development tax credit. The credit is equal to 10% of the excess of qualified research expenses for the fiscal or calendar accounting year over a base amount and 10% of the basic research payments determined in accordance with Section 41 of the Internal Revenue Code of 1986, as in effect on June 30, 1992. N.J.S.A. 54:10A-5.24(a)(2) provides, in pertinent part: "... subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply." The Division interprets this language to mean that the New Jersey research and development tax credit is independent of the Federal research and development tax credit.

Therefore, the New Jersey research and development tax credit will continue, regardless of a lapse in the Federal research and development credit. The New Jersey research and development tax credit for 2012 will be calculated according to the instructions on Form 306, New Jersey Corporation Business Tax Research and Development Tax Credit.

Gross Income Tax New Jersey Mentor/Foster Parents Program — A taxpayer inquired about whether a stipend received from the New Jersey Mentor/Foster Parents Program is taxable for New Jersey gross income tax purposes.

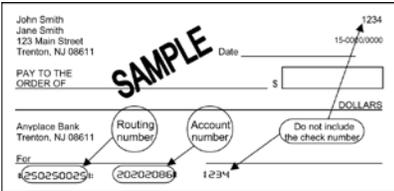
The New Jersey Mentor/Foster Parents Program was founded in 1990 to help children and adolescents in need and adults with intellectual and developmental disabilities find supportive, loving home environments

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where they can thrive. The program provides a stipend to qualified mentor/foster parents that varies based on the condition and the needs of the individual(s) supported.

For Federal income tax purposes, payments received from a state, political subdivision, or a foster care placement agency for providing care to qualified foster individuals in the taxpayer's home are not taxable. However, taxpayers must include payments received for the care of more than five individuals age 19 or older and certain difficulty-of-care payments in their income.

The New Jersey Gross Income Tax Act does not have any specific provisions that would exclude the Mentor/Foster Parents Program stipend from income. However, to the extent that the stipend is for the support of qualified foster individuals, taxpayers may exclude the payments from New Jersey gross income if it is excluded from Federal income. Any such payment that is taxable for Federal income tax purposes will also be taxable for New Jersey gross income tax purposes.

If a mentor/foster parent receives taxable payments, the payor agency will issue a Form W-2 or 1099-MISC to both the mentor/foster parent and the IRS and the recipient must report the income on their tax return. In addition, if the payments amount to \$1,000 or more, the agency must provide a copy to the Division of Taxation.

Sales and Use Tax

Brake Cleaning Kits, Fuel Injection Kits, Throttle Body Kits, and Power Steering Kits Purchased by Automobile Dealerships and Repair Shops — A taxpayer inquired

as to whether the purchase of brake cleaning kits, fuel injection kits, throttle body kits, and power steering kits by automobile dealerships and repair shops qualify as a sale for resale. The taxpayer stated that the kits are comprised of fluids that are used in the process of cleaning or flushing various areas of a vehicle, which are taxable services. All the fluids included in the kits are listed individually and taxed on the invoice provided to the consumer.

The Division responded that purchases of supplies that are used by a dealership or repair shop to perform a service and that do not become a component part of the vehicle are subject to sales tax. There are no provisions in the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) which would allow a repair shop to use a resale certificate to purchase supplies to be used or consumed to provide a service. The fact that the supplies used to perform the taxable service are separately stated on the invoice to the customer does not make them nontaxable when purchased by the dealership or repair shop.

Kits used to clean or flush various areas of a vehicle do not become a component part of the vehicle. They are, therefore, supplies that are consumed and used by the dealership or repair shop. Thus, the kits do not qualify for the resale exemption and are taxable when purchased by the dealership or repair shop.

Search Engine Optimization Services — A taxpayer inquired whether charges for search engine optimization services are subject to sales and use tax. The taxpayer described search engine optimization services as the process of improving the visibility of a Web site or a Web page in a search engine's natural (organic or

algorithmic) search results.

In general, the earlier (or higher ranked on the search results page) and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. Search engine optimization services may target different types of searches, including image search, local search, video search, academic search, news search, and industry-specific vertical search.

The Division responded that under the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) the receipts from the sales of a service are not subject to sales and use tax unless specifically enumerated as taxable in the Act.

Because the sales of search engine optimization services are not specifically enumerated in the Act, such sales are not subject to the sales and use tax. □

In Our Courts

Corporation Business Tax

Nexus – Telebright Corporation, Inc. v. Director, Division of Taxation, decided March 2, 2012; Superior Court of New Jersey Appellate Division, Docket No. A-5096-09T2-2012.

This case presented an issue of first impression concerning whether a Delaware corporation that had offices in Maryland is subject to the New Jersey Corporation Business Tax Act where it employs a resident who telecommutes from her New Jersey home via telephone and computer. This employee developed and wrote software code that became part of a Web application provided by Telebright to its customers.

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The Appellate Division affirmed the Tax Court's holding that "a foreign corporation that regularly and consistently permits one of its employees to telecommute full-time from her New Jersey residence is doing business in New Jersey, is subject to the New Jersey Corporation Business Tax Act (CBT Act), N.J.S.A. 54:10A-1 to -41, and must file New Jersey Corporation Business Tax returns."

Addressing whether Telebright is doing business in New Jersey, the Appellate Division agreed with the Tax Court and added that when Telebright's New Jersey employee creates computer code that becomes part of Telebright's Web-based service, that is no different than when a foreign manufacturer employs someone to fabricate parts in New Jersey for products that will be assembled elsewhere. See N.J.A.C. 18:7-1.9(a)1.

Telebright claimed that its limited activities in New Jersey should not subject it to the CBT Act because this would violate the Due Process and Commerce Clauses of the United States Constitution. The Appellate Division stated that taxing a business because it employs one person who performs work on a full-time basis in New Jersey does not violate the Due Process Clause.

The Appellate Division found that Telebright had sufficient contacts with New Jersey, as the New Jersey employee is entitled to all the legal protections New Jersey provides to its residents, and that Telebright, provided it files a Notice of Business Activities Report, may file suit in New Jersey courts to enforce its employment contract with the New Jersey employee. Furthermore, the CBT Act does not violate the Commerce Clause physical presence requirements because the employee worked for Telebright from her New Jersey home office.

Property Tax Relief Programs Multi-Unit Dwelling – *Robert G. Howard v. Director, Division of Taxation*, decided April 11, 2012; Tax Court of New Jersey, Docket No. 015539-2009 and 020955-2010.

In this case, Judge Nugent affirmed the Division's reduction of Mr. Howard's property tax reimbursement for years 2006–2009.

The Property Tax Reimbursement (Senior Freeze) Program was enacted in 1997. The legislative purpose was set forth as follows:

The homestead property tax reimbursement is intended to further the State's interest in maintaining a diverse population through the preservation, continuity and stability

of its low-income senior and disabled homeowners, who have contributed to the fabric, social structure and finances of New Jersey communities, by affording protection to those homeowners who may otherwise be forced to move out of the State due to increasing property taxes.

Mr. Howard resided in a two-family home with his daughter. For the years 2006–2009 Mr. Howard claimed that even though the building was a two-family dwelling, he occupied the entire building as his principal residence and therefore should be entitled to a property tax reimbursement utilizing 100% of the property taxes levied against the property.

The Director determined that as the property was a multi-unit dwelling, Mr. Howard occupied 50% of the home as his principal residence and not the 100% as he was claiming. The property tax reimbursement would be based on 50% of the property tax levied against the property.

Judge Nugent found that the plain language of the statute is sufficient to resolve the issue. The Director's determination to reduce the plaintiff's property tax reimbursement to 50% of the total available to him based on a finding that the plaintiff owns a two-family dwelling and occupies 50% of the property as his principal residence, was affirmed.

Sales and Use Tax

Untimely Filing – *Glenn B. Slater (S.S. Clinton) v. Director, Division of Taxation*, decided December 22, 2011; New Jersey Tax Court, Docket No. 011825-2008.

Current Amnesty Programs

The following jurisdictions are conducting tax amnesty programs. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

KY	10/1/12 – 11/30/12	http://www.amnesty.ky.gov/
RI	9/2/12 – 11/15/12	http://www.taxamnesty.ri.gov/

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On February 11, 1997, the Director issued a Notice of Responsible Person Status to Mr. Glenn Slater, holding him liable for sales and use tax in the amount of \$61,382.46 from the audit of S.S. Clinton, Inc. (S.S. Clinton) t/a Pioneer Tavern. The notice was mailed to the taxpayer's last known address and signed for by "J. Slater." On September 9, 1999, Mr. Slater filed a petition for Chapter 11 bankruptcy with the United States Bankruptcy Court for the District of New Jersey. On August 1, 2000, the Director, as a creditor, filed proof of claims in the bankruptcy proceedings totaling \$218,722.35 representing tax liability due and owing from Mr. Slater's business, S.S. Clinton. The Director's proof of claim was filed beyond the 180-day statute of limitations. On February 20, 2001, Mr. Slater filed a motion with the Bankruptcy Court to expunge the claims of the Director. Mr. Slater's motion was granted and the order specifically provides that the claims of the Director are "completely expunged as being untimely." The Bankruptcy Court dismissed Mr. Slater's bankruptcy petition on April 2, 2002.

More than six years later, on or about October 22, 2008, Mr. Slater filed a complaint in Tax Court seeking a refund of \$535,000 which the taxpayer characterized as follows: \$260,000 in funds taken from the taxpayer, \$75,000 loss on the auction of the liquor license, and \$200,000 loss on the equity of the bar. Mr. Slater filed a motion for summary judgment to compel the Division to refund the amount sought by the taxpayer. The Division opposed the taxpayer's motion and filed a motion to dismiss for untimely filing.

The Tax Court ruled that regardless of the Bankruptcy Court's order expunging the Director's claims, and irrespective of whether those claims are or are not dischargeable under the applicable law, the expungement order was vacated and issue of dischargeability was therefore rendered moot when Mr. Slater's bankruptcy proceeding was dismissed on April 2, 2002. The effect of the dismissal of Mr. Slater's bankruptcy proceeding is that the Director's assessment against Mr. Slater was neither expunged nor discharged by the Bankruptcy Court.

The Tax Court further found that the taxpayer has not properly filed for a sales tax refund, and that if the taxpayer now files for a sales tax refund, the request will be well outside the statute of limitations.

The Tax Court denied the taxpayer's motion for summary judgment and ruled in favor of the Director on the motion to dismiss based on untimely filing. The Court noted under the applicable statute of limitations governing protests and complaints contesting actions of the Director, the taxpayer did not file a timely appeal of the February 11, 1997, notice issued by the Director. The tax liability assessed against Mr. Slater is deemed fixed and final, and Mr. Slater's complaint is dismissed with prejudice. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2011 (January 1, 2011 – December 31, 2011) and tax year 2012 (January 1, 2012 – December 31, 2012) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2012](#) [2013](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2012](#) [2013](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2012](#) [2013](#) □

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- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline**
- for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement**
- Hotline.....1-800-882-6597
- Earned Income Tax Credit**
- Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling**
- System1-877-829-2866
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director's Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax**
- Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634

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- [Division Organization Chart](#)

NJ Budget Funds Property Tax Relief

The State Budget for fiscal year 2013 (which began July 1, 2012) contains changes to both the Homestead Benefit and Property Tax Reimbursement (Senior Freeze) Programs.

Homestead Benefit

The Budget provides funding for the 2011 Homestead Benefit Program at the same level as for 2010. Under the terms of the Budget, eligibility and benefit amounts for 2011 homeowner benefits are limited based on income, and benefits must be calculated based on 2006 property taxes. Funding for 2011 tenant benefits was not included in the Budget.

Applications for the 2011 Homestead Benefit were mailed in May, and the original June 30 filing deadline has now been extended to October 19, 2012. Most homeowners can file their applications either [online](#) or by phone (1-877-658-2972).

Most eligible homeowners will receive their Homestead Benefit for 2011 as a credit applied to their February 2013 property tax bills. These homeowners can expect to receive a revised property tax bill or advice copy that will show the amount of the benefit. Homeowners who indicate when filing that they no longer own the property that was their principal residence on October 1, 2011, or whose principal residence was a unit in a co-op

or continuing care retirement community, will have their Homestead Benefit issued in the form of a check (or direct deposit).

More information on the [Homestead Benefit Program](#), including eligibility requirements and calculation of benefit amounts, is available on the Division of Taxation's Web site.

Senior Freeze

Under the terms of the fiscal year 2013 State Budget, only those applicants whose 2011 income did not exceed \$70,000 (the original limit was \$80,000) are eligible to receive a reimbursement payment for 2011, provided they met all the other eligibility requirements.

Residents whose 2011 income was over \$70,000 but not over \$80,000 will not receive reimbursements for 2011, even if they met all the other program requirements. However, by filing a 2011 application by the due date, these qualified residents can establish their eligibility for benefits in future years and ensure they will be mailed an application for 2012.

In mid-July, reimbursement checks for 2011 were mailed to over 163,000 qualified senior and disabled residents who had filed their applications by June 1, 2012. The deadline for filing 2011 reimbursement applications has also been extended to October 19, 2012. Checks for applicants who filed applications after the original June 1 due

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date will be issued as quickly as possible.

Additional information on the [Senior Freeze Program](#) is available on the Division's Web site. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time to hear and determine appeals.
- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2013 together with a notice that the completed form must be filed with assessor by August 1, 2012, to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2013.

August 5-

- All SR-1A forms showing sales transactions to be used in compiling 2012 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25-

- State Equalization Table completed by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2013 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2013 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 10-

- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation

Acting Director: Michael J. Bryan

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assessors' calendar - from page 2

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On October 9, 2011, Christopher Elia was sentenced before New Jersey State Superior Court Judge Francis P. DeStefano in Freehold to a five-year State prison term. Elia pled guilty in April 2011, admitting to third-degree failure to pay taxes and the theft of more than \$75,000, a second-degree offense. When arrested in May 2010, he had solicited more than \$596,000 in contributions for phony charities, mostly from local, small business owners, then used the money to pay personal expenses and gambling debts. Victims thought they were donating to organizations that helped local police officers, firefighters, and disabled veterans. Assistant Monmouth County Prosecutor, Christopher Matthews, handled the case for the State. This has been a joint case with the Monmouth County Prosecutor's Office and the Office of Criminal Investigation (OCI) since October 2009.
- Stavroula Mavrikis (a.k.a. Stephanie Voulgaris), owner of Venture Holdings LLC, was recently apprehended as a result of an arrest

warrant issued by the Trenton Municipal Court. \$7,500 bail was forfeited as a result of her failure to appear for a prior Court appearance as required. The original criminal charges were filed on September 6, 2006, and the warrant was outstanding until recently. Mavrikis was scheduled to appear on February 3, 2012.

- Gordon Lenworth, t/a Elite Pro Cleaning Services of Neptune, failed to appear before the Trenton Municipal Court to answer charges filed by OCI's Technical Enforcement Unit on a bad electronic funds transfer (EFT) payment. The Court set \$4,500 in cash bail.
- During the last quarter of 2011 OCI's Special Investigation Unit (SIU) conducted investigations into New Jersey businesses and individuals which resulted in the seizure of 1,743.6 cartons of contraband cigarettes and 37,731 units of tobacco products. The special agents had 11 arrests during this time period, which resulted in 37 guilty pleas and a total of \$28,873 in fines and various terms of incarceration and/or probation. Also seized was cash in the amount of \$122,583, as well as seven vehicles and other counterfeit goods.
- The Technical Enforcement Unit (TEU) is now an arm of OCI. TEU has filed criminal charges against 95 taxpayers since its inception. At this point, 71 taxpayers have made full restitution and 58 of the Criminal Court cases have been closed with guilty pleas. Arrest warrants have been issued for 8 taxpayers for their failure to appear for scheduled court appearances. Currently 70 criminal

cases remain active at various stages within the court system. This reporting period 19 taxpayers were charged and 17 criminal cases were resolved with full restitution and guilty pleas. Collections totaled \$432,422.86, for that time period. Bad check notices were sent to 247 taxpayers for \$756,491.86, and 202 failed EFT payment letters were sent totaling \$1,093,722.27.

- During the last quarter of 2011 the Special Frauds Unit identified 2,011 fraudulent refunds totaling \$2,873,925 of gross income tax revenue protected.
- On January 6, 2012, Dawn Woolbert of Waldwick, New Jersey, was sentenced to three years in New Jersey State Prison for her involvement in a mortgage fraud scheme during 2007-2009 that resulted in the default of over \$3 million in residential mortgage loans. The sentence is the outcome of a 25-count indictment

continued on page 4

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2012 - December 31, 2012, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%



criminal enforcement - from pg. 3

against Ms. Woolbert, a former loan officer at Paragon Federal Credit Union, and 11 others who approved the mortgages submitted with false financial information, fictitious W-2s, and fabricated income tax returns. This case was a joint investigation with OCI and the Bergen County Prosecutor's Office.

- On January 9, 2012, FedEx Security contacted OCI relative to intercepted untaxed cigarettes which originated in the Shinnecock Reservation, Southampton, New York. A total of 329 cartons valued at \$27,550.46 were seized by OCI. FedEx sent a Cease and Desist letter to the shipper. OCI will identify recipients as appropriate. All cigarettes are Master Settlement Agreement (MSA) violations. The Division of Law will be advised accordingly.
- On January 27, 2012, Chaudhary Akhtar, t/a Glassboro Shell, of Gibbsboro, New Jersey, was found in possession of untaxed tobacco products (922 units) as well as unknown powdery substances and synthetic marijuana. Additionally, a number of invoices showing the purchase of tobacco products shipped via mail from out of State and where no New Jersey tobacco products taxes were indicated were seized. Charges for possession of untaxed goods, no registration, and not remitting the tax were filed by OCI. Charges for the marijuana possession were filed by the Camden County Sheriff's Office. On April 19, 2012, the subject pled guilty to the charges by OCI and was fined.

- On January 28, 2012, OCI special agents arrested Ellis Williams of New York City, New York, for possession of 34 cartons of Delaware-stamped cigarettes after he was detained by New Jersey State Police on the New Jersey Turnpike. Charges for possession of contraband cigarettes, no invoices, no license and transportation have been filed in Greenwich Township, New Jersey. The subject was released on his own recognizance. The vehicle was not seized. Hardware consistent with that of a "trap" compartment was also discovered during a search of the vehicle. In an interview, the driver admitted he transported cigarettes on a regular basis from Delaware. On June 11, 2012, the subject pled guilty to the charges and was fined.
- On January 28, 2012, Michael L. Meglino and his wife, Susan

Gisela Hernandez-Meglino, were admitted into the Pretrial Intervention Program provided they meet certain conditions. Susan G. Hernandez-Meglino must amend her New Jersey CBT-100 returns relating to her limited liability corporations, SGM Construction and Twelve Point Construction, as well as make payment to the State of New Jersey towards the total joint liability of \$43,012.04 with her husband. A \$10,000 payment must be made at the defendants' (Susan and Michael Meglino) formal acceptance into the program. This case was jointly investigated by the Office of Criminal Investigation and the Office of the Insurance Fraud Prosecutor. Michael Meglino, while President of the Oak Hollow Condo Association, made payments from the condo association funds to Susan

continued on page 5

Enforcement Summary Statistics Fourth Quarter 2011

Following is a summary of enforcement actions for the quarter ending December 31, 2011.

	Number	Amount
• Bank Levies	1,060	\$ 4,575,005
• Certificates of Debt	3,487	35,934,156
• Seizures	84	736,901
• Auctions	4	125,460

First Quarter 2012

Following is a summary of enforcement actions for the quarter ending March 31, 2012.

	Number	Amount
• Bank Levies	981	\$ 2,516,194
• Certificates of Debt	4,278	53,658,364
• Seizures	106	951,013
• Auctions	7	89,189
• Warrants of Satisfaction	3,935	



criminal enforcement - from page 4

Hernandez-Meglino's LLCs for over \$400,000 in 2005 and 2006. The income was not reported.

- On January 30, 2012, two men from North Carolina were convicted in U.S. District Court in North Carolina. Emad Hasan Tawfiq Wshah of Winterville, North Carolina, and Mamoun Hasah Wshah of Greenville, North Carolina, were busted in "Operation Smoke Screen," a two-year undercover investigation of Middle Eastern men suspected of trafficking cigarettes. Also indicted were Sobhi Sulieman Shehadeh of Roanoke Rapids, Virginia; Nabil Nafiz Mustafa of Greensboro, North Carolina; and Omar M. Nijim of Brooklyn, New York. The group was indicted in February 2011 on 40 counts related to interstate contraband cigarette smuggling. The group purchased what they thought were stolen cigarettes and "export only" cigarettes, and shipped \$21 million worth of these cigarettes through North Carolina, South Carolina, Virginia, New Jersey, and New York. Federal and State agents seized approximately \$1.9 million in cash, approximately \$10 million in bank accounts, including a Bureau of Alcohol, Tobacco,

Firearms and Explosives (ATF) undercover account, a 1999 Ferrari, a 2008 BMW SUV, a 2009 Chevrolet Tahoe, and a 2010 Ford F-150. Emad Wshah and Mamoun Wshah pled guilty to conspiring to transport stolen goods valued at more than \$5,000 in interstate commerce, as did Sobhi Shehadeh. Emad Wshah was sentenced to 26 months in prison. Investigation of this case was conducted by the ATF, the National Tax and Trade Bureau (TTB), United States Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), the Federal Bureau of Investigation, the Internal Revenue Service, and the Office of Criminal Investigation. OCI provided significant operational support in New Jersey and later testified in the Federal District Court in North Carolina.

- On January 31, 2012, OCI coordinated the arrest of a fugitive who was wanted on active warrants by the Pennsylvania Department of Revenue. New Jersey State Police Detectives assigned to the casino detail at the Borgata Hotel Casino located and arrested the subject within an hour of the request. This coordination between agencies illustrates the cooperative operations that exist between the revenue/tax law enforcement agencies.
- OCI special agents shut down a Roll Your Own (RYO) Cigarette outlet in south Jersey. This location did not have a manufacturer's license and was operating three tabletop electric cigarette rolling machines, which were seized by special agents. Additionally, over 900 counterfeit DVDs, which

were also seized. Charges were filed in Bridgeton Municipal Court and then transferred to the Cumberland County Prosecutor's Office because of the number of counterfeit DVDs. All parties were found guilty and all seized RYO machines were forfeited to the State.

- OCI's Special Agent in Charge was subpoenaed by the Cayuga County, New York, District Attorney's Office, as an expert witness in the trial of Aiman Abujudeh who has prior contraband convictions in New Jersey. In a very unusual move the subject was tried in absentia. The subject had been arrested by a New York State Trooper and was believed to be en route back to New Jersey with master cases of contraband cigarettes purchased from New York-based Native American Reservations. The subject claimed he had purchased the cigarettes in New Jersey and showed invoices from a New Jersey wholesaler that is not authorized to possess or sell unstamped cigarettes. A warrant has been issued for his arrest. New York will extradite.
- On February 2, 2012, Victor, Angiolina, Charlie, and Harold Madera entered into the Pretrial Intervention Program for a period of 36 months where they will receive court-ordered supervision from the Middlesex County Prosecutor's Office. All items seized were forfeited to the Office of Criminal Investigation. This case was initiated by an OCI investigator and led by an OCI special agent. On May 18, 2011, Victor, Angiolina, Charlie, and Harold Madera were arrested by

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

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OCI for their involvement in the sale of contraband cigarettes and charged with trademark counterfeiting, forgery of New Jersey counterfeit tax stamp, and possession of 2,000 or more contraband cigarettes. Seized were 82 cartons of cigarettes, \$116,726.54, and two vehicles.

- On February 14, 2012, six men from southern New Jersey were arrested for their alleged roles in a \$9.6 million conspiracy to obtain contraband untaxed cigarettes for sale. Each of the six defendants, Melido Fortuna and his brother Jose Fortuna, of Camden; Muhammad Shafique and his son, Kamran Khalid, of Egg Harbor Township; Wael Kasharmeh of Gibbstown; and Mohammad Rafiq of Atlantic City, was arrested in Cumberland or Atlantic County, New Jersey, and are charged in a separate complaint with conspiracy to obtain and sell contraband cigarettes. Shafique, Rafiq, and Khalid were also charged with conspiracy to commit money laundering for allegedly using criminal proceeds to make additional illegal purchases. Prior to September 2010, OCI special agents began investigating a cigarette smuggling operation in which the defendants purchased contraband cigarettes, which did

not bear the New Jersey State cigarette excise tax stamp or bore a counterfeit stamp, and resold them at a profit while avoiding State taxes of \$27 per carton. During the course of the investigation, which lasted from September 2010 until February 2012, the defendants purchased contraband cigarettes from a confidential informant and two undercover law enforcement officers. During that time, the defendants bought approximately 253,741 cartons of cigarettes for \$9,680,197, resulting in a tax loss of approximately \$6,851,655. The defendants sold the contraband cigarettes to others for sale at retail stores or sold them at various retail stores they owned and operated. Some of the money obtained from selling the cigarettes was used to purchase additional contraband cigarettes. These were later sold to New Jersey-based retail stores. The defendants bartered a shotgun and, on two occasions, two vehicles to pay for the cigarettes. The defendants are facing up to 15 years in Federal prison. The defendants also each face a maximum fine of \$250,000, or twice the gross gain from the offense. Additionally, the government seeks forfeiture of all property, real and personal, involved in the money laundering offense. Special agents of the U.S. Bureau of Alcohol, Tobacco,

Firearms and Explosives, Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, Homeland Security, and local law enforcement from the various states, as well as the New York Department of Taxation and Finance Criminal Investigations Division (CID) worked cooperatively to bring this case to its conclusion. This case started when an OCI special agent observed significant contraband activity in south Jersey and arrested one of the defendants for New Jersey violations during that time. An OCI special agent worked to bring this case to the Federal level when he was assigned to a Federal Task Force last year. OCI special agents laid the ground work for this case and worked with ATF to make numerous undercover purchases, operate an undercover warehouse, and provide coordination with other agencies. OCI will share in the seizure proceeds as well as move to recover the tax due the State of New Jersey.

- On February 24, 2012, at the request of personnel from the Compliance and Enforcement Activity, OCI special agents responded to Glassworld, a business that had been seized for the third time by Division of Taxation investigators. Despite changed locks and appropriately posted signs on the premises, the owner broke into the building and let his employees in to conduct business. Special agents questioned the owner who admitted to illegally entering and removing some of the seizure notices. As a result, he was arrested and transported to the Ocean Township, Monmouth County, Police Department for processing

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where he was charged with defendant trespass and obstruction of a governmental function. He was released on his own recognizance pending a first appearance in Municipal Court.

- OCI's Special Investigations Unit conducted a "sweep" in Jersey City. 21 locations were inspected resulting in 3 seizures of 7.4 cartons seized (all counterfeit stamped) and 3 locations that were unlicensed or had expired licenses. Additionally, one illegal handgun was seized and special agents intervened in a stabbing occurring in their presence at another location. This was the second phase of the Jersey City sweeps. It appears the word of these operations was out to the retailers thus obtaining the desired deterrent effect.
- OCI conducted joint operations with the United States Air Force Police at Joint Base McGuire-Dix-Lakehurst involving individuals from the northeast region who have attempted to smuggle tobacco products and cell phones into the Federal Bureau of Prisons facility on the base. 10 individuals were arrested and charged on various dates for possession of contraband tobacco products, which were bundled with cell phones. The intent was for the subjects to throw the bundles over the wall of the Federal Correction Center for inmates to retrieve. All subjects were lodged in a Burlington County Corrections facility and charged in Pemberton Municipal Court. All were individually found guilty and fined. In two cases defendants also received short terms of incarceration.

- Investigators from OCI have visited over 40 licensed New Jersey cigarette wholesalers in an ongoing project intended to gauge, through unannounced inspections, the wholesaler's voluntary compliance with requirements under both the New Jersey Cigarette Tax Act and New Jersey Administrative Code. These inspections have been very successful, as a majority of license holders thus far have been compliant and cooperative with reporting and record keeping requirements. Those who fell short were on the right track and were provided a short grace period to complete their records or face criminal prosecution. This project was initiated because many retail violators are blaming their suppliers for various violations. Inspections of this type have not been conducted in over seven years.
- During the first quarter of 2012, there were a total of 7 arrests; 31 cases that resulted in contraband seizures, with 1,143 cartons of contraband cigarettes and 6,075 units of contraband tobacco products; 30 guilty pleas entered in various cases; and \$21,653 in fines imposed.
- Also during the first quarter of 2012, the Special Frauds Activity identified 4,256 fraudulent refunds totaling \$6,863,630. □

Tax Briefs

Gross Income Tax

Contributions to Pension Plans on Behalf of Partner or Sole Proprietor — An accountant inquired about the New Jersey gross income tax treatment of a partner's contributions to certain pension plans and

the limit on the amount that is excludable for determining income subject to tax, as well as the treatment of pension contributions made on behalf of a sole proprietor.

Contributions to a 401(k) plan made on behalf of a partner or a sole proprietor are excluded from gross income when contributed, whether the amount is considered to be an employee or employer contribution, up to the allowable Federal dollar limits for the Federal tax exclusion. However, a partner or a sole proprietor is not allowed to exclude any type of contribution made on his or her behalf to other types of pension plans, such as SEP, Simple IRA or Keogh plans. See N.J.A.C. 18:35-1.3(d)1.iii.(3).

Filing New Jersey Extension When Federal Income Tax Extension Has Been Filed

— An individual taxpayer inquired about a six-month extension for filing the 2011 New Jersey income tax return, Form NJ-1040. The taxpayer had a valid Federal automatic extension for filing the 2011 Federal income tax return.

If the taxpayer has 80% of the 2011 tax liability paid in the form of withholdings, payments, and credits by the original return due date, and if the taxpayer attaches a copy of the Federal Application for Automatic Extension to the NJ-1040 return, the New Jersey extension will be valid. A line is provided at the top of Form NJ-1040 where the taxpayer must indicate that a Federal extension is being filed.

If the taxpayer has not paid at least 80% of the 2011 New Jersey tax liability by the original due date of the return (through withholdings,

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credits, and estimated tax payments), then the taxpayer must file Form NJ-630, Application for Extension of Time to File New Jersey Gross Income Tax Return. The taxpayer must include with Form NJ-630 a valid payment that will make the total payments (including withholdings and credits) equal to or exceed the 80% requirement.

N.J.A.C. 18:35-6.1(d) provides: "Failure to satisfy either the 80 percent payment requirement ... by the original due date of the return, or to file the gross income tax return by the extended due date, will result in the retroactive denial of the extension as of the original due date of the return."

Income From Pennsylvania S Corporation — A New Jersey resident shareholder of a Pennsylvania S corporation inquired about whether the Federal S corporation income or the Federal S corporation income with New Jersey modifications, such as the 100% meal deduction and charitable contribution deduction, should be used in determining the net pro rata share of S corporation income.

The Division responded that the amount of S corporation income to be used as the shareholder's net pro rata share is determined by completing Reconciliation Worksheet B. This worksheet requires the shareholder to enter the amount of ordinary income

or loss as reported on Federal Form 1120S, Schedule K-1. Any item that is excludable or deductible from S corporation income under the New Jersey Gross Income Tax Act is included on Line 4c along with Line 4f of Worksheet B.

Therefore, the taxpayer should use the Federal S corporation income with New Jersey modifications, such as the 100% meal and entertainment expense deduction, charitable contribution deduction, and New Jersey depreciation computation, for determining net pro rata share of S corporation income for New Jersey gross income tax purposes.

Nonresident With Income From IRA Rolled Over Into Roth IRA —

A taxpayer inquired about the New Jersey gross income tax treatment of income received from converting a traditional IRA into a Roth IRA in 2010. The taxpayer made a Federal election to report the income in equal installments on the Federal return in 2011 and 2012. The taxpayer became a nonresident of New Jersey on July 1, 2011, and asked how to report the income on the 2011 New Jersey return.

For New Jersey gross income tax purposes, tax is paid on the amounts contributed to an IRA. Therefore, only interest, dividends, and other earnings credited to a traditional IRA are subject to tax when IRA amounts are withdrawn or rolled over.

For the first six months of 2011, the taxpayer was a New Jersey resident and he must report income from the conversion as pensions and annuities on Form NJ-1040 in accordance with Federal reporting. To calculate the amount to report, the taxpayer would determine the amount subject to tax for all of 2011 and multiply by one-half.

In accordance with N.J.S.A. 54A:5-8(b), nonresidents are not taxed on pension income regardless of where earned. Therefore, with regard to the six months in 2011 when the taxpayer was a nonresident, if the taxpayer had income from New Jersey sources and files a nonresident return, the taxpayer will report the other portion (one-half) of the 2011 taxable distribution amount on the pensions and annuities line in Column A, "Amount of Gross Income Everywhere," on Form NJ-1040NR.

Partnership's Sale of Partnership Assets —

A New Jersey resident taxpayer recently inquired if a particular transaction is considered a "complete liquidation" for New Jersey gross income tax purposes under N.J.A.C. 18:35-1.3(d)2. Specifically, the taxpayer is one of several partners in a New Jersey partnership which sold the assets of the partnership business. The taxpayer still owns part of the actual partnership entity, although all of the operations and operating assets were sold as a result of this transaction. The only assets left on the balance sheet of the seller entity are the installment notes, some cash, and some remaining trade receivables because the partnership must survive for at least a couple more years to collect on the notes and remaining accounts receivable.

40th Anniversary

The *New Jersey State Tax News* is celebrating its 40th year of publication. The first copy of the newsletter appeared in June 1972, and the newsletter has been providing tax-related information to the public ever since. Thank you to everyone who has made the *New Jersey State Tax News* what it is today.

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A complete liquidation of a partnership is deemed to occur in the tax year when it and all its partners discontinue all partnership activities, all its assets have been distributed to partners, and the partners are required to recognize their gain or loss on the disposition of their partnership interests for Federal income tax purposes. N.J.A.C. 18:35-1.3(d)2.

Therefore, based on the information provided, the transaction is not considered a complete liquidation for New Jersey gross income tax purposes under N.J.A.C. 18:35-1.3(d)2 since all the assets such as installment notes, some cash, and some remaining trade receivables have not yet been distributed to partners.

Sales and Use Tax

Doggie Day Care and Pet Sitting — The Division received an inquiry regarding the application of the Sales and Use Tax Act to doggie day care occurring at the service provider's facility and pet sitting occurring at the pet owner's home.

The Division responded that under the Act a distinction is made between doggie day care and pet sitting. Doggie day care occurring at the service provider's facility is considered animal boarding, which is subject to tax pursuant to N.J.S.A. 54:32B-3(b) (3); whereas pet sitting occurring at the pet owner's home is considered an exempt personal service. N.J.S.A. 54:32B-2(e)(4)(A).

Needles and Syringes Purchased by a Health Care Provider — The Division received an inquiry from a doctor's office regarding the taxability of hypodermic needles and syringes purchased for use in providing medical services.

The Division responded that N.J.S.A. 54:32B-8.1c states that "[r]eceipts from sales of supplies purchased for use in providing medical services for compensation, but not transferred to the purchaser of the service in conjunction with the performance of the service ..." are taxable.

Therefore, disposable or reuseable hypodermic needles and syringes sold to a health care provider for use

in providing medical services but not transferred to the patient are subject to sales and use tax.

Personal Seat License — A sports team inquired whether the sale of a Personal Seat License (PSL) is subject to sales tax given the following facts:

A PSL will give the licensee the right to purchase season tickets for the selected seat at the regular admission price for the team's home games. A PSL is purchased for a one-time fee. PSLs will sell for different prices, depending on the location of the seating that is associated with the PSL. The PSL licensee will own the right to purchase season tickets for the selected seat for all pre-season, regular season and playoff games. A PSL licensee will not be permitted admission to the stadium without a ticket.

The Division responded that the Sales and Use Tax Act imposes tax on any admission charge to or for the use of any place of amusement in New Jersey or to any entertainment event or sporting activity which takes place in this State. N.J.S.A. 54:32B-3(e)(1). However, "for any person having the permanent use or possession of a box or seat or lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee." N.J.S.A. 54:32B-3(e)(1).

Based on the fact that the PSL entitles the licensee to the right to purchase season tickets and that the PSL is sold separate and apart from

Practitioners' E-File Mandate

For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us at nj.taxation@treas.state.nj.us](mailto:nj.taxation@treas.state.nj.us)

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the taxable season ticket, a charge for a PSL is not subject to sales or use tax.

Service Charge Imposed by Satellite Television Company — A taxpayer inquired whether it was correct for a satellite television company to charge sales tax on a service charge imposed by the satellite television company.

The Division responded that the answer will depend upon what the service charge represents. Under the Sales and Use Tax Act, the definition of “receipt” does not allow for a deduction of expenses in an otherwise taxable transaction. N.J.S.A. 54:32B-2(d); N.J.S.A. 54:32B-2(oo). The service charge imposed by the satellite television company follows the taxability of the underlying product or service. Thus, the answer depends upon whether the underlying product or service is the charge for the television service or the charge for the rental of the receiver.

Charges to subscribers for television audio and video programming services, such as cable service, are excluded from the sales tax imposed on telecommunications services. N.J.S.A. 54:32B-2(cc)(13). Therefore, charges for satellite television subscription service are not subject to tax. The service charge is not subject to tax if it is a charge imposed on the television service.

On the other hand, a charge to rent a receiver is subject to tax. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f). The service charge is taxable if it is a charge imposed on the rental of the receiver since it is simply an increase in the taxable receipt.

Transfer of Vehicle With Lien From Deceased Family Member — A taxpayer inquired whether New Jersey sales tax applies to the transfer of title to a vehicle that previously belonged to his deceased mother. The taxpayer acquired the vehicle with a lien.

The Division responded that the Sales and Use Tax Act imposes tax on retail sales of tangible personal property. N.J.S.A. 54:32B-3(a). A sale is defined to include a “transfer of title.” N.J.S.A. 54:32B-2(f). A sale does not occur if there is no consideration (e.g., a gift).

Since there is a balance due (lien) remaining on the vehicle, consideration exists when the vehicle is transferred from the deceased’s name to the surviving relative’s name. There is no exemption in the Sales and Use Tax Act for transfers of tangible personal property for consideration. Thus, the surviving relative is required to pay tax when title to the vehicle is transferred to him.

However, if the decedent’s estate pays the lien in full and then gifts the vehicle to the surviving relative, sales tax would not be due. The decedent’s estate is not required to pay tax and consideration does not exist when the decedent’s estate gifts the vehicle to the surviving relative. □

In Our Courts

Gross Income Tax

S Corporation Shareholder Deductions – *Schulmann, Daniel et al., v. Director, Division of Taxation*, decided December 6, 2011; Superior Court of New Jersey, Appellate Division, Docket No. A-2089-10T3.

The New Jersey Superior Court, Appellate Division affirmed the Tax

Court decision upholding the Director’s assessment.

Daniel Schulmann, known as Tiger Schulmann, owns, operates, and franchises karate schools. During the tax years 2000, 2001, and 2002, Daniel Schulmann used his personal funds to pay commissions that two S corporations were contractually obligated to pay to instructors at Tiger Schulmann Karate Schools. The corporations did not report those commissions as expenses on their corporation business tax returns. Instead, Mr. Schulmann deducted the commission expenses from the S corporation income that he reported on his New Jersey personal income tax return.

The Appellate Court agreed with the Tax Court in that Mr. Schulmann could not deduct commission payments he paid as a business expense under N.J.S.A. 54A:5-1(b) (net income from the operation of a business). It was determined that income from an S corporation is a separate income category under N.J.S.A. 54:5-1(p) and, therefore, Mr. Schulmann could not “cross-net an alleged business expense” against net pro rata share of S corporation income.

In addition, the Court stated that the fact that the S corporations could have taken deductions for the commissions had they paid them did not mean that Mr. Schulmann could deduct them on his New Jersey personal income tax return.

Local Property Tax
Retroactive Refund of Disabled Veteran’s Property Tax Exemption – *Salvatore Del Priore v. Edison Township*, decided March 29, 2012; Tax Court.

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Plaintiff, Salvatore Del Priore, disputed the denial of a retroactive refund for a disabled veteran's property tax exemption. On April 20, 2006, the U.S. Department of Veterans Affairs (VA) issued a letter determining the plaintiff was 100% permanently and totally disabled due to wartime service-connected disabilities. The effective date for this determination was September 17, 1997. On April 24, 2006, the plaintiff filed an application for a full exemption of local property taxes for his residence under N.J.S.A. 54:4-3.30 to 54:4-3.34. The municipal assessor granted the exemption for 2006 and on May 10, 2006, the Edison Township Municipal Council refunded the plaintiff his first-quarter taxes in the amount of \$1,966.78.

After receiving the initial refund, the plaintiff sent a letter dated June 6, 2006, requesting a retroactive refund dating back to September 17, 1997, the effective date of his disability per the VA. Del Priore's letter made reference to the Township Council's prior full retroactive payment practice. The Township Council then authorized another refund in the amount of \$7,615.12 for taxes the plaintiff paid in 2005. A letter from Anthony Cancro, Edison's former business administrator, that accompanied the second refund explained that any further reimbursement would cause an undue hardship to the town and its residents.

Del Priore, dissatisfied with the determination, responded to Cancro with examples of other residents who were granted retroactive payments in full from the effective date of total and permanent disability as determined by the VA. No further response was received from Mr.

Cancro and the plaintiff made another attempt to request retroactive payment to the Township Council on December 11, 2006. The municipal assessor acknowledged receipt of the letter and advised Mr. Del Priore that his request would be revisited; however, there was no additional correspondence.

It is noted that, unlike the plaintiff, for the majority of cases which received a retroactive refund, the gap between the date of the VA determination and the effective date of the total and permanent disability was less than two years. The amount of refunds varied with the largest being \$13,570.98, the second largest \$9,581.90, and the remaining veterans receiving smaller amounts. Through OPRA the plaintiff identified 20 more fully refunded veterans.

In light of this situation, the Township Council adopted an ordinance which went into effect on October 23, 2007, limiting the retroactive property tax refund to the current year and the prior year, and in no case greater than a 24-month period in aggregate, for persons entitled to the veteran's exemption under N.J.S.A. 54:4-3.30. The ordinance stated the reason for the limitation was the impact and financial burden that this would cause on the township and its residents.

Del Priore inquired again about his refund request and in August of 2008 was supplied with a copy of the ordinance. Soon after, on or about September 8, 2008, Del Priore filed an appeal with the Middlesex County Tax Board. The Board issued a judgment on September 18, 2008, dismissing the petition for lack of jurisdiction and served it on September 23, 2008. Finally, Del Priore filed an appeal with the Tax

Court on October 30, 2008, requesting an additional refund of \$45,896.69 for local property taxes paid from September 17, 1997, through December 31, 2004. Del Priore indicated that he was willing to extend payment of the refund over a 48-month period.

The Court found that it had been the Township's policy to grant a tax refund back to the effective date of disability. It was the decision that the plaintiff was not seeking a prior exemption which was granted from the date he filed on April 24, 2006, but rather a prior refund. It is the discretion of the Township that is considered in this case. The Court concluded that the permissive language of the statute "may return" was discretionary, not mandatory. The Court further held the Township's policy change had a rational basis and did not violate the Equal Protection Clause of the U.S. Constitution.

Sales Tax

Jurisdiction – *Scott Frybarger, t/a Titan Power Equipment, Inc. v. Director, Division of Taxation*, decided December 20, 2011; Tax Court Docket No. 017189-2011.

Judge DeAlmeida denied plaintiff's motion seeking preliminary injunctive relief barring the Division of Taxation from levying on a bank account to satisfy a fixed and final sales tax obligation.

Frybarger had filed in several courts previously (a tort claim in Federal District Court; New Jersey Superior Court, Law Division; New Jersey Superior Court, Appellate Division; and finally to the New Jersey Supreme Court, who denied plaintiff's

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petition for certification) seeking to have a \$660,000 jeopardy assessment dismissed.

Frybarger, a Florida resident, had hired Ohio residents to sell construction equipment in New Jersey. No sales tax was collected on these transactions.

On October 28, 2011, a year and a half after the Appellate Division decision, Frybarger filed an Order to Show Cause in Tax Court, stating that the State does not have jurisdiction over him personally in New Jersey. Frybarger was claiming that he was not personally responsible for the debts of Titan Power Equipment, Inc.

Judge DeAlmeida opined, “The public interest is served in this case by the collection of outstanding tax liabilities. Protection of the public fisc is in the interest of all members of the public, as the provision of vital government services cannot be maintained if tax revenues authorized by the Legislature remain uncollected. While a showing of true hardship coupled with a likelihood of ultimate success on the merits might overcome this important public objective, plaintiff has not made such a showing. The standards for entry of preliminary injunctive relief are set forth in *Crowe v. DeGioia*, 90 N.J. 126, 133 (1982). The court must weigh several factors, including whether the requested relief is necessary to prevent irreparable harm, whether the party seeking the relief is likely to succeed on the legal rights asserted, whether a balancing of the relative hardships to the parties of granting or denying relief favors entry of preliminary relief and

the public interest. Each factor was examined in turn.”

After reviewing each of the standards outlined in *Crowe*, Judge DeAlmeida ruled that preliminary injunctive relief was not warranted.

Gross Sales – *Anthony Murphy, Inc. t/a Murphs Liquor & Bar and Peter Murphy, Individually v. Director, Division of Taxation*, decided December 22, 2011; Superior Court of New Jersey, Appellate Division, Docket No. A-1102-10T4.

The taxpayer is a subchapter S corporation trading as Murphs Liquor & Bar. The bar also engaged in retail sales of liquor. During the audit period, the bar operated with a single, noncomputerized cash register. The tapes from the cash register were not routinely saved. Instead, the owner counted the cash proceeds, recorded the amount, then deposited the cash into a bank account.

During the examination the auditor sought various documents needed for the audit. Although some were received, others, including most of the cash register tapes, were not provided. Based upon the auditor’s analysis of the records received, the absence of records such as cash register tapes, and the inconsistency of income reported for specific years on different reports and deposit records, the auditor concluded that there were insufficient books and records to complete the audit.

The auditor recalculated the taxes due based on the additional gross income resulting from the mark-up analysis and deducted the amount of taxes already paid. The auditor determined that both the corporation and the shareholder owed additional taxes.

The taxpayer filed a timely protest and an administrative conference was held. The taxpayer’s representative promised to provide additional cash register tapes to support the business’s position. Instead, the taxpayer’s representative provided an annotated adding machine tape and some other documents.

The taxpayer filed a complaint in Tax Court. The Director moved for summary judgment in October 2009. Oral argument was held on October 1, 2010. The Tax Court judge delivered a brief oral decision granting the Director’s motion. On appeal, the taxpayer’s representative argued that the Tax Court judge erred in granting summary judgment because there were issues of fact requiring a plenary trial. The Director argued that the judge properly determined that the taxpayer did not offer sufficient evidence to warrant a trial because they were unable to overcome the presumption of correctness that attaches to an assessment by the Division.

On appeal, the taxpayer tried to overcome the presumption of correctness by attacking the credibility of the auditor and conferee, questioning the methodology used by the Division. The taxpayer did not contradict the Director’s assertions that the bulk of the cash register tapes were not produced or that there were insufficient books and records to complete the audit. The taxpayer did not provide an expert report pointing to errors of fact, methodology, or calculation with respect to the Division’s mark-up analysis. Since the taxpayer had not provided the type of proofs required to rebut the presumption of correctness, the Appellate Division ruled that the Tax Court correctly

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determined that summary judgment in favor of the Director was appropriate.

Sales Tax Subjectivity – *Atlantic City Showboat, Inc. v. Director, Division of Taxation; Our Lady of Lourdes Medical Center, Inc. v. Director, Division of Taxation*, decided January 24, 2012; Tax Court of New Jersey, Docket Nos. 000036-2007 and 006119-2007.

Plaintiffs' motions for summary judgment were denied and the Director's cross-motions for summary judgment were granted. As a result, the Court affirmed the final determinations of the Director finding that all charges and expenses related to the service of transmitting and transporting electricity to the user or customer are subject to sales tax.

Plaintiffs argued that the law applied only to the service of transmitting the electricity to the distribution facility. Further, the distribution charges related to transmitting the electricity to the user/customer and other expenses passed on to them by the utilities pursuant to State law were unrelated to the provision of electricity and as such not subject to sales tax.

Judge DeAlmeida disagreed. N.J.S.A. 54:32B-2(d) did not require that a charge for a service be related to the provision of that service in order to be taxable. Distribution charges were subject to sales tax because electricity distribution was a "utility service" within the meaning of N.J.S.A. 54:32B-2(hh), as the charges were levied in exchange for the movement of electricity. Market transition costs were authorized as a cost of electricity distribution

services and, therefore, part of the taxable receipts for utility service. The transition bond charges were authorized by statute to recoup public utility expenses associated with bonds and as such are taxable. Society benefits charges were charges for electricity distribution services subject to the sales tax. The customer service charges paid for administrative activities associated with the delivery of electricity are also subject to the sales tax. □

In Our Legislature **Cosmetic Medical Procedure Gross Receipts Tax**

Phase Out — P.L. 2011, c.189, signed into law on January 17, 2012, and effective immediately, phases out the cosmetic medical procedure gross receipts tax, which is paid pursuant to P.L. 2004, c.53 (N.J.S.A. 54:32E-1 et seq.). The current 6% rate will be reduced to 4% on taxable services performed on or after July 1, 2012, but before July 1, 2013. It is further reduced to 2% on taxable services performed on or after July 1, 2013, but before July 1, 2014, and eliminated entirely on taxable services performed on or after July 1, 2014.

Gross Income Tax

Checkoff for American Red Cross-NJ Fund — P.L. 2011, c.211, signed into law on January 17, 2012, and effective for 2012 and subsequent tax years, establishes the American Red Cross-NJ Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns in support of the programs and services of the New Jersey chapters of the American Red Cross.

Checkoff for Girl Scouts Councils in New Jersey Fund

— P.L. 2011, c.227, signed into law on January 17, 2012, and effective for 2013 and subsequent tax years, establishes the Girl Scouts Councils in New Jersey Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns in support of the programs and services of the Girl Scouts Councils in New Jersey.

Local Property Tax

Urban Farming and Gardening — P.L. 2011, c.171, signed on January 5, 2012, and effective immediately, amends various parts of the law to allow all municipalities to sell and lease public property not needed for public purposes to certain nonprofit entities for "urban" farming and gardening purposes. Under the previous law, this practice was restricted to municipalities located in cities of the first, second, third, or fourth class.

Miscellaneous

Grow New Jersey Assistance Program — P.L. 2011, c.149, signed into law on January 5, 2012, and effective immediately, establishes the Grow New Jersey Assistance Program to encourage businesses to engage in economic development, job creation, and the preservation of existing jobs within New Jersey. The new law establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs, and retention of existing jobs.

To be eligible for program tax credits, the law requires a business to make capital investments of at least

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\$20 million at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits is entirely the province of the EDA.

The program's cost falls under the \$1.5 billion cap established under the Urban Transit Hub Tax Credit (UTHTC) Program. The bill allows the initial \$200 million program allocation to be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. It also requires that all applications for eligibility under the program shall be made to the EDA by July 1, 2014.

The new law provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment, or \$4 million. The Urban Transit Hub Tax Credit is capped at \$1.5 billion over its 10-year life.

An eligible business will receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business, as determined by the authority based on factors in the Act. The per-project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

There are provisions which would call for forfeiting of the benefit for noncompliance.

The definition of "urban transit hub" under the UTHTC law will now include in the eligibility criteria for that tax credit assistance program any project commencing construction located within a half mile radius of a New Jersey Transit Corporation rail station sited at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

The law makes clarifying changes to the Business Retention and Relocation Assistance Grant (BRRAG) Program to expand the definition of "capital investment" and to repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied equals or exceeds the amount of the tax credits.

Finally, the State Treasurer may make certain sales and conveyances to the New Jersey Performing Arts Center.

Motor Fuel Signs Must Display Cash and Credit Prices — P.L. 2011, c.152, signed into law on January 5, 2012, and effective the 120th day following its enactment, or May 4, 2012, provides that price signs posted by a retail motor fuel dealer on the dealer's premises and visible from any adjacent roadway shall include the price per gallon, or the price per gallon and per liter, for both cash and credit card purchases of motor fuel in accordance with

regulations prescribed by the Director of the Division of Taxation.

Benefits Allowable for Motor Fuel Purchases on Credit, Debit, or Rewards Card — P.L. 2011, c.164, signed into law on January 5, 2012, and effective immediately, amends subsection e. of section 201 of P.L. 1938, c.163 (N.J.S.A. 56:6-2) to stipulate that a consumer who earns credits through purchases on a credit card, debit card, or rewards card may utilize those credits to receive a rebate, allowance, concession, or benefit when that person purchases motor fuels.

The use of credits earned through purchases on a credit card, debit card, or rewards card would not change the retail price of motor fuel displayed pursuant to section 3 of P.L. 1952, c.258 (N.J.S.A. 56:6-2.3); and the retail dealer would not bear the cost of the rebate, allowance, concession, or benefit received by the motor fuel purchaser, except for a processing fee assessed in the ordinary course of business.

Wine or Beer Manufactured for Personal or Household Use or Consumption — P.L. 2011, c.169, was signed into law on January 5, 2012, and became effective immediately. Under the previous law, a person over age 21 could manufacture at home up to 200 gallons of wine or beer for personal or household use or consumption annually; however, prior to producing the wine or beer, the person was required to obtain a special permit from the Director of the Division of Alcoholic Beverage Control. This new law eliminates the requirement to obtain a permit. Home production of wine or beer continues to be limited to a

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maximum of 200 gallons annually under Federal regulations.

Reports and Publications Must be Available Electronically on the Internet — P.L. 2011, c.184, signed on January 17, 2012, and effective immediately, repeals N.J.S.A. 52:14-21, 22, 25, and 25.2 and makes certain other technical changes and clarifications.

The new law requires that any reports and publications produced by the State or its agencies and submitted to the Governor, the Legislature, or the public must be made available electronically on the Internet instead of being printed in hard copy. Individuals who are unable to access reports or publications electronically on the Internet may request a printed copy. A notice of availability must be provided and in certain instances copies must be furnished to the State Librarian. The new law does not apply to the publication and distribution of the New Jersey Administrative Code and the New Jersey Register.

Out-of-State Winery License — P.L. 2011, c.207, signed into law on January 17, 2012, and effective on the first day of the fourth month after enactment, or April 1, 2012, permits direct shipping by wineries and creates an out-of-State winery license. In doing so, it makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey sales by wineries licensed in other states.

Plenary wineries that produce a maximum of 250,000 gallons per year and farm wineries would be

permitted to sell their products directly to licensed retailers after paying a fee. Plenary wineries would pay a graduated fee ranging from \$100 to \$1,000 and farm wineries would pay a fee of \$100. The winery is required to retain the original invoices for any wine shipped for at least three years on the winery premises for inspection by the State.

Previously, all plenary and farm winery licensees were permitted to sell their products to retailers. Under the new law all plenary and farm wineries are able to sell their products to licensed wholesalers. The law also permits the wineries to sell their products by the glass at the salesrooms. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2011 (January 1, 2011 – December 31, 2011) and tax year 2012 (January 1, 2012 – December 31, 2012) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2011](#) [2012](#)

important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ... 1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline for Homeowners 1-888-238-1233
- Property Tax Reimbursement Hotline 1-800-882-6597
- Earned Income Tax Credit Information 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System 1-877-829-2866
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax Refunds 609-633-8878
- Public Utility Tax..... 609-633-0013

- **Alphabetical Summary of Due Dates by Tax Type**

[2011](#) [2012](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2011](#) [2012](#) □

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2011 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
19	2/1/11	Revises various aspects of casino industry regulations. Provides for transition of administration of certain casino taxes and fees to the Division of Taxation.	CAS	S-12(4R)
28	3/1/11	Allows all qualified UEZ businesses to be eligible to receive the sales tax exemption at the point of purchase regardless of annual gross receipts.	S&U	SCS for A-1559
30	3/1/11	Provides for the creation of benefit corporations, the purpose of which is to create a “general public benefit.”	CBT	S-2170
35	3/1/11	Encourages nonprofit corporations and associations to help transform vacant properties located in older urban areas into gardens for growing fresh fruits and vegetables.	LPT	A-2859(2R)
38	3/21/11	Provides dedicated line item on property tax bill to fund municipal free public libraries and joint free public libraries.	LPT	S-2068(1R)
49	4/8/11	Makes various technical changes in the sales tax law to maintain compliance with the Streamlined Sales and Use Tax Agreement.	S&U	S-2130
57	4/20/11	Establishes the Boys and Girls Clubs in New Jersey Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-3267
59	4/28/11	Modifies the formula used to determine the portion of the income of a corporation subject to tax by New Jersey from a three-factor formula to a single (sales) factor formula and establishes a specialized sales fraction formula for airlines that are subject to taxation. This change is being phased in over three years.	CBT	S-2753
60	4/28/11	Establishes an alternative calculation that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.	GIT	S-2754
80	6/29/11	Amends the Tobacco Products Wholesale Sales and Use Tax Act, Cigarette Tax Act, and related criminal statutes. Establishes procedure for destroying certain contraband tobacco products and cigarettes.	CIG/ TPT	SS for S-2175(1R)
83	6/30/11	Removes the limitation on the application of the research and development tax credit to 50% of the liability otherwise due.	CBT	S-2980
84	6/30/11	Decreases the minimum corporation business tax on certain New Jersey subchapter S corporations by 25%.	CBT	S-2981

2011 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
89	7/26/11	Expands the Urban Transit Hub Tax Credit Act (UTHTCA) and the New Jersey Economic Stimulus Act of 2009 to include certain mixed-use projects as creditable investments and to change the manner in which the tax credits under the UTHTCA are treated by eligible businesses.	MIS	S-2972(2R)
117	8/19/11	Establishes the NJ National Guard State Family Readiness Council Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-2286
118	8/19/11	Makes changes to several laws that affect the regulation and business operations of employee leasing companies or professional employer organizations.	MIS	S-2164(3R)
119	8/19/11	Revises the method for the regulation and collection of surplus lines insurance premium taxes.	IPT	S-2930(1R)
122	8/24/11	Extends the moratorium on the imposition of fees on nonresidential construction projects for two years.	MIS	S-2974
123	9/1/11	Requires the establishment and maintenance of a program to assist small businesses in identifying financial assistance programs offered by any State agency for which the business may be eligible. A uniform application will be created to gather basic information from small businesses seeking assistance.	MIS	A-3195(1R)
124	9/14/11	Exempts certain sales of real property from the bulk sale notification requirements that are used to administer State taxes.	MIS	A-2748(2R)
131	9/16/11	Requires the Division of Taxation to display Senior Gold Prescription Discount Program information in the gross income tax return instructions.	GIT	A-2632(1R)
149	1/5/12	Establishes the Grow New Jersey Assistance Program to encourage businesses to engage in economic development, job creation, and the preservation of existing jobs within New Jersey.	MIS	S-3033(5R)
152	1/5/12	Provides that price signs posted by a retail motor fuel dealer on the dealer's premises and visible from any adjacent roadway shall include the price per gallon, or the price per gallon and per liter, for both cash and credit card purchases.	MIS	S-847(1R)
164	1/5/12	Stipulates that a consumer who earns credits through purchases on a credit card, debit card, or rewards card may utilize those credits to receive a rebate, allowance, concession, or benefit when that person purchases motor fuels.	MIS	A-3133(1R)
169	1/5/12	Eliminates the requirement to obtain a permit to produce wine or beer at home for personal or household use or consumption.	MIS	A-4012(1R)

2011 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
171	1/5/12	Allows all municipalities to sell and lease public property not needed for public purposes to certain nonprofit entities for “urban” farming and gardening purposes.	LPT	A-4114
184	1/17/12	Requires that any reports and publications produced by the State or its agencies and submitted to the Governor, the Legislature, or the public must be made available electronically on the Internet instead of being printed in hard copy.	MIS	S-1217(1R)
189	1/17/12	Phases out the cosmetic medical procedures gross receipts tax.	CMPT	S-1988(2R)
207	1/17/12	Makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey direct sales by wineries licensed in other states.	MIS	S-3172(1R)
211	1/17/12	Establishes the American Red Cross-NJ Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-1400(2R)
227	1/17/12	Establishes the Girl Scouts Councils in New Jersey Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-4182

2011 TAX LAWS *(continued)*

***Legend for 2011 Tax Laws**

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuel Tax
CAS = Casino Taxes and Fees	MIS = Miscellaneous
CBT = Corporation Business Tax	MULT = Multiple Taxes
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax
LIT = Litter Control Fee	

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Division and IRS Expand Cooperation on Criminal Matters



Victor Lessof, IRS Special Agent in Charge for New Jersey (left); Charles Giblin, Special Agent in Charge of the Division of Taxation's Office of Criminal Investigation (center); and Michael Bryan, Director of the Division of Taxation (right) sign Memorandum of Understanding.

The Division of Taxation's Office of Criminal Investigation and the Internal Revenue Service are expanding their cooperation on criminal investigations to ensure their investigative resources are used efficiently and violations of both Federal and State tax laws are successfully prosecuted. The agencies signed a Memorandum of Understanding outlining their new areas of cooperation and information sharing at the Division of Taxation's office in Trenton on October 19, 2011. The memorandum was signed on behalf of the IRS by Victor Lessof, Special Agent in Charge for New Jersey; Charles Giblin, Special Agent in Charge of Taxation's Office of Criminal Investigation; and Michael Bryan, Director of the Division of Taxation. □

What's New for Tax Year 2011

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Form 1099-G** — The State of New Jersey is no longer mailing Form 1099-G, *Certain Government Payments*, to report the amount of a State tax refund a taxpayer received. State income tax refunds may be taxable income for Federal purposes for individuals who itemized their deductions on their Federal tax

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return in the previous year. Taxpayers who need this information to complete their Federal return will be able to view or print their 1099-G information from the Division's Web site.

- **Property Tax Deduction/Credit for Homeowners and Tenants** — To calculate the correct amount of property taxes paid on their New Jersey principal residence homeowners must know whether they received a homestead benefit during 2011, the amount of the benefit, and whether the benefit was paid as a credit on their 2011 property tax bill or in the form of a check. For tenants, 18% of the rent paid during the year is considered property taxes paid. Qualified residents should review the instructions in the [NJ-1040](#) booklet for determining the amount of property taxes due and paid for 2011 (to be reported on Line 36a).
- **Designated Contribution** — The New Jersey Lung Cancer Research Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new fund, taxpayers must specify code number "11" at the "Other Designated Contribution" line.
- **Roth IRA Conversions During Tax Year 2010** — Taxpayers who converted an existing IRA to a rollover Roth IRA during tax year 2010 and made a Federal election to report the income in equal installments in 2011 and 2012 must report one-half of the amount that is taxable for New Jersey purposes on their income tax return for 2011.

- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2011, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$125.80, the maximum employee disability insurance contribution was \$148.00, and the maximum employee family leave insurance contribution was \$17.76. Taxpayers with two or more employers who have contributed more than the maximum amount(s), must complete Form NJ-2450 to claim credit on their New Jersey tax return for the excess withheld.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2011 is 3.4985%.
- **Filing Deadline** — The due date is April 17, 2012, for calendar year taxpayers instead of April 15 because of the Emancipation Day holiday in the District of Columbia. This is the same day the Federal Form 1040 is due.
- **Online Refund Status Inquiry** — Taxpayers who are owed a refund from the State of New Jersey can now check the status of their refund on the Division's [Web site](#).

Property Tax Relief Programs

- **Homestead Benefit Program** — New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2011, may be eligible for a homestead benefit provided the 2011 property taxes were paid and they meet certain income limits. Eligibility requirements, including income limits,

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director: Michael J. Bryan**

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what's new - from page 2

and benefits available under this program are subject to change by the State Budget.

Information about the 2011 home-
stead benefit will be posted on our
[Web site](#) as it becomes available.

- **2011 Property Tax Reimbursement (Senior Freeze)** — With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2011, total annual income must be:

2011: \$80,000 or less, and

2010: \$80,000 or less

These limits apply regardless of marital/civil union status. However, if an applicant's status is married/CU couple, combined income of both spouses/CU partners must be reported.

Eligibility requirements, including income limits, and benefits available under this program are subject to change by the State Budget. The eligibility requirements and benefit amounts for 2011 property tax reimbursements will not be finalized until the completion of the State Budget that must be adopted by July 1, 2012. □

Taxation Safeguards its Federal Tax Information

In March 2011, the Division of Taxation, the Office of Treasury Technology, and the Office of Information Technology were reviewed by Internal Revenue Service (IRS) specialists on their use of confidential Federal tax information (FTI). The IRS has established requirements for the safe handling of FTI.

FTI includes Federal tax returns or Federal information returns filed by a taxpayer, including any schedules, forms, attachments, and amendments. Anything the IRS collects and uses to determine a taxpayer's liability or potential liability is also considered FTI. This includes, but is not limited to, information forms such as W-2s or 1099s, social security numbers, and employer identification numbers.

The IRS Safeguards Program requires that each agency receiving confidential Federal tax data have internal systems developed for the proper use of that data, ensuring that it is treated with the highest level of confidentiality protections that are both feasible and available.

The Division had not been through such an extensive review for three years. In addition, the IRS revised its standards to create stricter guidelines to protect confidential tax information. With the help and cooperation provided by the Disclosure Unit, the Division is working towards meeting the new compliance goals.

Because of the nature of its mission, the Division maintains files that contain highly confidential personal and financial information about

individuals, businesses, and other entities, all paying various taxes to the State. In order to maintain public confidence in the Division, it is critical that the privacy rights of taxpayers be respected and protected. It is the responsibility of each employee of the Division to take scrupulous care to ensure the absolute confidentiality and integrity of the Division's records.

All Division employees are required to sign an "Agreement to Adhere to Secrecy Provisions of the State Tax Uniform Procedure Law" and to adhere to the applicable Internal Revenue Code as it applies to confidential tax data. (See the Internal Revenue Code, Subtitle F, Chapter 75, Subchapter A, Part I, Sections 7213, 7231A, and 7431 and U.S.C. Title 18, Part I, Chapter 93, Public Officers And Employees, Section 1905.)

The penalties for violation of these laws are severe. Unauthorized disclosure (providing tax information to someone who is not entitled to it) and/or use of tax information is defined in N.J.S.A. 54:50-8 as being a crime of the fourth degree. The statute also defines unauthorized examination of tax information as a disorderly persons offense.

The Federal criminal penalty for unauthorized access to FTI is one year in prison, a \$1,000 fine, and the cost of prosecution. Unauthorized disclosure has a more severe criminal penalty: five years in prison, a \$5,000 fine, and the cost of prosecution.

Both sets of requirements restrict the disclosure, redisclosure, and use of tax information to authorized personnel for authorized purposes only.

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safeguarding tax info - from pg. 3

This includes the restriction against browsing, which is accessing any tax information by any means for any reason other than to perform an official duty. □

Safe Deposit Box Release

R.S. 54:35-19 provides that the contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise may not be released without at least a 10-day notice to the Director, Division of Taxation, of the intended delivery and the retention of sufficient assets to pay any tax and interest that may be assessed on the assets. The statute provides that the Director may examine the assets of a decedent contained in a safe deposit box.

In 1992 the Division determined that it would no longer inventory safe deposit boxes held by a decedent at the time of his or her death. Since

September 30, 1992, the Director has issued a blanket waiver that is reissued every five years.

On December 12, 2011, the Director reissued the blanket waiver authorizing the immediate release of the contents of a safe deposit box for the period from January 1, 2012, to January 1, 2017. See below. □

GROSS INCOME TAX

Clarification: Practitioners' E-File Mandate

The following is provided to clarify information published in the winter 2010 issue of the New Jersey State Tax News regarding the practitioners' e-file mandate.

For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must

use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. □

OTA Accepting Certain Sales and Use Tax Cases

Since its creation last year, the Office of the Taxpayer Advocate (OTA) has been assisting taxpayers with problems involving individual gross income tax. Beginning October 1, 2011, OTA is no longer limiting cases by tax type, provided they meet the [case acceptance guidelines](#).

Cases the OTA will not accept include inquiries concerning delinquency and/or deficiency notices, questions regarding the filing of sales and use tax returns, and PIN (Personal Identification Number) requests.

Inquiries concerning delinquency and/or deficiency notices should be directed to the e-mail address, phone number, or mailing address on the notice.

For questions regarding the filing of sales and use tax returns, [e-mail](#) the Division or call the Customer Service Center at 609-292-6400.

To: All Banks, Trust Companies, Savings Institutions, Safe Deposit Companies, Savings and Loan Associations, or Other Institutions:

The Director, Division of Taxation, Department of the Treasury of the State of New Jersey, hereby waives the requirements of Revised Statutes 54:35-19 with respect to the issuance of the ten days notice and retention of assets for the opening of safe deposit boxes standing in the name of decedents either individually, jointly, or otherwise, or to which they had access and consents to release of the contents thereof.

This waiver is effective January 1, 2012 and shall expire January 1, 2017 unless cancelled by prior notice.

The institution releasing the contents of safe deposit boxes should keep the original of this letter for its own records.

Michael Bryan
Acting Director
Division of Taxation



OTA accepting s&u cases - from pg. 4

PIN requests can be made on the Division of Revenue's Web site at: <https://www.state.nj.us/treas/revenue/requestpin.shtml>

Answers to frequently asked questions about sales and use tax can be found on the Division's Web site at: www.state.nj.us/treasury/taxation/emailfaqs.shtml#Submit

The OTA is not intended as a substitute for, or to circumvent or replace, established procedures or the formal appeal process. It is only when those procedures don't work properly that the OTA can intercede. Taxpayers who have tried to resolve their tax problem with the Division on their own but have not been successful can ask the OTA to intercede on their behalf. The OTA will work with appropriate Division personnel and the taxpayer (or their representative) to resolve issues as quickly as possible.

Additional information about the Office of the Taxpayer Advocate, can be found on the Division's Web site at: www.taxpayeradvocate.nj.gov

The Office of the Taxpayer Advocate can be contacted via e-mail at: nj.taxpayeradvocate@treas.state.nj.us □

Request a Speaker From Taxation

For over 20 years the Division of Taxation has provided speakers for events sponsored by civic and/or professional organizations. Division representatives are available to speak to groups of 15 or more on many New Jersey tax topics including: New Jersey property tax relief programs, which includes the Homestead Benefit Program and the Property Tax Reimbursement

Program (often referred to as the Senior Freeze); business tax responsibilities; New Jersey gross income tax; and New Jersey sales and use tax. Information presented at these events can be customized for a specific group. Presentations have been made to groups that include both tax professionals and individual taxpayers.

If you are interested in requesting a Division speaker for an upcoming event, contact us at least 30 days prior to the event to ensure that we can meet your needs. Requests for speakers must be submitted via the Division's Web site at: <https://www.state.nj.us/treas/taxation/contactus/tytoutreach.shtml> □

Small Business Workshops

The Division of Taxation conducts free small business workshops designed to help owners of small businesses understand their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The small business workshops include the following topics:

- How to register a business with the Division of Taxation, Division of Revenue, and Department of Labor and Workforce Development.
- Types of business ownership and the tax consequences of each type.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

- What is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.

To attend a workshop, interested parties must register with the contact person listed for each event. The contact person can also provide the time of the workshop, parking information, and directions to the location. The Division does not manage the registration process.

The current workshop schedule is available on the Division's Web site at: www.state.nj.us/treasury/taxation/sbwsched.shtml. The schedule is updated as new workshops are added. □

OCI Special Agents Complete Investigator Training

In January of 2011, Acting Director Michael Bryan administered the oath of office to four new special agents in the Office of Criminal Investigation: Audrey Boyd-Iovinno, Nicole Schwartz, Ryan Villaroman, and Bruce Stuck.

The four special agent recruits were assigned to complete the Basic Course for Investigators, conducted at the New Jersey Division of Criminal Justice Academy at Sea Girt. In accordance with the provisions of the Police Training Act, this training is mandatory for sworn State and county criminal investigators.

The Basic Course for Investigators, which runs for nearly six months, consists of an intense physical and



oci special agents - from page 5

academic regimen. Instructors are drawn from across New Jersey's law enforcement community and include Marijane LaMattina, who is a firearms instructor at the academy. The curriculum includes criminal and constitutional law, arrest, search and seizure, the criminal justice system, investigative techniques, and review and interrogation. Instruction is also provided on additional specialized subjects such as homeland security, electronic surveillance, defensive tactics, and other lessons that build basic skills for a successful criminal investigator.

In a class of 28, Special Agent Bruce Stuck graduated at the top of the class academically and Special Agent Ryan Villaroman was second. All four OCI special agents received high scores in firearms, academics, leadership, and physical conditioning.

Additionally, OCI worked with the Department of Criminal Justice in 2010 to design a modified classroom

curriculum for auditors and investigators assigned to OCI in order to develop their skills in investigative techniques, courtroom testimony, and report writing.

OCI's auditors and investigators who do not have prior law enforcement experience attend the modified classroom sessions, which are held at the New Jersey Division of Criminal Justice Academy during the same training cycle as the Basic Course for Investigators. These auditors and investigators are responsible for passing all written exams administered during the training cycle, but do not participate in physical conditioning, defensive tactics, or firearms. To date, eight members of OCI have completed the modified training course. □

LOCAL PROPERTY TAX **Tax Deductions Certified**

The 2011 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses/civil union partners, and veterans was delivered to the State Treasurer on September 15, 2011.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2011.

The total amount of property tax deductions for senior and disabled persons and surviving spouses/civil union partners for 2011 was \$16,808,740. That amount represents a decrease of 6.7% from 2010. The total number of property tax deductions for senior and disabled

citizens and surviving spouses/civil union partners for 2011 was 65,893. When compared to tax year 2010, the number of deductions decreased 4%.

For tax year 2011, the amount of veterans' deductions was \$62,961,561. That amount represents a decrease of 3% from 2010. The total number of veterans' deductions for 2011 was 248,744. When compared to tax year 2010, the number of deductions decreased 3%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of P.L. 1997, c.30. □

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eleven persons passed the March 26, 2011, C.T.A. exam. They are:

Atlantic County: Shana W. Kestrel, Somers Point Borough.

Burlington County: William A. Mancuso, Bordentown Township.

Gloucester County: Jeffrey J. Taylor, East Greenwich Township; Albert R. Crosby, Washington Township; James Grandrimo, Jr., Washington Township.

Hunterdon County: Richard Serrano, High Bridge Borough.

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2012 – December 31, 2012, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%



tax assessor certificates - from page 6

Middlesex County: Christopher M. Efstathiou, East Brunswick Township.

Morris County: Jeffrey L. Lauver, Denville Township; Thomas W. DeKorte, Kinnelon Borough.

Ocean County: Charles P. Tivenan, Esq., Brick Township; Leonard A. Molinari, Jackson Township.

Five persons passed the September 24, 2011 C.T.A. exam. They are:

Cape May County: Jay L. Laubengeyer, Woodbine Borough.

Essex County: Romal D. Bullock, East Orange City.

Monmouth County: Gail A. Scaglione, Middletown Township; William C. Shapiro, Howell Township.

Passaic County: William A. Yirce Jr., North Haledon Borough.

The next C.T.A. examination is scheduled for March 24, 2012. The deadline to file applications for this exam was February 23, 2012. The filing fee is \$10. If you have any questions regarding this exam, please contact Christopher Beitz at 609-341-2708 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml

LOCAL PROPERTY TAX Tax Assessors' Calendar

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statements filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase provided to County Tax Administrator by assessor.
- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption

Report” filed with County Tax Board by assessor.

January 25–

- Assessor's schedule of office hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)–

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1–

- Form EA-4 (part A) for properties under Chapter 441 tax agreements to be completed by assessor and forwarded to County Tax Administrator.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year's property tax deduction by collector.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10–

- Certification of bulk mailing of Notification of Assessment filed with the County Tax Board by assessor. If bulk mailing completed by County Tax Board, certification



assessors' calendar - from page 7

prepared by the County Tax Administrator "within 10 days" of the date the bulk mailing was completed.

February 15 (on or before)–

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1–

- Recipients of a property tax deduction for tax year 2011 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2011 income and anticipated income for 2012.

- County Tax Administrator to submit equalization table to: County Tax Board; each assessor; Division of Taxation; two copies to Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to: each taxing district in the county, Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions.](#)" Select the name of the business for details about that auction.

Criminal Enforcement

Criminal enforcement over the past several months included:

- On January 28, 2011, in Monmouth County Superior Court, Judge Richard W. English sentenced Larry Kushner, of Long Branch, New Jersey, to seven years in prison. Kushner entered guilty pleas to theft by failure to make required disposition of property received and failure to file a 2005 gross income tax return. Kushner agreed to pay \$1.1 million in restitution to

seven victims. Kushner told the victims the money they invested in his business, Foreclosure 911, would be used to buy foreclosed properties in New Jersey, Delaware, and Pennsylvania. Instead, the money was used for personal expenses and travel. This investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- On February 28, 2011, and March 1, 2011, a total of seven search warrants were executed in

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**Enforcement Summary Statistics
First Quarter 2011**

Following is a summary of enforcement actions for the quarter ending March 31, 2011.

	Number	Amount
• Bank Levies	1,428	\$ 3,924,299
• Certificates of Debt	4,196	58,831,360
• Seizures	81	1,014,221
• Auctions	6	75,690

Second Quarter 2011

Following is a summary of enforcement actions for the quarter ending June 30, 2011.

	Number	Amount
• Bank Levies	1,909	\$ 5,638,813
• Certificates of Debt	4,628	63,224,749
• Seizures	116	1,198,379
• Auctions	6	220,876

Third Quarter 2011

Following is a summary of enforcement actions for the quarter ending September 30, 2011.

	Number	Amount
• Bank Levies	1,347	\$ 3,456,821
• Certificates of Debt	3,883	58,744,211
• Seizures	69	1,043,824
• Auctions	1	121,000



criminal enforcement - from page 8

Bergen and Passaic Counties by the Office of Criminal Investigation (OCI) in connection with an arrest warrant that had been issued for Jean Sawits, of Lodi, New Jersey. Sawits had been charged by an OCI special agent with violating multiple indictable Title 54 statutes for engaging in sales of contraband cigarettes to businesses and individuals primarily in Paterson, New Jersey, and was arrested by OCI at her residence without incident. A total of 1,735.8 cartons of contraband cigarettes and \$2,719 in U.S. currency were seized as a result of the search warrants. Sawits was remanded to the Bergen County Jail with bail set at \$50,000, no 10%.

- On March 23, 2011, in Mercer County Superior Court, George Makris, former owner of Serefeim, LLC, t/a The Jersey Diner, in Bridgewater, New Jersey, pled guilty to third-degree misapplication of entrusted funds (sales and use tax and employee withholdings) and third-degree filing false or fraudulent returns. Makris was scheduled to be sentenced on August 3, 2011. Recommended sentencing was five years' probation, mandatory restitution of approximately \$83,000 payable at a rate of \$500 per month, a lump-sum payment of \$10,000 at the day of sentencing, and 25 hours' community service.
- On April 1, 2011, in Trenton Municipal Court, Vincent Mayo, of Trenton, New Jersey, was sentenced to 30 days in the Mercer County Correction Center for possession of contraband cigarettes. Mayo had been arrested by

an OCI special agent on January 4, 2011, in Trenton. Mayo was on probation at the time of his arrest with two active warrants. His sentence was in addition to a 400-day jail sentence on unrelated charges.

- On April 1, 2011, Miroslaw Sapinski along with his wife Grayzna Sapinski, Stanislaw Zbronski, and Waclaw Jeziorski were arrested for contraband cigarette trafficking in Passaic, New Jersey. On May 14, 2011, Sapinski et al. appeared in Passaic County Superior Court. The Court sentenced Sapinski, a multiple offender, to three years in the New Jersey State Prison as a result of his guilty plea to a second-degree count of conspiracy. Part of the plea agreement required Sapinski to forfeit to the State of New Jersey \$24,903.42 in U.S. currency seized by OCI at the time of his arrest and one 1997 Toyota Camry. Grayzna Sapinski appeared in Passaic County Superior Court and the Court permitted the defendant to enter the Pre-Trial Intervention Program. Part of the plea agreement required Sapinski to forfeit \$66,612.78 and one 2001 Chrysler minivan to the State. Stanislaw Zbronski, also of Passaic, New Jersey, was sentenced to 295 days in the Passaic County Jail. Part of the plea agreement required Zbronski to forfeit \$149 to the State. Zbronski is in the U.S. illegally and will be deported to Poland by U.S. Immigration and Customs Enforcement. A fourth defendant, Waclaw Jeziorski of Wallington, New Jersey, was sentenced to 100 hours of community service. Part of the plea agreement required Jeziorski to forfeit \$2,141 to the State.

- On April 4, 2011, Min Qin Yang t/a Golden Garden Restaurant pled guilty to possession of contraband cigarettes in Elizabeth Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$2,571 in seized U.S. currency to the State. OCI had worked to stop an activity where the take-out business delivered contraband cigarettes with Chinese food deliveries.
- On April 12, 2011, Kalpesh Patel t/a Hillsborough Convenience Store of Hillsborough, New Jersey, pled guilty to possession of contraband cigarettes in Hillsborough Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$4,970 in seized U.S. currency to the State.
- On April 13, 2011, Rameshchandra Patel t/a Griffins Deli of Ewing Township, New Jersey, pled guilty to possession of contraband cigarettes in Ewing Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$1,565 in seized U.S. currency to the State.
- On April 18, 2011, in Monmouth County Superior Court, Christopher Elia pled guilty to second-degree theft by deception and third-degree failure to pay taxes. This plea was based on a 14-count Grand Jury indictment on September 13, 2010. The investigation revealed that Elia operated N.L.E.O.A. Publications, collecting charitable contributions from a large number of donors. Elia used the names of legitimate charitable organizations in order to collect contributions but did not transfer the funds to any legitimate charities. Instead the funds

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were used for personal expenses, including extensive gambling debts. This investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- On April 19, 2011, Yarin Montilla t/a Dominican Deli Grocery LLC of Elizabeth, New Jersey, pled guilty to possession of contraband cigarettes in Elizabeth Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$1,169 in seized U.S. currency to the State.
- On April 21, 2011, Christ Townsend of Pine Hill, New Jersey, was sentenced to one year of supervised probation by the Camden County Superior Court. The Court imposed \$158 in fines, fees, and costs. The Court

also forfeited the \$605 seized by OCI's Special Agents at the time of his arrest.

- On April 25, 2011, Xiangguang Zhang t/a Jade Garden of Elizabeth, New Jersey, pled guilty to failure to examine contraband cigarettes found in his possession. The Court imposed \$288 in fines and fees and ordered \$4,620 in seized U.S. currency to be forfeited to the State.
- On April 27, 2011, a Bergen County Grand Jury returned a 25-count indictment against 12 persons for allegedly engaging in an elaborate mortgage fraud scheme involving Paragon Federal Credit Union located in Montvale, New Jersey. All were indicted for conspiring to commit the crime of theft by deception and various other charges.

The investigation was initiated by representatives of Paragon Federal Credit Union. During a routine audit of Paragon Federal Credit Union's residential mortgage loans, bank investigators discovered that an unusual amount of residential mortgage loans were delinquent and promptly notified the Bergen County Prosecutor's Office, White Collar Crimes Unit. Detectives uncovered a fraud scheme being perpetrated by the Paragon Federal Credit Union loan coordinator with mortgage brokers from AOR Consultants or Apex Consultants, and an appraiser of Lighthouse Appraisals, LLC. Credit union membership, mortgage application, property appraisal, and personal income and expense documents were fraudulently prepared by the

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coconspirators in order for the individuals to be approved for mortgage loans with Paragon Federal Credit Union. Over \$3,000,000 of residential mortgage loans currently in default was processed in this manner.

This indictment was the result of an ongoing investigation by members of the Bergen County Prosecutor's Office, White Collar Crimes Unit, the United States Secret Service – New Jersey, and the Office of Criminal Investigation.

- On April 28, 2011, Andy Jimenez t/a Valerio Inc. of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$1,841 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On April 28, 2011, Coleman O'Koro t/a Brothers Food Market of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$594 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On May 2, 2011, Sara Velasquez t/a Sarita Market Shop LLC of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$3,143 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On May 3, 2011, Rajai Mashal t/a Mashal Mini Market of Haledon, New Jersey, pled guilty to possession of untaxed goods.

The Haledon Municipal Court imposed fines, fees, and costs of \$1,316.

- On May 4, 2011, Phuc Vuong, of Camden, New Jersey, was arrested by OCI along with Tran Hao of Camden, after the delivery of unstamped Vietnamese cigarettes by an undercover U.S. postal inspector. Postal inspectors had previously tracked the unlawful product. A total of 406.6 cartons of cigarettes and \$350 in U.S. currency were seized. Bail for both subjects was set at \$150,000, no 10%. Indictable charges of possession of more than 2,000 cigarettes, no licenses with intent to evade, and no records with intent to evade were filed in Camden County Superior Court.

On May 27, 2011, an additional 672 cartons of unstamped Vietnamese cigarettes were seized from Vuong. The second shipment was intercepted by the U.S. Postal Inspector and turned over to OCI for seizure in this ongoing investigation.

- On May 4, 2011, Hung Tran, of Pennsauken, New Jersey, was arrested by OCI after a search warrant was executed at his residence. Tran had made purchases in Camden City at another residence where OCI investigators and Camden County

Sheriff's Officers observed other contraband sales and possession. 25 cartons of both unstamped domestic and imported Vietnamese cigarettes were seized. A total of \$5,752 was seized from the premises along with two vehicles.

- On May 5, 2011, Dorian Munoz, owner of Spartan Cutting Edge Landscaping and Brookside Landscape, was indicted in the Superior Court of New Jersey, Law Division, on eight counts of failure to file sales and use tax and gross income tax returns, failure to pay sales and use tax in the approximate amount of \$40,744 and gross income tax to New Jersey, as well as filing false or fraudulent sales and use tax returns for tax years 2001 through 2007. All counts are third-degree crimes.
- On May 12, 2011, Aiman M. Muheisen t/a Valero Gas Station in Little Ferry, New Jersey, pled guilty to possession of untaxed goods and failure to examine in the Little Ferry Court. 18.4 cartons of counterfeit-stamped cigarettes were seized from the location. The Court imposed fines, fees, and costs in the amount of \$868.
- On May 17, 2011, Vinaykumar Trivedi t/a Two Lucky Convenience Store appeared before

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Hillside Municipal Court Judge Lara DiFarbrizio and pled guilty to possession of untaxed cigarettes. He was fined a total of \$658.

- On May 18, 2011, a search warrant was executed by OCI at a residence in North Brunswick, New Jersey. Arrested at the residence were Victor Madera, his wife, Angiolina, and their sons Harold and Charlie Madera. Seized from the residence were \$109,353 in U.S. currency and an additional \$14,504.18 from various bank accounts, along with 13 cartons of contraband cigarettes, a plastic utility box containing paraphernalia used to affix New Jersey counterfeit tax stamps (glue, tape, scissors, brass pads, iron) and two cigarette stamps. Also seized were two vehicles: a Volvo containing the 13 cartons seized, and a Honda Odyssey. Another search warrant was executed on their storage unit located at a Public Storage facility in North Brunswick, New Jersey. Seized from the unit were 69 cartons of contraband cigarettes containing unstamped and New Jersey counterfeit-stamped cigarettes and plastic bags used to contain the cigarettes. The defendants were brought to the North Brunswick Police Department where they were processed. Madera was issued bail of \$75,000, no 10%; the other three defendants were issued bail of \$50,000, no 10%. This was a three-month investigation initiated by OCI and conducted with the assistance of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). During surveillance performed by OCI and ATF, the defendants were observed trafficking contraband cigarettes and storing them at their residence and storage unit.
- On May 23, 2011, Sandeep and Mandip Kaur t/a Crown of Dickson St. of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. The defendants agreed to forfeit \$975 in U.S. currency to the State. The Court imposed fines totaling \$408.
- On May 23, 2011, German Alvarez t/a San Juan Mini Market of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. The defendant agreed to forfeit \$3,048 in U.S. currency to the State. The Court imposed fines totaling \$408.
- On May 24, 2011, Zhi Zheng, t/a New Chinese Gourmet, of Elizabeth, New Jersey, pled guilty to possession of untaxed cigarettes and accepted full responsibility for the contraband cigarettes. Seized were 170.2 cartons of cigarettes and \$20,123 in U.S. currency. The cigarettes and cash seized were forfeited to the State.
- During the reporting period, in Camden County Superior Court, Robert G. Burk, of Camden, New Jersey, was sentenced to 12 months' probation and 50 hours of community service for possession of untaxed cigarettes that occurred in 2009. Burk was arrested at the time of the offense and was found with two cartons of Delaware-stamped cigarettes, nine suspected counterfeit DVDs, and \$184.90 in U.S. currency, which were all seized. In Court, Burk pled guilty and the items seized were forfeited to the State.
- On May 24, 2011, Luis R. Forty t/a 40's Wholesale of Vineland, New Jersey, pled guilty to possession of untaxed goods and failure to obtain a cigarette license. The Vineland Municipal Court imposed fines, fees, and costs of \$816.
- On June 1, 2011, Juan Cabrera t/a Duarte's Deli of Harrison, New Jersey, pled guilty to possession of contraband cigarettes and sale of loose cigarettes. The Harrison Municipal Court imposed fines, fees, and costs of \$1,268 and forfeited the cigarettes to the State.
- On June 2, 2011, Ericka Rangel t/a Lurenjem Deli & Grocery pled guilty to possession of contraband cigarettes and failure to display license. The Newark Municipal Court imposed \$816 in fines, fees, and costs.
- On June 3, 2011, James Gillespie, 46, of Williamstown, was sentenced to five years in State prison by Judge Irvin J. Snyder in Camden County for failing to turn over \$487,975 in State and Federal payroll taxes on behalf of employees of his patient transportation company. He pled guilty on February 14, 2011, to charges of second-degree theft by failure to make required disposition of property received and second-degree misapplication of entrusted property and property of government. In pleading guilty, Gillespie admitted that from 2001 through 2006 he failed to remit payroll taxes withheld from employees of his company, Wellness Enterprises Corp., totaling \$487,975, which consisted of \$105,440 due the State of New Jersey and \$382,535

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due the Internal Revenue Service. Wellness Enterprises, which was based in Cedar Brook and did business as Excel Medical Transportation Services, provided nonemergency patient transportation services to hospitals, nursing homes, assisted living programs, and private residences. Gillespie entered a civil consent judgment to pay a total of \$582,740 to the Division of Taxation and the U.S. Treasury, representing the back payroll taxes owed by his company, plus penalties and interest of \$94,765 to be paid to the State.

- On June 9, 2011, Bhavesh Patel t/a Long Valley of Washington Township, Morris County, New Jersey, pled guilty to possession of contraband cigarettes. The Washington Township Municipal Court imposed \$408 in fines, fees, and costs and forfeited \$1,294 in U.S. currency to the State.
- On June 16, 2011, the Grand Jury for the State of New Jersey returned a three-count indictment

against Ashok Patel. This indictment follows a criminal investigation which was conducted by OCI's Financial Investigation Unit. This investigation was referred by OCI's Special Investigations Unit. The investigation revealed that sales and use tax for the years 2004–2007 was underreported by Ashok Patel, owner of A&D Family Deli. Patel was indicted on third-degree misapplication of entrusted property, third-degree theft by failure to make required disposition of property received, and third-degree failure to pay or turn over New Jersey sales and use tax.

- On June 23, 2011, Wilyn Caceres and Lisaldo Espinal were each sentenced to six years in State prison for their participation in a tax refund fraud scheme. Wilyn Caceres, Jason Perez, Lisaldo Espinal, and Miguel Hernandez were indicted in December 2008 for allegedly conspiring to steal \$272,000 by filing more than 117 fraudulent State tax returns. All four entered guilty pleas to charges of conspiracy, money

laundering, and receiving stolen property. The tax refund scheme was uncovered in August 2007, when an abnormal pattern involving the refund checks was detected. An investigation proved that the W-2s used were fraudulent. The refund checks, which ranged from \$1,500 to \$3,676, were cashed by Caceres at a bank branch office in Passaic where he worked or were deposited by him into a series of accounts he opened there using stolen or fraudulent identification information. The defendants withdrew money from those accounts, and an account opened by Perez at another bank where refund checks were also deposited, in the form of cash, ATM withdrawals, debit charges and checks. Sizeable transfers were also made among the various accounts. Miguel Hernandez was sentenced to one year of incarceration in October 2009. Jason Perez was scheduled for an October 2011 sentencing. This investigation was initiated and conducted by OCI.

- On June 27, 2011, Foad Salib t/a Minas Grocery of Elizabeth, New Jersey, pled guilty to possession of contraband cigarettes and untaxed tobacco products. The Court imposed fines, fees, and penalties of \$1,158 and forfeited \$1,194.30 as well as the unstamped cigarettes and untaxed tobacco products to the State.
- On June 27, 2011, a Monmouth County Grand Jury returned a 100-count indictment charging seven defendants with various crimes relating to a multimillion-dollar mortgage refinance fraud

Practitioners' E-File Mandate

For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

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scheme that victimized dozens of homeowners throughout New Jersey and New York. An investigation by the Monmouth County Prosecutor's Office revealed a mortgage fraud scheme perpetrated by associates of Hawthorne Capital Corporation that resulted in losses to homeowners and financial institutions. Funds that were intended to pay off the homeowners' original mortgages were significantly delayed, or in other instances, the payoffs never occurred, leaving the homeowners with two mortgages attached to their properties. Additionally, the identities of homeowners who had only completed an initial application for refinance were stolen and illegally used to cause financial lending institutions to fund refinances that never actually occurred. In total, the amount of calculated theft perpetrated by the defendants exceeded \$7.5 million. Frederick Tropeano of Holmdel, New Jersey, was identified in the investigation as the person responsible for the daily operations at Hawthorne Capital. Frederick Tropeano was indicted on charges of theft, attempted theft, conspiracy, financial facilitation of criminal activity, impersonation-theft of identity, uttering a forged instrument, insurance fraud, and three counts each of failing to file returns and failure to pay or turn over taxes for tax years 2008, 2009, and 2010.

- On June 28, 2011, Hugo Castaneda-Tapia t/a Latino Mini Market of Bound Brook, New Jersey, pled guilty to possession of contraband cigarettes. The Court imposed fines, fees, and penalties of \$408 and forfeited \$1,353 and

the counterfeit-stamped cigarettes to the State.

- On June 28, 2011, Victor Camachoduran t/a Centro America Sport of Bound Brook, New Jersey, pled guilty to possession of contraband cigarettes. The Court imposed fines, fees, and penalties of \$408 and forfeited to the State \$1,398 as well as the unstamped cigarettes, which were purchased over the Internet.
- In the Camden Superior Court, Harry Marrow of the City of Camden, who was previously arrested by OCI Special Agents for selling contraband cigarettes, was found guilty and sentenced to one year of supervised probation. The \$213 in currency was forfeited and the defendant was assessed \$158 in fees. In the same Court, Khalif Banks, also of Camden, who was arrested by OCI Special Agents for selling contraband cigarettes, was found guilty and sentenced to 2 years' supervised probation, 50 hours of community service, and assessed \$150 in fees. The \$275.75 in currency that was seized during the arrest was forfeited to the State. A third subject, John Demby, was also found guilty of selling contraband cigarettes and was sentenced to 12 months' supervised probation and \$158 in fees. The \$32 in U.S. currency that was seized during his arrest was also forfeited. These subjects were arrested in an OCI sting operation along with three others who were conducting an "open-air cigarette market" in a shopping center on Mt. Ephraim Avenue in Camden City.
- On June 29, 2011, Hung Tran of Pennsauken, New Jersey, appeared before the Municipal

Court of Pennsauken and pled guilty to possession of Vietnamese cigarettes, which were received via mail order. After a search warrant was executed in Camden County, the subject was arrested at his residence based on a sale to an undercover operative. The subject paid \$408 in fines, fees, and costs. The Court awarded the State \$4,752 that was seized by the Office of Criminal Investigation (OCI), which will be revenue shared with Camden County for their assistance.

- July 27, 2011, the Office of Criminal Investigation (OCI) received the following information from the State Grand Jury for Monmouth County, which returned a 10-count indictment against Paul Chemidlin on June 3, 2011. This indictment follows a criminal investigation which was conducted by the Monmouth County Prosecutor's Office in conjunction with OCI. The investigation revealed that Paul Chemidlin was engaged in illegal gambling and financial activity, which included money laundering and tax evasion. Chemidlin was indicted on second-degree conspiracy, third-degree promoting gambling, third-degree terroristic threats, second-degree theft by extortion, third-degree possession of a controlled dangerous substance, second-degree theft by deception, second-degree financial facilitation of criminal activity, and third-degree failure to file New Jersey tax returns.
- On July 28, 2011, Ramon Gomez was found guilty in the United States District Court for the Eastern District of North Carolina on

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all counts related to contraband cigarette smuggling and will be deported after he completes his sentence. The Office of Criminal Investigation participated with the Bureau of Alcohol, Tobacco, Firearms and Explosives out of North Carolina in pursuing this subject who was smuggling into New Jersey.

- The Federation of Tax Administrators Suspicious Filers group announced the sentencing of Marvin Berkowitz, a repeat offender who has filed fraudulent returns in multiple states for two decades. Berkowitz was sentenced by a Federal Judge to 18 years and 4 months in Federal prison and must pay restitution to the victimized tax agencies of \$10.232 million, much of which is expected to come out of seized bank accounts. The Suspicious Filers group learned to spot many of Berkowitz's submissions and shared information on a real-time basis, helping impede the success of his schemes. One of the Office of Criminal Investigation's auditors had uncovered the Berkowitz scheme in New Jersey, and information was supplied through the Division's disclosure officer to assist in the Federal prosecution.

- Members of OCI's Special Investigations Unit (SIU), in response to Hurricane Irene, conducted facility assessments and continuity of operation evaluation for the Division of Taxation. All Division executives were continuously provided situational reports from the New Jersey State Police's Regional Operations and Intelligence Center (ROIC) and New Jersey's Office of Emergency Management (NJOEM) so as to gauge the disaster's effect on Division operations and personnel.
- On August 1, 2011, the State Grand Jury of the Superior Court of the State of New Jersey in Trenton returned a three-count indictment against Michael L. Meglino, Jr. and his wife, Susan Gisela Hernandez Meglino. The indictment is a result of a joint criminal investigation conducted by the Division of Criminal Justice's Office of the Insurance Fraud Prosecutor and the Division of Taxation's Office of Criminal Investigation. The investigation concluded that Michael Meglino misappropriated funds of the Oak Hollow Condominium Association in 2005 and 2006, which coincided with the period he was the president of the condominium association. Mr. Meglino was indicted on one count of third-degree theft by deception.

Meglino and his wife, Susan Meglino, were also indicted for third-degree filing a false and fraudulent New Jersey tax return and third-degree failure to pay tax.

- On August 25, 2011, Ahmad Rafei, owner of Star's General Supply, of Paterson, New Jersey applied for and received Pre-Trial Intervention (PTI) as a first-time offender in the Passaic County Superior Court. Rafei was arrested by a special agent from the Office of Criminal Investigation (OCI) for possession of untaxed other tobacco products. The Court, however, did agree to the civil forfeiture of the vehicle involved. The Passaic County Prosecutor's Office (PCPO) agreed to sell back the vehicle to Rafei for \$2,500 and the proceeds will be shared between PCPO and OCI. The subject must complete one year of unsupervised probation with no violations to successfully complete the PTI program.
- On September 19, 2011, Omar Nijim of Brooklyn, New York, was found guilty in the United States District Court in the Eastern District of North Carolina on one count of conspiracy to traffic in contraband cigarettes. An OCI special agent was a witness in this trial and had coordinated OCI's role in this joint operation with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) when Nijim traveled to New Jersey and New York to sell contraband cigarettes in December 2009 and January 2010. Nijim awaits sentencing. OCI will prepare a loss of revenue report for the U.S. District

Current Amnesty Program

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

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<http://tax.ohio.gov/>

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Court for restitution as part of the sentencing.

- On September 28, 2011, in the Superior Court of Mercer County, George Makris, the former owner of The Jersey Diner, was sentenced to five years' probation as a result of his guilty plea to misapplication of entrusted property (sales taxes) and filing false and fraudulent returns. As a result of the civil consent judgment signed by Makris, he is required to pay restitution in the amount of \$83,831.49, payable at \$500 per month to the State of New Jersey. During the sentencing, Makris made a payment of \$10,000. Makris was also ordered to perform 25 hours of community service. This case was prosecuted by the Mercer County Prosecutor and the Office of Criminal Investigation.
- Blessing Iwarimie's Pre-Trial Intervention (PTI) was revoked for failure to comply with her agreed upon payment schedule to the Division of Taxation. Blessing Iwarimie was entered into the State's PTI program for her part in the theft of monies in the Mustapha case in 2005.
- The Office of Criminal Investigation and Field Investigations-Newark jointly canvassed the Avenel Flea Market. Also assisting in the canvass was local law enforcement, the Recording Industry Association of America, and Stumar Investigations, which resulted in the seizure of pirated and counterfeit CDs, DVDs, counterfeit goods, and accessories. The Division received over \$9,000 involving eleven jeopardy assessments. Additionally, many

businesses completed the application to register with the State for tax purposes. This was the first time OCI has worked jointly with Field Investigations and local law enforcement on such a canvass, and the combined efforts sent a strong message about the importance of compliance.

- On September 30, 2011, Mercer County Prosecutor, Joseph L. Bocchini, Jr., announced that a joint investigation, conducted by his Economic Crime Unit (ECU) and the Office of Criminal Investigation, resulted in the arrest of David D. Murray of Hardwick, New Jersey. Murray was taken into custody at his Warren County residence by members of the Mercer County Prosecutor's Office with assistance from the New Jersey State Police. Murray is the owner of five Dunkin' Donuts establishments in Warren County. The investigation revealed that, between December 4, 2009, and August 31, 2011, Murray collected sales tax at his businesses and failed to remit those taxes to the State, representing a loss in tax revenue of approximately \$156,500 to the State of New Jersey. Murray was charged with theft by failure to make required disposition of property received and misapplication of entrusted property and property of government or financial institution. Both are second-degree crimes, each carrying a maximum penalty of 10 years in prison and a \$150,000 fine. Mercer County Superior Court Judge Thomas W. Summers, Jr., set bail for Murray at \$35,000. This investigation was a result of the actions of OCI's new Technical Enforcement Unit.

- During July 2010 – June 2011, the Office of Criminal Investigation's Special Frauds Unit identified and prevented the issuance of over \$7 million in fraudulent refunds. Losses are prevented through twice weekly manual reviews of the lists of refunds that are earmarked to be mailed out. These manual efforts extend beyond the scope of the automatic system checks that the Division already has in place.
- During the months of July, August, and September, 2011, the Special Frauds Activity identified 2,080 fraudulent refunds totaling \$3,227,009.46 of total gross income revenue protected. There were 197 checks totaling \$340,761 that were not issued, and 314 direct deposits stopped in the amount of \$465,637.35. Another 460 refund requests, totaling \$816,107, were identified as fraudulent, and 413 refund requests identified through the paid preparer edit totaling \$737,505 were subsequently denied. Utilizing an additional edit program, 897 refund requests totaling \$1,188,389 were identified as American Bankers Association routing fraud, reviewed, and denied. There were 128 returns referred by the Division of Revenue, totaling \$285,118. An additional 20 returns were stopped through a suspicious filer program totaling \$33,587. □

Tax Briefs

**Corporation Business Tax
Federal Small Employer Health
Insurance Premium Credit** — The Federal small employer health

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insurance premium credit that was created as part of the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, was enacted March 23, 2010. Several taxpayers have inquired whether New Jersey conforms to this credit for corporation business tax purposes.

The PPACA created Internal Revenue Code §45R. The new small business tax credit is effective for amounts paid or incurred after December 31, 2009, and applies to the determination of alternative minimum tax credits after that date and their carryback. Small businesses that currently provide health care for their workers could receive immediate help with their premium costs, and additional firms that initiate coverage for tax years beginning in 2010 could receive the tax assistance. To be eligible, small employers would have to contribute at least 50% of the cost of premiums towards a qualified health plan or 50% of a benchmark premium. The Internal Revenue Service provides further guidance on who is eligible for Federal tax purposes on their Web site at www.irs.gov. Taxpayers who take the credit will have to reduce their health premium expense deduction by the amount of the credit under IRC §45R.

For New Jersey corporation business tax purposes, entire net income is deemed to be equal to the amount of income taxable for Federal purposes before the net operating loss deduction and special deductions. N.J.S.A. 54:10A-4(k).

If the taxpayer corporation elects the Federal credit and expense reduction, then it must use the reduced expenses for New Jersey purposes when the credit is not recognized in

New Jersey since items reported on Line 28, Schedule A, Form CBT-100 must be the same as those reported to the IRS for Federal tax purposes.

Therefore, the small employer health insurance premium credit is not available for New Jersey corporation business tax purposes. Where a taxpayer takes this credit for Federal purposes, the taxpayer must report the reduced expenses on New Jersey Form CBT-100 even though the taxpayer could not claim the small employer health insurance credit for New Jersey purposes.

Gross Income Tax Cafeteria Plans and Certain Adult “Dependents” — The Division received an inquiry from an employer about providing cafeteria plan health insurance coverage to qualifying “dependents” up to age 27. The employer’s inquiry was prompted by the impact of the Federal Affordable Care Act. The employer’s health insurance cafeteria plan was a salary reduction plan.

For New Jersey gross income tax purposes, benefits provided through a “cafeteria plan” salary reduction are generally treated as income taxable to the employee. In other words, the employee is taxed on the wage amount before any deduction for the health plan coverage. This is because the New Jersey Gross Income Tax Act does not have a cafeteria plan section that provides a tax exclusion for a salary reduction benefit. For further details on the gross income tax treatment of cafeteria plan benefits, see Technical Bulletin [TB-39\(R\)](#), *Cafeteria Plans*.

Calculation of Nonresident Partner’s Share of Tax — A partner in a partnership questioned the Division about getting “inequitable” results

when she multiplied the amount from Column H, Partners Directory, Form NJ-1065, by the corporation allocation factor, which is the calculation method that is required by the instructions with regard to Column I, Partners Directory, Form NJ-1065.

For New Jersey purposes, the partnership must net the partner’s Federal income together and multiply that amount by the partnership’s corporation allocation factor (Schedule J, Form NJ-1065) to determine the partner’s share of tax that is required to be remitted by the partnership, as set forth in the instructions for Form NJ-1065. Sometimes the tax remittance required for the nonresident partner is accurate with regard to the gross income tax required to be paid by the partner, and other times it is not accurate and the partner may need to apply for a refund on Form NJ-1040NR.

For example, a partnership with a loss from New Jersey sources for reporting purposes, may have positive net Federal income. In this situation, the partnership may be required to remit tax on behalf of the nonresident partner that is more than the actual gross income tax owed by the partner. On a different set of facts, the tax remitted may be less than the actual tax owed by the nonresident partner.

Employer-Paid Health Insurance — The Division received an inquiry from an employer about a change to its health insurance coverage in response to the Federal Affordable Care Act. The change was to the employer paid health insurance coverage for qualifying children up to age 27. The employer asked whether coverage (paid by the employer) for

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a qualifying 26-year-old child was a nontaxable benefit for purposes of the gross income tax. The employer also asked for clarification about continuing to provide health insurance for the spouse of the employee.

For New Jersey gross income tax purposes, the benefit of health insurance coverage for a qualifying child up to age 27, or a spouse, *paid directly by the employer*, is not taxable wage income for the employee. However, if benefit coverage is paid by the employee through a cafeteria plan deduction from wages, the wage deduction or reduction amount is generally taxable for gross income tax purposes. See N.J.S.A. 54A:6-21.

Federal Small Employer Health Insurance Premium Credit — Several taxpayers inquired whether New Jersey allows a credit for gross income tax purposes similar to the Federal credit allowed under the Patient Protection and Affordable Care Act (PPACA).

The PPACA created Internal Revenue Code §45R. The new small business tax credit is effective for amounts paid or incurred after December 31, 2009, and applies to the determination of alternative minimum tax credits after that date and their carryback. To be eligible, small employers have to contribute at least 50% of the cost of premiums towards a qualified health plan or 50% of a benchmark premium. Taxpayers who take the credit will have to reduce their health premium expense deduction by the amount of the credit under IRC §45R.

New Jersey does not have a similar health care credit. Therefore, the small employer health insurance

credit is not available for New Jersey gross income tax purposes. A taxpayer's accounting method for New Jersey gross income tax purposes must be the same as that used for Federal income tax purposes. N.J.S.A. 54A:8-3(c). Therefore, where a taxpayer took this credit for Federal purposes, thus reporting reduced expenses on the Federal return, the taxpayer's New Jersey gross income tax return must also reflect the reduced expenses.

Municipal Bond Derived Income — The Division was asked about the gross income tax treatment of income derived from municipal bonds received during tax year 2011.

The Division explained that interest income received from the bonds of a New Jersey municipality is exempt, while interest income received from the bonds of any other state's municipality is taxable. See N.J.S.A. 54A:6-14. Concerning capital gain income derived from municipal bonds, the Division similarly explained that income derived from New Jersey municipal bonds is exempt while income derived from the bonds of other states' municipalities is taxable. The Division also clarified that with respect to taxable capital gain income, the New Jersey Gross Income Tax Act does *not* have a special lower rate of tax.

Partnership Investment Club — A partner in an investment club partnership wrote to the Division asking about the consequences of the club's increasing to 10 "individual" members. More specifically, the partner asked whether having 10 members would cause the club to "lose exemption." The Division replied that having 10 individual members would not cause the club to lose certain exemptions.

Investment club partnerships that meet certain statutory criteria are exempt from the requirement to pay filing fees for the partners and the nonresident partner tax. To qualify for these exemptions, the investment club must meet these criteria: (1) it must be classified as a partnership for Federal income tax purposes; (2) all of the owners must be individuals; (3) all of the assets must be securities, cash, or cash equivalents; (4) the total value of the market assets must not exceed the lesser of \$42,400 per owner or \$302,300 (for tax year 2010, with amounts subject to annual inflation adjustments); and (5) the entity is not required to be registered with the Federal Securities and Exchange Commission (SEC).

The Division explained that the qualifying criteria do not include a limit on the number of individual partners. A resident partner of the club is subject to gross income tax on the partner's income derived through the partnership. Details on the partnership filing fee and nonresident partner tax are available in Technical Bulletin [TB-55\(R\)](#), *Partnership Filing Fee and Nonresident Partner Tax*.

Requirement to File Quarterly NJ-927 Withholding Tax Form — A business inquired about whether it was required to file Forms NJ-927 and WR-30 for employees on a quarterly basis even if it did not withhold any New Jersey gross income tax during that calendar quarter.

The Division responded that for New Jersey gross income tax purposes, all employers required to deduct and withhold gross income tax from employee wages must file quarterly income tax remittance returns. See

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N.J.S.A. 54A:7-4(a). Employers who did not withhold any gross income tax during a particular calendar quarter are still required to file a return for that quarter as required under N.J.A.C. 18:35-7.3(a)(1).

Therefore, the employer is required to file a quarterly return if it has employees subject to New Jersey gross income tax, even if it did not withhold any New Jersey gross income tax during that calendar quarter.

Requirement for Tax Preparers to File Returns Electronically — For the 2011 taxable year and later, tax preparers that reasonably expect to prepare 11 or more New Jersey individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. N.J.S.A. 54A:8-6.1. Currently, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust).

Preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. Additional information is available on the Division's Web site at: www.state.nj.us/treasury/taxation/efilemandate.shtml

Treatment of Key Employee Life Insurance for S Corporation — Several taxpayers have inquired about the taxability of proceeds from a key employee life insurance policy owned by an S corporation. Specifically, the taxpayers asked whether New Jersey follows the Federal treatment of the proceeds and whether they should be reported on

Schedule NJ-K-1 (Form CBT-100S). Under the scenario as presented, the S corporation collected the proceeds of the policy, and the policy and proceeds met the requirement for exclusion from income on the Federal level.

The Federal treatment was set forth in IRS Revenue Ruling 2008-42, which concluded that premiums paid by the S corporation on an employer-owned life insurance contract, of which it is directly or indirectly a beneficiary, do not reduce the S corporation's Accumulated Adjustments Account (AAA). Benefits received because of the death of the insured from an employer-owned life insurance contract that meets an income exception under IRC Section 101(j)(2) do not increase the S corporation's AAA. The exempt income is reported in the Federal Other Adjustments Account (OAA).

For New Jersey gross income tax purposes, any adjustments for New Jersey tax-exempt income earned by the S corporation, which would include the life insurance proceeds in addition to any other reductions made to the Federal AAA or Federal OAA, must be made to the New Jersey AAA, provided that these reductions have not already been taken into consideration in calculating S corporation income. (N.J.A.C. 18:35-1.5(e)(2)(i) and (ii))

Although the life insurance proceeds are generally exempt from Federal and State income tax when received by the S corporation, a distribution of the proceeds may be taxable to the shareholder when the distribution is made from New Jersey Earnings and Profits or is in excess of New Jersey Adjusted Stock Basis.

For New Jersey gross income tax purposes, the ordering rules for distributions when Federal OAA is present are as follows: (1) New Jersey Accumulated Adjustments Account (NJ AAA); (2) New Jersey Earnings and Profits (NJ E&P); and (3) New Jersey Adjusted Stock Basis. Distributions from NJ E&P are taxed as dividends since this account represents the S corporation's earnings that were accumulated while it was a C corporation. Distributions that are in excess of the shareholder's New Jersey Adjusted Stock Basis are taxed as capital gains. See N.J.A.C. 18:35-1.5(e)–18:35-1.5(l).

Schedule NJ-K-1 requires the shareholder to report the total distribution received from the S corporation. The distribution is then deducted from the NJ AAA and NJ E&P balances on the NJ-K-1.

Any capital gain that results from the S corporation distribution is reported on Schedule B of the New Jersey resident income tax return (Form NJ-1040) or Part I of the nonresident income tax return (Form NJ-1040NR).

Inheritance/Estate Tax Mutually Acknowledged Child Requirements — A taxpayer inquired about the relevant circumstances establishing a "mutually acknowledged child" relationship under N.J.S.A. 54:34-2.1 and N.J.A.C. 18:26-2.6 for transfer inheritance and estate tax purposes.

N.J.S.A. 54:34-2.1 in pertinent part states:

The transfer of property passing to any child to whom the decedent for not less than ten

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years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter, shall be taxed at the same rates and with the same exemptions as the transfer of property passing to a child of said decedent born in lawful wedlock.

The relevant regulation (N.J.A.C. 18:26-1.1) describes a mutually acknowledged child as:

Any child to whom decedent for not less than 10 years prior to the transfer stood in the mutually acknowledged relationship of a parent, provided the relationship began at or before the child's fifteenth birthday and was continuous for 10 years thereafter. This applies to persons who were taken into the household and reared as children of the decedent, but who were never legally adopted by the decedent.

N.J.A.C. 18:26-2.6(a) lists the information requirements that must be submitted to the Division of Taxation to prove that a person is a mutually acknowledged child. The claim on behalf of such a transferee must include the following information:

1. The date and age the child was first taken into the household and mutually acknowledged child relationship assumed.
2. The period of time the relationship continued, with the dates given.

3. A complete statement of circumstances whereby the child was taken into the household.
4. The source and cost of the child's support.
5. The child's parentage indicating whether such parents are alive and their address or if deceased, the date of death and their legal domicile at death.
6. The person who was established as the parent of the child when the child registered at school. The person who signed the child's report cards and similar documents. The person who claimed the child as a dependent for Federal income tax purposes and the relationship claimed on the return of such individual.
7. The affidavits of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to them.
8. Any other details which will support the claim that a mutually acknowledged relationship of parent and child existed.

Sales and Use Tax

Game Truck — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a game truck which is a mobile video game theater which can be used for birthday parties, special occasions, school, and corporate functions. The game truck with attendant is provided at the location of the event and the participants play video games for a specified length of time.

The Sales and Use Tax Act imposes tax on any admission charge to or for the use of any place of amusement in New Jersey or to any entertainment event or sporting activity which

takes place in this State. N.J.S.A. 54:32B-3(e).

A per head charge to enter the game truck is taxable as an admission charge. However, a flat rate for the game truck for a certain number of hours which includes an attendant is not subject to sales tax.

Indoor Mini-Car Racing Track — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a charge to enter an indoor mini-car racing track facility.

The Sales and Use Tax Act imposes tax on any admission charge to or for the use of any place of amusement in New Jersey or to any entertainment event or sporting activity which takes place in this State. N.J.S.A. 54:32B-3(e). Therefore, a charge to enter an indoor mini-car racing track facility is subject to sales tax. However, a charge for a participant to race their own car is not subject to sales tax.

Natural Gas Purchased for Generation of Electricity — A taxpayer inquired about the taxability of the purchase of natural gas used to generate electricity that is sold for resale.

The New Jersey Sales and Use Tax Act states that receipts from the purchase or use of "[n]atural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous

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to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity..." are exempt from sales and use tax. N.J.S.A. 54:32B-8.46b.(1).

Therefore, a wholesale producer of electricity may claim the above exemption to purchase natural gas to generate electricity that is sold for resale by issuing a properly completed Exempt Use Certificate (Form ST-4) to the natural gas provider.

Online Vouchers — The Division has received an inquiry as to whether sales tax is applicable to the sale of online vouchers by a taxpayer. The taxpayer is a marketing Web site that sells discounted "deals" for its contracted retailers. Retailers advertising on the site offer specified goods or services to visitors of the site at a discount when purchased within a short period of time, which can vary (e.g., days, hours). Upon purchase, the customer receives a voucher for the specified good or service that may be redeemed with the retailer within prescribed time periods, terms, and conditions. Although the online vouchers have limitations and generally can only be used for the purchase of specific identified products, they are not viewed as pre-purchases of goods or services. Therefore, the sale of an online voucher is not subject to sales tax at the time of its purchase.

As the goods or services are not being purchased and resold by the taxpayer, the sale of the voucher does not result in a transfer of title or possession of the related inventory or resources. Participating retailers agree to share a portion of the face value of the voucher with the taxpayer for its marketing services.

Upon redemption, if the goods or services are subject to sales tax (e.g., meals), the face value of the voucher is subject to sales tax in addition to any excess amount charged over the voucher amount. For purposes of the New Jersey Sales and Use Tax Act, sales tax must be charged on the total "receipt" from a retail sale; i.e., the actual amount of the sales price paid to the retailer. See N.J.S.A. 54:32B-2(d) and N.J.S.A. 54:32B-2(oo). When the voucher is redeemed, the retailer must charge tax on the discounted price payable to the retailer at the face value of the voucher, not on the original price before the reduction. The reduced price is the "receipt" on which the sales tax is calculated.

Sales Lead Generator — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a charge by a sales lead generator to a car dealership.

A car dealership contracts with a sales lead generator. The sales lead generator agrees to list the car dealer's inventory on their Web site and make it searchable by prospective car buyers. The sales lead generator agrees to collect prospective buyers' information and verify the accuracy of the information. The car dealership is then provided with the sales lead information via e-mail or fax. The information collected by the sales lead generator is not exclusive and may be provided to any or all of the participating car dealerships that have the same inventory or as designated by the search criteria. The sales lead generator charges for its service either per sales lead or as a flat monthly fee.

On and after October 1, 2006, sales and use tax is imposed on "information services." N.J.S.A. 54:32B-3(b)

(12). The law defines "information services" as the furnishing of information of any kind, which has been collected, compiled, or analyzed by the seller, and provided through any means or method, other than personal or individual information which is not incorporated into reports furnished to other people. N.J.S.A. 54:32B-2(yy).

A list containing names, addresses, phone numbers, e-mail addresses, and vehicle descriptions that prospective customers are interested in is a sales lead, which meets the definition of information services as referenced above. Since this information was collected and may be provided to all participating car dealerships that have the same make and model in their inventory, the information is not "personal or individual."

Therefore, a charge for sales leads is subject to tax as an information service. The Division has determined that the method of billing, whether per sales lead or a flat monthly fee, does not affect the taxability. Even where a sales lead generator's service is combined with Web site advertising or space, the true object of the overall service remains the provision of sales leads.

Shed and Gazebo Installation — A taxpayer inquired whether charges to install a shed or gazebo are subject to sales or use tax.

The Division responded that the Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to

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tax. N.J.S.A. 54:32B-3(b)(4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property on real property is also subject to tax. N.J.S.A. 54:32B-3(b)(4). A “capital improvement” occurs when tangible personal property is permanently affixed to real property (land or buildings) and becomes a permanent part of the real property. To qualify as a capital improvement, the installation must increase the capital value of the property or significantly increase the useful life of the property. If the work performed on the real property results in an exempt capital improvement, the installer does not collect sales tax on the labor portion of the bill, provided the property owner provides the installer with a properly completed Certificate of Exempt Capital Improvement (Form ST-8).

Thus, charges to install sheds and gazebos are subject to tax if they are not permanently attached to the real property as the statute requires. An exempt capital improvement would result if the shed or gazebo is permanently attached to the real property (e.g., secured to cement footings).

Shipping Merchandise Via New Jersey to a Nonresident Member of the Military Stationed Overseas

— A taxpayer inquired about the following scenario:

A taxpayer is a member of the military stationed overseas whose home of record is not New Jersey. The taxpayer purchased a computer over the Internet but the seller of the computer will not ship to an Army Post Office (APO) address. The seller informed the taxpayer that the computer will be shipped to

a company in New Jersey who will remail the tangible personal property to the taxpayer’s APO address. Since the computer is being shipped to New Jersey, the taxpayer inquired whether the seller should charge and collect New Jersey sales tax.

In general, registered businesses who sell taxable items or services must collect and remit New Jersey sales tax whenever such sales are completed by delivery of the item(s) to a New Jersey location. However, the sale of the property is not subject to New Jersey sales or use tax if the property is delivered by the seller to a freight forwarding company. Items that are normally taxable when sold and delivered to a New Jersey location are not subject to New Jersey sales tax when they are shipped to a destination outside this State. Freight forwarding companies act as intermediaries between shippers and the carriers which transport the goods by rail, motor, or water to the consignee. The shipment of taxable tangible personal property by a registered seller to a freight forwarding company is deemed to be an out-of-State shipment insofar as the seller is concerned. In this instance, an exemption certificate is not required in order to document an out-of-State sale. Instead, the seller should retain a copy of the invoice stating that the property was delivered to a freight forwarder for further shipment overseas as evidence of the exemption.

Unless the seller delivers the computer to a freight forwarding company the Sales and Use Tax Act does not contain an exemption for tangible personal property delivered to a location in this State.

Subsidized Employee Cafeteria

— A taxpayer inquired about the sales tax consequences when an employer

pays subsidies to a food service company to reduce the cost of food to its employees.

The Division responded that if a subsidy is paid by an employer *in addition* to a specified amount paid by the employees, both amounts are taxed as “receipts from the sale of prepared food.” N.J.S.A. 54:32B-3(c)(1); N.J.A.C. 18:24-12.6(d). For example, an employer pays \$0.50 to a caterer for each sale of prepared food to its employees. The employees will pay any amount due which exceeds the \$0.50 paid by the employer.

If the amount is paid as a “management fee” (guarantee of profit or cost reimbursement made by the employer), the fee is not subject to tax where a reasonable charge is made to the employee for the prepared food.

Terminaling Service — A taxpayer inquired about the taxability of a charge for a “terminaling service” which is described as the storage of a customer’s fuel inventory in a tank. Customers can drive up to a terminal and withdraw from their inventory and load stored fuel into their truck for delivery to a gas station.

The New Jersey Sales and Use Tax Act states that storing all tangible personal property not held for sale in the regular course of business and furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage is subject to sales tax. N.J.S.A. 54:32B-3(b)(3). “Space for storage” means secure areas, such as rooms, units, compartments or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free

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access within reasonable business hours, or upon reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hanger. N.J.S.A. 54:32B-3(b)(3). For more information on storage see publication [ANJ-26](#), *Space for Storage*. The storage of goods held as inventory is not taxable. N.J.S.A. 54:32B-3(b)(3). Therefore, a charge for a “terminaling service” as described above is not subject to sales tax because it involves the storage of inventory that will be sold in the regular course of business. The customer should issue the seller a properly completed resale certificate to document that the terminaling service is not subject to sales tax. □

In Our Courts

Corporation Business Tax

Entire Net Income – *International Business Machines Corporation & Crestron Electronics, Inc. v. Director, Division of Taxation*, decided January 26, 2011; Tax Court Nos. 011630-2008 and 011795-2009.

At issue is whether a corporation’s entire net income includes Internal Revenue Code (IRC) §114 extraterritorial income during the tax years 2002–2005. In 2000, IRC §114 was enacted to provide that extraterritorial income was not included in gross income for Federal income tax purposes. Extraterritorial income was defined by IRC §114 as “gross income of the taxpayer attributable to foreign trading gross receipts.” Under Federal law, both plaintiffs first reported their extraterritorial income on Line 1 of their Federal

returns (Form 1120). Thereafter, the extraterritorial income was excluded pursuant to IRC §114(a) to arrive at taxable income before net operating loss deduction and special deductions (Line 28 of Federal Form 1120).

In calculating New Jersey entire net income, the Division determined that IRC §114 income was not excludable because income from sources outside the United States that was not included in Federal taxable income must be added back to Federal taxable income to calculate the corporation’s entire net income. N.J.S.A. 54:10A-4(k) defined entire net income as follows:

“Entire net income” shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

For the purpose of this act, the amount of a taxpayer’s entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report ... to the United States Treasury Department for the purpose of computing its Federal income tax.

This statute continues and thereafter states that the determination of entire net income shall be without the exclusion, deduction or credit of numerous items that are both additions and subtractions to Federal taxable income. These items are listed in N.J.S.A. 54:10A-4(k)(2)(A) through

(J). However, the extraterritorial income exclusion from Federal taxable income is not contained therein as an adjustment.

Interpreting the plain meaning of the statute, the Court determined that the broad definition of entire net income in the statute’s first paragraph is limited by the second paragraph. If the first paragraph stood alone, then the Court noted that extraterritorial income would be included in entire net income and the Division would prevail. However, the first paragraph must be read in conjunction with the second paragraph that couples entire net income under the Corporation Business Tax Act with Line 28 of Federal Form 1120, “taxable income before net operating loss deduction and special deductions.” Therefore, the starting point is Line 28, which is then adjusted for items that are detailed in N.J.S.A. §54:10A-4(k)(2)(A) through (J) to arrive at entire net income. As extraterritorial income was not included as an adjustment, the Court concluded that extraterritorial income was therefore not included in entire net income for corporation business tax purposes. The Court noted that the Legislature could have amended the statute.

Untimely Refund Claim – *General Motors Acceptance Corporation v. Director, Division of Taxation*, decided April 1, 2011; Docket No. A-3505-09T3.

On September 14, 2001, General Motors Acceptance Corporation (GMAC) filed its 2000 corporation business tax return and paid the tax due. On the return, GMAC mistakenly reported a 50% dividends received deduction rather than a 100% dividends received deduction

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for dividends received from its 100% owned foreign subsidiary.

The Internal Revenue Service audited GMAC's 2000 consolidated return and determined that GMAC owed more tax due to Federal adjustments, unrelated to the dividends received deduction, for that year. When GMAC prepared the revenue agent report (RAR) disclosing to New Jersey the Federal adjustments, which resulted in its owing additional corporation business tax, GMAC discovered the mischaracterization of its percentage ownership in the subject foreign subsidiary at less than 80% rather than 100% and reporting a 50% dividends received deduction rather than a 100% dividends received deduction.

On November 10, 2005, GMAC filed a 2000 amended corporation business tax return incorporating the RAR and at the same time offsetting \$992,280 attributable to the additional dividends received deduction from the amount of additional tax due attributable to the RAR. On January 26, 2006, the Division issued a notice of assessment that denied the proposed offset.

GMAC claimed that it should be allowed to adjust its tax liability for the dividends received deduction because: (1) it is entitled to an offset under N.J.S.A. 54:49-16(b); (2) it is entitled to an offset under the doctrine of equitable recoupment; and (3) equity and justice permit an offset.

The Appellate Division determined that the refund claim was untimely under N.J.S.A. 54:49-14(a) because the November 10, 2005, amended return was beyond four years from the September 14, 2001, payment.

The Appellate Division found that where there is a Federal adjustment, N.J.S.A. 54:10A-13 grants the taxpayer an extension of four years to file a refund claim attributable to the Federal adjustment. GMAC did not suggest that the dividends received deduction was related to the Federal adjustment, and the overpayment occurred from GMAC's mistake in the percentage of ownership. Therefore, GMAC was not entitled to an N.J.S.A. 54:10A-13 extended four-year period to file a refund claim.

Addressing GMAC's offset claim pursuant to N.J.S.A. 54:49-16(b), the Appellate Division found that, in general, this statute permits an offset of a deficiency assessment for taxes erroneously or illegally collected or paid under mistake of fact or law in certain circumstances that did not exist in this case. This offset provision is applicable during the time period that a corporation business tax deficiency assessment may be made, which is generally four years under N.J.S.A. 54:49-6(b). The Appellate Division determined that the claim was beyond the four-year statute of limitations for assessments, the four-year extension of N.J.S.A. 54:10A-13 was inapplicable, and noted that the complaint was not filed during the time that a deficiency assessment of tax could be made. Therefore, N.J.S.A. 54:49-16(b) provided no basis to permit an offset. In addition, the Appellate Division noted that the Federal audit resulted in an increase of corporation business tax rather than a finding that the State erroneously or illegally collected taxes from GMAC.

The Appellate Division determined that GMAC was not entitled to an offset under the doctrine of equitable recoupment. There are three elements of equitable recoupment:

(1) there must be a single transaction; (2) there must be an identity of interest among parties; and (3) a need to balance the equities must exist. The first element of equitable recoupment was not satisfied because recoupment was not a result of the audit of GMAC and therefore did not result from the same transaction. As to the third element, the equities were neutral at best. The fact that GMAC was a sophisticated taxpayer and that statutes of limitations are associated with fairness weighed against GMAC.

In affirming the Tax Court's decision, the Appellate Division did not discuss other contentions presented by GMAC stating that they were without sufficient merit to warrant a discussion in a written opinion.

Untimely Refund, Doctrine of Equitable Recoupment – *General Motors Acceptance Corporation, a Delaware Corporation, v. Director, Division of Taxation*, Supreme Court of New Jersey No. C-38 September Term 2011, decided September 9, 2011.

The New Jersey Supreme Court denied General Motors Acceptance Corporation's (GMAC) petition for certification.

The Appellate Division, No. A-3505-09T3, decided April 1, 2011, affirmed the Tax Court decision, 26 NJ Tax 93 (2010), which granted the Director's summary judgment motion.

On September 14, 2001, GMAC filed its 2000 corporation business tax (CBT) return and paid the tax due. On the return, GMAC mistakenly reported a 50% dividends received deduction rather than a

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100% dividends received deduction for dividends received from its 100% owned foreign subsidiary.

The Internal Revenue Service audited GMAC's 2000 consolidated return and determined that GMAC owed more tax due to Federal adjustments, unrelated to the dividends received deduction, for the 2000 tax year. When GMAC prepared the revenue agent report (RAR) disclosing to New Jersey the Federal adjustments, which resulted in its owing additional CBT, GMAC discovered the mischaracterization of its percentage ownership in the subject foreign subsidiary at less than 80% rather than 100% and reporting a 50% dividends received deduction rather than a 100% dividends received deduction.

On November 10, 2005, GMAC filed a 2000 amended CBT return incorporating the RAR and at the same time offsetting the additional amount attributable to the additional dividends received deduction from the amount of additional tax due attributable to the RAR. On January 26, 2006, the Division issued a notice of assessment that denied the proposed offset.

GMAC claimed that it should be allowed to adjust its tax liability for the dividends received deduction because: (1) it is entitled to an offset under N.J.S.A. 54:49-16(b); (2) it is entitled to an offset under the doctrine of equitable recoupment; and (3) that equity and justice permit an offset.

The Appellate Division determined that the refund claim was untimely under N.J.S.A. 54:49-14(a) because the November 10, 2005, amended return was beyond four years from

the September 14, 2001, payment. The Appellate Division found that where there is a Federal adjustment, N.J.S.A. 54:10A-13 grants the taxpayer an extension of four years to file a refund claim attributable to the Federal adjustment. GMAC did not suggest that the dividends received deduction was related to the Federal adjustment and the overpayment occurred from GMAC's mistake in the percentage of ownership. Therefore, GMAC was not entitled to an extended four-year period to file a refund claim.

Addressing GMAC's offset claim pursuant to N.J.S.A. 54:49-16(b), the Appellate Division found that, in general, this statute permits an offset of a deficiency assessment for taxes erroneously or illegally collected or paid under mistake of fact or law in certain circumstances that did not exist in this case. This offset provision is applicable during the time period that a CBT deficiency tax assessment may be made, which is generally four years under N.J.S.A. 54:49-6(b). The Appellate Division determined that the claim was beyond the four-year statute of limitations for assessments, the four-year extension of N.J.S.A. 54:10A-13 was inapplicable, and noted that the complaint was not filed during the time that a deficiency assessment of tax could be made. Therefore, N.J.S.A. 54:49-16(b) provides no basis to permit an offset. In addition, the Appellate Division noted that the Federal audit resulted in an increase of CBT rather than a finding that the State erroneously or illegally collected taxes from GMAC.

The Appellate Division determined that GMAC was not entitled to an offset under the doctrine of equitable recoupment. There are three elements of equitable recoupment:

(1) there must be a single transaction, (2) there must be an identity of interest among parties, and (3) a need to balance the equities must exist. The first element of equitable recoupment was not satisfied because recoupment is not a result of the audit of GMAC and therefore did not result from the same transaction. As to the third element, the equities were neutral at best. The fact that GMAC was a sophisticated taxpayer and that statutes of limitations are associated with fairness weighed against GMAC.

Gross Income Tax

Nonbusiness Bad Debt – *Harlan W. Waksal v. Director, Division of Taxation*, Superior Court of New Jersey Appellate Division, Docket No. A-6062-09T4, decided October 31, 2011.

The Appellate Division decision affirmed the Tax Court decision, Docket No. 001191-2009 (2010), which affirmed the final assessment of the Director.

In January 2002 the taxpayer loaned money to his brother, who in turn signed a promissory note and agreed to repay the loan on or before January 31, 2004. The taxpayer's brother then defaulted on the loan. As a result, on the Federal individual income tax return the taxpayer reported the loan amount as a short-term capital loss. The taxpayer also reported the same amount as a loss from the sale, exchange, or other disposition of property on the 2004 New Jersey gross income tax return.

In the ruling, the Appellate Division held that the "worthless debt, although treated as a loss from the sale or exchange of a capital asset held for not more than one year..."

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under §166(d)(1)(b) of the Internal Revenue Code, does not fit the statutory rubric of “sale, exchange or other disposition of property” found in N.J.S.A. 54A:5-1(c).

Therefore, the taxpayer’s loss from the nonbusiness bad debt could not be used to offset other gains derived from the sale, exchange, or other disposition of property under N.J.S.A. 54A:5-1(c).

Local Property Tax

Farmland Assessment – *Atlantic Coast LEH, LLC, v. Township of Little Egg Harbor*; decided July 26, 2011; Tax Court.

This case concerns the issue of whether a remote twelve-acre predominantly vacant plot of land located in Little Egg Harbor Township qualifies for preferential reduced farm assessment under the Farmland Assessment Act of 1964. The property owner, Atlantic Coast LEH, LLC, pays an out-of-State beekeeper to maintain beehives on the property for the production of honey, wax, and other products. The Farmland Assessment Act defines agricultural use to include beekeeping (N.J.S.A. 54:4-23.3). However, there is a dual use to the property, as the owner also collects rent for an operating cell phone tower that occupies less than an acre of land but stretches approximately twenty-five stories into the sky.

In 2003, Atlantic Coast contacted Wilson’s Honey, LLC, located in upstate New York, to set up eight beehives on the subject property. The hives were fenced in with the cell tower but the bees foraged on blueberry bushes, clover, and knapweed scattered over the entire 12.24 acres that comprise the subject property.

From 2003 to present, Wilson’s Honey purchased products created from the bees for amounts that barely satisfied statutory gross sales requirements for farmland qualification. The property averaged \$535 for the two years preceding the tax years at issue. Wilson’s Honey paid Atlantic Coast at least \$550 per year for the apiary products. Atlantic Coast paid Wilson’s Honey annually for the care of the bees on the property. There was no evidence, however, how often Wilson’s employees traveled from New York to tend the bees and to collect their products.

Atlantic Coast applied for farmland assessment for the subject property for tax years 2006 through 2009, and each time the assessor denied the claim. For tax year 2006, the assessor determined that the area was less than five acres and that the land had not been devoted to agricultural use for the two years prior to 2006. For tax year 2007, the assessor determined that the gross sales from apiary products did not exceed \$500 dollars and that the principal use of the property was for a “radio station.” There is no evidence that a radio station ever operated on the property. In 2008, the assessor denied the property for the same reasons and the assessor’s denial for 2009 is not in the record. Atlantic Coast filed appeals for each year with the Ocean County Board of Taxation, which upheld the assessor’s determinations. The taxpayer then filed complaints with the Tax Court of New Jersey.

The municipality does not dispute that the subject property exceeds five acres. Also, the parties are in agreement that apiary activity took place. The municipality does not dispute the fact that the plaintiff has met the gross income requirements

for the subject property. The fact that the beekeeping was not profitable does not disqualify the subject property from farmland assessment. Finally, the municipality does not dispute that the entire twelve acres were used for apiary activity and Atlantic Coast’s beekeeping activity, by itself, satisfies the statutory requirement for farmland assessment. However, the problem is that the property is also devoted to the operation of a cell phone tower that generates income for the property owner.

The Tax Court of New Jersey noted the following decisions when reviewing this matter. In *Township of Wantage v. Rivlin Corp.*, 23 N.J. Tax 441, 446 (Tax 2007) the Court stated: “Where the entire parcel seeking farmland assessment qualification also was used for other purposes, the court must determine if the agricultural or horticultural use is the dominant use of the property.” If the use of the property is predominantly for a purpose other than farmland assessment, the property is not entitled to farmland assessment.

The dominant use test was first applied in *City of East Orange v. Township of Livingston*, 102 N.J. Super. 512 (Law Div. 1968), aff’d, 54 N.J. 96 (1969). Judge Handler concluded that there can be multiple, simultaneous uses of property; however, “depending upon the particular lands involved, one use tends to become dominant.” The Court further explained: “even though the agricultural use is ‘active’ in the literal sense...compliance with this single (gross sales) criterion does not render the water reserve as land devoted to agricultural use.”

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Several additional court cases were cited where the dominant use of the subject property was not intended for agricultural or horticultural use.

Atlantic Coast's history with the property reveals an intention to construct a cell tower for commercial use and represents a significant capital expenditure. Also, the operation of the cell phone tower dominates the beekeeping activity on the property. The 290-foot cell phone tower overrides the physical aspects of the property. Although beekeeping is being carried out, the cellular tower dwarfs the beehives. Because the apiary activities are subordinate to the taxpayer's nonagricultural exploitation of the property, the assessor correctly denied the plaintiff's right to farmland assessment for the years in question.

Sales and Use Tax

Books and Records – *Ellgen Landscape & Construction, Inc. v. Director, Division of Taxation*, decided June 17, 2011; Tax Court No. 011636-2008.

Ellgen Landscaping and Construction, Inc. is a retail garden center located in Bernardsville, New Jersey. It sells fruits, vegetables, and construction/landscaping materials and also provides landscaping services.

At issue is whether the taxpayer maintained adequate books and records and whether the Division's auditor erred in disregarding the taxpayer's records.

The auditor determined that the gross receipts on Ellgen's sales and use tax and corporation business tax returns did not match. In addition, the taxpayer acknowledged that its bank deposit receipts did not match

the amounts on either its sales and use tax or corporation business tax returns. The auditor therefore determined that a markup analysis was appropriate.

The taxpayer countered that the auditor used a markup analysis that deviates from what is normal or expected and that the auditor ignored Ellgen's annual summaries, improperly used sale prices instead of purchase prices when calculating use tax, arbitrarily categorized sales as taxable or nontaxable, used an inflated markup figure, and incorrectly allocated income to Ellgen's different lines of business.

In *Yilmaz, Inc. v. Director, Division of Taxation*, 22 N.J. Tax 204, 236 (Tax 2005), aff'd, 390 N.J. Super, 440 (App. Div. 2007) the taxpayer is charged with providing "cogent evidence that is definitive, positive and certain in quality and quantity to overcome the presumption" of the Director. "Naked assertions of the taxpayer, without supporting records or documentation, are insufficient to rebut the Director's presumption."

Although N.J.A.C. 18:24-2.4(a) states "where summary records are maintained... the seller may dispose of individual sales slips... or cash register tapes", the court in *Charley O's, Inc. v. Director, Division of Taxation*, 23 N.J. Tax 171, 187 (Tax 2006) found that, "if an auditor has reason to believe that a taxpayer's summary records are inaccurate, and no cash register tapes are available, the use of the markup analysis is appropriate."

Judge Bianco opined, "Accordingly, the court concludes that Ellgen failed to meet its burden since it did not provide any cogent evidence, in the form of cash register receipts,

purchase journals, general ledgers, or paid bills, and it did not provide documentation demonstrating that its two part-time workers were independent contractors, rather than employees. Although Ellgen provided the Director with summary records of cash receipts, the court is satisfied with the Director's determination that these records were unreliable thereby warranting a markup analysis. Likewise Ellgen's tax return, which contains a deduction labeled 'outside casual labor', is unsubstantiated and does not prove that Ellgen remitted withholdings."

Judge Bianco granted summary judgment in favor of the Director.

Charges for Transportation and Disposal of Septic Waste – *English Sewage Disposal, Inc. v. Director, Division of Taxation*, decided April 11, 2011; Docket No. 007870-2008.

The Tax Court granted the Director's motion for summary judgment, concluding that plaintiff's invoices for per-gallon charges to its customers, said to represent charges for the transportation and disposal of septic waste, are subject to sales tax and therefore not exempt under N.J.S.A. 54:32B-8.11.

The Court found that: (a) the transportation costs were not separately stated; (b) under the "predominant purpose test" the transportation is incidental to the service being rendered and the service for which the customer employed plaintiff to perform; i.e., pumping the septic tank, servicing the tank itself (though not mentioned in the opinion), and removal of septic waste from the premises; and (c) plaintiff is not excused by N.J.S.A. 54:49-11(b)

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from payment of penalty and interest on the assessment, as the advice rendered by the Division was issued to a completely separate entity, even though plaintiff was a successor to the entity to which the advice was rendered and the accountant was the same for both entities. Furthermore, copies of the letters requesting the Division's advice were unavailable, so there is no frame of reference for the basis of the Division's advice. □

In Our Legislature **Cigarette Tax**

Forfeiture of Contraband Tobacco Products and Cigarettes — See Tobacco Products Tax.

Corporation Business Tax
Single Sales Fraction Formula for Income Allocation — P.L. 2011, c.59, signed into law on April 28, 2011, and effective immediately, except section 2, which will apply to privilege periods beginning on or after January 1, 2012, modifies the formula used to determine the portion of the income of a corporation subject to tax by New Jersey from a three-factor formula to a single (sales) factor formula and establishes a specialized sales fraction formula for airlines that are subject to taxation.

Under the old law, New Jersey employed a formula that apportioned a share of a corporation's income to the State based on: (1) a weighted average of a corporation's property in the State over the corporation's total property, representing 25% of the apportionment; (2) a corporation's sales in the State over the corporation's total sales, representing 50% of the apportionment; and (3) the corporation's payroll in the State

over the corporation's total payroll, accounting for the remaining 25% of the apportionment.

Pursuant to the new law, this change is phased in over three years, commencing with privilege periods beginning on or after January 1, 2012, but before January 1, 2013. For that year, the sales fraction will account for 70% of the apportionment and the property and payroll fractions will each account for 15% of the apportionment. For privilege periods beginning on or after January 1, 2013, but before January 1, 2014, the sales fraction will increase to 90% and the property and payroll fractions will each account for 5% of the apportionment. For privilege periods beginning on or after January 1, 2014, the sales fraction will account for 100% of the apportionment.

The new law institutes a sales fraction for airlines determined as the ratio of an airline's revenue miles in this State divided by an airline's total revenue miles. Previously, the sales fraction for airlines was determined based on the ratio of departures from New Jersey to total departures, weighted as to cost and value of aircraft by type.

Research and Development Tax Credit — P.L. 2011, c.83, signed into law on June 30, 2011, effective immediately, and applicable to privilege periods beginning on or after January 1, 2012, removes a restriction on the application of the research and development tax credit. The credit had been limited to 50% of the liability otherwise due for the tax period.

The research and development tax credit remains equal to 10% of the increase in "qualified research expenses" (research performed by or for the taxpayer) in a tax year over

a base amount, plus 10% of the "basic research payments" (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. The new law does not affect the allowance of the credit.

The new law retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum and retains the Director's prerogative as to prioritization of corporation business tax credits.

Minimum Tax — P.L. 2011, c.84, signed into law on June 30, 2011, and effective immediately, decreases the minimum tax on New Jersey subchapter S corporations by 25% for taxable periods beginning on or after January 1, 2012, as follows:

New Jersey Gross Receipts	Minimum Tax*
Less than \$100,000	\$ 375.00
\$100,000 or more, but less than \$250,000	562.50
\$250,000 or more, but less than \$500,000	750.00
\$500,000 or more, but less than \$1,000,000	1,125.00
\$1,000,000 or more	1,500.00

*The minimum tax of New Jersey subchapter S corporations that are members of affiliated or controlled groups with total payrolls of \$5,000,000 or more will remain \$2,000 annually.

Gross Income Tax
Checkoff for Boys and Girls Clubs in New Jersey Fund — P.L. 2011, c.57, signed into law on April 20, 2011, effective immediately, and applicable to taxable years beginning on or after January 1, 2012, establishes the Boys and Girls Clubs in New Jersey Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns in support of New Jersey's Boys and Girls Clubs.

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Alternative Business Income or Loss Calculation — P.L. 2011, c.60, signed into law on April 28, 2011, effective immediately, and applicable to taxable years beginning on or after January 1, 2012, establishes an alternative calculation that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

Gains and losses derived from one or more of the following business-related categories of gross income may be netted: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. Thus, a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories of income to income that is not related to the taxpayer's conduct of the taxpayer's own business, including salaries and wages, disposition of property, and interest and dividends.

The law provides that net losses from business-related categories of income may be carried forward and applied against income in future taxable years. The law limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of

up to 20 taxable years following the year the net loss occurs.

The changes are phased in over five years beginning with tax year 2012.

Checkoff for NJ National Guard State Family Readiness Council Fund — P.L. 2011, c.117, signed into law on August 19, 2011, effective immediately, and applicable to tax years 2012 and after, establishes the NJ National Guard State Family Readiness Council Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns to support members of the New Jersey National Guard and their families in need of assistance.

Senior Gold Prescription Discount Program — P.L. 2011, c.131, signed into law on September 16, 2011, and effective immediately, requires the Division of Taxation to prominently display the eligibility requirements for and benefits available under the Senior Gold Prescription Discount Program in the gross income tax return instruction booklet for tax years 2011 and after.

Insurance Premiums Tax Surplus Lines — P.L. 2011, c.119, signed into law on August 19, 2011, and effective July 21, 2011, revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance. These revisions are intended to bring "the surplus lines law," P.L. 1960, c.32 (N.J.S.A. 17:22-6.40 et seq.), into compliance with the Federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), which was part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the NRRRA, the ability to share surplus lines insurance premium tax

revenue will be suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

A state that does not join such an agreement may collect 100% of the taxes due from insureds located in its state, otherwise known as "home-state insureds" (as detailed in the law). Accordingly, this bill authorizes the Commissioner of Banking and Insurance to enter into compacts or agreements with other states with respect to such collections.

Miscellaneous

Employee Leasing Companies — P.L. 2011, c.118, signed into law on August 19, 2011, and effective 12 months following enactment, makes various changes to several laws that affect the regulation and business operations of employee leasing companies, or professional employer organizations (PEOs).

Employee leasing companies are business entities that manage human resources, employee benefits, health insurance, and payroll and workers' compensation for small businesses. Companies contract with an employee leasing company to assist them with employee-related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims, allowing the client companies to concentrate on the operational aspects of their businesses. Employee leasing companies are not temporary employment agencies; employee leasing companies become "co-employers" of the employees of the businesses to which they provide services. Employee leasing companies are regulated

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by the Department of Labor and Workforce Development pursuant to P.L. 2001, c.260 (N.J.S.A. 34:8-67 et seq.).

Specifically, the New Jersey employee leasing company statute (1) establishes a limited registration process for certain small, out-of-State employee leasing companies; (2) makes several changes to the financial test for Department of Labor and Workforce Development registration of employee leasing companies; (3) allows for the electronic filing of compliance documents; and (4) clarifies certain responsibilities, rights, and liabilities of employee leasing companies, client companies, and covered employees, as well as a host of other provisions affecting these entities. The Act also supplements the Sales and Use Tax Act, P.L. 1966, c.32 (N.J.S.A. 54:32B-1 et seq.) to clarify and allocate the tax liabilities of client companies and employee leasing companies if the tax were to be applied prospectively to services provided by client companies or to services provided by employee leasing companies. Also, this bill similarly clarifies and allocates tax liabilities of a per-employee tax or payroll tax imposed on a client company or an employee leasing company. Lastly, the new law clarifies that a tax credit or economic benefit or incentive available to employers accrues to a client company employer with an agreement with an employee leasing company.

Moratorium on Imposition of Fees on Nonresidential Construction Projects — P.L. 2011, c.122, signed into law on August 24, 2011, and effective immediately, extends for two years, until July 1, 2013, the

moratorium on the imposition of fees on nonresidential construction projects.

The fees, known as Statewide non-residential development fees, were enacted as part of a revision of the Fair Housing Act, pursuant to P.L. 2008, c.46. A moratorium was placed on the imposition of the fees until July 1, 2010, pursuant to the Economic Stimulus Act of 2009, P.L. 2009, c.90, and extended again by this statute. Any monies paid during the period from July 1, 2010, to the present must be repaid. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

Uniform Application for Small Businesses Seeking Financial Assistance — P.L. 2011, c.123, signed into law on September 1, 2011, and effective immediately, requires the Department of State, in consultation with the New Jersey Economic Development Authority, to establish and maintain a program to assist small businesses in identifying financial assistance programs offered by any State agency for which the business may be eligible. A uniform application will be devised for the purpose of gathering basic operational and financial information from small businesses seeking assistance under this program, and any additional information as deemed necessary by the Department.

Exemption From Bulk Sale Notification Requirements — P.L. 2011, c.124, signed into law on September 14, 2011, effective immediately, and retroactive to August 1, 2007, exempts certain sales of real property from the bulk sale notification

requirements that are used to administer State taxes.

Under the bulk sales law, the purchaser of business assets must notify the Director of the sale at least 10 days before the transfer of goods or payment or the purchaser can become liable for taxes owed by the seller. The Director must respond within that 10-day timeframe. If the Director notifies the purchaser that the seller owes State taxes, the purchaser must escrow any sums owed to the State. If the purchaser fails to notify the Director, the purchaser can be held liable for any taxes of the seller. If the Director fails to respond to the notice within the allowed time, the sale can continue and the purchaser has no liability for the seller's taxes.

The Act provides an exemption from the bulk sale notification requirements for sales of a simple dwelling house, seasonal rental, or lease of real property if the seller, transferor, or assignor is an "individual," "estate," or "trust" for gross income tax purposes.

However, bulk sales law provisions still apply if the seller, transferor, or assignor is a business entity, including but not limited to a corporation or a partnership.

Multiple Taxes

Urban Transit Hub Tax Credit Act and the New Jersey Economic Stimulus Act of 2009 Expanded — P.L. 2011, c.89, signed into law on July 26, 2011, and effective immediately, expands the Urban Transit Hub Tax Credit Act (UTHTCA) and the New Jersey Economic Stimulus Act of 2009 (Stimulus Act) to include certain mixed-use projects as creditable investments and to change

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the manner in which the tax credits under the UTHTCA are treated by eligible businesses.

Currently, under the UTHTCA a business may receive tax credits of up to 100% of its qualified capital investment in a business facility that (1) is located in an urban transit hub (i.e., an “urban aid” municipality, served by a commuter rail station, in which at least 30% of real property value is exempt from property taxes); and (2) employs at least 250 persons at the facility. Annually, for 10 years, the business may apply a credit equal to 10% of the amount of the investment against corporation business tax, insurance premiums tax, or gross income tax liability. A tenant in these qualified business facilities may also be allowed credits if the tenant occupies space in the facility that proportionally represents at least \$17.5 million of the capital investment in the facility and employs at least 250 persons in the facility. For a business or a tenant to be eligible for the credit, the owner of the facility has to have made or acquired capital investments in the facility of not less than \$50 million.

Capital Investment

Under a separate but similar urban transit hub tax credit program enacted as part of the Stimulus Act, a developer could receive tax credits of up to 20% of its capital investment in a qualified residential project located in an urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

With the enactment of the new law, credits of up to 35% of an eligible applicant’s capital investment in a mixed-use project comprising both a qualified business facility and a

qualified residential project, neither of which by itself satisfies the total investment minimum of \$50 million, subject to certain restrictions as set forth in the Act, is allowed.

Carryforward Credits for Urban Transit Hub Tax Credit Recipients

UTHTCA recipients may now (1) carry forward the credits into no more than 20 subsequent tax accounting or privilege periods with a limit on the amount allowed in any fiscal year to \$150 million; and (2) increase from 20% to 35% the proportion of the cost of capital invested in a qualified residential project located within an urban transit hub that they can receive as a tax credit. The definition of “urban transit hub” now includes any rail spur located adjacent to or within a one mile radius surrounding the entrance to property for loading and unloading freight cars on trains.

Job Relocation Within the State No Longer a Factor

The New Jersey Economic Development Authority (EDA) can no longer consider the relocation of a job within the State as a factor in making its determination of whether a capital investment would yield a net positive benefit to the State, unless the business proposes to transfer existing jobs as part of a consolidation of business operations from two or more locations and municipalities. Previously, the EDA considered a job relocated within the State as a new job and therefore, creating a benefit.

Municipalities to Determine Percentage for Occupancy by Low- or Moderate-Income Households Within an Urban Transit Hub

Finally, for the purposes of mixed-use projects or qualified residential projects where a business receives an

urban transit hub tax credit, the amended bill allows eligible municipalities under the UTHTCA to determine the amount of the percentage, up to 20% of the total, of newly constructed residential units set aside for occupancy by low- or moderate-income households within an urban transit hub.

Tobacco Products Tax

Forfeiture of Contraband Tobacco Products and Cigarettes — P.L. 2011, c.80, signed into law on June 29, 2011, and effective immediately, amends the Tobacco Products Wholesale Sales and Use Tax Act, Cigarette Tax Act, and related criminal statutes. The new law supplements and makes a number of changes to P.L. 1990, c.39 (N.J.S.A. 54:40B-1, et seq.), and P.L. 1948, c.65 (N.J.S.A. 2C:64-1), respectively.

The law provides that all tobacco products subject to the tax imposed under P.L. 1990, c.39, on which the tax has not been paid as required found in any place in the State are declared to be, prima facie, contraband goods and may be seized by the Director, Division of Taxation, the Director’s agents or employees, or by any peace officer of the State, when so ordered by the Director, without a warrant. The Director may authorize the use for law enforcement purposes of any untaxed tobacco products forfeited.

In addition, the Director may order the return of any seized tobacco product where there is reason to believe, upon the presentation of satisfactory proof, that the owner has not willfully or intentionally evaded any tax imposed under P.L. 1990, c.39.

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Although the Director may order the destruction of any tobacco product, as an alternative to destruction the Director may resell any untaxed tobacco product to the manufacturer of that tobacco product, but such tobacco product shall be resold only for export or destruction.

All unstamped cigarettes forfeited to the State under this law will be destroyed. However, the Director may, prior to the destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such cigarettes in order to assist the Director in any investigation regarding such cigarettes.

The seizure of any unstamped or illegally stamped cigarettes or any other contraband cigarettes under the provisions of the law does not relieve any person from a fine, imprisonment, or other penalty for violation of any of the provisions of the law. The Director, the Director’s agents or employees, or any peace officer of the State, when directed to do so, will not be responsible in any court for the seizure or the confiscation of unstamped or illegally stamped packages of cigarettes. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2011 (January 1, 2011 – December 31, 2011) and tax year 2012 (January 1, 2012 – December 31, 2012) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2011](#) [2012](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2011](#) [2012](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2011](#) [2012](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement Hotline.....1-800-882-6597
- Earned Income Tax Credit Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System1-877-829-2866
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax Refunds 609-633-8878
- Public Utility Tax..... 609-633-0013

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Homestead Benefits for 2009 on the Way

Most New Jersey homeowners who were eligible and filed for a 2009 homestead benefit received their 2009 benefit as a one-time credit on their May 2011 property tax bill. Revised property tax bills reflecting the credit amount were sent to eligible homeowners in April. Benefits were issued in the form of a check (or direct deposit) during the last week in April 2011 to those homeowners whose principal residence was a unit in a co-op or continuing care retirement community or who indicated when filing that they no longer owned the property that was their principal residence on October 1, 2009. Under the terms of the State Budget, no benefits will be issued to tenants.

To be eligible for a 2009 homestead benefit an applicant must be a New Jersey resident who owned and occupied their principal residence in the State on October 1, 2009, paid property taxes on that home, and who had \$75,000 or less in New Jersey gross income for 2009 (\$150,000 or less for homeowners age 65 or older and/or disabled).

Benefit amounts vary based on the applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or eligible to claim an exemption as blind or disabled for tax year 2009.

The State Budget required that the 2009 benefit be based on 2006 property taxes. For purposes of calculating the 2009 benefit, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2009, are being used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006.

In addition, 2009 benefit amounts, when annualized, will be no greater than those paid for 2006 (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or marital status, or an increase in percentage of ownership.

Homeowners can find out the status of their homestead benefit online at www.state.nj.us/treasury/taxation/homestead/statusinq.shtml

Additional information about the Homestead Benefit Program, including information on how the benefit is calculated, is available at: www.state.nj.us/treasury/taxation/2009homesteadinfo.shtml

Applications for the 2010 Homestead Benefit Program are expected to be mailed in June and homeowners will apply either online or by phone. □

Office of the Taxpayer Advocate Introduced

New Jersey Treasurer Andrew Sidamon-Eristoff recently announced the creation of the Office of the Taxpayer Advocate (OTA) within the Division of Taxation.

One of the goals of the OTA is more predictable treatment under the tax laws which, according to Governor Chris Christie, “is vital to restoring New Jersey’s image as a home for business growth and investment.” The Governor believes that with the OTA, “we can both bring in revenue and improve New Jersey’s economic climate if we make it less difficult and stressful for taxpayers to navigate the tax system.”

Treasurer Sidamon-Eristoff said that the role of the Taxpayer Advocate is to simplify New Jersey’s tax regulations for the public and to provide help in navigating the tax code. “The No. 1 mission of this experienced team is to resolve tax problems before they cause lasting economic harm. Simplifying tax compliance is a proven way to increase revenue and fairness,” Sidamon-Eristoff said.

Michael J. Bryan, Acting Director of the Division of Taxation, has named Sheri Silverstein as the Taxpayer Advocate. According to Bryan, the role of the OTA will be twofold: to assist taxpayers with State tax problems that, despite their good faith efforts, they have not been able to resolve; and to identify and find ways to resolve systemic problems that affect multiple taxpayers.

The OTA will help taxpayers understand their rights and responsibilities

under the law and help them navigate through the Division so that the right result is reached for both sides.

The OTA is not intended as a substitute for, or to circumvent or replace, established procedures or the formal appeal process. It is only when those procedures don’t work properly that the OTA can intercede. Taxpayers who have tried to resolve their tax problem with the Division on their own but have not been successful can ask the OTA to intercede on their behalf. The OTA will work with appropriate Division personnel and the taxpayer (or their representative) to resolve issues as quickly as possible.

Initially, the OTA will only be assisting taxpayers with problems involving individual gross income tax. The plan is to expand to other tax types as resources become available.

Ms. Silverstein, who has been with the Division for more than 24 years, started her career in Regulatory Services specializing in gross income tax issues. Most recently, she was the Chief of the Division’s Information and Publications Branch. She earned a Bachelor of Arts degree in Business from Rutgers College and a Juris Doctor degree from Rutgers School of Law.

Additional information about the Office of the Taxpayer Advocate, including their case acceptance guidelines, can be found on the Division’s Web site at:

www.taxpayeradvocate.nj.gov

The Office of the Taxpayer Advocate can be contacted via e-mail at: nj.taxpayeradvocate@treas.state.nj.us □

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
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<i>Criminal Investigation</i>	Lee Roach
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LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for non-filing or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross-petition with County Tax Board or counterclaim with State Tax Court.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction

recipient's illness or medical problem prevented the required March 1 filing.

- Extended deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling or late filing Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled person, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On January 5, 2011, a special agent from the Office of Criminal Investigation (OCI) arrested Anthony Howlen of Beverly, New Jersey, for possession of contraband cigarettes. Based on information from the Trenton Police Department, Howlen was operating from a business on North Broad Street in Trenton. Howlen had four outstanding warrants

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with bail of \$2,005 on non-OCI related issues. Charges for possession and sale of contraband cigarettes resulted in a \$20,000 bail (no 10%).

- On January 10, 2011, the Office of Criminal Investigation (OCI) conducted an inspection of Milagro Grocery, of Irvington, New Jersey, where 7.8 cartons of counterfeit New Jersey-stamped cigarettes and a total of \$1,935 in U.S. currency were seized by OCI. Fredys Rodriguez, t/a Milagro Grocery, was also selling loose cigarettes, which he admitted to buying from an unknown/unidentified male subject who came to his store offering the product. Charges for possession of contraband, no licenses, no invoices, and illegal transactions were filed in Irvington Municipal Court. On February 22, 2011, Rodriguez pled guilty to possession of untaxed cigarettes. The Court imposed a total of \$408 in fines, fees, and costs. The Court forfeited to the State for deposit into the Law Enforcement Forfeiture Fund the \$1,935 seized by OCI.
- On January 14, 2011, Rebecca Cirillo appeared before Judge Richard W. English in Monmouth County Superior Court where she was sentenced to five years for one count of second-degree theft by deception and three years for three counts of third-degree filing of fraudulent returns for tax years 2005, 2006, and 2007. These sentences are to be served concurrently. Cirillo used her position as bookkeeper to embezzle money from her employer, Ansoerge Unlimited, Inc., by writing checks to herself or to "cash." She then

attempted to cover this up by making false entries into QuickBooks, the accounting system used by Ansoerge Unlimited, Inc.

- On February 3, 2011, Ashok C. Patel, on behalf of Cream Ridge Liquors, pled guilty to one count of possession of untaxed goods in Upper Freehold Township Municipal Court. The Court imposed a total of \$658 in fines, fees, and costs. The Court forfeited 3,192 units of untaxed tobacco products to the State. This case resulted from a joint operation with the Office of Criminal Investigation and the Pennsylvania Department of Revenue's Office of Criminal Tax Investigations, where Pennsylvania-based businesses were subject to search warrants and records identified New Jersey customers who did not pay the tobacco products wholesale sales and use tax on the purchases.
- On February 14, 2011, in Camden County Superior Court, James Gillespie, owner of Wellness Enterprises Inc., t/a Excel Medical Transportation Service, pled guilty to second-degree misapplication of entrusted funds and third-degree failure to remit payroll taxes. Gillespie also signed a consent judgment to pay restitution in the amount of \$582,740.36, including the sum of \$200,205.14 payable to the State. Gillespie's sentencing is scheduled for June 3, 2011.
- On February 14, 2011, in Camden County Superior Court, Susan Gillespie, officer of record for EZ, Inc., d/b/a Big Dog Lawn Care, pled guilty to third-degree failure to remit sales and use tax and signed a consent judgment to pay restitution in the amount of \$40,072.26 to the State. Gillespie entered into the Pretrial Intervention Program and agreed to make monthly payments of \$400.
- On February 17, 2011, in Somerset County, Judge Robert B. Reed sentenced Eric Eugene Criss (a.k.a. Tariq Samaad), of East Orange, Essex County; Trezmyynn Emond Criss, of Phillipsburg, Warren County; and Tia-Staucia Estee (Criss) Perrin, of Allentown and Reading, Pennsylvania. Previously, on January 28, 2011, Judge Reed sentenced codefendants Tonijah Emanuel Criss, of Phillipsburg, Warren County; and Tihee Jabbar Brisbane, of Whippany, Morris County, in the same case.

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NY/NJ Cooperative Interstate Tax Program

The 1986 Reciprocal Agreement between the State of New Jersey and the State of New York providing Cooperative Tax Administration has ended. As a result, New Jersey vendors participating in the program will no longer file ST-20/21 returns to report New York sales tax, and New York participants will no longer file ST-100.4/101.4/809.4/810.4 forms to report New Jersey sales and use taxes. For more information see:

New Jersey-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf

New York State-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfony.pdf



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Judge Reed sentenced Eric Criss to two consecutive 10-year terms in State prison with five years per term to be served without eligibility for parole for his convictions of second-degree racketeering and second-degree leader of organized crime. Criss was also sentenced to four years, to be served concurrently, for third-degree failure to file income tax return. The actual time he will serve before he is eligible for parole is 10 years. Judge Reed also imposed a fine of \$100,000, the forfeiture of certain assets held by the defendant, and a two-year loss of driving privileges in New Jersey to begin after completion of his sentence.

According to Somerset County Prosecutor, Geoffrey D. Soriano, the 407-count indictment against Eric Criss and the codefendants represented the largest indictment in Somerset County. Soriano

said it was important for law enforcement to target, arrest, and prosecute these defendants because “among other things, these economic crimes impact a large segment of society with the resultant increase in operating costs for banks and the corresponding increase in banking fees for all account holders and bank customers.”

The following law enforcement agencies assisted the Somerset County Prosecutor’s Office during the investigation and prosecution of this case: the Federal Bureau of Investigation, the United States Secret Service, the Office of Criminal Investigation, Pennsylvania State Police, Hunterdon County Prosecutor’s Office, Middlesex County Prosecutor’s Office, Ocean County Prosecutor’s Office, Warren County Prosecutor’s Office, Bedminster Township Police Department, Clark Police Department, Elizabeth Police Department, Phillipsburg Police Department, and Mt. Kisco, New York, Police Department.

contraband cigarettes and untaxed liquor, who had been arrested and charged six times previously by the Office of Criminal Investigation. As a result, the subjects have all been indicted on various contraband cigarette and money laundering counts.

At trial, Mirosław Sapinski pled guilty to second-degree conspiracy and received a sentence of three years in State prison. Sapinski agreed to forfeit currency and his vehicle that were seized. Grayzna Sapinski was issued pretrial intervention as part of her plea agreement and she also forfeited the cash and vehicle that were seized.

Also at trial, Stanisław Zbronski pled guilty to third-degree conspiracy and spent 295 days in Passaic County Jail. Zbronski was deported to Poland due to his immigration status. Waclaw Jeziorski was issued pretrial intervention and was ordered to perform 100 hours of community service.

This case was prosecuted by the Passaic County Prosecutor’s Office, and for the first time the Racketeer Influenced and Corrupt Organization (RICO) Act was applied to individuals involved in contraband cigarette activity.

- On March 4, 2011, Grayzna Sapinski, Stanisław Zbronski, and Waclaw Jeziorski pled guilty for their involvement in the case of Mirosław Sapinski, et al. The case began with the arrest of Mirosław and Grayzna Sapinski on May 14, 2010, when Virginia-stamped cigarettes, a vehicle, and a large amount of cash were seized from their residence. On September 9, 2010, a Passaic County Grand Jury indicted all four subjects. The investigation was a long-term operation that identified Sapinski, a persistent offender dealing in

- The Office of Criminal Investigation’s Special Frauds Unit prevented the issuance of 1,668 fraudulent refund claims totaling \$3,213,854 for the current fiscal year. In addition, OCI issued assessments based on refunds found to be fraudulently obtained.

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2011 – December 31, 2011, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%



criminal enforcement - from pg. 5

- The Office of Criminal Investigation (OCI) has been operating a mini-task force led by an OCI investigator along with the City of Elizabeth Police Department. Their actions have resulted in 13 arrests, tens of thousands of dollars in cash seizures, and numerous cartons of counterfeit-stamped cigarettes and untaxed tobacco products being seized for failure to pay State sales taxes on the products or failing to have a legitimate license to sell tobacco products. □

Tax Briefs

Corporation Business Tax

Qualifying Therapeutic Discovery Project Grants — The Division has received numerous inquiries related to qualifying grants awarded under P.L. 111-148 Section 9023, Qualifying Therapeutic Discovery Project Credit (QTDP), in lieu of the tax credit under the same Section. Taxpayers specifically asked whether the grant would be excluded from the income of a corporation for New Jersey corporation business tax purposes.

Section 9023 of P.L. 111-148, effective May 23, 2010, added Section 48D to the Internal Revenue Code (IRC). IRC Section 48D(f)

(3) provides that a grant made under Section 9023(e) of the Patient Protection and Affordable Care Act (P.L. 111-148) will not be includible in the gross income of the taxpayer. Where the grants are used for an expenditure related to property of a character subject to an allowance for depreciation, the basis of the property must be reduced by the amount of the grant. IRC Section 48D(e)(9) provides for a denial of the double benefit. Furthermore, allowable deductions, including R&D expenses, are to be reduced by the amount of the grant. The QTDP also has recapture provisions where the grant received is either in excess of the qualified investment or is no longer a qualified investment.

Therefore, for New Jersey purposes, assuming the taxpayer received these QTDP grants for qualified projects, the grant will not be reportable as income because New Jersey uses Line 28 of Federal Form 1120 as the starting point for taxable income. N.J.S.A. 54:10A-4(k). Where the taxpayer took the grant, the corporation will be required to report the reduced expenses claimed for Federal purposes and the reduced Federal basis of the property for New Jersey purposes. N.J.S.A. 54:10A-4(k). Any amount triggering the recapture provisions in IRC Section 48D will

be taxable for New Jersey corporation business tax purposes.

The QTDP credit itself is not available on the Corporation Business Tax Return, Form CBT-100, since New Jersey does not recognize the credit.

Gross Income Tax

IRC Section 1035 Exchanges — A taxpayer inquired whether New Jersey follows the Federal income tax treatment of income that is excluded under Section 1035 of the Internal Revenue Code. IRC Section 1035 allows the movement of amounts from certain financial products to certain other financial products without an income tax consequence.

More specifically, a Section 1035 exchange allows “nonqualified” monies from an annuity to be moved to another annuity, from a life insurance policy to another life insurance policy, or from a life insurance policy to an annuity contract. However, an exchange from an annuity to a life insurance policy is *not* a Section 1035 exchange. Therefore, the transaction may have tax consequences for Federal income tax purposes and for New Jersey gross income tax purposes.

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “[Auctions](#).” Select the name of the business for details about that auction.

Enforcement Summary Statistics Fourth Quarter 2010

Following is a summary of enforcement actions for the quarter ending December 31, 2010.

	Number	Amount
• Bank Levies	1,080	\$ 5,180,614
• Certificates of Debt	3,781	64,538,506
• Seizures	90	847,014
• Auctions	3	30,734



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For New Jersey gross income tax purposes, the method of accounting and the basis of property must be the same as for Federal income tax purposes. N.J.S.A. 54A: 5-1(c) also provides that net gains or net income do not include transactions to the extent to which nonrecognition is allowed for Federal income tax purposes. Therefore, for exchanges such as those described above, the taxpayer is not required to include in New Jersey taxable income any gains or income to the extent that nonrecognition is allowed for Federal income tax purposes.

Keogh Plan Contributions Made by a Sole Proprietorship — A taxpayer inquired about the New Jersey gross income tax treatment of contributions to a Keogh Plan made by a sole proprietorship where the business has no “employees.”

New Jersey law allows only a few deductions, such as for exemptions, certain medical expenses, alimony

and separate maintenance payments, property taxes (or rent constituting property taxes) paid on a homestead, and qualified conservation contributions. Generally, deductions that are adjustments on the Federal return, such as the Federal adjustments for moving expenses, IRA contributions, and Keogh Plan contributions, are *not* deductible for gross income tax purposes.

Consequently, contributions to a Keogh Plan made by a sole proprietorship are currently taxable under New Jersey law, and the business owner’s contributions for his or her own Keogh Plan are not deductible as ordinary business expenses. For more information see “[Exemptions and Deductions](#)” in the instructions for Form NJ-1040.

Tax on Gain From Sale of Real Property — The Division has received inquiries about whether or not New Jersey imposes an “exit tax.” There is no tax imposed simply because an owner of New Jersey real property has moved or is moving out

of New Jersey; rather, such an owner may be subject to gross income tax if the New Jersey real property is sold at a gain.

As a result of P.L. 2004, c.55 (N.J.S.A. 54A:8-8 et seq.), effective August 1, 2004, New Jersey requires “nonresidents” who are individuals, estates, or trusts to pay an estimated tax as withholding on the income from the sale of New Jersey real property. The estimated tax withholding requirement is an enforcement tool to enable the Division to collect tax from nonresident sellers and is imposed on the sale of New Jersey real property when the deed is recorded. It is simply another withholding procedure to ensure payment of a possible tax liability. Again, it is not a tax for leaving the State. Therefore, it is a misnomer to describe the nonresident estimated tax requirement as an exit tax.

The Division has also taken the position that for the purposes of the law, a nonresident includes a seller who is simultaneously moving out of New Jersey at the time of closing. Without this withholding procedure the State would have considerable difficulty collecting tax from nonresidents. It should be noted that both residents and nonresidents are subject to the same gross income tax on gain from the sale of New Jersey real property, subject to certain exemptions and exclusions.

Litter Control Fee Nexus for Requirement to Pay Litter Control Fee — A business located outside New Jersey inquired about the nexus criteria used for determining whether a business is required to pay the litter control fee. More specifically, the business

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inquired whether having sales people working in New Jersey would, by itself, be sufficient nexus to require payment of the fee.

The litter control fee is imposed by N.J.S.A. 13:1E-216.4a. The fee imposition sentence begins as follows:

There is imposed upon each person engaged in business in the State as a manufacturer, wholesaler, or distributor of litter-generating products a user fee of 3/100 of 1% (.0003) on sales of those products within the State, and each person engaged in business in the State as a retailer of litter-generating products a user fee of 2.25/100 of 1% (.000225) on sales of those products within the State, except any retailer with less than \$500,000.00 in annual retail sales of litter-generating products is exempt....

The litter control fee regulations, N.J.A.C. 18:38-1.3, provide a pertinent definition as follows:

“Engaged in business in the State” means the participation in any commercial activities in New Jersey with the object of gain, benefit or advantage to the feepayer or to another person or class, directly or indirectly.

The Division explained that the nexus criteria provided in the pertinent laws are broad. Therefore, if a business located outside New Jersey has sales agents working in New Jersey, the business has nexus and is required to pay the litter control fee, which is imposed on sales of litter-generating products within or into New Jersey.

Sales and Use Tax

Rental of Storage Units to Tenants by Apartment Complex — A taxpayer inquired whether an apartment complex is considered “engaged in the business” of furnishing space for storage if they only rent storage units to tenants.

The Division responded that effective October 1, 2006, the Sales and Use Tax Act was amended to impose tax on the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage. N.J.S.A. 54:32B-3(b)(3). “Space for storage” means secure areas, such as rooms, units, compartments, or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free access within reasonable business hours, or upon reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hangar.

The phrase “... by a person engaged in the business of furnishing space for such storage” means that the seller of the storage space must actually be in the business of furnishing space for such storage. Since the apartment only rents storage space to tenants, the apartment is not “engaged in the business” of furnishing space for storage as N.J.S.A. 54:32B-3(b)(3) requires. Thus, charges to a tenant to rent a storage unit in the apartment complex are not subject to tax as it is a charge which is incidental to the lease or ownership of real property.

However, if members of the public can rent space for storage at the apartment complex without being

a tenant at the complex, then the apartment complex owner is deemed to be “engaged in the business,” and the charge for the rental of storage space is subject to tax for both tenants and nontenants of the apartment building.

Sale of Wig to Member of Particular Religious Community — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to the sale of a wig to a member of a particular religious community.

The Division responded that the Sales and Use Tax Act contains an exemption for “clothing,” for human use, which means all human-wearing apparel suitable for general use. N.J.S.A. 54:32B-8.4. However, the exemption does not apply to clothing accessories. “Clothing accessories” means incidental items worn on the person or in conjunction with clothing. N.J.S.A. 54:32B-8.4; N.J.A.C. 18:24-6.2. Wigs are considered clothing accessories and thus are subject to tax. N.J.S.A. 54:32B-3(a). □

In Our Courts

Gross Income Tax

S Corporation Shareholder Deductions – *Schulmann, Daniel et al. v. Director, Division of Taxation*, decided November 9, 2010; Tax Court Docket No. 007221-2005.

Daniel Schulmann, known as Tiger Schulmann, owns, operates, and franchises karate schools. Schulmann is a 100% shareholder in some of his karate schools and a controlling shareholder in all of the schools. Schulmann encouraged the instructors at his schools to open new schools and thereupon Schulmann

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would pay these instructors a commission or referral fee for operating a Tiger Schulmann Karate School. Schulmann would place all the income he received from his karate schools as either a 100% shareholder or controlling shareholder into a bank account from which he would write checks for commissions/referral fees to the instructors who opened new schools.

On his New Jersey gross income tax returns for tax years 2000–2002, Schulmann took the deductions for commissions/referral fees that he made to individuals who ran his karate schools as a deduction to net pro rata share of S corporation income. The auditor had denied the losses since they were not valid expenses of an S corporation.

Judge Narayanan stated:

For each tax year 2000 to 2002, the Director issued a notice of deficiency for GIT against Schulmann denying an offset of the commissions against the passed through S corporation income. The Director explained that the commissions “paid by Schulmann to the various Karate schools” were “[p]ersonal expenses” and hence “not deductible.” An offset was denied because “[a]lthough the expenses are related from the S Corporations, they were not incurred by the S corporation.” The denial of this deduction resulted in an increase to Schulmann’s passed through pro-rata share of S corporation income. This in turn led to an assessment of additional GIT (plus interest and penalties).

After an administrative conference, the Director issued a final determination upholding the audit. The Director reasoned that a deduction for commissions would ordinarily constitute an acceptable corporate business expense however, since they were paid by Schulmann and not the S corporations, such a deduction could not be used by Schulmann to offset the passed through S corporation income. Having made a business decision to choose a corporate form of business undertaking, a taxpayer could not avoid the corporate form when the same resulted in unfavorable tax consequences.

Thus, the issue before the court is whether Schulmann’s payment of commissions from his pro-rata share of S corporation income from the various karate schools, allows him to offset or reduce such income because the commissions were the contractual obligations of the corporate school/UAK/TSK. Schulmann contends he must be allowed to do so because (a) he is a 100% shareholder of UAK/TSK, thus, he and the corporation are one and the same, or (b) he made the payments on behalf of the corporate entities, thus, they qualify

as business expenses, entitled to a deduction.

Judge Narayanan stated in her decision that Schulmann could not take an S corporation deduction for the commission/referral fees because S corporations and partnerships are different entities. While partners are taxed as if they are sole proprietors, an S corporation has a separate and distinct legal identity. Therefore, an expense that may be allowed for a partner in a partnership may not be allowed for a shareholder in an S corporation. If Schulmann were to take a deduction for the commissions/referral fee payments in the category net profits from business, then net pro rata share of S corporation income could not be reduced due to the disallowance of intercategory netting.

The New Jersey Gross Income Tax Act is not patterned after the Internal Revenue Code (IRC) and deductions allowable Federally are not automatically allowable for New Jersey gross income tax purposes. Even if the Federal income tax principles on ordinary and necessary business expenses as mentioned in IRC 1366 were applicable to the Gross Income Tax Act, a deduction for commission/referral fees is not allowed at the individual level; and in this case Judge Narayanan stated:

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Schulmann did not have a business or sole proprietorship which is separate or independent from that of the karate schools.... Rather he seeks (to) ignore the corporate form of business specifically undertaken to operate the karate schools, and in order to justify a deduction under N.J.S.A. 54A:5-1(b), have this court treat those corporate schools as his sole proprietorship. This result is impermissible.

Sales and Use Tax

Justiciable Controversy – *Labor Ready Northeast, Inc. v. Director, Division of Taxation*, decided January 4, 2011; Tax Court Docket No. 000359-2010.

The Tax Court denied the plaintiff's motion for summary judgment and the Director's cross-motion. The Court found that declaratory relief is appropriate because the Director's notice created a justiciable controversy between the parties. However, the Court found that such relief was inappropriate in this case because material facts need to be established as to the nature of Labor

Ready's business activities after the 2008 calendar year.

Labor Ready moved for summary judgment seeking declaratory relief from the Director's notice that Labor Ready's business activities would generally be subject to sales and use tax unless Labor Ready received sales tax exemption certificates or the services were nontaxable or nonenumerated. Labor Ready claimed it provides temporary labor service, which is not an enumerated category of service subject to sales and use tax. The Director opposed and cross-moved for summary judgment on grounds that: (a) the complaint was premature since the Director has neither audited nor issued a final appealable determination against Labor Ready; (b) if the notice to Labor Ready is deemed a determination by the Director, then Labor Ready's complaint is untimely since it was not filed within 90 days of the date of the notice; (c) the facts of Labor Ready's business activities need to be fully established, therefore a summary judgment in its favor is inappropriate; and (d) based upon facts gathered in a prior litigation on an identical issue, Labor Ready provides taxable services, therefore

the Director's summary judgment motion should be granted.

Ultimately, the Court ruled that the need to establish material facts was overriding and the matter will go to trial.

Lack of Urban Enterprise Zone Certification – *River Front Recycling and Aggregate, LLC v. Director, Division of Taxation*, decided December 16, 2010; Tax Court Docket No. 001393-2009.

The Tax Court granted the Director's motion for summary judgment and denied the plaintiff's cross-motion. The Director's refund denial was upheld.

Plaintiff is located in an urban enterprise zone. When applying for a Certificate of Authority to collect sales and use tax at a reduced rate due to its location in the urban enterprise zone, the applicant mistakenly checked a box which indicated that it did not operate a retail location within the zone. The record contained a letter from the local urban enterprise zone office which indicated that the application was approved and was being forwarded to the Division for final approval and issuance of a Certificate of Authority for sales and use tax. Plaintiff never received a certificate and never made inquiries as to why it was not issued. Plaintiff subsequently filed another application and was issued a certificate as of the date of the correct application.

Plaintiff failed to file monthly urban enterprise zone returns (or any sales and use tax returns) for almost two years until the Division filed judgments and initiated collection on the business accounts and the personal

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2009 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2010 New Jersey resident income tax returns electronically. Under proposed regulations, any tax practitioner who reasonably expects to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

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accounts of the business principals. At that time, the principals paid the estimates, and in the months that followed, filed the missing reports. Plaintiff then filed a claim for refund on the basis of its claim that it was entitled to collect sales and use tax at the reduced rate for the periods at issue. The Division denied that portion of the refund claim, but did refund that portion of the tax paid on the estimated liability which exceeded the actual liability as filed.

Although Judge DeAlmeida found no dispute that plaintiff met the qualifications for urban enterprise zone certification, he was nonetheless unmoved by plaintiff's arguments that it substantially complied with the requirements of the Urban Enterprise Zone Act and the Sales and Use Tax Act under the facts of this case. The Judge rejected the substantial compliance argument with particular focus on the fact that plaintiff never filed and paid sales and use tax during the period in question and, although it was notified that its application was pending final approval, it never followed up and never received a Certificate of Authority for the period at issue. □

In Our Legislature

Casino Taxes and Fees

Division of Taxation to Administer and Collect Casino Taxes and Fees — P.L. 2011, c.19, signed into law on February 1, 2011, and effective immediately, provides for an orderly transition of responsibilities and functions from the Casino Control Commission to the Division of Gaming Enforcement by May 1, 2011.

The Division of Taxation now administers and collects several taxes that were previously administered and collected by the New Jersey Casino Control Commission. These taxes include the gross revenue tax, the casino hotel room fee, and the multi-casino progressive slot machine revenue tax.

The gross revenue tax is an 8% tax on the gross revenues of a casino licensee as defined by Section 24 of this law. N.J.S.A. 5:12-144. The casino hotel room fee is a \$3-per-day fee on each hotel room in a casino hotel facility that is occupied by a guest. N.J.S.A. 5:12-145.8. The multi-casino progressive slot machine revenue tax is an 8% tax on the casino service industry multi-casino progressive slot machine revenue. N.J.S.A. 5:12-148.2.

Taxpayers that were required to file and remit tax returns under the prior version of the Casino Control Act must now file tax returns and make payment to the Division of Taxation. This requirement is applicable to returns for the above-listed taxes that are due after April 30, 2011.

Corporation Business Tax

Benefit Corporations — P.L. 2011, c.30, signed into law on March 1, 2011, and effective immediately, amends and/or supplements the New Jersey Business Corporation Act (N.J.S.A. 14A:1-1, et seq.) by

providing for the creation of a benefit corporation, which is a corporation organized and subject to the provisions of the New Jersey Business Corporation Act. The purpose of a benefit corporation is to create a "general public benefit," defined as a material positive impact on society and the environment through activities that promote some combination of specific public benefits.

These benefit corporations are subject to corporation business tax since they are formed under N.J.S.A. 14A:1-1, et seq. (as opposed to N.J.S.A. 15A:1-1, et seq., the New Jersey Nonprofit Corporation Act). Finally, the benefit corporations must file a benefit report with the Department of the Treasury through the Division of Revenue.

Miscellaneous

Business Retention and Relocation Assistance Grant Program Broadened — P.L. 2010, c.123, signed into law on January 6, 2011, broadens the availability and revises the terms of financial assistance under New Jersey's Business Retention and Relocation Assistance Grant (BRRAG) Program. This program, administered by the New Jersey Economic Development Authority (NJEDA), helps businesses preserve jobs, expand operations, and reinvest in the State through the award of tax

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Current Amnesty Program

The following jurisdiction is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

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credits against corporation business tax and various taxes on insurers. The amount of the credits awarded is based upon the business's investment or its expansion or preservation of jobs in the State.

The Act eliminates the requirement that the amount of an individual grant of tax credits is limited to no more than 80 percent of projected State tax revenues from the retained full-time jobs.

The current annual cap of \$20 million on the issuance of BRRAG credits is converted to a cap on the total amount of such credits that may be applied against tax liability in a fiscal year. Also, a new annual cap of \$10 million is imposed on the total value of credits that a single business may apply against liability in a fiscal year.

The value of BRRAG credits for a business retaining more than 250 jobs is increased by authorizing awards in multiples of up to six times the current rate of \$1,500 per employee, with the size of the multiple depending on the number of retained jobs. The bill requires such multiple-rate awards to be taken in equal amounts over the appropriate number of years.

The law now requires that, as a precondition for the business's ability to apply the credits against tax liability, the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits. The class of businesses to which, as a "designated industry," consideration may be given in determining the amount of a BRRAG award is broadened to include not only high technology businesses, but any business deemed

desirable by the NJEDA to be maintained in the State.

Based upon this certification, the NJEDA issues a certificate indicating the amount of credits that the business may use in a tax period. If a business fails to meet its jobs retention commitment, its credit award is reduced proportionately and it forfeits the unused credits.

The statute now authorizes the sale of BRRAG tax credits between "affiliated" businesses, and a requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program is repealed.

Local Property Tax

Urban Gardens — P.L. 2011, c.35, signed into law on March 1, 2011, and effective immediately, encourages nonprofit corporations and associations to help transform vacant properties located in older urban areas into gardens for growing fresh fruits and vegetables. Existing provisions of law authorize municipalities and counties to lease or sell public property not needed for a public use to nonprofit entities for them to perform specified laudatory public purposes thereon. This law affects lands in cities of the first, second, third, and fourth classes.

The cultivation and sale of fresh fruits and vegetables is now among the purposes for which municipalities may lease or sell public land for nominal consideration. Previously, the law allowed for the long-term lease of excess public land, but not the sale thereof, to nonprofits for gardening purposes. Now, the transformation of excess vacant public lands into urban farms is a public purpose and the law affords these

lands exemptions from property taxation.

Dedicated Library Purposes Tax — P.L. 2011, c.38, signed into law on March 21, 2011, and effective immediately, requires municipalities in which a free public library is located or that belong to a joint municipal library to provide for a dedicated library purposes tax on the property tax bill.

Specifically, a municipality must pay over to the library or the joint municipal library funds due to the library on a quarterly basis. The law further assures that there will be no net impact on a municipality's nonlibrary purposes adjusted tax levy for the purposes of the cap law. The Director, Division of Local Government Services, Department of Community Affairs is now required to proportionately decrease the adjusted tax levy of affected municipalities to ensure that any statutorily required municipal support of free public libraries is exempt from the calculation of a municipality's adjusted tax levy for the purposes of the 2% levy cap.

The Division is required to segregate the municipal library tax on the local property tax bill/abstract of ratables. All system-related changes will be performed by the Office of Information Technology.

Sales and Use Tax

UEZ Point of Purchase Exemption — P.L. 2011, c.28, signed into law on March 1, 2011, applies to sales or services made or rendered on or after April 1, 2011. The law amends section 20 of P.L. 1983, c.303 (N.J.S.A. 52:27H-79) and allows all qualified urban enterprise zone

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(UEZ) businesses to be eligible to receive the sales tax exemption at the point of purchase regardless of annual gross receipts. Previously, P.L. 2006, c.34, (amended by P.L. 2007, c.328 and P.L. 2008, c.118) restricted the point-of-purchase exemption from sales and use tax on eligible purchases made by certain small qualified businesses for exclusive use or consumption of such business in the enterprise zone. Larger UEZ businesses had to pay sales tax at the time of purchase and then file for refunds.

Streamlined Sales and Use Tax Agreement Technical Changes — P.L. 2011, c.49, was signed into law on April 8, 2011, and became effective immediately, except for sections 1 through 15, that became operative on May 1, 2011. The law makes various technical changes in sales tax law to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA), which was adopted by New Jersey in 2005.

For purposes of compliance, the bill removes the current definition of, and eliminates references to, “digital property” under sales tax law and replaces it with “specified digital product,” the defined term for electronically transferred digital products under the SSUTA. This change technically modifies but does not substantively affect the taxability of digitally downloaded music, movies, books, and certain other goods currently subject to sales and use tax.

To conform the State’s current tax treatment of digital goods within the parameters of the defined term under the Agreement, the law makes certain other ancillary

changes that were required in addition to the adoption of the new SSUTA definition. Specifically, it (1) revises the definition of “retail sale” to reiterate that sales of specified digital products are only taxable to end users (sales for resale are excluded from tax); (2) specifies that a digital code which provides a purchaser the right to obtain the product is treated as a specified digital product for purposes of taxation; (3) stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment for the product is required; and (4) carves out a specific statutory exemption for all video programming services, including video-on-demand television services, and broadcasting services, including content to provide such services, to ensure that sales of those services are not taxable as specified digital products. The former digital property definition excluded these services; therefore, this exemption is necessary to maintain treatment under prior law.

The law also provides a separate statutory exemption for specified digital products that are accessed but not delivered electronically to the consumer. Previously, New Jersey excluded from tax digital property that was temporarily streamed or uploaded to a consumer to access certain digital content. However, “specified digital products” includes electronically transferred digital audio-visual works, digital audio works, and digital books, where “transferred electronically” means obtained by the purchaser by means other than tangible storage media. Since “transferred electronically” includes instances where

specified digital products are streamed or uploaded, the exemption ensures that access alone is not used to determine the taxability of specified digital products. This exemption is necessary to maintain treatment under prior law.

New compliance provisions incorporate SSUTA provisions that relieve certain sellers from liability due to changes in the sales and use tax rate. The Director of the Division of Taxation may not hold a seller liable for failure to collect tax that may be due at a new tax rate if the director provides less than 30 days between the date a change in rate is enacted and the date that change takes effect. However, the relief from liability is limited and further described in the new statute.

The law makes technical changes and clarifications to the tax by removing remaining references to the previously defined term “vendor,” replacing them with “seller,” and removing charges for installation as part of the enumerated charges included in the definition of “sales price.”

The elimination of installation charges from the definition of “sales price” clarifies the imposition of tax on charges for installation. A separate statutory provision specifies that installation charges are an enumerated service subject to the sales and use tax regardless of how “sales price” is defined. This revision is necessary to clarify treatment of installation charges, which have always been statutorily subject to tax.

NOTE: This bill represents the fifth time the State has amended the Sales and Use Tax Act to comply with the SSUTA. □



Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2010 (January 1, 2010 – December 31, 2010) and tax year 2011 (January 1, 2011 – December 31, 2011) for businesses and individuals:

- Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2010](#) [2011](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2010](#) [2011](#)

- Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2010](#) [2011](#) □



important phone numbers

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
 609-826-4400
Homestead Benefit Hotline
 for Homeowners..... 1-888-238-1233
Homestead Benefit Hotline
 for Tenants1-888-213-8623
Property Tax Reimbursement
Hotline.....1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System1-877-829-2866
Alcoholic Bev. Tax 609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax..... 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-633-8878
Public Utility Tax..... 609-633-0013

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2010 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
10	5/5/10	Modifies provisions of the New Jersey Economic Stimulus Act of 2009.	MIS	S-920(3R)
14	5/6/10	Extends the time period for renewal of lapsed alcoholic beverage retail licenses.	ABT	S-828
20	6/29/10	Provides temporary reduction of annual cap on corporation business tax benefit certificate transfer program for certain technology and biotechnology companies and temporarily suspends certain tax credits for certain film and digital media content production expenses.	CBT/ GIT	A-3011 (Corrected Copy)
22	6/30/10	Repeals prior motor fuels tax legislation and makes changes in the licensing requirements for the motor fuel taxes as well as the requirements for the reporting, imposition, and collection of the taxes.	MFT	A-3014
27	6/29/10	Reduces the benefit under the New Jersey earned income tax credit program from 25 percent of the Federal credit amount to 20 percent beginning in tax year 2010.	GIT	A-3016 (Corrected Copy)
51	8/17/10	The Fort Monmouth Economic Revitalization Authority Act creates a new redevelopment agency, requires the New Jersey Economic Development Authority to engage in new duties, and creates several special-purpose districts.	S&U	S-917(2R)
55	8/18/10	Requires every municipality imposing the occupancy tax to provide a list of hotels and motels in the municipality to the State Treasurer, who must provide to the municipality a list of hotels and motels that submitted occupancy tax. The bill also makes unpaid occupancy tax a municipal lien on the real property of the hotel or motel.	HMO	S-1828
57	8/19/10	The Offshore Wind Economic Development Act establishes an offshore wind renewable energy certificate program and authorizes the New Jersey Economic Development Authority to provide tax credits for qualified wind energy facilities in wind energy zones.	CBT	S-2036(2R)
79	10/1/10	Amends the Motor Fuel Tax Act to defer implementation for three months and makes technical corrections.	MFT	S-2289
123	1/6/11	Broadens the availability and revises the terms of financial assistance under the Business Retention and Relocation Assistance Grant (BRRAG) Program and repeals the requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the program.	MIS	S-2370(2R)

2010 TAX LAWS *(continued)*

***Legend for 2010 Tax Laws**

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuel Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax

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What's New for Tax Year 2010

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Form 1099-G** — The State of New Jersey is no longer mailing Form 1099-G, *Certain Government Payments*, to report the amount of a State tax refund a taxpayer received. State income tax refunds may be taxable income for Federal purposes for individuals who itemized their deductions on their Federal tax return in the previous year. Taxpayers who need this information to complete their Federal return will be able to view or print their 1099-G information from the Division's Web site.

- **Property Tax Deduction/Credit for Homeowners and Tenants Temporary Deduction Limitations Expire.** Eligibility for the property tax deduction is not limited by income. Residents who meet the requirements may be able to deduct up to 100% of property taxes due and paid or up to \$10,000, whichever is less. (For tenants, 18% of rent paid is considered property taxes.) The temporary income eligibility and benefit amount limitations for the property tax deduction that were in effect for tax year 2009 were for one year only.

New Form for Credit

Only Filers. Most New Jersey residents claim the property tax deduction or credit on their resident income tax return (Form NJ-1040). However, certain residents who are not required to file a tax return but are eligible for the property tax credit can use the new Property Tax Credit Application (Form NJ-1040-H) instead of Form NJ-1040 to apply for the credit. Filers can use Form NJ-1040-H **only** if they:

1. Were 65 years of age or older, blind, or disabled on December 31, 2010, **and**
2. Had New Jersey gross income for 2010 of \$20,000 or less (\$10,000 or less if filing status is single or married/CU partner, filing separate return), **and**
3. Have not filed and will not file a 2010 New Jersey resident income tax return, **and**
4. Were **not** a New Jersey homeowner on October 1, 2010.

Residents who owned and occupied their principal residence in New Jersey *on October 1, 2010*, should not file Form NJ-1040-H even if they meet the requirements in paragraphs 1–3. The property tax credit for these homeowners will automatically be included with their homestead benefit,

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provided they file a homestead benefit application.

- **Earned Income Tax Credit** — The amount of the NJEITC is equal to 20% of the applicant's Federal earned income tax credit.
- **Family Leave Insurance** — Excess family leave insurance contributions can be claimed as a credit on Form NJ-1040. The maximum contribution for 2010 was \$35.64. Taxpayers who had more than the maximum amount withheld by two or more employers must enclose a completed Form NJ-2450 with their return to claim the credit.
- **Designated Contributions** — Two new funds have been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to these funds, taxpayers must specify the "code number" at the "Other Designated Contribution" line. The new funds are: Community Food Pantry Fund (09) and Cat and Dog Spay/Neuter Fund (10).
- **Roth IRAs** — Taxpayers who converted a traditional IRA to a Roth IRA during 2010 and made a Federal election to report the income resulting from the conversion in equal amounts in 2011 and 2012, must report the amount that is taxable for New Jersey in equal installments in 2011 and 2012. If a taxpayer elected to include the entire amount of income from the conversion on the 2010 Federal return, the entire amount that is taxable for New Jersey purposes must be reported on the 2010 New Jersey return.

- **Tax Rates** — The New Jersey gross income tax rates have reverted to the rates that were in effect for 2008. (Rates were temporarily increased for 2009 on income over \$400,000.)
- **Commuter Transportation Benefits** — The maximum commuter transportation benefit is \$2,760.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate is 3.4997% from January 1 to June 30, 2010, and 3.4985% from July 1 to December 31, 2010.
- **Filing Deadline** — The due date is April 18, 2011, for calendar year taxpayers instead of April 15 because of the Emancipation Day holiday in the District of Columbia. This is the same day the Federal Form 1040 is due.

Property Tax Relief Programs

- **Homestead Benefit (Rebate) Program** — Information about the 2010 Homestead Benefit (Rebate) Program is not yet available.

Tenants. The new Form NJ-1040-H, Property Tax Credit Application, is not a tenant rebate application. Tenant rebates were suspended for 2009. As a result, no 2010 tenant rebate application is enclosed in the NJ-1040 packet.

Homeowners. New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2010, may be eligible for a homestead benefit provided the 2010 property taxes were paid and certain income limits are met. The homestead benefit application for

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation

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homeowners is *not* included in the NJ-1040 booklet.

Information will be posted on our [Web site](#) as it becomes available.

Benefits available under this program are subject to change.

- **2010 Property Tax Reimbursement** — With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2010, total annual income must be:

2010: \$80,000 or less, and

2009: \$80,000 or less

These limits apply regardless of marital/civil union status. However, if an applicant's status is married/CU couple, combined income of both spouses/CU partners must be reported.

Budgetary constraints limited the PTR benefits paid for 2009 to the previous year's benefit level for established participants and did not provide reimbursements to first-time applicants. Applicants who filed 2009 applications as first-time filers but who did not receive a check should submit a 2010 application if they meet the requirements.

Benefits available under this program are subject to change. □

MOTOR FUEL TAX Changes in Administration

New Jersey recently enacted motor fuel tax legislation that takes effect on January 1, 2011, and significantly changes the system by which motor fuel taxes are administered; but current tax rates remain unchanged. The tax rate for gasoline remains at \$0.105 per gallon, the tax rate for diesel fuel remains at \$0.135 per gallon, and the tax rate for liquefied petroleum gas (LPG) used as a motor fuel remains at \$0.0525 per gallon.

Under the new law, all fuel, except dyed fuel, will be taxed as it is removed from the terminal, otherwise known as "at the rack." Dyed diesel fuel or dyed kerosene that is dyed pursuant to either United States Environmental Protection Agency rules or Internal Revenue Service rules will not be taxed as it is removed from the terminal.

Suppliers of motor fuels removed from the terminal system collect the tax and remit it on or before the 22nd day of the month following the removal. Suppliers with terminals located outside New Jersey may elect to have all removals from the out-of-State terminals treated as if they were removed from terminals within New Jersey and collect the tax on those removals. Those wishing to make this election must file Form SMF-2, Notice of Election.

The law allows certain distributors of motor fuels to make an election as to the timing of the remittance of the tax to their suppliers. Distributors who qualify for the election may delay remittance of the amount of tax due to their suppliers until the 20th day of the month following

the purchase. Elective distributors must make remittances to their suppliers by electronic funds transfer. In order for a distributor to qualify for delayed remittance to its suppliers, the distributor must complete Form DMF-2, Application for Recognition as a Qualified Distributor, and agree to the conditions listed on that form.

The law contains a dyed fuel provision which prohibits the use of dyed fuel to operate or maintain a motor vehicle on any public highway in New Jersey except for uses which are lawful under the Federal Internal Revenue Code (IRC). Any person and any officer, employee, or agent of any person who participates in any act that violates the dyed fuel provisions of the law will be jointly and severally liable for the tax and penalties. The penalties imposed will be the same as imposed pursuant to IRC Section 6715.

Under the new law, current license holders will have their licenses automatically converted to new licenses. The new licenses will expire on the same date as their current license. Some current license holders will not be required to be licensed under the new law. An individual whose license is not converted to a license appropriate for his particular needs must file Form MFA-3, Change of Status Request, before December 15, 2010.

Taxes must be paid on untaxed fuel held in inventory as of the close of business on December 31, 2010. A FloorStock Tax Return, Form MFA-10, is due by January 31, 2011; however, the tax is not due until July 1, 2011. If the tax is paid on or before January 31, 2011, a 10% early payment discount is offered.

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Additional information including license applications, tax returns, and other forms are available on the Division's Web site at: www.state.nj.us/treasury/taxation/motorfuels.shtml □

CORPORATION BUSINESS TAX

Payments on Behalf of Nonconsenting Shareholders

Under the New Jersey Corporation Business Tax Act, a Federal S corporation may elect to be treated as a New Jersey S corporation by timely and properly filing a New Jersey S Corporation or New Jersey QSSS Election, [Form CBT-2553](#), with the New Jersey Division of Revenue. For the New Jersey S election to be valid, the corporation and all present shareholders, referred to as "initial shareholders," must consent to the election and to the jurisdictional requirements of the State.

Under New Jersey corporation business tax regulation 18:7-20.1(c), Form CBT-2553 must also be filed by the corporation to report any new shareholders. A new shareholder is a shareholder who did not previously own any shares of the S corporation's stock and acquired the stock (either existing shares or shares issued at a later date) subsequent to the initial New Jersey S corporation election.

An initial shareholder's initial consent remains in effect as long as they are a shareholder regardless of changes to their stock ownership percentage or New Jersey residency status. Changes for existing shareholders, including address changes, are to be reported on Form CBT-2553.

New shareholders who sign the Shareholder's Consent Statement are "consenting shareholders." A consenting nonresident shareholder is responsible for making proper and timely tax payments and may be subject to penalties and interest on any tax paid after the due date of their nonresident income tax return.

New shareholders who do not sign the Shareholder's Consent Statement are referred to as "nonconsenting shareholders." Under 54:10A-5.23 of the Corporation Business Tax Act, the corporation is required to make payment of gross income tax on behalf of nonconsenting shareholders. The payment amount is calculated at the highest marginal income tax rate on the pro rata share of S corporation income allocated to New Jersey for each nonconsenting shareholder

and must be submitted with Form NJ-1040-SC. The S corporation form and instructions are available on the [Division's Web site](#). This payment method and form is *not* to be used for consenting shareholders. Payments made for a consenting shareholder will not be credited to a consenting shareholder's income tax return and the corporation will need to file a refund request on Form A-1730 for the return of erroneous payments.

As an alternative, a New Jersey electing S corporation may file a New Jersey Income Tax Nonresident Composite Return, Form NJ-1080C, on behalf of qualified nonresident individual shareholders, including nonconsenting shareholders, who have elected to participate in a composite return. The corporation can submit a written request to Individual Tax Audit Branch – Composite Returns, P.O. Box 288, Trenton, NJ 08695, to allow a non-qualified nonresident shareholder to participate on the composite return. Form NJ-1080C and instructions, including filing and timely payment requirements, are available on the [Division's Web site](#). □

NY/NJ Cooperative Interstate Tax Program

The 1986 Reciprocal Agreement between the State of New Jersey and the State of New York providing Cooperative Tax Administration is ending. As a result, New Jersey vendors participating in the program will no longer file ST-20/21 returns to report New York sales tax, and New York participants will no longer file ST-100.4/101.4/809.4/810.4 forms to report New Jersey sales and use taxes. For more information see:

New Jersey-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf

New York State-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfony.pdf



**INHERITANCE/ESTATE TAX
QTIP Elections for
Decedents Dying
in 2010**

The Division has received numerous inquiries related to its policy regarding qualified terminable interest property (QTIP) elections for decedents dying in 2010. Although there is, of course, the possibility that Congress may reinstate it, the Federal estate tax is currently suspended for decedents dying in 2010.

Since the revision of the New Jersey estate tax in 2002, it has been the Division’s policy that in an estate where a Federal estate tax return is not filed and not required to be filed, the estate representative may for New Jersey estate tax purposes make a QTIP election in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, and the terms of the decedent’s will or other controlling document.

In those cases where a Federal estate tax return is not filed and not required to be filed and the estate representative decides to make a QTIP election for New Jersey estate tax purposes, the property for which the QTIP election is made is includable in the estate of the surviving spouse in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001. In those cases where the estate representative decides not to make a QTIP election for New Jersey purposes, the property is normally not includable in the estate of the surviving spouse in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001.

There has been no change in the Division’s policy as it relates to QTIP elections for decedents dying in 2010.

For questions related to this issue, contact the Inheritance and Estate Tax Section at 609-292-5033. □

an effort to foster a true “team” approach. Lee will now head up a recently established “Special Frauds Unit” within OCI augmented with additional auditors and investigative resources.

Special Agent Charles Peters of the Office of Criminal Investigation has been nominated by the Postal Inspector in Charge of the Newark Division of the U.S. Postal Service for the Federal Law Enforcement Foundation’s “Investigator of the Year” award for his work as part of a Federal task force investigating contraband cigarette smuggling. The nomination read in part:

... Postal Inspector Richard Lennon; Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent Robert Caprioglio; New Jersey Treasury Special Agent Charles Peters; Internal Revenue Service – Criminal Investigations Special Agent Ken Long; and Assistant U.S. Attorney Ronald Chillemi, District of New Jersey, collaborated on this joint investigation involving an internet cigarette distributor based in Salamanca, NY on the Seneca Indian Reservation. Their investigation focused on the criminal conduct of Joseph and Rita Roosa, the subjects responsible for the day-to-day operations of All American Tobacco. While All American Tobacco is purportedly owned by Donald John, a Native American, its day-to-day activities were actually controlled by Rita and Joseph Roosa of Allegany, NY. In a 24-month period (May 2004

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2011 – December 31, 2011, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%

OCI Staff Honored

Lee Roach, an auditor with the Office of Criminal Investigation (OCI), was honored as the New Jersey State Treasurer’s You Matter! Award recipient for October for her work with OCI’s “Loss Prevention Project.” The project, which started in late 2006, continues to pay dividends to New Jersey. Since its inception, the project has stopped thousands of fraudulent refund checks totaling in excess of \$20 million. Lee regularly communicates with other branches in the Division of Taxation, as well as with the New Jersey Division of Revenue, U.S. Postal Service Inspectors, out-of-State District Attorneys and law enforcement agencies, and other state revenue agencies in



OCI staff honored - from page 5

– May 2006), the Roosa’s moved approximately \$15 million through All American Tobacco bank accounts with the proceeds derived from the sale of the untaxed cigarettes. After accepting a plea of guilty to Trafficking of Contraband Cigarettes, the Roosa’s agreed to forfeit four commercial properties valued at approximately \$2.5 million to the U.S. Government. Several co-conspirators in New Jersey, arrested in April 2007, purchased approximately \$5 million of untaxed cigarettes from All American Tobacco. The New Jersey targets then resold those cigarettes to restaurants in New Jersey, thereby defrauding the State of New Jersey out of millions of dollars in tax revenue. Search warrants were executed on three New Jersey residences, two Chinese restaurants, two storage facilities, and a Bank of America safety deposit box. Among the items seized were approximately \$100,000 in cash, jewelry, numerous documents and over 50 cases of contraband cigarettes. All American Tobacco ceased business operations in

October 2008. In 2010, the co-conspirators were sentenced to 15–30 months incarceration and ordered to pay a combined total of approximately \$4.1 million in restitution. □

LOCAL PROPERTY TAX Tax Assessors’ Calendar

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statements filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.

- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase provided to County Tax Administrator by assessor.
- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” filed with County Tax Board by assessor.

January 25–

- Assessor’s schedule of office hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)–

- Notices of current assessment and preceding year’s taxes mailed to each taxpayer by assessor.

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “[Auctions](#).” Select the name of the business for details about that auction.

Enforcement Summary Statistics Third Quarter 2010

Following is a summary of enforcement actions for the quarter ending September 30, 2010.

	Number	Amount
• Bank Levies	1,245	\$ 4,194,313
• Certificates of Debt	4,449	79,299,678
• Seizures	84	767,852
• Auctions	6	36,600



assessors' calendar - from page 6

February 1–

- Form EA-4 (part A) for properties under Chapter 441 tax agreements to be completed by assessor and forwarded to County Tax Administrator.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year's property tax deduction by collector.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10–

- Certification of bulk mailing of Notification of Assessment filed with the County Tax Board by assessor. If bulk mailing completed by County Tax Board, certification prepared by the County Tax Administrator "within 10 days" of the date the bulk mailing was completed.

February 15 (on or before)–

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1–

- Recipients of a property tax deduction for tax year 2010 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2010 income and anticipated income for 2011.
- County Tax Administrator to submit equalization table to: County Tax Board; each assessor; Division of Taxation; two copies

to Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to: each taxing district in the county; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On July 26, 2010, a special agent and investigator from the Office of Criminal Investigation (OCI) conducted an inspection of E.J. Abreu Supermarket of Perth Amboy, New Jersey, and as a result, a total of 37,685 untaxed cigars, 5.3 cartons of counterfeit New Jersey tax-stamped cigarettes, 96 counterfeit U.S. postal stamps, and 20 pirated DVDs were seized. OCI also seized \$1,000 in U.S. currency for forfeiture. The counterfeit U.S. postal stamps were turned over to U.S. postal inspectors for their action. Charges were brought for possession of untaxed goods on the contraband cigarettes and DVDs and for copyright violations on the DVDs.
- On August 24, 2010, a special agent arrested Rajesh Sanghavi

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criminal enforcement - from pg. 7

t/a Rajmital of Voorhees, New Jersey, for violations of the Tobacco Products Wholesale Sales and Use Tax Act. Originally, Sanghavi's vehicle was seized by the Office of Criminal Investigation (OCI) from a motor vehicle stop by a Voorhees Township police officer when he observed a case of product labeled as cigarettes. The investigation leading up to the arrest culminated in the execution of two search warrants, one arrest warrant, and a court order freezing six bank accounts. Over \$32,000 in U.S. currency and 51,182 in Indian rupees were seized along with a large amount of business records. Two storage units were filled with tobacco products with values estimated at close to half a million dollars. The investigation continues as the evidence is examined. Sanghavi's

bail was set at \$65,000 with the requirement that his passport be turned over to OCI. The Camden County Prosecutor's Office will prosecute this matter.

- On September 9, 2010, a Passaic County Grand Jury indicted four subjects in the matter of Miroslaw Sapinski, et al. The investigation was a long-term operation that identified Sapinski, a persistent offender dealing in contraband cigarettes and untaxed liquor, who had been arrested and charged six times previously by the Office of Criminal Investigation (OCI). As a result, Sapinski, his wife, and coconspirators Waclaw Jeziorski and Josef Babon have all been indicted on various contraband cigarette counts and money laundering. For the first time the Racketeer Influenced and Corrupt Organization (RICO) Act has been applied to individuals

involved in contraband cigarette activity. A civil forfeiture action against Sapinski's and his wife's assets, including their home, has been initiated. The Passaic County Prosecutor's Office is prosecuting this case for OCI.

- On September 13, 2010, a Monmouth County Grand Jury returned a 14-count indictment against Christopher Elia. This indictment resulted from a criminal investigation which was conducted jointly by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation. The investigation revealed that Christopher Elia operated N.L.E.O.A. Publications, collecting charitable contributions from a large number of donors. Elia used the names of legitimate charitable organizations in order

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criminal enforcement - from page 8

to collect contributions but did not transfer the funds he collected to any legitimate charities. Instead, he used the funds to pay personal expenses, including extensive gambling debts. Elia was indicted on the following charges: second-degree conspiracy, third-degree promoting gambling, second-degree theft by deception, second-degree misconduct by a corporate official, fourth-degree falsifying records, first-degree financial facilitation of criminal activity, third-degree filing a fraudulent return, third-degree failure to file a return, and third-degree failure to pay or turn over taxes.

- On September 14, 2010, Larry Kushner of Long Branch entered guilty pleas to theft by failure to make required disposition of property received and failure to file a tax return. Kushner agreed to pay \$1.1 million in restitution to seven victims. Kushner had told victims that the money they invested in his business, Foreclosure 911, would be used to buy foreclosed properties in New Jersey, Delaware, and Pennsylvania, but instead he used the money for personal expenses and vacations. Kushner will be sentenced on January 7, 2011, by State Superior Court Judge Richard W. English. This investigation was conducted by the Monmouth County Prosecutor's Office in conjunction with the Office of Criminal Investigation.
- On September 14, 2010, Miguel Rodriguez t/a All Brothers Liquors of Newark, New Jersey, was the target of a joint operation with the New York State Department of Taxation and Finance's

Criminal Investigation Division and the Bronx District Attorney's Office, with the assistance of the Essex County Prosecutor's Office. A search by the Office of Criminal Investigation (OCI) resulted in the seizure of 1 roll of counterfeit U.S. postage stamps, \$5,305 in U.S. currency subject to forfeiture, 6.4 cartons of counterfeit New Jersey-stamped cigarettes, 3,653 untaxed cigars, and 70 pouches of RYO cigarette tobacco and/or chewing tobacco from the premises. Additionally, OCI found evidence that the business was manufacturing fraudulent invoices to give the appearance that the wholesale tobacco products tax was paid.

- On September 14, 2010, Bhajan Singh was arrested at his gas station in New York City and was charged in a joint investigation dealing with counterfeit cigarette tax stamps and the sale and transportation of contraband cigarettes with the New York Department of Taxation and Finance's Criminal Investigation Division and the Bronx District Attorney's Office. A search warrant was executed on a residence in Carteret, New Jersey, where a total of 220 cartons of counterfeit-stamped cigarettes were seized, 90 of which were bearing counterfeit New Jersey tax stamps with the remainder bearing counterfeit

New York tax stamps.

There was a cash seizure of \$46,000 from the residence along with narcotics and other counterfeit goods.

- On September 23, 2010, Rebecca Cirillo appeared before Judge Richard W. English in Monmouth County Superior Court and pled guilty to theft by deception and filing fraudulent returns for the years 2005, 2006, and 2007. Under the plea agreement the State recommended that she be sentenced to five years in State prison conditioned upon the entry of a civil judgment in the amount of \$290,949.12. Cirillo will also be required to file amended tax returns for the years 2005, 2006, and 2007. Cirillo used her position as bookkeeper to embezzle money from her employer, Ansonge Unlimited, Inc., by writing checks to herself or to "cash." She then attempted to cover up her actions by making false entries into Quickbooks, the accounting system used by Ansonge Unlimited, Inc.
- On October 25, 2010, Anthony J. Foti, of Ogdensburg, New York, was sentenced to five years in State prison by Mercer County Superior Court Judge Gerald J. Council for failing to pay the

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criminal enforcement - from pg. 9

State of New Jersey thousands of dollars in sales tax he collected from customers at his car dealership, AN-JO Car Company, Inc., in Toms River between 2000 and 2004. Foti was ordered to pay restitution in the amount of \$192,017 which consisted of \$79,347 in sales tax, \$92,239 in interest, and \$23,931 in penalties. On October 4, 2010, Foti, formerly of Brick, New Jersey, pled guilty to theft by failure to make required disposition of property and failure to remit sales tax, both second-degree offenses. A judgment was placed on Foti's property located in Ogdensburg, Saint Lawrence County, New York, for the sum of \$192,017.49.

- The Office of Criminal Investigation's Special Frauds Unit prevented the issuance of 996 fraudulent refund claims totaling \$1,880,043 for the period July 2010 through October 2010. In addition, OCI issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Gross Income Tax

Deduction for Parking Expenses — A taxpayer wrote to the Division asking about her payroll deduction for the costs of parking near her place of employment, which for Federal income tax purposes is treated as a "pretax" contribution. The Division responded that the deduction cannot be treated as a pretax contribution for New Jersey gross income tax purposes.

The deduction amount does *not* qualify for tax exclusion under the provisions of the Gross Income Tax Act. More specifically, although the Gross Income Tax Act has exclusions for qualifying commuter transportation benefits, the New Jersey exclusions are not exactly the same as the Federal exclusions for commuter benefits. One important difference is that for gross income tax purposes, benefits are *not* excludable if they are provided pursuant to a salary reduction agreement. N.J.S.A. 54A:6-23.c. provides: "The exclusion provided by subsection a. of this section shall not apply to

any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee."

Married Couple Filing as Qualified Joint Venture — A married couple wrote to the Division asking about the New Jersey gross income tax treatment of a "qualified joint venture." The Small Business and Work Opportunity Act of 2007, effective for tax years beginning after December 31, 2006, provides for a "qualified joint venture" whose only members are a husband and wife filing a joint return and who did not need to file as a partnership for Federal tax purposes.

For New Jersey gross income tax purposes, there is no provision similar to IRC section 761(f) that allows a husband and wife to engage in a qualified joint venture and to make an election to be treated as a sole proprietorship and not be treated as a partnership.

On the other hand, New Jersey allows all business entities that qualify for and elect to be treated as partnerships for Federal income tax purposes to be treated as partnerships for New Jersey income tax purposes. If these entities are not treated as partnerships for Federal tax purposes, they are not treated as partnerships for New Jersey tax purposes. Therefore, taxpayers in New Jersey may use the same reporting category for New Jersey gross income tax (partnership income or sole proprietorship income) as for Federal income tax purposes with regard to a qualified joint venture.

Practitioners' E-File Mandate

For the 2010 taxable year and later, any tax practitioner who reasonably expects to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

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If a married couple qualifies and files a Federal election to be treated as a qualified joint venture for Federal income tax purposes, they may receive similar treatment for New Jersey income tax purposes. The husband and wife members of the qualified joint venture are permitted to report their respective joint venture income as business income on their New Jersey income tax return. They will not be required to file a partnership return because they are not considered to be a partnership for Federal income tax purposes.

Sales and Use Tax

Correction: Safe Deposit Box Repair — In the [Spring 2005 issue](#) of the *New Jersey State Tax News*, the Division addressed the purchase of locksmith services by safe deposit box owners who held the boxes out for “rentals.” The article stated that locksmith services such as key replacement, box drilling, or other general repairs performed upon the boxes are exempt from sales tax. The Division’s reasoning was that those services were performed upon inventory held for rental and concluded that the use of a Resale Certificate (Form ST-3) was appropriate.

The Division has reevaluated its statements in that article and has concluded that since safe deposit box rentals are not true rentals of boxes but rather are the provision of safe deposit box *services*, the boxes themselves are not being resold. See N.J.S.A.54:32B-3(b)(3). Thus, the resale exemption is not applicable to the purchase of such services and tax must be imposed.

Spray-On Tanner — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to the purchase of spray-on tanner by a tanning salon.

Tanning services, which include spray-on tanning, are subject to New Jersey sales tax. N.J.S.A. 54:32B-3(b)(8). The Division determined that a tanning salon may purchase spray-on tanner with a resale certificate because it is transferred to the customer in the performance of the taxable tanning service and it is intended to remain with the customer. N.J.S.A. 54:32B-2(e)(1)(B).

Spray-on tanning, however, is not subject to the Federal excise tax imposed on an “indoor tanning service.” For more information on the Federal excise tax imposed on tanning service providers, visit the Division’s Web site at: www.state.nj.us/treasury/taxation/taxtanpro.shtml □

In Our Courts

Corporation Business Tax Interest Add-Back and Depreciation – *Beneficial New Jersey, Inc. v. Director, Division of Taxation*, decided August 31, 2010; Tax Court No. 009886-2007.

Interest Add-Back. HSBC Finance Corporation (HSBC) was the parent of Beneficial New Jersey, Inc. (BNJ), a Delaware corporation. BNJ was a consumer finance operating lending company that held a sales finance license and a New Jersey lender license to make consumer loans as well as first and second mortgage loans to New Jersey customers. BNJ’s retail branch lending operations were located in New Jersey. In order to finance these loans, BNJ borrowed money from HSBC, which

borrowed funds from unrelated third parties. HSBC charged interest on the loans to BNJ at the maximum Applicable Federal Rate. BNJ deducted the interest payments associated with these loans to arrive at New Jersey entire net income on its corporation business tax returns.

HSBC did not file New Jersey corporation business tax returns for tax years 2002–2004. After auditing BNJ, the Division effectively disallowed BNJ’s interest deductions for tax years 2002–2004 by adding them back pursuant to N.J.S.A. 54:10A-4(k)(2)(I). This statute provides that entire net income will be determined without excluding, deducting, or providing a credit for interest paid, accrued, or incurred to a related member; however, the statute also provides for five exceptions to this rule. BNJ claimed that they were entitled to the “three percent” exception, the “guarantee” exception, and the “unreasonable” exception.

Under the three percent exception, BNJ must prove, among other things, that “the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.” The Court first determined that the phrase “rate of tax” does not mean the tax rate as BNJ claimed, but is the effective tax rate, which is the “allocation factor times the tax rate percentage” as per the Division’s regulation. As BNJ was a 100% New Jersey allocator, its effective New Jersey tax rate was 9% (1H 9%). Therefore, HSBC’s effective tax rate in another jurisdiction must be at least 6% (9% less 3%) for the exception to apply. It was undisputed that HSBC’s effective

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tax rate in any other state was below 6% even though some of the other states' tax rates were above 6%. Consequently, the Court ruled that BNJ did not qualify for the three percent exception.

BNJ offered a funding agreement dated December 30, 2005, as proof that it met the guarantee exception, where the taxpayer guarantees the debt on which the interest is required and interest is directly paid, accrued, or incurred to an independent lender. In denying BNJ the guarantee exception, the Court determined that: (1) the agreement did not explicitly contain the word "guarantee"; (2) either BNJ or HSBC could withdraw from the agreement at any time for any reason; (3) BNJ did not produce documents evidencing its role as guarantor of HSBC loans to third parties; and (4) the agreement was between HSBC and BNJ and did not include any third-party lenders as parties.

Finally, the Court addressed the unreasonable exception which required that BNJ prove that the disallowance of the interest deduction was unreasonable. Although the Court found that the term "unreasonable" was undefined, the Court ruled that BNJ qualified for the unreasonable exception based upon common sense and an analysis of the totality of the circumstances. The Court found that the related party loans had economic substance and that the transactions had business purpose. HSBC received more favorable interest rates from third-party lenders than could its subsidiaries. In practice, the money HSBC borrowed was lent to its subsidiaries, not just to BNJ. HSBC paid taxes on income, including BNJ's interest payments,

in 17 jurisdictions. Consequently, BNJ was not required to add back the interest deductions it paid to HSBC.

Depreciation. The Division determined that during tax years 2000 and 2001 BNJ should have used the accelerated method rather than the straight-line method of depreciation for assets placed in service after 1993. The Court ruled that the statute clearly required the accelerated method. BNJ argued that the Division's failure to correct depreciation deductions prior to 2000 was a tacit affirmation of the same. The Court ruled that "[e]ach tax year stands on its own, and the Director is not estopped from making adjustments (for one year) that were negligently permitted in previous years."

Sales and Use Tax

Definition of Newspaper – *ADVO, Inc. v. Director, Division of Taxation*, decided October 28, 2010; Tax Court Docket No. 000131-2008.

The Tax Court granted plaintiff's motion for summary judgment and denied the Director's cross-motion, finding that plaintiff's "Shop Wise" publication constituted a newspaper within the meaning of N.J.S.A. 54:32B-8.30. Therefore, receipts from the sale of advertising in the publication were exempt from sales tax. The Division's regulation N.J.A.C. 18:24-1.2 (2007) was controlling, and the Director's refund denial was reversed.

At issue was whether plaintiff's weekly distributed, four-page publication entitled "Shop Wise" met the definition of a newspaper and whether the advertising revenue was entitled to an exemption. The Director concluded that although "Shop Wise" contained articles on one page of its four-page publication, it was a

direct-mail advertising publication and not a newspaper as contemplated under the statute. The Director argued that plaintiff's publication did not contain "information of general interest/current events" which comprises a bona fide newspaper. The Director did not dispute that plaintiff satisfied the requirement under N.J.A.C. 18:24-1.2(a) that no more than 90% of the printed area of the publication consist of advertising.

The Court concluded that plaintiff satisfied the pertinent elements of N.J.A.C. 18:24-1.2 with its publication of "Shop Wise" and must only have "generally conformed" to qualify as a newspaper. N.J.A.C. 18:24-1.2 was amended (effective in 2009) to change the definition of a newspaper in regard to the exemption statute.

Proper Party to File for Refund Claim – *RCN Telecom Services, Inc. f/k/a Freedom New York, LLC v. Director, Division of Taxation*, decided June 14, 2010; Tax Court No. 000161-2007.

In 2001, Freedom New York, LLC (Freedom) filed a timely sales tax refund claim pertaining to sales tax paid from December 1998 through December 1999 on purchases of machinery, equipment, and apparatus (MEA) claiming exemption from sales and use tax under N.J.S.A. 54:32B-8.13(c). Prior to 2000, Freedom was doing business as RCN Telecom Services, Inc. (RCN Telecom) and RCN Telecom was the purchaser of the MEA. At issue was whether Freedom or RCN Telecom was the proper party to file the refund claim and whether the requirements for exemption under N.J.S.A. 54:32B-8.13(c) were met.

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Initially, Freedom purchased real estate and MEA because it planned to set up a telecommunications network in northern New Jersey. In 2000, RCN and its affiliates filed for Chapter 11 bankruptcy and Freedom abandoned the New Jersey project. Subsequently, Freedom installed all the MEA at issue in its New York telecommunications system.

Copies of the MEA purchase invoices and checks revealed that RCN Operating Services, Inc. (RCN Operating) paid the vendors and that the purchases were billed and shipped to various RCN affiliates, subsidiaries, and locations. Freedom, RCN Telecom, and RCN Operating were wholly owned subsidiaries of RCN Corporation (RCN).

RCN Operating was found by the Court to be the special purpose payment agent for RCN as well as its affiliates and subsidiaries. The Court ruled that a customer who paid the tax is eligible for a refund. A customer is one who purchases property. The Court concluded that Freedom/RCN Telecom was a customer and may file the refund claim even though the vendors were paid by the related corporate entity, RCN Operating Services.

In order to qualify for exemption, N.J.S.A. 54:32B-8.13(c) requires that the MEA be sold to a service provider who is subject to the jurisdiction of the Board of Public Utilities or the Federal Communications Commission (FCC) for use directly and primarily in receiving at destination or initiating, transmitting, and switching telephone, telegraph,

or interactive telecommunications service for sale to the general public. Although the Court ruled that RCN Telecom was a service provider subject to the jurisdiction of the FCC, the Court determined that neither the certification of RCN Telecom's vice president nor the invoices provided an indication or description of the primary and nonprimary uses of the MEA sufficient for the Court to determine whether the MEA qualifies for the exemption. Therefore, the Court concluded there was a genuine issue of material fact that would require a hearing and evidence. □

In Our Legislature **Motor Fuel Tax**

Technical Amendments — P.L. 2010, c.79, signed into law on October 1, 2010, and effective immediately, makes a number of purely technical corrections, clarifies licensing requirements and fees, assures that heating oil dealers are not required to be licensed as motor fuel tax dealers, and clarifies that fuel transporters are not among those required to precollect the tax. These changes were critical in the implementation of the Motor Fuel Tax Act, P.L. 2010, c.22.

Sales and Use Tax

Fort Monmouth Economic Revitalization Authority Act — P.L. 2010, c.51, was signed into law on August 17, 2010, and became effective 45 days after its enactment, except that section 25 takes effect on the date that the authority assumes all of the powers, rights, assets, and duties of the predecessor authority.

This Act creates a new redevelopment agency, the Fort Monmouth Economic Revitalization Authority (FMERA), requires the New Jersey Economic Development Authority (EDA) to engage in new duties, and creates several special-purpose districts. FMERA, which is in but not of the New Jersey Department of the Treasury, is responsible for the implementation of the revitalization effort. The new law expands the powers of the EDA as the appropriate State agency to assist in plans for that redevelopment.

The Act provides for the creation of special improvement districts, transportation districts, and infrastructure districts. Within the district, at the discretion of the EDA, there may be a 50% reduction to the State's sales and use tax on the receipts of retail sales. However, the sales of motor vehicles, alcoholic beverages, cigarettes, and energy (natural gas and electricity) are excluded from the 50% reduction so the tax is at the 7% rate.

The law further provides that the authority may adopt a resolution to levy and collect a franchise assessment within an infrastructure district not to exceed an amount equivalent to 50% of the tax imposed under the Sales and Use Tax Act with the intention of devoting the proceeds from those assessments to purposes of the district. □



Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2010 (January 1, 2010 – December 31, 2010) and tax year 2011 (January 1, 2011 – December 31, 2011) for businesses and individuals:

- Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2010](#) [2011](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2010](#) [2011](#)

- Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2010](#) [2011](#) □



important phone numbers

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline for Homeowners	1-888-238-1233
Homestead Benefit Hotline for Tenants	1-888-213-8623
Property Tax Reimbursement Hotline	1-800-882-6597
Earned Income Tax Credit Information.....	609-292-6400
NJ TaxFax	609-826-4500
Business Paperless Telefiling System	1-877-829-2866
Speaker Programs	609-984-4101
Alcoholic Bev. Tax	609-633-7068
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director’s Office	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7974
Motor Fuels Tax Refunds	609-633-8878
Public Utility Tax.....	609-633-0013

New Jersey State Tax news

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Budget Funds Homestead Benefits

The State Budget for fiscal year 2011 (which began on July 1, 2010) provides funding for the Homestead Benefit (formerly Homestead Rebate) Program. However, for 2009, eligibility and benefit amounts for homeowners are limited based on income, and benefits will not be paid to tenants. The Budget also requires that the benefit for homeowners be based on 2006 property taxes.

Instead of receiving a rebate check (or direct deposit) as in previous years, eligible homeowners will receive their homestead benefit for 2009 as a one-time credit on the property tax bill for the second quarter of 2011.

Who is Eligible

Homeowners who occupied their principal residence in New Jersey on October 1, 2009, and who paid property taxes on that dwelling, are eligible for a 2009 homestead benefit, provided that their gross income for the entire year does not exceed the applicable income limit: \$150,000 for homeowners age 65 or older or disabled and \$75,000 for homeowners under age 65 and not disabled. Under the terms of the Budget, no benefits will be issued to tenants.

Benefit Amounts

Benefit amounts are determined by income, filing status, amount of property taxes paid, and whether the

applicant was 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Amounts received under the Homestead Benefit Program are in addition to the State's other property tax relief programs. The total amount of all property tax relief benefits received (homestead benefit, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant's principal residence for the same year.

The State Budget requires that the 2009 benefit be based on 2006 property taxes. For purposes of calculating the 2009 benefit, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2009, will be used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006.

Under the terms of the Budget, 2009 benefit amounts, when annualized, will be no greater than those paid for 2006 (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or marital status, or an increase in percentage of ownership.

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homestead benefits - from page 1

Homeowners age 65 or older or disabled on December 31, 2009, will calculate the amount of their benefit as follows:

Step 1: Multiply the amount of 2006 property taxes (up to \$10,000) by the applicable percentage (20% if 2009 New Jersey gross income is \$100,000 or less; 10% if income is over \$100,000 but not over \$150,000).

Step 2: Divide the result of the Step 1 calculation by 4.

Homeowners under age 65 and not disabled on December 31, 2009, will calculate the amount of their benefit as follows:

Step 1: Multiply the amount of 2006 property taxes (up to \$10,000) by the applicable percentage (20% if 2009 New Jersey gross income is \$50,000 or less; 13.34% if income is over \$50,000 but not over \$75,000).

Step 2: Divide the result of the Step 1 calculation by 4.

How to Apply

The 2009 homestead benefit applications were mailed in September. The filing deadline for all eligible homeowners is November 1, 2010.

Most homeowners can file their applications [online](#) or by phone by calling 1-877-658-2972.

Homestead Benefit Payment

After April 1, 2011, eligible homeowners can expect to receive a revised property tax bill or advice copy from their tax collector that will reflect the amount of the benefit.

However, any homestead benefit for which homeowners are eligible will be issued in the form of a check (or direct deposit) on or after May 1, 2011, if (1) their principal residence was a unit in a co-op or continuing care retirement community or (2) they stated in their application that they no longer own the property that was their principal residence on October 1, 2009.

More information on the Homestead Benefit Program is available at: www.state.nj.us/treasury/taxation/2009homesteadinfo.shtml



INHERITANCE/ESTATE TAX **Estate Tax Circular Computations**

The New Jersey estate tax is imposed upon the transfer of the estate of every resident decedent dying after December 31, 2001, which would have been subject to Federal estate tax under the provisions of the Internal Revenue Code (IRC) of 1986 (26 U.S.C. §1, et seq.) in effect on December 31, 2001. The amount of the New Jersey estate tax is either (1) the maximum credit that would have been allowable under the provisions of the IRC in effect on December 31, 2001, against the Federal estate tax that would have been payable under the provisions of the IRC in effect on December 31, 2001, on account of taxes paid to any state or territory of the United States or the District of Columbia or (2) determined pursuant to the simplified tax system prescribed by the Director of the Division of Taxation.

The New Jersey Tax and Superior Courts in the *Oberhand* case ruled that transactions should be taxed as they occurred. The New Jersey estate

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation
Acting Director: Michael J. Bryan

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estate tax computations - from page 2

tax is based on estate distributions as governed by the laws in effect on the decedent's date of death. The Director's responsibility is to determine estate distributions under the law in effect on the date of death and apply to those distributions the Federal estate tax law in effect on December 31, 2001.

The New Jersey estate tax is based on the Federal credit that would have been allowable for state death taxes under the provisions of the IRC in effect on December 31, 2001. This credit is computed on the Federal taxable estate as determined under the provisions of the 2001 IRC. If the Federal and New Jersey estate taxes that would have been payable under the provisions of the IRC in effect on December 31, 2001, would have been paid out of property for which a marital or charitable estate tax deduction would otherwise have been allowed, then the amount of the marital or charitable deduction must be reduced for the amount of such tax. The deduction cannot be greater than the amount that would have passed to a surviving spouse or charity. This results in a circular or interrelated computation as the reduction in the marital or charitable deduction in turn increases the taxable estate. This increase in the taxable estate

results in an increase in tax. The increase in tax again reduces the marital or charitable deduction and so forth. The calculation must be run until the reduction in the marital or charitable deduction equals the State and Federal taxes.

Although the circular or interrelated computation existed prior to January 1, 2002, it was not a matter which generally concerned the Division. Prior to that date, the New Jersey estate tax was essentially a "sponge tax" whose function was to absorb the allowable credit for state death taxes as determined in the Federal estate tax proceeding. The circular or interrelated computation was made and verified by the Internal Revenue Service. Since the New Jersey estate tax decoupled from the Federal estate tax in 2002 and is now a "stand-alone" tax, the computation is a matter which concerns the Division.

In order to determine the Federal credit for state death taxes that would have been allowable under the provisions of the IRC in effect on December 31, 2001, the taxable estate, Federal estate tax, and marital or charitable deduction under the provisions of the 2001 IRC must also be determined as they are all interrelated with and impact the credit.

Example 1

Taxable estate in the amount of \$2 million of which XYZ Corporation stock valued at \$1 million passes to the decedent's children with the residue of the estate passing to charity. The decedent's will provides that taxes are not to be paid from the residue.

Amount Passing to Charity	\$1,000,000
Charitable Deduction	1,000,000
Taxable Estate	1,000,000
Federal Tax Before State	
Death Tax Credit	125,250
State Death Tax Credit	33,200
Net Federal Tax	92,050

Example 2

Same situation as above except that the decedent's will provides that taxes are to be paid from the residue.

Amount Passing to Charity (before taxes)	\$1,000,000
Charitable deduction (after taxes)	787,712
Taxable Estate	1,212,288
Federal Tax Before State	
Death Tax Credit	212,288
State Death Tax Credit	45,986
Net Federal Tax	166,302

A circular or interrelated computation may be complex. Various programs have been developed by software companies to make this calculation. Upon request, the Division of Taxation will provide the taxpayer with assistance in making the computation. The Inheritance and Estate Tax Section may be contacted by phone at 609-292-5033 or by mail at Division of Taxation, Inheritance and Estate Tax, P.O. Box 249, Trenton, New Jersey 08695-0249. □

**Motor Fuel Tax Act Legislative Changes
Effective January 1, 2011**

P.L. 2010, c.22, the Motor Fuel Tax Act, repeals prior motor fuels tax legislation and makes changes in the licensing requirements for the motor fuel taxes as well as the requirements for the reporting, imposition, and collection of the taxes. P.L. 2010, c.79, makes technical corrections and delays the effective date of the new motor fuel law established in Chapter 22, P.L. 2010, from October 1, 2010, to January 1, 2011.

For more information, visit the Division's Web site at: www.state.nj.us/treasury/taxation/motorfuels.shtml

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to

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small bus. workshops - from pg. 3

help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

UI/DI Tax Amnesty

The New Jersey Department of Labor and Workforce Development will be offering tax amnesty to employers subject to the New Jersey unemployment compensation and temporary disability laws. The tax amnesty offer covers unemployment, disability, workforce, healthcare, and family leave insurance contributions due for the first quarter of 2005 through the fourth quarter of 2009. The amnesty offer does not include gross income tax, sales tax, or any other taxes due

to the Division of Taxation. Also, the amnesty offer does not include liabilities due for quarters prior to the first quarter of 2005 and after the fourth quarter of 2009.

For more information, visit the Department of Labor and Workforce Development's Web site at: <http://lwd.dol.state.nj.us/labor/employer/ea/empinfo/uiditaxamnesty.html> □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Twenty-two persons passed the March 27, 2010, C.T.A. exam. They are:

- Bergen County:** Mary Ann Maiorana, Cliffside Park Borough.
- Burlington County:** James Andrew Duda II, Delran Township; Justin C. Vining Jr., Burlington City.

- Gloucester County:** Kathleen S. Hill, Greenwich Township.
- Hunterdon County:** Gwen M. Caiella, Alexandria Township.
- Middlesex County:** James Louis Meehan, Woodbridge Township; Ryan Riccio, East Brunswick Township.
- Monmouth County:** John Francis Cattanach, Manasquan Borough; Debra J. Conley, Ocean Township; Daniel M. Kelly, Little Silver Borough.
- Morris County:** Raymond Tighe, Kinnelon Borough.
- Ocean County:** Angela R. Ilaria, Lacey Township; Cassandra E. Johnson, Brick Township; Peter A. Maher, Jackson Township; Bradley R. Millman, Brick Township; Christian A. Napolitano, Jr., Berkeley Township; Veronica L. Schenk, Jackson Township; Chelsea E. Skuby, Brick Township.
- Passaic County:** Richard S. Marra, Hawthorne Borough; Jay R. Schwartz, Little Falls Township.
- Union County:** Howard A. Andrews, Roselle Borough; Susana Borgia, Elizabeth City.

The next C.T.A. examination is scheduled for March 26, 2011. The deadline to file applications for this exam is February 24, 2011. The filing fee is \$10. If you have any questions regarding this exam, please contact Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam,

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NY/NJ Cooperative Interstate Tax Program

The 1986 Reciprocal Agreement between the State of New Jersey and the State of New York providing Cooperative Tax Administration is ending. As a result, New Jersey vendors participating in the program will no longer file ST-20/21 returns to report New York sales tax, and New York participants will no longer file ST-100.4/101.4/809.4/810.4 forms to report New Jersey sales and use taxes. For more information see:

New Jersey-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf

New York State-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfony.pdf



tax assessor certificates - from page 4

Form AC-1, is available on the Division's Web site at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).

- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

October 25 (on or before)–

- Added assessments certified for fire districts on Form CNC-3.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Form CNC-3 completed by assessor and forwarded to collector.

November 15–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or

30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.

- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.
- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2011 must be filed with assessor during the pretax year, thereafter with collector during the tax year.
- Last date for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2010 to be filed with collector. □

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2010 – December 31, 2010, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%



Criminal Enforcement

Criminal enforcement over the past several months included:

- In May 2010, Dawn Mass of Marlton, New Jersey, pled guilty to one count of theft of property (N.J.S.A. 2C:20-3) and one count of failure to pay or turn over taxes (N.J.S.A. 54:52-9). In her position as bookkeeper for a Pennsauken-based realty management firm, Ms. Mass was able to manipulate financial records and misappropriate \$585,665.84 of funds between 2002 and 2009. Ms. Mass was sentenced to four years in State prison on each count, to be served concurrently. Ms. Mass paid \$64,819.22 in restitution to her employer. A judgment for the \$30,464.94 tax liability to the State of New Jersey will be forthcoming.
- On May 14, 2010, a total of 11 search warrants and 4 arrest warrants and seizure orders were executed at locations in the City of Passaic and Wallington Township, Passaic County and Saddle Brook, Bergen County by the Office of Criminal Investigation (OCI). This action resulted after a 10-month undercover investigation and with the cooperation

and assistance of the Passaic County Prosecutor's Office. Miroslaw Sapinski and his wife, Grazyna Sapinski, as well as Waclaw Jeziorski and Stanislaw Zebronski, were arrested by OCI special agents. Seized were a total of 655.1 cartons of cigarettes at the residences. Also seized by OCI were two handguns and one rifle; three vehicles identified as being used in the transportation of contraband; and over \$130,000 in currency from the residences, business, and associated bank accounts. At the Market Quality Market, owned and operated by the Sapinskis, a secret room was built to hide the contraband cigarettes. All subjects were remanded to Passaic County Jail in lieu of \$50,000.

- On May 14, 2010, Waclaw Jeziorski of Wallington, New Jersey, while under surveillance just prior to his arrest for other cigarette smuggling charges, was observed exiting his residence and driving to Krystna's Place, an Alcoholic Beverage Control licensed bar in Wallington, New Jersey. Special agents observed a transaction and, as a result, an inspection was conducted at Krystna's Place, 171 Hathaway Street, Wallington, New Jersey. A total of

135.8 cartons of Virginia-stamped cigarettes and \$1,381 in currency were seized from the business. Jozef Babon of the same address was arrested by special agents of the Office of Criminal Investigation and charged with possession of untaxed goods, no invoices, no licenses, and related charges in the Wallington Municipal Court.

- On May 17, 2010, Herbert Brandt, the pharmacist and owner of Pharmacy of America in East Orange, New Jersey, and his son, Douglas Brandt, who operated the business activities of Pharmacy of America, were sentenced to three years in State prison by Superior Court Judge Joseph C. Cassini III, in Essex County. Previously, on September 23, 2009, they pled guilty to second-degree health care claims fraud and third-degree witness tampering. They were also ordered to pay restitution to the Medicaid program and a civil penalty totaling \$1.1 million. Herbert Brandt also entered into a consent agreement with the Board of Pharmacy to surrender his license to operate a pharmacy.
- On May 20, 2010, Office of Criminal Investigation (OCI) special agents responded to a call from New Jersey State Police,

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

Enforcement Summary Statistics Second Quarter 2010

Following is a summary of enforcement actions for the quarter ending June 30, 2010.

• Bank Levies	1,375	• Seizures	77
• Certificates of Debt:		• Auctions	10
Total Number	4,020		
Total Amount	\$71,455,351		



criminal enforcement - from page 6

Moorestown Station on the New Jersey Turnpike, relative to a stop of a U-Haul vehicle containing untaxed alcohol. The driver of the rental truck, Satish Madidi of Newark, Delaware, was interviewed and was unable to provide paperwork to show where the alcoholic beverages were to be delivered. He also admitted that he was following another subject who was to lead him to the eventual delivery point. That subject was not found. The truck contained 210 cases of Johnnie Walker Black Label scotch. Madidi was arrested by OCI for possession of untaxed goods (N.J.S.A. 54:52-1 et seq.) and related charges (N.J.S.A. 54:43-1 et seq.), and the untaxed alcohol was seized. Charges are pending in the Carneys Point Township Municipal Court.

- On June 7, 2010, Anthony Foti, owner of AN-JO Car Company, Inc., t/a A & J Car Company,

pled guilty to second-degree theft by failure to make required disposition of property received and second-degree purposefully failing to turn over New Jersey sales and use tax for the period of September 1999 through June 2004 in the amount \$79,392.26 plus penalty and interest. Anthony Foti tendered \$2,000 at the time of his plea and paid an additional \$1,500 on June 18, 2010. He was ordered to pay an additional \$6,500 by the end of September 2010 and to pay the balance in monthly installments. Foti's probation is contingent on adherence to this payment schedule.

- On June 10, 2010, James Gillespie and his wife, Susan Gillespie, were indicted on 15 counts and charged with second-degree crimes of failure to make required disposition of property received and misapplication of property received (N.J.S.A. 2C:20-9 and N.J.S.A. 2C:21-15) and third-degree crimes of failing to file

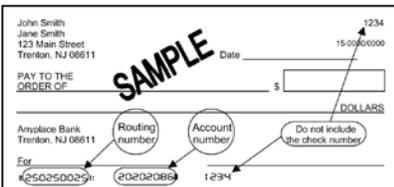
payroll and sales tax returns and failure to turn over to the State of New Jersey payroll and sales taxes collected (N.J.S.A. 54:52-8 and N.J.S.A. 54:52-9). During the period 2001 through 2007, James Gillespie was the owner of Wellness Enterprise Corporation and Rolling Help, Inc., businesses which provided medical transportation services. During that period, Mr. Gillespie did not file payroll tax returns nor did he submit income tax withheld or disability/unemployment taxes collected from employees to the State of New Jersey. During the period 2005 through 2007, Susan Gillespie was the owner of the business EZ, Inc., which provided lawn care services. During that period, corporation business tax returns were not filed nor were any sales tax returns filed or sales tax remitted to the State of New Jersey. Also, the Gillespies were charged with the filing of false and fraudulent NJ-1040 returns for the years 2005, 2006, and 2007. During those years, the Gillespies failed to report the income received from the businesses EZ, Inc. and Rolling Help, Inc. Unremitted payroll taxes totaled \$105,439.82, and unremitted sales tax totaled \$23,906.29.

- On June 24, 2010, Christopher Nemeth, owner of Nemeth Enterprises, Inc., was sentenced to four years in State prison by Superior Court Judge Edward M. Neafsey in Mercer County. Marisol Garcia, Nemeth's girlfriend, was sentenced to three years in prison. Nemeth and Garcia each pled guilty on March 10, 2010, to second-degree misapplication

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www.officialpayments.com



* Fee of 2.49% of tax payment applies.

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criminal enforcement - from pg. 7

of entrusted property and third-degree failure to remit payroll taxes. From 1999 through the second quarter of 2007, the defendants, who ran the paving company from their home, failed to pay the State \$207,003.57 in payroll taxes withheld from their employees. Throughout that period the defendants failed to file tax returns, which must be filed quarterly with the Division of Taxation, and employer wage reports, which must be filed annually with the Department of Labor. The subjects are required to pay the State of New Jersey \$368,807, which includes the back payroll taxes owed by their company with penalties and interest.

- On July 16, 2010, Brian McGuire was sentenced to two five-year prison terms to be served concurrently. He was charged with one count of second-degree theft by failure to make required disposition and one count of third-degree failure to pay taxes by Judge Reiser in Monmouth County Superior Court. A criminal investigation which was conducted by the Monmouth County Prosecutor's Office in conjunction with the Office of Criminal Investigation revealed that between November 2004 and July 2007, Brian McGuire, President and Chief Operating Officer of Kaibobo Enterprises Corporation, stole \$574,652 from the company's operating account.

Previously, on March 22, 2010, Brian McGuire pled guilty to the above charges from the August 11, 2008, Monmouth County Grand Jury indictment. All charges were dismissed against Benedette McGuire. Kaibobo Enterprises Corporation conducts business under the name Resources Payroll Company, a payroll tax processing service which processes payroll and remits withheld payroll taxes to the appropriate taxing authorities. McGuire failed to pay the taxes due.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of 3,263 fraudulent refund claims totaling \$7,087,221 for the period July 2009 through June 2010. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c.123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

Tax Briefs

Corporation Business Tax

IRC Section 179—A taxpayer asked if New Jersey has conformed to the IRC Section 179 maximum expense deduction of \$250,000 for taxable year 2010, and if not, what the limit is for 2010. IRC Section 179 allows taxpayers to take a deduction if they elect to treat the cost of qualifying property as an expense rather than a capital expenditure.

The Division responded that P.L. 2002, c.40 decoupled the corporation business tax and gross income tax from the Federal calculation of IRC Section 179 deductions. For New Jersey purposes, IRC Section 179 deductions are to be calculated pursuant to the

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Federal IRC in effect on December 11, 2002. At that time the limit was \$25,000. Information is provided in the applicable tax return instructions regarding decoupling bonus depreciation and IRC Section 179 deductions from Federal calculations.

Gross Income Tax

Income Resulting From a Demutualization of an Insurance Company

— A taxpayer inquired about the New Jersey gross income tax treatment of stock received as a result of a demutualization of an insurance company.

For Federal income tax purposes, the treatment of the demutualization income depends on whether it is a tax-free reorganization under IRC Section 368(a)(1). Information on whether the reorganization qualifies under IRC Section 368(a)(1) is obtained from the former mutual insurance company. If the demutualization qualifies as a tax-free reorganization and the taxpayer elects to receive stock, the taxpayer will not recognize any gain or loss on the receipt of the stock for tax purposes.

For New Jersey gross income tax purposes, the method of accounting and the basis of property must be the same as for Federal income tax purposes. See N.J.S.A. 54A:8-3(c) and N.J.S.A. 54A:5-1(c). Therefore, the taxpayer may use Federal income tax accounting concepts to determine if any income is realized for New Jersey gross income tax purposes.

As a result, if a taxpayer receives stock from an IRC Section 368(a)(1) reorganization and qualifies for nonrecognition of income for

Federal income tax, the taxpayer also qualifies for nonrecognition of income for New Jersey gross income tax.

IRC Section 179— See Corporation Business Tax.

Partnership Income and IRC Section 754 Election — The Division responded to a taxpayer who inquired about the treatment of an IRC §754 election under the New Jersey Gross Income Tax Act. The taxpayer inquired about how the IRC §754 election should be reported on the NJ-1065 return.

Pursuant to IRC §754, a partnership may file an election to adjust the basis of the partnership property. This may create a higher “outside” basis for the partnership. Consequently, the partners may use greater depreciation deductions for Federal income tax purposes.

For New Jersey purposes, partnerships are taxed in accordance with N.J.A.C. 18:35-1.3 and N.J.S.A. 54A:5-1(k). All choices affecting the determination of income from the partnership are made by the partnership, not each partner. This includes the choice of the methods of computing depreciation. The partnership may apply Federal law, where it is applicable, to its choice of the method of depreciation.

Thus, Federal adjustments such as an IRC §754 election will be allowed for New Jersey income tax purposes. Supporting documentation for any adjustments should be retained and made available to the Division if requested.

The partnership should report the partners’ IRC §754 adjustment as supplemental information for the NJK-1. The partnership should also indicate in the supplemental information that the IRC §754 amount had not already been taken into account in their reported distributive share of partnership income (loss).

The partners will then adjust their reported distributive share of partnership income (loss) by the IRC §754 adjustment and report the net amount on their NJ-1040.

Property Tax Deduction — A taxpayer inquired about the gross income tax deduction for property taxes paid on a principal homestead. The taxpayer had paid all (100%) of the property taxes due and paid on the homestead property. However, the taxpayer only owned a one-half interest in the property.

The Division replied that based on these facts, the taxpayer is limited to 50% of the property taxes due and paid on the homestead property up

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to the maximum deduction allowed in the law. N.J.S.A. 54A:3A-17(c) states in part:

If title to a homestead is held by more than one individual as joint tenants or tenants in common, each individual shall be allowed the property tax deduction only in relation to the individual's proportionate share of the property taxes assessed and levied against the homestead.

Therefore, a claimant who only holds a 50% interest can use only 50% of the property taxes due and paid on the property when calculating the allowable property tax deduction, even though she is paying 100% of the property taxes.

Sales and Use Tax

Charges for Sightseeing — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to charges for sightseeing, such as the chartering of a ferryboat to see the Statue of Liberty or chartering a boat for the purpose of whale watching.

The Division responded that charges for the transportation of persons are exempt from tax. N.J.S.A. 54:32B-8.11. Thus, the charges for sightseeing in the above examples

are exempt from tax because the object of the transaction is the transportation of people.

Conversely, the bare rental of a boat without an operator or crew is taxable as the rental of tangible personal property. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f). The object of the transaction is considered to be the rental of the boat.

It should be noted that certain boat chartering situations may represent services that go beyond a mere transportation charge, for instance, a dinner cruise which offers food, beverages, entertainment, etc. The taxability can only be determined based on a review of the specific facts. However, please note the following general information pertaining to a lunch/dinner sightseeing cruise.

Bill stated as a lump sum (e.g., \$100 per guest charge). The entire amount is subject to tax since the charge includes significant taxable elements that go beyond merely a charge for transportation.

Itemized bill.

Boat charter fee—exempt as transportation if separately stated and reasonable in relation to prevailing charter rates. N.J.S.A. 54:32B-8.11.

Catering fee—receipts from the sale of food and drink by restaurants, caterers, etc. are taxable. N.J.S.A. 54:32B-3(c).

Sales of Human Semen — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to sales of human semen or sperm to fertility patients and sales of human semen or sperm to fertility doctors or clinics for use in fertility treatments.

The Division determined that due to the nature of the property, human semen and sperm, as well as other human body parts, are not considered to be tangible personal property for purposes of the Sales and Use Tax Act. Therefore, sales of human semen or sperm to fertility patients or to fertility doctors or clinics for use in fertility treatments are not subject to sales and use tax.

Wind Turbines — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to the sale of wind turbines.

The Division responded that the Sales and Use Tax Act contains an exemption for the purchase, rental, lease, or use of solar energy devices or systems designed to provide heating or cooling, or electrical or mechanical power by collecting and transferring solar-generated energy and including mechanical or chemical devices for storing solar-generated energy. N.J.S.A. 54:32B-8.33. Note that solar energy devices certified by the manufacturer will qualify for the exemption. This exemption *does not* apply to wind turbines, and the Sales and Use Tax Act does not contain an exemption for other renewable energy sources (e.g., wind energy or geothermal technology).

However, the law also provides an exemption for “sales of machinery, apparatus or equipment for use or

Current Amnesty Programs

The following jurisdiction(s) are conducting tax amnesty program(s). During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site(s) listed below.

IL Oct. 1 – Nov. 8 <http://tax.illinois.gov/Amnesty/AmnestyQandA.htm>

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consumption directly and primarily in the production, generation, transmission or distribution of gas, electricity, refrigeration, steam or water for sale or in the operation of sewerage systems.” N.J.S.A. 54:32B-8.13(b). Thus, if the wind turbines are used in an exempt manner, for instance, to produce electricity for sale, the purchase of the wind turbines will be exempt under N.J.S.A. 54:32B-8.13(b). If a statutory exemption is not available, purchases of wind turbines and related equipment and materials are subject to tax. N.J.S.A. 54:32B-3(a). □

In Our Courts

Corporation Business Tax

Throwout Rule – *Pfizer, Inc., Whirlpool Properties, Inc. v. Director, Division of Taxation*, New Jersey Superior Court, Appellate Division, decided July 12, 2010.

The Superior Court of New Jersey, Appellate Division, affirmed that the throwout rule is facially constitutional in that it does not offend the due process, commerce, or supremacy clauses of the United States Constitution.

In 2002, the Legislature added the throwout rule to N.J.S.A. 54:10A-6(B). This rule affects the computation of the New Jersey sales factor by excluding or throwing out from the denominator receipts attributable to a state “in which the taxpayer is not subject to a tax on or measured by profits or income, or business presence or business activity.” Note that the throwout rule was repealed for tax periods beginning after June 30, 2010.

Plaintiffs’ contention was that the throwout rule was unconstitutional because it allowed New Jersey to tax income unrelated to the taxpayers’ activities in the State which resulted in a tax that was not fairly apportioned or related to the services provided by the State.

Plaintiffs’ motions were consolidated by the Tax Court to hear the constitutional challenge. The “as applied” portion has yet to be addressed.

The Appellate Division denied plaintiffs’ motions for leave to file interlocutory appeals; however, the Supreme Court granted the motions and remanded for consideration on the merits. Plaintiffs have now filed motions for leave to appeal with the Supreme Court.

Gross Income Tax

Domicile – *Masami Tawara & Kimiko Tawara v. Director, Division of Taxation*, Docket No. 002061-2009, decided July 7, 2010.

Judge Hayser granted the Director’s motion to dismiss the complaint.

In this case, the taxpayer claimed that he was not a New Jersey domiciliary for 2004 and had abandoned his New Jersey domicile in 2001 for a new domicile in Japan where his primary business was located and where he occupied a home owned by the company.

Judge Hayser stated in his opinion that the taxpayer had not abandoned his New Jersey domicile based on several factors:

- The taxpayer maintained his clothing, goods, and personal effects in his New Jersey residence;
- Although the taxpayer lived “separate and apart” from his

spouse, he still owned the house with his wife;

- The taxpayer maintained a New Jersey phone number until 2008;
- The taxpayer was a member of the Old Tappan Lions Club through 2004;
- In 2004, the taxpayer filed Federal and New York tax returns listing his New Jersey address as his address of record;
- The taxpayer maintained a current New Jersey driver’s license that did not expire until 2013, which stated the taxpayer’s New Jersey address as his residence; and
- The taxpayer also maintained an equity loan on his pre-existing marital residence and a joint bank account in New Jersey.

Judge Hayser concluded:

The burden rests with the taxpayer asserting the abandonment of an old domicile for a new one to prove same, to enable the conclusion that the objective factors evidencing that clear intent show that the taxpayer no longer has a “sufficiency of relationship” with the old domicile.

Interest on Late Payment of New Jersey Gross Income Tax –

Alexander and Gloria Szymanski v. Director, Division of Taxation, Docket No. 000449-2009, decided July 8, 2010.

Judge DeAlmeida granted the Director’s summary judgment motion.

In this case, the taxpayers, residents of Pennsylvania, sold rental real estate in New Jersey. Claiming

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that they were not aware of tax in New Jersey and filing an amended Pennsylvania resident return too late to receive a credit for taxes paid to New Jersey, the taxpayers sought the abatement of all penalty and interest.

In his decision, Judge DeAlmeida stated:

Plaintiffs do not dispute that the gain they realized from the sale of the Ocean City property was subject to New Jersey Gross Income tax. They contend that they should not be subject to interest on the taxes due from the sale for a variety of reasons, none of which the court finds availing to plaintiffs.

The Szymanskis believed that all of their interest should be abated because:

1. They were unaware of their obligation to pay nonresident New Jersey gross income tax;
2. Their accountant practices in Pennsylvania, not New Jersey;
3. They should have received amnesty treatment (50% interest relief) even though they paid the balance due in full on January 8, 2009, several months before the amnesty program began; and
4. A Division employee orally informed the taxpayers that no interest was due. (However, as the Judge states in his opinion, this conversation occurred three years after the sale of the Ocean City property and the Division employee

“recognized his error soon after this conversation...and advised them by telephone that interest was due.”).

Judge DeAlmeida stated that “these facts are insufficient to warrant relief under N.J.S.A. 54:49-11b.”

Nonbusiness Bad Debt – *Harlan W. Waksal and Carol Waksal v. Director, Division of Taxation*, Docket No. 001191-2009, decided July 1, 2010.

Judge DeAlmeida granted the Director’s summary judgment motion.

This case involved the taxpayers’ taking a nonbusiness bad debt as a loss on their NJ-1040 return based on an unpaid loan of \$14 million that Mr. Waksal had made to his brother. Several New Jersey Court decisions have previously supported the premise that New Jersey gross income tax (unlike the IRC) does not allow nonbusiness bad debts.

Judge DeAlmeida stated:

The question presented here is whether a non-business bad debt is a “net loss, derived from the sale, exchange or other disposition of property.... As determined in accordance with the method of accounting used for federal tax purposes” within the meaning of N.J.S.A. 54A:5-1(c). The Court’s analysis of this question is guided by the controlling Appellate Division decisions in *Walsh v. Director, Div. of Taxation*, 15 N.J. Tax 180, 183-186 (App. Div. 1995) and *King v. Director, Division of Taxation*, 22 N.J. Tax 627 (App. Div. 2005). The facts of those two cases are on point with those before the Court in all significant aspects.

In each case, the Court upheld the Director’s determination that a loss from non-business bad debt does not fall within N.J.S.A. 54A:5-1(c) and cannot be used to offset gains from the sale, exchange or other disposition of property.

The Gross Income Tax Act provides that taxable income shall consist of sixteen distinct categories, N.J.S.A. 54A:5-1. One of those categories is “net gains or income from disposition of property.” N.J.S.A. 54A:5-1(c). The category is defined as Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting used for federal income tax purposes.

The Appellate Division (in *Walsh v. Director*) flatly rejected the notion that a non-business bad debt constituted a loss that could be offset from gains from the sale, exchange or other disposition of property under N.J.S.A. 54A:5-1(c).

Plaintiffs would have us read N.J.S.A. 54A:5-1(c) broadly so that the language “losses, derived from the sale, exchange or other disposition of property”, would include losses from non-business bad debt. The legislative history weighs against such a broad interpretation. The Legislature determined that the New Jersey Gross Income Tax Act should contain fewer deductions from

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income than the federal income tax. This was seen as a way of making the Gross Income Tax fairer. The Legislature did not explicitly provide for a deduction of a non-business bad debt. Thus, in view of legislative history, it would appear that the Legislature did not intend for N.J.S.A. 54A:5-1(c) to be read broadly to include a deduction for non-business bad debts.

The appellate panel rejected the argument that the Gross Income Tax Act allows gains from the sale, exchange or other disposition of property to be offset by a deduction for non-business bad debt.

**Property Tax Relief Programs
Property Tax Reimbursement –
*Rudolf Abel v. Director, Division of
Taxation*, Docket No. 017319-2009,
decided June 22, 2010.**

Judge Andresini affirmed the Division's denial of Mr. Abel's 2008 Property Tax Reimbursement.

Mr. Abel filed a PTR-1 form seeking a property tax reimbursement (PTR) for 2008.

For the year 2008, the property tax reimbursement application, Form PTR-1, was available to residents who were filing for the first time or were not eligible for the 2007 reimbursement. There is an income limit section on the PTR-1 form; the applicant must have qualifying income in the base year and the application year.

The Director had determined that Mr. Abel's 2007 income exceeded

the income eligibility limit. The Director had also determined that Mr. Abel had failed to fulfill the statute's three-year residency requirement. Mr. Abel moved into his new home in 2006. Mr. Abel lived at his old home from 1985 until 2006.

Mr. Abel argued that the Director did not correctly calculate his income and that his only income came as a result of working as an election booth operator and that his 2007 Federal tax return reflected income below the PTR income threshold.

Mr. Abel argued that although he did not reside in his new home for the statutory required three-year period, he should be able to aggregate the years spent at his former home to the years spent at his new home.

Judge Andresini stated, "Property tax reimbursements are governed by N.J.S.A. 54:8.67 to 54:8.75."

An eligible claimant must have an annual income of \$60,000 or less in 2007 and \$70,000 or less in 2008.

Judge Andresini further opined:

N.J.S.A. 54:4-8.67 defines income as "income as determined pursuant to P.L. 1975, c.194 (C.30:4D-20 et seq.)," which is the statute establishing the Pharmaceutical Assistance to the Aged ("PAAD") program. Regulations promulgated for the PAAD program pursuant to N.J.S.A. 30:40D-24 include N.J.A.C. 8:83-6.2, which defines "income" for purposes of PAAD program and thus for eligibility for the property tax reimbursement. Income includes such things as pensions, N.J.A.C. 8:83-6.2 (c)(1)(xvi) and social security benefits

N.J.A.C. 8:83-6.2(c)(1)

(i). Income for purposes of the property tax reimbursement has nothing to do with federal income tax definition. I therefore conclude that Mr. Abel's income exceeded the income eligibility limits for the property tax reimbursement for tax year 2007 and that he is not eligible for the reimbursement.

Judge Andresini went on to say about the three-year residency requirement:

The tacking issue was extensively analyzed by Judge Small in *Anderson v. Director, Div. of Taxation*, 24 N.J. Tax 141, 152 (Tax 2008), aff'd, 2009 N.J. Lexis 244 (App. Div. 2009). The taxpayer argued because she was forced to move from her old home to her new home, as a result of condemnation of her old home, she should be able to tack the years lived at her old home to those lived in her new home in order to meet the statute's three year residency requirement. The judge agreed that the principle of tacking had been applied in the adverse possession context, so that one who claims adverse possession may gain benefit of adverse uses by predecessors as long as the adverse use is continuous, the claimant satisfies all other requirements, and privity exists between the claimant and previous titleholders. He determined that tacking was not applicable here due to the taxpayer's lack of privity with the prior owners of her new property. The judge

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also reasoned that exemptions from taxation are typically narrowly construed and therefore the equitable principle of tacking should not be applied to settings other than adverse possession in the absence of express legislative direction.

In this case, Mr. Abel did not fulfill the three-year residency requirement.

In closing, Judge Andresini stated:

I conclude that the Director of the Division of Taxation properly exercised discretion denying Mr. Abel's property tax reimbursement for 2008.

□

In Our Legislature
Hotel/Motel Occupancy Tax Revisions to the Hotel/Motel Occupancy Tax Imposed by Municipalities — P.L. 2010, c.55, signed into law on August 18, 2010, and effective immediately, revises the hotel/motel occupancy tax permitted to be imposed by municipalities under P.L. 2003, c.114.

The Act amends section 7 of P.L. 2003, c.114 (N.J.S.A. 40:48F-5) to require the State Treasurer to include with the periodic distribution of tax revenue to each subject municipality a list of all of the hotels and motels therein that submitted municipal occupancy tax revenue to the State for the reporting period.

The new law also requires every municipality that has adopted an ordinance imposing the occupancy tax to annually provide to the State Treasurer on or before January 1 of each year a list of the names and

addresses of all of the hotels and motels located in the municipality, and also the name and address of any hotel or motel that commences operation after January 1 of any year. This additional reporting requirement will aid in more effective tax administration.

Finally, the Act makes unpaid occupancy taxes a municipal lien on the real property comprising the delinquent hotel or motel. This requires the State Treasurer to provide to a subject municipality written notification of nonpayment of local hotel/motel taxes. The municipality would then be authorized to act as the collection agent for the outstanding balance of taxes due and owing to it in place of the State Treasurer.

Corporation Business Tax Offshore Wind Economic Development Act — P.L. 2010, c.57, signed into law on August 19, 2010, and effective immediately, creates the Offshore Wind Economic Development Act and establishes an offshore wind renewable energy certificate program. The Act also authorizes the Economic Development Authority (EDA) to provide tax credits for qualified wind energy facilities in wind energy zones.

The new law provides corporation business tax credit support of offshore wind energy programs with an expected power generation capacity of 20 to 25 megawatts. The tax credit program would finance 100% of capital costs for such programs in an amount not to exceed \$100 million in the same manner that tax credits are to be provided under the Urban Transit Hub Tax Credit Act (N.J.S.A. 34:1B-208 as amended by P.L. 2007, c.346).

The Act does, however, allow the EDA to exceed the \$100 million cap if “a business demonstrates to the authority, at the time of application, that the State’s financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive benefit to the State.”

The Division must also ensure that the aggregate amount of these credits, in addition to any other urban transit hub tax credit certificates approved in the future, do not exceed statutory maximums. It is anticipated that the Division of Taxation will administer this measure in the same manner as it expects to administer any actual approved credit under the Urban Transit Hub Tax Credit Program. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- ***Chronological List of Filing Deadlines*** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#)

[2010](#)

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• **Alphabetical Summary of Due Dates by Tax Type**

2009 2010

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

2009 2010 □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
- for Homeowners 1-888-238-1233
- Homestead Benefit Hotline
- for Tenants 1-888-213-8623
- Property Tax Reimbursement
- Hotline 1-800-882-6597
- Earned Income Tax Credit
- Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
- System 1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
- Refunds 609-633-8878
- Public Utility Tax..... 609-633-0013

New Jersey State Tax news

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Michael Bryan Named Acting Director

New Jersey Treasurer Andrew Sidamon-Eristoff appointed Michael J. Bryan as the new Acting Director of the Division of Taxation.

Mr. Bryan took the oath of office for the position on July 12, 2010, in the Treasurer's Office at the State House and assumed responsibility for managing a staff of 1,300 employees who administer 40 taxes and fees and provide information and assistance to members of the public on tax questions. In the fiscal year ended June 30, 2009, the Division collected \$24.8 billion in tax revenues for the State of New Jersey.

Mr. Bryan is a tax and accounting professional with more than 20 years of private and public sector experience. Most recently, he served as senior director in the tax department at Comcast Corporation in Philadelphia. In that capacity he managed all tax controversy issues for the communications and entertainment company as well as its centralized records management.

"Mike brings a broad and deep background in tax, audit, and accounting matters to the Division along with strong managerial experience. We are pleased that New Jersey will benefit from the services of a professional of his caliber," Sidamon-Eristoff said.

"His experience in handling tax and audit issues both from the government and private client perspective will be particularly valuable as he manages the Division's interactions with taxpayers.

"Mike also has a strong interest in how tax agencies deal with the public," Sidamon-Eristoff added, "and I believe he is the right person to lead the Division as we seek to enhance the communications and support it provides to taxpayers to help them fulfill their legal responsibilities."

Mr. Bryan will serve on an acting basis pending the advice and consent of the New Jersey Senate.

He began his tax career in 1987 as a revenue agent conducting field examinations for the Internal Revenue Service in Philadelphia. He then joined Coopers & Lybrand as an associate and assisted clients with tax and audit matters. His career at Comcast began in 1994 when he joined the company to manage tax examinations.

He is a Certified Public Accountant and earned a Bachelor of Science degree in accounting from Drexel University and a Master of Science degree in taxation from Temple University.

Mr. Bryan is a lifelong resident of New Jersey. He currently resides in Haddonfield with his wife Rebecca and their two children. □



Director's Advisory Council to be Formed

The Division of Taxation is proud to announce the formation of the Tax Director's Advisory Council (the "Council" or "TDAC"). The purpose of the Council will be:

1. To provide a public forum for communication between New Jersey's Tax Director and representatives of the public interested in New Jersey tax policy, and
2. To provide ideas, input, and perspective to the New Jersey Tax Director, assisting him in developing tax policy and identifying improvements in the administration of New Jersey's taxes and to offer constructive observations regarding current or proposed New Jersey tax policies.

Applicants must have a strong tax or business background, excellent communication skills, practical tax administration experience and knowledge, and the ability to interact in a diversified environment. In addition, applicants should describe and document their qualifications for membership, including the applicant's past and current affiliations and dealings with a particular tax segment of the community that he/she wishes to represent on the council.

The TDAC is comprised of no more than fifteen (15) members. It is important that the TDAC represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection will be based on the applicant's qualifications and areas of expertise. To be fully considered,

an applicant's background should include several of the following:

- Application of tax law expertise to resolve complex tax issues;
- Development and implementation of customer service initiatives and tools;
- Systems management and improvement, and change management;
- Establishment of successful strategic partnerships; and,
- Demonstrable ability to examine situations from a "macro" perspective.

Anyone interested in becoming a member of the Council should review the [Charter](#) and submit a completed [application](#) by September 15, 2010. Applicants will be notified shortly thereafter regarding their appointment to the Council.

Applications should be postmarked, faxed, or e-mailed on or before September 15, 2010. Applications should be sent to: Division of Taxation, P.O. Box 240, Trenton, NJ 08695 or faxed to 609-984-2061 or e-mailed to NJTax.Advisory.Council@treas.state.nj.us

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1–

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time to hear and determine appeals.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director: Michael J. Bryan**

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tax assessors' calendar - from page 2

- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2011 together with a notice that the completed form must be filed with assessor by August 1, 2010, to claim continuance of Farmland Assessment.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2011.

August 5–

- All SR-1A forms showing sales transactions to be used in

compiling 2011 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25–

- State Equalization Table completed by Director, Division of Taxation.

September 1–

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2011 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2011 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

- All SR-1A forms showing sales transactions to be used in

September 13–

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders.

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland

Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

October 25 (on or before)–

- Added assessments certified for fire districts on Form CNC-3. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

continued on page 4

Correction

2009 NJ-1040NR Instructions

There is an error on page 7 in the printed version of the 2009 NJ-1040NR nonresident return instructions. The equation that appears under "Line 30 - Total Exemption Amount" is incorrect. It should read:

$$\frac{\text{Total Exemptions}}{12} \times \frac{\text{Mos. NJ Nonresident}}{12} = \text{Line 30}$$

A corrected version of the instructions is available on our Web site at: www.state.nj.us/treasury/taxation/prntgit.shtml

small bus. workshops - from pg. 3

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Tax Briefs

Gross Income Tax

Contributions to Health Savings Accounts — An employer inquired if contributions to health savings accounts are included as taxable income.

The Division replied that the New Jersey Gross Income Tax Act does not allow any deduction for contributions made to a health savings account, which refers to an account established under IRC §223. Therefore, any contributions made by an employer or employee to a health savings account under IRC §223 are includible in gross income subject to

tax, including for purposes of withholding tax.

NOTE: Contributions to a *health* savings account must be distinguished from contributions made to a *medical* savings account established under IRC §220. Under N.J.S.A. 54A:3-4(a), qualified contributions to a medical savings account established under IRC §220 are excludable from income subject to gross income tax, provided all IRC limitations and requirements are satisfied, which generally dictate that the account must have been established prior to 2008.

Treatment of Nonwage Income Under Military Spouses Residency Relief Act — A spouse of a member of the military inquired about the treatment of nonwage income under the Federal Military Spouses Residency Relief Act.

The Federal Military Spouses Residency Relief Act is effective for the 2009 income tax year and thereafter. The Act allows a military servicemember's nonmilitary spouse to keep a tax domicile throughout the marriage and while moving from

state to state, as long as the spouse moves into a state to be with a servicemember who is in the state on military orders. The spouse (treated as a nonresident of New Jersey under the pertinent laws) inquired whether the Federal protections apply to income earned from a business carried on within New Jersey.

The Division responded by explaining that the Federal protection applies to earned income that is salaries, wages, tips, professional fees, and other compensation received for personal services. The Division informed the nonresident spouse that income from New Jersey sources such as income or gain from property located in the state, or income from a business, trade, or profession carried on in the state, does not qualify for Federal relief and is subject to New Jersey gross income tax.

Litter Control Fee

Trade Books and Textbooks Not Subject to Litter Control Fee — The Division received a letter regarding the applicability of the litter control fee to the business's sales of trade and textbooks. According to the bookseller, the industry term "trade book" refers to any book other than one commonly referred to as a "textbook."

The law defining litter-generating products provides for 15 litter-generating product categories, including "paper products and household paper." Years ago, the Division had taken the position that books fall within the litter-generating product list as "paper products and household paper."

The Division later modified that position pursuant to the Tax Court's

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2008 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2009 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:email@nj.treasury.state.nj.us) at nj.treasury@treas.state.nj.us



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disposition in *Random House, Inc. v. Director, Division of Taxation*, 22 N.J. Tax 485 (Tax Court 2005), affirmed 23 N.J. Tax 291 (Superior Court Appellate Division 2006). In that case, the Court determined that books did not fall within the scope of “litter-generating products.”

The regulation currently defines the category “paper products and household paper” to include “all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers, magazines, books and roll stock produced by paper product manufacturers and wood pulp, sold as such.” N.J.A.C. 18:38-3.1. (emphasis added)

The bookseller was advised that it need not include its sales of trade and textbooks in its gross receipts of litter-generating products for purposes of the litter control fee. Also,

receipts from sales of newspapers and magazines are not subject to the fee. N.J.A.C. 18:38-3.1. On the other hand, other publications and paper products, such as brochures, maps, stationery, and journals (and any other “litter-generating products”) sold by booksellers are subject to the fee.

Sales and Use Tax

Campground Site Fee — The Division received an inquiry concerning whether the operator of a campground must charge sales tax on the fee charged for a camper to use a campground site.

The Division replied that this fee is not subject to sales tax. The Division considers the transaction to be the rental of real property. The charge for using a campground site is not treated as “rent for...occupancy of a room or rooms in a hotel.” Therefore, the charge is not subject to sales tax or to the State occupancy fee or the municipal occupancy tax.

Certificate of Authority Requirements at a Flea Market — The operator of a flea market wrote to the Division with questions concerning a Certificate of Authority to collect sales tax. The Division responded by explaining that the sellers of taxable merchandise, prepared foods, or services, etc. at a flea market must have a New Jersey Certificate of Authority to collect sales tax.

The Division of Taxation advises the operators of flea markets to make sure that every seller having taxable transactions at the flea market has a New Jersey Certificate of Authority to collect sales tax. The operator of the flea market can accept a certificate that has the first six digits replaced (xxx-xxx-123/000) because the Division of Revenue now sends

the certificates in that format for privacy reasons. The Certificate of Authority issued to a seller (concessionaire) is required to be displayed at the table, stand, motor vehicle, or other merchandising device used at their business location. These certificates are non-assignable and nontransferable.

Further information for flea market operators and sellers is found in publication ANJ-15, *Flea Markets and New Jersey Sales Tax*, available on the Division of Taxation’s Web site at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj15.pdf

Leased Property Relocated Outside New Jersey — The Division responded to an inquiry regarding the application of the New Jersey Sales and Use Tax Act to a lease transaction for property leased in New Jersey. The lease in question is a lease for one year, for which the lessor must charge sales tax at the beginning of the lease based on the total of the periodic payments due (or based on the original purchase price of the property). See N.J.S.A. 54:32B-7(d).

If the property originally leased in New Jersey is permanently relocated to another state before the expiration of the lease, the lessee is entitled to a partial refund of the amount of sales tax paid. The partial refund is based on the sales tax allocable to the portion of the lease or rental that remains in effect after the property is removed from New Jersey. N.J.S.A. 54:32B-7(d).

For motor vehicle leases or rentals which require periodic payments by the lessee, each periodic payment is sourced to the primary property location. The “primary property

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2010 – December 31, 2010, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%



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location” is the address provided by the lessee and maintained in the lessor’s ordinary business records, provided that the address is used in good faith. N.J.S.A. 54:32B-3.1(c).

The Division’s policy, based on the sourcing rules, is to permit a partial refund if the vehicle’s primary property location is no longer in New Jersey.

The lessee may request a refund from the State of New Jersey by filing Form A-3730, Claim for Refund. The application for a refund must be filed within four years from the date of payment of the sales tax. The form is available on the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/other_forms/sales/a3730.pdf

For filing the refund claim, the lessee must provide documentation of payment of sales tax and documentation demonstrating that the primary property location of the vehicle is now outside of the State (e.g., copy of the registration of the vehicle with New York or another state).

For more information, visit the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/ssutlease.pdf □

In Our Courts

Administration

Notification – *Damon Dash v. Director, Division of Taxation*, Docket No. 015538-2009, decided April 6, 2010.

Judge Narayanan granted the Director’s motion to dismiss the complaint.

Damon Dash maintained that the assessment underlying the Certificate of Debt (COD) should be reviewed by the Court because his accountant and tax preparer never forwarded him the Director’s assessment notices.

Judge Narayanan stated:

Even if Dash’s assertion of the accountant’s failure to forward him the Notices of Deficiency is true, this unfortunate circumstance was not caused by, and thus, cannot be attributed to the Director. The Director reasonably, and as permitted by the statute, used Dash’s last known address on his last filed GIT return to mail the notices of deficiency, which address was that of Dash’s tax preparer. Unless notified or directed otherwise, the Director cannot speculate or envision a breakdown in business/professional

relations or lack of communications between Dash and his accountant, and be therefore required to investigate Dash’s address each time before mailing the Notices of Deficiency. Nothing was provided to the court to establish that the Director was given specific instructions/notice either to not use the accountant’s address or to use some other address.

The court cannot undo the assessment underlying the COD docketed for tax years 2000-2002. See R. 8:3-5(b)(2), (a “challenge to a tax assessment” contained in the COD “may be reviewed [by the Tax Court] only if the applicable period for filing a complaint to challenge this assessment had not previously expired”). See also, *Kowasaki v. Director, Division of Taxation*, 13 N.J. Tax 160 (Tax 1993) (noting that the COD is a collection mechanism only, and does not provide an independent basis to challenge the Director’s tax assessment if the time for such challenge has expired).

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “**Auctions**.” Select the name of the business for details about that auction.

Enforcement Summary Statistics First Quarter 2010

Following is a summary of enforcement actions for the quarter ending March 31, 2010.

• Bank Levies	1,102	• Seizures	64
• Certificates of Debt:		• Auctions	4
Total Number	4,944		
Total Amount	\$62,624,812		



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Corporation Business Tax

IRS Adjustment – General Motors Acceptance Corporation v. Director, Division of Taxation, Docket No. 010743-2007, decided February 18, 2010.

On September 14, 2001, General Motors Acceptance Corporation (GMAC) filed its 2000 corporation business tax return. On the return, GMAC reported a 50% dividend exclusion for dividends attributable to its subsidiary, Opel.

The Internal Revenue Service audited GMAC’s 2000 return and assessed income adjustments. On November 7, 2005, GMAC timely submitted to the Division of Taxation its report of the Federal audit which increased its New Jersey tax liability. In addition to the Federal audit report, GMAC also submitted that it was entitled to a 100% dividends received exclusion from Opel rather than the 50% exclusion it originally reported. Essentially, GMAC realized that it erred

when it originally filed because its percentage of ownership of Opel qualified for a 100% dividend exclusion rather than a 50% exclusion.

The Division denied the request for 100% dividend exclusion because both the statute of limitations had expired and GMAC was not entitled to an offset on this assessment resulting from the Federal audit change.

Judge Bianco concluded:

GMAC is only entitled to an offset during ‘the time in which a deficiency assessment of that tax may be made.’ N.J.S.A. 54:49-16(b). GMAC is not entitled to an offset because either the Director’s ability to make a deficiency assessment is barred by N.J.S.A. 54:49-6(b) or GMAC’s claim does not relate to a change or correction by the Commissioner, as required by N.J.S.A. 54:10A-13. Nor is GMAC entitled to an offset under the doctrine of recoupment because there were two taxable events.

Nexus – Telebright Corporation, Inc. v. Director, Division of Taxation, Docket No. 011066-2008, decided March 24, 2010.

Telebright Corporation, Inc., is a software company having its principal place of business in Maryland. It does not maintain an office nor does it solicit sales in New Jersey.

In 2001, Telebright hired Ms. Thirumalai to develop and write software code. At the time, Ms. Thirumalai lived in Maryland. In 2004, she moved to New Jersey and Telebright retained her as a salaried employee, where she worked from home. Telebright withheld and remitted New Jersey gross income tax from her salary. Ms. Thirumalai received and performed her work assignments at her New Jersey home via computer and telephone.

The Court concluded that a “foreign corporation that regularly and consistently permits its employee to work each business day at a New Jersey residence is doing business in this State and must file Corporation Business Tax returns.” The Court found that Telebright satisfied factors one, three, and four of the “doing business” regulation N.J.A.C. 18:7-1.9(a). Further, the Court found that Telebright’s constitutional claims were unavailing.

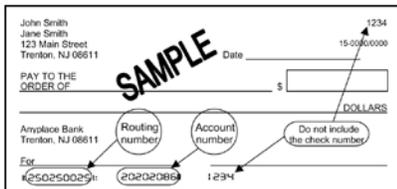
Gross Income Tax Deduction From Wages – Kit Ching Ng v. Director, Division of Taxation, Docket No. 000007-2009, decided March 22, 2010.

Judge Narayanan granted the Director’s summary judgment motion and dismissed the plaintiff’s complaint.

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Plaintiff, Ms. Ng, is a New Jersey resident. She is a registered securities representative. For tax year 2006, Ms. Ng was an employee of Morgan Stanley. On her New Jersey income tax return she reported an amount less than what was listed on the W-2 she received from Morgan Stanley.

In an explanation attached to her return, Ms. Ng stated that she deducted from her Morgan Stanley wages the amount of the annual consulting fee she had paid her former boss at Morgan Stanley. After her former boss retired, Ms. Ng took over and began managing her customer stock portfolio accounts in November 1999. Ms. Ng and the former boss had “reached an agreement” whereby

she undertook to pay the former boss an annual consulting fee based on her gross commissions. According to Ms. Ng, this fee reduced her gross income as “an expense directly related to her earning of commissions,” rather than an unreimbursed employee expense; therefore, she deducted the amount of the consulting fee from the wages reported on her income tax return.

Judge Narayanan opined:

The Director’s regulations reflect the above stated statutory scheme, in that income earned by an employee from his or her employment cannot be offset by any deductions. Thus, N.J.A.C. 18:35-1.2(a) states that an employee “shall

not deduct from gross income any costs and expenses incurred in connection with such employment. N.J.A.C. 18:35-1.2(b) elaborates this principle by reiterating that “all earnings in connection with employment” including commissions, must be reported only under the wage income category (N.J.S.A. 54A:5-1(a)) and “in no case” can the same be reported as “net profits from business” under N.J.S.A. 54A:5-1(b).

Ng does not contend that she is entitled to deduct the consulting fees paid to her former boss because she is engaged in an independent securities trading business (whether as a sole proprietor or otherwise). Rather, she seeks to deduct these fees from her commissions earned as an employee of Morgan Stanley. However, such a deduction is impermissible pursuant to N.J.S.A. 54A:5-1(a), the implementing regulations, and precedent in this connection.

Local Property Tax

Dismissal of an Appeal by County Tax Board – Arnold Lee Austin v. Township of Pemberton, Docket No. 014022-2009; ***Ana Ramirez v. Township of Pemberton***, Docket No. 014024-2009; ***Sultan Muhammed v. Township of Pemberton***, Docket No. 014026-2009. Formal opinion dated April 28, 2010.

In these consolidated cases, the Tax Court of New Jersey determined that a taxpayer’s testimony before a County Board of Taxation regarding the taxpayer’s recent purchase

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

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of his or her residence, including the characteristics of the property, the circumstances surrounding the purchase, and the purchase price, constitutes sufficient evidence to preclude dismissal of the taxpayer's appeal for lack of prosecution. As a result of this holding, the defendant Township of Pemberton's motions pursuant to N.J.S.A. 54:51A-1(c)(2) to dismiss the complaints in these matters for failure to prosecute before the Burlington County Board of Taxation were denied.

The three plaintiffs, Mr. Arnold Austin, Ms. Ana Ramirez, and Mr. Sultan Muhammed, filed timely appeals of the assessments of their respective properties with the Burlington County Board of Taxation. All plaintiffs were represented by the same legal counsel.

The first to testify before the County Tax Board was Mr. Austin. He purchased his residence about 15 months prior to the October 1, 2008, relevant property valuation date. Mr. Austin described the physical condition of his property, the circumstances surrounding the purchase, and the purchase price. In addition, Mr. Austin testified that the property is affected by loud noise from Fort Dix, a neighboring military base, information not known to him prior to the closing on his purchase. He offered the view that this evidence was relevant to the fair market value of the property on October 1, 2008. According to the plaintiffs' uncontested submissions, after hearing Mr. Austin's testimony the Burlington County Tax Administrator stated "no comps equals no evidence" and advised the County Tax Board to dismiss the appeal. In response to a question posed by the County

Tax Administrator, Mr. Muhammed and Ms. Ramirez maintained they planned to rely entirely on testimony of the type given by the first taxpayer, Mr. Austin, without providing comparable sales or an expert witness. Thereafter, the County Tax Board refused to hear any testimony from these taxpayers.

On June 12, 2009, the County Tax Board entered judgments dismissing all three of the plaintiffs' appeals for failure to prosecute. The plaintiffs filed timely complaints with the Tax Court challenging the County Tax Board's judgments. The Township of Pemberton moved to dismiss the complaints pursuant to N.J.S.A. 54:51A-1(c)(2) because the County Tax Board had dismissed the three matters for failure to prosecute.

The Tax Court concluded that where a taxpayer or counsel appears at a County Tax Board hearing, the appeal is properly dismissed for lack of prosecution only if the taxpayer or counsel fails to produce "some evidence" of the value of the subject property. The distinction between a failure to produce sufficient evidence and a failure to prosecute is significant. Dismissal of an appeal by a County Tax Board where the taxpayer produces some, but insufficient, evidence of value will not preclude further review by the Tax Court. However, in *Pipquarryco, Inc. v. Borough of Hamburg*, 15 N.J.

Tax 413 (Tax 1996) the Court held that dismissal of an appeal because a taxpayer has not produced even some evidence of value before a County Tax Board equates to a dismissal for failure to prosecute and deprives the Tax Court of jurisdiction.

The Tax Court is vested with the power to determine, *de novo*, whether there has been a failure to prosecute before the County Tax Board within the intendment of N.J.S.A. 54:51A-1(c)(2) and whether dismissal for lack of prosecution by a County Tax Board was warranted.

The Tax Court concurred with the analyses in *VSH Realty, Inc. v. Township of Harding*, 291 N.J. Super. 295, 15 N.J. Tax 653 (Appellate Division 1996) and *Ganifas Trust v. City of Wildwood*, 15 N.J. Tax 722 (Appellate Division 1996). It was with these positive and negative precedents the Tax Court concluded that Mr. Austin satisfied the "some evidence" standard established in N.J.A.C. 18:12A-1.9(e) when he offered testimony regarding the circumstances of his purchase of the subject property, the purchase price, and the property's characteristics. In reaching this decision, the Tax Court was guided by the Appellate Division's opinion in *Passarella v. Township of Wall*, 22 N.J. Tax 600

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(Appellate Division 2004). In that case, the Tax Court granted the municipality's motion to dismiss at the close of the plaintiff's case, where the only evidence produced was the testimony of an expert appraiser regarding the taxpayer's purchase of the subject property a year and a half prior to the relevant valuation date. The Appellate Division reversed, stating it is well established that the price established by an arms-length sale of a property is probative of its fair market value. The Appellate Division held the taxpayer presented sufficient evidence that true value was equal to purchase price.

In light of that holding, the Tax Court concluded that Mr. Austin presented some evidence of value when he testified regarding his purchase of the subject property. While the plaintiff's testimony may have been, in the County Tax Board's view, insufficient for a determination of value, that fact was not relevant to the outcome. Mr. Austin's decision to rely on his own testimony without obtaining an expert appraisal does not amount to a failure to prosecute his appeal. The Tax Court maintained that Mr. Austin appeared at the hearing with counsel and made

a good faith effort to explain why he believed the assessment on his property was incorrect and that he did not act in a deliberate and contumacious manner or make a sham appearance before the County Tax Board.

Whether ultimately successful or not, testimony of the type presented by Mr. Austin would satisfy the "some evidence" standard of N.J.A.C. 18:12A-1.9(e) and preclude a finding of failure to prosecute. The type of testimony these taxpayers intended to offer would have satisfied the "some evidence" standard sufficient to avoid dismissal for lack of prosecution had they been permitted to proceed by the County Tax Board. Since Ms. Ramirez and Mr. Muhammed were not permitted to present any evidence before the County Tax Board, dismissal of their appeals for lack of prosecution was not warranted and cannot be sustained.

The Tax Court was aware of the high caseload and short statutory time frame for resolving appeals at County Tax Boards. It was the opinion of the Court that all facets of the tax administration system, including the Tax Court and the County Tax Boards, cannot lose sight of the fact that these venues exist to provide taxpayers and taxing

districts with a meaningful forum for the principled resolution of tax disputes.

Sales and Use Tax

Jurisdiction – *Scott Frybarger, t/a Titan Power Equipment, Inc. v. New Jersey Department of Treasury*, Docket No. A-2410-08T3, decided April 20, 2010.

This case was heard in the New Jersey Superior Court, Appellate Division on appeal from the New Jersey Superior Court, Law Division.

The Director had previously prevailed in court decisions from the United States Federal District Court and the New Jersey Superior Court, Law Division on this matter.

Mr. Frybarger, a resident from Florida, sent a tractor-trailer full of construction equipment to New Jersey to be sold. Mr. Frybarger hired individuals from Ohio to drive around New Jersey construction sites and sell the merchandise. The individuals from Ohio were responsible for picking the equipment up from a New Jersey site and driving the equipment to prospective customers located in New Jersey. Once a construction site foreman saw equipment that he was interested in, the Ohio driver would make a phone call to Mr. Frybarger who would finalize the deal. Sales tax had not been remitted on these transactions.

Mr. Frybarger's appeal alleged constitutional violations by the defendant, including illegal search and seizure, confiscation of property, infringement of right to interstate travel, and invasion of privacy.

The New Jersey Superior Court, Appellate Division ruling stated:

Current Amnesty Programs

The following jurisdiction(s) are conducting tax amnesty program(s). During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site(s) listed below.

FL	July 1 – Sept. 30	http://dor.myflorida.com/dor/
NM	June 7 – Sept. 30	www.taxrelief.newmexico.gov
NV	July 1 – Sept. 30	http://tax.state.nv.us
Washington, D.C.	Aug. 2 – Sept. 30	http://dctaxamnesty.com/

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Here, a sales tax obligation was triggered by the sale of plaintiff's equipment in New Jersey. "The combination of physical presence in New Jersey and transfer of possession [of the equipment] in New Jersey is sufficient to impose on [plaintiff] an obligation to collect the sales and use tax in a two-party transaction." *Steelcase, Inc. v. Director, Division of Taxation*.

Even if, as plaintiff suggests, the subcontractors made each sale, plaintiff remains liable for the collection and turnover of sales taxes, as "the same principles that govern two-party transactions also apply to three-party transactions." *Ibid.* As the vendor and owner of the seized equipment, plaintiff became liable for incurred taxes when equipment was transferred in New Jersey upon his approval for each sale. Therefore, plaintiff retains the obligation to collect the sales or use tax for all transactions that are not otherwise qualified exempt sales.

We reject as unfounded plaintiff's contentions that defendant's seizure of his property violated his constitutional rights "protected by 42 U.S.C.A. Section 1983".... Plaintiff's claim that defendant performed an unlawful warrantless search and seizure and assertion of a right to jury trial are without merit and do not warrant extensive discussion. R. 2:11-3(e)(1)(E).... Our review discerns no "fraudulent

representation" by defendant or its investigators in exercising its authorized power to issue a warrant of execution for jeopardy assessment of delinquent taxes, pursuant to N.J.S.A. 54:32B-22 and N.J.S.A. 54:49-13a.... With regard to the confiscation of plaintiff's property in partial satisfaction of the assessment, no Fourth Amendment protections, made applicable to the states by the Fourteenth Amendment were infringed.... The open seizure of plaintiff's trailer and its contents were within the scope of defendant's statutory authority and violated no protected privacy interest.... We conclude plaintiff's failure to comply with the jurisdictional prerequisites to having tax matters heard is a fatal flaw barring his requested relief. □

In Our Legislature **Alcoholic Beverage Tax**

Renewal of Lapsed Alcoholic Beverage Retail Licenses — P.L. 2010, c.14, signed into law on May 6, 2010, and effective immediately, extends the time period for renewal of lapsed alcoholic beverage retail licenses by permitting an issuing authority to issue a new retail license to a licensee who did not file a timely renewal application but files an application for a new license within one year after the expiration of the license renewal period. New license issuance is permissible subject to certain determinations by the Director of the Division of Alcoholic Beverage Control. The licensee would be required to pay the municipal and State renewal fees for the year

for which a timely renewal application was not filed.

The licensee must file the request no later than one year after the expiration of the license renewal period for the license which was not renewed in a timely manner. A filing fee of \$100 is payable to the Director for each license term.

A new license issued pursuant to this bill would be assigned the same license number as the lapsed license.

The Act establishes a grandfather clause for those licensees whose licenses expired within the five-year period immediately preceding the date of this law's enactment if the licensee applies for the new license within six months of the effective date of the new law and pays the municipal and State renewal fees for each year for which a timely renewal application was not filed.

Corporation Business Tax ***Temporary Reduction of the Tax Benefit Certificate Transfer Program and the Film and Digital Media Tax Credits*** — P.L. 2010,

c.20, signed into law on June 30, 2010, and effective immediately, temporarily reduces the annual cap imposed on the corporation business tax benefit certificate transfer program available to certain technology and biotechnology companies. It also temporarily suspends the tax credits provided for qualified film and qualified digital media content production expenses under the corporation business tax and gross income tax.

The new law reduces the annual cap imposed on the corporation business tax benefit certificate transfer program for new or expanding

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emerging technology and biotechnology companies in New Jersey from the current \$60 million-per-year limitation to \$30 million in fiscal year 2011.

It proportionally reduces the current set-aside for innovation zone-located companies under the program from \$10 million per year to \$5 million during the same period of time. The change in the annual limitation and the modification to the set-aside apply to the surrender of transferable tax benefits in fiscal year 2011.

The Act also temporarily suspends the corporation business tax and gross income tax credits for qualified film production expenses and the corporation business tax credit for qualified digital media content production expenses by effectively reducing the existing annual tax credit caps from \$10 million per year for film and \$5 million per year for digital media content to \$0 for film and digital media content in fiscal year 2011. The law provides that the temporary suspension of tax credits applies to the authorization of new credits and the application of previously authorized credits in the upcoming fiscal year. It does not affect the carryover of unused film and digital media tax credits previously allowed or which may be allowed following the suspension.

Finally, the Act requires the State Treasurer to prepare and file a report regarding the effectiveness of the tax benefit certificate transfer program and the film and digital media tax credits in meeting their statutory goals and objectives.

Gross Income Tax

Reduction in Earned Income Tax Credit—P.L. 2010, c.27, was signed into law on June 30, 2010, and is effective immediately. It applies to taxable years beginning on or after January 1, 2010.

Commencing with tax year 2010 and thereafter, the Act reduces the benefit amount provided under the New Jersey earned income tax credit (EITC) program as a percentage of the Federal earned income credit. Previously, the EITC program provided a refundable credit for New Jersey income tax purposes equal to 25% of the Federal earned income credit. The new law reduces the New Jersey credit to 20% of the Federal benefit.

Temporary Reduction of the Tax Benefit Certificate Transfer Program and the Film and Digital Media Tax Credits— See Corporation Business Tax.

Miscellaneous

Modification to the New Jersey Economic Stimulus Act of 2009—P.L. 2010, c.10, which was signed into law on May 5, 2010, modifies provisions of the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c.90). The Act is effective immediately; however, section 1 and sections 3 through 9 are retroactive to July 28, 2009 (the date of enactment of P.L. 2009, c.90), and section 2 applies to applications submitted for the 2010 technology business tax certificate transfer program.

The Act revises the definition of “biotechnology company” to clarify that only a company sufficiently involved in biotechnology may participate in the program. Eligible companies must have fewer than 225 employees in the United States as of

June 30 and as of the date of the exchange of the tax benefit certificate. Additional employee thresholds must also be met.

The Act added to the definition of “qualifying economic redevelopment and growth grant incentive area” in section 3 of P.L. 2009, c.90 (C. 52:27D-489c). It means Planning Area One (Metropolitan), Planning Area Two (Suburban), or a center as designated by the State Planning Commission; a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c.111 (C.13:18A-1 et seq.); a transit village, as determined by the Commissioner of Transportation; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission Action.

The Act also ensures that ordinances that are authorized to be adopted pursuant to the New Jersey Economic Stimulus Act of 2009 (which would include those required under the Economic Redevelopment and Growth Grant Program provisions) will not be subject to delays from public referendum challenges in those municipalities in which general initiative and referendum is authorized. The statutes contain other provisions to ensure that certain types of ordinances are not subject to public changes through initiative and referendum and ordinances adopted for the purpose of providing economic stimulus require swift implementation and should not be impeded through the referendum process.

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in our legislature - from page 12

Motor Fuel Tax

Motor Fuel Tax Act — P.L. 2010, c.22, was signed into law on June 30, 2010. The Act is effective immediately; however, sections 1 through 21, 29 through 49, and 53 through 56 will remain inoperative until October 1, 2010.

The Act modernizes the system for assessing the taxes on highway motor vehicles. Those taxes are principally dedicated by the New Jersey Constitution to the costs of the State transportation system.

The law changes the point of taxation of diesel fuel from the retail level to the level at which it is removed from the bulk fuel storage and distribution system of refineries, pipelines, ships, and barges at a terminal. It also changes the point of taxation of gasoline from the distributor level to the terminal level.

The Act includes requirements for transporting and labeling dyed fuel, and penalties for mishandling dyed (tax-exempt) fuel and for using dyed fuel in highway vehicles. The law also authorizes the co-collection of petroleum products gross receipts tax with the motor fuel taxes when feasible. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#) [2010](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2009](#) [2010](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2009](#) [2010](#) □



*important
phone
numbers*

Customer Service Ctr.... 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
 Homestead Rebate Hotline
 for Homeowners..... 1-888-238-1233
 Homestead Rebate Hotline
 for Tenants 1-888-213-8623
 Property Tax Reimbursement
 Hotline 1-800-882-6597
 Earned Income Tax Credit
 Information..... 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
 System 1-877-829-2866
 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-633-7068
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions..... 609-292-5323
 Director’s Office 609-292-5185
 Inheritance Tax 609-292-5033
 Local Property Tax..... 609-292-7974
 Motor Fuels Tax
 Refunds 609-633-8878
 Public Utility Tax..... 609-633-0013

New Jersey State Tax news

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- [Division Organization Chart](#)

State Treasurer Sworn In



Andrew P. Sidamon-Eristoff was nominated by Governor Chris Christie as State Treasurer and assumed the duties of Acting State Treasurer on January 19, 2010. On March 2, 2010, having received Senate confirmation, he was officially sworn in as the Treasurer of the State of New Jersey.

Mr. Sidamon-Eristoff is an accomplished leader in public sector budget, revenue, and tax system administration. Prior to his nomination, from 2003 to 2006, Mr. Sidamon-Eristoff served as Commissioner of the New York State Department of Taxation and Finance, the nation's second-largest state revenue administration.

From 1999 to 2002, he served as New York City Commissioner of Finance and as a three-times elected member of the New York City Council from 1993 to 1999.

Between 2006 and 2008, Mr. Sidamon-Eristoff performed a series of short-term consulting assignments for Chemonics International, an international development consulting firm then executing a business climate reform project in the Republic of Georgia for the United States Agency for International Development.

Mr. Sidamon-Eristoff is currently a member of the Internal Revenue Service's Electronic Tax Administration Advisory Committee and is a former President of the North Eastern States Tax Officials Association and board member of the Federation of Tax Administrators.

Mr. Sidamon-Eristoff earned a bachelor's degree, cum laude, from Princeton University and a juris doctor degree, cum laude, from Georgetown University Law Center. He also earned an Advanced Professional Certificate in Information Technology from New York University.

He is married to the former Catherine E. Baxter and they have three children. □



Tax Expenditure Report

P.L. 2009, c.189, signed into law on January 12, 2010, by Governor Jon Corzine, requires a State tax expenditure report to be included in the Governor’s annual budget message, commencing with the Governor’s FY 2011 budget message.

The statute requires the reporting of all State tax expenditures made in the last completed fiscal year, the current fiscal year, and the fiscal year to which the budget message applies. The subject years for the first report issued on March 1, 2010, are: FY 2009, FY 2010, and FY 2011. This report also complies with the spirit of Governor Chris Christie’s Executive Order No. 8, which was issued on January 20, 2010.

“State tax expenditure” means those revenue losses attributable to provisions of State tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit, preferential tax rate, or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions, or property from the liability which would be presumed to exist without the State tax expenditure.

The March 2010 report presented a summary table of the State tax expenditures, segregated by grant or tax and by category of tax expenditure. The body of the report provides a more detailed explanation of each tax and the tax expenditure(s) available under that levy.

For the purposes of this report, the Division of Taxation considers

“tax expenditures” to be only those provided explicitly under statute, whether under the enabling statute or subsequent provision modifying the original statute. Primarily, those statutory provisions allow for three categories of preferential tax treatment: exemptions, deductions, and credits.

The tax expenditure report was a collaborative venture and represents the work of various units within and outside the Division of Taxation: the Office of Revenue and Economic Analysis, the Regulatory Services Bureau, the Audit and Local Property Tax Branches, the Disclosure Office, and the Office of Legislative Analysis from the Division of Taxation; as well as the Economic Development Authority and the Division of Revenue. John Kelly, Chief of the Office of Legislative Analysis, coordinated the preparation of the first report on behalf of the Division of Taxation, Department of the Treasury.

The March 2010 State tax expenditure report is available on the Division of Taxation’s Web site at: www.state.nj.us/treasury/taxation/pdf/expenditure_report_final.pdf □

SALES AND USE TAX Sales and Use Tax Review Commission

Pursuant to P.L. 1999, c.416, the Sales and Use Tax Review Commission “shall review every bill, joint resolution, or concurrent resolution introduced in either House of the Legislature which constitutes sales and use tax base expansion or reduction legislation” as defined by

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Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:** Cheryl Fulmer

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<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Lee Roach
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s&u review commission - from page 2

P.L. 1999, c.416, and as determined by the Legislative Budget and Finance Officer pursuant to that Act. The Division of Taxation assists the Commission in the performance of its duties. The Commission may make use of existing studies, data, or other materials in the possession of the Division and may request the assistance and services of the Division's employees.

The Commission's reviews include an analysis of the fiscal impact of any reviewed bill or resolution, any comments upon or recommendations concerning the legislation, and any alternatives to the legislation which the Commission may wish to suggest. It is the responsibility of the Commission's executive secretary to reduce these recommendations to written form.

At the end of each calendar year, the Commission must submit an annual report on its activities to the Legislature. It may also issue periodic reports concerning sales and use tax base expansion or reduction legislation.

The Commission met on March 24, 2010, where it reviewed 59 proposed sales and use tax bills. Eight of the nine sitting commissioners participated in the meeting. The Commission recommended in favor of the enactment of 4 bills and against the enactment of 55 bills. For a full review of the bills and the Commission's analysis visit: www.state.nj.us/treasury/taxation/s_ucommish/commish.shtml

In January 2010, El-Rhonda Williams Alston was appointed by the Deputy Director of the Division of Taxation to serve as the Executive Secretary of the Sales and Use Tax Review Commission. □

INSURANCE PREMIUMS TAX

Dental Service Corporations

N.J.A.C. 54:18A-9(b)3, enacted on June 29, 2009, includes Dental Service Corporations (DSCs) in its definition of "insurance companies" for the calendar year January 1, 2009, through December 31, 2009.

- DSCs are subject to the new group accident and health insurance tax rate of 1.35% plus the additional 0.05% tax dedicated to the Department of Banking and Insurance, for a total tax rate of 1.40%. Premiums and the applicable tax amounts are to be indicated on the "Group Accident and Health" line when filing the tax form and remitting the tax liability, due and payable on March 1, 2010.
- DSCs are to file using the applicable 2009 insurance premiums tax forms: Domestic Companies Other Than Life (DEM) or Foreign or Alien Companies Other Than Life (EM). The forms can

be found on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/prntins.shtml

- An original copy of the return must be filed with the Department of Banking and Insurance at the address indicated on the return.
- DSCs are not required to make prepayments due to the temporary nature of their subjectivity.
- DSCs are permitted to remit their tax payment by check, along with their tax return, regardless of the check amount. They will not be required to remit tax payments over \$10,000 by electronic funds transfer (EFT), due to the temporary nature of their subjectivity. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

April 1–

- Deadline for filing appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for non-filing or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or

continued on page 4

Correction

2009 NJ-1040NR Instructions

There is an error on page 7 in the printed version of the 2009 NJ-1040NR nonresident return instructions. The equation that appears under "Line 30 - Total Exemption Amount" is incorrect. It should read:

$$\frac{\text{Total Exemptions}}{12} \times \frac{\text{Mos. NJ Nonresident}}{12} = \text{Line 30}$$

A corrected version of the instructions is available on our Web site at: www.state.nj.us/treasury/taxation/prntgit.shtml



assessors' calendar - from page 3

taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with State Tax Court.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Certification of REAP aid due to each local unit for tax year received by County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.

- Extended deadline for filing assessment appeals to the County Tax Board or State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.

- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.

- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2008 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2009 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The

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small business workshops - from pg. 4
seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal enforcement over the past several months included:

- In November 2009, special agents from the Office of Criminal Investigation responded to the Palisades Interstate Parkway Police Headquarters in Alpine, New Jersey.

Officers of the Palisades Interstate Parkway Police Department (PIPPD) had stopped a commercial vehicle (which is not allowed on the Palisades Interstate Parkway) and found the occupants in possession of 2,400 cartons of Native American/Mohawk-manufactured cigarettes which were being transported from the Mohawk reservation at the Canadian border to a reservation on Long Island, New York. Charges were for fourth-degree possession of contraband cigarettes, third-degree failure to keep records with intent to evade and avoid, fourth-degree doing business requiring licensure without first having obtained license, third-degree possession/transportation of cigarettes not part of the master settlement agreement, disorderly persons charge of transportation of untaxed cigarettes, and disorderly persons charge of no consumer license. Both subjects were arrested by a special agent of the Office of Criminal Investigation, processed at the PIPPD, and remanded to the Bergen County Jail in lieu of \$57,000 bail each, no 10% (surety bond only).

- In December 2009, Jerry Smith of Sparta, New Jersey, was sentenced to seven years in State prison by Superior Court Judge Salem Vincent Ahto in Morris County. Smith pled guilty on October 6, 2009, to an accusation charging him with second-degree misapplication of entrusted property and third-degree failure to pay New Jersey income taxes. Smith was treasurer of the Pleasant Hill Cemetery Association and a member of its board of trustees for more than 20 years.

As treasurer, Smith had control of Pleasant Hill's finances and bookkeeping, including custody and control of income from plot sales and burials. In February 2008, the cemetery's superintendent found discrepancies in financial reports prepared by Smith and reported them to the board of trustees. The charges stem from a joint investigation by the Division of Criminal Justice and the Division of Taxation. In pleading guilty, Smith admitted that between January 2000 and February 2008 he misappropriated \$611,590 in cemetery association funds, which he used for his personal benefit. Smith further admitted that in filing joint personal income tax returns with the State of New Jersey for himself and his wife for the years 2000 through 2008 he failed to report the misappropriated funds as income, resulting in the couple's failure to pay \$25,304 in taxes owed. Under the plea agreement, Smith executed consent orders to pay restitution of \$607,590 to the Pleasant Hill Cemetery Association, representing the amount stolen less \$4,000 he previously repaid, and \$42,021 to the Division of Taxation, representing the taxes owed plus fines and penalties. The judge ordered Smith to continue to make restitution payments from his fixed income while in prison.

- On January 6, 2010, before Superior Court Judge Francis R. Hodgson in Ocean County, James Hankins, Jr. was sentenced to a 20-year prison term with a 10-year parole ineligibility based on his October 13, 2009, guilty plea to one count of financial

continued on page 6

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2010 – December 31, 2010, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%



criminal enforcement - from pg. 5

facilitation of a criminal activity, commonly known as money laundering, one count of failing to file a tax return, and one count of failure to pay taxes on the proceeds. Investors, primarily in Ocean and Monmouth County, gave Hankins almost \$18 million with which Hankins said that he would purchase interests in life insurance policies of terminally ill individuals. No policies were ever purchased. Instead, Hankins operated a typical Ponzi scheme by paying returns to some investors in order to entice others to invest. Hankins funded his lavish lifestyle, returning only \$11.7 million to the victims. Hankins, a New Jersey resident, failed to file tax returns and pay taxes on his income for tax years 2004, 2005, 2006, and 2007. Hankins' liability for taxes due to the New Jersey Division of Taxation totaled \$571,202.79 for the years in question, not including penalties and interest.

- During the period of January 2009 through December 2009, the Division of Taxation's Office of Criminal Investigation prevented the payment of 2,742 fraudulent refunds, totaling \$5,266,103. The methods employed to save

the Treasury of the State of New Jersey from being defrauded are threefold. First, losses are prevented by earmarking accounts with a fraud indicator, essentially causing refunds to be denied. Secondly, through a twice-weekly manual review, refund checks are pulled prior to mailing and/or payment is stopped on checks already issued. Lastly, working in conjunction with the Division of Revenue, returns are manually identified as fraudulent prior to processing. These manual efforts extend beyond the scope of automatic system checks already in place. □

Tax Briefs

Corporation Business Tax

New Jersey Economic Development Authority Grants — Grants made under the Business Employment Incentive Program Act, N.J.S.A. 34:1B-124 et seq., are calculated pursuant to N.J.S.A. 34:1B-129. If a grant is made to a C corporation, the grant is deemed taxable income. The grant would be considered a New Jersey source receipt for apportionment purposes. If a grant is received by a conduit-type entity such as a partnership, limited liability corporation electing to be treated

as a partnership, or subchapter S corporation, the grant is to be apportioned as taxable income among the persons to whom the income or profit of the partnership, limited liability corporation, subchapter S corporation, or other entity is distributed, in the same proportion as the income or profit is distributed.

This article supercedes a prior *State Tax News* article on this topic (*State Tax News*, Spring 2003, Volume 32, Number 1, page 7).

Gross Income Tax

Treatment of Guaranteed Payments — The Division received a letter from a taxpayer representing a partnership concerning the gross income tax treatment of partnership guaranteed payments and whether those payments are subject to withholding when received by nonresident partners and considered wages for purposes of the Business Allocation Schedule, [NJ-NR-A](#).

The partnership asked whether the guaranteed payments paid by the partnership should be treated as payroll for purposes of completing the business allocation schedule. The Division of Taxation answered that the guaranteed payments are not included in the payroll allocation factor because the payments

continued on page 7

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

Enforcement Summary Statistics Fourth Quarter 2009

Following is a summary of enforcement actions for the quarter ending December 31, 2009.

• Bank Levies	920	• Seizures	81
• Certificates of Debt:		• Auctions	9
Total Number	4,608		
Total Amount	\$47,459,023		



tax briefs - from page 6

are not treated as wages or salaries. The Division confirmed that the partnership was correct in its conclusion that guaranteed payments are not included in the payroll fraction on the NJ-NR-A or Schedule J for allocation purposes.

Guaranteed payments must be reported as distributive share of partnership income. N.J.A.C. 18:35-1.3(d)(3). However, if the guaranteed payments are paid to a retired partner who is receiving the payment pursuant to a retirement agreement or pension plan (in connection with a period of service to the partnership), the partner should report these guaranteed payments as pension income. N.J.A.C. 18:35-1.3(d)(3).

If a partnership has some or all of its income allocated to New Jersey, then the partnership must meet its nonresident partner tax payment requirements. Guaranteed payments

made to nonresident partners are subject to tax as distributive share of partnership income.

2010 Conversion of a Traditional IRA to a Roth IRA — A taxpayer wrote to the Division of Taxation with a question related to the Federal Tax Increase Prevention and Reconciliation Act of 2005. The Federal law contains a provision that allows taxpayers, if they convert a traditional IRA to a Roth IRA in 2010, to spread the income (from the “distribution” from the traditional IRA) over a two-year period for Federal income tax purposes. The taxpayer inquired whether this treatment of the “conversion” income would apply for purposes of New Jersey gross income tax.

New Jersey conforms to the Federal Tax Increase Prevention and Reconciliation Act of 2005 provision regarding the reporting of a distribution from an IRA which the taxpayer converts into a Roth IRA in 2010. The taxpayer may choose

to include the distribution in taxable income in 2010 or in equal amounts in 2011 and 2012. Taxpayers and tax practitioners should use the Division’s publication, **GIT-2, IRA Withdrawals**, to calculate the portion of the IRA distribution that is taxable for gross income tax purposes.

Sales and Use Tax

Molds and Dies Used in Manufacturing — The Division received an inquiry from a mold and tool shop concerning the taxability of custom molds and dies used in the manufacturing process.

The Sales and Use Tax Act provides an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). The exemption also includes parts with a useful life of greater than one year. A “part” is an “item used as a replacement for any portion of a machine and which is attached or affixed to the machine of which it is a part permanently or during periods of usage. A part cannot accomplish the work for which it was designed independent of the machine of which it is intended to be a component.” N.J.A.C. 18:24-4.2.

Molds and dies are considered a part of exempt manufacturing equipment. Thus, if the molds and dies have a useful life of greater than one year, they are entitled to the exemption. Useful life can often be determined by the accounting treatment afforded the property. In order to document this exemption, an Exempt Use Certificate (Form ST-4) must be provided by the purchaser. □

Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation/

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.49% of tax payment applies.



In Our Courts

Corporation Business Tax

Nexus: Doing Business – *Praxair Technology, Inc. v. Director, Division of Taxation*, (A-91/92-08), decided December 15, 2009.

In a unanimous decision, the New Jersey Supreme Court reversed the Appellate Division, holding that an out-of-State taxpayer was subject to New Jersey's corporation business tax for the years 1994–1996, prior to the 1996 addition of an example to the regulation at N.J.A.C. 18:7-19.

Plaintiff Praxair Technology, Inc. (Praxair) is a Delaware corporation based in Connecticut that exists solely to own and license patents

to corporate affiliates. Praxair's corporate parent manufactures and sells industrial gases throughout the United States, including New Jersey. From 1994 through 1999, Praxair's parent used Praxair's intellectual property in its New Jersey manufacturing facilities and paid licensing fees to Praxair for that use. During that period, Praxair did not file New Jersey corporation business tax returns or pay any New Jersey corporation business taxes.

The Director issued a notice of assessment to Praxair finding it subject to corporation business tax for the years 1994–1999, together with interest and late filing penalties. Following the completion of the

informal administrative conference, the Director issued Praxair a final determination upholding the initial notice of assessment for corporation business tax and imposing additional interest and penalties.

One of the issues before the Tax Court was the assessment of corporation business tax for the years 1994–1996, under N.J.S.A. 54:10A-1, in light of the 1996 addition of an example to N.J.A.C. 18:7-19. The 1996 example stated that a foreign corporation that receives fees for licensing trademarks to New Jersey companies for use in New Jersey is subject to the corporation business tax. Praxair argued that the example expanded the Director's taxing power while the Director argued that the example represented no change in tax policy or obligations. The Tax Court rejected Praxair's claim that the Director's adoption of the 1996 example to N.J.A.C. 18:7-19 expanded the Director's taxing power and found Praxair liable for the corporation business tax.

Praxair appealed and the Appellate Division reversed. The panel found that the Tax Court erred in deciding Praxair's pre-1996 tax liability because it had given insufficient regard to the impact of the 1996 changes to the regulation.

The Director's petition for certification was granted by the Supreme Court along with Praxair's cross-petition. In reversing the Appellate Division's decision, the Supreme Court held that both Praxair's argument and the Appellate Division's reasoning were premised on an incorrect assumption that tax liability can somehow flow from the adoption of or amendment to a

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

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regulation. Praxair's activities were sufficient to constitute doing business in New Jersey for corporation business tax purposes both before and after the example was added.

NOTE: This matter has been remanded to the Appellate Division for review of plaintiff's challenges to the imposition of the late filing and post-tax amnesty penalties under N.J.S.A. 54:49-4 and N.J.S.A. 54:53-18(b), respectively.

Gross Income Tax

Alimony Income – *Goldrick, Nancy L. v. Director, Division of Taxation*, New Jersey Supreme Court C-115 September Term 2009, decided November 10, 2009.

On July 13, 2009, the Superior Court, Appellate Division, affirmed Judge Hayser's Tax Court decision, which granted the Division's summary judgment motion in this matter, stating:

In any event, the issue in this appeal is not whether an agreement to pay alimony post-mortem would be enforceable, but rather whether the Director of the Division of Taxation can treat payments that the parties to a divorce have themselves characterized as "alimony" as alimony for tax purposes even though those payments are required to continue even if one of the parties dies. We are satisfied that it was well within the Director's broad discretionary authority in the administration of the Gross Income Tax Act to treat such payments as "alimony" within the intent of N.J.S.A. 54A:5-1(n).

On November 10, 2009, the New Jersey Supreme Court denied the plaintiff's petition for certification.

Statute of Limitations – *Aboaba, Akintade and Daunis v. Director, Division of Taxation*, Docket No. 002022-2009, decided November 6, 2009.

The taxpayer was assessed for tax years 2004, 2005, and 2006 for under-reporting wage income.

Almost 219 days after the auditor had issued the notices of deficiency, the taxpayer filed a complaint in Tax Court.

Judge Hayser stated:

It is well established that the law frowns upon those who sleep on their rights. Statutes of limitations are intended to run against those who are neglectful of their rights, and...fail to use reasonable and proper diligence in the enforcement thereof. The public policy considerations behind statutes of limitations are perhaps most pertinent to tax matters. This is because strict conformity with such statutory deadlines provides finality and predictability of revenue to state and local governments. Consequently, failure to file a timely appeal is a fatal jurisdictional

defect, and if a plaintiff does not file within the requisite statutory period, that plaintiff is proscribed from an appeal in the Tax Court and from any judicial review of the Director's decision.

Judge Hayser concluded:

When the taxpayers failed to file timely, the Division of Taxation was entitled to assume that its assessment was final. It is not within the court's power to relax the statutory time limitations of N.J.S.A. 54:49-18(a) or N.J.S.A. 54A:9-10. Even in the face of possible recalcitrance, denial of future consideration, or silence by the Division after April 2008, the taxpayers cannot be relieved of their duty to file a timely appeal in the Tax Court. Moreover, there is nothing in the record which would allow the court to toll the 90 day period to which these statutes apply.

Judge Hayser granted the Division's motion to dismiss.

Insurance Premiums Tax

Constitutionality – *Horizon Blue Cross Blue Shield v. State of New Jersey, et al.*, Docket No. 007354-2005, decided December 15, 2009.

continued on page 10

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This case involves the constitutionality surrounding the enactment of P.L. 2005, c.128, which amended the insurance premiums tax with respect to "Health Service Corporations."

Assembly Bill No. 4401 was signed into law July 2, 2005, after hearings and approval by the Legislature. A4401 amended N.J.S.A. 54:18A-6 only to remove Health Service Corporations from the preferential tax (cap) treatment of insurance premiums granted by statute. A4401 did not amend: (1) the filing or payment dates for insurance premiums tax (IPT) set forth in Title 54 or (2) the provisions of Title 54 governing taxpayer challenges to taxes; granting refunds to taxpayers, with interest; or staying collection action while a taxpayer's case is pending in our courts.

On July 6, 2005, less than one full week after A4401 was enacted, Horizon filed a complaint contesting the legislation on numerous constitutional grounds.

Horizon challenged the constitutionality of the Premium Tax Cap Statute as amended due to alleged violations of the Equal Protection Clause and Due Process Clauses of the Fourteenth Amendment of the United States Constitution, and

Article 1, Section 1, of the Constitution of the State of New Jersey. Furthermore, Horizon felt they were being singled out by this legislation in further violation of the United States Constitution.

On December 15, 2009, the constitutionality of the Premium Tax Cap Statute as amended was upheld in an opinion by Judge Bianco, who stated:

For the foregoing reasons the court finds the Premium Tax Cap Statute is constitutional as amended. The statute is reasonably related to a legitimate government purpose and there is a rational basis for A4401. Accordingly the Director's motion for summary judgment is granted and Horizon's motion for summary judgment is denied.

Horizon has filed an appeal.

Local Property Tax Property Tax Exemption – *Lighthouse Mission for Evangelism, Inc. v. Long Branch City.*

While plaintiff Lighthouse Mission was also involved in related Federal litigation concerning zoning use, the issue discussed here is whether the plaintiff was entitled to exemption from local property

taxes under N.J.S.A. 54:4-3.6 for tax year 2005.

In order for property to be eligible for exemption under N.J.S.A. 54:4-3.6: (1) the entity claiming exemption must be organized exclusively for religious purposes, including religious worship, or charitable purposes; (2) the property must be actually used for the tax-exempt purpose; and (3) the property and the charitable or religious organization using the property may not be conducted for profit. See *Roman Catholic Archdiocese of Newark v. City of East Orange*. Additionally, the entity claiming exemption must own the property for which the exemption is claimed.

Long Branch alleged that the Lighthouse Mission's claim in the Federal litigation that it was not allowed to use said property as a church constitutes an admission that it is not qualified for the exemption based on religious use. Long Branch states that the Lighthouse Mission failed to satisfy a vast majority of elements required by N.J.S.A. 54:4-3.6. Long Branch reiterates that the property was not used for charitable purposes, but instead as a residence for Kevin Brown, Lighthouse Mission's pastor and president, and by Reverend Brown in conjunction with for-profit activities he conducted for his own benefit. Defendant also maintains that, at the valuation date, October 1, 2004, the name of the owner of record of the subject property differed from the name of the plaintiff and that plaintiff therefore did not own the subject property as required by N.J.S.A. 54:4-3.6.

Lighthouse agrees that it was illegally barred from using the property

Current Amnesty Programs

The following jurisdiction(s) are conducting tax amnesty program(s). During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site(s) listed below.

- PA April 26 – June 18 www.revenue.state.pa.us/
- Philadelphia, PA May 3 – June 25 www.phila.gov/revenue/

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for purposes of religious assembly; however, the property was used for other charitable and religious purposes. Lighthouse also suggests it was illegally denied permission to use the property as a church under the prior ordinance, and that if defendant granted the application prior to the adoption of a redevelopment plan, the church use would have been permitted. The plaintiff admits that the property was used in part as Reverend Brown's residence, which under N.J.S.A. 54:4-3.6 is a valid exempt use as it relates to parsonages. It further states that all of the activities conducted by Reverend Brown at the property were in concordance with the plaintiff's religious and charitable purposes, and that with the exception of commercial space leased by it to a third party, which it concedes is not eligible for exemption, all of the remaining subject property is used for the intended purposes.

New Jersey Tax Court Judge Gail Menyuk agreed that although careless record keeping had created confusion as to title, the subject property was owned by the plaintiff. She also concluded Lighthouse was organized for religious/charitable purposes. However, Lighthouse Mission was ineligible to receive the exemption as both a parsonage and a charitable/religious organization. Judge Menyuk states that Lighthouse Mission failed to establish what part of the property was actually used for religious/charitable purposes, and it appeared that the purpose of the property was profit bearing. Also, since the property did not qualify as an exempted church there could be no exempt parsonage (*Mestivta Ohr*

Torah of Lakewood v. Township of Lakewood). □

In Our Legislature

Local Property Tax

Farmland Assessment Act Provides Preferential Treatment for Biomass, Solar, or Wind Energy Generation Facilities — P.L. 2009, c.213, signed into law on January 16, 2010, is effective immediately. However the provisions governing application for consideration for farmland assessment treatment are effective for tax years commencing after the date of enactment.

The Act supplements P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.), the Farmland Assessment Act. This law allows any person who owns preserved farmland to construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm to generate power or heat and to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose.

These uses now qualify for the preferential tax treatment provided under the Farmland Assessment Act.

Miscellaneous

Proof of Business Registration Changes and Bid Language Requirements — P.L. 2009, c.315, signed into law on January 18, 2010, and effective immediately, requires the Department of the Treasury to provide each contracting agency with appropriate language reflecting the obligations of contractors and subcontractors to be included in any contract document, bid specification, request for proposal, or

other documents notifying potential contractors of contract opportunities with a contracting agency.

This law revises the requirement for a bidder to provide proof of business registration to a local contracting agency prior to the awarding of a contract, purchase order, or other contracting document. At the sole option of the contracting agency, the bidder may provide proof by presenting sufficient information for the contracting agency to verify registration of the bidder, or that of listed subcontractors, through a computerized system maintained by the State. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#) [2010](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2009](#) [2010](#)

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- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2009](#) [2010](#)



important phone numbers

Customer Service Ctr.... 609-292-6400
 Automated Tax Info ...1-800-323-4400
609-826-4400
 Homestead Rebate Hotline
 for Homeowners..... 1-888-238-1233
 Homestead Rebate Hotline
 for Tenants1-888-213-8623
 Property Tax Reimbursement
 Hotline.....1-800-882-6597
 Earned Income Tax Credit
 Information..... 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
 System1-877-829-2866
 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-633-7068
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions..... 609-292-5323
 Director's Office 609-292-5185
 Inheritance Tax 609-292-5033
 Local Property Tax..... 609-292-7974
 Motor Fuels Tax
 Refunds 609-633-8878
 Public Utility Tax..... 609-633-0013

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2009 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	1/27/09	Clarifies that certain sports and entertainment projects are devoted to an essential public and governmental use and purpose and are exempt from property tax.	LPT	S-1604(1R)
21	3/17/09	Establishes a 45-day State tax amnesty period for outstanding liabilities due between January 1, 2002, and February 1, 2009.	MISC	A-3819(1R)
69	6/29/09	Temporarily increases income tax rates for taxpayers with income exceeding \$400,000, temporarily adjusts property tax deduction for certain taxpayers with income exceeding \$150,000, and taxes New Jersey lottery prizes exceeding \$10,000.	GIT	A-4102(1R)
70	6/29/09	Increases cigarette tax rate from \$2.575 to \$2.70 per pack of 20 cigarettes and dedicates additional revenue to the Health Care Subsidy Fund.	CIG	A-4103 (Corrected Copy)
71	6/29/09	Increases tax rates on liquor to \$5.50 a gallon; still wines, vermouth, sparkling wines to \$0.875 a gallon; and hard cider to \$0.15 a gallon, and dedicates additional revenue to the Health Care Subsidy Fund.	ABT	A-4104(1R)
72	6/29/09	Provides one-year extension of 4% surcharge on corporation business tax liability and decouples corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.	CBT	A-4105
75	6/29/09	Modifies the tax treatment of certain lines of insurance and dedicates certain additional revenues to the Health Care Subsidy Fund for FY 2010.	IPT	A-4108(2R)
90	7/28/09	The New Jersey Economic Stimulus Act of 2009 is an omnibus bill designed to reinvigorate New Jersey's economy.	MISC	ACS (Corrected Copy) for A-4048
118	8/18/09	Establishes pilot program in Gloucester County for the transfer of the municipal property assessment function to the county.	LPT	S-2356(2R)
120	8/18/09	Extends Neighborhood Revitalization Tax Credit Program eligibility to areas located in municipalities adjacent to neighborhoods that currently qualify and that share similar socioeconomic characteristics.	MISC	A-2623(1R)
124	9/8/09	Establishes the Community Food Pantry Fund and the Cat and Dog Spay/Neuter Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-2513(2R)
172	1/11/10	Establishes the New Jersey Lung Cancer Research Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	S-2502(1R)

2009 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
189	1/12/10	Requires that a State tax expenditure report be included in the Governor's annual budget message.	MISC	A-2139
194	1/14/10	Expands the powers of the Commissioner of Labor and Workforce Development to suspend or revoke the licenses of employers for failure to adhere to State wage, benefit, and tax laws.	GIT	SCS for S-2773(2R)
213	1/16/10	Allows any person who owns preserved farmland to construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm to generate power or heat and to make improvements to buildings or structures on the land for that purpose. These uses now qualify for the preferential tax treatment provided under the Farmland Assessment Act.	LPT	SS for S-1538(1R)
240	1/16/10	Clarifies the meaning of "contiguous property" for purposes of Section 26 of the Sales and Use Tax Act and removes certain limitations on the exemption from sales and use tax for natural gas and utility service used for cogeneration.	S&U	ACS for A-3339/3439(1R)
251	1/16/10	Revises procedure for reassessment of certain real property by assessor and appeal of assessment by certain property taxpayers.	LPT	A-4313(1R)
256	1/17/10	Establishes forest stewardship and forest certification programs in the Department of Environmental Protection and expands the Farmland Assessment Act of 1964 to provide differential property tax assessment to owners of forest land who implement an approved forest stewardship plan.	LPT	SCS for S-713(1R)
315	1/18/10	Revises requirement for bidder to provide proof of business registration to local contracting agency prior to the awarding of a contract.	MISC	A-557(2R) (Corrected Copy)

2009 TAX LAWS *(continued)*

***Legend for 2009 Tax Laws**

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax

New Jersey State Tax news

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What's New for Tax Year 2009

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Spouses of Military Personnel** — Federal legislation signed into law on November 11, 2009, will affect the New Jersey rules regarding the residency and tax treatment of income of certain spouses of military personnel. For more information, see the [Military Spouses Residency Relief Act](#).
- **Tax Rates Increased on Income Over \$400,000** — The New Jersey gross income tax rates increased to: 8% on income over \$400,000 but not over \$500,000; 10.25% on income over \$500,000 but not over \$1,000,000; and 10.75% for income over \$1,000,000. This is a one-year increase. Tax rates are expected to revert to 2008 rates on January 1, 2010.
- **Property Tax Deduction/Credit Deduction Limitations.** Homeowners under 65 years of age and not blind or disabled whose New Jersey gross income is more than \$250,000 are not eligible for the property tax deduction. In addition, for homeowners under 65 years of age and not blind or disabled whose New Jersey gross income is over \$150,000

but not over \$250,000, the maximum deduction is limited to \$5,000. Homeowners who are not eligible for a deduction because their income is over \$250,000 can receive a property tax credit if they satisfy the other eligibility requirements.

Schedule 1 Completion. Two new charts have been added to the tax return instructions to help taxpayers complete Schedule 1. Homeowners will use Chart A - Determining the Property Tax Deduction for Homeowners, and tenants will use Chart B - Determining the Property Tax Deduction for Tenants, to calculate the deduction for Line 2 of Schedule 1.

- **Homeowner/Tenant/Both?** — Taxpayers must indicate at Line 36b, Form NJ-1040, if they were a homeowner, tenant, or both homeowner and tenant during the year.
- **Separate Returns, Same Residence** — Spouses/CU partners who file separate tax returns using the filing status "Married/CU Partner, filing separate return" must fill in the oval at Line 37, Form NJ-1040, if they both occupy the same principal residence.
- **New Jersey Lottery Prizes Over \$10,000 Taxable** — New Jersey Lottery winnings from prize amounts exceeding \$10,000 are taxable for New Jersey gross

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income tax purposes. The individual prize amount, not the total amount of New Jersey Lottery winnings over the year, determines taxability. Taxpayers may deduct gambling losses, including New Jersey Lottery losses, from their winnings that occurred during the same year. For more information, see [New Jersey Lottery Questions and Answers](#).

- **Earned Income Tax Credit** — The amount of the NJEITC will be equal to 25% of the applicant's Federal earned income tax credit.
- **Commuter Transportation Benefits** — The maximum commuter transportation benefit is \$2,540.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate is 3.5% from January 1 to June 30, 2009, and 3.4997% from July 1 to December 31, 2009.
- **Family Leave Insurance** — Beginning January 1, 2009, employers were required to withhold contributions for family leave insurance. The maximum contribution for 2009 was \$26.01. Excess family leave insurance contributions cannot be claimed as a credit on the 2009 Form NJ-1040 or Form NJ-1040NR. Taxpayers who contributed more than the maximum amount must file a refund claim with the Department of Labor and Workforce Development using their Form [UC-9A](#), *Employee's Claim for Refund of Excess Contributions*. For more information, write to: Division of Employer Accounts,

Worker Refund Unit "2009," PO Box 910, Trenton NJ 08625-0910, or call the Department of Labor and Workforce Development at 609-633-6400.

Property Tax Relief Programs

- **Homestead Rebate Program** — Information about the 2009 Homestead Rebate Program is not yet available.

The program provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or tenant on October 1, 2009. Homeowners and tenants file different applications.

Tenants who meet the eligibility requirements use the application in the New Jersey income tax booklet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax booklet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone.

Information will be posted to our Web site as it becomes available.

- **2009 Property Tax Reimbursement** — With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:** Cheryl Fulmer

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for reimbursements for tax year 2009, total annual income must be:

2009: \$80,000 or less, and

2008: \$70,000 or less

These limits apply regardless of marital/civil union status. However, if an applicant's status is married/CU couple, combined income of both spouses/CU partners must be reported.

Benefits available under this program are subject to change.

- **2010 Property Tax Reimbursement** — Recent legislation (P.L. 2009, c.129) modified the residency requirements for reimbursement recipients who lose their eligibility temporarily when they move to a new home. The legislation shortens to two full years the period of time these residents must occupy their new home before they can again qualify to resume applying for the property tax reimbursement.

The new residency rules do not apply to 2009 applications. They take effect for the first time with 2010 applications (to be filed in 2011). □

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Nine persons passed the September 26, 2009, C.T.A. exam. They are as follows:

Cape May County: William F. Crowther, Middle Township.

Cumberland County: Les M. Meehan, Fairfield Township.

Gloucester County: Charles M. Horan, Wenonah Borough.

Mercer County: Lorraine M. Jones, Robbinsville Township.

Middlesex County: Michael E. Lachs, East Brunswick Township.

Monmouth County: Scott M. Kineavy, Tinton Falls Borough.

Morris County: Ryan R. Smith, Butler Borough.

Ocean County: Geraldine Ambrosio, Toms River Township; Brenda A. Tutela, Toms River Township.

The next C.T.A. examination is scheduled for March 27, 2010. The deadline to file applications for this exam is February 25, 2010. The filing fee is \$10. If you have any questions regarding this exam, please contact

Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site under "Assessor - Continuing Education and Recertification" at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml □

LOCAL PROPERTY TAX Tax Assessors' Calendar

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statements filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.

continued on page 4

Correction

2009 NJ-1040NR Instructions

There is an error on page 7 in the printed version of the 2009 NJ-1040NR nonresident return instructions. The equation that appears under "Line 30 - Total Exemption Amount" is incorrect. It should read:

$$\frac{\text{Total Exemptions}}{12} \times \frac{\text{Mos. NJ Nonresident}}{12} = \text{Line 30}$$

A corrected version of the instructions is available on our Web site at: www.state.nj.us/treasury/taxation/prntgit.shtml



assessors' calendar - from page 3

- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase provided to County Tax Administrator by assessor.
- "U.E.Z. Exemption Report" and "Five-Year Limited Exemption Report" filed with County Tax Board by assessor.

January 25-

- Assessor's schedule of office hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)-

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1-

- Form EA-4 (part A) for properties under Chapter 441 tax agreements

to be completed by assessor and forwarded to County Tax Administrator.

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year's property tax deduction by collector.

February 1 (after)-

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10-

- Certification of bulk mailing of notifications of assessment by assessor filed with the County Tax Board. If bulk mailing completed by County Tax Board, certification prepared by the County Tax Administrator "within 10 days"

of the date the bulk mailing was completed.

February 15 (on or before)-

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1-

- Recipients of a property tax deduction for tax year 2009 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2009 income and anticipated income for 2010.
- County Tax Administrator to submit equalization table to: County Tax Board; each assessor; Division of Taxation; two copies to Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to: each taxing district in the county; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2008 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2009 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

Criminal Enforcement

Criminal enforcement over the past several months included:

- On July 17, 2009, Carol Lynn Palma, former Cliffside Park Deputy Clerk, was sentenced to five years in prison for her crimes. On April 17, 2009, suspended Cliffside Park Deputy Clerk, Carol Lynn Palma, was found

continued on page 5



criminal enforcement - from page 4

guilty on the following charges: third-degree failure to pay taxes when due (N.J.S.A. 54:52-9), third-degree filing or preparing false or fraudulent returns (N.J.S.A. 54:52-10), third-degree theft by failure to make required disposition of property (2C:20-9), and second-degree official misconduct (2C:30-2). This was the culmination of an extensive investigation conducted by the Bergen County Prosecutor's Office and the Office of Criminal Investigation. By way of criminal complaints, the Bergen County Prosecutor's Office charged that the defendant entered into a scheme whereby school board funds that should have been used for the education of children were instead diverted to Palma for election services. Invoices for these payments were virtually nonexistent. Vouchers for these payments were improper and the payments were not approved by

the Cliffside Park Board of Education. The six-count indictment against Palma charged that she submitted false purchase order(s), known as vouchers, for payment and illegally received and kept Board of Education funds which she was not entitled to receive. The indictment also charged that Palma filed false or fraudulent New Jersey State income tax returns for several years by failing to include these payments from Board of Education funds as income on her tax returns and that she failed to pay taxes due thereon.

- On August 5, 2009, Joseph Soccodato, a New Jersey resident and president of JVS Landscaping Company, tendered a guilty plea to a one-count accusation charging third-degree failure to remit New Jersey sales taxes, a violation pursuant to N.J.S.A. 54:52-9, and agreed to pay \$270,000 in back sales taxes. JVS, a landscaping business located in Westwood, also performed exterior residential holiday decoration services and snow removal. Mr. Soccodato paid the New Jersey Division of Taxation \$100,000 in a partial payment of sales tax owed from 1999 to 2006. The defendant is expected to tender another \$50,000 at the time of sentencing and enter into a consent judgment for the remaining balance.
- On August 26, 2009, a 75-count indictment was handed up in Bergen County resulting in the arrest of 27 individuals for various offenses related to leading organized crime, racketeering, money laundering, uttering forged instruments, filing fraudulent income tax returns, failing to

pay sales tax, stealing individual's identity, tampering with public records, filing fraudulent documents with the Motor Vehicle Commission, and engaging in corporate misconduct. The investigation began in March 2008 and initially focused on Ilya Igdalev, the owner and president of two wholesale car dealerships: Gemp, LLC and Best Buy Car Company. On Friday, June 27, 2008, detectives executed six search warrants related to the case. These search warrants were executed on the business of Gemp, LLC, located at 60 Railroad Avenue, Hasbrouck Heights, New Jersey; and the residence of its owner, Ilya Igdalev, 216 10th Street, Cresskill, New Jersey. As a result of the search warrants and related investigation, approximately \$750,000 in illegal proceeds and 28 high-end vehicles were seized. Igdalev also stole nearly \$100,000 in sales tax monies owed to the State of New Jersey. Igdalev masked his actual transaction between Gemp, LLC and the customer by issuing the customer a fictitious bill of sale from a Minnesota-based car dealership named Auto Point located at 9130 Olson Memorial Highway, Golden Valley, Minnesota. The fictitious bill of sale made the transaction falsely appear to be from Auto Point, an out-of-State car dealership, and no sales tax was required to be remitted from the out-of-State dealership to the State of New Jersey. The New Jersey resident customer, not the out-of-State auto dealership, would be required to satisfy the New Jersey sales tax obligations. Nonetheless, Igdalev did

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2010 – December 31, 2010, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%



criminal enforcement - from pg. 5

collect the sales tax owed on the automobile transactions directly from his New Jersey resident customers and kept the tax despite his legal obligation to turn it over to the New Jersey Division of Taxation.

- On October 6, 2009, Jerry Smith of Sparta, New Jersey, pled guilty to second-degree misapplication of entrusted property and third-degree failure to pay New Jersey income taxes in Morris County Superior Court. Smith was treasurer of the Pleasant Hill Cemetery Association and a member of its board of trustees for more than 20 years. As treasurer, Smith had control of Pleasant Hill's finances and bookkeeping, including custody and control of income from plot sales and burials. In February 2008, the cemetery's superintendent found discrepancies in financial reports prepared by Smith and reported them to the board of trustees. The charges stem from a joint investigation by the Division of Criminal Justice and the Division of Taxation. In pleading guilty, Smith admitted that between January 2000 and February 2008, he misappropriated \$611,590 in cemetery association funds, which he used for his personal benefit. Smith

further admitted that in filing joint personal income tax returns with the State of New Jersey for himself and his wife for the years 2000 through 2008, he failed to report the misappropriated funds as income, resulting in the couple's failure to pay \$25,304 in taxes owed. Under the plea agreement, the State will recommend that Smith be sentenced to seven years in State prison. He must also pay restitution of \$607,590 to the Pleasant Hill Cemetery Association, representing the amount stolen less \$4,000 he previously repaid, and \$42,021 to the Division of Taxation, representing the taxes owed plus fines and penalties.

- On October 7, 2009, Namrata Patel of Lodi, New Jersey, pled guilty to charges related to her possession of untaxed cigarettes, which she was found selling from her vehicle. At the time of her arrest, June 2009, Office of Criminal Investigation agents seized \$3,700 in United States currency that was found in the vehicle and those funds were forfeited to the State per court order. The Woodbridge Municipal Court also imposed \$2,500 in fines, fees, and costs.
- On October 13, 2009, James Hankins Jr. pled guilty before

Superior Court Judge Francis R. Hodgson in Monmouth County to two counts of financial facilitation of a criminal activity and one count each of failing to file a tax return and failure to pay taxes on the proceeds. Investors, primarily in Ocean and Monmouth County, were bilked out of more than \$6 million from the \$18 million Ponzi scheme operated by Hankins. Hankins will be required to make restitution to his victims.

- On October 13, 2009, Tejinder Singh t/a Rising Sun Petroleum of Salem, New Jersey, pled guilty to a third-degree charge of counterfeiting cigarette tax stamps. He was sentenced to three years' supervised probation and the Court imposed \$5,000 in fines, fees, and costs. This investigation included the possession of sheets of counterfeit stamps as well as counterfeit-stamped product.
- On October 29, 2009, Yi Yong Zheng t/a New Hong Kong Restaurant of Jersey City, New Jersey, pled guilty to counts of possession of untaxed cigarettes, selling loose cigarettes, and failure to examine/return. Jersey City Municipal Court imposed a total of \$2,974 in fines, fees, and penalties. This is the second offense for this subject.

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

Enforcement Summary Statistics Third Quarter 2009

Following is a summary of enforcement actions for the quarter ending September 30, 2009.

• Bank Levies	426	• Seizures	26
• Certificates of Debt:		• Auctions	1
Total Number	965		
Total Amount	\$25,817,110		



criminal enforcement - from page 6

- On November 9, 2009, Sing Pun t/a Chuan Xing Kitchen, Inc. of Jersey City, New Jersey, was found guilty of possession of contraband cigarettes. The Jersey City Municipal Court imposed a total of \$2,341 in fines, fees, and penalties. This subject is a second offender.
- On November 13, 2009, Raj Kumar of South Plainfield, New Jersey, pled guilty to an accusation in the Middlesex Superior Court for third-degree possession of counterfeit-stamped cigarettes. Defendant must serve probation and was assessed a total of \$3,877.50 as a civil penalty for failure to examine.
- On November 13, 2009, Sai Fang Liao t/a New Golden Dragon of Jersey City, New Jersey, was

found guilty as a second offender in Jersey City Court. The Court imposed \$2,893.75 in fines, fees, and costs for possession of untaxed goods (cigarettes & tobacco products). □

Tax Briefs

Corporation Business Tax Nonprofit Corporation and IRS Form 990 — An accountant wrote to the Division on behalf of a nonprofit corporation. The nonprofit annually files a Federal Form 990 with the Internal Revenue Service (IRS). The accountant asked whether a copy of the Federal Form 990, or an equivalent State tax (or information) return, must be filed with the Division of Taxation.

The Division responded that there is no requirement to file a copy of the Federal Form 990, or an equivalent

State tax (or information) return, with the Division of Taxation, assuming that the entity is truly organized and operated as a nonprofit entity.

The Division explained that the State of New Jersey does not have an “income tax” on “unrelated business income” like that imposed at the Federal tax level. Therefore, the Division of Taxation does not have a need for details on such income.

Certain charitable entities are required to register and file a copy of Federal Form 990 with the New Jersey Charities Registration Section, Consumer Affairs, Department of Law and Public Safety. For further information on the requirements of that office, visit their Web site at: www.njconsumeraffairs.gov/ocp/charities.htm or call the Charities Registration Section at 973-504-6215.

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How to Get Your NJ Income Tax Refund **FASTER!**



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Use your computer to file your return. Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.



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Nonprofit corporations formed in New Jersey must file an annual report with the Division of Revenue to properly preserve their status as a corporation. The annual report must be filed online at: www.nj.gov/treasury/revenue/dcr/programs/ann_rpt.html

Gross Income Tax

Charitable Remainder Trusts —

A taxpayer wrote to the Division questioning the gross income tax treatment of a Charitable Remainder Trust (CRT) as described in the Division's Technical Bulletin [TB-64](#), Charitable Remainder Trusts. The Division responded that it has been the Division of Taxation's long-standing policy that income that is not distributed and which is

not deemed to be permanently and irrevocably set aside or credited to a charitable beneficiary is taxable income to the trust.

Technical Bulletin TB-64 was written as clarification, not to set forth any new policy regarding the New Jersey income taxation of CRTs. New Jersey's position on the income taxation of CRTs has been available since the inception of the income tax.

Civil Union Couples and Filing Status —

The Division received an inquiry concerning the gross income tax filing status for a same-sex couple for tax year 2007. In 2002, the couple had entered into a civil union under Vermont's then-existing civil union law. In 2004, the couple registered as domestic partners under the

New Jersey Domestic Partnership Act, P.L. 2003, c.246, which was signed into law and took effect on July 10, 2004.

The Division's publication [GIT-4](#), *Filing Status*, states:

If you were a member of a domestic partnership registered in New Jersey, you are not considered to be married or a partner in a civil union and you may not use the filing statuses "Married/CU couple, filing joint return" or "Married/CU partner, filing separate return."

However, the New Jersey Civil Union Act, which took effect on February 19, 2007, states that:

A civil union relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the civil union relationship was created, shall be valid in this State.

The Office of the Attorney General has reviewed the applicability of the Civil Union Act to those couples who may fall within these out-of-State relationships, regardless of the actual terminology used. It issued an opinion on February 16, 2007, stating that:

[G]overnment-sanctioned, same-sex relationships validly established under the laws of other States and foreign nations will be valid in New Jersey beginning on February 19, 2007.... The name of the relationship selected by other jurisdictions, however, will not control its treatment under New Jersey law. Rather it is the

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)



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nature of the rights conferred by another jurisdiction that will determine how a relationship will be treated under New Jersey law.

Also, the opinion specifically states that same-sex civil unions established under the laws of Vermont will be valid in New Jersey and treated as civil unions in New Jersey.

Accordingly, the Division advised the same-sex couple that they must file as married/CU couple, filing joint return or married/CU partner, filing separate return for tax year 2007. The GIT-4 publication language quoted above will be changed to clarify that where a same-sex couple had been registered under New Jersey's domestic partnership law and in addition, had entered into a "civil union-like" relationship conferred by another jurisdiction, that couple must file their New Jersey gross income tax return using the joint or separate filing statuses for married/CU couples for the tax year in which that relationship was established (but not earlier than tax year 2007, which was the year the New Jersey Civil Union Act took effect).

Discharge of Indebtedness and IRC Section 108(i) — A taxpayer inquired about the New Jersey gross income tax treatment of Federal IRC Section 108(i) as enacted under the American Recovery and Reinvestment Tax Act. IRC Section 108(i) allows corporate taxpayers (including pass-through entities such as partnerships and subchapter S corporations) engaged in the conduct of a trade or business to defer the recognition of income from the discharge of indebtedness for Federal income tax purposes.

For New Jersey gross income tax purposes, the New Jersey Tax Court in *Weintraub v. Director, Division of Taxation*, 19 N.J. Tax 65 (2000) held that income from the discharge of business or personal indebtedness is not taxable for New Jersey gross income tax purposes. Additionally, N.J.S.A. 54A:8-3(c) states that a taxpayer's accounting method under the Gross Income Tax Act shall be the same as the accounting method for Federal income tax purposes. Therefore, taxpayers should not report income from IRC Section 108(i) discharge of indebtedness on the New Jersey gross income tax return for any tax year.

Partnership Contribution to Pension Plan — The Division received an inquiry from an accountant asking about the gross income tax treatment of contributions made by the partnership to a pension plan. More specifically, the pension contributions in question were made on behalf of the partners, not "employees" of the partnership.

The Division replied that the contributions are included in the distributive share of partnership income and not deductible by the partnership unless the amounts are a contribution to a qualified 401(k) plan. Therefore, to determine the correct treatment of pension contributions for the partners, the accountant or tax practitioner must have knowledge

of the Federal IRC section under which the plan was formed.

If the plan was formed as a Section 401(a) "Keogh" pension plan, the contribution amounts for the partners cannot be deducted and must be included in distributive share of partnership income. In other words, for calculating the amount to enter on any gross income tax return lines, there can be no deduction for the partners' Keogh plan contributions.

On the other hand, if the plan was formed as a Section 401(k) pension plan, the contribution amounts for the partners are deductible for gross income tax purposes, up to the limits that are deductible for Federal income tax purposes. (See N.J.S.A. 54A:6-21.) For purposes of completing New Jersey gross income tax returns, the 401(k) contributions are entered on the line for "Partner's 401(k) Contribution" in Part II of Schedule NJK-1, which is a subtraction taken for determining the distributive share of partnership income amount to transfer to the partnership income line on the individual's gross income tax return.

For more information on the correct tax treatment of contributions for "employees" (nonpartners), see the employers' instruction booklet (Form NJ-WT) available on the

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Division's Web site at: www.state.nj.us/treasury/taxation/prntempl.shtml

Sales and Use Tax

Installation of Garage Door Openers — The Division received an inquiry from a garage door business regarding the sales tax treatment of the installation of a new garage door opener system. The Division responded by explaining that the service of installing a new garage door opener system is exempt from sales tax as an exempt capital improvement service.

The Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to tax. N.J.S.A. 54:32B-3(b)(4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property on real property is subject to tax. N.J.S.A. 54:32B-3(b)(4).

A "capital improvement" occurs when equipment is permanently affixed to real property (land or buildings) and becomes a permanent part of the real property. To qualify as a capital improvement, the installation must increase the capital value of the

property or significantly increase the useful life of the property.

If the work performed on the real property results in an exempt capital improvement, the installer does not collect sales tax on the labor as long as the customer provides the installer with a properly completed Certificate of Exempt Capital Improvement (Form ST-8). Also, if the business installs a new garage door opener system as a replacement of an old or defective system, this installation also qualifies as an exempt capital improvement.

The garage door opener system being installed is tangible personal property that is subject to sales tax when purchased from the supplier whether by the installer or by the property owner. The installer is a contractor and must pay sales or use tax when purchasing equipment to be installed on the real property. The installer may not charge the property owner sales tax on the cost of the equipment. If the property owner purchases the garage door opener directly from the supplier, the property owner must pay the sales tax on the equipment. □

In Our Courts

**Gross Income Tax
Retroactive Application of Rate
Change** – *Demuth v. Director,
Division of Taxation*, New Jersey

Superior Court, Appellate Division, decided October 28, 2009.

In June 2004, the New Jersey Legislature amended N.J.S.A. 54A:2-1 to increase the tax rate from 6.37% to 8.97% on gross income of \$500,000 or more and retroactively applied the rate to January 1, 2004. In May 2004, Mr. Demuth made three separate stock sales that resulted in a net gain of \$3,269,288.

Mr. Demuth filed his 2004 New Jersey gross income tax return in April of 2005 reporting the income from the stock sales and determined the tax at the new rate of 8.97%. In August 2006, Mr. Demuth amended his 2004 New Jersey gross income tax return. On the amended return, Mr. Demuth determined the tax on the stock transactions at the 6.37% rate. He believed that the new tax rate could not be retroactively applied and requested a refund. The refund was denied and the denial was upheld in Tax Court. Mr. Demuth relied on the New Jersey Supreme Court decision in *Oberhand v. Director, Division of Taxation*, supra, 193 N.J. at 573 citing "manifest injustice." The New Jersey Superior Court, Appellate Division, upheld the Tax Court decision and differentiated Mr. Demuth's case from *Oberhand* by stating:

That matter involved decedents who had structured their estate plans on the basis of the tax law then in effect. Subsequently, the law changed in a manner which created a tax liability where previously none had existed. In *Oberhand*, no tax would have been due but for the amendment. Here, plaintiff's sales of this stock were always taxable events.

Current Amnesty Programs

The following state(s) are conducting tax amnesty program(s). During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site(s) listed below.

PA April 26 – June 18 www.revenue.state.pa.us/ ("Hot Topics")

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Sales and Use Tax

Sales Tax Refund – *Home Depot, U.S.A. Inc., v. Director, Division of Taxation*, New Jersey Superior Court, Appellate Division, decided on October 27, 2009.

The taxpayer appealed from a summary judgment dismissal by the New Jersey Tax Court challenging the denial of a refund claim for sales tax paid on uncollectible credit card purchases. The taxpayer is a “conduit for credit card applications and the collecting and remitting of New Jersey sales tax.” For the involved period, the taxpayer made a business decision to outsource its accounts receivable to three finance companies. The taxpayer paid service fees under agreements with these finance companies which included projected bad debt loss incurred by the finance companies. This element was not identified in any of the agreements nor was there any evidence identifying or allocating part of the service fee to any other cost or item.

The Appellate Division confirmed the Tax Court’s denial of their sales tax refund claim on the basis that the claim was barred under the provisions of N.J.A.C. 18:24-23.2(a) (2), the “regulation that denies any refund of sales tax where a vendor has collected from a customer an amount at least equal to the amount of sales tax paid.” Further, it was stated that the taxpayer’s “proofs did not establish that it suffered any losses on credit card transactions due to bad debts as a result of its payment of unidentified and unallocated service fees to the finance companies.”

It was further found that the taxpayer recovered from the finance companies an amount more than sufficient to pay the sales tax during the refund period. Therefore, even if the customer eventually defaulted on the credit card obligation the taxpayer received the same payment in conjunction with the transaction and paid the same service fee to the finance companies. □

In Our Legislature

Gross Income Tax

New Jersey Lung Cancer Research Fund — P.L. 2009, c.172, signed into law on January 11, 2010, establishes the New Jersey Lung Cancer Research Fund and allows voluntary contributions to the fund by taxpayers on State gross income tax returns. Monies in the fund will be appropriated annually to the State Commission on Cancer Research.

This charitable check-off will be available to taxpayers wishing to donate to the fund for tax year 2011 and thereafter.

Employer Licenses can be Suspended or Revoked for Repeated Violations of State Wage, Benefit, and Tax Laws — P.L. 2009, c.194 was signed into law on January 14, 2010, and takes effect on the 180th day after enactment.

This law significantly expands the powers of the Commissioner of the Department of Labor and Workforce Development, allowing the suspension or revocation of certain licenses held by employers for failure to adhere to State wage, benefit, and tax laws, including violations of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). The Act defines “license” to mean any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State.

In addition, the new law provides that the Commissioner may suspend or revoke the licenses of clients of employee leasing companies.

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Credit Card*

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Local Property Tax

Gloucester County Property Assessment Pilot Program — P.L. 2009, c.118, signed into law on October 1, 2009, and effective immediately, establishes a pilot program in Gloucester County for the transfer of the municipal property assessment function to a county assessor. This Act requires the appointment of a county assessor over a three-year period. In addition, transfer of the assessment function requires the revaluation of all municipalities within the county to ensure uniformity of assessment throughout the county-wide assessment district.

The Act requires the Local Unit Alignment, Reorganization, and Consolidation Commission to study this pilot program and, in consultation with the Director of the Division of Taxation, issue a report no later than February 1 of the sixth year of the pilot program.

Hiring preference criteria are provided with regard to deputy assessor positions from the ranks of currently serving municipal tax assessors or deputy tax assessors.

All current or pending assessment and abatement programs and agreements under the Long Term Tax Exemption Law, P.L. 1991, c.431 (N.J.S.A. 40A:20-1 et seq.), and the Five-Year Exemption and Abatement Law, P.L. 1991, c.441 (N.J.S.A. 40A:21-1 et seq.), remain in effect in the pilot county.

Reassessment of Certain Real Property by Assessor and Appeal of Assessment by Certain Property Taxpayers — P.L. 2009, c.251, signed into law on January 16, 2010, and effective immediately,

eliminates parts of the notice and approval requirements that a tax assessor must satisfy. The Act increases the statutory threshold for bringing a property tax appeal directly to Tax Court from an assessed value of \$750,000 to an assessed value of at least \$1,000,000. The Act would also modify the reporting requirements and criteria the assessor must provide to the Division of Taxation and eliminates the 45-day time frame by which the County Board of Taxation or the Division of Taxation must approve the compliance plan.

Forest Stewardship Plan — P.L. 2009, c.256 was signed into law on January 17, 2010. This Act directs the Department of Environmental Protection (DEP) to establish a forest stewardship program for owners of forest land. The Act further directs the DEP to establish a forest certification program and a cost share incentive program, to be known as the New Jersey Forest Stewardship Incentive Program.

The Act limits local government's ability to enact any ordinance, rule, or resolution as appropriate that conflicts with, prevents, or impedes the implementation of a forest stewardship plan. Also, the Farmland Assessment Act of 1964 is now expanded to provide differential property tax assessment to owners of forest land who implement an approved forest stewardship plan.

Miscellaneous

State Tax Expenditure Report — P.L. 2009, c.189, signed into law on January 13, 2010, requires that the Governor's annual budget message include a State tax expenditure report.

State tax "expenditure" means those revenue losses attributable to

provisions of State tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit, preferential tax rate, or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions, or property from the liability which would be presumed to exist without the State tax expenditure.

The Division of Taxation is required to advise and assist the Governor in the preparation of the State tax expenditure report.

Sales and Use Tax

Natural Gas and Utility Service Used For Cogeneration — P.L. 2009, c.240, signed into law on January 16, 2010, and effective immediately, clarifies the meaning of "contiguous property" for the purposes of Section 26 of the Sales and Use Tax Act, P.L. 1997, c.162 (N.J.S.A. 54:32B-8.46). This new law removes certain limitations on the exemption from the tax imposed under the Sales and Use Tax Act for natural gas and utility service used for cogeneration. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not

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listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#) [2010](#)

• **Alphabetical Summary of Due Dates by Tax Type**

[2009](#) [2010](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2009](#) [2010](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
..... 609-826-4400
- Homestead Rebate Hotline
for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline
for Tenants1-888-213-8623
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-0013

New Jersey State Tax news

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Tax Amnesty Program – Record-Setting Success

After the final accounting, total collections from the 2009 Tax Amnesty Program implemented by the Division of Taxation amounted to \$746.3 million. The Amnesty program, which began on May 4, 2009, and ended on June 15, 2009, offered a waiver of all penalties, referral cost fees, and one-half of the balance of the interest that remained due as of May 1, 2009.

Based on past Tax Amnesty experiences in New Jersey and other states, and considering the economic climate at the time, initial projections for revenue were conservative. The Administration set the goal for additional revenue related to Tax Amnesty at \$100 million. Two weeks into the program, based on the rate of response, the State Treasurer revised the revenue estimate upwards to \$200 million. By June 11, the goal of \$200 million had been reached. As with other Tax Amnesty programs, most payments were received in the last few days leading up to June 15. On June 12 alone, a one-day revenue total of \$201 million was recorded.

An analysis to consider what portion of the Amnesty revenue would have been collected through normal compliance and enforcement activities by the Division of Taxation (absent a Tax Amnesty program) determined that the additional (net) revenue benefit to the State as a result of the Tax

Amnesty program was \$647.1 million. This revenue outcome resulted in New Jersey's having the most successful State Tax Amnesty program in the history of the country, which has seen more than 50 such programs across dozens of states.

Tax Amnesty Administrator, Mark Wintermute, reported that more than 108,500 payments were made during the 43-day Tax Amnesty period, of which nearly 90% were processed electronically through Web-based payment modules or through automated payment processes by the Division of Revenue. Of the total amount collected, more than 56% was from corporate tax liabilities, nearly 12% from gross income tax, and about 19% from sales and use tax, with the remainder from the other taxes and fees administered by the Division. During the Tax Amnesty period, a dedicated telephone hotline answered 117,411 phone calls, and a special Amnesty Web site recorded more than 53,000 hits.

Multiple factors contributed to the success of the program. Most important was a comprehensive advertising and public relations program, which emphasized outreach to the tax professional community. In any Tax Amnesty program, success is dependent upon participation by large business taxpayers and ensuring they understand, with the help of their tax advisors, the economic benefit the program offers. The program also included direct outreach

continued on page 2

tax amnesty program - from pg. 1

by mail to taxpayers with known tax liabilities to New Jersey. This comprehensive outreach resulted in more than 700,000 mailings.

Taxpayers who failed to settle their outstanding tax debts during the Tax Amnesty period now face the reinstatement of the original penalties, interest, and fees, plus the imposition of an additional 5% penalty. Acting Director Cheryl Fulmer advises, "The Tax Amnesty program was designed to help taxpayers who had fallen behind during tough economic times get a fresh start, while collecting money that New Jersey could use for needed programs and services. The program also reduced our backlog of delinquent and deficient taxpayers and allows our audit and investigative teams to concentrate their efforts on the truly hard-core tax evaders." □

NJ Economic Stimulus Act

The New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c.90) was an omnibus bill, consisting of eight actions, designed to reinvigorate New Jersey's economy. There are numerous technical and administrative changes in this Act; six of which affect the Division of Taxation.

Economic Redevelopment and Growth Grant Program

This portion of the Act authorizes the awarding of State and local incentive grants to developers in qualifying economic redevelopment and growth grant incentive areas to fill in their project financing gap.

Authorization For Certain Municipalities to Impose Special

Taxes and Surcharges

This portion of the Act authorizes special taxes and surcharges to fund redevelopment activities and certain programs.

Municipalities with a population over 100,000 and a commercial airport with over ten regularly scheduled flights per day may impose a 5% tax on the rental fee of motor vehicles to mainly fund redevelopment plan activities.

Second class cities with a major place of amusement are allowed to impose a surcharge up to \$2 on each admission charge subject to New Jersey sales tax and a \$2 charge on parking at that place of amusement for the benefit of senior citizen and youth health and recreational purposes.

Modifications to the Emerging and Biotechnology Credit Transfer Program

An eligible entity may surrender any credit which cannot be applied to its liability, or surrender any unused net operating loss carryover to certain other corporations.

A recipient of surrendered tax benefits must pay at least 80% (formerly 75%) of the value of such benefits.

The Economic Development Authority is limited annually to \$60 million of credit transfer approvals and, along with the Division of Taxation, must manage the allocation of the credit transfer approvals pursuant to a modified formula.

The innovation zone portion of the credit allocation increases to \$10 million (formerly \$5 million) and is specifically set aside for emerging technology and biotechnology

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
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continued on page 3



nj economic stimulus act - from page 2
 companies; unused portions of the emerging technology and biotechnology transfer credit program may be allocated outside of the designated innovation zones.

The maximum lifetime value of credit transfers for any one eligible corporation increases from \$10 million to \$15 million.

The Act allows for a credit recapture program to recoup the remaining value of the surrendered credit if the entity fails to use the proceeds for its statutorily intended purposes.

Expansion of Eligibility and Tax Credit Limits Under the Urban Transit Hub Tax Credit Act (UTHTCA)

- A business must demonstrate at the time of its application that the State’s financial support will yield a net positive benefit to both the State and the eligible municipality.
- All credits approved under the program are now capped at \$1.5 billion.
- The “full-time employee” requirement may consist of contract

workers and include out-of-state residents.

- A business may use an affiliate to satisfy the employment or capital investment requirements.
- The definition of “Urban transit hub” is expanded to include: (1) property located within one-half mile of an interstate rail station; (2) property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line for loading and unloading freight cars on trains; and (3) all light rail stations.
- The capital investment threshold is reduced from \$75 million to \$50 million for an *owner* of a qualified business facility, and from \$50 million to \$17.5 million for a *tenant* that occupies a leased area of the qualified business.
- Tenant investment may be included in the capital investment calculation for the qualified business facility.
- The Act allows for the aggregation of up to three tenants to meet the 250 employee requirement.

- InvestNJ Business Grantees may not qualify for an Urban Transit Hub tax credit.
- The Statewide full-time workforce reduction trigger requiring mandatory forfeiture of an annual tax credit is now 20%.
- Business headquarters property may now become a qualified investment facility if it meets certain criteria.
- S corporation shareholders and limited liability corporation members may no longer be permitted to participate in the program. A qualified individual who is a holder of a credit may sell it under the tax credit transfer certificate program pursuant to the guidelines established in the Act.
- Casino licensees now only qualify for benefits for casinos.
- The credit shall be reduced by 20% if there are fewer than 200 employees.
- Forfeiture may occur if the business reduces its workforce by more than 20%.
- The New Jersey Economic Development Authority is required to set standards to encourage “green building.”

Telephone Filing Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions are no longer able to file their returns and make the related payments by phone through the Division of Taxation’s Business Paperless Telefiling System. Telephone filing has been discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue’s Web site.

Relief to Certain Developers and Municipalities

This portion of the Act provides relief to certain developers otherwise subject to the Statewide Non-Residential Fee Act and grants to municipalities for affordable housing.

The Act temporarily exempts property that received a site plan approval



economic stimulus act - from pg. 3

before July 1, 2010, and a permit for construction prior to July 1, 2011, from the 2.5% nonresidential development fee imposed by the State-wide Non-Residential Fee Act (P.L. 2008, c.46). N.J.S.A. 40:55D-8.1 through 40:55D-8.7. These amendments to the Act are not intended to change the provisions of N.J.S.A. 40:55D-8.7, which void and prohibit municipal ordinances that seek to impose obligations on nonresidential development for the purposes of providing affordable housing.

Developers may apply to the approving authority for full or partial fee refunds.

\$15 million is appropriated to the New Jersey Affordable Housing Trust Fund from the General Fund, and the Act permits the transfer of a portion of the appropriation to the Urban Housing Assistance Fund established by N.J.S.A.52:27D-329.7.

Sales Tax Exemption on Energy and Utility Services

The Act also allows a sales tax exemption for the purchase and use of energy and utility service by certain postconsumer material manufacturing facilities.

Receipts from the sale or use of energy and utility service to or by a

postconsumer material manufacturing facility for use or consumption directly and primarily in the production of tangible personal property, other than energy, are exempt from the State sales and use tax and certain transitional energy facility assessment (TEFA) charges during the period beginning on or after January 1, 2010, but ending on or before January 1, 2017.

During the period for which the sales tax and TEFA exemptions are granted, the seller of such energy and utility service to an eligible postconsumer material manufacturing facility must charge the sales tax and TEFA on such purchases. The eligible postconsumer material manufacturing facility may then file a claim for refund with the Division of Taxation pursuant to the guidelines established within the Act. □

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran’s property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

October 25 (on or before)–

- Added assessments certified for fire districts on Form CNC-3.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.
- Form CNC-3 completed by assessor and forwarded to collector.

Fur Clothing Retail Gross Receipts Tax and Use Tax Repealed Effective January 1, 2009

P.L. 2008, c.123, repealed the Fur Clothing Retail Gross Receipts Tax and Use Tax effective January 1, 2009. The final return for the quarter ending December 31, 2008, was due January 20, 2009. Beginning January 1, 2009, sales of fur clothing are subject to sales tax at the rate of 7%. For more information see the [Notice to Fur Clothing Sellers Effective January 1, 2009](#).



tax assessors' calendar - from page 4

November 15–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.
- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2010 must be filed with assessor during the pretax year, thereafter with collector during the tax year.
- Last date for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2009 to be filed with collector. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On June 1, 2009, Paul Sarris, 52, of Jersey City, was sentenced to 8½ years in State prison by Superior Court Judge Darlene J. Pereksta in Mercer County. Sarris pled guilty on March 31, 2009, to a second-degree charge of theft by deception. He was also ordered to pay restitution of \$282,902, representing his share of the amount stolen from the State, plus penalties and interest.

In pleading guilty, Sarris admitted that he conspired with his business partner, Achilles "Butz" Amante, 57, formerly of Jersey City, in a fraudulent scheme in which they filed 745 false homestead rebate applications with the State of New Jersey between August 2001 and September 2003, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City.

The State's investigation revealed that the defendants filed the applications using names and social security numbers obtained from tax preparation clients without permission of the clients. The defendants laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses. Sarris specifically admitted that he deposited 371 checks totaling more than \$282,000 into six bank accounts he maintained and controlled on behalf of his business, Sarris Financial Services.

continued on page 6

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2009 – December 31, 2009, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □



criminal enforcement - from pg. 5

Three of Amante’s children and his sister, all of Jersey City, previously pled guilty and were sentenced last year for participating in the scheme. Amorito “Angelo” A. Amante, 35, and Aloysius M. Amante, 33, were each sentenced to five years in State prison after pleading guilty to theft by deception. Amorito Amante was ordered to pay \$80,173 in restitution, while Aloysius Amante was ordered to pay \$40,794 in restitution. Aristides Amante, 29, also pled guilty to theft by deception and was ordered to serve five years’ probation, conditioned on serving 30 days in the sheriff’s labor program. He was ordered to pay \$78,000 in restitution. Matilda Amante Ramos, 58, pled guilty to theft by deception and was ordered to serve five years’ probation and pay \$35,851 in restitution. Matilda Amante Ramos ran a travel agency, while all of the other defendants operated their own financial service companies offering tax preparation services.

Charges are pending against Butz Amante, who is a fugitive. An arrest warrant has been issued for him.

- On June 12, 2009, in the City of Newark, Municipal Court Judge Roslyn Holmes-Grant awarded the State of New Jersey one cigarette vending machine and its contents, \$156 in U.S. currency, and 7.3 cartons of Delaware-stamped cigarettes. The vending machine was seized from the defendant, Ademir DeSouza, at his restaurant, Brasilia Grill, on April 21, 2008. This forfeiture of property was presented to and accepted by the judge as condition of DeSouza’s plea agreement. DeSouza was fined and penalized a total of \$1,123. This vintage “pull knob” style cigarette vending machine has a resale value of \$3,000 and will be auctioned to the public through the New Jersey Department of the Treasury.
- On June 19, 2009, William C. Neumann, Jr., 62, of Leonardo, New Jersey, was sentenced to a five-year State prison term for the crimes of second-degree theft by deception and third-degree failure to file State taxes. As a condition of the sentence, Neumann must pay full restitution of \$297,724.26 to a total of 82 victims. Neumann must also pay \$9,075.66 in penalties to the New Jersey Division of Taxation. Neumann pled guilty to the charges on March 9, 2009.

Neumann was the owner of Cabbage Rose, L.L.C., and Chelsea Manor Unlimited. Cabbage Rose, L.L.C., was a furniture store located in Fair Haven, New Jersey. Chelsea Manor Unlimited was a business which sold furniture through the Internet. The investigation revealed that Neumann received furniture orders and subsequently obtained deposits for merchandise pursuant to generated invoices. The investigation further revealed that from January 2004 until January 2007, Neumann received payments from customers totaling over \$297,000 and failed to deliver any of the merchandise or submit refunds. Additionally, from 2003 until 2006, Neumann failed to file New Jersey gross income tax returns.

- On June 22, 2009, the New Jersey Division of Taxation received a forfeiture check in the amount of \$21,432.50 from the Passaic County Prosecutor’s Office. This amount is derived from a seizure of U.S. currency during a cigarette inspection conducted at the China Garden restaurant in Paterson, New Jersey, on September 9, 2008. (This inspection had also resulted in the seizure of 3,298.5 cartons of contraband cigarettes.)

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “**Auctions**.” Select the name of the business for details about that auction.

Enforcement Summary Statistics Second Quarter 2009

Following is a summary of enforcement actions for the quarter ending June 30, 2009.

• Bank Levies	1,386	• Seizures	64
• Certificates of Debt:		• Auctions	7
Total Number	979		
Total Amount	\$15,451,157		



criminal enforcement - from page 6

The owner of the aforementioned establishment, Fen Shou Chen, is currently awaiting sentencing in United States District Court in Camden.

- On July 15, 2009, the New Jersey Division of Taxation received a forfeiture check in the amount of \$22,189.64 from the United States Postal Inspection Service (USPIS). The amount is derived from multiple seizures of U.S. currency and items recovered during the 2007 execution of Federal search warrants and arrest warrants connected to the Office of Criminal Investigation (OCI) case of Xiao Qi. This individual and his associates had conspired to defraud the State of New Jersey of cigarette tax through the trafficking of contraband cigarettes throughout primarily Essex, Union, and Passaic Counties in New Jersey. The case investigation was anchored by the joint

efforts of OCI, USPIS, Bureau of Alcohol, Tobacco, Firearms and Explosives, and Internal Revenue Service-Criminal Investigation, and was assisted at different junctures by personnel from the New Jersey State Police (NJSP), Essex Anti-Crime Task Force/NJSP Metro North Unit, Newark Police Department Vice Unit, Paterson Police Department Narcotics Unit, Passaic Police Department, and West New York Police Department.

- On July 24, 2009, Gilroy Campbell of Atlantic City, New Jersey, was sentenced to three years' probation, 138 days in the Atlantic County Jail, and forfeiture of \$323 in seized currency and a 1996 GMC Safari van, which will be auctioned by the State. Campbell pled guilty to charges of possession and sale of contraband cigarettes and possession and sale of counterfeit CDs and DVDs in August 2008.

- On July 27, 2009, Naeem Khan, t/a Garden State Fuels, of Egg Harbor Township, New Jersey, pled guilty to possession of contraband cigarettes and failure to examine/return. Egg Harbor Municipal Court imposed \$2,841 in fines, fees, and penalties. A total of 86 cartons of unstamped and Delaware-stamped cigarettes were seized from the business. □

Tax Briefs

Corporation Business Tax

Schedule I, Certification of Inactivity — An accountant wrote to the Division on behalf of a client who has an S corporation based in New York City. All of the business activity and sales were in New York during 2008.

However, the client rented a warehouse in New Jersey in 2008. The client received a notice that a corporation business tax return (Form CBT-100S) must be filed with the State of New Jersey. Reviewing Form CBT-100S, the accountant inquired about Schedule I, Certification of Inactivity, which may be filed with the first five pages of the tax return. On Schedule I the corporation certifies that throughout the tax period the “taxpayer had no business activities, no income, no assets and...made no distributions, and did not have any change in ownership.” The accountant asked, “Can this form be used if there were sales in New York only and no income or activity in New Jersey other than the rental of the warehouse?”

The Division responded that the Schedule I, Certification of Inactivity, cannot be used by the client.

continued on page 8

Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation/

The image shows a sample electronic check form. It includes fields for the payee's name and address (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), a date field, and a dollar amount field. Below these are fields for the routing number (250250029) and account number (20202089). A note says "Do not include the check number." There is also a MICR line at the bottom: @250250029 20202089 1234.

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com



* Fee of 2.49% of tax payment applies.



tax briefs - from page 7

Renting a warehouse in New Jersey creates nexus and constitutes business activity. Therefore, all pages of Form CBT-100S must be completed and filed (with tax payment as instructed).

Gross Income Tax

Bicycle Commuter Transportation Benefit — An employer inquired whether New Jersey has a commuter transportation benefit for bicycle commuters similar to the newly-adopted Federal income tax benefit for commuters using a bicycle.

Beginning with the 2009 tax year, Federal IRC Section 132(f) provides a limited Federal income tax exclusion for “any qualified bicycle commuting reimbursement”

provided by an employer to an employee. The Federal exclusion applies to employer reimbursement for reasonable expenses incurred by the employee for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee’s residence and place of employment.

The New Jersey Gross Income Tax Act, at N.J.S.A. 54A:6-23, provides a limited exclusion for certain commuter transportation benefits. One limitation is that the benefit be provided to the employee “in addition to and not in lieu of compensation.” In other words, the New Jersey commuter transportation benefit exclusion does not apply to a benefit provided through a salary reduction agreement.

The New Jersey gross income tax exclusion is for “commuter transportation benefits” provided to employees for their use of “alternative means of commuting.” Further, the gross income tax exclusion provides that those terms are defined in N.J.S.A. 27:26A-3, which provides, in pertinent part:

Alternative means of commuting include, but are not limited to, public transportation, car pools, van pools, bus pools, ferries, bicycling, telecommuting, and walking....

The Division determined that if commuter benefits for bicycling are excludable for Federal income tax, they are also excludable for New Jersey gross income tax purposes, assuming they are not provided through a salary reduction agreement.

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

Sales and Use Tax

“Cash for Clunkers” Credit Towards Car Purchase — A taxpayer buying a car inquired about the “Cash for Clunkers” payments. More specifically, the buyer asked whether the program payment credited towards the motor vehicle purchase was subject to sales tax.

Cash for Clunkers payments are made under the Consumer Assistance to Recycle and Save Act of 2009. If a buyer’s application is successfully approved by the Federal government, the government will issue a financial credit to the dealer (subject to fund availability and approval of all aspects of the application).

The Division replied that the amount credited as the program payment was subject to sales tax. The Federal



tax briefs - from page 8

funds provided to the dealer under this program are directed towards the purchase or lease of a new vehicle. Those funds are deemed to be consideration paid by a third party. The amount of third-party consideration must be included in the sales tax base when calculating the applicable sales tax due on the transaction. The funds are not treated as part of the trade-in value that a dealer offers a buyer.

Tree Removal Service — A homeowner asked whether services to cut down and remove a tree and the stump are subject to sales tax. The Division responded that these services are subject to sales tax.

In the Sales and Use Tax Act, the definition of landscaping services includes “clearing and filling land.” That term includes the services of removing a tree and its stump. The business that provides the service must charge and remit sales tax. □

In Our Courts

Corporation Business Tax

Regular Place of Business – *BIS LP, Inc. v. Director, Division of Taxation*, Docket No. 007847-2007, decided July 30, 2009.

BIS LP was a wholly-owned subsidiary of BISYS, Inc. BISYS, Inc. and BIS LP entered into a limited partnership agreement whereby BISYS, Inc. became a 1% general partner and BIS LP was a 99% limited partner of Solutions. BIS LP did not have the right or obligation to participate directly or indirectly in the active management of Solutions. BIS LP’s sole interest in New Jersey was its limited partnership interest in Solutions, which is in the data processing business. It did not have

any place of business, property, employees, agents, or representatives in New Jersey.

BIS LP filed a 2003 corporation business tax return on which it elected to be treated as an investment company because it qualified with its limited partnership interest in Solutions. Audit denied the investment company status on the basis that BIS LP did not have a qualifying asset. Additionally, the auditor found that BIS LP had a unitary relationship with the business conducted by Solutions and provided BIS LP with enough constitutional presence in New Jersey to be subject to tax.

The Court reviewed the statutes and regulations. In 2006 there was a regulatory amendment that stated that qualified investment assets do not include the direct investment in a non-publicly traded pass-through entity, if that entity would not satisfy the definition of an investment company had it been organized as a corporation. Prior to the amendment, there was no language in the statutes or regulations that suggested that an interest in a limited partnership could *not* be considered as a qualifying asset for purposes of the investment company election.

The Court held that BIS LP’s 2003 limited partnership interest in Solutions was an investment contract and therefore would be considered

another security, and thus a qualifying asset, prior to the 2006 amendment. The Court stated that there was no language in the statutes or regulations which would have disqualified the limited partnership interest from qualifying as another security in 2003. Additionally, the Court refused to allow retroactive application of the regulation as that would be unfair to taxpayers.

Moreover, the Court also held that BIS LP was not subject to corporation business tax in 2003, noting that BIS LP and Solutions were separate entities and that BIS LP received 100% of its income from its limited partnership interest in Solutions. BIS LP is a holding company that was a passive investor and not in the same line of business as Solutions. The Court stated this situation was akin to the Division’s regulation, N.J.A.C. 18:7-7.6, example IV. Therefore, BIS LP and Solutions were not integrally related.

Nexus and Software License – *AccuZIP, Inc. v. Director, Division of Taxation*, Tax Court No. 005744-2003, decided August 13, 2009; *Quark, Inc. v. Director, Division of Taxation*, Tax Court No. 004692-2002, decided August 13, 2009.

The Division determined that both plaintiffs were subject to corporation business tax (CBT) because

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they retained title to licensed software where the license was sold, used, and located in New Jersey. For example, Quark's license stated that a customer did not receive title to the software but rather was granted a nonexclusive license to use the software subject to terms and restrictions.

The Tax Court ruled that neither plaintiff was subject to CBT due to the sale of software. The Court found that the property at issue was tangible and not intangible, citing the Sales and Use Tax Act, as well as Federal law which states that prewritten computer software is considered tangible property even though it is characterized as a licensing agreement. Therefore, the buyer acquires ownership of the physical property containing the intellectual property for its own use. The Court reasoned that to find that the plaintiffs owned property in New Jersey would lead to illogical results.

The Court distinguished the *Lanco* ruling emphasizing that the Court gave great weight to the fact that *Lanco* was licensing intangible property, that income (royalty payments or licensing fees) was generated in New Jersey from the use of intangible property, and that holding

companies were involved for the purpose of creating a tax benefit.

As to the Division's alternative nexus arguments, the Court refused to adopt the significant economic presence test (as applied in the West Virginia case concerning MBNA) noting that it was not adopted by New Jersey and therefore was not binding. As to economic benefit, the Court found that although the plaintiffs may receive a slight benefit from the New Jersey judicial system, that alone is not a substantial economic benefit that would satisfy the substantial nexus requirement.

In conclusion, the Court held that AccuZIP was not subject to CBT because it did not meet the substantial nexus requirement of the Commerce Clause as it was not doing business in New Jersey. On the other hand, Quark was found to be doing business in New Jersey because of the activities of its one sales representative; however, those activities were protected by P.L. 86-272 and Quark was therefore only subject to the minimum tax.

Subjectivity/Nexus – *GSJ Corporation and Peter Polites v. Director, Division of Taxation*, Docket No. 007680-2004.

The Court upheld the Director's denial of the S corporation's refund claim for corporation business tax (CBT) and affirmed the Director's assessment of personal income tax against the individual, Peter Polites, because the plaintiff's contentions were based on the president of the company's self-serving testimony and not supported by any documentary evidence that was definite, positive, and certain in quantity and quality to overcome the Division's presumption of correctness.

The Court held that GSJ did not maintain a regular place of business in a room of its president's residential apartment in Pennsylvania because GSJ did not provide documentary evidence that showed GSJ's direct responsibility for the expenses, it was not identifiable as an office of GSJ, and the alleged home office was not regularly occupied when the president was not there. Therefore, the Court concluded that it did not matter whether the income was determined to be operational as all the income was allocated to New Jersey under Section 6; however, the Court noted that even if the income was determined to be nonoperational, the income should be assigned to New Jersey because all GSJ's business occurred in New Jersey. Finally, the Court denied GSJ's request for Section 8 relief stating that there was no documentary evidence that GSJ ever filed any income tax report or return in another state.

As to the personal income tax assessed against the plaintiff, the Court held that the income earned from a settlement and arbitration award was sourced to New Jersey and therefore taxable to Polites, a nonresident of New Jersey. Plaintiff failed to

Current Amnesty Programs

The following state(s) are conducting tax amnesty program(s). During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site(s) listed below.

ME	Sept. 1 – Nov. 30	www.state.me.us/revenue/
VA	Oct. 7 – Dec. 5	www.getsquareva.com/

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provide any cogent evidence to support his contentions.

Section 338(h)(10) Election – *McKesson Water Products Company v. Director, Division of Taxation*, Docket No. A-5423-06T3, decided July 16, 2009.

The Appellate Division upheld the Tax Court ruling that the gain derived on a deemed asset sale pursuant to a Section 338(h)(10) election is not subject to corporation business tax because it is not operational income as defined under N.J.S.A. 54:10A-6.1(a).

Gross Income Tax Credit for Taxes Paid to Other Jurisdictions – *Mannino, Philip & Joanne v. Director, Division of Taxation*, Docket No. 009142-2007, decided July 8, 2009.

This case essentially confirmed or denied whether *Mannino* rose to the level of a previously decided case, *Allen v. Director, Division of Taxation*, 14 N.J. Tax 385 (1994), *aff'd*, 15 N.J. Tax 704 (App. Div. 1996). In *Allen*, the taxpayer had a capital loss that was deductible in New Jersey but not in New York and a loss from rental property deductible in New York that was not deductible in New Jersey. The Court held that reducing the credit numerator by both categories of income would result in double taxation. Therefore, the taxpayer was only required to reduce his credit numerator by the greater of the two amounts.

In the *Mannino* case, the taxpayer had partnership expenses that were deductible in New Jersey and not in California and partnership expenses deductible in California that were not deductible in New Jersey.

The Tax Court ruled that “the goal in offering a tax credit for taxes paid to other jurisdictions is to avoid double taxation of money taxed and actually paid to both New Jersey and a foreign jurisdiction.” *Vassilidze v. Director, Division of Taxation*, 24 N.J. Tax 278, 290 (Tax 2008).

Judge Bianco compared the facts in *Mannino* with the facts in the *Allen* case:

The *Allen* case states that both amounts would be subtracted from the numerator only if both amounts were deductible in both states. The Manninos’ deductions are not deductible in both states and therefore cannot be deductible from the numerator.

Judge Bianco also stated that to reduce the credit numerator by the partnership expenses allowed by New Jersey and California would result in double taxation.

Deduction of Personal Expenses – *Sitar, William and Margaret v. Director, Division of Taxation*, Docket No. A-3323-07T1, decided August 4, 2009.

The issue presented in this matter is the correctness of the methodology employed by the Division of Taxation in denying the deduction of personal expenses from the gain on the sale of land held purely for investment purposes. The plaintiffs, William and Margaret Sitar, asserted that since personal expenses (interest on a loan and property taxes) incurred in connection with the land they held for investment purposes were deductible Federally, but not for New Jersey purposes, then pursuant to *Koch*, the New Jersey gross income tax assessment denying a basis adjustment was invalid. The

Division contended that land is not a depreciable asset and the plaintiffs’ personal expenses of interest on the loans to purchase the property and pay yearly property taxes are not deductible and therefore the taxpayer’s basis for the calculation on the sale of the land is the taxpayer’s Federal adjusted basis under N.J.S.A. 54A:5-1(c). The taxpayers also asserted *Moroney v. Director, Division of Taxation; Denitzio v. Director, Division of Taxation*, 2005 N.J. Super LEXIS 83, (2005).

There is no statutory provision which allows and provides for the deductions claimed by the plaintiffs. Plaintiffs sold a piece of vacant land which was held by the plaintiffs in their individual capacity for investment purposes. No improvements were made on this land. Plaintiffs had borrowed money to purchase the property and thus had to pay interest on the personal loan. Plaintiffs paid property taxes on this property. This property was not income producing. For the 1998 tax year, plaintiffs filed their Federal 1040 income tax return, and on Schedule A they deducted interest paid on the loan to purchase the said property and the real estate taxes paid on the property in the amount of \$1,710,158. These Schedule A expenses were personal expenses which were not related to taxpayers’ being involved in a trade or business. In *Gilligan v. Director, Division of Taxation*, 11 N.J. Tax 414, (1991) such expenses are not deductible from the plaintiff’s gross income.

Thus, the Division wrote in the final determination that the plaintiffs must use the Federal adjusted basis to compute gain from sale of the land

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in this case, and that the tax on the gain from the sale of land was not a tax on a return of capital nor a tax on fictitious, phantom income.

The New Jersey Superior Court, Appellate Division, in affirming the Tax Court stated:

Finally, we reject plaintiffs' argument that the computation of the basis for purposes of the GIT is the same as that for federal income tax purposes. Plaintiffs' seek to "have it both ways" - to take a personal deduction for federal purposes and take the same expenses and capitalize them for purposes of the GIT. The disparate treatment of these expenses is what the GIT seeks to avoid. Nothing in *Koch* or *Moroney* suggests that such conduct is envisioned by the GIT.

**Local Property Tax
Property Tax Exemption for
Parsonage Residence – *Chabad of Randolph, Inc. v. Township of Randolph*, New Jersey Superior Court, Appellate Division, Docket No. A-3244-07T3, decided December 31, 2008.**

The Township of Randolph appealed from a judgment entered by the State Tax Court which granted the Chabad of Randolph, Inc. a property tax exemption for a parsonage residence. The New Jersey Appellate Division affirmed the Tax Court's decision.

The issues raised by the Township of Randolph concerning the Chabad of Randolph's application for a property tax exemption were whether the rabbi met the definition of "officiating clergyman" and whether the premises in question was used

in a fashion that would qualify for exemption as a parsonage under N.J.S.A. 54:4-3.6.

In September 2005, the Randolph Township zoning administrator observed activity which he believed demonstrated that the Chabad of Randolph's parsonage property was being used as a Hebrew school. However, the zoning administrator admitted that while he observed a large number of people entering and leaving the premises, he had no personal knowledge as to what they were doing at the house. Randolph Township also contended that Chabad was using the property as a Jewish community center in violation of the zoning ordinance, and therefore was not entitled to a tax exemption.

In October 2005, the Township tax assessor denied the Chabad a parsonage exemption for the residence occupied by the religious organization's rabbi. The Township maintained that the Chabad committed several zoning violations, and that "there was no proof that the rabbi was in fact installed over an established congregation." The Chabad appealed the tax assessor's denial of the property tax exemption to the Morris County Tax Board. On appeal, the Morris County Tax Board affirmed the assessor's decision to deny the parsonage exemption.

The Chabad appealed to the Tax Court of New Jersey, where it reversed the Morris County Tax Board's decision. Judge Kuskin, J.T.C., found that the rabbi's testimony on the issue of "officiating clergyman" was credible, and that the property was used as a parsonage within the meaning of the statute. Judge Kuskin concluded that the rabbi "was an officiating clergyman

in that the duties and responsibilities described by him in his undisputed testimony 'sound like those performed by congregational leaders of all religious denominations.'" The rabbi testified that his responsibilities included providing religious services, religious education, prayer services, sermons, weekly Torah readings, and officiating at various religious rituals such as marriages and funerals, overseeing preschool and adult religious educations, hiring staff, and overseeing the organization's finances. The judge maintained that Randolph Township had not proven that the premises were being used in a manner that violated the zoning ordinance. Judge Kuskin's decision was based on his assessment of the rabbi's testimony, as well as the Township's lack of proof. The record contains evidence of one zoning violation which was resolved by paying a \$250 fine and moving the religious school to another location. There was no proof that the Chabad violated the zoning ordinance in any other way. Judge Kuskin concluded that the Chabad carried its burden of proving that the rabbi's Chabad-owned residence was entitled to a parsonage exemption as per N.J.S.A. 54:4-3.6, which exempts from taxation "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State."

The Township of Randolph then appealed the Tax Court's decision to the New Jersey Appellate Division. The Appellate Division agreed with the Tax Court and held that "the evidence overwhelmingly supports the conclusion that his residence is a 'parsonage' within the meaning of N.J.S.A. 54:4-3.6." With this ruling

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the Chabad of Randolph was granted a property tax exemption for the parsonage residence. □

Sales and Use Tax

Statute of Limitations – *Trump Plaza, Trump Marina, and Trump Taj Mahal Associates v. Director, Division of Taxation*, Docket Nos. 008825-2006; 008827-2006; 008826-2006, decided June 19, 2009.

In this case, the Court found that there was no cause to allow an exception to the four-year statute of limitations involving refund claims for sales tax erroneously charged to the Trump Entities by Atlantic City Electric (ACE). The Court found that the argument to extend the statute of limitations was not compelling and that “the Director, on behalf of all other taxpayers should not be ordered to waive its protection.” □

In Our Legislature

Gross Income Tax

Checkoff for Community Food Pantry Fund and Cat and Dog Spay/Neuter Fund — P.L. 2009, c.124, enacted on September 8, 2009, effective immediately, and applicable to taxable years beginning on or after January 1, 2010, establishes the Community Food Pantry Fund and the Cat and Dog Spay/Neuter Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their tax returns in support of community food pantries and for pet spaying and neutering.

Miscellaneous

Expansion of Neighborhood Revitalization State Tax Credit — P.L. 2009, c.120, signed into law on August 18, 2009, and effective immediately, extends the Neighborhood Revitalization State Tax Credit Program eligibility to areas that are adjacent to current qualifying neighborhoods and that share similar socioeconomic characteristics with those eligible neighborhoods. The eligible neighborhoods qualified due to receipt of aid under the Special Municipal Aid Act or because they were coextensive with an Abbott district as designated pursuant to the Comprehensive Educational Improvement and Financing Act of 1996. This Act permits tax credits to businesses located in a depressed neighborhood bordering a municipality that is currently eligible to participate in the program. The cap of \$10 million remains the same.

The New Jersey Economic Stimulus Act of 2009 — P.L. 2009, c.90, signed into law on July 28, 2009, became effective immediately with the exception of sections 9 and 11, which became effective on October 1, 2009. This was an omnibus bill, consisting of eight actions, designed to reinvigorate New Jersey’s economy. There are numerous technical and administrative changes in this Act; six of which affect the Division of Taxation. The Act provides the following:

1. An Economic Redevelopment and Growth Grant Program;
2. Authorization for certain municipalities to impose special taxes and surcharges to fund redevelopment activities and certain programs;

3. Modifications to the current Emerging and Biotechnology Credit Transfer Program;
4. Expansion of eligibility and tax credit limits under the Urban Transit Hub Tax Credit Act (UTHTCA);
5. Relief to certain developers otherwise subject to the Statewide Non-Residential Fee Act and grants to municipalities for affordable housing;
6. Sales tax exemption on the receipts for the use of energy by certain postconsumer material manufacturing facilities.

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#) [2010](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2009](#) [2010](#)



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- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

2009 2010 □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Rebate Hotline
for Homeowners 1-888-238-1233
- Homestead Rebate Hotline
for Tenants1-888-213-8623
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-588-3932
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-588-3688
- Public Utility Tax..... 609-584-4337

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Budget Funds Rebates

The State Budget for fiscal year 2010 (which began on July 1, 2009) provides funding for the Homestead Rebate Program – although not at the same level as last year. Eligibility and rebate amounts for homeowners are limited based on income, and rebates for tenants will not be paid to those under age 65 and not disabled. The Budget also requires that the rebates for homeowners be based on 2006 property taxes.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2008, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2008 homestead rebate, provided that their gross income for the entire year does not exceed the applicable income limit: \$150,000 for homeowners age 65 or older or disabled, \$75,000 for homeowners under age 65 and not disabled, and \$100,000 for tenants age 65 or older or disabled. Under the terms of the Budget, no rebates will be issued to tenants under age 65 and not disabled.

Benefits

Benefit amounts differ for homeowners and tenants, and are determined by income, amount of property taxes (or rent) paid, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

The benefits under the Homestead Rebate Program are in addition to the State's other property tax relief programs. However, beginning this year with benefits paid for 2008, the total amount of all property tax relief benefits received (homestead rebate, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes (or rent constituting property taxes) paid on the applicant's principal residence for the same year.

Homeowners: The State Budget requires that the 2008 rebate be based on 2006 property taxes. For purposes of calculating the 2008 rebate, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2008, will be used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Under the terms of the Budget, 2008 rebate amounts will be no greater than those paid for 2006 (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or

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marital status, or an increase in percentage of ownership.

Homeowners age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (20% if New Jersey gross income is \$100,000 or less, 10% if income is between \$100,001 and \$150,000) or the amount by which the property taxes paid exceed 5% of New Jersey gross income, but within the following ranges:

\$70,000 or less	—	\$1200 – \$1000
\$70,001 – \$125,000	—	\$800 – \$600
\$125,001 – \$150,000	—	\$500

Homeowners under age 65 and not disabled will receive either 13.34% or 20% of the first \$10,000 of property taxes paid in 2006, depending on their income level.

\$50,000 or less	—	20%
\$50,001 – \$75,000	—	13.34%

Tenants: For tax year 2008, tenants age 65 or older or disabled are eligible to receive rebates ranging from a minimum of \$160 up to a maximum of \$860. Tenants under age 65 and not disabled are not eligible.

How to Apply

Homeowners: The 2008 homestead rebate applications were mailed in May to homeowners who were 65 years of age or older or disabled on December 31, 2008. Application packets were mailed in late July/early August to nonsenior, nondisabled homeowners whose 2008 New Jersey gross income was \$75,000 or less. The filing deadline was recently extended for all filers to November 2, 2009.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or [online](#).

Tenants: Applicants who are required to file a 2008 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it at the same time they file their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software), which was originally due by April 15, 2009.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until November 2, 2009, to file the tenant rebate application, Form TR-1040. However, because no rebates will be paid to tenants who are not 65 or disabled, there is no reason for them to file an application if they have not done so.

Applicants who are not required to file a 2008 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until November 2, 2009, to apply.

Rebate Checks

Homeowners: Homestead rebate checks for senior and disabled homeowners who filed by the original June 1 filing deadline were mailed July 31, 2009, while checks for those who file between June 1 and November 2 will be issued as quickly as possible. Checks for all nonsenior, nondisabled homeowners are scheduled to be mailed in October.

Tenants: Homestead rebate checks for all eligible tenants were mailed July 31, 2009.

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**Division of Taxation
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More information on the Homestead Rebate Program is available at: www.state.nj.us/treasury/taxation/homestead/hrintro.shtml □

FY 2010 Budget Legislation

The following is a list of several recently enacted tax laws related to the fiscal year 2010 budget.

Alcoholic Beverage Tax

P.L. 2009, c.71, increases the alcoholic beverage tax rate imposed on certain alcoholic beverages by 25% effective August 1, 2009. The tax rate imposed on liquor is increased to \$5.50 per gallon; the rate on wine, vermouth, and sparkling wine is increased to \$0.875 per gallon; and the rate on hard cider is increased to \$0.15 per gallon. The law also dedicates certain additional revenues generated by the tax to the Health Care Subsidy Fund.

Cigarette Tax

P.L. 2009, c.70, raised the cigarette tax rate, effective July 1, 2009. The rate increased \$0.125 per pack of 20 cigarettes from \$2.575 to \$2.70.

The law also dedicates additional revenue to the Health Care Subsidy Fund.

Corporation Business Tax

P.L. 2009, c.72, extends the 4% surcharge on corporation business tax liabilities for one year to include privilege periods ending before July 1, 2010. It also decouples the corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.

Gross Income Tax

P.L. 2009, c.69, makes various modifications to the New Jersey gross income tax.

- The tax rate for tax year 2009 is increased to 8% on income over \$400,000 but not over \$500,000; 10.25% on income over \$500,000 but not over \$1,000,000; and 10.75% for income over \$1,000,000.
- The property tax deduction for tax year 2009 is limited to \$5,000 for homeowners under age 65 and not blind or disabled whose gross income is over \$150,000 but

not over \$250,000. The deduction for 2009 is suspended for homeowners under age 65 and not blind or disabled whose income exceeds \$250,000.

- New Jersey Lottery winnings from prizes over \$10,000 are subject to New Jersey gross income tax beginning with tax year 2009. The New Jersey State Lottery is required to withhold income tax on taxable winnings at the rate of 3%.

Insurance Premiums Tax

P.L. 2009, c.75, modifies the tax treatment of certain lines of insurance.

- The rate on group accident and health insurance premiums increases to 1.35% for taxes payable in 2009.
- Dental service corporations are subject to the 1.35% insurance premiums tax for taxes payable in 2009.
- The tax for surplus lines coverage increases to 5%.

The law also dedicates certain additional revenue to the Health Care Subsidy Fund.

For more information on 2009 tax legislation, visit the Division's Web site at: www.state.nj.us/treasury/taxation/newlegislation2009.shtml □

Telephone Filing Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions are no longer able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing has been discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.

INHERITANCE/ESTATE TAX

Alternate Valuation Date

With the recent decline in the value of stocks, bonds, other investments, and realty, the Division has received numerous inquiries regarding the use

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of the alternate valuation date. This was not an issue of any great concern to most taxpayers until the market's recent precipitous decline.

New Jersey Inheritance Tax

The inheritance tax statute does not provide for the use of an alternate valuation date. Assets must be valued for all inheritance tax purposes at their value on a decedent's date of death in accordance with the provisions of N.J.A.C. 18:26-8.10(a).

Estate Tax

The provisions of the Internal Revenue Code in effect on December 31, 2001, provide for the use of an alternate valuation date if certain conditions are met. The policy of the Division has been and continues to be that if an election to use the alternate valuation date could have been made under the provisions of the 2001 Internal Revenue Code, that election may be made for New Jersey estate tax purposes. If a Federal estate tax return is filed, the same election must be made for New Jersey estate tax purposes and all other Federal and New Jersey tax purposes.

In situations where a Federal estate tax return is neither filed nor required to be filed, a taxpayer may make an

election to use the alternate valuation date for New Jersey estate tax purposes provided the election could have been made under the provisions of the Internal Revenue Code in effect on December 31, 2001.

In situations where a Federal estate tax return is filed with the Internal Revenue Service even though a tax return is not required to be filed, and in situations where a Federal estate tax return is filed with the Internal Revenue Service pursuant to the requirements of the Internal Revenue Code, the same valuation date must be used for New Jersey estate tax purposes as is used for Federal purposes.

In those situations where date of death valuations must be used on the Federal estate tax return filed as alternate date valuations and would not decrease the Federal estate tax, date of death valuations must be used for New Jersey estate tax purposes. This is mandated even though an election to use the alternate valuation date could have been made under the provisions of the Internal Revenue Code in effect on December 31, 2001.

For questions related to this issue, contact the Inheritance and Estate Tax Section at 609-292-5033. □

GROSS INCOME TAX

Charitable Remainder Trusts

The New Jersey Gross Income Tax Act states at N.J.S.A. 54A:2-1 that tax is imposed on the gross income of every trust, other than a charitable trust or a trust forming part of a pension or profit-sharing plan. The Act does not exempt any other type of trust from tax.

A "charitable trust" for New Jersey gross income tax purposes means a trust operated exclusively for religious, charitable, scientific, literary, or educational purposes. A trust cannot be deemed to be a charitable trust unless it is operated exclusively, during all of the taxable years in question, for religious, charitable, scientific, literary, or educational purposes; serves a public interest as opposed to a private interest; and, under the governing instrument, there is no possibility that a non-charitable beneficiary will receive gains or income. See *Burke, Clare and Hill, Trustees, v. Director*, 11 N.J. Tax 29 (1990).

In contrast, a Charitable Remainder Trust (CRT) is formed to pay income to one or more noncharitable income beneficiaries. The donor donates property or money to the CRT while continuing to use the property, receive income, and/or provide for beneficiaries. After a specified period of time, the CRT pays the entire remainder amount to charity or uses the trust for a charitable purpose. The terms of the trust are specified in the governing instrument.

There are three types of CRTs, all of which are treated similarly for New Jersey gross income tax purposes:

Fur Clothing Retail Gross Receipts Tax and Use Tax Repealed Effective January 1, 2009

P.L. 2008, c.123, repealed the Fur Clothing Retail Gross Receipts Tax and Use Tax effective January 1, 2009. The final return for the quarter ending December 31, 2008, was due January 20, 2009. Beginning January 1, 2009, sales of fur clothing are subject to sales tax at the rate of 7%. For more information see the [Notice to Fur Clothing Sellers Effective January 1, 2009](#).

continued on page 5



charitable remainder trusts - from pg. 4

Charitable Remainder Annuity Trust (CRAT), which pays a fixed dollar amount annually; Charitable Remainder Unitrust (CRUT), which pays a fixed percentage of the trust's value annually; and Charitable Pooled Income Fund (CPIF), which is set up by the charity, enabling many donors to contribute. See Internal Revenue Code Section 664.

Only *exclusively* charitable trusts qualify for income tax exemption under the New Jersey Gross Income Tax Act. A CRT, in contrast to a charitable trust, has noncharitable beneficiaries and does not operate exclusively for charitable purposes. Accordingly, a CRT is not an exclusively charitable trust exempt from New Jersey gross income tax under N.J.S.A. 54A:2-1, and income that is not distributed and which is not deemed to be permanently and irrevocably set aside or credited to a charitable beneficiary is taxable income to the trust. □

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2009 – December 31, 2009, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eighteen persons passed the March 28, 2009, Tax Assessor Certificate examination. Seventeen persons have received certificates dated July 1, 2009. They are:

Atlantic County: Wesley W. Briscoe, Jr., City of Atlantic City.

Bergen County: Richard A. Hubschman, Jr., Cresskill Borough; Christopher L. Lauver, Fair Lawn Borough.

Burlington County: Glenn P. McMahon, Eastampton Township.

Camden County: Kathleen M. McNally, Berlin Borough.

Cumberland County: Mary I. Reimer, Stow Creek Township; Steven Wisneski, Vineland City.

Essex County: Mary Frances Hildebrandt, Glen Ridge Borough.

Hudson County: Barry Appel, Guttenberg Town.

Mercer County: Erica J. Brill, Ewing Township.

Monmouth County: Gerald J. Briscione, Oceanport Borough; Michael Donald Imbriaco, Freehold Township.

Morris County: William Kersey, Wharton Borough; Maryellen Vautin, Long Hill Township.

Ocean County: Bruce E. Jones, Manchester Township.

Somerset County: William David Schelling, Warren Township.

Commonwealth of Pennsylvania, Philadelphia County: Eugene P. Davey, City of Philadelphia.

The next examination will be held on September 28, 2009, at the Richard J. Hughes Justice Complex in Trenton. The deadline to file applications for this exam is August 27, 2009. The filing fee is \$10. If you have any questions regarding this exam or wish to obtain an application, please contact Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site under "Assessor - Continuing Education & Recertification" at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

July 1–

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time to hear and determine appeals.
- Disallowed property tax deduction recipients, granted a filing extension, required to pay tax deductions previously granted. If unpaid, become real property liens.

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assessors' calendar - from page 5

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2010 together with a notice that the completed form must be filed with assessor by August 1, 2009, to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2010.

August 5-

- All SR-1A forms showing sales transactions to be used in compiling 2010 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25-

- State Equalization Table completed by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2010 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2010 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On February 20, 2009, Spiro Pollatos was sentenced to more than 13 years in State prison for his lead role in mortgage and investment schemes. Spiro Pollatos pled guilty on October 17, 2008,

continued on page 7

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

**Enforcement Summary Statistics
First Quarter 2009**

Following is a summary of enforcement actions for the quarter ending March 31, 2009.

• Bank Levies	1,494	• Seizures	110
• Certificates of Debt:		• Auctions	4
Total Number	4,740		
Total Amount	\$58,795,959		



criminal enforcement - from page 6

to first-degree money laundering, and Crystal Velitschkow pled guilty on June 27, 2008, in connection with a series of mortgage and investment scams through which they stole approximately \$2.9 million from victims. From January 2004 through March 2007 Pollatos and Velitschkow funneled more than \$2.7 million in criminal proceeds through a personal bank account they controlled, using the money to buy real estate, cars, and boats and pay personal expenses. In December 2008, Spiro Pollatos was assessed \$69,825 in State taxes due and \$38,270.44 in penalties and interest, totaling \$108,095.44, for failing to declare \$1,350,000 in income over the past four years. At the same time, Crystal Velitschkow of Aberdeen, New Jersey was assessed \$81,853.34 in State taxes due and \$43,062.25 in penalties and interest, totaling \$124,915.59, for

failing to declare \$1,538,828 in income over the past four years. Information obtained from the Division's Data Warehouse, in conjunction with Pollatos's and Velitschkow's October pleas, led to the assessments.

- On March 9, 2009, William C. Neumann, Jr. pled guilty to one count of second-degree theft by deception and one count of third-degree failure to file taxes in Monmouth County Superior Court. Neumann was the owner of Cabbage Rose, LLC, a furniture store located in Fair Haven, and Chelsea Manor Unlimited, an Internet furniture business. The investigation revealed that from January 2004 through January 2007 Neumann received payments from customers totaling over \$330,000 but failed to deliver any of the merchandise or submit any refunds. Additionally, from 2003 through 2006 Neumann failed to file New Jersey gross income tax returns.

- On March 10, 2009, a Cape May County Grand Jury returned a seven-count indictment against Bonita Lynn Morin. This indictment follows a criminal investigation conducted by the Cape May County Prosecutor's Office in conjunction with the New Jersey Division of Taxation, Office of Criminal Investigation (OCI). The investigation revealed that Morin earned wages in excess of \$70,000 for tax years 2004, 2005, and 2006 as a nurse utilizing a fictitious social security number and failed to file tax returns associated with those wages. The indictment charges her with three counts of third-degree failure to file tax returns, one count of second-degree trafficking in personal identifying information, one count of third-degree receiving stolen property, one count of second-degree receiving stolen property, and one count of second-degree conspiracy.
- On March 31, 2009, Paul Sarris pled guilty to second-degree theft by deception of New Jersey home-
stead rebate checks in the Mercer County Superior Court before Judge Darlene Pereska. Under the plea agreement the State will recommend that he be sentenced to ten years in State prison and pay restitution of \$282,902 plus penalties and interest. Sarris was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are: Paul Sarris, 50;

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criminal enforcement - from pg. 7

Achilles “Butz” Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito “Angelo” A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal \$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks. The investigation revealed that Matilda Amante Ramos ran a travel agency, while all of the other defendants operated their own financial service companies offering tax preparation services. Between August 2001 and September 2003 the six defendants allegedly filed 745 false homestead rebate applications with the State

of New Jersey, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City. The defendants allegedly filed the applications using names and social security numbers obtained from tax preparation clients without permission. They allegedly laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses. To date, five have entered plea agreements. Achilles “Butz” Amante remains at large and is believed to be out of the country.

- On April 8, 2009, OCI retrieved 323 cartons of unstamped cigarettes from the United States

Customs & Border Protection (USC&BP) office at the New Jersey International Bulk Mail Center in Jersey City, New Jersey. OCI was notified of the presence of these cigarettes as a result of continued cooperation between OCI and USC&BP, including a previous seizure of 330 cartons in January 2009. These cigarettes all share the common element of being shipped from outside the United States with the intent of the domestic recipients to avoid payment of State cigarette taxes. The Division of Taxation will bill the New Jersey residents.

- On April 9, 2009, an Ocean County Grand Jury returned a 25-count indictment against James Hankins, Jr. This indictment follows a criminal investigation which was conducted by both the Ocean and Monmouth County Prosecutor’s Offices in conjunction with the New Jersey Division of Taxation, Office of Criminal Investigation. The investigation revealed that Hankins had bilked investors out of as much as \$12 million to purchase viatical or life settlements between March 2006 and November 2007. Hankins never purchased a single life insurance policy. Instead, he used the funds to make real estate investments and cover his own lavish lifestyle. The indictment charges him with 2 counts of first-degree financial facilitation of criminal activity, 1 count of second-degree theft by deception, 14 counts of second-degree issuing bad checks, 4 counts of third-degree failure to file tax returns, and 4 counts of third-degree failure to pay.

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)



criminal enforcement - from page 8

- On May 5, 2009, in Plainfield City Municipal Court, Dinesh Patel, owner of Plainfield Supermarket, pled guilty to criminal possession of untaxed cigarettes and was fined \$1,000 plus court costs. He was also assessed a \$770 civil penalty for accepting delivery of untaxed cigarettes. Total amount paid was \$1,961. Charges stemmed from a December 2008 investigation in which this retailer made available for sale 30.8 cartons of cigarettes consisting of packs affixed with counterfeit New Jersey Revenue stamps and untaxed imported cigarettes. □

Tax Briefs

Corporation Business Tax

Nonprofit Condominium Association Exempt From Corporation Business Tax — A representative of a condominium association inquired whether a condominium association that was incorporated for the purpose of operating a professional office complex could qualify for exemption from the corporation business tax. Condominium associations are usually organized as nonprofit corporations under Title 15A. The representative was advised that commercial condominium associations, as well as residential condominium associations, are exempt from corporation business tax pursuant to N.J.S.A. 54:10A-3(e) if they are organized as nonprofit corporations under Title 15A. While these corporations are not required to file a New Jersey corporation business tax return, they may be required to file Federal income tax returns with the Internal Revenue Service.

Cosmetic Medical Procedures Gross Receipts Tax

Fee for Room and Board — A surgery center wrote to the Division of Taxation with a question concerning the cosmetic medical procedures gross receipts tax. The surgery center provides cosmetic procedures such as cosmetic plastic surgery. In addition to fees such as the doctor’s fee for the surgical procedure, the center charges a separately itemized fee for day use (not overnight) of the surgical and other rooms used to provide the cosmetic surgery. The surgery center inquired whether this charge, described on the bill as “room and board,” is subject to the tax.

N.J.S.A. 54:32E-1.b includes the following definition:

“Cosmetic medical procedure” includes but is not limited to cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peel, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic dentistry.

N.J.S.A. 54:32E-1.b also provides, in pertinent part:

“Gross receipts from a cosmetic medical procedure” means all amounts paid for services,

property or occupancy required for or associated with the performance of a cosmetic medical procedure and billed to the procedure subject’s account.

Since the statute specifically taxes amounts paid for occupancy, the Division determined that the day use room and board charge was subject to the cosmetic medical procedures gross receipts tax. The legislature intended that the tax be broadly applied to the various fees charged for the cosmetic surgery.

Gross Income Tax

Election Worker Stipend — A taxpayer wrote to the Division of Taxation to ask whether a stipend paid to a poll worker for services performed on election day is subject to New Jersey gross income tax. The Division answered affirmatively.

Under the New Jersey Gross Income Tax Act at N.J.S.A. 54A:5-1(a), gross income includes all wages, salaries, commissions, tips, bonuses, sales awards, and other types of compensation for services rendered. Therefore, for New Jersey gross income tax purposes, the stipend that poll workers receive as compensation for their services is considered taxable and should be reported on the New Jersey gross income tax return.

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Litter Control Fee

Requirement to File Litter Control Fee Return

— A taxpayer wrote to the Division for guidance on its litter control fee filing responsibilities. For purposes of the litter control fee, the definition of a subject “retailer” excludes restaurants with over half of their prepared food served on the premises. The taxpayer inquired as to whether it is required to file the Litter Control Fee Return (Form LF-5) since it operates a restaurant that serves over 50% eat-in.

The Division advised that there is a check box on the reverse side of the return where a taxpayer can indicate this fact. Where a business anticipates that its on-premises service may fluctuate under and over the 50% threshold from year to year, the Division suggests that the business continue to file returns yearly using the check box where appropriate. However, where a business operates in such a manner that it is certain it will exceed the 50% threshold every year, the taxpayer may check the box on the reverse side of Form LF-5 as mentioned above. Or, to clearly end eligibility for the fee, the taxpayer may file Form REG-C-L, Request for Change of Registration Information, located on the Division of Revenue’s Web site at: www.state.nj.us/treasury/revenue/forms/regcl.pdf

Sales and Use Tax

Gratuity and Services Charges

— A taxpayer inquired about charges for a catering event imposed by a hotel. The taxpayer provided the following facts:

A catering facility’s customer contract provides that a charge equal to 11.25% of the food, beverage, room rental, and miscellaneous fees is added to the contract as a gratuity and is fully distributed to the caterer’s employees. The contract also provides that a charge equal to 10.75% of the food, beverage, room rental, and miscellaneous fees is added to the contract as a service charge and that this service charge is not a gratuity, but rather is retained by the caterer to cover general discretionary costs for the catering event.

Charges made for tips and gratuities, including stipulated gratuities or service fees/charges, are not subject to tax when: (1) the charge is separately stated on the bill or guest check given to the customer; (2) the charge is specifically designated as a gratuity; and (3) all such monies received by management are paid in total to the employees. N.J.A.C. 18:24-12.7. Thus, in order for the gratuity and the service charge to be exempt from sales tax, all three of the above criteria must be met.

Based on the facts provided, the 11.25% fee is not subject to tax as long as the three elements above are met. However, the 10.75% fee does not meet the above elements. This fee is simply an increase in the taxable receipt and is therefore included in the tax base. N.J.S.A. 54:32B-2(d); N.J.S.A. 54:32B-2(oo).

Purchase of a Wheelchair — A taxpayer inquired about the taxability of the purchase of a wheelchair for his own use. Mobility enhancing equipment is exempt from tax. N.J.S.A. 54:32B-8.1. “Mobility enhancing equipment” means equipment, other than durable medical equipment, that:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle; and
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Effective January 1, 2009, a prescription requirement was added to the exemption for mobility enhancing equipment. This is intended to clarify that there is no exemption for such equipment when purchased by a medical services provider (e.g., a for-profit hospital, doctor’s office, etc.). Thus, the wheelchair qualifies for the exemption as long as the purchaser provides a prescription to the seller. □

Current Amnesty Programs

Delaware, Louisiana, and Maryland are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

DE	Sept. 1 – Oct. 30	http://revenue.delaware.gov/amnesty.shtml
LA	Sept. 1 – Oct. 31	www.rev.state.la.us/default.aspx
MD	Sept. 1 – Oct. 30	www.comp.state.md.us



In Our Courts

Gross Income Tax

Intercategory Netting – *Monsees, Gregg Peters v. Director, Division of Taxation*, Docket No. 003535-2008, decided May 1, 2009.

At issue was whether the Division of Taxation properly denied the taxpayer's netting of a net pro rata share of S corporation loss against other categories of gross income.

N.J.S.A. 54A:5-2 states that losses within one category of gross income may be applied against other sources of gross income within the same category of gross income during the taxable year. However, a net loss in one category of gross income may not be applied against gross income in another category of gross income.

In *Miller v. Director, Division of Taxation*, 352 N.J. Super. 98, 799 A.2d 660 (App. Div. 2002), the New Jersey Appellate Court stated that since income is taxed on a category-by-category basis, the New Jersey Gross Income Tax Act expressly prohibits the netting of income and losses among the different categories.

The Division had adjusted the taxpayer's net pro rata share of S corporation income to zero where the taxpayer had reported a loss on Line 21 of his NJ-1040 return. Plaintiff argued that he had reported and paid tax on income for over 20 years from his S corporation, so now that the S corporation had a loss, the Division should allow the loss.

Judge Bianco granted the Division's motion for summary judgment. In reaching his decision, he stated that N.J.S.A. 54A:5-2 prohibits intercategory netting by the taxpayer. □

In Our Legislature

Alcoholic Beverage Tax

Alcoholic Beverage Tax Increase — P.L. 2009, c.71, signed into law on June 29, 2009, and effective August 1, 2009, increases the New Jersey alcoholic beverage tax (excise tax), which is applied to the first sale or delivery of alcoholic beverages to retailers in New Jersey and is paid by manufacturers, wholesalers, and State beverage distributors.

The rate as it applies to liquors increases from \$4.40 a gallon to \$5.50 a gallon; still wines, vermouth, and sparkling wines increase from \$0.70 a gallon to \$0.875 a gallon; apple cider (cider containing at least 3²/₁₀% but not more than 7% alcohol by volume) increases from \$0.12 a gallon to \$0.15 a gallon.

Cigarette Tax

Cigarette Tax Increase — P.L. 2009, c.70 signed into law on June 29, 2009, and effective July 1, 2009, increases the New Jersey cigarette tax and applies to all New Jersey cigarette stamps, stamped floor stock, and to all cigarettes in the possession of any distributor, wholesaler, or retailer licensed by the State of New Jersey as of July 1, 2009. The law provides for new rates per pack of \$2.70 on a pack of 20 cigarettes and \$3.375 on a pack of 25 cigarettes.

Corporation Business Tax

New Jersey Decouples From Federal Deferral of Certain Discharge of Indebtedness Income and Extends the Business Surtax — P.L. 2009, c.72 enacted on June 29, 2009, and effective July 1, 2009, extends the 4% surtax on corporation business tax liabilities for one year. The annual surtax, which was initially imposed under P.L. 2006, c.38

(N.J.S.A. 54:10A-5.40) for privilege periods ending on or after July 1, 2006, but before July 1, 2009, will now apply to privilege periods ending on or after July 1, 2006, but before July 1, 2010. As previously imposed, the surtax is paid in addition to the franchise tax that is required pursuant to N.J.S.A. 54:10A-5.

The law also decouples the corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.

Gross Income Tax

Rate Increase, Property Tax Deduction Suspension and Cap, New Jersey Lottery Winnings Taxable — P.L. 2009, c.69, approved on June 29, 2009, and effective July 1, 2009, applies to taxable years beginning on or after January 1, 2009. The legislation temporarily adjusts the New Jersey gross income tax rates for taxpayers with taxable incomes exceeding \$400,000 in taxable years beginning on or after January 1, 2009, but before January 1, 2010. The law provides for adjusted income taxation of the following brackets at the following rates: over \$400,000 but not over \$500,000 is adjusted from 6.37% to 8%; over \$500,000 but not over \$1,000,000 is adjusted from 8.97% to 10.25%; and over \$1,000,000 is adjusted from 8.97% to 10.75%.

The law also provides that for the taxable year beginning January 1, 2009, homeowners who have a gross income of more than \$250,000 and are not age 65 or older or allowed a personal exemption as a blind or disabled individual are not eligible for the property tax deduction.



in our legislature - from page 11

Additionally, the maximum property tax deduction is capped at \$5,000 for homeowners who have gross income of more than \$150,000, but not exceeding \$250,000, and are not age 65 or older or blind or disabled.

The law also provides that New Jersey lottery winnings from prizes exceeding \$10,000 are taxable for New Jersey gross income tax purposes and that the New Jersey State Lottery is required to withhold New Jersey gross income tax on such taxable winnings at the rate of 3%.

Insurance Premiums Tax Increase in Insurance Premiums Receipts Tax Rates for 2009 — P.L. 2009, c.75, signed into law on June 29, 2009, and effective immediately, increases the tax rate on group accident and health insurance premiums payable in 2009 from 1% to 1.35%. The law also modifies the current tax exemption given to a dental service corporation to make it subject to the 1.35% insurance premiums tax for taxes payable in 2009. The legislation also increases the premium receipts tax for surplus lines coverage from 3% to 5%. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#) [2010](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2009](#) [2010](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2009](#) [2010](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Rebate Hotline for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline for Tenants1-888-213-8623
- Property Tax Reimbursement Hotline.....1-800-882-6597
- Earned Income Tax Credit Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-588-3932
- Corp. Liens, Mergers, Withdrawals & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax Refunds 609-588-3688
- Public Utility Tax..... 609-584-4337

New Jersey State Tax news

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Tax Amnesty 2009

Governor Jon S. Corzine recently signed a law (P.L. 2009, c.21) requiring the Division of Taxation to implement a limited Tax Amnesty Program this spring.

The 2009 Tax Amnesty Program will begin May 4 and end at midnight, June 15. During that time, taxpayers will be offered the opportunity to file delinquent returns and to pay back taxes and one-half of the balance of interest that remains due as of May 1, 2009, without penalty. Recovery fees and the imposition of civil or criminal penalties will also be waived provided that all of the eligibility requirements are met.

Most taxpayers are eligible for tax amnesty with few exceptions. Tax amnesty is not available to any taxpayer who is under criminal investigation or charge for any State tax matter. In addition, a taxpayer who has filed a complaint with the New Jersey Tax Court, or who is pursuing an appeal in any other manner, may only participate if approved by the Director and provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed.

Tax amnesty is available only for outstanding tax liabilities that are reportable on any tax return due on or after January 1, 2002, and prior to February 1, 2009. To receive amnesty, a taxpayer must:

- File the required tax return(s), if applicable; and
- Pay the balance of the tax due *and* one-half of the balance of interest that remains due; and
- Complete and submit a payment/waiver statement.

Taxpayers will be able to apply for tax amnesty on the Tax Amnesty Web site at: www.taxamnesty.nj.gov

After the amnesty period ends on June 15, 2009, a nonabatable 5% penalty will be imposed on any amnesty-eligible tax liabilities that are not satisfied during the amnesty period. An additional collection service fee may also be imposed. This will be in addition to all other penalties, interest, and other costs authorized by law.

The 2009 Amnesty Program includes all State taxes and fees administered by and payable to the New Jersey Division of Taxation including the corporation business tax, sales and use tax, and gross income tax. Taxes not administered and collected by the Division of Taxation – such as local property taxes, realty transfer fees, payroll taxes owed to the Department of Labor and Workforce Development, and Federal liabilities – are not eligible for amnesty.

The State will mail notices to approximately 600,000 individuals and businesses who are delinquent

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tax amnesty 2009 - from page 1

in filing returns and who owe back taxes to the State for the eligible years. The State also plans to undertake a full-scale public awareness campaign that includes radio and print advertising, and perhaps some television spots.

Information and forms will be available:

- Online at the Tax Amnesty Web site: www.taxamnesty.nj.gov
- By phone at: 1-800-781-8407 (toll-free)
- By e-mail at: tax.amnesty@treas.state.nj.us

You may also write to: New Jersey Division of Taxation, Tax Amnesty Program, P.O. Box 272, Trenton, NJ 08695-0272.

Organizations and individuals who would like to distribute pamphlets or other informational materials to their clients, or who would like to arrange to have a Division representative speak to their group about the 2009 Amnesty Program should visit our Web site at: www.taxamnesty.nj.gov □

Electronic Filing and Payment for Employer Returns

All Employer Quarterly Reports, Forms NJ-927, NJ-927-W, and WR-30, as well as Form NJ-927-H, Domestic Employer's Annual Report, are now required to be filed electronically. Monthly remittances of gross income tax withheld, Form NJ-500, must also be filed electronically. As a result, the quarterly reports for the first quarter of 2009,

due April 30, 2009, must be filed using the Division of Revenue's secure Web site or in bulk using Secure File Transfer Protocol (SFTP). Notification of the new filing requirement was mailed to all registered employers in late fall 2008. A reminder was also recently mailed.

Great success has been seen with other electronically filed business tax returns and fees. The State is expecting similar success with the NJ-927s and anticipates an easier and more user-friendly filing experience with the new format.

The advantages of electronic filing are many. Filing instructions are only a click away, and there are comprehensive help screens to guide the user through the entire report. Employers no longer need to wait for paper forms in the mail. Processing of information is quicker and more accurate. Employers can view all payments submitted for each quarter of 2009 and after. In addition, the revised filing system allows employers to specify the exact dollar amount to be remitted to the Division of Taxation and the Department of Labor and Workforce Development. This payment change gives employers greater control over payroll monies remitted to the State. Electronically filed returns have fewer errors, thereby reducing processing costs. Employers can make payment by using one of the three allowable methods: e-check, electronic funds transfer, or credit card.

For inquiries concerning New Jersey income tax withholding, call the Division of the Taxation at 609-984-1721 or visit the Division's Web site at:

www.state.nj.us/treasury/taxation/

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:** Cheryl Fulmer

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For questions concerning unemployment, disability, or family leave insurance contributions, call the Division of Employer Accounts at 609-633-6400 or visit the Department of Labor and Workforce Development's Web site at:

lwd.dol.state.nj.us/labor

For questions concerning the filing of the online Employer's Quarterly Report, call the Division of Revenue at 609-633-1132 or visit Revenue's Web site at:

www.state.nj.us/treasury/revenue/



LOCAL PROPERTY TAX

Tax Deductions Certified

The State Revenue Sharing Act distribution for 2008 for senior and disabled persons, surviving spouses, and veterans was delivered to the State Treasurer on September 15, 2008.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation

certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2008. The revenue sharing funds are comprised of the senior citizen and veterans' deductions in each municipality. Qualified senior citizens and disabled persons are permitted a tax deduction of \$250 annually as per N.J.S.A. 54:4-8.40 et seq. Qualified veterans are permitted a deduction of \$250 pursuant to N.J.S.A. 54:4-8.10 et seq.

The total amount of property tax deductions for senior citizen and disabled persons and surviving spouses for 2008 was \$19,316,880. That amount represents a decrease of 5% from 2007. The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2008 was 74,318. When compared to tax year 2007, the number of deductions decreased 5%.

For tax year 2008, the amount of veterans' deductions was \$69,353,434. That amount represents a decrease of 3% from 2007. The total number of veterans' deductions for 2008 was 272,364. When compared to tax year 2007, the number of deductions decreased 3%.

The total amount of senior citizen and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of P.L. 1997, c.30. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for non-filing or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

Telephone Filing Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions are no longer able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing has been discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.



assessors' calendar - from page 3

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Certification of REAP aid due to each local unit for tax year received by County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.
- Extended deadline for filing assessment appeals to the County Tax Board or State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and clerk of each municipality in the county.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2007 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2008 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:email@nj.treas.state.nj.us) at [nj.treas.state.nj.us](mailto:email@nj.treas.state.nj.us)



Criminal Enforcement

Criminal enforcement over the past several months included:

- On December 9, 2008, a contraband investigation conducted at the Plainfield Supermarket in the City of Plainfield resulted in the seizure of 30.8 cartons of contraband cigarettes: 20.8 cartons were affixed with counterfeit New Jersey tax stamps and 10 cartons were untaxed Indian imported beedie cigarettes. In addition, loose cigarettes for sale, in violation of the law, were also recovered.
- On December 19, 2008, Francisco Monterroso and his wife Lucy Rodriguez Monterroso were indicted by a Middlesex County Grand Jury on two counts of failure to file New Jersey gross income tax returns (Form NJ-1040) for years 2006 and 2007, two counts of failure to pay the tax,

four counts of second-degree theft by deception, and two counts of third-degree theft by deception. Francisco Monterroso was a home remodeler and had taken \$396,600 for these two years.

- On December 31, 2008, Spiro Pollatos of Hackensack, New Jersey, was assessed \$69,825 in tax and \$38,270.44 in penalties and interest, totaling \$108,095.44, for failing to declare \$1,350,000 in income over the past four years and failing to pay the taxes due. At the same time, Crystal Velitschkow of Aberdeen, New Jersey, was assessed \$81,853.34 in tax and \$43,062.25 in penalties and interest, totaling \$124,915.59, for failing to declare \$1,538,828 in income over the past four years and failing to pay the taxes due. Information obtained from the Division's Data Warehouse, in conjunction with Pollatos's and Velitschkow's pleas, lead to the two assessments. Spiro Pollatos pled guilty on October 17, 2008, to first-degree money laundering, and Crystal Velitschkow pled guilty on June 27, 2008, in connection with a series of mortgage and investment scams through which they stole approximately \$2.9 million from victims. From January 2004 through March 2007, Pollatos and Velitschkow

funneled more than \$2.7 million in criminal proceeds through a personal bank account they controlled, using the money to buy real estate, cars, and boats and pay personal expenses.

- On July 1, 2008, James Hendricks, t/a B & J Towing, and his wife, Mary Ann Clark, were indicted by a State Grand Jury on four counts: third-degree conspiracy, third-degree theft by failure to make required disposition of property received, and third-degree misapplication of entrusted funds for Hendricks and Clark; and third-degree failure to remit sales and use tax for Hendricks. Hendricks and Clark were scheduled to be sentenced in March of 2009.
- On January 8, 2009, 330 cartons of unstamped cigarettes were retrieved from the United States Customs & Border Protection (USC&BP) office at the New Jersey International Bulk Mail Center in Jersey City, New Jersey. The Office of Criminal Investigation (OCI) was notified of the presence of these cigarettes as a result of continued cooperation between OCI and USC&BP, which originated with the aggregate seizure of 57,762

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Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2009 – December 31, 2009, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%

Fur Clothing Retail Gross Receipts Tax and Use Tax Repealed Effective January 1, 2009

P.L. 2008, c.123, repealed the Fur Clothing Retail Gross Receipts Tax and Use Tax effective January 1, 2009. The final return for the quarter ending December 31, 2008, was due January 20, 2009. Beginning January 1, 2009, sales of fur clothing are subject to sales tax at the rate of 7%. For more information see the [Notice to Fur Clothing Sellers Effective January 1, 2009](#).



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cartons of unstamped cigarettes between November 2004 and January 2007. These cigarettes all share the common element of being shipped from outside the United States, with the intent of the domestic recipients avoiding payment of State cigarette taxes. The addressee information of all New Jersey residents will be forwarded to Audit Services, and the information of out-of-State recipients to the proper taxation authority.

- As announced on January 8, 2009, by Attorney General Anne Milgram, New Jersey has entered into a multistate settlement with the Santa Fe Natural Tobacco Company over its violation of the Master Settlement Agreement. Santa Fe distributed decorative tin signs to consumers that featured its “Natural American Spirit” cigarettes brand name. This violated the agreement and under terms of the settlement Santa Fe agrees not to distribute the following types of brand name merchandise: decorative tin signs, toys, games, fashion accessories, CDs, DVDs, video games, clothing, athletic equipment, outdoor gear, luggage, stationery items, housewares, and paintings and plaques intended for the home. In

addition, Santa Fe Natural agrees to pay a penalty of \$250 for every future violation of the agreement. Forty-two states, including New Jersey, are party to the settlement agreement with Santa Fe.

- On January 26, 2009, a Monmouth County Grand Jury returned a 38-count indictment against 16 defendants following an investigation into a cocaine trafficking and money laundering network based in Manalapan, New Jersey. The investigation revealed cocaine was imported utilizing corporations, Diamond Builders of New Jersey, LLC and Bacardi Oil, LLC, owned by Vicente Esteves, to launder the financial proceeds of the criminal activities. The indictment charges Vicente Esteves, 36, with three counts of failure to file State income tax returns and three counts of failure to pay or turn over State income taxes in addition to second-degree racketeering conspiracy, first-degree leader of a narcotics trafficking network, possession of a controlled dangerous substance, first-degree possession of a controlled dangerous substance with intent to distribute, multiple counts of first-, second-, and third-degree financial facilitation of criminal activity, two counts of second-degree misconduct by

a corporate official, one count each of fourth-degree deceptive business practices and fourth-degree falsifying records, and four counts of fourth-degree unlawful check cashing. Esteves is being held at the Monmouth County Correctional Institution in lieu of \$2,500,000 bail. □

Tax Briefs

Gross Income Tax

Section 401(a) and 401(k) Retirement Plans — A taxpayer wrote to the Division of Taxation asking about the gross income tax treatment of Section 401(a) and 401(k) retirement plans. The Division explained that the governing rules for IRC Sections 401(a) and 401(k) plans are very similar. However, 401(a) plans are usually offered by government employers and 401(k) plans are offered by private companies. Section 401(k) allows for employees to contribute to their plans, whereas under 401(a) plans no employee contributions are allowed.

In adopting its gross income tax, New Jersey has not incorporated Federal conformity except as may be specifically set forth in the law. The New Jersey Gross Income Tax Act at N.J.S.A. 54A:6-21 does not provide

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s Web site under “[Auctions](#).” Select the name of the business for details about that auction.

Enforcement Summary Statistics Fourth Quarter 2008

Following is a summary of enforcement actions for the quarter ending December 31, 2008.

• Bank Levies	1,480	• Seizures	103
• Certificates of Debt:		• Auctions	4
Total Number	3,836		
Total Amount	\$70,990,485		



tax briefs - from page 6

for the tax-deferred treatment of contributions made under IRC Section 401(a) plans. These same contributions, however, are not taxable when distributed at retirement time, to the extent that the taxpayer is receiving previously taxed amounts.

Section 401(k) plans are the only plans specifically excluded from gross income under the provisions of the Gross Income Tax Act. The law was enacted intending to only encompass the plans that were in and of themselves 401(k) plans, not plans with similar requirements and characteristics. This has been the case since the 401(k) contribution exclusion was enacted in 1984.

Therefore, for a 401(a) plan, any Federally deferred contributions are included in a taxpayer's gross income as they are contributed; only interest, dividends, and other earnings credited to a Section 401(a) plan are subject to income tax when withdrawn.

Viatical Settlement— The Division received a letter from a taxpayer inquiring about the taxability of income received through a viatical settlement. A viatical settlement is the sale of a life insurance policy by the policy owner before the policy matures. Generally, viatical settlements involve insured individuals with a shorter life span.

For New Jersey gross income tax purposes, N.J.S.A. 54A:6-4 states that proceeds of life insurance contracts payable by reason of death are excluded from New Jersey gross income taxation. If the person is still alive, amounts received would be taxable and included in the net gains or income from the disposition of property category of income, since they are not specifically excluded under the Act in accordance with N.J.S.A. 54A:5-1(c). However, N.J.S.A. 54A:5-1(c) provides that net gains or net income does not include transactions to the extent to which nonrecognition is allowed for Federal income tax purposes.

Therefore, for New Jersey purposes, any amount from a viatical settlement reported on Form 1099-LTC that is taxable for Federal income tax purposes must be included in a taxpayer's New Jersey gross income in the same way as for Federal purposes; and any amount excluded for Federal income tax is excluded for New Jersey gross income tax purposes.

The taxpayer also inquired about the treatment of the income for purposes of the property tax reimbursement. The Division answered that proceeds received from viatical settlements should not be taken into account to determine eligibility for the property tax reimbursement.

Homestead Rebate

Life Estate — Two taxpayers with a life estate in their home inquired whether they may receive a rebate under the New Jersey Homestead Rebate Program.

The Homestead Rebate Program is established by law in accordance with N.J.S.A. 54:4-8.57 et seq., and provides specific rebate qualifications and amounts. Under the law, the definition for "homestead" provides, in pertinent part:

[A] homestead shall be deemed to be owned by a person if that person is a tenant for life or a tenant under a lease for 99 years or more and is entitled to and actually takes possession of the homestead under an executory contract for the sale thereof or under an agreement with a lending institution which holds title as security for a loan....

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SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Date _____ 15-09/0000

PAY TO THE ORDER OF _____ \$ _____

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Trenton, NJ 08611

Routing number: 02020889
Account number: 1234

For #250250029

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.49% of tax payment applies.



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Therefore, the two taxpayers with a life estate in their home are considered homeowners under the Act and can receive a rebate under the New Jersey Homestead Rebate Program if their home is a permanent legal residence in New Jersey and they meet the other eligibility requirements. Information about the Homestead Rebate Program, including eligibility requirements, is available on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/relief.shtml

Since these taxpayers are not the actual owners of record they must file a homestead rebate paper application, which they can obtain by calling 1-888-238-1233. The

application must include a copy of an official document (e.g., deed, lease) establishing their right to occupy the property.

Sales and Use Tax

Imitation Fur on Clothing — A taxpayer wrote to the Division asking whether imitation fur (fake fur) clothing is subject to sales and use tax, which is imposed on purchases of fur clothing effective January 1, 2009. The Division of Taxation answered the taxpayer by explaining that imitation fur does not meet the definition of "fur clothing" for purposes of the Sales and Use Tax Act.

The definition of fur clothing provides, in pertinent part:

For the purposes of this section, 'fur' means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state....

Therefore, fake fur clothing does not fit within the definition of fur clothing. As a result, fake fur clothing is exempt from sales tax under the clothing exemption, and retailers are not required to charge sales tax on clothing that includes only imitation fur.

Prefabricated Firewood — A taxpayer inquired whether sales tax applies to sales of prefabricated firewood.

The New Jersey Sales and Use Tax Act contains a tax exemption for "sales of gas other than natural gas, water, steam, or fuel delivered to consumers through mains, lines, pipe, or in containers or bulk." N.J.S.A. 54:32B-8.7. Firewood is exempt from sales and use tax as fuel. Firewood treated with a burning catalyst, often lighter fluid, is also exempt from sales tax in accordance with the statutory exemption. Therefore, sales of prefabricated firewood are exempt. Lighter fluid is also exempt from sales and use tax as a fuel.

Underground Oil Tank Services — A business wrote to the Division asking about the sales tax treatment of certain services performed in relation to oil storage tanks. Specifically, the business repaired, removed, and installed underground oil tanks, both commercial and residential.

In response to the questions, the Division explained that the business is considered a "contractor" for sales tax purposes. A contractor

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)



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is an individual or business entity engaged in the business of improving, altering, or repairing the land, buildings, or other real property of others. Where work performed by a contractor results in a capital improvement to the property, the property owner may provide the contractor with a Certificate of Exempt Capital Improvement (Form ST-8) in lieu of paying sales tax on the services.

The Division deems the installation of an underground oil tank to be a capital improvement. Also, the removal and restoration of the real property and the sand-filling of an abandoned oil tank is deemed to be a capital improvement. Therefore, the property owner may issue a contractor a Certificate of Exempt Capital Improvement (Form ST-8) in lieu of paying sales tax on these services.

Repairing real property is subject to sales tax under N.J.S.A. 54:32B-3(b) (4). Therefore, the business must collect sales tax on repairs to underground tanks. On the other hand, soil testing services and inspection services, in connection with oil tank services, are not subject to sales tax when separately itemized. □

In Our Courts

Gross Income Tax

401(k) Contributions, Credit for Taxes Paid to Philadelphia

– *Macario A. Sarreal v. Director, Division of Taxation*, Docket No. 007828-2008, decided December 30, 2008.

N.J.S.A. 54A:4-1(a) provides a New Jersey resident a credit against the New Jersey gross income tax for income or wage tax imposed by a

political subdivision of another state on income that is also subject to the New Jersey gross income tax.

At issue was whether the Division of Taxation properly excluded the plaintiff's 401(k) contribution from income earned in Philadelphia for the purpose of calculating the taxpayer's credit for taxes paid to other jurisdictions.

When calculating his taxes paid to Philadelphia, the taxpayer overstated the numerator of his credit fraction by not having deducted 401(k) contributions from his Philadelphia wages.

The Division had adjusted the taxpayer's credit calculation because 401(k) contributions, although taxable to the City of Philadelphia, are excludable for New Jersey gross income tax purposes. To provide a credit for taxes paid on 401(k) contributions would result in the taxpayer taking a credit for taxes paid on income which was not taxed under the New Jersey Gross Income Tax Act.

The plaintiff had argued that the Division's instructions regarding the exclusion were inadequate and therefore he should not be subjected to the deficiency assessment.

Judge Menyuk granted the Division's motion for summary judgment opining:

I conclude that N.J.S.A. 54A:4-1 plainly provides a credit for taxes paid to another jurisdiction only for those taxes on income that is also subject to tax by New Jersey. I also find that consistent with the statute, the Division's regulation, its instructions for the 2004 gross income tax return and its informational bulletin, GIT-3W (rev. 12/04) clearly directed that, in calculating the amount of the credit, tax on Philadelphia income that was not subject to tax by New Jersey was to be excluded when calculating the amount of the allowable credit.

Single-Member LLC – *Michael & Helen Kaplan & Morris & Sandra Kaplan v. Director, Division of Taxation*, Docket No. A-3758-07T3, decided February 11, 2009.

The New Jersey Superior Court, Appellate Division, affirmed the Tax Court opinion reported in 23 N.J. Tax 594 (Tax 2008) in this case involving an attempted change in business type to gain favorable tax treatment.

The Kaplans had acquired commercial apartment properties as single-member LLCs, disregarded entities. Recognizing that a large loss from the property could not be

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used on the NJ-1040 return, the taxpayers reported partnership income that should have been reported as distributive share of partnership income as net income from rents to take advantage of the large loss.

The Division placed the partnership income back into the distributive share of partnership income category resulting in a notice of deficiency.

The taxpayer challenged the Division's action, claiming that the single-member LLC, disregarded entity, was a tenant in common, a partnership in reality. The taxpayers argued the loss from the apartment should be allowed as an offset in the distributive share of partnership income category. The taxpayer believed that the partnership entity status should have been allowed, since the taxpayer and his brother were partners together in other partnerships.

The taxpayer next attempted to file amended returns for New Jersey and file a first-time Georgia partnership return and a first-time Federal partnership return almost three years after the original NJ-1040 was filed.

Judge Kuskin found in favor of the Division, disallowing the change

in type of business entity for New Jersey gross income tax in order to gain favorable tax treatment. □

In Our Legislature

Local Property Tax

Property Tax Exemption for Certain Sports and Entertainment Projects — P.L. 2009, c.6, enacted on January 27, 2009, and effective immediately, provides that a sports and entertainment project constructed under a redevelopment plan adopted by an eligible city that is owned, used, and operated by the eligible city to provide sports and entertainment events, shows, public meetings or events, exhibitions, or other expositions shall be deemed to be devoted to an essential public and governmental use and purpose. The property of the sports and entertainment project is exempt from property taxation as well as any special assessments of the State or any local government entity.

Miscellaneous

New Jersey Establishes a State Tax Amnesty Period — P.L. 2009, c.21, signed into law on March 17, 2009, and effective immediately, establishes a 45-day State tax amnesty period to end no later than June 15, 2009. During the amnesty

period established by the Director, a taxpayer who has failed to pay any State tax may, on or before the last day of the amnesty period, pay the amount of the tax owed and one-half of the balance of interest that is due as of May 1, 2009, without the recovery fee and without the imposition of any civil or criminal penalties arising out of the tax obligation.

Tax amnesty is not available to any taxpayer who at the time of payment is under criminal investigation or charge for any State tax matter, as certified by a county prosecutor or the Attorney General to the Director.

The law also imposes a 5% penalty upon any State tax liability eligible but not satisfied during the amnesty period.

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2008](#) [2009](#)

Current Amnesty Programs

Alabama, Arizona, Massachusetts, and Connecticut are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

AL	Feb. 1 – May 15	www.ador.state.al.us/cleanslate.html
AZ	May 1 – June 1	www.azdor.gov/taxamnesty
MA	Mar. 1 – April 30	www.mass.gov/dor
CT	May 1 – June 25	www.ct.gov/drs/site/default.asp

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• **Alphabetical Summary of Due Dates by Tax Type**

[2008](#) [2009](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2008](#) [2009](#)



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Rebate Hotline**
- for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline**
- for Tenants1-888-213-8623
- Property Tax Reimbursement**
- Hotline.....1-800-882-6597
- Earned Income Tax Credit**
- Information..... 609-292-6400
- NJ TaxFax** 609-826-4500
- Business Paperless Telefiling**
- System1-877-829-2866
- Speaker Programs** 609-984-4101
- Alcoholic Bev. Tax** 609-588-3932
- Corp. Liens, Mergers, Withdrawals**
- & Dissolutions..... 609-292-5323
- Director’s Office** 609-292-5185
- Inheritance Tax**..... 609-292-5033
- Local Property Tax**..... 609-292-7974
- Motor Fuels Tax**
- Refunds 609-588-3688
- Public Utility Tax**..... 609-584-4337

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2008 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	3/26/08	Delays effective date of recycling tax from January 13 to April 1, 2008, and treats recycling tax revenue as an exclusion to be added to calculations of the adjusted local property tax level.	ENV	A-1910(3R)
32	6/30/08	Delays phase-out schedule of transitional energy facility assessment unit rate surcharges.	TEFA	A-2807
45	7/15/08	Allows certified public accountants licensed in other states to practice in this State under certain circumstances.	MIS	A-2466
46	7/17/08	Revises laws concerning the provision of affordable housing.	MIS	ACS for A-500
53	8/5/08	Requires the Department of Human Services to verify income of applicants for Medicaid and New Jersey FamilyCare with Department of the Treasury records.	GIT	S-1696
90	10/1/08	Provides a property tax exemption for certain renewable energy systems.	LPT	SCS for S-241/394/1098(SCS) and S-710
91	10/1/08	Prohibits the sale of certain flavored cigarettes in New Jersey.	CIG	S-613(1R)
98	10/31/08	Permits implementation of encrypted, counterfeit-resistant stamps for cigarettes sold in the State.	CIG	A-786(2R)
102	11/24/08	Extends carryover period of net operating loss under corporation business tax.	CBT	S-2130
112	12/9/08	Establishes the InvestNJ Business Grant Program, administered by the New Jersey Economic Development Authority, to stimulate certain capital investment and job creation in New Jersey during a limited period.	MIS	ACS for A-3294
118	12/17/08	Broadens small qualified business exception under the urban enterprise zone sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$3 million to less than \$10 million.	S&U	AS for A-2720(1R)
119	12/18/08	Increases income eligibility limits for the Property Tax Reimbursement Program.	PTRP	A-3460
120	12/19/08	Eliminates throwout provision of the apportionment formula for corporation business tax and removes "regular place of business" requirement for allocation of income.	CBT	A-2722(2R)
123	12/19/08	Revises Sales and Use Tax Act to conform with Streamlined Sales and Use Tax Agreement.	S&U	A-3111 (Corrected Copy)

2008 TAX LAWS *(continued)*

***Legend for 2008 Tax Laws**

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax

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A Quarterly Newsletter

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What's New for Tax Year 2008

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Earned Income Tax Credit**— The amount of the New Jersey earned income tax credit (NJEITC) will be equal to 22.5% of the applicant's Federal earned income tax credit. Eligible residents must file a New Jersey resident income tax return to receive the NJEITC, even if they are not required to file a return because their gross income is below New Jersey's minimum filing threshold.

The New Jersey credit will increase to 25% of the Federal credit amount for tax year 2009 and subsequent years.

- **Federal Economic Stimulus Payments** — For New Jersey gross income tax purposes the treatment of the Federal economic stimulus payments to individuals corresponds to the Federal treatment. The payments are not considered taxable income and should not be reported on the 2008 New Jersey income tax return.
- **Dependents' Information** — Residents must indicate on their New Jersey gross income tax return whether or not each dependent listed on the return has health insurance coverage on the date the return is filed.
- **Designated Contribution** — The New Jersey Veterans Haven Support Program Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To

continued on page 2

Telephone Filing Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions will no longer be able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing has been discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.

what's new - from page 1

donate to the new fund, taxpayers must specify code number "08" at the "Other Designated Contribution" line.

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2008 is .037242 from January 1 to June 30, 2008, and .035392 from July 1 to December 31, 2008.
- **Fiduciary and Partnership Extension Period Now Five Months** — New Jersey is following the Federal decision to change the extension period for certain returns to help individuals better meet their filing obligations. The extension period for Forms NJ-1041 and NJ-1065 is reduced from six months to five months for taxpayers with return years ending on or after September 30, 2008. This change eases the burden on taxpayers who must report information from Schedule K-1 and similar documents on their individual New Jersey income tax returns.

Property Tax Relief Programs

- **Homestead Rebate Program** — The Homestead Rebate Program provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or tenant on October 1, 2008. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

Tenants who meet the eligibility requirements use the application

in the New Jersey income tax booklet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax booklet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone. More information will be posted to our Web site as it becomes available.

- **2008 Property Tax Reimbursement** — The income eligibility limits for the Property Tax Reimbursement (PTR) Program have been increased for tax year 2007 and after (P.L. 2008, c.119, signed into law on December 18, 2008). For residents applying for reimbursements for tax year 2008, total annual income must be:

2008: \$70,000 or less, and

2007: \$60,000 or less

These limits apply regardless of marital/civil union status. However, if the status is married/CU couple, combined income of both spouses/CU partners must be reported.

For tax year 2009, the income limit will increase to \$80,000 or less for all applicants whether single or married/civil union couple. For tax year 2010 and after, the income eligibility will increase annually by the amount of the maximum Social Security benefit cost-of-living increase for that year.

Benefits available under this program are subject to change.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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- 2007 Property Tax Reimbursement** — The change in the income limits for 2007 affects senior and disabled residents who were not eligible for a 2007 reimbursement application because their total 2007 income was above the old income limits for 2007 (less than \$45,135 for single applicants and less than \$55,344 (combined income) for married/civil union couples). Provided they meet all the other eligibility requirements, applicants who now qualify for a 2007 reimbursement solely because of the increase in the income limits for 2007 have until March 31, 2009, to file a reimbursement application for 2007. For residents who qualified under the old income limits, the filing deadline for 2007 PTR applications was October 31, 2008.

Employer Withholdings

- Electronic Filing Mandate** — Beginning with the quarter ending March 31, 2009, the use of paper returns will be eliminated and Forms NJ-500/NJ-927, NJ-927-W, NJ-927H, and WR-30 must be filed electronically. More information will be posted to our Web site as it becomes available.
- Family Leave Insurance** — Beginning on July 1, 2009, New Jersey employees will be eligible to receive up to six weeks of paid leave for the birth or adoption of a child or to care for a sick family member. The program will be funded by a payroll deduction which began on January 1, 2009. Workers will contribute at the rate of 0.09% on the first \$28,900 (taxable wage base) in wages earned

during the year. The contribution rate will increase to 0.12% of the taxable wage base for tax year 2010 and subsequent years. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Thirteen persons passed the September 20, 2008, C.T.A. exam. They are as follows:

Bergen County: Dipak Oza, East Rutherford Borough; Daniel S. Skiba, Jr., Elmwood Park Borough.

Burlington County: Eileen R. Carlos, Tabernacle Township; Bruce T. Carroll, Mount Laurel Township.

Cape May County: Dianne R. Kelly, Lower Township; John Snyder, Upper Township.

Mercer County: Donald E. Fraczkiewicz, Trenton City.

Middlesex County: David P. Jasko, Spotswood Borough.

Monmouth County: Mark J. Fitzpatrick, Neptune Township.

Morris County: Carlos Carrero, Boonton Township.

Ocean County: Timothy B. Hogan, Point Pleasant Borough; Sharon A. Sulecki, Ship Bottom Borough.

Somerset County: Joseph A. Murray, Jr., Raritan Borough.

The next C.T.A. examination is scheduled for March 28, 2009. The deadline to file applications for this exam is February 26, 2009. The filing fee is \$10. If you have any questions regarding this exam, please contact Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, P.O. Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site under "Assessor - Continuing Education and Recertification" at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml □

Fur Clothing Retail Gross Receipts Tax and Use Tax Repealed Effective January 1, 2009

P.L. 2008, c.123, repealed the Fur Clothing Retail Gross Receipts Tax and Use Tax effective January 1, 2009. The final return for the quarter ending December 31, 2008, was due January 20, 2009. Beginning January 1, 2009, sales of fur clothing are subject to sales tax at the rate of 7%. For more information see the [Notice to Fur Clothing Sellers Effective January 1, 2009](#).

**LOCAL PROPERTY TAX****Tax Assessors' Calendar****January 1–**

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax

deductions filed with County Tax Board.

- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.

- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” filed with County Tax Board by assessor.

January 25–

- Assessor’s schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)–

- Notices of current assessment and preceding year’s taxes mailed to each taxpayer by assessor.

February 1–

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors’ office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year’s property tax deduction by collector.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.

February 10–

- Certification of bulk mailing of notifications of assessment by assessor filed with County Tax Board. If bulk mailing completed by County Tax Board, certification filed with the County Tax Administrator “within 10 days” of the date the bulk mailing was completed.

February 15 (on or before)–

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1–

- Post-Tax Year Statement, Form PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; two copies to Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Current Amnesty Programs

Connecticut is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

CT May 1 – June 25 www.ct.gov/drs/site/default.asp



Criminal Enforcement

Criminal enforcement over the past several months included:

- On August 11, 2008, a Monmouth County Grand Jury returned a 19-count indictment against Brian McGuire and his wife Benedette. This indictment follows a criminal investigation which was conducted by the Monmouth County Prosecutor's Office in conjunction with the Office of Criminal Investigation (OCI). The investigation revealed that between November 2004 and July 2007, Brian McGuire, President and Chief Operating Officer of Kaibobo Enterprises Corporation, stole \$724,432.69 from the company's operating account. Kaibobo Enterprises Corporation conducts business under the name "Resources Payroll Company," a payroll tax processing service which processes payroll and remits withheld payroll taxes to

the appropriate taxing authorities. Brian McGuire is charged with second-degree misapplication of entrusted property, second-degree theft by failure to make required disposition, and second-degree failure to turn over collected withheld taxes. Both Brian and Benedette are charged with third-degree failure to file returns, filing a fraudulent return, and failure to pay or turn over taxes for multiple years.

- On Wednesday, August 13, 2008, Joao Salvador was indicted for filing false New Jersey gross income tax returns for years 2001 through 2007. He filed his returns using W-2s issued from his business, a construction company, knowing he did not remit the withholdings. Count one of the indictment was for third-degree filing or preparing a false or fraudulent tax return for years 2001 through 2007. Count two of the indictment was third-degree failure to file returns or reports: he did not file Form NJ-927 employer reports for years 2001 through 2007. Count three was failing to remit taxes he withheld from his employees for years 2001 through 2007.
- On September 2, 2008, a State Grand Jury returned separate indictments charging a father and son with failing to pay State sales tax collected from customers at their used car dealerships. Anthony Foti, owner of AN-JO Car Company, Inc., formerly located at 2023 Route 9 in Toms River, failed to remit to the State more than \$75,000 in sales tax between the years 2000 and 2004. Anthony Foti also failed to file corporation business tax returns and his personal income tax returns for that period. Anthony J. Foti Jr.,

owner of Wheels Are Us Auto Sales, located at 819 Route 35 in Middletown, failed to remit to the State more than \$37,000 in sales tax between the years 2006 and 2008. He also failed to file his personal income tax returns for the same period.

- On September 9, 2008, a cigarette compliance inspection was conducted by OCI personnel with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Paterson Police Department Narcotics Unit at China Garden Restaurant in Paterson, New Jersey. The inspection resulted in a seizure of 3,298.5 cartons of contraband cigarettes, as well as the confiscation of \$42,875 by the Paterson Police Department. The cigarette seizure represents a product value of \$224,265.02, with an aggregate cigarette and sales tax loss to the State of New Jersey of \$100,634.93. The owner of the establishment, Fen Shou Chen of New York, New York, was arrested at the scene and charged with multiple fourth-degree criminal offenses. Mr. Chen has also been convicted of similar cigarette-related offenses in Paterson Municipal Court in 2003, 2005, and 2007 and may be subjected to Federal prosecution in this matter.
- On September 23, 2008, Wallace M. Omodeo of Bloomingdale, New Jersey, was indicted in Passaic County Superior Court on five (5) counts of failure to file tax returns (N.J.S.A. 54:52-8). Each count pertains to a year in which the defendant failed to file his State income tax return, and

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2009 – December 31, 2009, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%

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criminal enforcement - from pg. 5

includes the tax years of 2003, 2004, 2005, 2006, and 2007. The defendant concurrently has multiple judgments placed against him by the Division of Taxation for various unpaid business-related tax liabilities, the existence of which was cited in the grand jury testimony. This case is being prosecuted by the Passaic County Prosecutor's Office.

- On October 7, 2008, Gilroy Campbell was served with a warrant in Atlantic City pursuant to his arrest on August 22, 2008, for the sale of untaxed cigarettes and possession of pirated/counterfeit DVD movies and music CDs. Investigation into this matter revealed that Campbell was operating a business not registered with the Division of Taxation. He was charged with the following offenses: failure to register with the Division of Taxation (N.J.S.A. 54:52-13), failure to file tax returns (N.J.S.A. 54:52-8), failure to maintain books and records (N.J.S.A. 54:52-12), failure to collect sales tax (N.J.S.A. 54:52-14), the sale of untaxed cigarettes (N.J.S.A. 54:40A-28), selling sound recording/audio visual work which did not conspicuously disclose the true name and address of the manufacturer (N.J.S.A. 2C:21-21(4)), and possession of items bearing a counterfeit mark (N.J.S.A. 2C:21-32(c)). Bail was set at \$100,000, no 10%. He was taken to the Atlantic County Prosecutor's Office for

processing. Gilroy Campbell has several prior convictions for possession/distribution of CDs, as well as possession of a weapon and sexual assault. He was also directly linked to Wheels of Soul, an outlaw motorcycle gang with a chapter in the Atlantic City area.

- On October 7, 2008, Larry Huffin of Atlantic City, New Jersey, was observed selling cigarettes to individuals on the street. He was arrested and transported to the Atlantic County Prosecutor's Office for processing. He had in his possession a total of 13.2 cartons of import-stamped Newport cigarettes. A total of \$630 was seized from his person. Huffin admitted to purchasing the cigarettes online. He was charged with the following disorderly persons offenses: possession of untaxed cigarettes (N.J.S.A. 54:52-18), failure to keep records (N.J.S.A. 54:52-6k), and engaging with an unlicensed dealer (N.J.S.A. 54:52-17a). He has no prior convictions.
- On October 24, 2008, Robert Parrish, 44, of Neptune, New Jersey, was sentenced to five years' probation, conditioned on his serving 200 days in the Mercer County Jail, by Superior Court Judge Thomas P. Kelly in Mercer County. Parrish also must pay restitution in an amount to be determined following a hearing. Parrish was indicted in June 2006 along with New Africa Day Care Center, Inc., which operated at 372 South Orange Avenue; its

executive director, Muslimah Suluki, 60, who is Parrish's mother; and her ex-husband, Mahdi Suluki, a consultant and board member of New Africa. Parrish, who diverted thousands of dollars in State funding from the day care center for his personal use, was found guilty in July 2008 as an accomplice of third-degree charges of theft by failure to make a required disposition of property, misconduct by a corporate official, and failure to file a State income tax return for 2002. The verdict followed a five-day trial.

- On October 28, 2008, a joint inspection was coordinated by OCI with the Newark Police Department Vice Unit, ATF, and the United States Postal Inspection Services at New Food King Chinese Restaurant in Newark, New Jersey. The location had been the scene of previous contraband cigarette seizures and arrests, and the sale of contraband cigarettes and "loosies" (single cigarettes) had recently been observed there. This inspection resulted in the arrest of the restaurant owner, Qiu Shi Wu of New York, New York, and the seizure of 155.3 cartons of contraband cigarettes and 18 counterfeit New Jersey cigarette stamps. The overwhelming majority of these seized items were found in the subject's apartment across the street from the restaurant, and were secured after obtaining a "Consent to Search" from the subject. The subject was charged with multiple indictable disorderly persons and civil offenses by both Newark Police and OCI, and will be prosecuted in Essex County Superior Court.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

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criminal enforcement - from page 6

- On December 2, 2008, four Paterson men were indicted for allegedly conspiring to steal \$272,000 by filing more than 117 fraudulent State tax returns. Wilyn Caceres, 32, was charged with second-degree conspiracy, money laundering, and receiving stolen property; Jason Perez, 23, was charged with second-degree conspiracy and receiving stolen property; Lisaldo Ramon Espinal, 24, was charged with second-degree conspiracy and third-degree receiving stolen property; and Miguel A. Hernandez, 20, was charged with second-degree conspiracy and third-degree receiving stolen property. The tax refund scheme was uncovered in August 2007, when an abnormal pattern involving the refund checks was detected. Investigation proved that the W-2s used were fraudulent. The refund checks, which ranged from \$1,500 to \$3,676, were cashed by Caceres at a bank branch office in Passaic where he worked or were deposited by him into a series of accounts he opened there using stolen or fraudulent identification information. The defendants

withdrew money from those accounts and an account opened by Perez at another bank where refund checks were also deposited in the form of cash, ATM withdrawals, debit charges, and checks. Sizeable transfers were also made among the various accounts.

- On December 3, 2008, in the Weehawken Municipal Court, Thuyai Nguyen, owner of Aivan II Wine & Liquors, pled guilty to criminal possession of untaxed cigarettes and was fined \$1,000 plus court costs. She was also assessed a civil penalty of \$1,695 for accepting delivery of untaxed cigarettes. The total amount paid was \$2,886. Charges stemmed from a September 2008 investigation in which the Aivan II Wine & Liquors offered for sale 67.8 cartons of cigarettes affixed with counterfeit New Jersey tax stamps, Virginia tax stamps, Kentucky tax stamps, and a small quantity without tax stamps. □

Tax Briefs

Gross Income Tax

Cancellation of Debt — An individual asked whether “forgiveness

of debt” related to a mortgage on a personal residence repossessed by the lender results in income for gross income tax purposes. The Division replied that this type of income is not subject to the gross income tax.

The New Jersey Gross Income Tax Act only taxes specifically identified classes of income. Discharge of indebtedness is not specifically included in the taxable categories of income. Therefore, cancellation of debt or discharge of indebtedness income “received” in connection with foreclosure and forfeiture of a personal residence is not subject to New Jersey gross income tax.

Deferred Compensation Paid to a Nonresident

— A taxpayer recently asked the Division to explain whether an employer has a responsibility to withhold New Jersey gross income tax on deferred compensation paid to a nonresident under a nonqualified deferred compensation plan.

With regard to nonresidents, contributions to a nonqualified deferred compensation plan, except as described below, are taxable as wages if they are received for any occupation or from services performed in New Jersey. New Jersey

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Enforcement Summary Statistics

Third Quarter 2008

Following is a summary of enforcement actions for the quarter ending September 30, 2008.

• Bank Levies	1,599	• Seizures	125
• Certificates of Debt:		• Auctions	8
Total Number	7,354		
Total Amount	\$69,140,778		

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdiscal.shtml



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income tax must be withheld by the employer.

To qualify for New Jersey income tax deferral at the time of contribution, the plan must be a nonqualified, unfunded, deferred compensation plan that is set up for the bonuses and compensation of highly compensated employees. The deferral must be agreed to before compensation is earned. The employee cannot control the percentage of income deferred or eliminate deferral entirely. Also, the promise to pay the deferred compensation must be a contractual obligation not evidenced by notes or secured in any way, and the deferral amount cannot be unconditionally placed in trust or escrow for the

benefit of the employee (no constructive receipt).

At distribution, if contributions were included in the nonresident's taxable income when made, only amounts in excess of the contributions are taxable and require withholding by the employer. However, under N.J.S.A. 54A:5-8(b), if any distribution payments are considered pension income (reported on Federal Form 1099-R), they are not taxable to a nonresident and no New Jersey income tax should be withheld.

Nonresident Seaman or Waterway Worker — On November 9, 2000, P.L. 106-489 was signed into law preempting the state taxation of wages earned by interstate waterway workers. This Federal law provides

that a licensed pilot or other worker “on a vessel operating on the navigable waters of more than one State” shall be subject to the income tax laws only in the state in which he or she resides.

New Jersey's policy has been that income attributable to a nonresident seaman's employment on ships operating exclusively between New Jersey ports and foreign ports, or ports of other states, is not considered to be New Jersey source income. Also, a seaman who is in New Jersey simply because his ship entered a New Jersey port for the purpose of foreign or interstate trade is not subject to gross income tax for income earned during that period. Residents, however, are taxed on their full income no matter where earned. The New Jersey treatment is consistent with P.L. 106-489.

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123 revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

Qualified Conservation Contribution — An individual taxpayer posed a question concerning the gross income tax deduction for a “qualified conservation contribution.” Under N.J.S.A. 54A:3-6, a taxpayer is allowed a deduction against gross income for a qualified conservation contribution, as defined under Section 170(h) of the Federal Internal Revenue Code. For the Federal conservation contribution, the individual was specifically allowed to “carry over” the deduction to a subsequent tax year. The individual asked whether the carryover was allowed for the New Jersey gross income tax deduction.

The New Jersey deduction provision states, “The amount of the deduction in a taxable year shall be equal to the amount of the contribution allowed in the taxable year as a deduction... for federal income tax purposes.”

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Based on this provision and specific statements in the legislative history referring to a carryover of the deduction, the Division determined that the legislature intended that the New Jersey deduction carry over to subsequent tax years, to the extent allowed to the individual for Federal income tax purposes.

Property Tax Relief Programs

Tenant Homestead Rebate — The Division of Taxation was asked why tenants residing in dwelling units which do not contain separate kitchens and bathrooms cannot receive a rebate under the New Jersey Homestead Rebate Program.

The Homestead Rebate Program is established by law in accordance with N.J.S.A. 54:4-8.57 et seq., and provides specific rebate qualifications and amounts. A tenant is eligible for a New Jersey tenant homestead rebate if the person is domiciled in New Jersey and meets all of the following conditions: (1) the person rented and occupied a dwelling in New Jersey that was the principal residence on October 1 of the tax year; (2) the principal residence is subject to local property taxes, and property taxes were paid on the residence through rent; (3) the principal residence is a full living unit with its own separate kitchen and bathroom; and (4) the person and spouse/civil union partner, if any, had gross income (for 2007) of \$100,000 or less.

The purpose of providing a rebate to tenants in a full living unit with its own separate kitchen and bathroom is that long-term tenants generally pay property tax for a home through rent, as opposed to transients living

in an arrangement such as a rooming house, hotel, or motel. The property tax rebate law imposes the kitchen and bathroom requirement as a means to limit the rebate to permanent or long-term residents.

Sales and Use Tax

Cooperative Maintenance Fees — A representative of a cooperative (co-op) housing facility raised questions concerning sales tax and fees paid by residents of the co-op facility. The residents pay a maintenance fee that is used to pay property tax, mortgage, utilities, capital improvement, and other operating costs. The co-op charges an additional fee to help cover the costs of the co-op's tennis courts, exercise rooms, and swimming pools.

The Division explained that while the shareholders' maintenance fee paid to the co-op was not subject to sales tax, when the co-op pays for taxable services those services are subject to sales tax. For example, when the co-op hires a contractor to provide repair or maintenance services for the co-op property, the contractor must charge sales tax to the co-op.

Since the sales tax law now imposes sales tax on certain membership fees, this raises a question concerning the additional fee for the use of the tennis courts, exercise rooms, and swimming pools. If only certain

residents of the housing community pay the separately stated membership fee for access to or use of the athletic facility, sales tax is due. However, if all of the residents are assessed a fee which allows them access to or use of the facility as part of the community or association fees, which are required as a condition of ownership, New Jersey sales tax is not due. In order for the membership fee to be exempt from tax, all residents of the community must be paying the membership fee as part of their annual or monthly community fees.

For additional information on the sales tax treatment of taxable membership fees, visit the Division's Web site at: www.state.nj.us/treasury/taxation/membership.shtml □

In Our Courts

Gross Income Tax

Alimony, Credit for Taxes Paid to Other Jurisdictions — *Sylvester L. & Yongjie Tuohy v. Director, Division of Taxation*, Docket No. 000033-2008, decided August 18, 2008.

At issue was a resident's proper calculation of the credit for taxes paid to other jurisdictions under N.J.S.A. 54A:4-1. The taxpayer challenged the Director's method for calculating the credit for taxes paid to New York

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and the effect that alimony paid had on the calculation.

N.J.S.A. 54A:4-1 defines the parameters of the credit:

(a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act...

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

When calculating his taxes paid to New York, the taxpayer overstated the numerator of his credit fraction by not including a reduction for alimony, an allowable deduction on the taxpayer's New York nonresident return.

N.J.A.C. 18:35-4.1(a)3 establishes a formula to determine the amount of credit for taxes paid to a foreign jurisdiction. Under N.J.A.C. 18:35-4.1(a)10 a taxpayer may "not include in the numerator in the credit fraction any income, which has been excluded or deducted from the taxable gross income of other jurisdiction(s) or which has not been taxed by other jurisdiction(s)."

The Court granted the Director's motion for summary judgment on the basis of the decision in *Ambrose v. Director*, 198 N.J. Super. 546 (App. Div. 1985).

Credit for Taxes Paid to Other Jurisdictions – *Teimouraz & Nana Vassilidze v. Director*, Division of Taxation, Docket No. 010946-2007, decided October 24, 2008.

The issue was whether the credit for taxes paid provision established in N.J.S.A. 54A:4-1 was available to a resident of New Jersey who paid income taxes to Pennsylvania on wage income.

The taxpayer filed a 2003 Pennsylvania income tax return reporting the wages Dr. Vassilidze earned in that state. Pennsylvania withholding was taken out of Dr. Vassilidze's paychecks in an amount equal to the calculated Pennsylvania tax balance due. Hence, the Pennsylvania return was filed reflecting a zero balance due.

N.J.S.A. 54A:4-1 allows a credit for taxes paid only in those circumstances in which an income tax is "imposed" by a foreign jurisdiction.

N.J.A.C. 18:35-4.1(a)7 provides:

As a result of the Reciprocal Personal Income Tax Agreement between the Commonwealth of Pennsylvania and the State of New Jersey, wages, salaries and other compensation paid to New Jersey residents employed in Pennsylvania are not subject to Pennsylvania income tax. Thus, a New Jersey resident may not claim a credit for taxes paid to Pennsylvania on employee compensation.

The Court affirmed the Director's assessment, noting:

Pennsylvania law excludes in plain terms the employment income of New Jersey residents from income tax. Pennsylvania issued instructions to the income tax return used by plaintiffs informing New Jersey residents that the

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compensation they earn in Pennsylvania is not subject to income tax in that State. It was despite these official efforts, not because of them, that plaintiffs voluntarily paid income tax to Pennsylvania. The Legislature did not intend for N.J.S.A. 54A:4-1 to apply when taxpayers voluntarily pay income tax to a State that has relinquished any claim to the tax and made public efforts to inform taxpayers that the tax is not due. □

**In Our Legislature
Corporation Business Tax**

Net Operating Loss Carryover Period Extended — P.L. 2008, c.102, signed into law November 24, 2008,

extended the net operating loss carryover period under the corporation business tax. The law provides that a net operating loss for any privilege period ending after June 30, 2009, shall be a net operating loss carryover to each of the 20 privilege periods following the period of the loss. This 20-year carryover applies only to net operating losses accruing for privilege periods ending after June 30, 2009. Net operating losses accruing for privilege periods ending on or before June 30, 2009, continue to have a net operating loss carryover to each of the seven privilege periods following the period of the loss.

Throwout Rule and Regular Place of Business Requirements Eliminated — P.L. 2008, c.120, signed on December 19, 2008, applicable to privilege periods beginning on or after July 1, 2010, eliminates the throwout provision of the

apportionment formula for corporation business tax. It also removes the “regular place of business” requirement for taxpayers to allocate income. To allocate less than 100% of income to New Jersey, a taxpayer will no longer be required to show a regular place of business exists outside of the State.

**Cigarette Tax
Implementation of Encrypted Counterfeit-Resistant Revenue Stamps**

— P.L. 2008, c.98, signed into law on October 31, 2008, and effective immediately, permits implementation of encrypted, counterfeit-resistant stamps for cigarettes sold in the State. The Director, Division of Taxation, is required to provide a report to the Governor and Legislature on or before the 240th day after enactment to detail the effectiveness of the measures.

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Miscellaneous

InvestNJ Business Grant Program Established — P.L. 2008, c.112, signed into law on December 9, 2008, establishes the InvestNJ Business Grant Program, which is designed to boost certain capital investment and job creation in the State. This short-term initiative is being administered by the Economic Development Authority (EDA). To obtain information on this program, contact the EDA’s Call Center at 1-866-534-7789.

Property Tax Relief Programs Income Eligibility Limits for Senior Freeze Increased — P.L. 2008, c.119, approved December 18, 2008, and effective immediately, modifies the definition of who constitutes an “eligible claimant” under the Property Tax Reimbursement Program (often referred to as the Senior Freeze Program). The legislation increases the income eligibility limits from \$45,135, if single, and \$55,344 for married couples to \$60,000 in tax year 2007; to \$70,000 in tax year 2008; and to \$80,000 in tax year 2009, whether single or married.

The legislation also provides that for tax years 2008 and after the total of all property tax relief benefits received (property tax reimbursement, homestead rebate, property tax deduction for senior/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant’s principal residence for the same year.

Sales and Use Tax Changes in Urban Enterprise Zone Sales Tax Rebate Program — P.L. 2008, c.118, approved on December 17, 2008, and effective in relation

to purchases made on or after February 1, 2009, amends the definition of “small business” applicable to the UEZ sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$3 million to less than \$10 million. “Small businesses” are an exception to the requirement that qualified UEZ businesses claiming exemption from sales tax on purchases for their own use in the zone must first pay the tax at the point of purchase and then apply for a refund of the tax paid. “Small businesses,” as defined in the Act, may instead claim the exemption at the point of sale.

Conformance with Streamlined Sales Tax Agreement — P.L. 2008, c.123, enacted on December 19, 2008, makes revisions to a number of aspects of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) in an effort to conform New Jersey’s law with various provisions of the Streamlined Sales and Use Tax Agreement of which New Jersey is a member. Areas of change include telecommunications, direct mail, sales price, fur clothing, and the medical exemption. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer

to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2008](#) [2009](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2008](#) [2009](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2008](#) [2009](#) □



important phone numbers

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
..... 609-826-4400
Homestead Rebate Hotline
for Homeowners 1-888-238-1233
Homestead Rebate Hotline
for Tenants 1-888-213-8623
Property Tax Reimbursement
Hotline..... 1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-588-3932
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax..... 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-588-3688
Public Utility Tax..... 609-584-4337

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Family Leave Insurance

On May 2, 2008, Governor Jon S. Corzine signed a historic family leave insurance bill, propelling New Jersey to become only the third state in the nation to enact a paid family leave program for workers caring for sick family members, newborns, and newly adopted children.

The legislation extends the State's existing Temporary Disability Insurance (TDI) program and permits up to six weeks of paid family leave insurance benefits for workers taking leave to provide care certified to be necessary for a family member.

Some important facts regarding paid Family Leave Insurance (FLI):

- The law applies to all private and governmental employers subject to the Unemployment Compensation Law (R.S. 43:21-

1 et seq.), including local governmental employers who have chosen not to elect disability insurance coverage under the New Jersey Temporary Disability Benefits Law.

- There is no employer contribution to the program. However, beginning January 1, 2009, employers will be required to withhold 0.09% (0.0009) of their employees' taxable wages as defined in the Unemployment Compensation Law. This is the same wage upon which the withholding for unemployment compensation is based (\$27,700 in 2008; \$28,900 in 2009). The withholding rate increases to 0.12% (0.0012) beginning in 2010.
- Employers will report wages and deductions and submit payment with Form NJ-927, Employer's Quarterly Report.

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Telephone Filing to be Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions will no longer be able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing will be discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.

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- In lieu of the State FLI plan employers may choose to provide self-coverage or arrange to have their employees covered by a private insurance carrier. Both of these alternatives require prior approval by the Division of Temporary Disability Insurance.
- Beginning July 1, 2009, employees may apply for up to six weeks of FLI benefits during leave taken to provide care for a sick family member or to care for a newborn or newly adopted child. Eligible applicants who are covered by the State FLI plan will receive weekly benefits amounting to no more than two-thirds of their weekly pay, subject to the same maximum as TDI for an individual's own disability (the maximum weekly benefit rate for TDI is \$524 in 2008).

For more information, visit the New Jersey Department of Labor and Workforce Development Web site: <http://lwd.dol.state.nj.us/labor/employer/ea/legal/FLI.html> □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.

November 15–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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mailing of tax bills for added assessments, whichever is later.

- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.
- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2009 must be filed with assessor during the pretax year, thereafter with collector during the tax year. □

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On May 29, 2008, a Somerset County Grand Jury returned a 407-count indictment charging 15 defendants with interstate racketeering, money laundering, and conspiracy in this multistate case dubbed "Operation Stop Payment." Eric Eugene Criss, alleged organized crime leader, was also charged with failure to file tax returns and failure to pay taxes for his part in this scheme to defraud banks and other financial institutions. The scheme was carried out through the creation and presentation of fictitious payroll checks for payment. The investigation was initiated by the Somerset County Prosecutor's

Office when fictitious checks were reported by Peapack-Gladstone Bank and the organized crime enterprise, lead by Criss, was uncovered. Assisting in this six-month-long investigation were: the Federal Bureau of Investigation; U.S. Secret Service; Pennsylvania State Police; the Hunterdon, Middlesex, Ocean, and Warren County Prosecutor's Offices; and various local police departments.

- On June 6, 2008, Matilda Amante Ramos was sentenced to five years' probation and required to pay \$400 per month on restitution of \$35,851. A \$6,000 payment was made at the time of sentencing. Matilda Amante Ramos was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are: Paul Sarris, 50; Achilles "Butz" Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito "Angelo" A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal

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Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

Current Amnesty Programs

Oklahoma is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

OK Sept. 15 – Nov. 14 www.tax.ok.gov/

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\$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks.

- On June 10, 2008, a Bergen County Grand Jury handed up a six-count indictment against Carol Lynn Palma, the Deputy Municipal Clerk of Cliffside Park. The indictment charges Carol Lynn Palma with third-degree theft by deception, third-degree theft by failure to make required disposition of property, second-degree official misconduct, fourth-degree falsifying or tampering with records, third-degree failure to pay taxes when due, and third-degree filing or preparing false or fraudulent returns.

The Bergen County Prosecutor's Office and the Office of Criminal Investigation began an extensive investigation into payments made by the then Superintendent of the Cliffside Park School District, Robert Paladino, to the Deputy Municipal Clerk, Carol Lynn Palma. By way of criminal complaints, the Bergen County Prosecutor's Office charged that the defendants entered into a scheme whereby school board funds that should have been used for the education of children were instead diverted to Palma for election services. Invoices for these payments were virtually nonexistent, vouchers for these payments were improper, and the payments were not approved by the Cliffside Park Board of Education. The six-count indictment against Palma charges that she submitted false purchase order(s), known as vouchers, for payment and illegally received and kept for

herself Board of Education funds which she was not entitled to receive. The indictment charges that Palma filed false or fraudulent New Jersey State income tax returns for several years by failing to include these payments from Board of Education funds as income on her tax returns and that she failed to pay taxes due thereon.

- On June 27, 2008, Crystal Velitschkow, 50, of Marlboro, New Jersey, pled guilty to second-degree money laundering. Velitschkow, along with live-in boyfriend Spiro Pollatos, 45, was arrested in December on charges of first-degree money laundering, second-degree conspiracy to commit racketeering, and second-degree theft. The Marlboro couple allegedly conspired to steal more than \$2.5 million through fraudulent loan services, collecting excessive fees and commissions. It was determined that over \$2.5 million in criminal proceeds was funneled through Velitschkow's personal bank account to finance purchases of real estate, cars, and boats as well as other personal expenses in this series of mortgage and investment scams, allegedly orchestrated by her boyfriend, Spiro Pollatos. Under the plea agreement, Crystal Velitschkow faces a sentence of 10 years in State prison. Both are being held in the Morris County Jail; bail for Spiro Pollatos is set at \$2 million.
- On July 1, 2008, William Marsh was indicted for stealing \$44,569 from the State of New Jersey by filing fraudulent tax returns. Marsh filed 24 fraudulent New Jersey gross income tax returns between February 2002 and

March 2006. He received 14 refund checks from the Division of Taxation totaling \$43,557 and 11 homestead rebate checks totaling \$1,012. The returns were suspicious in that they used typical variations of the defendant's name such as Will P. Marsh, Will H. Marsh, etc. and listed one of two post office boxes rented by Marsh in West New York, New Jersey, as the mailing address. The employers listed on the W-2s filed with the returns were nonexistent or never filed wage reports with New Jersey. William Marsh was indicted on charges of third-degree money laundering and third-degree theft by deception.

- On July 2, 2008, James Hendricks and Mary Ann Clark, a husband and wife trading as B & J Towing & Service, located in Sicklerville, New Jersey, were indicted by a Grand Jury on the third-degree charges of conspiracy, failure to make required disposition of property received, misapplication of government property, and failing to remit sales taxes with intent to defraud or evade.
- On July 14, 2008, Julio A. Rozon of Union, New Jersey, pled guilty to third-degree failure to pay taxes. Mr. Rozon, the sole officer of Rozon Distributors, Inc. of Newark, New Jersey, had been arrested on February 27, 2008. Mr. Rozon was entered into a Pre-Trial Intervention Program, sentenced to 50 hours of community service, and ordered to pay the tax.
- On July 29, 2008, Robert Parrish, 44, of Neptune, New Jersey, former manager of the New Africa

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Day Care Center, was found guilty of theft as an accomplice, following a five-day trial. Robert Parrish was convicted of third-degree theft by failure to make a required disposition of property, third-degree misconduct by a corporate official, and third-degree failure to file a State income tax return for 2002 for diverting thousands of dollars in State funding from the day care center for his personal use. Parrish was indicted in June 2006 along with New Africa Day Care Center Inc., formerly located in Newark, New Jersey, its executive director, Muslimah Suluki, 60, who is Parrish's mother; and her ex-husband, Mahdi Suluki, 66, of East Orange, New Jersey, who was a consultant and board member of New Africa. Mahdi Suluki pled guilty on July 21 to a charge of third-degree theft by deception. He admitted that he solicited a donation of \$4,785 from a Newark

business for New Africa after the day care center went out of business and deposited it into a bank account he controlled. The charges remain pending against Muslimah Suluki, a fugitive whose last known residence was in College Park, Georgia.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$10,894,456 for the period July 2007 through June 2008. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

Short Period Returns — The treatment of an S corporation that changes to a C corporation for Federal purposes is set forth at N.J.A.C. 18:7-20.1(e) which states that:

If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and, therefore, ceases to be a New Jersey S corporation, but continues its corporate existence, the corporation must file a New Jersey S corporation return (CBT-100S) for the short period ending on the day before the disqualifying event, and a C corporation short period return (CBT-100) for the remainder of the year.

1. The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension

of time to file the CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T on or before the due date of the return.

The procedure for revoking an S corporation election is set forth at N.J.A.C. 18:7-20.1(f) which states that:

In general, once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation unless the election is revoked pursuant to N.J.S.A. 54:10A-5.22(d).

1. To revoke an election, a letter of revocation signed by all shareholders holding more than 50 percent of the outstanding shares of stock on the day of the revocation, must be filed. A copy of the original election form must accompany the letter of revocation.

2. Subject to (f)1 above, an election may be revoked on or before the last day of the accounting or privilege period in which the election would otherwise apply.

Short period returns are required in New Jersey subsequent to a merger as set forth at N.J.A.C. 18:7-12.1(b) which states that:

Some of the circumstances which require the filing of short period returns are:

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

Interest 9.00%

The interest rate assessed on amounts due for the period April 1, 2008 – December 31, 2008, will be 9.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%

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2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;
3. Corporations which dissolve, merge, consolidate, withdraw, surrender, or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;
4. A corporation which changes its accounting period.

Minimum Tax for Short Period upon Dissolution, Merger, Consolidation, or Withdrawal — A short period return is required when corporations dissolve, merge, consolidate, withdraw, surrender, or otherwise cease to have a taxable status in New Jersey prior to the close of a 12-month accounting period. N.J.A.C. 18:7-12.1(a)3.

When a short period return is required, the minimum tax cannot be prorated. The full minimum tax amount that would be due for a full accounting or privilege period must be paid. N.J.A.C. 18:7-12.2(a)1.

When a corporation takes over another corporation and the target

corporation ceases to exist in New Jersey, two short period returns must be filed and the appropriate amount of minimum tax must be submitted for each short period. The minimum tax is calculated based on New Jersey gross receipts for each privilege period. A minimum tax must be calculated for the short period return that is filed to reflect income for the target company up to the point that it is no longer a separate entity. The minimum tax is calculated based on gross receipts for the short period.

Gross Income Tax Property Tax Deduction/Credit and Mobile Homes

— Mobile homes which are located inside a mobile home park are not subject to local property taxes. Instead, such homes are subject to a municipal service fee which covers the cost of local services such as sewer and water. Because they do not pay property taxes on their home, owners of mobile homes inside mobile home parks cannot be treated as homeowners when claiming the property tax deduction/credit. However, since the land that the mobile home is located on is subject to property taxes, and the mobile home owner is leasing that land, he/she can claim the property tax deduction/credit as a tenant using 18% of the rent paid if all of the other eligibility requirements are met. The mobile home owner should enter 18% of the rent paid for the land on Line 1, Schedule 1 of Form NJ-1040. The fee for municipal services may not be included. If the

taxpayer is renting the mobile home as well as the land, he or she cannot use the rent paid for the mobile home when determining the property tax deduction/credit.

**Partnerships
LLC Filing Requirement-Inactive** — Every flow-through entity that operates as a partnership and has New Jersey source income or has a New Jersey resident member, must file Form NJ-1065. Income from New Jersey sources includes any income, gain, loss, or expense.

An LLC operating as a partnership in New Jersey must file Form NJ-1065 even if there is no activity to report for a privilege period.

Fiscal year returns are due the 15th day of the fourth month after the end of the tax year. Any short period return must be filed by the due date of Federal Form 1065.

An entity with ten or more owners must file its return electronically. Form NJ-1065 filers that have less than ten partners have the option to file electronically or on paper.

A \$150 per owner filing fee is imposed on partnerships and other flow-through entities having income (or loss) derived from New Jersey sources and that have more than two owners. The filing fee is due on or before the 15th day of the fourth month succeeding the close of each privilege period. An installment payment equal to 50% of the filing fee for the current fiscal year is also required at the same time. The filing fee does not have to be submitted if the LLC derived no income from New Jersey sources although it is still responsible for filing Form NJ-1065.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[News](#)." For details about a particular auction, select "NJ Public Auction" at the beginning of its listing.

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The LLC must also file an annual report along with a \$50 filing fee. Online filing is required. For more information, visit the Division of Revenue's Web site at: www.state.nj.us/njbgs/

Recycling Tax

Liability for Tax — P.L. 2007, c.311, as amended by P.L. 2008, c.6, imposes a recycling tax on every ton of solid waste accepted for disposal or transfer at a solid waste facility. The recycling tax is further imposed on every ton of solid waste collected by a solid waste collector that transports solid waste for transshipment or direct transportation to an out-of-State disposal site.

The incidence of the tax falls directly on the solid waste facility or, in the case of haulers transporting to railroad transfer stations or directly out-of-State, directly on the hauler. The recycling tax is not a "trust tax" under which a facility or hauler collects and remits tax on behalf of the State. Rather, it is a cost of business that is passed on to customers in billing for services.

From a tax standpoint, any pass-through of the tax either from the

solid waste facility to the hauler or from the hauler to the waste generator is merely an increase in rates for services billed and does not represent a collection of the recycling tax.

Organizations designated as exempt organizations holding Exempt Organization Certificates (Form ST-5) are exempt from sales tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). This exempt status does not extend to taxes imposed under any other area of tax law. Therefore, an exempt organization can be subject to any tax other than sales tax (e.g., recycling tax) unless a specific exemption is expressed in the law.

Sales and Use Tax

Construction Permitting Services — The Division responded to an inquiry regarding the taxability of various costs associated with the acquisition of construction permits. The business gathers data for permit applications, prepares the documentation for submission, does onsite inspections, and performs research to assist the client in obtaining construction permits. Other services provided include consultation, supervision of onsite inspections, risk assessment and safety compliance

for site work, code consulting and research, and secretarial services. Time, travel, tolls, etc. will also be charged to the client.

All of the services mentioned are nonenumerated services that are not subject to sales tax. The expenses incurred by the service provider are also not subject to tax since they are incurred as part of a nontaxable receipt.

TV Converter Box Coupons — The Department of Commerce's National Telecommunications and Information Administration, a department of the Federal government, is administering the Digital-to-Analog Converter Box Coupon Program as authorized in the Digital Television Transition and Public Safety Act of 2005. Between January 1, 2008, and March 31, 2009, eligible U.S. households can request up to two coupons, worth \$40 each, to be used towards the purchase of up to two coupon-eligible converter boxes. Information regarding the program may be viewed at: www.ntiadtv.gov

Under the New Jersey Sales and Use Tax Act, the amount of a reimbursed coupon is included within the "sales price" of property and services and

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**Enforcement Summary Statistics
Second Quarter 2008**

Following is a summary of enforcement actions for the quarter ending June 30, 2008.

• Bank Levies	1,493	• Seizures	136
• Certificates of Debt:		• Auctions	9
Total Number	7,291		
Total Amount	\$69,569,074		

For more detailed enforcement information, visit our Web site at: www.state.nj.us/treasury/taxation/jdgdisc.html



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is taxed accordingly. This position is not dependent upon who actually provides the reimbursement, but rather, that a third party has agreed to pay the seller the coupon amount towards the specific purchase made by the coupon holder. The Division has been advised that the Federal government reimburses the store for the amount of the coupon. Thus, for example, if the converter is priced at \$49.99 and the store receives a \$40 coupon issued by the National Telecommunications and Information Administration, the 7% sales tax is calculated on \$49.99, prior to the deduction for the coupon amount.

□

In Our Courts

Gross Income Tax

Alimony – *Nancy McGoldrick v. Director, Division of Taxation*, Docket No. 001074-07, decided June 24, 2008.

Judge Hayser granted the Division's motion for summary judgment and denied plaintiff's motion for reconsideration.

On April 8, 2004, Peter and Nancy McGoldrick signed a Property Settlement Agreement (PSA). The agreement called for Mrs. McGoldrick to receive \$100,000 in alimony. It also called for her to receive "additional alimony" of \$10,649.72 from April 2004 to December 2004. This amount represented 34% of the proceeds of the sale of Natural Specialties Inc. to Acosta Inc. Mrs. McGoldrick will receive these payments until 2011, and they will not terminate upon remarriage or death. The PSA specifically indicated that this amount is to be taxable to the wife and deductible to the husband. Plaintiff argued that the taxability provision violated public policy. Plaintiff contended that the payment received was an "assignment of a right to income arising in connection with the divorce" and not taxable to her.

Judge Hayser stated:

Indeed, if the proceeds were only income to the former husband, they presumably would have been factored into the basic alimony award. His employment agreement with NSSI is the only subject of his personal services, and thus taxable, and the only basis for basic alimony payments to the plaintiff. Even if the proceeds of the sale of the brokerage relationships were paid to the former husband as a W-2 employee, it does not change the nature and source of these proceeds, just as "additional alimony" is not necessarily alimony.

The "additional alimony" payments were taxable to Mrs. McGoldrick as alimony on her NJ-1040 return and deductible by Mr. McGoldrick as an alimony deduction on his NJ-1040 return.

Local Property Tax
"Hospital Purposes" Exemption for Off-Site Building – *Hunterdon Medical Center v. Township of Readington*, decided July 14, 2008.

This New Jersey Supreme Court appeal raises the issue of whether a hospital's off-site building that houses its Health and Wellness Center, which provides physical therapy and cardio-pulmonary rehabilitation services, is exempt from local property tax. N.J.S.A. 54:4-3.6 states that real property used for the work of nonprofit organizations, including "all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes" are exempt from property tax. Whether the health

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

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center is exempt depends on the term “hospital purposes.”

Hunterdon Medical Center (HMC) is a nonprofit corporation in Flemington, New Jersey. It is a general, acute-care hospital with its certificate of incorporation in effect since 1983 and amended in 2001 to indicate that it is organized for charitable purposes including the establishment and management of a hospital, medical, and health center. In 1998, HMC opened its Health and Wellness Center about nine miles from the Flemington hospital. The HMC provides services to the community through exercise, fitness, diet, physical therapy, and cardio-pulmonary rehabilitation. The Center’s pool, running track, weight room, aerobic exercise equipment, and classroom areas were open to the public through the payment of membership dues. However, individuals could use the fitness equipment and facilities if they were patients of one of the two services that the hospital provides through the Center, namely, physical therapy and cardio-pulmonary rehabilitation. Also, the building contains a hospital-owned pediatric physician practice which had existed as a private practice prior to its acquisition in December 1997. HMC was receiving an exemption up until the 2000 tax year. The Readington Township tax assessor revoked the tax exemption and issued a tax assessment of \$3,300,000 for the property, \$2,000,000 of which was allocated to the facility.

The HMC filed with the Tax Court for the 2000 through 2005 tax years, wanting a tax exemption for the Wellness Center in its entirety (including the physical therapy service

and cardio-pulmonary rehabilitation service, and the pediatric practice), arguing that the uses were necessary to the hospital’s mission to provide a continuum of care to members of the community. The Tax Court rejected its application of “reasonably necessary test,” finding it unhelpful in the evaluation of the particular use of this property. The Court stated that no prior decision concerning “hospital purposes” exemption had concerned a hospital-owned facility having characteristics like those present in this matter: (1) a location distant from the main hospital campus; (2) not used for a purpose supportive of the hospital’s core function; and (3) used as part of the hospital’s continuum of care and its mission to enhance and improve the general health status of the population in the local area.

The Tax Court described the continuum of care to be a new element of hospital services. The Court devised its own framework for deciding between off-campus hospital facilities that would qualify for tax exemption under N.J.S.A. 54:4-3.6. The test had three components: (1) the nature and extent of the integration between the hospital and the subject facility; (2) the extent to which the activity conducted in the facility is under the control or supervision of the hospital staff; and (3) whether the facility serves primarily hospital patients

or primarily members of the general public. Two considerations were added to the third component: the first relates to the extent to which the hospital facility competes with commercial or privately owned facilities in the area, and the second is whether an exemption can be granted in proportion to the percentage of use by hospital patients of a specific facility within a building.

The Tax Court applied that framework to the Center and separately to the physical therapy service, finding each should be declared ineligible for exemption. The Appellate Division accepted the Tax Court’s finding with the new test criteria applied. The HMC appealed. The Supreme Court granted HMC’s petition for certification.

The High Court found earlier definitions, i.e., a facility providing continuous long-term care for periods exceeding 24 hours, too restrictive.

It was held that any medical or diagnostic service that a hospital patient may require, whether preadmission, during a hospital stay, or postadmission, constitutes a “hospital purpose” under the tax exemption statute. When an off-site facility provides services, its operational activities must be integrated and supervised by hospital personnel.

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The Supreme Court accepted the additional tests applied by the under Court but with a broader approach to the type of required supervision. The status of the physical therapy service was remanded to the Tax Court for further clarification.

The analysis for the term “hospital purposes” must meet the medical pursuits permitted to the “modern” hospital in New Jersey and can no longer just fit the needs of a nineteenth or even a twentieth century vision of a hospital building. Today, treatment is given on an outpatient basis at a hospital’s main facility and off-site facilities. The term “hospital purposes” should acknowledge the variety of activities that a modern hospital can be expected to perform for both inpatients and outpatients.

Sales and Use Tax
Due Process, Equal Protection Clause – *New Jersey Self Storage Association, Inc. et al. v. Corzine,*

et al., Docket No. 004635-2007, decided June 23, 2008.

Amendments to the New Jersey Sales and Use Tax Act (P.L. 2006, c.44) effective October 1, 2006, imposed tax on the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage. Charges for the service of storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space remains subject to tax. N.J.S.A. 54:32B-3(b) (3). The distinction is that the new law extends the tax to transactions where the facility merely provides the space, but not any services.

“Space for storage” means secure areas, such as rooms, units, compartments, or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free access within reasonable business hours, or upon

reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hanger.

The New Jersey Self Storage Association, Inc. challenged the law on due process and equal protection grounds.

In an unpublished opinion, following cross-motions for summary judgment, Judge Menyuk held that the sales tax on the service of furnishing space for storage by a person engaged in the business of furnishing such space does not violate the due process or equal protection clauses of the Federal or State constitutions, the uniformity clause, or the prohibition against special legislation in the New Jersey Constitution. □

In Our Legislature
Cigarette Tax

Prohibition on the Sale of Certain Flavored Cigarettes — P.L. 2008, c.91, signed into law on October 1, 2008, and effective the sixtieth day after enactment, prohibits the sales of certain flavored cigarettes in New Jersey. It further establishes civil penalties for violations and outlines circumstances in which the Division of Taxation may suspend or revoke the license of a retail dealer and may subject the dealer to administrative charges.

Gross Income Tax
Income Verification Procedure for Medicaid and NJ FamilyCare Applicants — P.L. 2008, c.53, enacted on August 5, 2008, and effective 90 days after enactment, establishes a new income verification procedure

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* Fee of 2.49% of tax payment applies.



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for those applying for Medicaid and NJ FamilyCare benefits. Applicants will be required to provide the Division of Taxation written authorization to release applicable tax information to the Commissioner of Human Services for purposes of ensuring that program income guidelines are met.

Local Property Tax

Property Tax Exemption for Renewable Energy System — P.L. 2008, c.90, enacted on October 1, 2008, and effective immediately, provides a property tax exemption for the value of an installed renewable energy system.

Miscellaneous

Out-of-State CPAs Authorized to Practice in New Jersey — P.L. 2008, c.45, enacted on July 15, 2008, and effective on the 365th day after enactment, revises the “Accountancy Act of 1997” to authorize out-of-State CPAs to practice public accounting in New Jersey without the need to obtain a license or to notify the New Jersey State Board of Accountancy. It further subjects those accountants to the laws and regulations governing CPAs in this State. The law also requires some accounting firms to register with the New Jersey State Board of Accountancy.

Fair Housing Reforms — P.L. 2008, c.46, enacted on July 17, 2008, and effective on that date, revises various laws concerning the provision of affordable housing. It requires that regulatory proposals advanced by State agencies include a housing affordability impact statement. It further requires the Director of the

Division of Taxation to establish an appeals procedure to address challenges brought by developers regarding municipal nonresidential development fees.

Transitional Energy Facility Assessment

Extension and Phase-out of TEFA — P.L. 2008, c.32, enacted on June 30, 2008, and effective immediately, freezes transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2008 rates for 2009 through 2011, and reduces surcharges in calendar years 2012 and 2013. It provides that TEFA surcharges will expire on December 31, 2013. □

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2008](#) [2009](#) □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2008](#) [2009](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2008](#) [2009](#)



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Rebate Hotline
for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline
for Tenants 1-888-213-8623
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-588-3932
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
- Refunds 609-588-3688
- Public Utility Tax..... 609-584-4337

New Jersey State Tax news

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Budget Funds Rebates

The State Budget for fiscal year 2009 provides continued funding for the Homestead Rebate Program; however, rebate amounts for tax year 2007 are limited for both homeowners and tenants. The Budget also limits eligibility for homeowners to those with income of \$150,000 or less and requires that the rebates for homeowners be based on 2006 property taxes.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2007, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2007 homestead rebate, provided that their gross income for the entire year does not exceed the income limit: \$150,000 for homeowners and \$100,000 for tenants.

Benefit Amounts

Benefit amounts differ for homeowners and tenants, and are determined by income, amount of property taxes (or rent) paid, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: The State Budget requires that the 2007 rebate be based on 2006 property taxes. For purposes of calculating the 2007 rebate,

the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2007, will be used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006.

Under the terms of the Budget, 2007 rebate amounts will be no greater than those paid last year (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or marital status, or an increase in percentage of ownership.

For tax year 2007, homeowners will receive either 10% or 20% of the first \$10,000 of property taxes paid in 2006, depending on their income level:

\$100,000 or less	—	20%
\$100,001 – \$150,000	—	10%

Homeowners who are age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (see above) or the amount by which the property taxes paid exceed 5% of gross income, but within the range specified based on income:

\$70,000 or less	—	\$1200 – \$1000
\$70,001 – \$125,000	—	\$800 – \$600
\$125,001 – \$150,000	—	\$500

continued on page 2



budget funds rebates - from page 1

In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2007, tenants age 65 or older or disabled are eligible to receive rebates ranging from a minimum of \$160 up to a maximum of \$860. Tenants under age 65 and not disabled are eligible for rebates of \$80.

How to Apply

Homeowners: The 2007 homestead rebate applications were mailed in early May to homeowners who were identified as being 65 years of age or older or disabled on December 31, 2007. Application packets were mailed during July to non-senior, nondisabled homeowners.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or [online](#). The filing deadline for all homeowners is August 15, 2008.

Tenants: Applicants who are required to file a 2007 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software) by April 15, 2008. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate is also extended.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until August 15, 2008, to file

the tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2007 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until October 31, 2008, to apply.

Rebate Checks

Homeowners: Homestead rebate checks for senior and disabled homeowners who filed by the original June 2 filing deadline are scheduled to be mailed on or about July 31, 2008, while checks for those who file between June 2 and August 15 will be issued as quickly as possible. Checks for all non-senior, nondisabled homeowners are scheduled to be mailed in the fall.

Tenants: Homestead rebate checks for all eligible tenants are expected to be mailed on or about July 31, 2008.

More information on the Homestead Rebate Program is available at: www.state.nj.us/treasury/taxation/homestead/hrintro.shtml □

LOCAL PROPERTY TAX PAMS Project Extends Testing and Review Period

The implementation schedule for New Jersey's new Property Assessment Management System (PAMS) was revised to push the go-live date from January 2008 to the end of 2008. This new schedule provides more time for testing and for addressing issues that may be identified.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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PAMS project - from page 2

PAMS will replace the outdated MOD IV system and will provide added tools for the assessor, collector, and tax administrator. A key difference between the old and new systems is a change from a simple batch program that stores data in flat files to a relational database system with integrated functions. While this means users will have more screens and fields to navigate, it also means they will have more information and reporting capabilities at their fingertips.

The PAMS project undertook its second trial or “mock” conversion in April to ensure that the process for converting municipalities’ data into the new system will run smoothly. PAMS will first be implemented in the three pilot counties of Camden, Hunterdon, and Salem.

The latest edition of the quarterly PAMS newsletter, *Update*, focuses on new tools for analysis and scheduling. An electronic version is available on the Division’s Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml

For questions, contact Dana Max at dana.max@treas.state.nj.us or 609-292-8311. □

SALES AND USE TAX

**Clarification:
Streamlined Sales
Tax Registration**

An article in the *New Jersey State Tax News*, fall 2007 issue, p. 3, provided an overview of the central online registration system for sales tax that was developed by the Streamlined Sales Tax Project. This

article provides additional information on cancelling a sales tax registration entered through that system.

The central online registration system was developed for companies desiring to register with every member state of the Streamlined Sales and Use Tax Agreement (SSUTA), including those states that adopt the SSUTA after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any full-member state. In addition, a registrant may choose to collect and remit taxes to any or all states that are associate members. Additional information concerning the central registration system may be found at: www.state.nj.us/treasury/taxation/streamregpro.shtml

Sellers who collect tax for any full-member or associate-member states during the time they are registered must remit the tax to the state(s).

If you used the central registration system and registered in more states than you wanted to, you cannot cancel registration for just the states you do not want to be registered with. To receive the benefits of the SSUTA, you *must* remain registered with *all* of the full-member states. You can, however, cancel your registration with any associate-member state. You may also opt out of the central registration system entirely,

in which case your registration will be cancelled with all of the states. If you want to register for sales tax with only a few states, you should *not* use the central registration system. While amnesty has expired in New Jersey, it may still be available in other SSUTA member states. Information on amnesty is available at:

www.streamlinedsalestax.org/amnesty.html

If you believe that you mistakenly registered through the central online registration system, find you no longer want to participate, need to update previously submitted registration information, or add an associate state, log into the Streamlined Sales Tax Project Web site at www.sstregister.org/sellers and select “Update Registration.” You will then need your Streamlined Sales Tax ID and password to continue. To cancel your registration select “Change Registration Status” and follow the instructions.

Once you terminate your sales tax registration through the central registration system, your *central registration account* for sales tax with all the SSUTA member states, including New Jersey, will be cancelled. However, if you were already registered with New Jersey for sales tax — or any other taxes — *before* you

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Current Amnesty Programs

Nevada is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

NV July 1 – Sept. 30 <http://tax.state.nv.us/amnesty.shtml>



ssst registration - from page 3

registered through the SSUTA central registration system, then your sales tax account with the State of New Jersey, as well as your accounts for any other New Jersey taxes, will remain open.

If you initiated your New Jersey sales tax registration only through the SSUTA central registration system, and subsequently cancel your central registration account, then your sales tax registration with New Jersey is terminated along with your central registration account. In this case, if you either have a legal obligation or choose to continue to collect and remit New Jersey sales and use tax, you must register directly with the State of New Jersey through the New Jersey Division of Revenue's Web site at:

www.state.nj.us/treasury/revenue/ □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.shtml □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Thirteen persons passed the March 29, 2008, Tax Assessor Certificate examination. They are:

Atlantic County: Megan M. Fasy, Egg Harbor Township; Theresa Prendergast, Egg Harbor Township.

Bergen County: Anthony J. Rinaldi, Jr., Dumont Borough; Mathew S. Rinaldi, Cliffside Park Borough.

Burlington County: Gregory T. Hutchinson, Eastampton Township.

Essex County: Steven P. Priscoe, Verona Township.

Monmouth County: Richard A. Anderson, Millstone Township.

Morris County: Natale T. Buono, Jr., East Hanover Township.

Ocean County: Stephen Bruemmer, Stafford Township; Theodore J. Tobiassen, Brick Township.

Salem County: Steven H. Caltabiano, Carneys Point Township.

Somerset County: Silvia N. Forbes, Bedminster Township.

Union County: Jonathan M. Bernstein, Westfield Town.

The next examination will be held on Saturday, September 20, 2008, at the Richard J. Hughes Justice Complex in Trenton. The deadline for candidates to submit applications for this examination is August 21, 2008. To obtain an application, write to Gary R. DalCorso, P.O. Box 251, Trenton, NJ 08695-0251 or call 609-292-7813. A fee of \$10 must accompany the completed application. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time to hear and determine appeals.
- Disallowed property tax deduction recipients, granted a filing extension, required to pay tax deductions previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2009 together with a notice that the completed form must be filed with assessor by August 1, 2008, to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.



tax assessors' calendar - from page 4

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2009.

August 5-

- All SR-1A forms showing sales transactions to be used in compiling 2008 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25-

- State Equalization Table completed by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2009 with the assessor for taxing district in which property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2009 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

type business: customers do not enter the street front business; the items are sold through a sliding glass window used to transact business. The store sells tobacco products, candies, and other sundry items. The inspection resulted in the confiscation of 314.6 cartons of cigarettes that were not properly stamped and taxed. Seized were 270 cartons of beedies (hand-rolled, South Asian cigarettes) along with 38.6 cartons of imports — Willis Classic, Gold Flake, and Guang Gram; 4 cartons with counterfeit stamps; and 2 cartons with Delaware stamps. Charges are pending against Yogeshkumar Patel in Jersey City Municipal Court for possession of contraband cigarettes, no invoices, buying cigarettes from an unlicensed person, and the \$25 per carton civil penalty which amounts to \$7,865.

- On March 27, 2008, a cigarette inspection was conducted at an Irvington, New Jersey, convenience store, Ivelisse Supermarket, and 11.8 cartons of contraband cigarettes were seized. Also, through the customary inspection of the entire facility, Office of Criminal Investigation personnel noticed crudely packaged DVDs with partial labels. As a result of this observation and having suspicion that the DVDs were counterfeit, assistance was requested from the Irvington Police Department and the Motion Picture Association of America, Inc. The DVDs were confirmed as counterfeit merchandise and inventoried. The owner of the business, Mr. Leocliedes Torres, was placed

Interest 9.00%

The interest rate assessed on amounts due for the period April 1, 2008 – December 31, 2008, will be 9.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%

Criminal Enforcement

Criminal enforcement over the past several months included:

- On February 8, 2008, the Office of Criminal Investigation (OCI) performed a routine cigarette compliance inspection at Laxmi Pan Center of J.C. L.L.C., Jersey City, New Jersey. The business is owned by Yogeshkumar Patel and operates as a small "stand"

criminal enforcement - from pg. 5

under arrest by the Irvington Police Department for possession of counterfeit DVDs. Criminal charges will be pursued in municipal court.

- On April 10, 2008, Jennifer Pham of Egg Harbor pled guilty to structured transactions, filing fraudulent returns, and failure to pay taxes. Jennifer and Jimmy Pham, husband and wife, were indicted in August 2007 for the structuring of funds and tax fraud for systematically depositing funds of unknown origin, in amounts less than \$10,000, to avoid filing Currency Transaction Reports and for failing to report and pay taxes on this income for tax year 2006. The Phams, employed by Harrah's Hotel and Casino, came under investigation by the Division of Gaming Enforcement after a Suspicious Activity Report was filed by Commerce Bank. In the plea agreement, Jennifer Pham will receive three years' probation and forfeiture of property seized, which included an estimated \$240,000 in cash and jewelry. The Phams' tax liability (\$17,000) plus penalty and interest (\$1,278) will be satisfied with the proceeds of the auctioned jewelry. Charges were dropped against Jennifer's husband, Jimmy Pham. This was a joint investigation between the Division of Gaming Enforcement and the Office of Criminal Investigation.
- On April 14, 2008, an arrest and cigarette seizure was executed as a result of an ongoing investigation by U.S. Immigration and Customs Enforcement into contraband cigarette sales conducted

by Mohamed Gaafar. It had been alleged that the subject sold cartons of cigarettes from the Hollywood Beauty Salon in Jersey City, a location at which the subject rented a chair to perform hairstyling. Gaafar was arrested across from the beauty salon while in the process of transferring multiple boxes containing unstamped cigarettes from his vehicle to another. When OCI personnel arrived, two boxes had already been transferred with the remaining boxes still in the subject's vehicle. A combined seizure total between the vehicles was 400 cartons of unstamped Marlboro and Newport products. Additionally, the Hollywood Beauty Salon was searched and a total of 88.6 cartons of Marlboro, Parliament, and Newport products were found. All of the contraband located within the business was also unstamped, with some containing cellophane wrapping indicative of a possible export product. As a result of the total 488.6 cartons of unstamped products being seized, the subject was arrested and charged with the following offenses: possession of contraband cigarettes (fourth degree), failure to keep records (fourth degree), dealing with unlicensed persons (fourth degree), failure to obtain cigarette license (disorderly persons), and transportation of contraband cigarettes (disorderly persons).

- On April 28, 2008, Tommy Tavarez, OH Main, LLC, pled guilty as charged to third-degree conspiracy and third-degree filing false or fraudulent New Jersey sales tax returns. Juan Torres, OH Main, LLC, filed an application for the Mercer County

Pretrial Intervention Program. OH Main, LLC, is a retail deli/grocery located in Passaic, New Jersey. The investigation was initiated by a field inspection for untaxed/contraband cigarettes and was expanded. The owners/operators underreported sales, failed to pay sales tax for five quarters in 2006 and 2007, and filed fraudulent New Jersey gross income tax and partnership returns for tax year 2006. As part of the plea agreement, Tavarez and Torres must file amended New Jersey sales and use tax returns, New Jersey partnership returns, and New Jersey gross income tax returns by May 30, 2008, and pay all tax, penalty, and interest by the sentencing date of July 21, 2008. This successful prosecution was the result of the combined efforts of a special agent and auditor, both from the Office of Criminal Investigation, and the New Jersey Division of Criminal Justice.

- On May 12, 2008, a twenty-six count indictment was returned charging Larry Kushner, 56, and his wife Jacqueline Kushner, 43, both of Long Branch, New Jersey, with five counts of second-degree theft by deception, two counts of third-degree theft by deception, one count of second-degree identity theft, one count of third-degree fraudulent use of credit card, and one count of fourth-degree fraudulently obtaining a credit card. Both defendants were also charged with third-degree failure to file a tax return and third-degree failure to pay taxes for the years 2003 through 2006. The investigation revealed that Mr. Kushner bilked

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criminal enforcement - from page 6

seven investors out of \$1.2 million dollars by telling them that money invested in his company, Foreclosure 911, would be used to purchase foreclosed properties. Instead, the money was used for personal expenses and travel. Jacqueline Kushner was the president of the company and most of the stolen funds were diverted to her. This criminal investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- In the area of refund fraud, the Office of Criminal Investigation prevented the payment of fraudulent refund claims totaling \$7,373,500 for the period July 2007 through mid-May 2008. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

Doing Business in New Jersey —

The requirement that foreign corporations doing business in New Jersey must register with the State is set forth at N.J.S.A. 14A:13-3(1), which states that:

No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. A foreign corporation may be authorized to do in this State any business which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to do such business

in the jurisdiction of its incorporation, but no other business.

In addition, penalties for doing business in New Jersey without registering are set forth at N.J.S.A. 14A:13-11(3), which states that:

In addition to any other liabilities imposed by law, a foreign corporation which transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than \$200.00, nor more than \$1,000.00 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. Such penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in such action in a summary manner or otherwise.

A foreign corporation is doing business in New Jersey when it meets the requirements of N.J.A.C. 18:7-1.9(a) and (b), which states that:

(a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of this Act.

2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.

(b) Whether a foreign corporation is doing business in New Jersey is determined by the facts in each case. Consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;
2. The location of its offices and other places of business;
3. The continuity, frequency and regularity of the activities of the corporation in New Jersey;
4. The employment in New Jersey of agents, officers and employees;
5. The location of the actual seat of management or control of the corporation.

A corporation is subject to tax in New Jersey when it meets the requirements of N.J.A.C. 18:7-1.6, which states that:

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return and pay a tax thereunder provided it falls within any one of the following:

1. Existing under the laws of the State of New Jersey; or
2. If a foreign corporation:
 - i. Holding a general Certificate of Authority to do business in this State issued by the Secretary of State; or
 - ii. Holding a certificate, license or other authorization

tax briefs - from page 7

issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or

iii. Doing business in this State; or

iv. Employing or owning capital in this State; or

v. Employing or owning property in this State; or

vi. Maintaining an office in this State; or

vii. Deriving receipts from sources within this State; or

viii. Engaging in contacts within this State.

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to

impose the tax under the Constitution and statutes of the United States.

Texas Margin Tax — When a taxpayer calculates its entire net income for corporation business tax (CBT) purposes under N.J.S.A. 54:10A-4(k), it is not permitted to deduct or exclude “taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act....”

A taxpayer inquired whether or not the new Texas Margin Tax is considered a state tax “on or measured by profits or income, or business presence or business activity” pursuant to N.J.S.A. 54:10A-4(k)(2)(C) such that it would have to be added back to the tax base.

The Division of Taxation responded that the Texas Margin Tax must be added back to the New Jersey entire net income for CBT purposes. The Division noted that the statutory addback in question was enacted to stop tax rate discrimination among taxpayers. The legislative history provided, in part: “If the deduction of the taxes of other jurisdictions is allowed, corporations which do business in several states pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey.” See *Ross Fogg v. Director*, 22 N.J. Tax 372 (2005) at 377.

The Division stated that the Ohio Commercial Activities Tax (CAT tax) and the Washington Business and Occupation Tax (B&O tax) were also included among other state taxes that must be added back to the CBT tax base.

Environmental Taxes and Fees

DEP Registered Brokers — The Division recently received an inquiry regarding the newly imposed recycling tax from a broker in the solid waste industry who does not directly haul waste. He wanted confirmation that there is no requirement for a broker to register and pay the recycling tax.

He was advised that either the haulers that are hired (if taking out-of-State or to a railroad transfer station) or the facilities that accept the solid waste in New Jersey would be responsible for calculating and remitting the recycling tax. Brokers in the industry, although registered with the Department of Environmental Protection as “haulers,” are not required to register with the Division of Taxation for the tax.

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Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



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Solid Waste Collectors — The Division responded to an inquiry regarding application of the recycling tax. The inquiry questioned whether solid waste transporters registered with the Department of Environmental Protection that transport solid waste from an in-State solid waste facility for out-of-State disposal are considered solid waste collectors subject to the recycling tax.

Solid waste collectors are only subject to the recycling tax and required to register in the following circumstances: (1) the solid waste collector transports solid waste to a rail transfer station for transshipment, or (2) the solid waste collector transports solid waste from its generators directly to an out-of-State disposal site.

Where a solid waste collector hauls solid waste from a New Jersey nonrailroad transfer station to an out-of-State disposal site, the collector is not transporting waste *directly* from generators as outlined above. Therefore, no tax is due on the transaction.

Gross Income Tax

Economic Stimulus Payments — Starting in May 2008, the Federal Treasury began sending economic stimulus payments to more than 130 million households. To receive a payment taxpayers must have a valid social security number, \$3,000 of income, and file a 2007 Federal tax return.

Taxpayers will not owe Federal income tax on the payment when they file their 2008 Federal income tax return, and it will not reduce their

2007 or 2008 refund or increase the amount owed when the 2008 return is filed.

Similarly, New Jersey's gross income tax treatment of the economic stimulus payments will correspond to the Federal treatment and the payments will not be considered taxable income for New Jersey gross income tax purposes.

Educational Debt Exchange — The National Institutes of Health generally repays up to a certain amount per year of a qualified health professional's educational debt in exchange for a two- or three-year commitment to perform medical research. The benefits provided by the Loan Repayment Program are taxable for Federal income tax purposes.

Similarly, for New Jersey gross income tax purposes, amounts paid in accordance with the Loan Repayment Program are provided in exchange for work performed or services rendered. These amounts are taxable as "other remuneration received for services rendered" in accordance with N.J.S.A. 54A:5-1(a).

Military Retirement — The New Jersey Gross Income Tax Act at N.J.S.A. 54A:6-26 permits taxpayers to exclude military pension payments and military survivor's benefit payments from their New

Jersey gross income tax. Military pension payments and military survivor's benefit payments are those earned with respect to service in the Army, Navy, Air Force, Marine Corps, and Coast Guard. Generally, for military retirement pay to qualify as a military pension, it must be received under Titles 10 and 32 of the U.S. Code and paid from the Defense Finance and Accounting Service.

Stock Options — A nonresident taxpayer who worked for the same company both inside and outside New Jersey during the period stock options were earned inquired whether she is subject to New Jersey income tax on these options.

Stock options a nonresident taxpayer receives while working in New Jersey, or for a New Jersey company, or for services performed in New Jersey are taxable as New Jersey source income. N.J.S.A. 54A:5-8.

New Jersey gross income tax due from a nonresident taxpayer is based on the amount of income attributable to New Jersey sources. Here, the portion of the taxpayer's income from the stock options that is considered New Jersey source income must be determined using an allocation formula. N.J.S.A. 54A:5-7. The amount of the stock option payment is multiplied by a fraction,

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the numerator of which is the total time (e.g., number of days) employed in New Jersey and the denominator, the time employed within and outside New Jersey for the period the stock options were earned.

Telecommuting — For New Jersey purposes, nonresident taxpayers are subject to income tax if they have income sourced or earned in New Jersey. N.J.S.A. 54A:5-8. Generally, a nonresident taxpayer working for a New Jersey company has income sourced to New Jersey and has to file a New Jersey nonresident return (Form NJ-1040NR). Specifically, if a telecommuter comes into New Jersey to perform work or services, even occasionally, this individual is considered to have New Jersey source income and must file accordingly.

However, with regard to nonresident telecommuters who never enter the company’s home state to perform work or services, New Jersey uses a “physical presence” test. Using this test, only the telecommuting employee’s home state will tax the income.

Withholding on Pension Income — Under the New Jersey Gross Income Tax Act, a taxpayer may request that the payor of pension and annuity income withhold State income tax from disability or retirement benefits. N.J.S.A. 54A:7-1.1. This provision applies to all payors of pensions and annuities, both private and public, and to all payments, including lump-sum distributions.

The recipient of a pension or annuity must make a request in writing to the payor for the amount to be withheld on Form NJ-W-4P, Certificate of Voluntary Withholding of New Jersey Gross Income Tax From Pension and Annuity Payments. Form NJ-W-4P is contained in the employers’ instruction booklet (Form NJ-WT) and is also available on the Division’s Web site at: www.state.nj.us/treasury/taxation/prntgit.shtml

The amount of State income tax withheld from pension or annuity payments must be a minimum of \$10 per payment period or an even dollar amount greater than the minimum as specified by the recipient of the pension or annuity. The amount withheld may be changed or terminated upon request by the

recipient. The amount withheld must be reported on and remitted with Form NJ-500, NJ-927, or NJ-927-W. The total annual amount of tax withheld from pension and annuity payments (as reported on Form 1099-R) must be included on Form NJ-W-3, Gross Income Tax Annual Reconciliation of Tax Withheld.

Sales and Use Tax

Freight Charges — On and after October 1, 2006, P.L. 2006, c.44, modified the exclusion for delivery charges that are separately stated from the sales price of an item on the invoice, bill, or similar document given to the purchaser. N.J.S.A. 54:32B-8.11. The law provides for tax to be imposed on delivery charges for taxable items and no tax to be imposed on delivery charges for nontaxable items like clothing.

The law defines “delivery charges” as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. If a shipment includes both exempt and taxable property, the seller should allocate the delivery

continued on page 11

Enforcement Summary Statistics
First Quarter 2008

Following is a summary of enforcement actions for the quarter ending March 31, 2008.

• Bank Levies	1,294	• Seizures	129
• Certificates of Debt:		• Auctions	5
Total Number	6,100	• Referrals to the Attorney General’s Office	694
Total Amount	\$461,940,170		

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc.shtml



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charge by using: (1) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. N.J.S.A. 54:32B-2(rr). Only the portion of the delivery charge that relates to the taxable property or service is subject to tax.

Thus, only delivery charges imposed by the seller of taxable items on the end-user are subject to tax.

Magazine Articles Delivered Electronically — Under N.J.S.A. 54:32B-8.5(a), magazines and periodicals sold by single issue in hard copy are subject to tax. Magazines and periodicals accessed electronically are exempt because they are neither tangible personal property nor digital property. “Digital property” is defined specifically as music, ringtones, movies, books, audio and video works and similar property delivered through electronic means. Magazines and periodicals delivered electronically are not included in this definition of digital property. Therefore, a document delivery service’s charge for a single purchase of an article from a magazine publisher delivered electronically is not subject to tax.

In Our Courts

Gross Income Tax

Basis – *William & Margaret Sitar v. Director, Division of Taxation*, Docket No. 005141-2002, decided February 15, 2008.

In a bench decision, Judge Bianco granted the Division’s motion for summary judgment in this matter.

The issue presented was the correctness of the methodology employed by the Director in denying the deduction of personal expenses from the gain on sale of land held purely for investment purposes. The plaintiffs, William and Margaret Sitar, asserted that since personal expenses (interest on a loan and property taxes) incurred in connection with the land they held for investment purposes were deductible Federally, but not for New Jersey purposes, pursuant to *Koch*, the New Jersey gross income tax assessment denying a basis adjustment was invalid. The Director contends that land is not a depreciable asset and the plaintiffs’ personal expenses of interest on the loans to purchase the property and yearly property taxes are not deductible. Therefore, the taxpayers’ basis for the calculation on the sale of the land is the taxpayers’ Federal adjusted basis under N.J.S.A. 54A:5-1(c).

There is no statutory provision which allows and provides for the deductions claimed by the plaintiffs. Plaintiffs sold a piece of vacant land, which was held by the plaintiffs in their individual capacity for investment purposes. No improvements were made on this land. Plaintiffs had borrowed money to purchase the property and thus had to pay interest on the personal loan. Plaintiffs paid property taxes on this property. This property was not income producing. For tax year 1998 plaintiffs filed their Federal income tax return on which they deducted, on their Schedule A, interest paid on the loan to purchase the said property and the real estate taxes paid on the property in the amount of \$1,710,158. These Schedule A expenses were personal expenses which were not related to the taxpayers’ being involved in a trade or business. The Court held in *Gilligan v. Director*, 11 N.J. Tax 414 (1991), such expenses are not deductible from the plaintiff’s gross income.

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The Director's determination that plaintiffs must use the Federal adjusted basis to compute gain from sale of the land in this case was not a tax on a return of capital nor a tax on fictitious, phantom income and was sustained.

Credit for Taxes Paid to Other Jurisdictions – *Glenn A. Harris & Terrie D. Harris v. Director, Division of Taxation*, Docket No. 006227-2007, decided February 19, 2008.

The issue in this case was whether the Director properly calculated the gross income tax credit for taxes paid to other jurisdictions. N.J.S.A. 54A:4-1. Plaintiffs alleged that the Division of Taxation had not allowed credits for tax payments to Philadelphia and Pennsylvania in the amount of \$3,189 for tax year 2002, \$6,157 for tax year 2003, and \$7,067 for tax year 2004. The principal thrust of the plaintiffs' argument in their summary judgment motion was that *Jenkins v. Director*, 4 N. J. Tax 127 (Tax 1982), was wrongly decided and that the Director's regulation N.J.A.C. 18:35-4.1(a)(11) is *ultra vires* (in excess of the powers granted) because it is contrary to the plain language of the statute. On January 8, 2008, cross-motions for summary judgment were heard by the Honorable Gail L. Menyuk. In a letter opinion dated February 19, 2008, Judge Menyuk denied plaintiffs' motion

for summary judgment and granted the Director's cross-motion for summary judgment. In finding for the Director, the Court concluded that *Jenkins* was correctly decided and that the Director's regulation N.J.A.C. 18:35-4.1(a)(11) is valid.

Interest on Refund – *McLaughlin v. Director, Division of Taxation*, Docket No. 008593-07, decided April 17, 2008.

Judge Hayser denied the Division's summary judgment motion without prejudice and transferred the case to Superior Court.

The taxpayer sent the Division a \$5,000 check intended for the IRS. The taxpayer is seeking interest on the payment, which the Division sent back to the taxpayer upon his request, but according to the taxpayer a year and a half after the taxpayer improperly sent the check to the Division.

Judge Hayser stated in an unpublished decision that "there is no statutory authority that permits or requires the defendant make the interest payment requested by the Plaintiff" and "under the facts of this case, in weighing the relative equities between the parties there is no overriding and compelling equitable basis to require the Defendant to make the interest payment requested by the Plaintiff."

However, "Rather than dismissal, it is appropriate to transfer this action

to the Superior Court, the appropriate Court to consider Plaintiff's claim as set forth in the complaint, whether viewed as the tort of wrongful conversion or a claim predicated on unjust enrichment. That is the court that can finally determine whether the Plaintiff has met the procedural requirements of the Torts Claims Act."

Retroactivity – *Charles J. Demuth v. Director, Division of Taxation*, Docket No. 008298-07, decided April 22, 2008.

Judge Hayser granted the Division's motion for summary judgment and denied the plaintiff's motion.

In May 2004, the taxpayer made three stock sales resulting in a net gain. N.J.S.A. 54A:2-1, approved on June 28, 2004, increased the tax rate percentage from 6.37% to 8.97% for gross income of \$500,000 or more.

Plaintiff stated he would not have conducted the stock transactions if he knew they would be subject to a higher tax. Therefore, the taxpayer believes that the tax increase "as applied to his transactions" should "(1) be declared void on equitable principles as the imposition of such tax constitutes a manifest injustice....," and "(2) the statutory enactment constitutes a violation of due process under the U.S. Constitution...."

The taxpayer also argued the principle of *Oberhand v. Director*, 193 N.J. 558 (2008), where the Court ruled that the retroactive application of State estate or transfer tax was unfair and unenforceable under the doctrine of manifest injustice in support of his claim.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[News](#)." For details about a particular auction, select "NJ Public Auction" at the beginning of its listing.

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The Court distinguished *Oberhand* opining “the focus is one transaction, event or occurrence giving rise to the tax liability, and not income realized over an entire year.”

Judge Hayser further opined:

Neither the expectations of the taxpayer for a static tax rate nor a taxing authority attempting to operate a taxation system by speculating or seeking to divine when income is subject to an income tax or which taxpayer would have avoided realizing income under varying circumstances, serves neither the public nor private needs. For a rational tax system based upon annual income to function, it must both meet the changing demands required of an annual state budget, while also fairly apportioning the resulting tax liability to all those who realize annual income, and not on their unpredictable transactions individually discrete or not, during the tax year. The alternative as suggested by the Plaintiff’s argument, would be a chaotic, unpredictable, arbitrary and unfair system that serves no one’s needs or legal obligations. □

the effective date of the recycling tax, which was enacted by P.L. 2007, c.311. The effective date is now April 1, 2008. Entities subject to the recycling tax are required to register with the Division of Taxation by April 1, 2008, and the first quarterly recycling tax returns and tax payments are due July 20, 2008. The provisions delaying the effective date of the tax are retroactive to January 13, 2008. The Act also adds type 27-A asbestos-containing waste to the list of types of waste included within the definition of “solid waste.” In addition, the Act treats recycling tax revenue as an exclusion to be added to calculations of the adjusted local property tax levy. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2007](#) [2008](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2007](#) [2008](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#) [2008](#) □



*important
phone
numbers*

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
Homestead Rebate Hotline
for Homeowners ... 1-888-238-1233
Homestead Rebate Hotline
for Tenants 1-888-213-8623
Property Tax Reimbursement
Hotline 1-800-882-6597
Earned Income Tax Credit
Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-588-3932
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7974
Motor Fuels Tax
Refunds 609-588-3688
Public Utility Tax 609-584-4337

In Our Legislature

Environmental Taxes and Fees Amendments to the Recycling Enhancement Act and Delay of Its Effective Date — P.L. 2008, c.6, enacted March 26, 2008, deferred

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State Treasurer Sworn In



David Rousseau was confirmed by the State Senate and sworn in as State Treasurer on April 7, 2008. He was sworn in as Acting State Treasurer on January 16, 2008, soon after Governor Jon S. Corzine announced his intention to nominate Mr. Rousseau to be State Treasurer.

Prior to becoming Acting State Treasurer, Mr. Rousseau served as Senior Advisor to the Governor for Budget and Fiscal Policy and as Deputy State Treasurer. In those roles, he worked closely with the Governor and Treasurer in developing and implementing the annual State budget and other fiscal policy issues.

Mr. Rousseau has spent his career working at high levels on the

State budget in the Legislative and Executive Branches of New Jersey government.

He served as Deputy State Treasurer from 2002 until 2006 and provided policy guidance to the Governor, Treasurer, and Governor's office on areas related to fiscal and budget policy including taxation issues, property tax relief, and reform. He also oversaw the operations of the Office of Management and Budget and participated in the operations of the Division of Taxation, Division of Pensions and Benefits, and the Office of Public Finance.

Mr. Rousseau was Senior Policy Advisor to the Senate President focusing on the budget before returning to the Treasury Department.

He served as the Budget Director for the Senate Democratic office from 1990 to 2002. He moved to the Senate staff after serving as Research and Project Coordinator for the Election Law Enforcement Commission.

Mr. Rousseau received a bachelor's degree from Temple University where he graduated cum laude. He holds an MBA from Rider University.

Mr. Rousseau is a lifelong Mercer County resident. He lives in Hamilton with his wife and two children. □



CORPORATION BUSINESS TAX

Retroactive NJ S Corporation Election

To provide uniform relief for corporations that have inadvertently failed to make a timely New Jersey S corporation election, the Division of Taxation has adopted procedures (N.J.A.C. 18:7-20.3) that enable a corporation to make a retroactive election to be recognized as a New Jersey S corporation.

Corporations requesting a retroactive election must complete and file a Retroactive S Election Application, [Form CBT-2553-R](#) and remit a non-refundable fee of \$100 for each tax year affected by the late filing. Form CBT-2553-R must be submitted with [Form CBT-2553](#), New Jersey S Corporation Election, if the corporation does not currently have S corporation status. If New Jersey S corporation status has previously been approved, a copy of the CBT-2553 form that was originally filed with the Division of Revenue must be submitted.

A retroactive election will only be granted if the proper forms and fees are submitted and all of the following criteria are satisfied:

- The corporation is authorized to do business in New Jersey and is registered with the Division of Taxation;
- All appropriate corporation business tax returns have been timely filed and the taxes timely paid as if the New Jersey S corporation election request had been previously approved;

- The completed Retroactive S Election Application is received before any assessment for a year covered by the request becomes final;
- The Division has not denied a previous late-filed New Jersey S election request; and
- All shareholders have filed tax returns, reported the appropriate S corporation income, and paid the related tax in full when due as if the New Jersey S corporation election had been previously approved. □

SALES AND USE TAX

Changes in UEZ Refund Filing Procedure

Beginning February 1, 2008, a new filing procedure took effect for qualified urban enterprise zone businesses claiming a refund of sales tax paid. In addition, P.L. 2007, Chapter 328, which was signed into law on January 13, 2008, and became effective immediately, broadened the exception for small businesses under the urban enterprise zone sales and use tax rebate program. Previously, only qualified businesses with annual gross receipts of less than \$1 million were provided a sales tax exemption at the point of purchase when making purchases for their own use in the urban enterprise zone. Businesses with gross receipts of \$1 million or more were required to pay the tax and then apply for a rebate of the amount paid. Chapter 328 increased the threshold to include small qualified businesses with less than \$3 million in annual gross

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Maureen Adams

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<i>Compliance</i>	Marita Sciarrotta
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changes in uez refund filing - from pg. 2

receipts, thus expanding the number of businesses eligible to obtain the exemption at the time of purchase.

On and after February 1, 2008, businesses still required to pay tax at the time of purchase and apply for a rebate must use the following procedure:

- Complete and file a refund claim on [Form A-3730-UEZ](#).
- Submit a spreadsheet ([Form A-3730-UEZ-1](#)) along with Form A-3730-UEZ that lists the individual transactions covered by the refund claim. The method used to submit the spreadsheet depends on the number of transactions included in the claim:

Method 1 – Electronic Spreadsheet (compact disk). Transactions: more than 25.

Method 2 – Manual Spreadsheet (on paper). Transactions: 25 or less.

- Documentation (e.g., invoices, proof of payment) is no longer required to be submitted with the refund claim. However, all supporting documentation must be retained by the taxpayer for a period of not less than 4 years from the postmark date of the claim. The Division reserves the right to request the supporting documentation (including schedules and statements) at any time during the 4-year period for the purpose of examination and verification of the refund.

For more information on urban enterprise zones go to the Division's Web site at: www.state.nj.us/treasury/taxation/uez.shtml □

LOCAL PROPERTY TAX Tax Deductions Certified

The 2007 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses, and veterans was delivered to the State Treasurer on September 14, 2007.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2007.

The total amount of property tax deductions for senior and disabled persons and surviving spouses for 2007 was \$20,409,862. That amount represents a decrease of 6% from 2006. The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2007 was 78,024. When compared to tax year 2006, the number of deductions decreased 4%.

For tax year 2007, the amount of veterans' deductions was \$71,667,069. That amount represents a decrease of 3% from 2006. The total number of veterans' deductions for 2007 was 281,305. When compared to tax year 2006, the number of deductions decreased 3%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of P.L. 1997, c.30. □

Public Outreach by Conference & Appeals Branch

Between October 2007 and January 2008, representatives from the Conference and Appeals Branch traveled New Jersey speaking to over 650 tax practitioners at 10 different venues. The presentations, which were aimed at increasing practitioners' familiarity with the Branch's practices and procedures, addressed each potential phase of the administrative appeal cycle, discussing what a taxpayer and/or their representative can and cannot expect.

Some of the topics addressed by the presentations were: time constraints, perfecting your protest, paying your tax liability without conceding to the protested issues, appealing a notice of assessment versus a notice of deficiency, surety, how cases are assigned, when you can expect your case to be assigned, the importance of providing substantiating documentation, tips to help streamline your case, your conference, final determinations, and Tax Court.

The Conference and Appeals Branch looks forward to continuing its public outreach initiatives as it strives to increase the efficiency of the administrative appeal process. If, through your professional affiliation, you would like to invite a representative from the Conference and Appeals Branch to speak to a group of thirty or more taxpayers and/or practitioners, please fax your request to Chief, Conference and Appeals Branch, at 609-324-4094. For more information about the Branch, visit www.state.nj.us/treasury/taxation/organization/confappl.shtml □



INHERITANCE/ESTATE TAX

Property Inherited by Domestic/Civil Union Partners

The New Jersey Domestic Partnership Act was signed into law on January 12, 2004, and applies to the estates of decedents dying on or after July 10, 2004. The New Jersey Civil Union Act was signed into law on December 21, 2006, and applies to the estates of decedents dying on or after February 19, 2007.

The Domestic Partnership Act provides that all transfers by will, survivorship, or contract to a surviving domestic partner are exempt from the New Jersey inheritance tax. This includes membership certificates or stock in a cooperative housing corporation and the value of

any pension, annuity, retirement allowance, or return of contributions. There is no provision in the Domestic Partnership Act which provides a New Jersey estate tax marital deduction for property passing to a surviving domestic partner.

Section 4 of the Civil Union Act gives civil union couples “all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.” Section 5n of the Act provides that “legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples” to “laws relating to taxes imposed by the State or a municipality including but not limited to homestead rebate tax allowances, tax deductions based on marital

status or exemptions from realty transfer tax based on marital status.” Section 92 of the Act provides that “whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” “widow,” “widower,” “widowed” or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this act.” A surviving civil union partner is exempt from the New Jersey inheritance tax. A surviving civil union partner may claim for New Jersey estate tax purposes a marital deduction equal to that permitted a surviving spouse under the provisions of the Internal Revenue Code in effect on December 31, 2001. Property passing to

Relationship	Inheritance Tax		Estate Tax – Marital Deduction	
	Date of Death		Date of Death	
	On/after 7/10/04 and prior to 2/19/07	On/after 2/19/07	Prior to 2/19/07	On/after 2/19/07
Civil union partner	Class A – Exempt ¹	Class A – Exempt ²	No	Yes ²
Same sex marriage valid in another jurisdiction	Class A – Exempt ¹	Class A – Exempt ²	No	Yes ²
Domestic partner	Class A – Exempt ¹	Class A – Exempt ¹	No	No
Child of a partner artificially inseminated during a recognized civil union or domestic partnership	Class A – Exempt (Child)	Class A – Exempt (Child)		
Child of a civil union partner not artificially inseminated during a recognized civil union and not adopted by the decedent	Class D – Subject to Tax ³	Class A – Exempt (Stepchild) ²		
Child of domestic partner not artificially inseminated during a recognized domestic partnership and not adopted by the decedent	Class D – Subject to Tax ³	Class D – Subject to Tax ³		
Domestic partner of son or daughter of decedent	Class D – Subject to Tax ³	Class D – Subject to Tax ³		
Civil union partner of son or daughter of decedent	Class D – Subject to Tax ³	Class C – Subject to Tax ⁴		
Child of a domestic or civil union partner adopted by the decedent	Class A – Exempt	Class A – Exempt		

¹ Under provisions of Domestic Partnership Act

² Under provisions of Civil Union Act

³ Other beneficiary under provisions of Domestic Partnership Act. Tax rates 15%–16%.

⁴ Same as wife/widow of son or husband/widower of daughter under provisions of the Civil Union Act. Tax rates 11%–16%.



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beneficiaries other than a surviving civil union partner is treated in the same manner as though the decedent had been survived by a spouse.

For additional information, write to Inheritance and Estate Tax Section, Individual Tax Audit Branch, P.O. Box 249, Trenton, NJ 08695-0249 or call 609-292-5033. □

**LOCAL PROPERTY TAX
Tax Assessors’
Calendar**

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. April 1 deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.

- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Certification of REAP aid due to each local unit for tax year received by County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction recipient’s illness or medical problem prevented the required March 1 filing.
- Extended deadline for filing assessment appeals in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

- Table of Aggregates completed by County Tax Board from assessor’s Tax Duplicates and Taxation Director’s certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; clerk of the Board of Freeholders; and clerk of each municipality in the county.

June 1–

- Assessors’ Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors’ Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans’ Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

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Interest 9.00%

The interest rate assessed on amounts due for the period April 1, 2008 – December 31, 2008, will be 9.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%



assessors' calendar - from page 5

2nd Monday in June-

- If the Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On November 14, 2007, a New Jersey State Grand Jury handed up an indictment charging Peter D. Kim, a resident of Franklin Lakes, New Jersey, with theft by failure to make required disposition of taxes in excess of \$75,000, the misapplication of taxes in excess of \$75,000, and the failure to turn over taxes in excess of \$75,000 to the Division of Taxation. Mr. Kim owned and operated Pioneer Automotive, Inc., doing business as Troycar Sales and Leasing, a company involved in the retail sale of used automobiles, for the period beginning April 2000 through January 2005. Taxation investigators monitored the business practices of Troycar for a period of time and determined that the business was not remitting appropriate sales tax. The Office of Criminal Investigation initiated an investigation into the sales tax allegations and determined that Mr. Kim collected over \$850,000 in sales tax from Troycar's customers between 2000 and 2004 but failed to remit the entrusted funds. Mr. Kim fled the country in early 2005 and an arrest warrant has been issued.
- On November 15, 2007, Hazem Abuali pled guilty in Union City Municipal Court to possession of contraband cigarettes (N.J.S.A. 54:52-18), transportation of contraband cigarettes (N.J.S.A. 54:40A-32), failure upon delivery to examine and return cigarettes not bearing the required New Jersey revenue stamp (N.J.S.A. 54:40A-25), and liability for the

tobacco products wholesale sales and use tax (N.J.S.A. 54:40B-5). On October 29, 2007, special agents of the Office of Criminal Investigation arrested Hazem Abuali of Philadelphia, Pennsylvania, an unlicensed distributor, at a North Jersey location and charged him with various offenses, including possession and transportation of contraband cigarettes. Confiscated at the time of arrest were cigarettes, cigars, and currency. The currency was forfeited to the State of New Jersey.

- On December 3, 2007, Christopher Nemeth, 40, of Stewartsville, his live-in girlfriend, Marisol Garcia, 37, and their company, Nemeth Enterprises Inc., were indicted by a State Grand Jury in a four-count indictment charging them with second-degree conspiracy, second-degree misapplication of government property, third-degree failure to file State quarterly payroll tax returns, and third-degree failure to pay or turn over \$207,000 in State payroll taxes on behalf of their employees. Nemeth runs the paving company from his home with Garcia's help. The company formerly did business as Nemeth Asphalt Paving Company, but the couple incorporated a successor entity, Nemeth Enterprises Inc., in Pennsylvania in 2006, with Garcia as sole owner and officer, in an alleged effort to avoid New Jersey auditors. The indictment alleges that from 1999 through the second quarter of 2007 the defendants failed to pay the State \$207,003.57 in payroll taxes. The sum includes \$62,603.77 collected from employee wages \$40,038.78 in gross income taxes and \$22,564.99 in

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criminal enforcement - from page 6

taxes for the State's unemployment and disability insurance funds (UI/DI taxes) which the defendants were required to hold in trust until remitted to the State. It also includes \$144,399.80 in required employer UI/DI taxes. Throughout that period, the defendants failed to file payroll tax returns, which must be filed quarterly with the Division of Taxation, and employer wage reports, which must be filed annually with the Department of Labor and Workforce Development. Nemeth routinely employed 10 to 12 workers who were laid off during the winter months, resulting in workers filing unemployment claims. The Department of Labor and Workforce Development paid out more than \$100,000 in unemployment benefits to Nemeth's workers during the years in question despite the fact that the company made no contributions to the unemployment insurance fund. Since 2004, the defendants have repeatedly resisted and evaded the State's efforts to compel the company to file wage reports and payroll tax returns, remit employee withholding taxes, and pay UI/DI taxes. The charges stem from a joint investigation by the Department of Labor and Workforce Development and the Division of Taxation and were presented to the State Grand Jury by the Division of Criminal Justice.

- On December 7, 2007, Terry Tolbert, supplier of contraband cigarettes to various retail locations, was sentenced to a three-year term in State prison and taken into custody by the Union

County Sheriff's Office. Previously, Tolbert had pled guilty to third-degree possession of cigarettes in the quantity equal to or greater than 2,000, to which are affixed counterfeit New Jersey revenue stamps, a violation of N.J.S.A. 54:40A-29c, and fourth-degree selling cigarettes not bearing the required revenue stamp in violation of N.J.S.A. 54:40A-28. Mr. Tolbert was a salesman for Tobacco Express, an unlicensed and illegitimate company, whose sole business appears to be the selling of contraband cigarettes. The investigation into the entire business operation continues. Federal authorities are now providing assistance.

- On December 13, 2007, Peter Zarycki, 41, of Forked River, was ordered to serve four years in State prison. Earlier, in September 2007, he pled guilty to two counts of failure to file a tax return and failure to pay tax in addition to ten counts of official misconduct. Peter Zarycki, a 17-year veteran of the Ocean County

Department of Corrections, was charged with official misconduct in connection with the 2005 disappearance of \$78,145 in funds found to be missing from inmate bail accounts. This was a joint investigation with the Ocean County Prosecutor's Office.

- On December 17, 2007, Rosa M. Castro, 51, and her boyfriend, Rafael E. Ramos, 51, pled guilty to charges contained in a March 29, 2007, State Grand Jury indictment. Castro pled guilty to third-degree theft by deception and third-degree money laundering. Ramos pled guilty to third-degree conspiracy. In pleading guilty, Castro admitted to filing 46 fraudulent New Jersey gross income tax returns between March and December of 2006. She allegedly received 22 refund checks from the Division of Taxation totaling \$15,209 and four homestead rebate checks totaling \$865. Ramos admitted that he allowed Castro to deposit the checks into two

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 50 or more 2006 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2007 New Jersey resident income tax returns electronically. More information is available at:

[E-File Mandate](#)
[Frequently Asked Questions](#)
[Opt Out Request Form, NJ-1040-O](#)
[Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at **nj.taxation@treas.state.nj.us**



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bank accounts that he maintained. This was a joint investigation with the Major Crimes Bureau of the Division of Criminal Justice.

- On December 21, 2007, Anant Patel, 46, of Roxbury, was ordered to serve 15 years in State prison and pay \$1.4 million in restitution. Harold Stamateris, 47, of Basking Ridge, was ordered to serve 10 years in State prison and pay \$3.7 million in restitution. In October 2007, Anant Patel, a former consultant to Jersey Central Power & Light (JCP&L), pled guilty in connection with a theft of \$11.5 million from a State energy rebate program. Patel pled guilty to charges of second-degree money laundering and second-degree theft. The investigation revealed that Patel conspired with two other men to obtain \$11.5 million in payments for bogus or inflated applications under the New Jersey Smart Start Buildings Program, which offers

rebates to companies that install more efficient lighting or HVAC systems. Patel was hired by JCP&L as a consultant to inspect and verify installation work under the program. Patel admitted that he signed off on work that was never performed and also created a number of bogus contracting and consulting companies to submit false invoices under the program. He admitted he laundered fraudulent rebate checks using a number of bank accounts. The investigation revealed that Patel conspired with Harold Stamateris, who managed the rebate program for JCP&L and was responsible for approving rebate applications. Stamateris pled guilty on February 6, 2007, to first-degree conspiracy, admitting he knowingly signed off on the fraudulent rebates. Patel and Stamateris carried out the fraudulent scheme with an electrical contractor, William D. Eaton Jr., 56, of Caldwell, who fatally shot himself on January 30, 2007, after his

arrest in this case. The case was referred to the Division of Criminal Justice by JCP&L's internal audit group. The case was investigated by the Division of Criminal Justice – Major Financial Crimes Bureau and the Office of Criminal Investigation with assistance from JCP&L auditors.

- On February 6, 2008, Rosa Victoria Rivera (a.k.a. Vicky Roczana Rivera-Peralta), 40, of Lyndhurst, was sentenced to ten years in State prison by Superior Court Judge Thomas P. Kelly in Mercer County. The judge also sentenced Rivera's co-defendant and former boyfriend, John Arturo Perez Silva (a.k.a. John Perez), 39, of Belleville, to three years in State prison. On December 7, 2007, Rivera pled guilty to first-degree conspiracy to commit money laundering and theft by deception. Silva pled guilty to second-degree conspiracy. They agreed to pay full restitution to the State. Rivera and Silva admitted that between February 6, 2004, and July 11, 2006, they, along with Rivera's son, Wilson Armando Piños Rivera (a.k.a. Wilson Piños), 21, filed 540 fraudulent tax returns. About 400 of the returns were filed electronically and the remaining returns were filed on paper. A majority of the refund checks were mailed to mailbox drops leased by either Rivera or her co-defendants. More than 275 checks totaling \$828,272 were deposited in bank accounts maintained by Rivera or Silva, which the defendants allegedly used to pay personal expenses. Rivera admitted that more than \$500,000 in checks was deposited into accounts she maintained. The

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

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Division of Taxation was able to stop payment on the remaining 264 checks totaling \$1,005,030. The case against Wilson Armando Piños Rivera is pending.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$4,971,870 for the period July 2007 through mid-February 2008. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

9-1-1 System and Emergency Response Fee

Voice Over Internet Protocol (VoIP) — See Sales and Use Tax.

Administration

Business Listed on a State Contract

— The Division responded to an inquiry concerning whether a business that is “listed on the State contract” used by a contracting (government) agency must provide a Business Registration Certificate (BRC) to the agency. P.L. 2004, c.57, effective September 1, 2004, applies to goods and services sold by a business organization to the principal departments in the executive branch of the State government and any division, board, bureau, office, commission, or other instrumentality within or created by such department, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit such as county or municipal government, including any contracting unit as defined elsewhere in the law. The law

requires that for all such transactions, the business organization must provide the contracting agency with proof of business registration, which the Divisions of Taxation and Revenue in the Department of the Treasury, and the Division of Local Government Services in the Department of Community Affairs have determined to be the BRC issued by the Division of Revenue. Accordingly, the question to be answered is not whether the business organization is “listed on the State contract,” but whether it has a BRC. In any event, it must forward a copy of its BRC to the agency before the agency can contract with it.

Corporation Business Tax

IRC §1231 Capital Loss — For New Jersey corporation business tax purposes, a corporation’s net income is based on the corporation’s Federal taxable income without deductions for net operating losses and other special deductions subject to certain adjustments. The Corporation Business Tax Act does not address the characterization of certain gains or losses as subject to tax. N.J.S.A. 54:10A-4(k); N.J.A.C. 18:7-5.1(b).

The IRC §1231 loss is determined using Federal Form 4797 and the result is entered on Line 9 of Federal Form 1120. (New Jersey allows the IRC §1231 loss and has not decoupled from it.)

Since the amounts reported on Lines 1–28 of Schedule A, Form CBT-100 must be the same as the amounts reported on Lines 1–28 of Form 1120, any deduction from Federal corporate income taken above Line 28 on Form 1120 automatically flows through to Form CBT-100.

Therefore, there is no line on the CBT-100 to note the IRC §1231 loss since that deduction was already taken in calculating the Federal income on Form 1120, which automatically flows through to the CBT-100 tax return.

Short Period Allocation for Foreign Corporations

— If a taxpayer is required to file a return covering an accounting period of less than 12 months, an adjustment of entire net income may be required under N.J.A.C. 18:7-12.1. A short period return is required if a foreign corporation acquires a taxable status in New Jersey after the commencement of its Federal accounting period, and its New Jersey corporation business tax return covers a period less than the accounting period reported on the Federal income tax return.

The proration procedures indicate that when a foreign corporation has a short period return that covers a period other than the accounting period reported for Federal income tax

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purposes, the adjusted entire net income (line 38 of Schedule A) is divided by the number of calendar months, or part of a month, covered by the Federal income tax return, and the result is multiplied by the number of calendar months, or part of a month, covered by the short period return.

If a taxpayer is entitled and elects to allocate less than the full amount of its entire net income to New Jersey, the allocation fractions must reflect, both in the numerator and denominator, only the period covered by the short period return. This would be reflected on Schedule J, Part III (computation of allocation factor). For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

Cosmetic Medical Procedures Gross Receipts Tax

Cosmetic Dental Procedures — The Division has received several inquiries from dental offices regarding the taxability of various cosmetic dental procedures and cosmetic dental supplies sold by dentists.

The sales and use tax, imposed under N.J.S.A. 54:32B-1 et seq., and the cosmetic medical procedures

gross receipts tax (CMPGRT), imposed under N.J.S.A. 54:32E-1, are two separate and distinct taxes. A transaction may be subject to sales tax or to CMPGRT or to neither tax, but cannot be subject to both.

If a dentist offers teeth whitening (solely for cosmetic purposes), those charges for teeth whitening are subject to the 6% CMPGRT only if the dentist actually performs the procedure in the dental office or clinic. If, instead, the dentist sells the patient a teeth whitening kit for the patient to use at home, the sale of the bleaching supplies is subject to 7% sales tax, to be collected and remitted by the dentist. However, since the dentist has not performed the bleaching procedure on the patient, there is no receipt for a cosmetic medical procedure on which the CMPGRT can be imposed.

Teeth whitening is currently the most common cosmetic medical procedure performed by dentists and subject to the CMPGRT. Numerous dental procedures that may improve a patient's appearance are not subject to the CMPGRT if their primary purpose is to correct congenital or developmental abnormalities or damage caused by trauma or illness. For example, charges for reconstructive

dental surgery, orthodontic services, and the installation of dental implants to replace missing teeth are not subject to the CMPGRT, even though these services effect an improvement in patients' appearance. (Generally, these charges will also be deductible as medical expenses for Federal income tax purposes.) Similarly, veneers or bonding procedures are not subject to the CMPGRT unless done solely for cosmetic purposes.

A veneer is a thin covering of the facial surface of a tooth usually constructed of a tooth colored material (like porcelain or ceramic) used to restore discolored, damaged, misshapen, or misaligned teeth. Together with crowns, composite restorations, and amalgam restorations, veneers are recognized as restorative procedures and commonly are covered by insurance. Veneers are placed by removing a thin layer of tooth structure and then bonding the laminate to the tooth. Bonding is considered to be a restorative procedure. It is a process by which two or more components are made integral by mechanical and/or chemical adhesion at their interface. Bonding also involves removing a thin layer

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**Enforcement Summary Statistics
Fourth Quarter 2007**

Following is a summary of enforcement actions for the quarter ending December 31, 2007.

• Bank Levies	1,454	• Seizures	119
• Certificates of Debt:		• Auctions	4
Total Number	5,775	• Referrals to the Attorney General's Office	477
Total Amount	\$41,689,938		

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc1.shtml



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of tooth structure. Typically, bonding is billed as a composite restoration for insurance purposes.

Hotel/Motel Occupancy Fee
Complimentary Hotel Rooms — See Sales and Use Tax.

Sales and Use Tax
Complimentary Hotel Rooms — The occupancy of a room in a hotel or motel in this State is subject to New Jersey sales tax. N.J.S.A. 54:32B-3(d). A State occupancy fee is imposed on charges for the rental of a room in a hotel, motel, or similar facility. In addition, certain municipalities are authorized to enact a municipal occupancy tax.

However, sales tax and the hotel/motel occupancy fee and municipal occupancy tax are not imposed on a room that is provided to a guest as a “complimentary.” If the room is partially comped and the guest pays a reduced rental charge, sales tax and the hotel/motel occupancy fee and municipal occupancy tax are imposed on the amount actually paid by the guest.

For more information on the hotel/motel occupancy fee and municipal occupancy tax, see: www.state.nj.us/treasury/taxation/hotelfee.shtml

Cosmetic Dental Procedures — See Cosmetic Medical Procedures Gross Receipts Tax.

Sales Price Includes Reimbursed Expenses — The definition of the taxable sales price is set forth at N.J.S.A. 54:32B-2(o)(1) which states that:

- (1) Sales price is the measure subject to sales tax and means the total amount of consideration, including cash, credit,

property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller’s cost of the property sold;
- (B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;...

For example, a repairman incurs mileage, toll, and lodging expenses as part of travelling to the customer’s location to perform a taxable repair service. When he purchases the lodging, the repairman will pay sales tax, hotel/motel occupancy fee and, if applicable, municipal occupancy tax. Tolls and gasoline are not subject to sales tax.

When these expenses are passed along to the customer, they become part of the sales price, regardless of

whether they are included in a lump-sum charge for the repair service or separately itemized to the customer. If the transaction is for a service that is exempt from sales tax, then the reimbursed expenses would not be subject to tax. If the transaction is for a service that is subject to sales tax, then the reimbursed expenses would be subject to tax.

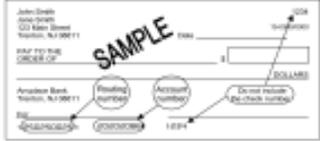
Temporary Fencing For Livestock Farms — The Division was asked whether a livestock farmer’s purchase of temporary fencing material qualifies for the farming use exemption under N.J.S.A. 54:32B-8.16, which exempts “receipts from sales of tangible personal property and production and conservation services to a farmer for use and consumption directly and primarily in the production, handling and preservation for sale of agricultural or horticultural commodities at the farming enterprise of that farmer,” with certain exceptions set forth in the provision.

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The farmer, who raises cattle for sale, explained that the fencing material consists of a roll of wire, metal or fiberglass posts, an electrical charger, and an insulator. The fencing is secured in place with the posts.

The fencing, once installed, controls the farmer's cattle while they are grazing. It is easily removed and re-installed in a new location when the pasture needs to be rotated. Thus, it is a tool for managing the way the cattle feed.

Based on the way this temporary fencing is used on the purchaser's farm, it is deemed to be farm equipment used directly and primarily in producing cattle (an agricultural commodity) for sale. Therefore, it qualifies for exemption under N.J.S.A. 54:32B-8.16. The farmer should give the supplier a properly completed Farmer's Exemption Certificate, Form ST-7, when purchasing the fencing material.

The fence is temporary, easily moved, and in fact is moved every time the pasture is rotated. It is not a building or structure, and therefore materials used to construct it are not excluded from the exemption under N.J.S.A. 54:32B-8.16b(3). Temporary fencing materials purchased by other kinds of farmers will not necessarily qualify for exemption. The livestock farmer's entitlement to exemption is based on the specific purpose that the fencing serves in the raising of cattle for sale.

Voice Over Internet Protocol (VoIP) — The Division responded to an inquiry regarding the taxability of voice over Internet protocol (VoIP).

The Sales and Use Tax Act defines "telecommunications" as "the act or privilege of originating or receiving messages or information through the use of any kind of one-way or two-way communication; including but not limited to voice..., computer..., using electronic or electromagnetic methods, and all services and equipment provided in connection therewith...." N.J.S.A. 54:32B-2(cc).

Retail sales of telecommunications services sourced to this State are subject to New Jersey sales tax based upon the customer's place of primary use. N.J.S.A. 54:32B-3(f); N.J.S.A. 54:32B-3.4(b). "Place of primary use" is defined as "the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer...."

Whether voice over Internet services are viewed as voice transmissions by other than traditional means or as data transmissions, the service falls within the Sales and Use Tax Act's definition of telecommunications. Therefore, VoIP service is subject to New Jersey sales tax for services sourced to this State.

Legislation enacted in 2004 (P.L. 2004, c.48) imposed a "9-1-1 System

and Emergency Response Assessment" fee of \$.90 to be charged for each voice grade access service line provided as part of a telephone exchange service and each mobile telephone number. Telephone exchange service includes VoIP service as well as cable telephony. Thus, each periodic bill for VoIP service must include the \$.90 fee. □

In Our Courts

Gross Income Tax

Reporting of Income in the Proper Category – *Michael & Helen Kaplan v. Director, Division of Taxation*, Docket No. 000032-2006, and *Morris & Sandra Lisman-Kaplan v. Director, Division of Taxation*, Docket No. 000039-2006, decided January 8, 2008.

In a published opinion, Judge Kuskin affirmed the Director's assessment.

Michael and Morris Kaplan were partners in a rental real estate partnership. Upon liquidation, the rental real estate partnership distributed properties individually to the Kaplans. Michael and Morris Kaplan received these properties as single-member limited liability companies (LLC).

The Kaplans maintained their single-member LLC designations on the distributed partnership properties in order to attain favorable capital gains treatment on their Federal income tax returns.

Prior to 2002, the Kaplans identified two Georgia properties for acquisition. The Kaplans entered into an IRC Section 1031 tax-free exchange of property. The Kaplans' accountant and attorney advised them that in order to comply with IRC §1031

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Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[News](#)." For details about a particular auction, select "NJ Public Auction at the beginning of its listing."

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and the regulations thereunder, ownership of the Georgia properties in their individual capacities was required because the properties the taxpayers were exchanging were owned by them individually.

The Kaplans reported the losses from their Georgia properties on their New Jersey gross income tax returns as net gains or net income derived from or in the form of rents, royalties, patents, and copyrights. The taxpayers improperly reported and netted partnership income against the rental losses.

The taxpayers were sent notices of deficiency denying the improper netting of partnership income against rental income losses. For New Jersey gross income tax, partnership income per N.J.S.A. 54A:5-1k must be reported in the category of income, distributive share of partnership income.

The taxpayers filed complaints in Tax Court challenging the Division's assessment. After the taxpayers filed their complaints, they claimed that their holding of the Georgia properties should really be considered a partnership LLC, not a single-member LLC, because the brothers Kaplan had arranged many of their business affairs in this manner, a tenancy in common had been established, and the business affairs of the Georgia properties were operated as if they were a partnership. This designation has impact on the Kaplans' New Jersey resident tax returns, since, if the ownership of the Georgia apartments was considered a partnership, the rental loss from the Georgia properties would be allowed to be netted against partnership income in the

category distributive share of partnership income. Conversely, a designation as single-member LLC would require that the Kaplans report the rental losses from the Georgia apartments in the net gains or net income derived from or in the form of rents, royalties, patents, and copyrights category, thus denying the opportunity to net any of the losses from the Georgia apartments against any of the Kaplans' other taxable New Jersey income.

N.J.A.C. 18:35-1.3(a)(1) states:

Only entities that qualify for and elect to be treated as partnerships for federal tax purposes and are in business shall be treated as partnerships under the Gross Income Tax Act.

In rendering its decision, the Court opined:

Plaintiffs seek the benefit of two different theories of taxation applied simultaneously. They wish to preserve, for tax years 2002 and 2003, their individual ownership status with respect to the Georgia partnership in order to preserve their qualification for a tax free exchange under IRC § 1031, while demanding that the Director treat the very same ownership entities as partnerships in order to enable plaintiffs to realize a tax benefit under the Gross Income Tax Act. Plaintiffs cannot have it both ways.

The Court underscored the general rule that New Jersey gross income must be reported in the proper category as defined in N.J.S.A. 54A:5-1. □

In Our Legislature

Administration

Professional Conduct of Tax Preparers — P.L. 2007, c.258, enacted on January 11, 2008, and effective April 1, 2008, imposes certain standards for the professional conduct of tax preparers and penalties for violation of those standards. This Act is administered by the Department of Banking and Insurance.

Corporation Business Tax

Credit for Digital Media Content Production — P.L. 2007, c.257, enacted on January 11, 2008, and effective immediately, establishes a corporation business tax credit for 20 percent of the expenses of producing certain digital media content in New Jersey. The Act sets a limit on the combined total value of credits a business may claim for digital media content creation and film production credits. It also specifies that a business claiming tax credits for job creation for digital media production may not base its claim on job creation that is used as a basis for other types of grants or tax credits under the State's other business incentive and grant programs.

Urban Transit Hub Tax Credit Act

— P.L. 2007, c.346, enacted on January 13, 2008, and effective immediately, establishes a tax credit program for businesses that engage in certain kinds of capital investments and increases in full-time employment in urban rail transit hubs. Urban transit hubs include property within a half-mile radius of the midpoint of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail station platform area. The Act will be

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implemented by the New Jersey Commerce Commission in consultation with the Division of Taxation.

Gross Income Tax

Checkoff for New Jersey Veterans Haven Support Fund — P.L. 2007, c.233, enacted on January 3, 2008, effective immediately, and applicable to taxable years beginning on or after January 1, 2008, establishes a New Jersey Veterans Haven Support Fund and allows taxpayers to make contributions to this fund through an option on the individual gross income tax return.

Urban Transit Hub Tax Credit Act — P.L. 2007, c.346. See Corporation Business Tax.

Environmental Taxes and Fees

Recycling Tax and Expiration of Solid Waste Services Tax — P.L. 2007, c.311, enacted on January 13, 2008, imposes a \$3-per-ton recycling tax, effective immediately, on solid waste accepted for disposal or transfer at a solid waste facility as well as on solid waste collected by a solid waste collector that transports solid waste for transshipment or direct transportation to an out-of-State disposal site. In addition, the Act provided for expiration of the solid waste services tax on February 1, 2008. Recycling tax revenues are deposited in the State Recycling Fund, administered by the Department of Environmental Protection, and used for the purposes enumerated in the Act.

Electronic Waste Management Act — P.L. 2007, c.347, enacted on January 13, 2008, and effective immediately, establishes a recycling system for used electronic devices and components. It establishes a

Used Television Recycling and Management Program Fund in the Department of the Treasury, administered by the Department of Environmental Protection, and containing funds generated by registration fees and market share payments to be paid by manufacturers.

Local Property Tax

Assessment Appeal Deadlines — P.L. 2007, c.256, enacted January 11, 2008, and effective immediately, changes the deadline for appeals of certain property tax assessments. When there has been a municipality-wide revaluation or reassessment, a taxpayer or taxing district may appeal to the county board of taxation on or before May 1, or if the assessed value of the property exceeds \$750,000, may instead file a complaint directly with the State Tax Court.

Short-Term Property Tax Exemptions and Abatements — P.L. 2007, c.268, enacted on January 13, 2008, and effective immediately, permits short-term property tax exemptions to begin immediately following the completion of a project instead of in the next tax year following the tax year when the project was completed.

Property Tax Exemption for Spouses of Disabled Veterans — P.L. 2007, c.317, enacted January 13, 2008, and effective immediately, allows the surviving spouse of a disabled veteran to claim a property tax exemption when the veteran's disability declaration was granted after death.

Calculation of Reserve for Uncollected Property Taxes — P.L. 2007, c.344, enacted January 13, 2008, and effective immediately, lowers the threshold for Tax Court and county tax board judgments against

municipalities by changing the method of calculation of the reserve for uncollected taxes.

Local Taxes and Fees

Changes in Local Payroll Tax Provisions — P.L. 2007, c.294, enacted January 13, 2008, and effective immediately, amends the Local Tax Authorization Act to permit municipalities that impose payroll taxes by ordinance to enact ordinances allowing the assessment of interest charges on delinquent payroll taxes owed to the municipality.

Municipal Special Event Parking Surcharge — P.L. 2007, c.296, enacted January 13, 2008, and effective immediately, authorizes municipalities to enact ordinances imposing a 7% "special event" parking tax surcharge on charges for parking, garaging, or storing motor vehicles for special events held in the municipality on weekday evenings, weekends, and holidays.

Municipal Surcharge on Charges for Admission to Major Places of Amusement — P.L. 2007, c.302, enacted on January 13, 2008, and effective immediately, authorizes municipalities to adopt ordinances imposing a 5% surcharge on admission charges to certain major places of amusement that are also subject to New Jersey sales tax pursuant to N.J.S.A. 54:32B-3(e)(1). The surcharge is to be collected by the same people who collect the admission charges from customers, who must then remit the surcharges collected and submit monthly tax returns reporting the surcharge to the Division of Taxation. Revenue from this surcharge collected in each municipality is distributed to each municipality by the State Treasurer.

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Miscellaneous

Charity Care Fraud Prevention and Detection Act — P.L. 2007, c.217, enacted on December 20, 2007, and effective January 19, 2008, establishes procedures to prevent fraud and correct mistakes in the charity health care system. This Act provides that the State Treasurer and the Commissioner of Health and Senior Services will establish an interagency agreement under which the Division of Taxation will conduct random checks of personal State income tax returns filed by individuals who have been determined to be eligible for charity health care.

Extension of Eligibility of Business Relocation and Retention Tax Credits — P.L. 2007, c.310, enacted January 13, 2008, and effective immediately, amends the Business Retention and Relocation Assistance Act. It extends eligibility for “tax credits” to businesses relocating at least 50 full-time jobs from existing locations within this State to new locations in this State. Previously, the threshold for eligibility was that an employer relocate 250 jobs. The “tax credits” are granted by the Commerce and Economic Growth Commission.

Motor Fuels Tax

Penalties for Motor Fuel Sale Violations — P.L. 2007, c.221, enacted January 3, 2008, and effective on that date, increases the monetary penalties for violations of the law governing retail sales of motor fuels.

Sales and Use Tax

Changes in Urban Enterprise Zone Sales Tax Rebate Program — P.L. 2007, c.328, enacted on January 13, 2008, and effective immediately, amends the definition of “small business” applicable to the UEZ sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$1 million to less than \$3 million. “Small businesses” are an exception to the requirement that qualified UEZ businesses claiming exemption from sales tax on purchases for their own use in the zone must first pay the tax at the point of purchase and then apply for a refund of the tax paid. “Small businesses,” as defined in the Act, may instead claim the exemption at the point of sale. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2007](#) [2008](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2007](#) [2008](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#) [2008](#) □



*important
phone
numbers*

- Customer Service Ctr 609-292-6400
- Automated Tax Info . 1-800-323-4400
- 609-826-4400
- Homestead Rebate Hotline
for Homeowners .. 1-888-238-1233
- Homestead Rebate Hotline
for Tenants 1-888-213-8623
- Property Tax Reimbursement
Hotline 1-800-882-6597
- Earned Income Tax Credit
Information 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-588-3932
- Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax 609-292-5033
- Local Property Tax 609-292-7974
- Motor Fuels Tax
Refunds 609-588-3688
- Public Utility Tax 609-584-4337

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2007 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
30	1/26/07	Authorizes eligible municipalities to create sports and entertainment districts and to impose additional taxes therein to finance the development of sports and entertainment facilities.	MIS	A-3835
43	2/21/07	Establishes the New Jersey Tax and Fiscal Policy Study Commission to study the State and local tax structure and related fiscal issues.	MIS	S-50
62	4/3/07	Establishes homestead credits for homeowners calculated as a percentage of property taxes paid during the previous year and imposes a 4% cap on local tax levies.	PTRP	A-1
63	4/3/07	The "Uniform Shared Services and Consolidation Act" and other provisions encourage savings among local units of government, implement user-friendly budgets, and expand the authority of county school superintendents.	LPT	A-4(1R)
86	5/4/07	The "Reduced Cigarette Ignition Propensity and Firefighter Protection Act" establishes requirements to ensure that cigarettes sold in the State satisfy fire safety standards and allows the Division of Taxation to inspect cigarettes to determine whether they are marked as required.	MIS	ACS for A-2575(1R)
89	5/6/07	Increases the amount of State tax credits granted to businesses providing funding to qualified neighborhood revitalization projects.	MIS	S-2095(1R)
90	5/6/07	Permits short-term property tax exemption or abatement for owners of homes located in a redevelopment area that were destroyed by fire when reconstruction or renovation is performed by a charitable entity or for-profit entity that uses volunteer labor.	LPT	ACS for A-3334
91	5/6/07	Permits short-term property tax exemption or abatement for certain single-family homes located in a redevelopment area that are improved to accommodate totally disabled persons when reconstruction or renovation is performed by a charitable entity or for-profit entity that uses volunteer labor.	LPT	A-3768
94	5/10/07	Provides certain manufacturing facilities a seven-year exemption from sales tax imposed on energy and utility services and from the TEFA unit rate surcharge.	S&U	A-3759(1R)
100	6/28/07	Makes several changes in tax compliance procedures in order to enhance tax collection and increase revenue.	ALL	A-5002(1R)
101	6/28/07	Establishes a tax clearance certificate program for awards of certain business assistance and incentives.	MIS	A-5003

2007 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
102	6/28/07	Imposes personal liability on certain persons required to collect Cape May County tourism sales tax, Atlantic City luxury tax, hotel and motel occupancy fee, 9-1-1 system and emergency response fee, and cosmetic medical procedures gross receipts tax.	MULT	A-5004
105	6/28/07	Exempts membership fees and dues of certain governmental and charitable clubs and organizations, municipal parking and garaging, and certain parking fees at Atlantic City casinos from sales and use tax.	S&U	SCS for S-2269 and S-2289(3R)
106	6/28/07	Requires that lottery prizes over \$600 be offset to satisfy certain debts.	MIS	S-2400
109	6/28/07	Expands eligibility for the New Jersey earned income tax credit and enhances the benefit amount.	GIT	S-2647
114	7/13/07	Establishes penalties for employers who misclassify construction workers as independent contractors.	GIT	A-4009(2R)
157	8/21/07	Clarifies intent and effect of requirements of P.L. 2004, c.183 with respect to historic site real property tax exemptions.	LPT	ACS for A-4126
195	10/26/07	Prohibits regulation of certain aspects of voice over Internet protocol and Internet protocol-enabled services.	MIS	A-4339(1R)
200	11/2/07	Requires certain disclosures of information by corporations that receive development subsidies.	MULT	S-1213(1R)
217	12/20/07	Establishes procedures to prevent fraud and correct mistakes in the charity health care system.	MISC	A-4295(2R)
221	1/3/08	Increases the monetary penalty amounts for violations of the law regulating the retail sale of motor fuels.	MFT	S-383
233	1/3/08	Provides for voluntary contributions by taxpayers on gross income tax returns for the New Jersey Veterans Haven Support Fund.	GIT	A-2663
256	1/11/08	Changes the filing deadline for assessment appeals following municipality-wide revaluation or reassessment.	LPT	S-1519(2R)
257	1/11/08	Provides a corporation business tax credit for certain digital media content production expenses.	CBT	S-2526(2R)
258	1/11/08	Imposes certain standards for the professional conduct of tax preparers and penalties for the violation of those standards.	MISC	A-1698(3R)
268	1/13/08	Permits short-term property tax exemptions and abatements to begin immediately following completion of a project.	LPT	S-824(1R)
294	1/13/08	Permits municipalities that impose local payroll taxes to assess interest when the taxes are delinquent.	MISC	S-2888(1R)

2007 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
296	1/13/08	Authorizes municipalities to impose a 7% special event parking tax surcharge for special events held on weekday evenings, weekends, and holidays.	MISC	S-2891(1R)
302	1/13/08	Authorizes municipalities to impose a 5% surcharge on admission charges to certain major places of amusement.	MISC	S-2971(2R)
310	1/13/08	Lowers the minimum full-time jobs requirement for business relocation and retention tax credits.	MISC	A-1696
311	1/13/08	Imposes a \$3-per-ton recycling tax on solid waste accepted for disposal or transfer at a solid waste facility as well as on solid waste collected for transshipment or direct transportation to an out-of-State disposal site. The Act also provides for the expiration of the solid waste services tax on February 1, 2008.	ENV	ACS For A-1886(1R)
317	1/13/08	Allows the surviving spouse of a disabled veteran to claim a property tax exemption when the veteran's disability declaration is granted after death.	LPT	A-2426
328	1/13/08	Broadens the exception for small businesses under the urban enterprise zone sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$1 million to less than \$3 million.	S&U	A-3938(3R)
344	1/13/08	Lowers the threshold for Tax Court and county tax board judgments against municipalities by changing the method of calculation of the reserve for uncollected taxes.	LPT	A-4667
346	1/13/08	Establishes the "Urban Transit Hub Tax Credit Act" allowing tax credits to certain businesses for certain capital investments in urban transit hubs.	CBT/GIT	S-3043(1R)
347	1/13/08	Establishes a recycling system for used electronic devices and components.	ENV	ACS for A-3572

2007 TAX LAWS (*continued*)

***Legend for 2007 Tax Laws**

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TIR = Motor Vehicle Tire Fee
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
HMO = Hotel Motel Occupancies	TPT = Tobacco Products Tax
IPT = Insurance Premium Tax	

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What's New for Tax Year 2007

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Practitioners' E-File Mandate** — Tax practitioners who prepared 50 or more 2006 New Jersey resident income tax returns must use one of the New Jersey electronic methods (NJ WebFile or NJ E-File) to file all 2007 New Jersey resident income tax returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so. A [list](#) of links to materials relating to this requirement appears on page 7.
- **Earned Income Tax Credit** — Eligibility for the New Jersey Earned Income Tax Credit (NJEITC) has been expanded so that all taxpayers who are eligible and file for a Federal earned income credit can also receive a New Jersey credit in the amount equal to 20% of their Federal benefit. Previously, eligible applicants had to have New Jersey gross income of \$20,000 or less and at least one qualifying child.

For tax year 2008 and thereafter, the percentage used to calculate the NJEITC will increase as follows: For tax year 2008 the amount of the New Jersey credit will be equal to 22.5% of the applicant's Federal earned income credit. The amount will increase to 25% of the Federal earned income credit for tax year 2009 and thereafter.

- **Pension Exclusion Line Moved** — Eligible taxpayers will now claim the New Jersey Pension Exclusion on Line 27a after calculating their total taxable income (before exclusions) on Line 26. This change will make it easier for filers to determine whether or not they meet the income requirement for the Pension and Other Retirement Income Exclusions (total income for the entire year of \$100,000 or less).
- **Credit for Taxes Paid to Other Jurisdictions** — *Jurisdiction Code*. Resident taxpayers who claim a credit for taxes paid to other jurisdictions are now required to enter a two-digit code for the jurisdiction for which they are claiming a credit at Line 39, Form NJ-1040. A list of jurisdiction codes appears in the NJ-1040 instruction booklet.

Philadelphia Wage Tax Rate. The nonresident wage tax rate for 2007 is 3.7557%.

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Property Tax Relief Programs

- **Homestead Rebate Program** — The Homestead Rebate Program provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or tenant on October 1, 2007. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

Tenants who meet the eligibility requirements use the application in the New Jersey income tax return packet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax return packet. Applications for the homeowner rebate are expected to be mailed in the spring, and homeowners will apply either online or by phone. More information will be posted to our Web site as it becomes available.

- **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2007 must have total annual income *less than*:

- 2007:** \$45,135 if single, or \$55,344 (combined income) if married or in a civil union, and
- 2006:** \$43,693 if single, or \$53,576 (combined income) if married.

Benefits available under this program are subject to change.

Civil Unions

- The Civil Union Act (P.L. 2006, c.103) established civil unions in New Jersey for couples of the same sex. Effective for tax years beginning on or after January 1, 2007, partners to a civil union recognized under New Jersey law must file their New Jersey income tax returns and property tax relief program applications using the same filing statuses accorded spouses under New Jersey Gross Income Tax Law.

Package NJX Discontinued

- Package NJX has been discontinued for tax year 2007 and after. Most New Jersey tax forms are available [online](#). □

INHERITANCE/ESTATE TAX **Estate Tax Filing Requirements**

The New Jersey estate tax is based on the credit for state death taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001. The credit calculation includes all of a decedent's property wherever it may be located. The amount of the New Jersey estate tax is the maximum credit that would have been allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, against the Federal estate tax that would have been payable under the provisions of the Internal Revenue Code in effect on December 31, 2001. In determining the New Jersey estate tax, the Federal estate tax that would have been payable in 2001 and not the Federal estate tax that is actually paid must be used.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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estate tax filing - from page 2

N.J.S.A. 54:38-7 requires that a copy of any estate tax return filed with the Federal government for the year of a decedent's death must be filed with the Division of Taxation. Additionally, the statute requires that when the Form 706 Method is used, a 2001 Federal Form 706 must be completed and filed with the Division. The 2001 Federal estate tax return and instructions are available on the Division's Web site at: www.state.nj.us/treasury/taxation/prntinh.shtml

As an alternative to filing a 2001 Federal estate tax return (Form 706 Method) the New Jersey Simplified Tax System may be used in certain cases. The Simplified Tax System is not designed for use in all situations. It cannot be used in cases where a Federal tax return is filed or required to be filed with the Internal Revenue Service. The Simplified Tax System may be used only in situations where it produces a tax liability similar to the tax liability produced using the Form 706 Method. The purpose of the Simplified Tax System is to enable a taxpayer to calculate the amount of tax notwithstanding the lack or paucity of information for compliance due to such factors as the absence of an estate valuation made for Federal estate tax purposes or the absence of a measure of the impact of gifts made during the lifetime of a decedent.

The tax as computed is reduced by the portion of the tax that is attributable to property located outside New Jersey. This generally includes real and tangible personal property located in another jurisdiction. Intangible personal property is normally deemed for tax purposes

to be located in New Jersey regardless of where it is actually located.

$$\frac{\text{Gross Value of Out-of-State Property}}{\text{NJ Gross Estate Wherever Located}} \times \frac{\text{Tax Due on Entire Gross Estate Wherever Located}}{\text{NJ Gross Estate Wherever Located}} = \text{Reduction}$$

□

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eleven persons passed the September 29, 2007, C.T.A. exam. They are:

Burlington County: James C. Rhoads, Moorestown Township.

Cape May County: Jennifer M. Dowe, Lower Township; Michelle H. Johnson, North Wildwood City.

Gloucester County: John L. Clements III, Washington Township.

Hunterdon County: Craig R. Brotons, Clinton Town.

Middlesex County: Rocco DeFranco, Old Bridge Township; Brenda L. Issacs, New Brunswick City; Tricia A. Mercado-Spano, Helmetta Borough.

Monmouth County: Michael D. Mirne, Marlboro Township.

Ocean County: Craig A. Enz, Jackson Township.

Sussex County: Mary Louise Hennighan, Newton Town.

The next examination is scheduled for March 29, 2008. The deadline to file applications for this exam is February 28, 2008. The filing fee is \$10. If you have any questions regarding this exam, please contact Anna Auletta-Smielek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of each Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.



assessors' calendar - from page 3

- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.
- "U.E.Z. Exemption Report" and "Five-Year Limited Exemption Report" filed with County Tax Board by assessor.

January 25-

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior)-

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1-

- After February 1, the assessor or County Tax Board shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year's property tax deduction by collector.

February 10-

- Certification of bulk mailing of notifications of assessment by assessor filed with County Tax Board. If bulk mailing completed by County Tax Board, certification filed with the County Tax Administrator "within 10 days" of the date bulk mailing was completed.

February 15 (on or before)-

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1-

- Post-Tax Year Statement, Form PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On June 8, 2007, Bao T. Van pled guilty to possession of contraband cigarettes and failure to obtain a cigarette license. This plea resulted from the May 7 seizure of 90.9 cartons of contraband cigarettes found at a business located at 2844 Kennedy Boulevard in Jersey City, New Jersey, during a compliance inspection. Of the total seized, 36.2 cartons were counterfeit-stamped cigarettes. It was also discovered that the business's cigarette license had expired. Van was fined a total of \$2,928.50.
- On August 13, 2007, a Monmouth County Grand Jury returned a 21-count indictment charging Marie L. Carty, 63; her daughter, Lauren M. Carty Reid, 30; and son-in-law, Christopher Reid, 38, of Little Silver, with failure to pay taxes and failure to file taxes, third-degree crimes, in addition to multiple counts of second-degree theft by deception, theft by failure to make required disposition, conspiracy,

Interest 10.50%

The interest rate assessed on amounts due for the period January 1, 2008 – December 31, 2008, will be 10.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%



criminal enforcement - from page 4

misconduct by a corporate official, misapplication of entrusted property, third-degree theft by deception, receiving stolen property, bad checks and fraudulent use of a credit card, and fourth-degree making a false statement in procuring the issuance of a credit card. The investigation was initiated by the Monmouth County Prosecutor's Office concerning the alleged misappropriation of funds in the amount of \$972,724.45 belonging to the Wellington Place Condominium Association located in Aberdeen, New Jersey.

- On August 29, 2007, Charles Hines of South Toms River, New Jersey, pled guilty to possession of untaxed cigarettes and failure to obtain a consumer's license. Earlier, on January 9, 2007, the

Office of Criminal Investigation took possession of 53 cartons of Delaware-stamped cigarettes from Hines, who purchased the cigarettes from a Delaware retail business and, as a service to New Jersey site coworkers, was selling them to the coworkers for the price paid. He was fined a total of \$684.

- On September 12, 2007, Peter Zarycki, 41, of Forked River, pled guilty to two counts of failure to file a tax return and failure to pay tax in addition to ten counts of official misconduct. This plea came as a result of a 12-count indictment handed up in February 2007. Peter Zarycki, a 17-year veteran of the Ocean County Department of Corrections, was charged with official misconduct in connection with the 2005 disappearance of \$78,145 in funds found to be missing from inmate

bail accounts. This is a joint investigation with the Ocean County Prosecutor's Office. The prosecutor expects that Peter Zarycki will do jail time.

- On September 20, 2007, Thuy Mai t/a L & T Liquors of Jersey City, New Jersey, pled guilty to possession of untaxed cigarettes and was fined \$1,155 in the Jersey City Municipal Court. A total of 65.8 cartons of contraband cigarettes were seized. The subject was also assessed a \$1,645 civil penalty for unlawful contraband possession. A total of \$2,800 was paid by the subject.
- Fugitive Paul Sarris, formerly of Jersey City, was taken into custody in New York on September 28, 2007. He was arrested as a result of domestic violence

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criminal enforcement - from page 5

charges and has waived extradition. Sarris will eventually be brought to New Jersey and arraigned in a homestead rebate theft case. He has been at large since being indicted in February 2007 and was thought to be out of the country.

Sarris was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are Paul Sarris, 50; Achilles "Butz" Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito "Angelo" A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal \$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks.

The investigation revealed that Matilda Amante Ramos ran a travel agency while all of the other defendants operated their own financial service companies offering tax preparation services. Between August 2001 and September 2003, the six defendants allegedly filed 745 false homestead rebate applications with the State of New Jersey, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City. The defendants allegedly filed the applications using names and social security numbers obtained from tax preparation clients without permission. The

defendants allegedly laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses.

State investigators from the Division of Criminal Justice – Major Financial Crimes Bureau, assisted by agents from the U.S. Social Security Administration and the Jersey City Police Department, arrested Matilda Amante Ramos, Aristides Amante, and Angelo Amante in Jersey City and Aloysius M. Amante in Somerville. All four have entered plea agreements and await sentencing. Achilles "Butz" Amante remains at large and is believed to be out of the country. This was a joint investigation with the Division of Criminal Justice.

- On October 12, 2007, D. Manasher, President of Star Global Financial Incorporated, was admitted to a Pre-Trial Intervention Program (PTI) under the condition that he continues to make timely payments for past sales tax liabilities owed to the State of New Jersey. As part of the agreement, Manasher is required to make 12 monthly installments to satisfy the outstanding liability. On August 14, 2007, Manasher pled guilty to one count of theft by failure to make a required disposition of property received in the amount of \$8,106.04 in regards to New Jersey sales tax. Manasher also pled guilty to one count of failure to file corporation business tax returns for tax years 2003 through 2005. Star Global Financial Incorporated is a used car dealer located in Jersey

City, New Jersey. This business utilizes the Web site eBay Motors to generate a large portion of their vehicle sales. This matter was a joint investigation with the New Jersey State Police Cyber Crimes Unit and the New Jersey Division of Taxation's Office of Criminal Investigation.

- On October 18, 2007, Anant Patel, 46, former consultant to Jersey Central Power & Light (JCP&L), pled guilty in connection with a theft of \$11.5 million from a State energy rebate program. Patel pled guilty to charges of second-degree money laundering and second-degree theft. Under the plea agreement, the State will recommend a 15-year prison sentence for Patel. The State is seeking full restitution, and Patel will pay \$775,000 in restitution at the time of sentencing. The investigation revealed that Patel conspired with two other men to obtain \$11.5 million in payments for bogus or inflated applications under the New Jersey SmartStart Buildings Program, which offers rebates to companies that install more efficient lighting or HVAC systems. Patel was hired by JCP&L as a consultant to inspect and verify installation work under the program. In pleading guilty, Patel admitted that he signed off on work that was never performed and also created a number of bogus contracting and consulting companies to submit false invoices under the program. He admitted he laundered fraudulent rebate checks using a number of bank accounts. The investigation revealed that Patel conspired with Harold Stamateris, 47, of Basking Ridge, who managed the

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criminal enforcement - from page 6

rebate program for JCP&L and was responsible for approving rebate applications. Stamateris pled guilty on February 6, 2007, to first-degree conspiracy, admitting he knowingly signed off on the fraudulent rebates. He faces a State prison sentence of 10 to 20 years. The State is seeking full restitution, and Stamateris will pay \$2,200,000 in restitution at the time of sentencing. Patel and Stamateris carried out the fraudulent scheme with an electrical contractor, William D. Eaton Jr., 56, of Caldwell, who fatally shot himself on January 30, 2007, after his arrest in this case. The case was referred to the Division of Criminal Justice by JCP&L's internal audit group. The case was investigated by the Division of Criminal Justice – Major Financial Crimes Bureau and the Office of Criminal Investigation with assistance from JCP&L auditors.

- On October 29, 2007, special agents of the Office of Criminal Investigation arrested Hazem Abuali of Philadelphia, Pennsylvania, an unlicensed distributor, at a North Jersey location and charged him with various offenses, including possession and transportation of contraband cigarettes. Confiscated at the time of arrest were cigarettes, cigars, and currency. On November 15, 2007, Hazem Abuali pled guilty in Union City Municipal Court to possession of contraband cigarettes (N.J.S.A. 54:52-18), transportation of contraband cigarettes (N.J.S.A. 54:40A-32), failure upon delivery to examine and

return cigarettes not bearing the required New Jersey revenue stamp (N.J.S.A. 54:40A-25), and liability for the tobacco products wholesale sales and use tax (N.J.S.A. 54:40B-5). Also, the currency was forfeited to the State of New Jersey.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$2,918,952 for the period of July 2007 through mid-November 2007. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

CBT-100 Meal and Entertainment Expenses — Expenses for meals and entertainment are deductible on the New Jersey corporation business tax return, Form CBT-100, for a C corporation to the extent that these expenses are deductible on Federal

Form 1120. The New Jersey CBT-100 is linked to items above Line 28 on the Federal return.

New Jersey has no specific provision relating to meal and entertainment expenses. Since the New Jersey CBT-100 is linked to Lines 1 to 28 of the Federal return, and taxpayers must use the same method of accounting for State tax purposes as for Federal tax purposes, any Federal deduction limitations will also be recognized by New Jersey. N.J.S.A. 54:10A-4(k); N.J.A.C. 18:7-5.1(b).

Entries made on Form CBT-100, Schedule A, Line 33(b) represent other adjustments that are made to Federal taxable income in order to determine New Jersey taxable income. Certain deductions made for Federal purposes in calculating net income must be added back to compute entire net income for New Jersey purposes. Federal deductions that are added back are described in N.J.A.C. 18:7-5.2.

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 50 or more 2006 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2007 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us



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Gross Receipts for Minimum Tax

— The Division was asked the following question:

“With regard to the increased New Jersey corporation minimum tax, if a New Jersey corporation ships most of its products to companies in other states, must those sales be included as New Jersey gross receipts for calculating the minimum tax or can they be excluded for calculating the minimum tax? The corporation is not registered in any other state because all shipments are by common carrier. The instructions in the CBT book do not explain what is New Jersey gross receipts and what is not.”

The Division replied that the statute defines “gross receipts” for calculating the new minimum tax by reference to “gross receipts as defined in the Alternative Minimum Assessment” at N.J.S.A. 54:10A-5a. The definition excludes receipts from sales to points outside the State. Therefore, those sales do not

have to be included in the New Jersey gross receipts for calculating the minimum tax.

Minimum Tax — Legislation that was enacted in July 2006 made adjustments to the New Jersey minimum tax under the Corporation Business Tax Act. For privilege periods beginning January 1, 2006, and thereafter, the determination of minimum tax has changed. Generally, minimum tax is determined on a graduated basis based on New Jersey gross receipts as shown below. New Jersey gross receipts and minimum tax may be computed on Schedule A-GR. N.J.S.A. 54:10A-5(e).

New Jersey Gross Receipts	Minimum Tax
Less than \$100,000	\$ 500
\$100,000 or more, but less than \$250,000	750
\$250,000 or more, but less than \$500,000	1,000
\$500,000 or more, but less than \$1,000,000	1,500
\$1,000,000 or more	2,000

Taxpayers that are part of an affiliated group that has a total combined payroll of \$5,000,000 or more continue to pay a minimum tax of \$2,000 regardless of the amount of New Jersey gross receipts.

NOL Suspension — Due to the suspension of the net operating loss (NOL) carryover for privilege periods beginning in 2002 and 2003, taxpayers could not use unexpired NOL amounts until privilege periods beginning in 2004 and 2005. A limited NOL deduction was allowed in 2004 and 2005 for the privilege period in an amount that reduced entire net income by up to 50%. (P.L. 2004, c.47). Any NOL deduction disallowed due to this prohibition could be extended by two years. N.J.A.C. 18:7-5.17. Losses that could not be used against income that occurred in 2002 and 2003 would carry over until 2004. In other words, an NOL due to expire in 2002 and 2003 would be carried over to 2004 if it could not be used in 2002 or 2003.

Domestic Security Fee

Complimentary Motor Vehicle Rentals

— The Division responded to an inquiry concerning the Domestic Security Fee on motor vehicle rentals. When a “loaner” vehicle is given to a customer while the customer’s vehicle is with the dealer for warranty service, there is no liability for the \$5-per-day fee, as long as there is no user charge and/or charge for vehicle insurance, cost of registration, and similar expenses.

N.J.A.C. 18:40-1.6 states:

Motor vehicles loaned by a motor vehicle dealer to customers under a warranty, service or similar agreement

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

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or contract, for any kind of consideration, whether or not through a third party, and regardless of which party pays the consideration, are considered motor vehicles for rental and, as such, are subject to the fee imposed by the Domestic Security Fee law.

Example 1: A motor vehicle dealer provides a loaner vehicle at “no cost” to a customer, but the agreement between the dealer and the customer requires payment for mileage and provides an option for the purchase of insurance by the customer. Charges for mileage, insurance waiver/damage liability all are common elements of a rental agreement. Accordingly, where such items are charged, the agreement is rental in nature, and the dealership would be responsible for the [\$2.00] \$5.00 per day fee. Multiple day usage under the same agreement terms would result in a multiple day liability for the fee.

Gross Income Tax

Civil Union Joint Filing — Civil union couples have the right to a joint filing status under New Jersey Gross Income Tax Law that can be exercised in 2008 for tax year 2007, just as married couples do. The Civil Union Act, P.L. 2006, c.103, section 4, gives partners in civil union couples “all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage,” and section 5n of the Act specifically

requires equal State tax treatment for same and opposite sex couples.

In certain other states that use a Federal adjusted gross income tax model (AGI) for income tax purposes, married same sex and civil union couples may calculate Federal AGI using a “pro forma” Federal return as though the couple had filed married jointly for Federal income tax purposes. New Jersey, however, does not import an adjusted gross income tax figure from the Federal income tax returns, so a taxpayer’s Federal AGI has no bearing on the preparation of their New Jersey gross income tax return. Civil union couples file their New Jersey returns the same way as married couples, reporting their income either jointly or separately. Civil union partners must use the same filing statuses that are available to spouses; they cannot use the filing status “single,” even if they do so for Federal purposes.

For additional information on implementation of the Civil Union Act, see www.state.nj.us/treasury/taxation/civilunionact.shtml

Partnership Filing Fee

Hedge Funds — If a partnership has hedge fund status, a filing fee is due for nonresident individual, trust, or estate partners, unless all operations and facilities are located outside

New Jersey and the non-resident partners have no contact with New Jersey.

For hedge fund status, the partnership’s only activities may be the purchase, holding, and sale of intangible personal property, such as securities or commodities (defined in 26 U.S.C. 475(c)(2) and (e)(2)), and such intangible personal property may not be held for sale to customers. The activities of “purchase, holding, and sale” include activities incidental thereto giving rise to income, including commitment fees, breakup fees, and income from securities lending.

The requirement that certain partnerships must pay a \$150 per partner filing fee is set forth at N.J.S.A. 54A:8-6(b)(2)(A), which states: “Each entity classified as a partnership for federal income tax purposes,... having any income derived from New Jersey sources, including but not limited to a partnership, a limited liability partnership, or a limited liability company, that has more than two owners shall at the prescribed time for making the return required under this subsection make a payment of a filing fee of \$150 for each owner of an interest in the entity, up to a maximum of \$250,000....”

The definition of a partnership that is subject to the \$150 per partner

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filing fee is set forth at N.J.A.C. 18:35-11.1, which states: "Partnership means any entity classified as a partnership for federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive non-taxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds."

The definition of income is set forth at N.J.A.C. 18:35-11.1, which states: "Income means income, loss, gain, or expense."

Therefore, since partnerships subject to the \$150 filing fee include hedge funds and qualified investment partnerships, these partnerships are subject to the fee if they derive income from New Jersey sources.

For example, a hedge fund derives income from New Jersey sources when the partnership pays a New

Jersey fund manager a fee to manage the fund (expense), the hedge fund is located in New Jersey and distributes income to shareholders (income), or the hedge fund is located in New Jersey and reports a loss to shareholders (loss).

Therefore, a partnership that only holds stock and other intangibles is subject to the \$150 per partner filing fee unless all operations and facilities are located outside New Jersey and the nonresident partners have no contact with New Jersey.

Sales and Use Tax
Software Maintenance on Electronically Delivered Software —

The Division responded to an inquiry regarding the application of the New Jersey Sales and Use Tax Act to software maintenance on an initial software purchase that was electronically delivered. The software maintenance is an annual renewal contract, which includes technical support as well as upgrades for the software that would also be received electronically.

Effective October 1, 2006, the exemption for prewritten computer software delivered electronically is only available to electronically

delivered computer software that is used *directly and exclusively* in the conduct of the purchaser's business, trade, or occupation. N.J.S.A. 54:32B-8.56. Thus, electronically delivered computer software sold to businesses is exempt from tax. Software upgrades are also exempt under this "business use" exemption.

In addition, effective October 1, 2006, electronically delivered software is defined and taxed as "tangible personal property." The law imposes tax on maintaining, servicing, or repairing tangible personal property. Since electronically delivered prewritten computer software is tangible personal property, services performed on the software, even if performed remotely, are taxable because electronically delivered software is taxed as tangible personal property. Note that the repair and maintenance services are taxable even if the "business use" exemption is applicable to the purchase of the software. If the seller bills the exempt software upgrades and the taxable repair and maintenance services together as one lump sum, the entire amount is taxable.

□

Enforcement Summary Statistics
Third Quarter 2007

Following is a summary of enforcement actions for the quarter ending September 30, 2007.

• Bank Levies	1,522	• Jeopardy Seizures	0
• Certificates of Debt:		• Seizures	120
Total Number	3,611	• Auctions	4
Total Amount	\$57,640,451.39	• Referrals to the Attorney General's Office	759
• Jeopardy Assessments	121		

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc1.shtml



In Our Courts

Administration

Jurisdiction – *Harry’s Lobster House Corporation v. Director, Division of Taxation*, decided June 14, 2007; Appellate Division No. A-5569-05T2.

The Tax Court granted the Division’s motion to dismiss the complaint of Harry’s Lobster House Corporation (Harry’s) because it lacked jurisdiction to consider the merits of the complaint. Harry’s alleged that the complaint should not be dismissed because representatives of the Division met with Harry’s after the issuance of the final determination as well as after the filing of Harry’s complaint and reached an agreement to reaudit the tax years at issue. Harry’s contended that the Division could not renege on the agreement because it relied on this agreement and spent substantial money to prepare for the reaudit.

The Tax Court concluded that, notwithstanding a purported agreement by Division representatives to reconsider this assessment, any such agreement was unauthorized and was not binding on the Division. The Appellate Division affirmed for the reasons set forth in Judge Menyuk’s opinion at 23 N.J. Tax 149 (2006). The New Jersey Supreme Court denied Harry’s petition for certification. (September Term 2007; 61,364)

Cash Audits

Audit Methodology – *Lane Trading Co. v. Director, Division of Taxation*, decided August 3, 2007; Tax Court No. 005189-2004.

Plaintiff (Lane) owns and operates an adult bookstore. It sells and rents videos, books, magazines, and novelties. Lane also operates video

viewing booths and rents rooms to female independent contractors for “fantasy performances.”

An audit disclosed that Lane did not retain copies of sales invoices or cash register tapes. However, it did have a summarized sales journal for two of the years at issue. Lane claims that all of its records were destroyed in a fire at a rented storage unit. The auditor used an alternate audit methodology as Lane’s books and records were inadequate to conduct the audit. This resulted in an audit assessment which Lane protested.

The final determination made adjustments to the audit determination of sales tax and corporation business tax liabilities. Lane appealed the final determination to the Tax Court challenging the reasonableness of the method of calculating the corporation business and sales tax assessments. The Court found that Lane had not provided any evidence indicating that the Division’s

assessment was incorrect. Therefore, the Court concluded that the Division’s use of the limited available data as well as its methodology was entirely reasonable under the circumstances.

Gross Income Tax

Alimony and Credit for Taxes Paid to Other Jurisdictions – *Cino v. Director, Division of Taxation*, decided November 2, 2007; Docket No. 008453-06.

In a summary judgment motion hearing on Friday, November 2, 2007, Judge Pizzuto granted the Director’s motion for summary judgment.

This matter involved another challenge to alimony and the credit for taxes paid to other jurisdictions. Judge Pizzuto held this case was controlled by *Ambrose v. Director*, 198 N.J. Super. 546, 487, A.2d 174 (1985).

Judge Pizzuto quoted from his decision in *Adelhock, Croce and Croce*

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v. Clerk of Bergen County and Director, 2006 N.J. TaxLEXIS 15, (November 2006):

As a general rule, duplicate taxation of the same property in different forms, if in accordance with statute, is not invalid. See *Old Dominion C.M. & S. Co. v. State Bd. Taxes*, 91 N.J.L. 173, 178-179 (E. & A. 1917); *Jersey City Gaslight Co. v. Jersey City*, 46 N.J.L. 194, 196 (E. & A. 1884); *Gritzmacher v. Taxation Div. Director*, 2 N.J. Tax 489, 492 (1981). See also *In re Estate of Romnes*, 79 N.J. 139, 164 (Handler, J., dissenting).

Here, there is no double taxation as the transfer tax is imposed pursuant to the Act upon separate owners on distinct transfers at different times. Indeed, even if this were deemed to be double taxation, the Legislature may constitutionally impose a duplicate tax, although courts generally endeavor to avoid such a statutory construction where the legislative intent is questionable. The language of N.J.S.A. 46:8D-2, however, is clear as to imposition of the transfer taxes. Even if it were deemed to produce true duplicate taxation, the Legislature's constitutional power to enact such a statute must be recognized. See *Old Dominion*, 91 N.J.L. at 178-179; *Jersey City Gaslight*, 46 N.J.L. at 196. [*Drew Associates of N.J., L.P. v. Travisano*, 235 N.J. Super. 194, 205-206 (App. Div. 1989), aff'd in pertinent part 122 N.J. 249, 268 (1991).]

The quote by the Court underscored the general rule that double taxation is not prohibited by statute. The credit for taxes paid to another jurisdiction was not intended to do away with double taxation, but to provide limits to double taxation.

Sales Tax

Servicing and Maintenance – Disposal Systems, Inc. v. Director, Division of Taxation, decided August 16, 2007; Tax Court No. 000061-07.

Disposal Systems, Inc. (Disposal) is in the business of servicing, replacing, and removing underground tanks and disposing of the waste. The Division issued an assessment under the Sales and Use Tax Act for failure to collect and remit tax to the Division.

The Court determined that Disposal's services were not exempt as capital improvements under N.J.S.A. 54:32B-3(b)(2)(v) because they were services and maintenance of properties and did not constitute an addition or capital improvement to property.

The Court decided that the services did not constitute a resale under N.J.S.A. 54:32B-3(b) because Disposal was the original vendor of its services and was not reselling them.

The Court found that the services were not exempt as a transportation service under N.J.S.A. 54:32B-8.11 because Disposal is not in the business of transporting persons or property.

Finally, the Court responded to Disposal's allegation that a New Jersey State employee fabricated the signature on two extensions to audit, concluding that no credible evidence was presented to give substance to

Disposal's allegations. Therefore, the Court granted the Division's motion for summary judgment. □

In Our Legislature

Multiple Taxes

Disclosure Requirements Imposed on Recipients of Development Subsidies — P.L. 2007, c.200, enacted on November 2, 2007, and effective immediately, but with its key provisions inoperative until April 30, 2008, requires corporations that receive development subsidies, including tax incentives from a State agency, instrumentality, or authority, to submit annual reports for five years disclosing certain information about their officers and detailing their progress in creating jobs. It also requires applicants for such development subsidies to disclose information about the corporation, previous development subsidies sought or received, and to detail their employment expansion goals.

Miscellaneous

Prohibition of Certain Regulation of Voice Over Internet Protocol and Internet Protocol-Enabled Services — P.L. 2007, c.195, enacted on October 26, 2007, and effective immediately, prohibits the State, State public entities, and political subdivisions of the State from enacting, adopting, or enforcing any laws, ordinances, regulations, orders, or other standards or provisions that have the effect of regulating the rates, terms, or conditions of voice over Internet protocol (VoIP) or Internet protocol-enabled (IP-enabled) services. This law does not, however, affect the application of criminal or other statutes that apply

continued on page 13

in our legislature - from page 12

generally to the conduct of business in the State, consumer protection, or unfair or deceptive trade practices; the authority to enforce the requirements of Federal law regarding collection of enhanced 9-1-1 fees, telecommunications relay service fees, or Federal Universal Service Fund fees on VoIP or IP-enabled services; the authority to set requirements for providing cable service or operating a cable television system pursuant to 47 U.S.C. §521 or N.J.S.A. 48:5A-1 et seq.; the authority to manage use of public rights of way; or the authority of the Board of Public Utilities to regulate circuit switched local exchange access service. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2007](#) [2008](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2007](#) [2008](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#) [2008](#) □



*important
phone
numbers*

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
 609-826-4400

**Homestead Rebate Hotline
 for Homeowners ... 1-888-238-1233**
**Homestead Rebate Hotline
 for Tenants 609-292-6400**
**Property Tax Reimbursement
 Hotline 1-800-882-6597**
**Earned Income Tax Credit
 Information 609-292-6400**
NJ TaxFax 609-826-4500
**Business Paperless Telefiling
 System 1-877-829-2866**
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-588-3932
**Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323**
Director’s Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7974
**Motor Fuels Tax
 Refunds 609-588-3688**
Public Utility Tax 609-584-4337

New Jersey State Tax news

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Property Tax Relief Checks Mailed

The Division of Taxation mailed over 2 million homestead rebate checks for tax year 2006 to New Jersey residents this summer. In early August, approximately 1.2 million rebate checks went out to eligible senior and disabled homeowners, as well as to all eligible tenants, who had filed their applications by June 1, 2007. In mid-September, an additional 1.1 million rebate checks were sent to eligible nonsenior, nondisabled homeowners whose applications had been filed by August 15, 2007.

In mid-July, property tax reimbursement (PTR) checks for 2006 were mailed to almost 122,000 qualified senior and disabled homeowners who had filed their applications by June 1, 2007.

Checks for those who filed homestead rebate or PTR applications after the cutoff dates for the general check mailings will be issued as quickly as possible.

The extended deadline for New Jersey residents to file 2006 homestead rebate applications was October 31, 2007. The extended deadline for filing 2006 property tax reimbursement applications was October 31 as well.

Information about the Homestead Rebate and Property Tax Reimbursement Programs is available on the

Division's Web site at:

www.state.nj.us/treasury/taxation/relief.shtml

LOCAL PROPERTY TAX PAMS Shifts Into High Gear for Implementation

Hunterdon, Salem, and Camden counties are on track to implement New Jersey's Property Assessment Management System (PAMS) in January and February 2008. The implementation was extended from October – December 2007 to accommodate end-of-the-year assessment schedules and to provide more time for preparation. Project activities in recent months have included unit testing, training, and conducting and reviewing preliminary data conversions. Before the end of the year, members of the Municipal Liaison Team are expected to visit all early implementation municipalities to review the steps in the implementation process and discuss the go-live checklist. The transition from an outdated MOD IV system to a Web-based, integrated, and configurable system is an historic move for the Division of Taxation. Approximately 30 trainers are involved in train-the-trainer courses in preparation for user training scheduled for January 2008.

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PAMS implementation - from page 1

The latest edition of the quarterly PAMS newsletter, *Update*, is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml

For questions, contact Dana Max at dana.max@treas.state.nj.us or 609-292-8311. □

INHERITANCE/ESTATE TAX ***Estate Tax***

The New Jersey estate tax is based on the credit for state death taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001. The allowable credit is the lesser of credit calculated on the taxable estate (line 3 of the 2001 Federal Estate Tax Return, Form 706) or the Federal tax calculated on the sum of the taxable estate plus adjusted taxable gifts (line 5 of the 2001 Federal Form 706).

For decedents dying on or after January 1, 2005, the provisions of the Internal Revenue Code eliminated the credit for state death taxes and replaced it with a deduction for state death taxes paid. The Federal estate tax is now calculated on the taxable estate reduced by the deduction for state death taxes plus adjusted taxable gifts.

The New Jersey estate tax continues to be calculated on the taxable estate before it is reduced by the state death tax deduction. Inheritance and/or estate taxes paid to New Jersey or any other jurisdiction do not in any way affect the determination of the credit on which the New Jersey estate tax is based. A

deduction is permitted for that portion of the credit which is attributable to property located outside New Jersey.

N.J.S.A. 54:38-7 provides that in addition to a copy of any Federal estate tax return filed with the Internal Revenue Service, a 2001 Federal Form 706 must be completed and filed with the Division.

With the replacement of the state death tax credit by a state death tax deduction and with other changes which have been made in the Internal Revenue Code, it is important that the 2001 Federal Form 706 be completed in order that the New Jersey estate tax obligation may be properly determined.

The 2001 Federal Form 706 is available on the Division's Web site at: www.state.nj.us/treasury/taxation/ □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director:**

Maureen Adams

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SALES AND USE TAX
Streamlined Sales Tax Registration

The central online registration system developed by the Streamlined Sales and Use Tax Project can be used as an alternative to the traditional registration system currently available through the New Jersey Division of Revenue’s Web site. Central registration constitutes registration with every member state, including those that adopt the Streamlined Sales and Use Tax Agreement (SSUTA) after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any member state. Additional information concerning the central registration system may be found at: www.state.nj.us/treasury/taxation/streamregpro.shtml

If you collect tax for member or associate states during the time you are registered, you must remit the tax to the state(s).

If you registered in more states than you wanted to through the streamlined process, you cannot simply cancel the states you do not want to be registered with. To receive the benefits of the Streamlined Sales and Use Tax Agreement, you *must* remain registered with all of the member states. If you choose to opt out, you must cancel with all of the member states. If you want to register with only a few states, you should not use the central registration system. Please keep in mind that amnesty is not available in any state unless a seller is registered with all of the full-member states.

If you believe that you mistakenly registered through the central online registration system or find you no

longer want to participate, or if you need to update previously submitted registration information or add an associate state, log into the Streamlined Sales Tax Project Web site at <https://www.sstregister.org/sellers> and select “Update Registration.” You will then need your Streamlined Sales Tax ID and password to continue. To cancel your registration select “Change Registration Status” and follow the instructions.

If you terminate your sales tax registration through the central registration system, your *central registration account* for sales tax with all the SSUTA member states, including New Jersey, will be cancelled. However, if you were already registered with New Jersey for sales tax — or any other taxes — *before* you registered through the SSUTA central registration system, then your sales tax account with the State of New Jersey, as well as your accounts for any other New Jersey taxes, will remain open.

If you initiated your New Jersey sales tax registration through the central registration system, and subsequently cancel your central registration account, then your sales tax registration with New Jersey is terminated with your central registration account. In this case, if you wish to continue to collect and remit New Jersey sales and use tax, you must register directly with the State of New Jersey. □

LOCAL PROPERTY TAX
Tax Assessors’ Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by

State Farmland Evaluation Advisory Committee.

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran’s property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.
- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.

November 15–

- Deadline for taxing districts’ appeals of Table of Equalized Valuations to New Jersey Tax Court.

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assessors' calendar - from page 3

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 1–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2008 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On July 10, 2007, three individuals were indicted for allegedly conspiring to steal \$828,000 by filing hundreds of fraudulent State tax returns. Rosa Victoria Rivera, her former boyfriend John Arturo Perez Silva, and the couple's son Wilson Armando Piños were indicted by a State Grand Jury on a charge of first-degree conspiracy. Rosa Rivera also was charged in the three-count indictment with first-degree money laundering and second-degree theft by deception.

The Office of Criminal Investigation identified numerous fraudulent tax returns for which refund checks were issued. Some of the returns were filed through the Division's NJ WebFile program and all the returns contained similar taxpayer information;

such as common names, addresses, and employers.

The majority of the refund checks were mailed to mailboxes rented by Rivera, Perez, or Piños. Refund checks totaling \$828,272 were deposited in bank accounts maintained by Rivera or Perez, which the defendants allegedly used to pay personal expenses. The Division of Taxation was able to stop payment on the remaining checks, totaling \$1,005,030.

The three defendants were arrested on theft charges on December 19, 2006. On that date, the Office of Criminal Investigation, along with investigators from the Division of Criminal Justice and officers from the Lyndhurst Police Department, executed a search warrant at Rivera's apartment resulting in the seizure of a computer, stacks of tax returns, blank W-2s, blank social security cards, numerous driver's licenses, passports, bank records, and \$191,000 in cash. Several bank accounts of the defendants were seized and a second search warrant was executed at a self-storage site leased by the defendants in Belleville where additional records were confiscated.

- On July 11, 2007, the Office of Criminal Investigation assisted the Atlantic City Police Department in the execution of a search warrant on Babajan's Deli located at 2401 Pacific Avenue, and subsequent searches at Babajan's Market located at 3104 Pacific Avenue, an apartment located at 2403 Pacific Avenue, and a suspect's vehicle, which resulted

Interest 11.25%

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



criminal enforcement - from page 4

in the overall seizure of 5,407 packs (540.7 cartons) of counterfeit New Jersey-stamped cigarettes as well as counterfeit cigarettes. The confiscated cigarettes have a street value of \$36,000. Warrants were also used to secure bank accounts of the suspects and their vehicles were impounded. The case was developed by Atlantic City Police who were investigating the owners of Babajan's Market and Babajan's Deli for paying Families First food program recipients 50 cents on the dollar for their food cards and placing false purchase amounts in the program's computer system, thus defrauding State and Federal governments.

Three individuals were arrested on charges involving fraud, conspiracy, cigarette tax violations, computer theft, and sale of drug paraphernalia. Arrested were Kahdim Hussain, listed as an owner of Babajan's, Rana Sajid, also listed as an owner of Babajan's, and Ihtisham Majid. Bail has been set at \$150,000.

- On July 18, 2007, former Clayton Borough police chief Frank Winters and his wife Bernice Winters were indicted by a State Grand Jury for allegedly stealing more than \$150,000 from Mothers Against Drunk Driving (MADD). Their alleged fraudulent scheme involved companies they owned which were paid to supply promotional items for MADD, but did not. Winters, 61, and his wife, 56, were indicted on charges of conspiracy and theft by deception, both in the second degree, and filing false and fraudulent State income tax resident returns,

a third-degree crime. Second-degree crimes carry a sentence of up to 10 years in prison and a fine of up to \$150,000, while third-degree crimes carry a sentence of up to five years in prison and a fine of up to \$15,000.

The Winters, who live in Newfield where Frank Winters previously was a councilman, are former leaders of MADD at the State and local levels. Frank and Bernice Winters are both former chairmen of the New Jersey State chapter of MADD. Frank Winters also served on the national board of directors. He allegedly used his prominent position to further the conspiracy and theft. Frank Winters resigned as chief after he was charged by complaint in this case on April 24, 2007.

The State charges that the Winters treated the money from MADD (which was received by Holiday House and Lasting Impact) as their own, depositing money into their personal bank account and using it to pay for their own personal debts and expenses such as their mortgage, car payments, dinners, travel, jewelry, computer equipment, and furniture. The scheme allegedly took place for nearly three years, from July 2001 to June 2004.

It is further alleged that the Winters filed false or fraudulent New Jersey income tax returns for the calendar years 2002, 2003, and 2004 by not reporting on the returns the income that they derived from Holiday House and Lasting Impact.

This was a joint investigation with the Major Crimes Unit of the New Jersey State Police and

the Office of Criminal Investigation.

- On July 24, 2007, The Office of Criminal Investigation sent teams of agents and investigators into Jersey City mini-marts and groceries to identify any that were in possession of and selling cigarettes without legitimate New Jersey cigarette tax stamps. Over 1,000 cartons of cigarettes were seized. While on site, the teams conducted compliance inspections for valid business registrations, sales tax certificates, and cigarette licenses and businesses were informed of any outstanding tax liabilities. This type of inspection is just one of the unit's normal enforcement activities. □

Tax Briefs

Corporation Business Tax

Neighborhood Revitalization State Tax Credit — A taxpayer raised a question about the operation of the credit mechanism allowable under the Neighborhood Revitalization State Tax Credit Act (NRSTC) N.J.S.A. 52:27D-490 et seq.

Two corporation business tax (CBT) taxpayers, a parent and subsidiary, each file CBT tax returns as separate corporate entities. In 2007 and subsequent years it is anticipated that these entities will be taking tax credits under the CBT for manufacturing equipment, N.J.S.A. 54:10A-5.16, and for unused research and development tax credits and net operating loss carryovers transferred by biotechnology companies to qualifying CBT taxpayers pursuant to N.J.S.A. 34:1B-7.42 a and b.

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The NRSTC was recently amended to further motivate taxpayers to contribute to designated projects. A taxpayer already anticipating the benefits of other credits for CBT purposes may be reluctant to make any contribution under the NRSTC without some clarification of the application of the credit mechanism.

N.J.S.A. 52:27D-492d provides that the credit is not permitted “for activities for which the business entity is receiving credit under any other provision against any tax on business related income.” (emphasis added)

For the following reasons the Division believes it is highly unlikely that under the mechanisms of the Neighborhood Revitalization State Tax Credits a taxpayer would be denied a credit under that law for “activities” for which the taxpayer is receiving credit under any other provision against any tax on business income.

The mechanisms of the Neighborhood Revitalization Program work as follows: A nonprofit organization submits a plan to the Department of Community Affairs (DCA) for approval (§493). The DCA approves the plan if it meets certain criteria (§494). Next, the DCA determines if the plan qualifies for assistance (§495). The Commissioner of DCA issues a certificate if certain standards are met (§496). The Commissioner issues the certificates to applicants in the order prescribed in N.J.S.A. 52:27D-496d: (1) businesses specifying a project, (2) businesses that have not specified a particular project but are willing to provide assistance for approved projects seeking assistance, (3) businesses not specifying a project that

are willing to provide assistance and for which no project approved by the department is available.

The Neighborhood Revitalization Credit must be interpreted *in pari materi* with other credits that are intended to stimulate the New Jersey economy yet limit double counting of benefit dollars, and as such the term “activities” is to be interpreted narrowly in order to give effect to the intended purposes of revitalization. By way of comparison, other credits include provisions that explicitly eliminate double counting of creditable expenses. For example, N.J.S.A. 54:10A-5.24b prohibits a manufacturing investment tax credit or a new jobs tax credit for property for which a qualified research credit is permitted. Because the NRSTC is based upon funds disbursed to and by the DCA, no risk of double counting exists under this credit. Therefore, it is assumed that the credit language is meant to encourage a different objective.

To give possible meaning to the word “activity,” one hypothetical example may be illustrative. The use of the word “activity” may stimulate the diversification of creditable funds. Under the hypothetical scenario it appears that a taxpayer could pay an “energy research consortium” established under IRC §41(f)(6) with funds that would qualify for or be used to compute the research credit. Supposing also that the research consortium developed a plan that qualified for assistance under the Neighborhood Revitalization Program, the business would be barred from making a donation to DCA under N.J.S.A. 52:27D-496d(1) and earmarking the donation for use of the consortium since the donor already enjoyed a research credit for the amount paid

to that “activity.” The interest being protected by the word “activities” appears to be potential multiplicity of revitalization programs, rather than concentration of a taxpayer’s funds into one “activity.” (This is a different interest from double counting as illustrated above in N.J.S.A. 54:10A-5.24b).

Further, the Division believes the prohibition would be satisfied and the business could receive a credit for any donation made under N.J.S.A. 52:27D-496(d)(2) & (3). That is because the Commissioner of DCA has discretion on where to designate the use of funds. Such a donation would meet the requirements even if the Commissioner later determined, hypothetically, to allow the funds to be used for a plan developed by an “energy research consortium.”

Thus, the Division does not believe the legislature intended to codify a broad prohibition by the word “activities” under which a taxpayer could not receive a neighborhood revitalization credit for any and all projects if it were receiving a research credit. If that were the case, the legislature could have made its intention explicitly clear by the use of specific language. More likely, the word “activity” was used to stimulate diversification of the creditable funds.

In conclusion, if a taxpayer made a donation to the revitalization program and it was used for nonrelated research activities or housing or economic development activities unrelated to the taxpayer’s line of business, no other credit or benefit would “taint” or disqualify the neighborhood revitalization



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donation. Furthermore, it is the Division's view, even in the hypothetical above, that if the Commissioner rather than the donor specified use of the separate funds in an "activity" for which the donor taxpayer was receiving a research credit, the research credit would not be "tainted" or disqualified since the Commissioner rather than the taxpayer specified the use of the donated funds.

Gross Income Tax

Incentive Stock Options — For New Jersey gross income tax purposes, the taxability of incentive stock options is based on the Federal treatment. Incentive stock options may be received and exercised by an employee without recognizing any gain. If the requisite holding period is met, the taxable event is the sale of the stock, and gain or loss will be realized to the extent of the difference between the option price and the sale price of the stock.

IRA Charitable Contributions — The Federal Pension Protection Act of 2006 (P.L. 109-280) enables anyone age 70½ or older to use as much as \$100,000 a year for tax years 2006 and 2007 from their tax-deferred IRA for charitable gifts, without paying Federal income taxes on the amount they use.

For New Jersey gross income tax purposes, no similar legislation has been enacted, and there is no change to the New Jersey income tax treatment of distributions from an IRA account that corresponds to the Federal income tax treatment.

Any amounts considered taxable income for New Jersey gross income tax purposes received as a distribution from an IRA must be reported as pension and annuity income on the New Jersey income tax return.

Petroleum Products Gross Receipts Tax

Recycled Motor Oil — Sales of recycled motor oil are subject to petroleum products gross receipts tax as set forth at N.J.A.C. 18:18A-2.3(a), which states that: "Receipts from first sales of petroleum products within this State as herein defined are subject to tax. Certain receipts, for example, from sales for exportation, sales of No. 2 fuel oil, propane for residential use, and the tax imposed by the Act are not included in arriving at gross receipts subject to tax. On and after July 1, 1991 the Act contains exemptions or exclusions for receipts from sales to the State, or municipal governments, their agencies or instrumentalities, and to qualified exempt organizations employing authorized purchase procedures. In addition, exemption from tax for receipts from sales to the Federal government is effective on and after July 1, 1990. Example 1: Company R collects used oil from various generators and produces a recycled fuel. Subsequent sales of its petroleum product by company R are considered to produce gross receipts subject to tax under the Act. The statute contains no exemption for sales of recycled oil...."

Therefore, because there is no exemption for recycled fuel, receipts from sales of recycled motor oil are subject to petroleum products gross receipts tax unless the sale meets the requirements for another exemption from tax.

Realty Transfer Fee Reverse IRC Section 1031 Exchange

— The Division responded to a question as to whether "using an exchange accommodation titleholder to hold member interests as a straw man" in an IRC Section 1031 real property reverse exchange would exempt the ultimate grantee from the 1% realty transfer fee (RTF) when the accommodation titleholder (AT) transfers the interest (that was transferred to the AT by the original grantor) to the final grantee. Assuming that the real property transfers are being done by recorded deed, it was suggested by the correspondent that this second conveyance not be subject to the RTF. N.J.S.A. 46:15-5 et seq.

The 1% RTF imposed on the grantee is imposed on specified property, including all property classified as "Class 4A" where the consideration for its sale exceeds \$1,000,000. N.J.S.A. 46:15-7.2. The fee is only imposed at the time the deed is offered for recording, not at the time of transfer. In other words, it is strictly a recording fee.

In the transfer from the original grantor to the AT and then from the AT to the ultimate grantee, the AT is not merely holding title to the property for the original grantor. The AT, as a separate legal entity, actually receives a deed to be recorded. The property is then reconveyed by a new deed from the AT to the ultimate grantee for recording.

The only exemptions that apply to the RTF are those listed in N.J.S.A. 46:15-10, the partial exemption set forth in N.J.S.A. 46:15-10.1, the (a) threshold \$1,000,000 or less "exemption" for grantees of certain specified real property or (b) "where

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the equalized assessed value of the real property being transferred is less than 20% of the total value of all assets exchanged” pursuant to N.J.S.A. 46:15-7.2.

Note that the Division is bound by the holding in *Terrell v. Director, Division of Taxation*, 22 N.J.Tax 297, 300 (Tax Ct. 2005):

The RTF is considered to be a State tax. *Grand Chester Associates v. Taxation Division Director*, 6 N.J.Tax 336, 339 (Tax Ct. 1984). New Jersey has consistently held that tax exemption statutes should be strictly construed against those claiming an exemption. *Princeton Univ. Press v. Princeton Bor.*, 35 N.J. 209, 214, 172 A.2d 420 (1961); *Zimmerer, supra*, 7 N.J. Tax at 21 [7 N.J. Tax 15, 22 (Tax Ct. 1984)]. The burden is on the party claiming an exemption to clearly bring itself within the provision. *Princeton Univ. Press, supra*, 35 N.J. at 214, 172 A.2d 420. Taxation is the rule, and all property owners in the State are required to bear their equal share of the public taxation burden. *City of Summit v. Overlook Hospital Ass’n*, 4 N.J.Tax 183 (Tax Ct. 1982) quoting *Locustwood Cem. Ass’n, v. Cherry Hill Tp.*, 133 N.J. Super. 92, 96, 335 A.2d 571 (App. Div. 1975) aff’d. 6 N.J.Tax 438 (App. Div. 1984).

See also, *Zimmerer*, at 7 N.J. Tax 22 (cited in the *Terrell* opinion above):

It is well established that statutes granting such exemptions are to be strictly construed against those claiming the

exemption because exemptions represent a departure from the principle that all persons should bear their just and equal share of the burden of taxation...Accordingly, one seeking an exemption has the burden of bringing himself clearly within the exemption provision.

For the reasons discussed above, the RTF would apply to the recording of the deed from AT to the ultimate grantee, barring any of the exemptions specified in the State statutes referred to above.

Sales and Use Tax

Access Flooring — On and after October 1, 2006, charges for the installation of carpeting and other flooring are subject to tax. N.J.S.A. 54:32B-3(b)(2). “Other flooring” is interpreted broadly to include the installation of all types of flooring. Thus the installation of access (raised) flooring, no matter how attached to the real property, is subject to tax.

Exemption Certificates — A taxpayer inquired about various issues surrounding the acceptance and issuance of sales and use tax exemption certificates, particularly New Jersey Forms ST-3 (Resale Certificate) and ST-4 (Exempt Use Certificate):

1. *Blanket certificates.* A single exemption certificate may cover additional purchases of the same general type of property by the same purchaser from the same vendor.
2. *Good faith acceptance.* Prior to October 1, 2005, a seller who “accepts in good faith any exemption certificate which upon its face discloses a proper basis for exemption is relieved of any liability for collection or payment of tax upon transactions covered by the certificate.” N.J.A.C. 18:24-10.3. The seller must not know, or have reason to know that any information on the face of the exemption is

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Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



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false or misleading. N.J.A.C. 18:24-10.4(a). The vendor is presumed to be familiar with the law and the regulations pertaining to his business, and to know when he can issue or accept exemption certificates. N.J.A.C. 18:24-10.4(b).

Effective October 1, 2005, the Streamlined Sales and Use Tax Agreement became effective in New Jersey and made several changes to the Sales and Use Tax Act. (P.L. 2005, c.126). In particular, the “good faith” requirement has been relaxed. Absent fraud or collusion, sellers who accept a properly completed exemption certificate are relieved of liability for improperly claimed exemptions. The form must be completed in its entirety and signed by a qualified person. The exemption certificate must contain specific identifying information about the purchaser and the type of exemption claimed, e.g., resale, manufacturing.

3. *Retroactive acceptance.* The certificate must be in the physical possession of the seller on or before the 90th day following the date of the transaction.
4. *Recordkeeping requirements.* Certificates must be retained by the seller for at least four (4) years from the date of the last transaction covered by the certificate.
5. *Penalties for misuse.* Penalties and interest may be assessed upon audit.
6. *Statute of limitations.* Certificates must be retained by the

seller for at least four (4) years from the date of the last transaction covered by the certificate.

7. *Expiration date.* Certificates must be retained by the seller for at least four (4) years from the date of the last transaction covered by the certificate. Certificates must be in the physical possession of the seller and available for inspection by the Division of Taxation. Although certificates do not actually expire, it is good business practice for a seller to request a new form at least every few years.
8. *Renewal process.* Although certificates do not actually expire, it is good business practice for a seller to request a new form at least every few years.
9. *Does New Jersey accept electronic exemption certificates?* Yes. The seller must provide the same information for proof of a claimed exemption regardless of the medium.
10. *Streamlined sales tax certificates.* New Jersey sellers and purchasers may accept and issue the Streamlined Sales and Use Tax Certificate of Exemption (ST-SST) in lieu of most New Jersey exemption certificates.
11. *Does New Jersey accept the ST-SST or multistate tax commission (MTC) certificate or other states' certificates?* New Jersey permits the use of the ST-SST and MTC certificates. However, the only situation where a New Jersey seller may accept an out-of-State exemption certificate is a drop shipment. For more information on drop-shipment transactions, see [ANJ-10](#), *Out of State Sales*.

12. *Are direct payment permit holders required to submit exemption certificates?* Yes, there are two types of direct payment certificates:

Form ST-6A. Direct Payment Certificates (Form ST-6A) are issued to taxpayers who purchase tangible personal property or services under circumstances that make it impossible to determine at the time of acquisition whether the item or service will be used for a taxable or exempt purpose. N.J.S.A. 54:32B-12(b). Such taxpayers are issued Form ST-6A by the Division of Taxation, which waives collection of sales tax by the seller and allows the purchaser to pay the tax directly to the Division.

Form ST-6X. Effective Use Tax Rate Agreements (EUTRAs), also known as Sales and Use Tax Compliance Agreements, are formal, individualized agreements between the Division of Taxation and the taxpayer. EUTRAs allow the use of an “effective tax rate” to calculate sales and use taxes owed. EUTRAs generally have a term of three (3) years or less. Both parties agree upon the conditions under which the agreement may require modification or termination. Upon request to enter the program, the Division will determine if the taxpayer is qualified to participate and then conduct an audit to establish the effective tax rate.

If the taxpayer is qualified for the program, the Division of Taxation waives collection of sales or use tax at the time of purchase and permits the

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taxpayer to apply the agreed upon effective tax rate to applicable purchases made during each filing period. The effective tax rate is determined by calculating the ratio of the base period taxable purchases to the base period total purchases.

Upon approval of the EUTRA the taxpayer will receive a Direct Payment (Audit) Certificate (Form ST-6X). Form ST-6X differs from Form ST-6A in that the ST-6A only allows holders not to pay the sales tax at the point of purchase where the taxable status of the transaction is not known at the time of purchase.

Purchases that will be excluded by the EUTRA include but are not limited to:

- Resale and inventory purchases; utility and telecommunications services; meals and lodging; motor vehicles, vessels, and aircraft;
- Items about which the Division and the taxpayer disagree.

For more information on exemption certificates, see Tax Topic Bulletin S&U-6, *Sales Tax Exemption*

Administration, available at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/su6.pdf

Sale and Delivery of Fruit “Bouquets” — Effective October 1, 2005, the Streamlined Sales and Use Tax Agreement has been incorporated into the New Jersey Sales and Use Tax Act. P.L. 2005, c.126. N.J.S.A. 54:32B-3(c)(1) has been amended to impose sales tax on the sale of “prepared food.” Under the SSUTA, “prepared food” is defined to include:

- Food sold in a heated state by the seller; or
- Food items that are a result of the combination of two or more food ingredients by the seller to make a single item; or
- Food sold with eating utensils (plates, cutlery items, glasses, cups, napkins, or straws. Plates do not include containers for transport). [N.J.S.A. 54:32B-3(c)(1)].

A fruit bouquet is taxable as “food items that are a result of the combination of two or more food ingredients by the seller to make a single item.” More information on this topic is available on the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/ssutfood.pdf

Effective October 1, 2006, P.L. 2006, c.44, modified the exemption for delivery charges that are separately stated from the purchase price of an item on the invoice, bill, or similar document given to the purchaser. N.J.S.A. 54:32B-2(oo)(1). The law provides for the taxation of delivery charges on taxable items and retains the exemption for delivery charges on nontaxable items like clothing. The law defines “Delivery Charges” as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Therefore, the delivery charge by a seller for a taxable fruit bouquet is subject to tax.

Solar Renewable Energy Certificates — The question was raised as to whether solar renewable energy certificates are subject to sales tax. These certificates “represent the environmental attributes of the power produced from renewable energy projects and are sold separately from commodity electricity.” ([U.S. Department of Energy Web site](http://www.energy.gov)).

The value of these certificates is not representative of the sales price for the sale of a tangible good, i.e.,

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Enforcement Summary Statistics Second Quarter 2007

Following is a summary of enforcement actions for the quarter ending June 30, 2007.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	3,916	• Seizures	117
Total Amount	\$49,135,536	• Auctions	3
• Jeopardy Assessments	108	• Referrals to the Attorney General’s Office	763

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdiscal.shtml

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electricity. Rather, the environmental impacts of specific projects or energy uses have been assigned a value that has become marketable. As such, this transaction is a *paper* transaction beyond the scope of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) Therefore, sales of solar renewable energy certificates are not subject to sales tax. □

In Our Courts

Gross Income Tax

Timeliness of Complaint – *Saltman v. Director, Division of Taxation*, decided June 22, 2007; Docket No. 006278-2006.

In this case, the Director moved for summary judgment on the imposition of late filing penalty and interest based on the taxpayer's late filing of their 2003 New Jersey gross income tax return (Form NJ-1040).

The plaintiff filed an application for an extension of time to file his 2003 New Jersey gross income tax return. The due date for the tax year 2003 return was April 15, 2004. Per N.J.A.C. 18:35-6.1(b), a six-month extension of time to file a New Jersey gross income tax return will be granted only if, by the original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with Form NJ-630, application for extension of time to file, at least 80% of the tax liability computed on the New Jersey gross income tax return when filed.

The taxpayer did not meet the 80% requirement by the original due date of the return; thus taxpayer's request for an extension of time to file his

gross income tax return after April 15, 2004, was denied and late filing penalty and interest were assessed.

In his decision Judge Small stated, "Plaintiff's cross-motion is denied. No material facts are disputed. Plaintiffs failed to perfect their requests for filing their joint 2003 gross income tax return on extension, and thus, the Director properly denied Plaintiff's request to waive penalties and interest as a matter of law."

Timeliness of Complaint – *Wieder v. Director, Division of Taxation*, decided July 31, 2007; Docket No. 005349-06.

The plaintiff, attempting to comply with the 2002 amnesty program, mailed his 1998 return and payment to the Division, which were received by the Division on the last day of the amnesty program, June 10, 2002.

However, the plaintiff's bank would not make payment to the Division, not for insufficient funds, but because the check was for a "large" amount (\$40,362) and did not represent a "normal payment of the taxpayer."

On August 5, 2002, the Division notified the taxpayer to make immediate payment and that penalty and interest charges would be assessed at a later date. On August 28, 2002, the plaintiff provided a replacement check for the tax paid under amnesty and sought an abatement of all penalty and interest.

In his decision, Judge Hayser opined, "The statutorily created amnesty period was of limited time and duration and ended no later than June 10, 2002. Furthermore, N.J.A.C. 18:39-1.3(a) and (b) require not only "full payment of amnesty

eligible taxes," but in order to be eligible for the program, the taxpayer "must pay the full amount of the tax within the period of amnesty." Finally, N.J.A.C. 18:39-1.4(f) provides that "a taxpayer will be denied amnesty for nonpayment of or... payment with a dishonored check."

The Judge noted, quoting *Lenox v. Director*, 19 N.J. Tax 437, 452 (2001), "equity demands more than good faith but demands diligence in the protection of one's interests. Taxpayer did not meet this measure and therefore "the penalties and interest assessed to the plaintiff's 1998 liability will not be waived."

The taxpayer also sought a refund for tax year 1999 following the filing of his 1999 New Jersey gross income tax return (Form NJ-1040) on August 11, 2003.

The Court ruled that under N.J.S.A. 54A:9-8(d) "No refund or credit shall be allowed or made... after the expiration of the applicable period of limitation..." The Judge opined, "Under the plaintiff's argument he could file a tax return any time, however untimely (even into the next century), as long as the taxes have been paid previously and have three years to seek a credit or a refund or credit. The doctrine of *reductio ad absurdum* comes to mind."

Judge Hayser granted the Director's motion for summary judgment, while denying the plaintiff's cross-motion for summary judgment.

Local Property Tax

Farmland Assessment – *Township of Wantage v. Rivlin Corporation*, decided May 25, 2007; Tax Court No. 008697-2006.

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Plaintiff (Wantage Township) appealed to the Tax Court from a judgment of the Sussex County Board of Taxation denying the imposition of rollback taxes on a portion of the defendant's (Rivlin Corporation) property. Plaintiff's motion for partial summary judgment was granted over whether a portion of a tax lot, the balance of which qualified for farmland assessment, can be subject to rollback taxes. Defendant's motion to require the plaintiff to provide certain discovery was also granted.

Rivlin Corporation is the owner of 35.91 acres of property in Wantage Township. For tax years 2003, 2004, and 2005 the entire parcel was assessed as farmland pursuant to the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 to 23.23). Rivlin Corporation's farmland assessment application in tax year 2006 stated that only five acres were devoted to agricultural use, while the application for tax year 2007 listed 15 acres. After completing on-site field inspections of the parcel, the Wantage Township assessor determined that rollback taxes for tax years 2003, 2004, and 2005 were in order for the portion of property not devoted to agricultural use as per N.J.S.A. 54:4-23.8 and N.J.S.A. 54:4-23.9. As per statute, the assessor filed a petition

with the Sussex County Tax Board, but was denied relief. Appeal to the Tax Court followed.

The plaintiff's position was that N.J.S.A. 54:4-23.16 and applicable decisional law permit the regular assessment of a portion of a tax lot even if the balance of the lot qualifies for farmland assessment. The nonqualifying portion of the lot may then be subject to rollback taxes. The Tax Court interpreted N.J.S.A. 54:4-23.16 and N.J.A.C. 18:15-5.3(b) "to contemplate that a separation or split off occurs...when the owner elects to use a portion of a parcel or tax lot for a purpose other than agricultural use." The Tax Court concluded "that not only may a portion of a tax lot qualify for farmland assessment while another portion does not, but also that rollback taxes may be imposed on a portion of a tax lot when that portion is converted to nonagricultural use."

Rivlin Corporation's contention was that N.J.S.A. 54:4-23.16 did not apply and that even if a portion of the parcel is devoted to nonagricultural use, the entire lot must qualify for farmland assessment if its predominant use is for agricultural purposes. The defendant cited case law which applied the predominant use test. However, the Tax Court concluded the dominant use test does not apply to the case at hand. In cases

applying the predominant use test, an agricultural use coexisted with a nonagricultural use. The Tax Court referred to *Andover Township v. Kymer*, 140 N.J. Super. 399 (App. Div. 1976) and *Wiesenfeld v. South Brunswick Township*, 166 N.J. Super. 90 (App. Div. 1979), stating that when integrating the two concepts of predominant use and split-offs, if the separated or split-off part of the lot is appurtenant to agricultural activities on the balance of the lot and is required to maintain or for the benefit of those agricultural activities, then the split-off portion qualifies for farmland assessment with the balance of the lot. In *Wiesenfeld supra*, 166 N.J. Super. at 95, the Tax Court held that if a portion of a lot is used for "independent commercial operations not conducted for the benefit of the farm or the farmer but as a completely separate business activity," then that portion of the lot cannot qualify for farmland assessment even if the nonfarming use is not the predominant use of the entire lot. In the final analysis, the Tax Court indicated that "if the proofs should establish that the portion of the defendant's property which has not been accorded farmland assessment was used in the manner...described in...*Wiesenfeld*, then a rollback assessment on that portion of the lot will be appropriate." The Tax Court concurred with the analysis in *Hamilton Township v. Estate of Lyons*, 8 N.J. Tax 112 that where the primary reason for the nonagricultural use of a portion of a lot is not to benefit the agricultural use of the balance of a lot, rollback taxes can be imposed, even if the nonagricultural use is temporary. □

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In Our Legislature

Local Property Tax

Clarification of Historic Site Real Property Tax Exemptions — P.L. 2007, c.157, enacted on August 21, 2007, effective immediately, clarifies the effect of P.L. 2004, c.183, which had supplemented the 1962 historic site real property tax exemption law by setting revised requirements for historic site tax-exempt status. The Legislature’s enactment of P.L. 2007, c.157, was a response to the Supreme Court’s decision in *University Cottage Club of Princeton New Jersey Corp. v. New Jersey Department of Environmental Protection and Borough of Princeton*, 191 N.J. 38 (2007), regarding the application of the historic site tax exemption law to the University Cottage Club. The Legislature noted that the Court’s interpretation of the intended effect of P.L. 2004, c.183, was contrary to legislative intent, and therefore it enacted P.L. 2007, c.157, as corrective legislation to clarify its intent

regarding the scope and applicability of the requirements for historic site real property tax exemption.

P.L. 2007, c.157, clarifies that the historic site real property tax exemption law is intended to apply only to historic sites that have a significant degree of public access, and not to private clubs that allow minimal public access and minimal benefit to the public. It makes the strict requirements imposed under the previous law, P.L. 2004, c.183, applicable to historic sites applying for tax-exempt status after July 1, 1999, or determined to be eligible after that date. The Act also shifts the authority to certify an historic site as exempt from real property tax from the Commissioner of Environmental Protection to the Director of the Division of Taxation, and it requires municipal tax assessors to certify annually that each certified tax-exempt historic site continues to meet the qualifications for exemption. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2007](#) [2008](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2007](#) [2008](#)

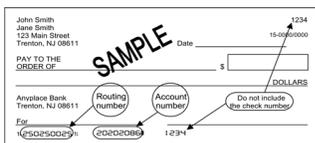
- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#) [2008](#) □

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 Homestead Rebate Hotline
 for Tenants 609-292-6400
 Property Tax Reimbursement
 Hotline 1-800-882-6597
 Earned Income Tax Credit
 Information 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
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 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-588-3932
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323
 Director's Office 609-292-5185
 Inheritance Tax 609-292-5033
 Local Property Tax 609-292-7221
 Motor Fuels Tax
 Refunds 609-588-3688
 Public Utility Tax 609-584-4337

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Changes to Rebate Program

The Homestead Property Tax Credit Act was signed into law April 3, 2007. The Act replaced the FAIR Rebate Program and increases the property tax benefit received by many New Jersey homeowners. The Act provides that, for most homeowners, the benefit can be paid as a credit applied to the homeowners' next property tax bill. However, because of unresolved issues with banking and mortgage lending industries, as well as municipalities, all eligible applicants will receive the benefit as a check this year.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2006, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2006 homestead rebate, provided that their gross income for the entire year does not exceed the income limit. The income limit is \$250,000 for homeowners and \$100,000 for tenants.

How to Apply

Homeowners: The 2006 homestead rebate applications were mailed in May to homeowners who were 65 years of age or older or disabled on December 31, 2006. Application packets were mailed beginning in late June to nonsenior, nondisabled homeowners.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or online at: www.state.nj.us/treasury/taxation/ The filing deadline for all homeowners has been extended to October 31, 2007.

Tenants: Applicants who are required to file a 2006 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software) by April 17, 2007. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate is also extended.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until October 31, 2007, to file the tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2006 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until October 31, 2007, to apply.

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Benefit Amounts

Benefit amounts differ for homeowners and tenants, and are determined by income, amount of property taxes (or rent) paid, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: For tax years 2006 and after, homeowners will receive 10%–20% of the first \$10,000 of property taxes paid, depending on their income level:

\$100,000 or less	—	20%
\$100,001 – \$150,000	—	15%
\$150,001 – \$250,000	—	10%

Homeowners who are age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (see above) or the amount by which the property taxes paid exceed 5% of gross income, but within the range specified based on income:

\$70,000 or less	—	\$1200 – \$1000
\$70,001 – \$125,000	—	\$800 – \$600
\$125,001 – \$200,000	—	\$500

In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2006, tenants age 65 or older or disabled will receive rebates ranging from a minimum of \$160 up to a maximum of \$860. Tenants under age 65 and not disabled will receive a minimum of \$80 up to a maximum of \$350.

Rebate Checks

Homeowners: Checks for senior and disabled homeowners who filed by June 1 were mailed on July 31, while checks for those who file between June 1 and October 31 will

be issued as quickly as possible thereafter. Checks for all nonsenior, nondisabled homeowners are scheduled to be mailed in the fall.

Tenants: Checks for tenants, who file their applications with their income tax returns, were also mailed on July 31.

More information on the Homestead Rebate Program is available at: www.state.nj.us/treasury/taxation/homestead/06hrintro.shtml □

SALES AND USE TAX

**Membership Fees/
Parking Charges**

P.L. 2007, c.105, effective July 1, 2007, amends the Sales and Use Tax Act to exempt from sales tax membership fees or dues for access to facilities of a health and fitness, athletic, sporting or shopping club or organization when the charges are made by qualified exempt organizations or New Jersey State or local government entities. All other charges for initiation fees, membership fees or dues for access to facilities of a health and fitness, athletic, sporting or shopping club or organization remain subject to sales tax.

P.L. 2007, c.105, also exempts charges for parking, storing, and garaging a motor vehicle when made by a municipality or county or a municipal or county parking authority. All other charges for parking, storing, or garaging a motor vehicle, other than residential and employee parking, remain subject to tax. The amendment also eliminates the imposition of sales tax on the \$3 parking fee at Atlantic City casino hotels.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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For more detailed information about these changes visit the Division's Web site at:

www.state.nj.us/treasury/taxation/notice_repealofsales.shtml

For general information about initiation fees, membership fees and dues, see **Tax Note** on this topic.

For general information about parking, storing, or garaging a motor vehicle, see **Tax Note** on this topic. □

SALES AND USE TAX

Newspaper Production Equipment

The sale of machinery, apparatus, or equipment used directly and primarily in the publication of newspapers is exempt from sales tax under N.J.S.A. 54:32B-8.29.

In the last several years, the newspaper industry has undergone many technological advances that affect the application of this exemption. For example, computers and digital imaging have automated the newspaper publishing industry, integrated multiple processes, and replaced the more traditional methods of publishing.

The availability of new technology has necessitated a reevaluation of how the phrase "directly and primarily" applies in the context of newspaper production. In general, "primarily" means used more than 50% of the time in the exempt activity, and "directly" refers to the physical proximity of the machinery, apparatus, or equipment in relation to the physical production of newspapers as a process.

In terms of newspaper production in a digital environment, the physical location of the equipment does not determine exempt status. Equipment that is used directly and primarily in the production process qualifies for the exemption even if it is physically located at a facility other than where the actual printing occurs. For example, the equipment used directly and primarily to coordinate the creation and layout of the newspaper pages may not be at the same location as the actual printing operation. Some small newspaper publishers may even outsource the entire printing process so that none of the printing takes place at their own facility.

In addition, computer equipment is likely to have dual uses, some "direct and primary" and some administrative. One factor that may be used to evaluate whether the purchase of a particular piece of equipment is exempt is the presence of software on the equipment which is used in the page layout process. The presence of such software creates a rebuttable presumption that the computer equipment is used directly and primarily in the production process; however, this presumption will be overcome if the equipment's actual use in the workplace indicates a nonexempt use more than 50% of the time. For example, if a computer that is used in a business office where its operator does a variety of tasks related to the conduct of business, including page composition, is used only 30% of the time for production purposes, it does not qualify for exemption. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.shtml □

LOCAL PROPERTY TAX

PAMS Countdown to Implementation

With the first implementation of New Jersey's new Property Assessment Management System (PAMS) only months away, the project team continues testing and is beginning to focus on activities to prepare the three early implementation counties for cutover to the new system. The counties will go live on a staggered schedule beginning in October as follows:

- October** – Hunterdon County
- November** – Camden County
- December** – Salem County

Project activities in recent months have included installing computer servers at the Office of Information Technology's facility, meeting with vendors to discuss interfaces with



PAMS countdown - from page 3

the new system, and testing business functions or procedures used to perform specific tasks in an office, such as appraising low-income housing or creating a lien certificate.

The latest edition of the quarterly PAMS newsletter, *Update*, is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml

For questions, contact Dana Max at dana.max@treas.state.nj.us or 609-292-8311. □

LOCAL PROPERTY TAX ***Tax Assessors' Calendar***

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2008 together with a notice that the completed form must be filed with the assessor by August 1, 2007, in order to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2008.

August 5-

- All SR-1A forms showing information to be used in compiling 2007 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) with respect to tax year 2008 with the assessor for taxing district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2008 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On February 21, 2007, the Office of Criminal Investigation (OCI) conducted a joint investigation with the Little Falls Police

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Interest 11.25%

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



criminal enforcement - from page 4

Department. Acting on a citizen complaint regarding the purchase of unstamped cigarettes at Deepali & Pinku, Inc., trading as Valley Spa, located at 61 E. Main Street in Little Falls, 192.5 cartons of cigarettes were seized, 40.3 of which bore counterfeit New Jersey tax stamps. The owner, Daxesh Parikh, was charged with numerous offenses, the most serious being the third-degree crime of possessing 2,000 or more cigarettes with counterfeit tax stamps.

- On March 26, 2007, a Clifton woman, Rosa M. Castro, 51, and her boyfriend, Rafael E. Ramos, 50, were indicted on charges that they stole more than \$16,000 by filing fraudulent State tax returns. They were indicted by a State Grand Jury on third-degree charges of theft by deception, money laundering, and conspiracy. It is alleged that Castro and Ramos filed 46 fraudulent New Jersey gross income tax returns between March and December 2006, consequently receiving and depositing 22 refund checks from the Division of Taxation totaling \$15,209 and 4 homestead rebate checks totaling \$865. Castro, who offered tax return preparation services to others, allegedly used the names of 13 different clients without their permission to prepare the fraudulent returns for tax years 2000 through 2005. All of the returns listed the defendants' home address. At the time of the alleged misconduct, Rosa M. Castro was on parole from State prison in connection with a prior fraud conviction involving more than 1,400 false State tax returns.

Castro pled guilty in 2002 to a Federal charge of aiding in the preparation of a false Federal income tax return and received three years' probation. In June 2004 she pled guilty to a second-degree charge of theft by deception brought by the Division of Criminal Justice for filing 1,448 fraudulent tax returns with the State of New Jersey. She was sentenced to five years in State prison but was released on parole in October 2005.

On April 17, 2007, Castro was returned to custody and on May 9, 2007, the New Jersey State Parole Board-Adult Panel revoked her parole and ordered Castro to serve the balance of her prison term (10 months, 17 days). Accordingly, she will serve a prison sentence until March 4, 2008, for the 2004 conviction. The disposition of the current charges is still pending.

- On March 30, 2007, Joan Orlando, 60, of Brick, was sentenced to five years in prison and ordered to make restitution for stealing \$738,163 from St. Benedict Roman Catholic Church. She was arrested in 2005 and pled guilty in January 2007 to theft by deception and failure to pay taxes. During a four-year period Orlando, with sole control of the books as a financial administrator at the Holmdel church, padded her \$47,000 salary to support her compulsive gambling addiction. In charge of payroll at the church, Orlando, who worked in the parish office for six and a half years, submitted paycheck amounts for church employees to Automatic Data Processing Inc. of Roseland, which produced the checks. From January 2001 to

June 2005, she inflated the amount of money she was to receive in her paycheck for each pay period. Joan Orlando's husband, Richard, who is accused of receiving nearly \$300,000 in cash and checks from his wife's bank account between 2003 and 2005, is scheduled to go to trial.

- On April 2, 2007, Mack Barden, 58, of Paterson, was sentenced to five years in State prison for stealing \$210,035 by fraudulently obtaining hundreds of New Jersey tax refund and homestead rebate checks. Barden pled guilty on January 18, 2007, to second-degree theft by deception, a charge contained in a State Grand Jury indictment obtained by the Division of Criminal Justice in July 2006. As part of the plea agreement, Barden agreed to make full restitution to the New Jersey Division of Taxation. The investigation by OCI revealed that Barden, a truck driver who earned additional income by preparing tax returns, submitted hundreds of fraudulent New Jersey gross income tax returns and homestead rebate applications between 1997 and 2005 using false names and social security numbers. Barden submitted altered W-2 forms with the tax returns, including forms from his tax preparation clients.
- On April 25, 2007, a search warrant and arrest warrants were executed at the residence of Jimmy and Jennifer Pham regarding allegations of tax evasion and structuring. The Phams accumulated sizeable liquid assets, but their reported gross income deemed it unlikely that their accumulation

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of assets was through the savings of a portion of their income. The IRS had seized certificates of deposit totaling \$300,000 and the New Jersey State Police confiscated \$200,000 in jewelry found during the search. The Phams claimed that the accumulation of money was from gambling winnings which they had previously secured in safes in their house and later decided to deposit in banks. The Phams stated they were making the deposits in amounts less than \$10,000 in order to avoid the need for the banks to file a Currency Transaction Report. Jimmy and Jennifer Pham were charged with financial facilitation and filing false and fraudulent tax returns for tax years 2005 and 2006. This is a joint investigation with the Financial Investigation Unit of the New Jersey Division of Gaming Enforcement and the IRS.

- On April 27, 2007, Lisa A. Gordon of Little Egg Harbor was sentenced to prison for theft of movable property and failure to file a New Jersey gross income tax return for tax year 2000. Gordon was sentenced to four years in State prison and ordered to make restitution to the Jewish Community Center, her former employer. In June 2005 a Monmouth County Grand Jury handed up a seven-count indictment of Lisa Gordon and her husband, Christopher, charging that they embezzled more than \$400,000 from the Jewish Community Center in Ocean Township. The investigation established that the Gordons used these funds to gamble in Atlantic City in addition to purchasing automobiles

and property. On July 14, 2006, Lisa A. Gordon pled guilty to the second-degree crime of theft of movable property and one count of failure to file a New Jersey gross income tax return. As part of the plea agreement the remaining charges against Lisa Gordon and all charges against her husband were dismissed at the time of sentencing. This was a joint investigation with the Monmouth County Prosecutor's Office.

- On May 8, 2007, Terry Tolbert was indicted in Union County Superior Court on charges of selling cigarettes without the required revenue stamp and possession of 2,000 or more cigarettes with counterfeit tax stamps. This indictment is the result of action taken on November 30, 2006, when Terry Tolbert and Ryan Mills were arrested for the possession, sale, and transportation of cigarettes bearing counterfeit tax stamps in Roselle, New Jersey. Ryan Mills pled guilty in Union County Superior Court and is awaiting sentencing. Terry Tolbert's case is pending trial. The arrests were the result of a six-month investigation conducted by OCI special agents of illegitimate cigarette wholesalers under the names C&M Tobacco and Tobacco Express.
- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$10,799,292 during the current fiscal year. In addition, the Office of Criminal Investigation continues to diligently issue assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

Termination of New Jersey S Corporation Status — A corporation that has elected and been accepted as a New Jersey S corporation remains a New Jersey S corporation as long as it is a Federal S corporation, unless it revokes its New Jersey status before the end of the first tax year. To revoke an election, a letter of revocation must be filed. The letter must be signed by all shareholders holding more than 50% of the outstanding shares of stock on the day of the revocation, and a copy of the original election form must be enclosed. The letter of revocation must be filed on or before the last day of the first tax year of the election. N.J.A.C. 18:7-20.1(f).

To terminate New Jersey S corporation status after the first year, a corporation must terminate its Federal S corporation status. An S corporation cannot end its New Jersey S corporation status without first terminating its Federal S corporation status. The corporation must then reregister with the State as a C corporation.

Multiple Taxes

Breast, Chin, and Other Implants — Several inquiries have been received regarding the taxability of breast implants under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., the Cosmetic Medical Procedures Gross Receipts Tax Act, N.J.S.A. 54:32E-1, or both.

The sale or use of breast implants is not subject to sales and use tax. Breast implants, chin implants, cheek implants, and similar bodily implants are deemed to be "prosthetic devices" and are therefore

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exempt from sales and use tax pursuant to N.J.S.A. 54:32B-8.1. Neither the medical services provider who purchases the implants from a supplier nor the patient who has them surgically implanted should pay sales tax or use tax on the implants.

If the medical services provider bills the patient for the implants in addition to billing for the medical services, then under certain circumstances the implants may be subject to cosmetic medical procedures gross receipts tax (CMPGRT), payable by the patient. If the procedure is a “cosmetic medical procedure,” i.e., a medical procedure performed in order to improve the patient’s appearance, but without significantly serving the purpose of preventing or treating disease, improving functioning of the body, or correcting or minimizing abnormalities caused by birth or developmental defects, trauma, or disease, then charges for the medical service are subject to the CMPGRT, payable by the patient and collected by the medical services provider. In that case, charges for any goods or facility occupancies required for the procedure and billed to the patient are also subject to the CMPGRT. For example, if a patient undergoes a breast augmentation procedure for purely aesthetic reasons, charges for the procedure as well as any additional charges for necessary room occupancies, implants, or other tangible personal property will be subject to the CMPGRT. However, if the procedure is reconstructive surgery performed to repair or correct abnormalities resulting from disease

or trauma (including prior surgeries) or congenital or developmental defects, then neither the medical services nor the implants and other goods will be subject to CMPGRT.

Partnerships

Partnership Filing Fee — Under N.J.S.A. 54A:8-6, a partnership filing fee is imposed on partnerships that have income (or loss) derived from New Jersey sources and that have more than two owners. The filing fee is \$150 for each owner up to a maximum of \$250,000. The filing fee is due on or before the 15th day of the fourth month following the close of each privilege period. An installment payment equal to 50% of the filing fee is also required at the same time.

A partnership may not be required to pay the filing fee if there is no New Jersey source income. To qualify for this exception, all operations and facilities must be located outside New Jersey. However, if the partnership has New Jersey source income, expenses, deductions, or losses it will not qualify for this exception. For example, a partnership that owns raw land in New Jersey on which it pays property taxes does not qualify for exemption because the property taxes constitute New Jersey expenses. On the other hand, fees paid by the partnership for a New Jersey checking account or to a New Jersey accounting firm are not considered New Jersey source expenses for purposes of determining liability for the filing fee. Similarly, the fee paid for simply filing the annual report in New Jersey will not be considered a New Jersey source expense for purposes of measuring filing fee liability.

If the partnership derives no income (or expenses) from New Jersey sources as described above, it would not be required to submit the \$150 per member filing fee. However, the partnership would still be responsible for filing a New Jersey partnership return (Form NJ-1065) if it had a New Jersey resident partner.

The partnership filing fee must be paid by the original due date of the partnership return. There is no extension for payment of the filing fee, even if the partnership has an extension for the filing of the partnership return. A prepayment of 50% of the next year’s filing fee must also be made with the fee for the current year. No other installment payments are required for the partnership filing fee.

The filing fee cannot be prorated for partners who own an interest for only a portion of the year. Similarly, the fee cannot be prorated if the partnership was in existence for only part of the tax year for which Form NJ-1065 is due. If a partnership dissolves before the end of a tax year, the 50% prepayment of the \$150 per partner filing fee for the next year is not required.

For additional guidance on the imposition of the partnership filing fee, see N.J.A.C. 18:35-11.1–11.6 and **TB-55**, *Partnership Filing Fee and Nonresident Partner Tax*.

Sales and Use Tax

Coin-Operated Laundromat — The sales tax exemption for laundering, dry cleaning, tailoring, weaving, and pressing is limited specifically to providing these services for clothing. N.J.S.A. 54:32B-3(b)(2)(iv).

When performed on nonclothing items, the services are subject to tax.

It is the Division's position that the operator of a coin-operated laundromat is permitted to make a basic presumption based on the traditional nature of the business that customers are using the coin-operated laundry machines to launder clothing. Therefore, receipts for the use of coin-operated washing machines and dryers at a self-service laundromat are not subject to sales tax.

Investigation and Security Services Sourcing — P.L. 2006, c.44, imposes tax on "Investigation and Security Services." See N.J.S.A. 54:32B-3(b)11.

The law defines "Investigation and Security Services" as:

1. Investigation and detective services, including detective agencies and private investigators, and fingerprint, polygraph, missing person tracing and skip tracing services;
2. Security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services;
3. Armored car services; and
4. Security systems services, including security, burglar, and fire alarm installation, repair or monitoring services. N.J.S.A. 54:32B-2(xx).

Investigation and detective services are sourced for sales tax purposes where the customer makes first use of the service. First use of these services is deemed to be where the

investigative report is delivered. N.J.S.A. 54:32B-3.1.

Security guard and patrol services are also sourced based on where the customer makes first use of the service. N.J.S.A. 54:32B-3.1. Since security guard and patrol services are specific to an actual location, they are sourced based on the location of the property being guarded. Thus, security guard and patrol services performed at a location in New Jersey are subject to tax.

Armored car service is subject to sales tax if performed entirely within New Jersey. If the service is not performed entirely within this State, then the service is sourced to the customer's location. Thus, if the customer's location is in New Jersey, regardless of whether goods are picked up or delivered to that location, the service is subject to sales tax.

Limousine Services — Sales tax is imposed on the sale, except for resale, of "transportation services originating in this state and provided by a limousine operator, as permitted by law, except such services provided in connection with funeral services." N.J.S.A. 54:32B-3(b)(13).

Sales tax will be imposed on limousine service that both begins and ends in the State of New Jersey, (i.e., the trip begins with pickup of passenger(s) in New Jersey and ends with the discharge of passenger(s) within New Jersey) and takes place entirely within the State of New Jersey. If a customer is picked up in New Jersey and delivered to a location outside this State, that service will not be taxable. If a customer is picked up outside of New Jersey and delivered to a location in this State, that service will also not be taxable.

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Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



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For example, a passenger contracts with a limousine operator to provide him with round-trip service from his home in Cherry Hill, New Jersey to a hospital in Philadelphia, Pennsylvania. The passenger is picked up in the morning and taken to the hospital. Then, several hours later the passenger is picked up from the hospital and taken back to Cherry Hill. The services provided are not taxable. The morning service is not taxable because it ends outside New Jersey, and the afternoon service is not taxable because it originates outside New Jersey.

Trucks and Trailers Used in Film or Video Production — Receipts from sales of tangible personal property and the installation, maintenance, or servicing of tangible personal property for use or consumption directly and primarily in the production of film or video for sale are exempt from New Jersey sales tax.

The exemption applies to motor vehicles; replacement parts, without regard to useful life; tools; and supplies. Thus, the rental of trucks and trailers that are used directly and primarily in the production of film or video for sale are exempt from New Jersey sales tax. The exemption does not apply to tangible personal property that is used incidentally to the production of film or video.

The definition of a film or video is set forth at N.J.S.A. 54:32B-8.49(c) which states that “. . . ‘film or video’ means motion pictures including feature films, shorts and documentaries, television films or episodes, similar film and video productions whether for broadcast, cable, closed circuit or unit distribution and whether in the form of film, tape, or other analog or digital medium, but does not include any film or video that is produced by or on behalf of a corporation or other person for its own internal use for advertising, educational, training, or similar purposes.” □

In Our Courts

Administration

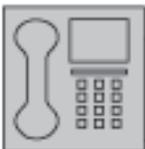
Jurisdiction – *Harry’s Lobster House Corporation v. Director, Division of Taxation*, decided June 5, 2006; Tax Court No. 004978-2004.

Plaintiff (Harry’s) filed a timely complaint in response to the Division’s final determination which concluded that Harry’s filed an untimely protest of the Division’s notice of assessment. There was no indication that this complaint was ever served on the Division. The Court found that Harry’s filed an untimely protest with the Division and that it did not appeal the notice of assessment with the Tax Court.

Harry’s further alleged that the complaint should not be dismissed because representatives of the Division met with Harry’s after the issuance of the final determination as well as after the filing of Harry’s complaint and reached an agreement to reaudit the tax years at issue. Harry’s alleges that the Division

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IRS Stakeholder Liaison presents:



National Phone Forum

IRS e-file – How to Get Started

Date: September 19th, 2007

Cost: FREE

Location: The convenience of your home or office

More information is available at: www.state.nj.us/treasury/taxation/pdf/irsefile.pdf



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cannot renege on the agreement because it relied on this agreement and spent substantial money to prepare for the reaudit.

The only remaining issue was whether the Division had any authority to reach an agreement to revoke or modify the original assessment following the filing of the complaint. For purposes of this motion, the Court assumed that the Division agreed to redetermine Harry's tax liability for the period related to the notice of assessment based upon Harry's subsequent period records.

The Court found that the Division has limited authority to redetermine sales tax, gross income tax withholding, and litter tax liabilities after the assessment has become fixed and final. The authority extends to cases dealing with compromises and closing agreements. Prior to the case's being referred to the Attorney General for defense, the Division may compromise a civil liability where there is doubt as to collectability. The Attorney General's opinion must be obtained before any compromise involving unpaid tax of \$5,000 or more may be accepted. A closing agreement must be requested before the case is

filed with the Tax Court. In both instances, the law requires that administrative action commence before litigation commences. Therefore, the Division would have had no authority to enter into an agreement as the complaint was already filed and no valid compromise or closing agreement could have been entered into. The Court held that it lacked jurisdiction to hear the case and therefore granted the Division's motion to dismiss the complaint.

Harry's appealed this decision to the Appellate Division.

Cash Audits

Mark-Up Methodology – Yilmaz, Inc. v. Director, Division of Taxation, decided February 2, 2007; Appellate Division No. A-0080-05T5.

The Appellate Division framed the issue as the standard of proof needed to overcome the presumed correctness of the Division's State tax assessment regarding the audit of a cash business involving factual issues and the Division's methodology. The Appellate Division noted that the Tax Court previously held that in order to overcome the Division's presumption of correctness of assessment there must be cogent evidence that is definite, positive, and certain in quality and quantity.

The Appellate Division affirmed the Tax Court.

Mark-Up Methodology – Yilmaz, Inc. v. Director, Division of Taxation, decided May 29, 2007; Supreme Court of New Jersey No. C-995 September Term 2006; 60,791.

The New Jersey Supreme Court denied Yilmaz, Inc.'s petition for certification.

Corporation Business Tax Basis for Depreciation of Transferred Assets – Clorox Products Manufacturing Corporation v. Director, Division of Taxation, decided November 29, 2006; Tax Court No. 007867-2004.

The Clorox Company (Parent Corporation) transferred its manufacturing operations and assets to plaintiff (Clorox) in July 1996 in exchange for 100% of Clorox's stock pursuant to a transaction that qualified as tax-free under Internal Revenue Code Section 351. The transferred assets consisted of uncoupled property, property originally placed in service during a time period when the New Jersey Corporation Business Tax Act (CBT) required the use of straight-line depreciation and did not permit the accelerated depreciation methods available to corporations under the

The Clorox Company (Parent Corporation) transferred its manufacturing operations and assets to plaintiff (Clorox) in July 1996 in exchange for 100% of Clorox's stock pursuant to a transaction that qualified as tax-free under Internal Revenue Code Section 351. The transferred assets consisted of uncoupled property, property originally placed in service during a time period when the New Jersey Corporation Business Tax Act (CBT) required the use of straight-line depreciation and did not permit the accelerated depreciation methods available to corporations under the

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**Enforcement Summary Statistics
First Quarter 2007**

Following is a summary of enforcement actions for the quarter ending March 31, 2007.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	4,032	• Seizures	107
Total Amount	\$58,058,207	• Auctions	6
• Jeopardy Assessments	178	• Referrals to the Attorney General's Office	463

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc.html



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Federal Internal Revenue Code (IRC).

Prior to the transfer, Parent Corporation depreciated the transferred assets using the straight-line method for CBT purposes and under an accelerated depreciation method for Federal purposes. On its CBT returns, Clorox used the Parent Corporation's CBT carryover basis and depreciated the assets using the straight-line method. The Division determined that Clorox should have used the Parent Corporation's IRC carryover depreciable basis per its regulations. N.J.A.C. 18:7-5.2(a)(2)(v) provides as follows:

Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Federal Internal Revenue Code, there shall be allowed as a deduction any excess or there must be restored as an item of income any deficiency of depreciation disallowed under (a)1x above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

The Court ruled that the Parent Corporation's transfer to Clorox was a physical disposal of recovery property under the regulations. However, the Court found nothing in the regulation that required the Parent Corporation to take an adjusting

depreciation deduction for the property it transferred to Clorox in 1996, which Parent Corporation did not take, and for which Clorox would have a reduced CBT carryover basis. The plain language of the regulation does not require the adjusting depreciation deduction but merely allows for the deduction in the year of the transfer. As Parent Corporation chose not to take the excess depreciation deduction, the Court found nothing within the regulation that precluded Clorox from using the Parent Corporation's higher depreciable basis.

The Division appealed this decision.

Gross Income Tax Timeliness of Complaint – *Szymczak v. Director, Division of Taxation*, decided April 30, 2007; Docket No. 005768-2006.

In this case, the Director moved to dismiss the complaint because it was filed after the expiration of the statutory 90-day appeal period.

A final determination was mailed to the plaintiff on March 10, 2006. Plaintiff had 90 days to file an appeal with the Tax Court. N.J.S.A. 54A:9-10.

R. 8:4-2(b) provides, "If a notice of an action is mailed the time period within which a complaint for review

may be filed shall be extended pursuant to R.1:3-3." R. 1:3-3 provides, "When service of a notice or paper is made by ordinary mail, and a rule of court order allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period." Thus plaintiff had until June 12, 2006, to file her complaint (June 11, 2006, was 93 days from March 10, 2006, but June 11 was a Sunday). However, plaintiff did not file a complaint with the Tax Court until June 21, 2006.

In his decision Judge Small opined:

While plaintiff argues that denying her right to an appeal would be unconscionable, the Tax Court has no authority to relax the statute of limitations. It appears that the plaintiff relied on her accountant to file a timely appeal on her behalf ... She must look to the accountant to compensate her for any loss she may have suffered because of his actions or must assume the consequences of her own actions or failure to act. The State is entitled to exert its defense that the court lacks jurisdiction. The court may not relax a statutory limitations

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Current Amnesty Programs

Iowa is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

IA Sept. 4 – Oct. 31 www.iowataxamnesty.gov/

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period. The State does not act as a malpractice insurer for professionals. To the extent that the plaintiff has a meritorious claim and she was precluded from raising it..., she must look to him (CPA), and not the State, for relief. A motion to dismiss on subject matter jurisdictional grounds can never be waived.

Judge Small went on to say, "As plaintiff's complaint was not timely filed, her complaint must be dismissed. The Director's motion to dismiss for lack of jurisdiction is granted." □

In Our Legislature **Administration**

Changes in Tax Debt Collection and Compliance Procedures — P.L. 2007, c.100, enacted June 28, 2007, effective immediately, but with the provision applicable to bulk sales not operative until August 1, 2007, makes several changes in tax compliance procedures in order to enhance tax collection and increase revenue.

Tax Clearance Program for Certain Business Assistance and Incentives — P.L. 2007, c.101, enacted June 28, 2007, effective immediately, and operative July 1,

2007, establishes a tax clearance certificate requirement for awards of certain monetary and financial incentives offered to businesses by State departments, agencies, instrumentalities, and independent authorities. The Act prescribes that as a precondition for obtaining an award of business assistance or incentives, such as grants, loans, and other financial assistance (but not including tax credits or tax exemptions), the applicant must obtain a tax clearance certificate from the Division of Taxation showing that it has filed its required tax returns, and paid any taxes, fees, or penalties and interest due.

Gross Income Tax

Earned Income Tax Credit — P.L. 2007, c.109, enacted June 28, 2007, effective immediately, and applicable to tax years beginning on or after January 1, 2007, expands the eligibility for the New Jersey earned income tax credit and enhances the benefit amount. The Act extends eligibility for the State credit to any individual who is eligible for a Federal earned income tax credit.

Penalties for Misclassifying Construction Workers as Independent Contractors — P.L. 2007, c.114, enacted July 13, 2007, and effective immediately, establishes penalties for employers who misclassify construction work employees as "independent contractors," thereby

affecting their rights and obligations under laws affecting State and Federal income tax withholding, social security, unemployment and disability benefits, workers' compensation, and other benefits. The Act makes it a criminal offense for an employer (or its agent, officer, foreman, employee) to misclassify a construction work employee, with the degree of the offense ranging from disorderly persons offense to second degree, depending on the intent and on the monetary value of the work contract. In addition, such misclassification may be subject to administrative penalties and civil penalties imposed by the Commissioner of Labor and Workforce Development, including suspension of registration, stop-work orders, and fines.

The Act creates a presumption that, for purposes of the Gross Income Tax Act and certain State benefit laws, workers who are remunerated by an employer for services performed in improving real property are deemed to be "employees" unless they meet all the criteria of a three-pronged test set forth in P.L. 2007, C.114 establishing that the worker is an independent contractor.

Local Property Tax

Uniform Shared Services and Consolidation Act and Other Reforms — P.L. 2007, c.63, signed into law on April 3, 2007, enacted several portions of a large package of reform proposals. Many of the provisions of the Act were designed to encourage fiscal savings among local units of government through a system of shared services. Other provisions promote openness and ease of public access to information regarding the budgeting processes for municipalities and public school systems.

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The Act also expands the authority of executive county superintendents (superintendents of schools). The Act indirectly affects local property taxation.

Short-Term Property Tax Abatement for Certain Reconstructed Homes — P.L. 2007, c.90, enacted May 6, 2007, and effective immediately, allows short-term property tax relief for a five-year period for owners of residential property located in a redevelopment area that has been rebuilt or renovated by certain volunteer labor after being destroyed or damaged by fire. The Act enables municipalities to enact an ordinance granting a five-year exemption from property tax on the value of the improvements made in such situations.

Short-Term Property Tax Abatement for Certain Homes Altered to Accommodate Disabilities — P.L. 2007, c.91, enacted May 6, 2007, and effective immediately, permits municipalities to allow a five-year property tax abatement for certain improvements made on single-family dwellings located in an area declared in need of redevelopment, if half of the occupants of the dwelling qualify for a Federal income tax credit because of permanent and total disability. The tax relief, which will allow the improved property to be assessed based on its value before the renovations or reconstruction, will apply if the improvements were made in order to accommodate the occupants' physical disabilities and the work was done by volunteer labor satisfying certain statutory criteria.

Miscellaneous

Reduced Cigarette Ignition Propensity and Firefighter Protection Act — P.L. 2007, c.86, enacted May 4, 2007, and effective June 1, 2008, sets various requirements to ensure that cigarettes sold in the State satisfy fire safety standards. It also provides that in the regular course of its inspections of cigarette dealers, the Division of Taxation may inspect cigarettes to determine whether they are marked as required by this Act. If they are not, the Director, Division of Taxation, shall notify the Director, Division of Fire Safety, Department of Community Affairs, notwithstanding the confidentiality provision (N.J.S.A. 54:50-8) of the State Tax Uniform Procedure Law.

Revisions of Neighborhood Revitalization State Tax Credit — P.L. 2007, c.89, enacted May 6, 2007, and effective immediately, increases the amount of State tax credits granted to businesses providing funding to qualified neighborhood revitalization projects.

Set-Off of Certain Debts Against Lottery Winnings —

P.L. 2007, c.106, enacted June 28, 2007, and effective immediately, provides that child support debts, debts to State government institutions and agencies, such as the Victims of Crime Compensation Board, and certain other debts shall be offset by the Department of Treasury against State lottery prizes greater than \$600. (This Act does not directly affect taxation.)

Multiple Taxes

Liability of Fiduciary Agents for Certain Taxes — P.L. 2007, c.102, enacted June 28, 2007, effective immediately, and operative on October 1, 2007, imposes personal liability on certain individuals and entities that, as the State's fiduciary agents, are required to collect and remit Cape May County tourism sales tax, N.J.S.A. 40:54D-4; Atlantic City luxury tax, N.J.S.A. 40:48-8.15 et seq.; hotel and motel occupancy fee, N.J.S.A. 54:32D-1;

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Routing: 080300020
Account: 123456789

Anyplace Bank
Trenton, NJ 08611

For: 123456789

Do not include this check number

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.49% of tax payment applies.

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9-1-1 system and emergency response fee, N.J.S.A. 54:17C-18; and cosmetic medical procedures gross receipts tax, N.J.S.A. 54:32E-1.

Property Tax Relief Programs

Homestead Credit Program — P.L. 2007, c.62, enacted April 3, 2007, establishes a system of homestead credits for homeowners, replacing the current homestead rebate program. The credit program provides taxpayers with benefits calculated as a percentage of the property tax (up to a maximum of \$10,000 tax) that they paid during the previous year. The percentages used to calculate this benefit are based on income levels, with higher percentage benefits allowed for the lower income levels, and with no benefit allowed for those whose income exceeds \$250,000. For seniors and residents who are blind or disabled, the Act either retains the current calculation of property tax rebates (the amount by which property taxes paid exceed 5% of gross income with specified maximum and minimum rebate amounts) or applies the new percentage of property taxes formula, whichever provides a greater benefit.

The homestead credit provisions will begin to apply to claims for rebates and credits for property tax paid for tax year 2006.

The Act also imposes a 4% property tax levy cap on school districts and county and local governments, subject to limited exceptions and adjustments. The tax levy cap provisions will apply to budget years beginning on or after July 1, 2007, but not to years beginning after June 30, 2012.

Sales and Use Tax

Seven-Year Exemption Period From Certain Taxes on Energy for Certain Manufacturers — P.L. 2007, c.94, enacted May 10, 2007, and effective immediately, provides an exemption from sales tax imposed on energy and utility services and from the transitional energy facility assessment unit rate surcharge. This exemption is to be applied only to a manufacturing facility producing products using recycled materials and satisfying several precise and complex criteria (currently applicable only to one manufacturing facility in the State). The Act provides that the exemption is in effect for seven years, and during that time the economic effect of allowing the facility's exemption will be reviewed annually.

Exemption for Certain Membership Fees and Municipal and County Parking — P.L. 2007, c.105, enacted June 28, 2007, and effective July 1, 2007, carves out certain exceptions to two new impositions of sales tax that were part of the expansion of sales and use tax under P.L. 2006, c.44, effective October 1, 2006.

The Act amends N.J.S.A. 54:32B-3(h), which imposes sales tax on fees and dues for use of the facilities of health and fitness, athletic, sporting, and shopping clubs and organizations. The amendment exempts such fees and dues if the club or organization is either an exempt private organization or an exempt public entity pursuant to N.J.S.A. 54:32B-9.

The Act also amends N.J.S.A. 54:32B-3(i) which imposes tax on receipts for parking or garaging a motor vehicle, with certain exceptions. The amendment carved out additional exceptions for municipal parking and garaging, even when not "metered," and certain parking fees at Atlantic City casinos. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2007](#) [2008](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2007](#) [2008](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#) [2008](#) □



*important
phone
numbers*

- Customer Service Ctr .. 609-292-6400
- Automated Tax Info 1-800-323-4400
..... 609-826-4400
- Homestead Rebate Hotline
for Homeowners ... 1-888-238-1233
- Homestead Rebate Hotline
for Tenants 609-292-6400
- Property Tax Reimbursement
Hotline 1-800-882-6597
- Earned Income Tax Credit
Information 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System 1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-984-4123
- Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
- Director's Office 609-292-5185
- Inheritance Tax 609-292-5033
- Local Property Tax 609-292-7221
- Motor Fuels Tax
Refunds 609-292-7018
- Public Utility Tax 609-633-2576

New Jersey State Tax news

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Civil Unions

P.L. 2006, Chapter 103, the Civil Union Act, was signed into law on December 21, 2006, and took effect on February 19, 2007. The legislation was passed in response to the New Jersey Supreme Court's decision in *Lewis v. Harris*, 188 N.J. 415 (2006), which unanimously held that "committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite-sex couples." The Act establishes "civil unions" for couples of the same sex. As stated in section 4, the Act gives civil union partners "all of the same benefits, protections and responsibilities under the law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage." Section 5n of the Act provides that "legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples" to "laws relating to taxes imposed by the State or a municipality including but not limited to homestead rebate tax allowances, tax deductions based on marital status or exemptions from realty transfer tax based on marital status."

The Civil Union Act impacts New Jersey State tax law and administration in the following areas:

Local Property Tax

Realty Transfer Fee. The exemption for the recording of deed transactions between spouses and between ex-spouses now applies equally to transactions between civil union partners and between ex-civil union partners.

Property Tax Reimbursement (Senior Freeze). Civil union couples will be treated in the same manner as married couples for determining eligibility and income amounts. This change applies to reimbursement applications filed for 2007 and thereafter.

Homestead Rebate. The same rules will apply to civil union partners that apply to married persons with a filing status "married, filing joint return" or "married, filing separate return." This change applies to rebate applications filed for 2007 and thereafter.

Exemption for Disabled Veterans. The same eligibility guidelines now apply to civil union couples and surviving civil union partners that apply to married couples and surviving spouses.

Deductions for Veterans and Senior Citizens. The same eligibility guidelines will apply to civil union couples and surviving civil union partners that apply to married couples and surviving spouses. All eligibility requirements must have been met by October 1 of the pretax year.

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Inheritance/Estate Taxes

Transfer Inheritance Tax will not be assessed against property passing to a decedent's surviving spouse, surviving civil union partner, parents, grandparents, children, stepchildren, or grandchildren. In such a situation, it will not be necessary to file an inheritance tax return with the Division of Taxation and waiver forms may be completed to secure the release of bank accounts, stocks, bonds, and brokerage accounts and real property, if any, in the name of the decedent. The Civil Union Act does not affect the treatment of domestic partners for purposes of the transfer inheritance tax unless domestic partners enter into a civil union, thus ending their domestic partner status.

New Jersey Estate Tax is based upon the Federal estate tax credit for state death taxes. In general, each return must have the same filing status. The Federal estate tax does not have a provision providing a deduction for property passing to a civil union partner. However, a surviving civil union partner may receive a "marital" deduction equal to that permitted a surviving spouse under the provisions of the Internal Revenue Code for New Jersey estate tax purposes by completing a "dummy" 2006 Federal Form 706 as though the Internal Revenue Code treated a surviving civil union partner and a surviving spouse in the same manner. This will permit the filing of a New Jersey estate tax return by a surviving civil union partner using the Federal calculations. Alternatively, a simplified tax system method may be used, but only in cases where a Federal estate tax return has not, will not, and is not

required to be filed with the Internal Revenue Service.

Gross Income Tax

New Jersey follows the Federal income tax rules regarding prerequisites for eligibility for "joint" filing status. For Federal purposes, persons must be considered married on the last day of the tax year to use the filing status "Married, Filing Jointly" or "Married, Filing Separately." Under the Civil Union Act, the same rules that apply to married persons with respect to filing status will apply to civil union partners in New Jersey, effective February 19, 2007. Accordingly, partners to a civil union will be able to use either joint or separate filing status on New Jersey income tax returns for tax years 2007 and thereafter, even if they were married or entered into a civil union in another jurisdiction (state or foreign country) prior to that date. It should be noted that the Attorney General of the State of New Jersey has rendered an opinion that out-of-State same-sex marriages entered into prior to tax year 2007 may only be treated as civil unions in New Jersey effective February 19, 2007.

A civil union partner may now choose the filing status "Married/Civil Union Couple Joint" or "Married/Civil Union Couple Separate" when completing Form NJ-W4, Employee's Withholding Allowance Certificate, which the employer uses to determine the amount of New Jersey gross income tax to withhold from employment income. The Federal Form W-4 does not include these filing status choices for civil union partners.

Civil union partners who make joint declarations of estimated tax for 2007 (Form NJ-1040ES) must list

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director:

Maureen Adams

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civil unions - from page 2

their names and social security numbers on the declarations in the same order they will appear on their 2007 joint income tax return that will be filed in 2008.

All forms and publications, as well as the information on the Division of Taxation's Web site, will continue to be updated in a timely manner to implement the provisions of the Civil Union Act that relate to the taxes and programs administered by the Division.

For further information on civil unions and New Jersey taxes visit the Division's Web site at: www.state.nj.us/treasury/taxation/civilunionact.shtml □

GROSS INCOME TAX ***Withholding on*** ***Payments to*** ***Contractors***

Under P.L. 2006, c.85, beginning January 1, 2007, any person (other than a governmental entity, a homeowner, or a tenant) who maintains an office or transacts business in New Jersey is required to withhold New Jersey gross income tax at the rate of 7% from payments made to unregistered, unincorporated contractors (e.g., builders, plumbers, landscapers, painters, carpenters, electricians) for services performed in this State. Any payor who is not already registered with the State as an employer will file the new [Form NJ-550](#) to report and remit the gross income tax withheld.

For more information on the new withholding requirement for contractor services visit the Division's Web site at: www.state.nj.us/treasury/taxation/noticegit.shtml □

Safe Deposit Box Release

R.S. 54:35-19 provides that the contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise may not be released without at least a 10-day notice to the Director, Division of Taxation, of the intended delivery and the retention of sufficient assets to pay any tax and interest that may be assessed on the assets delivered. The statute provides that the Director may examine the assets of a decedent contained in a safe deposit box.

In 1992 the Division determined that it would no longer inventory safe deposit boxes held by a decedent at the time of his or her death. On September 30, 1992, the Director issued a blanket waiver for the period to January 1, 1997, authorizing the immediate release of the contents of a safe deposit box. On October 11, 1996, the period was extended by the Director to January 1, 2002, and on January 4, 2002, the period was extended to January 1, 2007.

On January 12, 2007, the Director reissued the blanket waiver authorizing the immediate release of the contents of a safe deposit box for the period from January 1, 2007, to January 1, 2012. See below. □

To: All Banks, Trust Companies, Savings Institutions, Safe Deposit Companies, Savings and Loan Associations, or Other Institutions:

The Director, Division of Taxation, Department of the Treasury of the State of New Jersey, hereby waives the requirements of Revised Statutes 54:35-19 with respect to the issuance of the ten days notice and retention of assets for the opening of safe deposit boxes standing in the name of decedents either individually, jointly, or otherwise, or to which they had access and consents to release of the contents thereof.

This waiver is effective January 1, 2007 and shall expire January 1, 2012 unless cancelled by prior notice.

The institution releasing the contents of safe deposit boxes should keep the original of this letter for its own records.

Maureen Adams
Acting Director, Division of Taxation



Field Investigations

As of March 5, 2007, Special Projects Branch employees and functions were merged into the Field Investigations Branch. For administrative purposes the new Field Investigations Branch is divided into northern and southern jurisdictions.

The specific responsibility of the Special Projects Branch, which is obtaining compliance from out-of-State businesses, will now be handled by the Field Investigations Branch. Investigators will continue to work in cooperation with the New Jersey State Police, inspectors from the Division of Motor Vehicles, and local law enforcement agencies at weigh stations and vehicle and emission sites to check out-of-State commercial vehicles. Investigators will also continue to check locations such as construction sites and warehouses in order to uncover nonregistered or noncompliant out-of-State vendors. In-State vendors will also be checked for tax compliance. When necessary to protect the State's interest, investigators will continue to utilize the authority granted in N.J.S.A. 54:49-5 and N.J.S.A. 54:49-7 to make a jeopardy assessment and demand immediate payment. Failure to satisfy the jeopardy assessment may result in immediate seizure of available assets. Companies subject to the jeopardy assessment process have ninety (90) days from the date of the action to appeal the jeopardy assessment (appeal rights).

The Field Investigations Branch will be expanding its focus from performing its traditional tax collection and enforcement work for the

Division to also include the out-of-State vendors doing business in New Jersey. Field Investigations will now be involved in all aspects of tax compliance from the initial contact with a new business to the seizure and sale of assets from an uncooperative taxpayer. Field Investigations will continue working closely with all sections of the Division to enhance voluntary tax compliance by taking the tax enforcement actions appropriate to the situation. □

LOCAL PROPERTY TAX PAMS Demonstration

New Jersey's new Property Assessment Management System (PAMS) will be implemented this year in three counties: Camden, Hunterdon, and Salem. In addition to assessors, collectors, and tax administrators, county and municipal officials had the opportunity to see a demonstration of the PAMS computer-assisted mass appraisal (CAMA) module, which is an optional feature of the new system.

PAMS team members visited each of the three counties during the last week of February and the first week of March and provided an update on the project. Attendees had the opportunity to ask questions about PAMS CAMA, progress on the collections module, and the project in general.

Municipalities are being encouraged to take steps to prepare for PAMS, including reviewing contracts that involve assessment or collections software, looking at Internet connections, and considering budget effects.

For more information on the PAMS project, visit the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. April 1 deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.

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Interest 11.25%

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



assessors' calendar - from page 4

- County Boards of Taxation to establish the percentage level of taxable value of real property.
- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Board.

May 1-

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- For REAP recipients, the tax credit rate is calculated by divid-

ing the total REAP aid by total taxable value of qualified residential property.

- General tax rates certified by County Tax Boards.

May 23-

- Members of the County Board of Taxation shall sign the Table of Aggregates and transmit it to the County Treasurer who shall file, print in its entirety, and transmit certified copy to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- If Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On October 25, 2006, in Oldmans Township, Miguel A. Hernandez, 53, and Juana Berrios, 50, both of Jersey City, were arrested and charged by the New Jersey State Police with transporting 55 cartons of assorted brand Delaware stamped cigarettes. Hernandez was also charged with narcotics violations. The State Police also seized \$2,839 in cash and impounded their vehicle. In a written statement given by Hernandez to the State Police, he admitted that the two drove to Delaware to pick up the cigarettes at a gas station and paid \$1,640 for 55 cartons. Taxation records show that Hernandez and Berrios own Juana Deli located at 477 Ocean Ave., Jersey City. The Office of Criminal Investigation (OCI) immediately inspected this location, resulting in the seizure



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of an additional six cartons of untaxed cigarettes. An investigation concerning other tax issues is continuing and it is anticipated that OCI will be initiating additional criminal charges and tax enforcement.

- On November 30, 2006, in Roselle, OCI agents arrested Terry Tolbert, 25, of Bayonne, New Jersey, and Ryan Mills, 24, of Lake Orion, Michigan, on charges of possession of cigarettes bearing counterfeit tax stamps, sale of untaxed cigarettes, failure to maintain records with intent to evade the payment of tax, and transportation of untaxed cigarettes. Seized were 33 cartons of cigarettes bearing counterfeit tax stamps, a 2003 Dodge Neon, three cell phones, and numerous records indicating the suspects had been operating for some time under the fictitious

names C & M Tobacco, Tobacco Express, Tobacco Outlet, and other names not registered with or licensed by any governmental authority. Both suspects were held on \$75,000 bail in the Union County Jail. This investigation is continuing.

- On December 13, 2006, Gregory Slaton, 44, of Cherry Hill, pled guilty to theft and tax evasion. Mr. Slaton, the former treasurer of Little Rock Baptist Church, admitted stealing church funds for his own use and not paying New Jersey gross income tax on the illegal income for 2001 through 2004. He was scheduled to be sentenced on February 2, 2007. This matter was a joint investigation by the Division of Taxation and the Office of the Camden County Prosecutor.
- On December 19, 2006, three individuals were arrested when investigators from the Division of

Criminal Justice and the New Jersey Division of Taxation, assisted by officers from the Lyndhurst Police Department, executed a search warrant at an apartment in Lyndhurst, New Jersey. Arrested were Rosa Victoria Rivera (a.k.a. Vicky Rocsana Rivera-Peralta), 39, and Rivera's son Wilson Armondo Pinos Rivera (a.k.a. Wilson Pinos), 21, both residing in the Lyndhurst apartment, and Rivera's boyfriend, John Arturo Perez Silva (a.k.a. John Perez), 38, of Belleville, New Jersey. Nearly \$200,000 in cash, a computer, and several motor vehicles were seized along with blank social security cards, tax forms, and W-2 forms. Several bank accounts of the defendants containing a smaller amount of money were seized, and a second search warrant was executed at a self-storage site leased by the defendants in Belleville where additional records were confiscated. In this ongoing investigation OCI identified 540 fraudulent tax returns for which refund checks were issued between February 6, 2004, and July 11, 2006. The returns contained similar taxpayer information, such as similar names, common addresses, and common employers. About 400 of the returns were filed electronically and the remainder filed on paper. Of the 540 refund checks, 276 checks totaling \$826,974 were deposited in bank accounts. The Division of Taxation was able to stop payment on the remaining 264 checks totaling \$1,005,030. The defendants were each charged with second-degree theft

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



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by deception and are being held at the Mercer County Jail in lieu of \$1 million bail. The arrests were the result of a joint investigation by the Division of Taxation and the Division of Criminal Justice.

- On January 9, 2007, in Jersey City, New Jersey, OCI conducted its twenty-seventh seizure of untaxed cigarettes at the New Jersey International Bulk Mail Center. These untaxed cigarettes arrived at the facility from numerous overseas countries via Newark Liberty International Airport. OCI was initially alerted to this situation in November 2004 by government authorities and has since worked in conjunction. To date, OCI has seized approximately 57,762 cartons of untaxed cigarettes at this facility with a forfeiture value of approximately \$3,572,556.24.
- On January 18, 2007, a Paterson man pled guilty to stealing \$210,035 by fraudulently obtaining and cashing hundreds of New Jersey tax refund checks and homestead rebate checks. Mack Barden, 58, pled guilty to a charge of second-degree theft by deception. That charge was contained in a State Grand Jury indictment obtained by the Division of Criminal Justice in July 2006. As part of the plea agreement, Barden agreed to pay full restitution to the New Jersey Division of Taxation. Second-degree crimes carry a maximum sentence of 10 years in State prison. An investigation by the Office of Criminal Investigation

revealed that Barden, a truck driver who earned additional income by preparing tax returns, submitted hundreds of fraudulent New Jersey gross income tax returns and homestead rebate applications between 1997 and 2005 using false names and social security numbers. Barden submitted altered W-2 forms with the tax returns, including forms from his tax preparation clients. In pleading guilty, Barden admitted that he obtained and cashed 418 State tax refund checks totaling \$197,837 and 120 homestead rebate checks totaling \$12,198. Barden cashed the checks against his personal bank accounts and through independent check cashing agencies.

- On February 5, 2007, six Jersey City residents, including five members of one family, were indicted on charges they conspired to steal \$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks. All six of the defendants were indicted by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. First-degree charges carry a maximum sentence of 20 years in State prison and a criminal fine of \$200,000, while second-degree charges carry a maximum sentence of 10 years in prison and a fine of \$150,000. The defendants are Paul Sarris, 50; Achilles "Butz" Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons Aristides Amante, 27, Amorito "Angelo" A. Amante, 33, and Aloysius M. Amante, 31. The indictment was sealed until February 8, 2007, which allowed

for the execution of arrest warrants. State investigators from the Division of Criminal Justice arrested Matilda Amante Ramos, Aristides Amante, and Angelo Amante on February 6, 2007, and Aloysius M. Amante on February 7, 2007. The defendants were transported to Mercer County Jail, where they are being held in lieu of bail. Paul Sarris and Butz Amante remain at large. Matilda Amante Ramos ran a travel agency, while all of the other defendants operated their own financial service companies offering tax preparation services. Between August 2001 and September 2003, the six defendants allegedly filed 745 false homestead rebate applications with the State of New Jersey, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City. The defendants allegedly filed the applications using names and social security numbers obtained from tax preparation clients without permission of the clients. The defendants allegedly laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$1,428,391.99 for the period July 2006 through mid-February 2007. In addition, OCI issued assessments based on refunds found to be fraudulently obtained.

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Tax Briefs

Corporation Business Tax

AMA: Allocable Receipts — There is no provision within the New Jersey tax laws that allows sales made to governmental entities to be excluded when calculating gross receipts allocable to New Jersey. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey, regardless of the purchaser’s identity.

NOL Suspension — For privilege periods beginning in 2002 and 2003, net operating loss (NOL) deductions were disallowed. For privilege periods beginning in 2004 and 2005, the NOL deduction was limited to not more than 50% of taxable income. Any NOL deduction that was disallowed and would have expired in privilege periods beginning in 2002 and 2003 was extended for two years. Any NOL deduction that was disallowed by the 50% limitation and would have expired in privilege periods beginning in 2004 and 2005 was extended for one privilege period for each privilege period it was disallowed. The full NOL was allowed for privilege periods beginning in 2006.

Gross Income Tax

Principal Residence: Military — The New Jersey Gross Income Tax Act, N.J.S.A. 54A:6-9.1b, provides for the exclusion from New Jersey gross income of all or part of the gain derived from the sale or exchange of a principal residence up to a maximum of \$250,000 for an individual or \$500,000 for a couple filing jointly. To qualify for the exclusion, during the five-year period ending on the date of sale of the property, it must have been used by the taxpayer as a principal residence for periods totaling two years.

The New Jersey Gross Income Tax Act adopted the Federal IRC Section 121 that was in existence in 1998. New Jersey does not have a provision similar to the Federal Military Family Tax Relief Act which gives members of the U.S. uniformed services and foreign service some tax relief by extending certain deadlines, increasing the allowable exclusion for certain types of income, and providing tax deductions for certain expenses. Therefore, New Jersey does not conform to the Federal income tax exclusion for the sale or exchange of a principal residence that suspends the five-year test period for up to 10 years of

extended duty overseas or at a domestic location for qualified military and foreign service personnel.

Sales and Use Tax

Barter Transactions — The Division of Taxation continues to receive inquiries regarding the sales and use tax treatment of barter transactions.

A transaction in which one party provides its goods or services in exchange for the goods or services that it wants to receive clearly constitutes a “purchase” and a “sale” within the meaning of the Sales and Use Tax Act. These terms are defined in the act as:

Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this act, for a consideration or any agreement therefor. N.J.S.A. 54:32B-2(f).

“Sale” or “purchase,” as defined in this provision, explicitly includes “barter,” and the goods or services

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Enforcement Summary Statistics Fourth Quarter 2006

Following is a summary of enforcement actions for the quarter ending December 31, 2006.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,217	• Seizures	80
Total Amount	\$80,873,374	• Auctions	3
• Jeopardy Assessments	328	• Referrals to the Attorney General’s Office	411

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc.html



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given in exchange for the goods or services received constitute the requisite “consideration.” The two parties to a barter transaction function as both “buyer” and “seller”; the goods and services exchanged serve, in turn, as both the items sold and the consideration paid.

When the “seller” of taxable goods or services sold in a barter transaction is a New Jersey vendor (i.e., a vendor who has sales tax nexus with New Jersey, or a vendor without nexus who has voluntarily chosen to register as a vendor in this State), then the seller should collect and remit sales tax calculated on the normal retail value of the item sold, assuming that the purchaser cannot claim a valid statutory exemption (e.g., resale, exempt organization, production equipment, farm production use). The normal retail value is the price, in dollars, at which merchandise or services of the same kind are offered for sale by him to retail customers paying by traditional means (money).

For example, a lighting store and a plumber may enter into a barter transaction in which the store provides the plumber with a lighting fixture in exchange for the plumber’s repair services. The plumber, who normally charges \$50 per hour for this work, provides an hour and a half of labor in exchange for the lighting fixture, which has a retail price of \$75. Both the plumber and the lighting store will owe \$5.25 tax on their respective purchases. The plumber must report the \$75 sale of services in his gross receipts on the Sales and Use Tax Quarterly Return, ST-50, and remit \$5.25 tax

payable by the lighting store on the sale; the lighting store must report the sale of the \$75 fixture in its gross receipts on the ST-50 and remit the \$5.25 tax payable by its customer (the plumber).

The same lighting store may decide to barter with a barber. In exchange for a lamp sold for a retail price of \$30, the three co-owners of the lighting store are given haircuts, which the barber normally gives for \$10 each. The barber should be charged \$2.10 tax for the lamp. However, the lighting store will not be liable for sales or use tax on the services received from the barber, because the haircuts are a nontaxable service.

If the seller is an out-of-State vendor, not registered in New Jersey, who delivers taxable merchandise to a New Jersey customer in a barter transaction, then the New Jersey customer will be liable for compensating use tax. The New Jersey customer will owe the tax on the value of the consideration that it paid. This consideration will consist of the goods or services that it gave to the seller, in lieu of money. For example, an accountant in New Jersey may want a Pennsylvania carpenter to make him a bookcase for his office. The accountant prepares the carpenter’s income tax return, while the carpenter delivers a bookcase to the accountant as payment for the accounting services. The accountant would normally charge \$400 for the tax return. He is deemed to have paid \$400 for the bookcase and will therefore owe \$28 use tax on this piece of furniture, payable with the Annual Business Use Tax Return, ST-18B, after the close of the year.

Dog Park Membership —

Fees for membership in a dog park, a fenced-in area where people can let their dogs run and play safely, are not subject to sales tax. They are not deemed to be fees for use of the facilities of a “health and fitness, athletic, sporting club” within the meaning of N.J.S.A. 54:32B-3(h) because the Division of Taxation interprets this language to apply to fitness, health, and athletic clubs primarily for use by humans.

Parking — A taxpayer inquired if a parking garage that is operated for an office building that is not open to the general public is exempt from the sales tax on parking. The issue is whether the employee parking exemption applies when the employee pays to park in the office building’s garage or whether the exemption applies only if the employer is paying for the parking and does not pass the cost on to the employees.

On and after October 1, 2006, sales tax is imposed on the receipts from parking, storing, or garaging a motor vehicle, excluding charges for the following types of parking: residential parking; employee parking, when provided by an employer or at a facility owned or operated by the employer; municipal metered parking; and such receipts subject to tax pursuant to any other law or ordinance. See N.J.S.A. 54:32B-3(i).

If the employer located in the office building only permits his own employees to park in the parking garage, then that parking would not be subject to the new sales tax on parking whether purchased by the employer or by the employee. The employer is permitted to pass the



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parking cost on to the employees by charging them for it and the parking will still be exempt from sales tax as employee parking.

Sourcing Rental Payments — The New Jersey Sales and Use Tax Act provides that if the lease of a motor vehicle requires periodic payments, each periodic payment is sourced to the primary property location. The “primary property location” is the address given by the lessee and maintained in the lessor’s ordinary business records, provided that the address is used in good faith. If the lease does not require periodic payments, the payment is sourced the same as a retail sale, i.e., to the location where the property is delivered. N.J.S.A. 54:32B-3.1.

Streamlined Sales and Use Tax: Central Registration System — A key aspect of the Streamlined Sales and Use Tax Agreement (SSUTA) is the development of a central online registration system which can be used as an alternative to the traditional system currently available through the Division of Revenue’s Web site. Registering through this central system is voluntary, unless the seller seeks to take advantage of the amnesty program (see below). Central registration constitutes registration with every member state, including those that adopt the Agreement after the seller registers. By

registering through this system, sellers agree to collect and remit tax on all sales sourced to any member state. Thus, even though a registrant may not have sales in other member states, by using the central system, the sellers are registering in every other member state, all of which are listed on the registration form.

Sellers that register through the central system have the option of choosing among three methods of calculating, reporting, and remitting the tax. These methods involve the selection of a certified service provider (CSP), a certified automated system (CAS), or using the seller’s own proprietary system. Sellers may also report and remit based on traditional means, but there are benefits to utilizing one of the other systems that will not be available for traditional systems. Amnesty is available for uncollected or unpaid sales and use tax due from a seller in their capacity as a seller. However, in order to obtain amnesty now the seller must utilize CSP or CAS and meet other criteria. Amnesty in New Jersey ends on May 31, 2007.

Additional information concerning the central registration system, the identification and certification of CSPs and CASs, and other administrative simplifications will be provided as it becomes available from the SSUTA’s Governing Board. The central registration system can be

accessed on the Division’s Web site at: www.state.nj.us/treasury/taxation/streamregpro.shtml

Taxability of Massage, Bodywork, and Somatic Services — P.L. 2006, c.44, enacted July 8, 2006, made numerous changes in the Sales and Use Tax Act, expanding the tax base to include many previously nontaxable categories of transactions effective October 1, 2006. Among the changes was section 3, codified as N.J.S.A. 54:32B-3(b)(9), which imposes sales tax on “massage, bodywork or somatic services.”

Massage, Bodywork, and Somatic Services Defined

“Massage, bodywork, and somatic services” means systems of activity of structured touch which include holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying massage, bodywork or somatic principles. Such application may, for example, include the use of therapies such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, and external application of herbal or topical preparations.

The sales tax applies to massage, bodywork, and somatic services that are rendered in New Jersey. There is no New Jersey use tax on those services received outside the State.

For purposes of the Sales and Use Tax Act, massage, bodywork, and somatic services are not deemed to include services rendered by persons licensed in the following medical and medical-related fields, when they are performing services they are authorized to perform within the

Current Amnesty Programs

Texas is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

TX June 15 – Aug. 15 <http://freshstart.texas.gov/>

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scope of their licenses: medical doctors (M.D.), doctors of osteopathy (O.D.), dentists, chiropractors, physical therapists, registered nurses (R.N.), podiatrists (D.P.M.), or certified midwives (CM); acupuncture; or cosmetic and beauty services such as manicures and pedicures, cosmetic facials and cosmetic wraps, depilatory services, hair styling, and other services that are designed primarily to enhance appearance or cleanliness.

The taxability of the services does not depend upon the type of facility where the services are performed. Massage, bodywork, and somatic services are taxable regardless of whether they are performed in a massage-only facility, a clinic, a spa, an athletic facility or other location, unless they are performed by a massage, bodywork, or somatic practitioner pursuant to a doctor's prescription as detailed below. In addition, the services are taxable regardless of whether they are performed by a professionally trained massage therapist, a student intern, or an untrained massage practitioner.

Doctor's Prescription

For purposes of this Sales and Use Tax Act provision, a "doctor's prescription" for massage, bodywork, or somatic services will mean direction by a licensed medical doctor, osteopath, chiropractor, podiatrist, psychologist with a doctorate in psychology, or dentist for initiation of massage, bodywork, or somatic services for a patient for whom the medical doctor, osteopath, chiropractor, podiatrist, psychologist, or dentist is providing treatment or consultation services within the scope of his or her license. This direction

must be in writing, and must contain the following: name of patient; name and signature of referring medical doctor, osteopath, chiropractor, podiatrist, psychologist, or dentist; purpose of the referral and description of conditions or needs to be addressed by the massage, bodywork, or somatic therapy. Massage, bodywork, or somatic services provided without a doctor's prescription are taxable.

Contracted Services and Employee Services

The tax on massage, bodywork, and somatic services is imposed on the customer. Masseurs and other service providers who are employed to perform these taxable services do not collect sales tax from their employers on their salaries. Masseurs and other service providers who work for a professional office, athletic facility, spa, clinic, or other facility as independent contractors should not collect sales tax from the facility on the fees they charge to the facility. They should instead enter into a resale agreement with the facility, specifying that the facility, rather than the individual practitioner, will be responsible for collecting sales tax from clients on any taxable receipts for massage, bodywork, and somatic services. This agreement will take the place of a resale certificate, and should be retained by both the facility and the masseur or other service provider for at least four years. The individual or business billing the client for the services collects the tax.

Gift Certificates

Gift certificates, whether for a dollar amount specified on the certificate or for a specific service, are not taxable at the time when the certificate is sold. Sales tax will be due

when massage, bodywork, or somatic services are provided to the gift certificate holder, unless a doctor's prescription for the services has been provided to the practitioner.

Massages for Animals

The change in the law is deemed to apply only to services provided to humans. The policies regarding sales and use tax treatment of massages for nonhuman animals remain the same and are as follows. Massages performed by veterinarians and their staffs are exempt from sales tax. Massages performed by a service provider other than a veterinarian, but prescribed by a veterinarian, are also exempt. Rub downs, calming touch techniques, and other massage-like activities performed as part of animal grooming are treated as part of grooming, which is a taxable service. □

In Our Courts

Gross Income Tax

Alimony in the Credit for Taxes Paid to Other Jurisdictions Calculation – *DiLorenzo v. Director, Division of Taxation*, decided February 2, 2007; Docket No. 000157-2006.

This case involved a taxpayer who is a New Jersey resident, works in New York, and pays alimony. The taxpayer felt that he should not have to include the alimony deduction, allowed on the New York nonresident return, in the numerator of the credit calculation of the credit for taxes paid to other jurisdictions since he was not able to reduce the "entire New Jersey income" (denominator of the credit calculation) by the alimony paid.

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Judge Pizzuto stated that the leading factor in his ruling was the Court decision, *Ambrose v. Director, Division of Taxation*, 198 N.J. Super. 546, 487 A.2d 1274. Judge Pizzuto stated, "A decision of another tax court judge is not binding. (However) a decision of the Appellate Division is binding on the Tax Court. *Ambrose* is binding on this Court."

In response to the taxpayer stating fairness as an issue, Judge Pizzuto cited Judge Lasser in *Nielsen v. Director, Division of Taxation*, 4 N.J. Tax 438, (1982). Judge Lasser stated, "Taxpayers argue that they would pay less New Jersey tax if no alimony were paid. If no alimony were paid, the numerator would be increased by \$10,000 but the denominator would remain the same, increasing the fraction, increasing the New Jersey credit and reducing the New Jersey tax. However, if there were no alimony deduction in New York, the New York tax would also be higher, thus justifying the greater New Jersey credit. When taxpayers pay less tax in New York because of an alimony deduction, their New Jersey credit should be decreased."

Judge Pizzuto granted summary judgment in favor of the Division.

Local Property Tax

Farmland Assessment – *All Monmouth Landscaping & Design, Inc. v. Manalapan Township*, decided October 20, 2006; Tax Court No. 007199-2005.

The subject matter of this case was whether the plaintiff was eligible for farmland assessment under the Farmland Assessment Act for tax

year 2005 if he failed to file his application by the statutory filing deadline of August 1, 2004.

The plaintiff's property was purchased under the conditions of the Garden State Preservation Trust Act, which by deed restriction required the property be used for farm use, and which the plaintiff believed meant no application for farmland assessment was needed. The plaintiff's contention was that because the deed restricted the land to no other use but farmland, the assessor should have assessed the property as farmland on that basis and should have been aware of the restrictive covenant. The defendant's position was that since the application was not filed by August 1, 2004, the property was not qualified, no matter how eligible it might otherwise have been.

The defendant said that the plaintiff had always filed timely applications and the subject property had been assessed as farmland under the provisions of the Farmland Assessment Act for tax years 2003 and 2004. Plaintiff stated that the property owner filled out the application sometime in July and gave it to his secretary to submit to the defendant by the August 1, 2004, deadline. However, the secretary failed to file the application by the due date. On August 12, 2004, the defendant's assessor notified the plaintiff that the application had been denied due to untimely filing.

The plaintiff filed an appeal with the Monmouth County Board of Taxation. The County Board confirmed the assessments and the plaintiff then hired counsel, who filed an appeal with the New Jersey Tax Court.

The plaintiff pointed out that the idea of the Farmland Assessment Act was to preserve farmland and open space and argued that the strict covenant in the deed served the same purpose as the Act. The defendant did not argue that the use of the subject property was inconsistent with the purposes of the Act, but believed that the plaintiff must adhere to the requirements of the Farmland Assessment Act: he should have made a timely application.

N.J.S.A. 54:23.6 permits the assessor to extend the deadline for the application until September 1st, but only where the owner is ill or has died. New Jersey courts have consistently stood by the provisions of the Act and held that a failure to file a timely application for farmland assessment would preclude preferential valuation, assessment, and taxation for the tax year no application was filed.

In *Interstate 78 Office Park, Ltd. v. Tewksbury Twp.*, 11 N.J. Tax 172, 181 (Tax 1996), the Court explained why an application is required:

This legislative requirement for the filing of the farmland assessment application is to notice the assessor as to the exact agricultural or horticultural use the owner is claiming and the facts relied upon in support thereof so the assessor may check it out and make an informed determination whether the application sets forth a claim recognized by the act and whether the facts found by him support the claim.... When the assessor makes his physical



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inspection, naturally and logically, he is guided by the application as to what facts he should investigate.

So, even though the plaintiff's deed restricted the use of property, the Act still required the assessor to determine whether the property was eligible for farmland assessment. Since the plaintiff did not file his application in a timely manner, the New Jersey Tax Court found the land not to be entitled to a farmland assessment for tax year 2005.

Also, the plaintiff wanted the Court to examine how the assessor valued the property. The plaintiff thought that the assessor should have taken the restrictive covenant into account when valuing the property. The plaintiff incorrectly equated the true value of the property as restricted with the value under the Farmland Assessment Act. In valuing land under qualifying agricultural or horticultural use, the assessor must consider evidence of soil capability derived from Rutgers, the State University; the National Co-op Soil Survey; and the State Farmland Evaluation Advisory Committee.

When farmland is not eligible for farmland assessment, the assessor must determine "the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bonafide sale by the private contract on October 1 next preceding the date on which the assessor shall complete his assessments." N.J.S.A. 54:4-23. This means that the assessor must value the property the same way it would be valued in the marketplace even if it is farmland with a restrictive code.

The plaintiff was entitled to a trial to determine whether the market value of the property was different than the assessments. However, he was not eligible for a reduced assessment for the tax year 2005 under the Farmland Assessment Act.

Sales and Use Tax Responsible Person and Timeliness of Complaint – *Rosner v. Director, Division of Taxation*, decided November 6, 2006; Docket No. 007501-2005.

This case involves a responsible person case and the underpayment of sales tax.

After conducting an in-person conference, the administrative conferee had sent a final determination letter by certified mail to the address of record (which was the taxpayer's correct address). However, the post office returned the certified mail as "undeliverable as addressed." The administrative conferee then sent the final determination by regular mail

to the same address in July 2005.

The taxpayer claimed he did not receive the final determination letter until September 29, 2005. To prove this point, the taxpayer submitted a copy of an envelope sent from the Conference and Appeals Branch containing PO Box 198 in the left-hand corner and a stamped date of September 29, 2005, in the right-hand corner.

The Division countered that the administrative conferee had sent out a "Settlement Agreement Packet" which the taxpayer had requested via telephone. It was this mailing that the taxpayer received sometime after September 29, 2005.

Judge Hayser in his opinion stated, "We have a situation where the Division claims to have mailed certain documents and the taxpayer claims to have received certain documents at different times. We could have

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

Sample E-Check Form:
 John Smith
 123 Main Street
 Trenton, NJ 08611
 Date: 10-06-2006
 Amount: \$1234.00
 Anystate Bank, Trenton, NJ 08611
 Routing Number: 000000000
 Account Number: 123456789010
 Do not include the check number.

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX www.officialpayments.com

* Fee of 2.49% of tax payment applies.

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another hearing as to the credibility of the conferee and the taxpayer. However, I do not think that will be necessary.”

Then Judge Hayser stated that just as the Division was required to turn “square corners,” the taxpayer also had a responsibility to file a “timely, diligent appeal.” Quoting from *Prospect Hill Apartments vs. Borough of Flemington*, 411 A.2d 737, 1 N.J. Tax 224, 172 N.J. Super. 245 (1979), Judge Hayser said that the taxpayer waited 80 days from the date the taxpayer said he received the final determination by regular mail and 150 days from when the original final determination was mailed by certified mail to appeal to Tax Court. Judge Hayser said the “tolling of a statute is not open-ended.” “Not only does the Division have a responsibility with timeliness issues, but the taxpayer also has a duty when they appeal to be diligent.”

Judge Hayser opined, “The plaintiff knowing that the appeal time was going to run out, waited until the final days to mail his appeal. Due diligence would have required an earlier filing. He (the taxpayer) did so at his own peril.”

From *Prospect Hill Apartments, supra*, Judge Conley said, “Plaintiff is correct that the Tax Court as a judicial body has greater powers than were possessed by county boards of taxation or the Division of Tax Appeals. The Supreme Court has held that jurisdictional statutes of limitation may be tolled by courts in appropriate circumstances if the legislative purpose underlying the statutory scheme will thereby be

effectuated.” *White v. Violent Crimes Comp. Bd.*, 76 N.J. 368, 379, 388 A.2d 206, 211 (1978). In an apparent effort to invoke the application of this principle, plaintiff argues that the post office at which its complaint was mailed on August 14, 1979, promised delivery the next day, which would have resulted in a timely filing. This argument has no merit. Plaintiff waited until the day before the statutory filing deadline to mail the complaint. The mailing was in Elizabeth and the envelope was addressed to Trenton. Due diligence would have required either an earlier mailing of the complaint or a direct filing of the complaint by August 15. *Leake v. Bullock*, 104 N.J. Super. 309, 250 A.2d 27 (App. Div. 1969). There are no circumstances in the present case to warrant any consideration of a tolling of the filing deadline established by N.J.S.A. 54:3-21. The Court need not consider in this case whether such a tolling could effectuate the legislative purpose underlying the statutory scheme of tax appeals in other circumstances.

Judge Hayser granted the Division its motion to dismiss for untimely appeal to Tax Court.

Jurisdiction – *Scott Frybarger, t/a Titan Power Equipment, Inc. v. New Jersey Department of Treasury*, decided December 27, 2006; Civil Action No. 05-4648 (KSH).

Mr. Frybarger, a resident from Florida, sent a tractor-trailer full of construction equipment to New Jersey to be sold. Mr. Frybarger hired four gentlemen from Ohio to drive around New Jersey construction sites and to sell the merchandise.

The four gentlemen from Ohio were responsible for picking the equipment up from a New Jersey site and driving the equipment to prospective customers located in New Jersey. Once the construction site foreman saw equipment that he was interested in, the Ohio driver would make a phone call to Mr. Frybarger who would finalize the deal. The Ohio gentlemen are not considered a common carrier, nor should they be considered independent contractors since Mr. Frybarger closed all the deals on the cell phone.

Mr. Frybarger filed in United States District Court, District of New Jersey, claiming that the State of New Jersey deprived him of rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution when property was searched and seized for failure to pay sales tax. Mr. Frybarger also claims 1983 action (civil rights were violated) as well as emotional distress.

Judge Katherine S. Hayden of the Federal District Court has issued an order denying plaintiff’s motion for entry of default and granting the Division’s motion to dismiss the case citing that Mr. Frybarger had two alternative methods of challenging tax assessments made against him. Mr. Frybarger should have either filed a written protest for a hearing or appealed to the Tax Court of New Jersey. Accompanying the order is a seven-page unpublished opinion.

Mr. Frybarger had 30 days to file an appeal with the U.S. Third Circuit Court of Appeals. □

In Our Legislature

Cigarette Tax

Cigarette Tax Technical Changes

— P.L. 2006, c.98, enacted December 11, 2006, effective immediately, made technical changes in the fiscal year timing of various deposits of dedicated cigarette tax revenue.

Medical Research Facilities Funded Through Certain Cigarette Tax Bonds

— P.L. 2006, c.102, enacted December 20, 2006, effective immediately, authorizes the financing of certain State capital construction projects for facilities for stem cell, biomedical, and cancer research through cigarette tax securitization bonds.

Gross Income Tax

Electronic Filing of Tax Returns

— P.L. 2006, c.36, enacted July 8, 2006, effective immediately, requires tax practitioners to use electronic methods of filing gross income tax returns and of paying the tax for the returns prepared if the practitioner prepared or filed at least 100 gross income tax returns the prior taxable year. The Act authorizes the Director of the Division of Taxation to prescribe methods of filing returns and paying taxes, but specifies that it does not authorize the Director to require electronic filing or tax remittance by either individuals preparing their own gross income tax returns or practitioners who prepare the returns *pro bono*. The Act also allows the Director to extend the electronic filing requirement, beginning in taxable year 2007, by regulation, to practitioners who filed 50 or more gross income tax returns the prior year, and it allows the Director to develop a procedure whereby a taxpayer might elect not to have the

practitioner file the taxpayer's return electronically. In addition, the Act imposes penalties on taxpayers and tax practitioners who fail to use electronic methods when required to do so by law.

Withholding Income Tax From Payments to Unregistered Contractors

— P.L. 2006, c.85, enacted August 21, 2006, and applicable to payments made on or after January 1, 2007, makes changes in the requirements regarding withholding gross income tax. It requires all persons and businesses (other than governmental entities or homeowners or residential tenants) maintaining an office or transacting business in New Jersey and making payments for services rendered to an unregistered, unincorporated contractor to deduct and withhold 7% gross income tax from the amount paid.

Civil Union — P.L. 2006, c.103, enacted December 21, 2006, and effective February 19, 2007, establishes the legal relationship of "civil union" under the State's marriage laws. A civil union is "the legally recognized union of two eligible individuals of the same sex established pursuant to this act." Parties to a civil union will have the same legal benefits, protections, and responsibilities as parties to a marriage, including those based on tax laws, such as those governing local property tax, homestead rebates, realty

transfer fees, gross income tax, and transfer inheritance taxes.

Inheritance Tax

Civil Union — P.L. 2006, c.103. See Gross Income Tax.

Local Property Tax

Local Tax Collection by Certain Cities

— P.L. 2006, c.97, enacted September 13, 2006, effective immediately, authorizes cities of the first class to collect both local property tax and the hotel use or occupancy tax from hotels in their jurisdiction.

Civil Union — P.L. 2006, c.103. See Gross Income Tax.

Miscellaneous

Reciprocal Debt Collection Agreement With Federal Government

— P.L. 2006, c.32, enacted July 8, 2006, becomes operative when the State Treasurer enters into a reciprocal debt collection and offset of indebtedness agreement with the Federal government, which is authorized by this Act. The reciprocal agreement would allow the State to offset nontax debts owed to the Federal government against State tax refunds and against payments otherwise due to vendors and contractors providing goods and services to State public entities. Similarly the agreement would allow debt owed to the State of New

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in our legislature - from page 15

Jersey to be offset against Federal payments otherwise due to vendors and contractors and to taxpayers. The law amends one of the confidentiality provisions of Title 54 in order to allow the Division of Taxation to release relevant taxpayer information to the United States Treasury for the purposes of implementing a reciprocal debt collection and offset of indebtedness agreement.

Nuclear Electric Generating Facility Fees — P.L. 2006, c.35, enacted July 8, 2006, effective immediately, requires the State Treasurer to make an annual assessment against operators of nuclear generating facilities.

Titling Fee on Certain Luxury and Fuel-Inefficient Cars — P.L. 2006, c.39, enacted July 8, 2006, and applicable to new passenger automobiles required to have a certificate of ownership issued and filed on or after July 15, 2006, imposes a one-time 0.4% fee on ownership of new passenger automobiles with a sales

price or lease price of at least \$45,000 or a fuel efficiency rating of less than 19 miles per gallon.

Annual Assessment on HMOs — P.L. 2006, c.43, enacted July 8, 2006, and applicable to assessments for fiscal year 2007 and following, increases the annual assessment on the net written premiums of health maintenance organizations authorized to operate in New Jersey.

Sports and Entertainment Districts — P.L. 2007, c.30, enacted January 26, 2007, effective immediately, authorizes eligible municipalities to create “sports and entertainment districts” in order to promote the development of projects in the districts. “Eligible municipalities” are municipalities falling within a certain range of population size and density and in which part of an urban enterprise zone is located. The Act authorizes municipalities establishing these districts to impose one or more of several new local taxes and to dedicate the revenue from some or all of those taxes to financing

projects in the sports and entertainment districts. The new taxes allowed include, for example, 2% local taxes that may be imposed on certain categories of transactions that are also subject to State sales and use tax. These taxes would be in addition to any other State or local tax or fee imposed on the same transaction.

New Jersey Tax and Fiscal Policy Study Commission — P.L. 2007, c.43, enacted February 21, 2007, effective immediately, establishes a nine-member commission “in but not of the Department of Treasury,” charged with responsibility for continuously studying State and local tax issues and reporting annually to the Governor and the Legislature.

Transitional Energy Facility Assessment

Modification of TEFA Phase-Out — P.L. 2006, c.40, enacted July 8, 2006, effective immediately, makes changes in the phase-out schedule for the transitional energy facility unit rate surcharges. □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 100 or more 2005 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2006 New Jersey resident income tax returns electronically. More information is available at:

[E-File Mandate](#)

[Frequently Asked Questions](#)

[Opt Out Request Form, NJ-1040-O](#)

[Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us



Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2006 (January 1, 2006 – December 31, 2006) and tax year 2007 (January 1, 2007 – December 31, 2007) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2006](#) [2007](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2006](#) [2007](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2006](#) [2007](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
Homestead (FAIR) Rebate
Hotline 1-888-238-1233
Property Tax Reimbursement
Hotline 1-800-882-6597
Earned Income Tax Credit
Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4123
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director’s Office 609-292-5185
InheritanceTax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576

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2006 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
32	7/8/06	Authorizes the State Treasurer to enter into a reciprocal debt collection agreement with the Federal government and allows the Division of Taxation to share certain taxpayer information with the U.S. Department of Treasury for the purpose of implementing such an agreement.	MIS	S-1989
33	7/8/06	Imposes a 1% fee or tax on certain purchases of certain commercial property over \$1,000,000.	RTF	ACS(1R) for A-4701
34	7/8/06	Changes the way certain qualified urban enterprise zone businesses claim the sales tax exemption on purchases of certain goods and services.	S&U	ACS for A-4702
35	7/8/06	Requires the State Treasurer to make an annual assessment against operators of nuclear generating facilities.	MIS	A-4703(1R)
36	7/8/06	Requires tax preparers to use electronic methods of filing gross income tax returns and paying tax due if the preparer filed at least 100 gross income tax returns the prior taxable year, and imposes penalties for failure to do so.	GIT	A-4704 (1R)
37	7/8/06	Raises the cigarette tax \$0.175 per pack of 20 and changes the tobacco products wholesale sales tax on moist snuff to a weight-based tax.	CIG TPT	A-4705(1R)
38	7/8/06	Imposes a 4% surcharge on corporation business tax liability and raises the minimum tax.	CBT	ACS for A-4706
39	7/8/06	Imposes a one-time 4% fee on new luxury and fuel-inefficient passenger automobiles.	MIS	A-4707(1R)
40	7/8/06	Changes the phase-out schedule for the transitional energy facility unit rate surcharges.	PUT	A-4709
41	7/8/06	Imposes a 6% gross receipts tax on the retail sale of fur clothing in New Jersey.	FUR	A-4714(1R)
42	7/8/06	Increases the rental motor vehicle surcharge from \$2 per day to \$5 per day.	DSF	A-4715(1R)
43	7/8/06	Increases the annual assessment on the net written premiums of health maintenance organizations authorized to operate in New Jersey.	MIS	A-4716(1R)
44	7/8/06	Increases the sales and use tax rate from 6% to 7%, and expands the sales and use tax base by imposing tax on various transactions not previously taxed.	S&U	A-4901
85	8/21/06	Requires certain persons transacting business in New Jersey and making payments to unregistered, unincorporated contractors to withhold gross income tax from those payments.	GIT	S-468(2R)

2006 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
97	9/13/06	Authorizes cities of the first class to collect both local property tax and the hotel use or occupancy tax from hotels in their jurisdiction.	LPT	A-3191(2R)
98	12/11/06	Makes technical changes in the fiscal-year timing of various deposits of dedicated cigarette tax revenue.	CIG	S-2197
102	12/20/06	Authorizes the financing of certain State capital construction projects for facilities for stem cell, biomedical, and cancer research through cigarette tax securitization bonds.	CIG	SS(2R) for S-1471
103	12/21/06	Establishes civil unions under the State's marriage laws and gives the parties to a civil union the same legal benefits, protections, and responsibilities as parties to a marriage.	GIT LPT TIT/ET	A-3787(2R)

*Legend for 2006 Tax Laws

ABT = Alcoholic Beverage Tax	IPT = Insurance Premium Tax
ALL = All Taxes Administered by the Division	LIT = Litter Control Fee
CAS = Casino Taxes and Fees	LPT = Local Property Tax
CBT = Corporation Business Tax	MFT = Motor Fuels Tax
CIG = Cigarette Tax	MIS = Miscellaneous
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TIR = Motor Vehicle Tire Fee
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
HMO = Hotel Motel Occupancies	TPT = Tobacco Products Tax

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What's New for Tax Year 2006

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Practitioners' E-File Mandate** — Tax practitioners who prepared 100 or more 2005 New Jersey resident income tax returns must use one of the New Jersey electronic filing methods (NJ WebFile or NJ E-File) to file all 2006 New Jersey resident income tax returns and to pay any tax on behalf of their clients. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

A [list](#) of links to materials relating to this requirement appears on page 17.

- **NJ TeleFile Discontinued** — The NJ TeleFile System that allowed taxpayers to file their returns by phone has been discontinued. Taxpayers who want to file their returns electronically can use NJ WebFile, the Division's free Internet filing program, or approved vendor software. For information on New Jersey's electronic filing methods, go to:

www.njfastfile.com

- **Earned Income Tax Credit Schedule** — The Earned Income Tax Credit Schedule no longer appears on page 3 of Form NJ-1040 but is now included in the instruction booklet instead. Eligible taxpayers must complete the schedule to calculate the amount of their New Jersey earned income tax credit. Taxpayers who asked the Internal Revenue Service to calculate their Federal earned income credit must fill in the oval at Line 50, Form NJ-1040 instead of entering a credit amount.
- **Designated Contribution** — In addition to the charitable funds listed on the return, taxpayers may designate a contribution to one of seven other funds. The new fund added for 2006 is the World Trade Center Scholarship Fund (07).
- **Sheltered Workshop Tax Credit** — Certain taxpayers that employ qualified handicapped person(s) in a "sheltered workshop" arrangement may be eligible for a credit. Eligible taxpayers must complete Form GIT-317 to calculate the amount of their credit.
- **Use Tax Due on Out-of-State Purchases** — The New Jersey sales and use tax rate increased from 6% to 7% on all retail sales of taxable merchandise or services occurring on or after July 15, 2006. When calculating

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what's new for 2006 - from page 1

the exact amount of use tax due on their out-of-State purchases to report on Form NJ-1040, taxpayers must use the rate in effect at the time of the purchase.

- **Total Property Taxes Paid** — Taxpayers are now required to enter on Line 36a of their resident income tax return the total property taxes due and paid during 2006 on their qualified principal residence in New Jersey. For tenants, 18% of the rent paid during the year is considered property taxes paid.
- **Homeowner on October 1, 2006** — Taxpayers who owned, occupied, and paid property taxes on a home in New Jersey that was their principal residence on October 1, 2006, must fill in the oval at Line 36b, Form NJ-1040. Taxpayers who were tenants on October 1, 2006, or who were not homeowners on October 1, 2006, do not fill in the oval.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2006 is .037716.

Property Tax Relief Programs

- **Homestead Rebate Program** — The Homestead Rebate Program (previously referred to as the FAIR rebate) provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or a tenant on October 1, 2006. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

Tenants who meet the eligibility requirements use the application in the New Jersey income tax return packet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax return packet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone.

- **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2006 must have total annual income *less than*:

2006: \$43,693 if single, or \$53,576 (combined income) if married, and

2005: \$41,972 if single, or \$51,466 (combined income) if married.

Benefits available under this program are subject to change. □

Urban Enterprise Zones

Clarification

An article in the summer 2006 issue of the *New Jersey State Tax News* entitled "FY 2007 Budget Legislation" contained a section about Urban Enterprise Zones which described the procedural changes affecting the sales tax exemption for purchases made by qualified urban enterprise zone businesses. Effective July 15, 2006, only a "small qualified business" (annual gross receipts less than \$1 million in the prior annual tax period) is exempt from paying sales tax at the time of

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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purchase; other qualified urban enterprise zone businesses must pay the tax at the time of purchase and apply for a refund.

The article stated that for purposes of determining whether annual gross receipts are less than \$1 million in the prior annual tax period “a business may use its gross receipts from sales as reported for sales tax in the prior year.” However, the gross receipts of a business for the prior annual tax period are to be determined from the following sources:

- If the business is a corporation, the amount reported on Schedule A, Line 1 of the prior year (2005) New Jersey Corporation Business Tax Return (Form CBT-100 or CBT-100S).
- If the business is a partnership, the amount reported on Line 1c of Federal Form 1065 submitted with the prior year (2005) New Jersey Partnership Return (Form NJ-1065).
- If the business is a sole proprietorship, the amount reported on Federal Schedule C, Part 1, Line 3 submitted with the prior year (2005) New Jersey gross income tax return (Form NJ-1040).
- Other: if the above classifications are not applicable, the appropriate tax return information (e.g., foreign state tax return). □

Order Package NJX Online

The *2006 Package NJX* can be ordered online through our automated ordering and payment system. Payment must be made by electronic check (e-check).

For 2006, only the NJX Plus CD-ROM (\$20) is available for purchase. The CD-ROM contains tax forms and instructions, publications such as *New Jersey State Tax News* and *Division of Taxation Annual Report*, as well as other New Jersey tax information. The printed version of *Package NJX* has been discontinued for the 2006 tax year. For tax years 2007 and after *Package NJX* will be discontinued completely.

Anyone who purchased *Package NJX* materials last year should have received a notice from the Division of Taxation with instructions for ordering online as a “Registered User.” Those who did not order last year and wish to purchase the 2006 NJX CD-ROM must follow the instructions for “New User.”

[Order 2006 Package NJX](#) □

INHERITANCE/ESTATE TAX Waivers for Brokerage Accounts

The New Jersey inheritance and estate tax statutes provide that property which belongs to or stands in the name of a resident decedent may not be transferred without the written consent of the Director, Division of Taxation. The taxes remain a lien until paid on all the property of a decedent.

The Division has received numerous inquiries regarding the tax waiver requirements for brokerage accounts.

An inheritance/estate tax waiver is required for all brokerage accounts belonging to or standing individually or jointly in the name of a resident decedent. A tax waiver is required if the brokerage firm has

an office in New Jersey regardless of where the account was opened.

Assets held in a brokerage account which are registered in “street name” may be bought and sold without the necessity of first obtaining a tax waiver. The assets must remain in the account and nothing may be transferred or released to the estate or beneficiaries until a tax waiver is obtained.

In those situations where an account passes to a decedent’s surviving spouse, child, stepchild, legally adopted child, issue of any child or legally adopted child, parent, grandparent, or surviving domestic partner, and the taxable estate plus adjusted taxable gifts as determined under the provisions of the Internal Revenue Code in effect on December 31, 2001, does not exceed \$675,000, Form L-8 may generally be used. Form L-8 is an affidavit and self-executing tax waiver which is filed directly with the brokerage firm.

The blanket waiver provisions of N.J.A.C. 18:26-11.16 are applicable to brokerage accounts. Assets valued at one-half the value of an account on the decedent’s date of death must be retained and may not be released without a tax waiver. The remainder of the account may be released without a tax waiver.

Example:

The decedent held a brokerage account which contained 1,000 shares of XYZ Corporation stock valued at \$100,000 on his date of death.

- a. If three months after the decedent’s death the account is valued at \$200,000, assets valued at

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\$150,000 may be released without a tax waiver. Assets valued at \$50,000 must be retained pending receipt of a tax waiver.

- b. If three months after the decedent's death the account is valued at \$60,000, assets valued at \$10,000 may be released without a tax waiver. Assets valued at \$50,000 must be retained pending receipt of a tax waiver.
- c. If three months after the decedent's death the account is valued at \$40,000, no assets may be released without a tax waiver.

Questions regarding tax waivers may be sent to: Inheritance and Estate Tax Section, Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08695-0249. The Inheritance and Estate Tax Section may be reached by phone at 609-292-5033. □

INHERITANCE/ESTATE TAX ***Family Limited Partnership Valuations***

The Division has received an increasing number of inquiries related to the valuation of family limited partnerships for New Jersey inheritance and estate tax purposes.

A family limited partnership is defined by the Division as a limited partnership in which more than 50% of the partners are related by blood or marriage and which does not have a true business purpose. The partnership may or may not hold an interest in another partnership or other asset which has a true business purpose. One indicia of a true business purpose is that the family limited

partnership has and engages in business or commercial transactions with customers, clients, persons or entities other than the partners, their family members, or other related individuals or entities.

For inheritance tax purposes an interest in a family limited partnership is valued at the value of the underlying assets on the decedent's date of death. Discounts are not allowed unless the Director, Division of Taxation (Director), determines that they are warranted by the nature and risk associated with the underlying assets.

In those cases where a Federal estate tax return is required to be filed and where there is a Federal estate tax consequence, the discounts, if any, permitted by the IRS will generally be permitted for New Jersey estate tax purposes unless the Director deems them to be excessive. In other cases:

1. If an interest in a family limited partnership was created or funded within one year of a decedent's death, the value of the interest is presumed to be the value of the underlying assets on the decedent's date of death unless conclusive proof to the contrary is submitted which clearly indicates a different value. Discounts are not permitted unless the Director determines that they are warranted by the interest in the partnership and/or the nature and risk associated with the underlying assets. Discounts totaling more than 10% are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.
2. If an interest in a family limited partnership was created or funded

more than one year prior to a decedent's death, the interest is valued based upon the interest in the partnership and the value of the underlying assets on the decedent's date of death. Discounts totaling more than 10% are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.

3. If the Simplified Tax System is used, an interest in a family limited partnership is valued at the value of the underlying assets on the decedent's date of death. Discounts are not permitted unless the Director determines that they are warranted by the nature and risk associated with the underlying assets. □

SALES AND USE TAX

Compliance Agreements

Sales and Use Tax Compliance Agreements (SUTCAs) are formal, individualized agreements between the Division of Taxation and the taxpayer. SUTCAs allow the use of an "effective tax rate" to calculate sales and use taxes owed. SUTCAs generally have a term of three years or less. Conditions under which the agreement may require modification or termination are agreed upon by both parties. Upon request to enter the program, the Division will determine if the taxpayer is qualified to participate and then conduct an audit to establish the "effective tax rate." A taxpayer is eligible if they:

1. Are required to file and remit any New Jersey sales and use tax returns and payments;

continued on page 5



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2. Demonstrate a willingness and ability to understand and comply with tax laws;
3. Maintain an acceptable system of internal controls and business records; and
4. Have maintained a good filing record for all taxes and are currently in good standing.

If the taxpayer is qualified for the program, the taxpayer will be able to apply the agreed upon “effective tax rate” to applicable purchases made during each filing period. The “effective tax rate” is determined by calculating the ratio of the base period taxable purchases to the base period total purchases. Some of the benefits offered to both the Division and the taxpayer include:

1. Eliminates the need to pay the sales tax at the time of purchase or compute and remit the use tax on a transaction-by-transaction basis;
2. Predictability and consistency of approach in tax reporting;
3. Decisions regarding tax compliance are made by in-house and/or outside tax experts as opposed to nontax personnel;
4. Increased accuracy in sales and use tax budgeting and more certainty and consistency of sales and use tax expenses;
5. Development of cooperative relationship with the Division of Taxation;
6. Reduced audit costs;
7. Increased confidence in reported taxes;
8. Redirection of staff to other audit candidates; and

9. Timely receipt of sales and use taxes.

The Division will not enter into agreements with taxpayers that:

1. Have failed to correct improper reporting methods;
2. Filed for bankruptcy or are controlled by a company that has filed for bankruptcy;
3. Maintain inadequate books and records and have poor internal controls; or
4. Are involved in or have been involved in an ongoing criminal investigation.

Upon approval of the agreement the taxpayer will receive a Direct Pay (Audit) Certificate (ST-6X). Purchases that will be excluded by the agreement include but are not limited to:

1. Resale and inventory purchases;
2. Utility and telecommunications services;
3. Meals and lodging;
4. Motor vehicles, vessels, and aircraft;
5. Items on which the Division and the taxpayer do not agree.

Large volume purchases made for a business’s own use on an ongoing basis and capital assets may be included in an SUTCA. As a part of this agreement the Division agrees to waive the audit process and the taxpayer agrees to waive all rights to refund claims. However, the taxpayer can file a refund claim for overpayments or amounts erroneously paid to vendors for items outside the agreement. The agreement can be terminated by either party with a 90-day written notice. The Division may terminate the agreement and conduct an audit if the

taxpayer fails to fulfill the terms of the agreement and the failure is materially adverse to the Division. Legislative changes to the sales and use tax statutes may require modification of an agreement. Listed below are additional examples of conditions necessitating modification:

1. Merger or acquisition;
2. Significant start-up or closing costs of facilities;
3. Significant changes involving business activities;
4. Adoption of cost containment programs; or
5. Significant financial or accounting changes.

While there is no “true-up” conducted at the end of the agreement, the Division will perform at least one interim review and a final review of procedures and sample transactions to determine if the taxpayer is in compliance with the

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Interest 11.25%

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



compliance agreements - from pg. 5

agreement. The final verification can be done by the taxpayer separately or in conjunction with the Division. □

CORPORATION BUSINESS TAX
Business Tax
Credits

Entities subject to corporation business tax may qualify for one or more of the following tax credits:

- Urban Enterprise Zone Employees Tax Credit
- Urban Enterprise Zone Investment Tax Credit
- Redevelopment Authority Project Tax Credit
- Recycling Equipment Tax Credit
- New Jobs Investment Tax Credit
- Manufacturing Equipment and Employment Investment Tax Credit

- Research and Development Tax Credit
- Smart Moves for Business Program Tax Credit (Commuter Benefits)
- Small New Jersey-Based High-Technology Business Investment Tax Credit
- HMO Assistance Fund Tax Credit
- Neighborhood Revitalization State Tax Credit
- Effluent Equipment Tax Credit
- Economic Recovery Tax Credit
- Remediation Tax Credit
- AMA Tax Credit
- Business Retention and Relocation Tax Credit
- Sheltered Workshop Tax Credit
- Film Production Tax Credit

Guidelines pertaining to these credits may be found in subchapter 3 of the New Jersey Administrative Code, Chapter 7, Title 18 (Currently

N.J.A.C. 18:7-3.17 through 18:7-3.28). See also Schedule A-3 of the CBT-100 and instruction 46 in the CBT-100 instruction booklet. □

LOCAL PROPERTY TAX
PAMS Testing and
Training Planned

For the past 18 months, staff from the Division of Taxation's Local Property Tax Branch, the Division of Local Government Services, the Office of Information Technology, contractor Tyler Technologies, and volunteer assessors, collectors, and tax administrators have been working diligently through the development of New Jersey's new Property Assessment Management System (PAMS). They are now looking ahead to the fourth quarter of 2007, when PAMS is scheduled to be implemented in the first three counties.

Results of the behind-the-scenes work will take center stage as the project moves into testing, training, and preparations for going live in the three early implementation counties: Camden, Hunterdon, and Salem. These counties will be increasingly engaged in PAMS activities beginning in the spring.

Because PAMS is an integrated system using an Oracle database, users will have access to information from one source. As the PAMS system becomes populated with more data, users will be able to find information that in the past would have required research in several files, books, and individual computer systems.

In addition, each office — tax administrator, collector, and assessor

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at: [Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit: [Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at: [Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



PAMS testing and training - from page 6

— will be able to work independently according to their own work calendar, and yet PAMS will assist in coordinating information between offices: integrated, yet independent.

New capabilities will require new ways of thinking about business processes; however, training and communication channels will be in place to help users prepare for the new system.

For more information on the PAMS project, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/pamsvol/pams.shtml □

LOCAL PROPERTY TAX ***Tax Assessor*** ***Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eleven persons passed the September 30, 2006, C.T.A. exam. They are:

Bergen County: Christopher W. Eilert, Wallington Borough; Raymond A. Koski, Fort Lee Borough; James W. Nall, Franklin Lakes Borough; Patrick G. Wilkins, Teaneck Township.

Cape May County: Steven A. Henderson, Stone Harbor Borough; Margaret G. Slavin, Middle Township.

Middlesex County: Ronald L. Hatt, Woodbridge Township; Raymond M. Matyskiel, Woodbridge Township.

Monmouth County: Gregory K. Lewit, Red Bank Borough.

Morris County: Robert H. Scrivens, III, Washington Township.

Sussex County: Michael B. Crane, Andover Borough.

The next examination is scheduled for March 24, 2007. The deadline to file applications for this exam is February 22, 2007. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 1–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such

parcels in current year attributable to successful appeals, revaluations, or reassessments.

December 20–

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2007 must be filed with assessor during the pretax year, thereafter with collector during the tax year.

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.



assessors' calendar - from page 7

- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" and Five-Year Limited Exemption Report with County Tax Board.

January 25-

- Assessor's schedule of hours and appointment availability given to

County Tax Administrator and posted in the municipal building.

February 1 (prior)-

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1-

- After February 1, the assessor or County Tax Board shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer will have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.

- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10-

- Certification by assessor filed with the County Tax Board or, if completed by County Tax Board, filed with the County Tax Administrator, "within 10 days" of the date the bulk mailing of notifications of assessment was completed.

February 15 (on or before)-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.

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How to Get Your NJ Income Tax Refund **FASTER!**

 **NJWebFile**
 Use your computer to file your return. Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.

 **NJELF**
 Use tax software or ask your tax preparer. See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.

 **NJTeleFile**
 Call 1-888-235-FILE (3453). Fill out the NJTeleFile Worksheet in your tax package. If you use a Touch-tone phone to call our toll-free number to file your return.

www.njfastfile.com

 
NJFastFile
 the way to a faster refund.



assessors' calendar - from page 8

- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services; and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On March 26, 2006, in Hackensack, Superior Court – Bergen County confirmed that Francisco P. Delgado, 60, of Clifton, New Jersey, entered a plea of guilty to charges of failing to file domestic security fee returns in 2003, and failing to pay \$2,572 sales tax and \$1,902 domestic security fee. These counts were contained in an indictment which charged Delgado as the responsible person of Estrella Rental Car Incorporated, in Paterson, New Jersey. Delgado was also charged with making false statements in documents submitted to the Division of Motor Vehicles and with presenting false documents for filing with the Division of Motor Vehicles. This was a joint investigation by the

Office of Criminal Investigation (OCI) and the Bergen County Sheriff's Office, which commenced after Delgado was arrested by the Sheriff's Office for selling "international driver's licenses" to illegal aliens. The "international driver's license" is similar in appearance to a legitimate driver's license, but is not issued by or honored by any government agency. On June 16, 2006, Delgado was sentenced to three years' probation and ordered to pay restitution of \$6,000 in tax, penalty, and interest. This case marked the first criminal prosecution for violations involving the domestic security fee, which was instituted after the September 11, 2001, terrorist attacks to fund New Jersey counter-terrorism operations. The fee is collected by vehicle rental businesses at the current rate of \$5 per day per vehicle rented. This case was prosecuted by the Bergen County Prosecutor's Office.

- On April 3, 2006, in Trenton, Anthony Howlen, 40, of Trenton, New Jersey, was arrested by the Trenton Police Department and charged with selling cigarettes not bearing the required revenue stamp, possessing cigarettes not bearing the required revenue stamp, failure to keep records required by law with intent to evade tax, and failure to obtain a New Jersey cigarette consumer license. On April 8, 2006, Trenton Police arrested Willie I. Howlen, 35, of Morrisville, Pennsylvania (believed to be Anthony Howlen's brother), and charged him with possession of 17.8 cartons of cigarettes not bearing required revenue stamps. (Willie

Howlen had previously been arrested by OCI and Trenton Police in March 2006 and charged with sale and possession of 22.8 cartons of untaxed cigarettes; these charges are still pending.) These enforcement actions by the Trenton Police were the result of OCI's efforts to deal with street sales of untaxed cigarettes by enlisting the cooperation of local police and providing them with the necessary information.

- On April 19, 2006, in Toms River, an Ocean County Grand Jury returned a six-count indictment against Charles G. Skoog, formerly of Brick, New Jersey, charging him with second-degree theft by deception, second-degree insurance fraud (two counts), third-degree filing false or fraudulent New Jersey gross income tax returns, third-degree failure to pay New Jersey gross income tax, and fourth-degree workers' compensation fraud. It is alleged in the indictment that Charles Skoog had been employed between 1999 and 2004 in various capacities by businesses controlled by his son, Erik G. Skoog. During this time his employment status was disguised by his son so that Charles Skoog could collect social security disability payments and workers' compensation payments that he was not entitled to. Through this scheme, Charles Skoog received over \$180,000 in fraudulently obtained disability income, failed to report this illegal income on his New Jersey gross income tax returns, and failed to pay the tax due on the

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unreported income. The indictment also accused Erik Skoog of two counts of second-degree insurance fraud and one count of second-degree theft by deception for his part in the alleged scheme. This investigation was jointly conducted by the Ocean County Prosecutor's Office, OCI, and the Social Security Administration.

- On May 4, 2006, in Superior Court – Monmouth County, Freehold, Joseph W. Hughes pled guilty to one count of second-degree theft by deception and one count each of filing false tax returns and failing to pay tax in the amount \$120,229.50. In June of 2005, a Monmouth County Grand Jury handed up a 27-count indictment charging Hughes, the former pastor of The Church of the Holy Cross in Rumson, New

Jersey, with the theft \$2,032,422 from the church, and tax-related charges for filing false New Jersey State tax returns and failure to pay tax. Hughes wrote and endorsed checks to cash and wrote checks to cover personal expenses against church bank accounts between 1997 and 2004. Hughes waived his right to a restitution hearing and agreed to pay the \$120,229.50 in back taxes. On June 2, 2006, Hughes was sentenced to five years in State prison. This case was a joint investigation by OCI and the Monmouth County Prosecutor's Office.

- On May 4, 2006, in Camden, OCI and the Camden County Sheriff's Office executed a search warrant on a private residence which had been the subject of complaints from licensed cigarette retailers. The retailers alleged that large

quantities of untaxed cigarettes were being sold to consumers from the residence, causing substantial harm to nearby legitimate businesses. New Jersey State Police assisted in the investigation by providing an undercover trooper who purchased several packs of untaxed cigarettes at the residence. As a result of the search warrant, 5.7 cartons of untaxed cigarettes bearing Delaware tax stamps were seized and resident Iris M. Acevedo, 55, was charged in Camden Municipal Court with possession of untaxed cigarettes, engaging in activity for which a license is required without first having obtained a license, and failure to keep records required by law.

- On May 18, 2006, in Newark, police seized 117 cartons of untaxed cigarettes and charged Aku

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Enforcement Summary Statistics Second Quarter 2006

Following is a summary of enforcement actions for the quarter ending June 30, 2006.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	3,573	• Seizures	91
Total Amount	\$40,626,665.08	• Auctions	3
• Jeopardy Assessments	238	• Referrals to the Attorney General's Office	884

Third Quarter 2006

Following is a summary of enforcement actions for the quarter ending September 30, 2006.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	1,730	• Seizures	69
Total Amount	\$33,998,559.53	• Auctions	3
• Jeopardy Assessments	289	• Referrals to the Attorney General's Office	590

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.shtml



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Muhamad, 36, and Cornell Braxton, 26, both of Newark, with sales of untaxed cigarettes and conspiracy. On May 23, 2006, in Atlantic City, police, assisted by OCI, seized 12.3 packs of untaxed cigarettes from Anthony Minor, 43, of Atlantic City. Minor was charged with engaging in conduct requiring registration without having done so, sale of unstamped cigarettes, failure to file returns or reports, and possession of untaxed cigarettes. At the time of Minor's arrest he was carrying business cards reading "Omar's Cig Sales, 432-3294 after 2:00PM." This is Minor's second arrest for selling untaxed cigarettes. He was arrested by OCI in December 2005, and was fined \$1,000. These enforcement actions were the result of OCI's efforts to deal with street sales of untaxed cigarettes by enlisting the cooperation of local police and providing them with the necessary information.

- On June 3, 2006, in Newark, Victor Sanks, 41, of East Stroudsburg, Pennsylvania, was indicted by an Essex County Grand Jury on charges of failure to turn over sales tax collected, failure to collect \$13,582.48 in sales tax, failure to pay a total amount of sales tax of \$80,248.22, and failure to file sales tax returns from 2002 and 2005 in connection with Scratch Records, a retail DVD and CD store in Irvington. This case was a joint investigation by New Jersey State Police, Irvington Police, and OCI, and is being prosecuted by the Essex County Prosecutor's Office.

- On June 9, 2006, in Superior Court – Ocean County, Richard Carroll, 48, Brick, New Jersey, was sentenced to five years in State prison, immediately remanded to the custody of the Department of Corrections, and ordered to pay restitution of \$12,342.60 sales tax plus penalty and interest pursuant to his guilty plea to charges of selling unstamped cigarettes and failure to maintain records between 2001 and 2004 at Towne Stationery, a convenience store in Toms River. This case was investigated jointly by OCI and the Dover Township Police and prosecuted by the Ocean County Prosecutor's Office, and resulted from numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. Carroll had previously pled guilty in municipal court to possession of untaxed cigarettes in May 2002 and November 2002.
- On June 14, 2006, a State Grand Jury indicted Muslimah Suluki, 58, College Park, Georgia, for failure to file New Jersey gross income tax (GIT) returns for 2001, 2002, and 2003; indicted her son, Robert Parish, 42, Neptune, for failure to file New Jersey GIT returns for 2002 and 2003; and indicted her ex-husband, Mahdi Suluki, 64, East Orange, for failure to file a New Jersey GIT return for 2003, in connection with the operation of New Africa Day Care Center Inc. The corporation and individuals were also indicted on theft and other charges for diverting more than \$200,000 in State funding from the day care center for

personal use, including purchases of two Jaguars and vacations in Chicago and Hyannis Port, Massachusetts. In addition to Federal funds, New Africa received Abbott preschool funding. At the time of the indictment, New Jersey Department of Education (DOE) acting commissioner Lucille E. Davy stated, "For the past four years, DOE has been working to improve the quality of our Abbott preschool program, provide better state and district oversight and increase the level of fiscal accountability to which we hold the vendors," and State Attorney General Zulima Farber noted, "We allege that these defendants stole State funds that were intended to help young children in disadvantaged school districts. They violated the law and they violated the trust that the State and their community placed in them." This case was a joint investigation by the Division of Criminal Justice – Special Prosecutions Bureau and the Division of Taxation – OCI, and was presented to the grand jury by the State Office of the Attorney General.

- On June 28, 2006, in Trenton, a Mercer County Grand Jury indicted Tormu E. Prall, 33, of Trenton, on charges of possession of untaxed cigarettes, failure to maintain records with intent to evade tax, possession of illegal video tapes with intent to sell, failure to pay tax with intent to evade, failure to file tax returns with intent to evade, and violation of the counterfeit recording Anti-Piracy Act. On January 26, 2006, Prall was arrested by the Office of Criminal Investigation

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(OCI) for possession of 70 cartons of untaxed cigarettes in Trenton on September 2, 2005. At the time of his arrest on January 26, Prall was in possession of an additional 37 cartons of untaxed cigarettes. Search warrants were then executed on Prall's house in Trenton and two motor vehicles, resulting in the seizure of an additional 140 cartons of untaxed cigarettes, \$3,300 in cash, and several hundred DVDs, CDs, and video games. A 1995 Lexus was also seized along with computer hard drives, CD/DVD burners, and a large quantity of blank CDs and DVDs. Prall is free on \$75,000 bail. This was a joint investigation by OCI and the Mercer County Prosecutor's Office, with assistance from the Trenton Police Department. The investigation was begun by OCI in response to numerous complaints from the Trenton Downtown Association and its members concerning the sale of untaxed cigarettes on street corners and at bus stops.

- On July 17, 2006, in Trenton, a State Grand Jury handed up a two-count indictment charging Mack Barden of Paterson with one count of money laundering and one count of theft by deception, both second-degree crimes. Barden filed 418 fictitious State income tax returns and 120 fictitious homestead rebate applications for tax years 1996 through 2004. The returns were filed either in the name of Mack Barden or variations. In many instances the W-2 attached to the return was altered to agree with either the name or the social security

number used on the returns. All of the refunds and rebates were mailed to a post office box and a mail box leased by Barden. Barden then cashed or deposited 418 tax refund checks totaling \$197,837.05 and 120 homestead rebates totaling \$12,198.70. The amount of the theft totaled \$210,035.75. Barden was arrested on July 20, 2006, and bail was set at \$100,000 cash. He was remanded to the Passaic County Jail. This case was a joint investigation with the Division of Criminal Justice and was presented to the grand jury by the Office of the Attorney General.

- On July 25, 2006, the Monmouth County Prosecutor's Office confirmed that in Superior Court – Monmouth County, Lisa A. Gordon, 38, of Beachwood, pled guilty to the second-degree crime of theft of movable property and one count of failure to file a New Jersey gross income tax return for tax year 2000. In June 2005 a Monmouth County Grand Jury
- During the July 2006 reporting period, Eric E. Ford, 39, and Ed King Jr., 66, both of Trenton, were charged by OCI with possession of untaxed cigarettes and

handed up a seven-count indictment of Lisa Gordon and her husband, Christopher, charging that in 2000 and 2001 they embezzled more than \$400,000 from her employer, the Jewish Community Center in Ocean Township. The investigation established that the Gordons used these funds to gamble in Atlantic City in addition to purchasing automobiles and property. The plea was entered by Lisa Gordon only. The Monmouth County Prosecutor's Office will recommend at the time of sentencing that the remaining charges against Lisa Gordon and all charges against her husband be dropped. This was a joint investigation by OCI and the Monmouth County Prosecutor's Office.

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

A sample electronic check form with the following fields: Payee Name (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), Date (11-09-2000), Amount (\$ 1234.00), Routing Number (080001234), Account Number (12345678901234567890), and a note: "Do not include the check number".

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com



* Fee of 2.49% of tax payment applies.

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related offenses in separate incidents after they were stopped by Trenton Police as part of the continuing cooperative effort by the police department and the Division of Taxation to address the problem of untaxed cigarettes being sold on the streets by unlicensed vendors, causing injury to legitimate retailers.

- On August 10, 2006, in North Bergen, the New Jersey State Police, as part of an ongoing joint investigation with OCI, arrested Maria A. Barahona, 36, of North Bergen, and Gerardo J. Rodriguez, 20, of Brooklyn, New York, while they were loading untaxed cigarettes into a storage unit. A consensual search of the storage unit and searches pursuant to warrant of Barahona's house and safe deposit box were conducted by OCI, the State Police, and the Hudson County Prosecutor's Office, resulting in the seizure of 1,066 cartons of cigarettes bearing counterfeit tax stamps, one Lexus, one Dodge Caravan, and \$28,000 in cash. Both suspects were charged by OCI with forging or counterfeiting cigarette tax stamps, engaging in conduct requiring licensure without license with intent to evade tax, possession of 2,000 or more unstamped cigarettes, and transporting unstamped cigarettes.
- On August 18, 2006, in Trenton, as part of an investigation begun by OCI in response to complaints by local businesses concerning the sale of untaxed cigarettes on street corners, the Trenton Police Department arrested the

following eight people who were then charged by OCI in complaints filed in Trenton Municipal Court: Willie I. Howlen, 35, Levittown, Pennsylvania, sale of untaxed cigarettes; Jamar Adams, 27, Trenton, failure to obtain registration or license with intent to evade tax; Nely Ramos, 39, Trenton, possession of untaxed cigarettes; Dweli Koom, 19, Trenton, possession of untaxed cigarettes; Larry Howlen, 21, Trenton, possession of untaxed cigarettes; Jesse Evans, 42, Trenton, possession of untaxed cigarettes; Benjamin Bethea, 37, Trenton, possession of untaxed cigarettes; and Andre Howlen, 20, Trenton, possession of untaxed cigarettes. Seized were 54.8 cartons of untaxed cigarettes, \$2,833 in cash, a 1994 Oldsmobile that had been used to transport untaxed cigarettes, and 15 counterfeit DVDs and 27 counterfeit CDs being offered for retail sale. The Trenton Police Metro District, which is responsible for patrolling downtown Trenton, Tactical Anti-Crime Unit 1, Regional Violent Crime Interdiction Task Force, and the Vice Enforcement Unit assisted OCI investigators. Metro officers closed off North Broad Street between West Hanover and West State Streets while the enforcement operation was conducted.

- On August 22, 2006, in Jersey City Municipal Court, Afzal Sheikh, 52, of Jersey City, was fined a total of \$3,000 after he pled guilty to possession of untaxed goods and failure to maintain required records, as a result of the seizure of 22.1 cartons of untaxed cigarettes from Sheikh's

store on May 12, 2006.

The sentencing judge imposed an initial fine of \$1,500. OCI's case agent made the Court aware that in 1996 this taxpayer pled guilty to misapplication of \$45,000 in sales tax collected by his corporation, Ehsan Corp., and had made full restitution and served three years' probation. As a result of this information, in the present case the judge invoked the provisions of N.J.S.A. 2C:43-3, which allows for fines to be doubled in the case of a second or subsequent conviction for any State tax offense, and increased the fine to \$3,000.

- On September 1, and September 13, 2006, acting on information provided by a citizen who stated he was aware of OCI's recent initiative in response to complaints by local businesses concerning the sale of untaxed cigarettes in Trenton, OCI seized a total of 52 cartons of untaxed cigarettes, including two cartons bearing counterfeit tax stamps, from three Trenton stores. Fausto Gomez, proprietor of Espinal Grocery; Reginald Gilbert, owner of Tyrone's Deli; and Luther P. Mills, owner of M&M Deli, were charged in Trenton Municipal Court with possession of untaxed cigarettes and related offenses. Gilbert was also charged with failure to file sales and use tax returns.
- On September 14, 2006, Brenda J. McGinty pled guilty in Mercer County Superior Court to one count of theft by deception, a second-degree crime, and one count of failure to file a New Jersey gross income tax return for

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tax year 2002. Brenda McGinty, the bookkeeper for a Mercer County business, had been indicted on November 17, 2004, for embezzling \$1,085,457.50 from the business. The embezzlement took place over the three-year period from 2001 through 2003. As part of the plea agreement, Brenda McGinty, a Pennsylvania resident, will have 60 days from date of sentencing to file New Jersey nonresident returns for the above-mentioned tax years. This investigation was a joint investigation with the Mercer County Prosecutor's Office.

- On October 6, 2006, in Superior Court – Hudson County, Manuel Mier, 50, of Hillside, New Jersey, was sentenced to five years' probation, conditioned on his serving 364 days in county jail and paying the Division of Taxation \$523,385 in unpaid taxes, interest, and penalties for cheating the State out of taxes owed by his gas station and trucking companies. The sentencing judge said Mier could be ordered to serve five years in prison if he does not make full payment. Mier brought a \$300,000 check to the Court on October 6, 2006, and must make regular payments until the amount is paid in full. Mier pled guilty on January 29, 2005, to charges of failure to file New Jersey motor fuels tax returns and failure to turn over taxes. Mier admitted that he cheated the State out of \$277,000 in tax revenues. The balance of the amount that the judge ordered Mier to pay is interest and penalties. The charges resulted from a joint investigation by the Division of

Taxation and the Division of Criminal Justice. The joint-agency investigation determined that Mier failed to file returns for and remit \$95,909 in motor fuels taxes collected through the sale of gasoline and diesel fuels at his service station in North Bergen, 76 Tonnelle Friendly Service LTD, from September 1997 through February 2000. Additionally, the State's accusation charged that Mier and his wife had an ownership interest in two waste disposal trucking companies located in North Bergen and Newark — Leticia, Inc. and L&M Services, Inc. — which failed to remit more than \$181,199 in State use taxes. The investigation was coordinated by OCI and the Division of Criminal Justice – Financial Crimes Bureau.

- One hundred eighty-three (183) complaints alleging tax evasion were evaluated from April through June 2006 in the Office of Criminal Investigation.
- During the same period, one hundred thirty (130) charges were filed in court and twenty-six (26) arrests were made in forty-one (41) cases involving violations of the Cigarette Tax Act. Seized were 1,059.3 cartons of untaxed cigarettes, having a total value of \$65,909.65 and including 535.5 cartons bearing counterfeit New Jersey cigarette tax stamps.
- Eighty-two (82) complaints alleging tax evasion were evaluated from July through September 2006 in the Office of Criminal Investigation.
- During the same period, seventy-four (74) charges were filed in

court and twenty-two (22) arrests were made in forty-nine (49) cases involving violations of the Cigarette Tax Act. Seized were 1,847.9 cartons of untaxed cigarettes, having a total value of \$118,063.69 and including 1,493.7 cartons bearing counterfeit New Jersey cigarette tax stamps. □

Tax Briefs

Corporation Business Tax

Investment Company Deductions

Test — An inquiry was received relating to certain expenses incurred by a corporation (whose shares are publicly traded) to comply with requirements of the Securities and Exchange Commission and the provisions of the Sarbanes-Oxley Act of 2002 (SOA). The corporation engages an independent auditor to audit and report to shareholders on its operations, financial records, and activities and prescribed areas. As a result the corporation's Federal income tax return will reflect deductions for incurred professional fees to independent auditors, SOA related compliance expenses, and 10-K filing fees to provide the required reports by virtue of the corporate existence as a publicly traded corporation. Deductions for annual franchise taxes imposed by the state of domicile and New Jersey will also be reflected on the return.

The issue is whether the professional fees and franchise taxes reported as deductions on the corporation's current Federal corporation income tax return are qualifying deductions under N.J.A.C. 18:7-1.15(f)1.iii. That section reads as follows: "iii. (Deductions): For

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purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.”

The rule requires that the deductions must be “for holding, investing and reinvesting in cash and/or investment assets.” Thus, it would appear that the expenses paid for Sarbanes Oxley compliance, S.E.C. compliance, and State tax expenses are expenses paid by taxpayers regardless of what activities are engaged in by the corporations. Such payments are not unique to investment companies; they are paid whether the corporation is a manufacturer or any other type of corporation. As a result, these expenses would rightly fall in the category of the 10% of expenses that are not distinctively considered investment expenses but are common administrative expenses to any corporation regardless of its business activity. “Exemptions from tax are strictly construed and granted only when clear and unambiguous.” *Middlesex Water Co. v. Director, Division Taxation*, 3 N. J. Tax 233, at 240 (1981). Accordingly, the expenses in question do not qualify for the deductions portion of the business test.

LLC Filing Requirements — A limited liability company (LLC) with two members is treated as a partnership for New Jersey tax purposes if it is treated as such for Federal purposes. An LLC that is recognized as a partnership and that has a New Jersey resident member or any income or loss derived from New

Jersey sources must file a New Jersey partnership return, Form NJ-1065, pursuant to N.J.S.A. 54A:8-6. An LLC is not subject to corporation business tax in New Jersey unless it is treated as a corporation for Federal purposes.

QSSS Filing Requirements — To maintain the separate entity principle, every qualified New Jersey Subchapter S Subsidiary (QSSS) must complete and file a CBT-100S and pay the minimum tax. Income and loss from the QSSS “roll up” into the parent’s return.

For a taxpayer that is a member of an affiliated or controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax is \$2,000.

Furthermore, N.J.A.C. 18:7-3.4(i) provides: “If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax.”

Realty Transfer Fee Purchase of Commercial Real Estate — Partnership A owns Class 4A (commercial) real property. For

purposes of this example, assume that consideration for the sale/transfer or the equalized assessed value of A’s property exceeds \$1,000,000. Partnership B owns an 80% interest in Partnership A, and Partnership C owns a 20% interest. Entities W, X, Y, and Z each own a 25% interest in Partnership B. Partnership B “distributes” its 80% controlling interest in Partnership A equally to W, X, Y, and Z so that each owns a 20% interest in Partnership A. Does this transaction represent a transfer of a controlling interest (in Partnership A) from Partnership B to W, X, Y, and Z that would be subject to the 1% Realty Transfer Tax?

N.J.S.A. 54:15C-1a(2) states, in part, “Sale or transfer of a controlling interest subject to taxation pursuant to paragraph (1) of this subsection may be accomplished by one purchaser *or may be made by a group of purchasers acting in concert*. Purchasers who are related parties are presumed, unless shown to the contrary, to be *acting in concert*.” In the example above, W, X, Y, and Z together own an 80% interest in Partnership B, regardless of the percentages each of them individually may own. Accordingly, the presumption is that W, X, Y, and Z have acted in concert to acquire Partnership B’s controlling interest in

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Partnership A. Therefore, on the facts presented, the Division believes that the Realty Transfer Tax applies to the transfer of Partnership B's controlling interest in Partnership A to W, X, Y, and Z.

Sales and Use Tax

Armored Car Services — On and after October 1, 2006, P.L. 2006, c.44, imposes tax on "investigation and security services." See N.J.S.A. 54:32B-3(b)(11). The definition of investigation and security services includes armored car services (N.J.S.A. 54:32B-2(xx)).

Armored car services are sourced for sales tax purposes where the customer makes first use of the service; i.e., where the service originates is "first use." N.J.S.A. 54:32B-3.1. For example, if the service originates in New Jersey and the protected goods are delivered out of State, New Jersey tax is applicable. Conversely, if the service originates out of State and the goods are delivered to New Jersey, New Jersey tax does not apply.

Baked Waffles — The Division received an inquiry concerning the taxability of a baked waffle on a stick dipped in chocolate and coated with toppings (e.g., sprinkles, coconut, or peanuts).

N.J.S.A. 54:32B-3(c)(1) imposes sales tax on the sale of "prepared food." Prepared food is defined to include food items that are a result of the combination of two or more food ingredients by the seller to make a single item.

Since a baked waffle on a stick dipped in chocolate and coated with toppings meets this definition, it is

taxable as a prepared food. N.J.S.A. 54:32B-3(c)(1).

Exemption Certificates and "Good Faith" Requirement — Prior to October 1, 2005, a seller who accepted in good faith any exemption certificate which upon its face disclosed a proper basis for exemption was relieved of any liability for collection or payment of tax on transactions covered by the certificate. N.J.A.C. 18:24-10.3. The seller must not have known, or had reason to have known, that any information on the face of the exemption was false or misleading. N.J.A.C. 18:24-10.4(a). The vendor was presumed to be familiar with the law and the regulations pertaining to his business, and to know when he could issue or accept exemption certificates. N.J.A.C. 18:24-10.4(b).

Effective October 1, 2005, the Streamlined Sales and Use Tax Agreement became effective in New Jersey and made several changes to the Sales and Use Tax Act. In particular, the "good faith" requirement was relaxed. Absent fraud or collusion, sellers who accept a properly completed exemption certificate are relieved of liability for improperly claimed exemptions. The exemption certificate must contain specific identifying information about the purchaser and the type of exemption claimed, e.g., resale or manufacturing.

The Division will continue to allow the use of the current exemption forms (ST-3, ST-4, ST-5, ST-6, ST-7, ST-8, ST-10, ST-13) and the relaxed good faith requirement will apply for all purchaser or use exemptions for transactions occurring on and after October 1, 2005. The Streamlined Sales and Use Tax Certificate of Exemption may also be used as

documentation for an exemption. It can be found on the Division's Web site at:

www.state.nj.us/treasury/taxation/streamnotices.shtml

Horse Boarding — The service of boarding horses is deemed to be "storing all tangible personal property not held for sale in the regular course of business" and is therefore taxable pursuant to N.J.S.A. 54:32B-3(b)(3). The horse-boarding business must be registered as a vendor and must collect New Jersey sales tax on its charges. It may claim a resale exemption when purchasing feed for the horses that it boards. Separately itemizing the charges for feeding a customer's horse has no practical effect. If the business charges customers for the feed, the charge is taxable under N.J.S.A. 54:32B-3(a). If the feeding is included in the boarding charge, the entire charge is taxable as a service under N.J.S.A. 54:32B-3(b)(3).

If a customer simply rents a horse stall without receiving other services, the transaction is treated as a rental of storage space, which is now taxable pursuant to N.J.S.A. 54:32B-3(b)(3). Rentals of stalls and other storage space were nontaxable prior to a change in the Sales and Use Tax Act effective October 1, 2006.

If a horse is being boarded and services are provided in connection with the boarding (e.g., feeding, grooming), the boarding charge is taxable under N.J.S.A. 54:32B-3(b)(3). Separately stating a charge for the stall rental will have no effect on taxability since *both* the boarding service and the stall rental are now taxable.

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A business that is engaged primarily in boarding horses is not a "farming enterprise" for purposes of the Sales and Use Tax Act because it is not primarily engaged in producing an agricultural product. Therefore, although it may be viewed as a farm for property tax assessment purposes, it does not qualify for the farming use exemption from sales tax and may not use a Form ST-7 (Farmer's Exemption Certificate) when making purchases.

Prepaid Telephone Calling Cards/ Prepaid Internet Access Cards —

Sales tax must be collected on retail sales of prepaid telephone calling cards (landline and cellular), including the recharging of such cards. N.J.S.A. 54:32B-3(g). A prepaid calling arrangement is defined as the right to exclusively purchase telecommunications services which give the customer the ability to make a call using an access number or an authorization code. N.J.S.A. 54:32B-2(11). Under the law, the customer is considered to be purchasing such services in advance of using them. Thus, sales tax must be charged on retail sales of prepaid telephone calling cards to end users regardless of whether anything tangible is shipped.

The charge for Internet use is not subject to sales and use tax. Therefore, the sale of prepaid Internet access cards, which allow customers to log onto the Internet for a set amount of time from any computer, is not subject to sales tax.

Streamlined Sales and Use Tax Agreement Registration — The Streamlined Sales and Use Tax Agreement (SSUTA) contains a provision permitting the creation of a

Central Registration Online System. Central registration constitutes registration with New Jersey and every SSUTA member state, including those that join after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any member state. This central registration system may be used as an alternative to the methods currently available for registering with the State of New Jersey: online through the Division of Revenue's Web site or by completing and filing Form NJ-REG contained in the New Jersey Complete Registration Package (NJ REG).

Vendors that are registered with the State of New Jersey for sales tax purposes have the same responsibility for the collection of the New Jersey tax whether they registered directly with New Jersey or through the Central Registration Online System. Sales of taxable goods and services in New Jersey are subject to New Jersey sales tax if the goods are

picked up or delivered in New Jersey, unless a specific statutory exemption applies (e.g., resale, exempt organization, or various specific exempt uses). If the customer does not take possession of the goods in New Jersey, but instead requests shipment by the seller to an out-of-State address, the transaction is not treated as a New Jersey sale, and no New Jersey sales tax is due. The taxability of the transaction is determined by the laws of the state in which the purchaser or the purchaser's agent takes possession of the merchandise.

Vending Machine Sales — The question was raised as to how the Streamlined Sales and Use Tax Agreement (SSUTA) affected the taxability of vending machine sales.

Legislation that conformed New Jersey's Sales and Use Tax Act to the requirements of the SSUTA, effective October 1, 2005, did not affect vending machine sales. See P.L. 2005, c.126. New Jersey continues

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 100 or more 2005 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2006 New Jersey resident income tax returns electronically. More information is available at:

[E-File Mandate](#)
[Frequently Asked Questions](#)
[Opt Out Request Form, NJ-1040-O](#)
[Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

to tax vending machine sales as they have always been taxed, as stated in the law at N.J.S.A. 54:32B-3(c)(2).

The gross receipts from all sales of tangible personal property (other than food and drink) such as toys, laundry detergent, cigarettes, nail clippers, barrettes, and bobby pins sold through coin-operated vending machines are taxable. Sales of items that are exempt by law, such as clothing and footwear (e.g., shoe laces and bathing caps), as well as sales of any items for 25 cents or less, are not taxable and should be deducted from gross receipts before calculating the tax.

To calculate the tax due on receipts from the sale of taxable nonfood items, multiply the total gross receipts (less exempt sales if any) by the current sales tax rate (7%).

To calculate the tax due on receipts from the sale of food and beverages, the taxable amount is the wholesale price, which is defined as 70% of the retail vending machine selling price.

The vending machine operator may purchase all items to be sold through coin-operated vending machines without paying New Jersey sales tax by issuing a New Jersey Resale Certificate (Form ST-3) to its supplier. For more information on vending machine sales see publication ANJ-16, *Vending Machines & New Jersey Sales Tax*, which is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj16.pdf □

In Our Courts

Cash Audit

Methodology – *Charley O's Inc., t/a Scotty's Steakhouse v. Director, Division of Taxation*, decided July 12, 2006; Tax Court No. 0002836-2002.

The Division conducted an audit of plaintiff's (Charley O's) restaurant. The auditor requested various documents to verify that the filed returns were reported correctly. Charley O's accountant provided sales journals as well as cash disbursement journals and other records, but not cash register tapes. Therefore, the auditor commenced a markup analysis.

The Court found that the auditor's supervisor directed him to stop the markup analysis and use the CBT reported gross sales before the markup analysis was completed. The CBT returns reported larger amounts of gross sales than did the sales tax returns. In determining purchases, the Court found that the auditor had some purchase information but had to plug in a number of \$231,109 to result in total audited purchases of \$383,888 for the test year. The auditor stated that he did not audit the CBT returns because he was directed to accept them as filed. Additionally, the auditor did not look at Charley O's cash receipts and cash disbursements journal.

The auditor also prepared a summary of Charley O's bank account deposits for the test period from Charley O's bank statements. Testimony indicated that the auditor was cognizant that Charley O's maintained bank accounts for deposits from the proceeds of its various credit cards but was not aware that funds were transferred from these

accounts into Charley O's operating bank account.

Charley O's claimed that it provided their representative (accountant) with bank statements, cash register tapes, and other records for purposes of the audit and that the accountant stated that he would protest the audit. The accountant never filed a protest and ran into his own legal troubles that resulted in his incarceration. Additionally, the accountant did not return all the records to Charley O's that were allegedly provided to him. Therefore, Charley O's engaged another firm who filed an untimely protest. The Conference and Appeals Branch (CAB) allowed the untimely protest due to the unusual circumstances surrounding the accountant's failure to protest in combination with his incarceration.

At CAB, Charley O's presented unsigned amended CBT returns that it had prepared for all the years at issue. Essentially, the amended returns reported reduced amounts of gross receipts and indicated that Charley O's had overpaid CBT taxes. The amended returns gross receipts were based upon the original cash receipts journal and the original cash disbursements journal and were intended to support the sales and use tax return gross receipts. The CAB upheld the audit assessment pursuant to its Final Determination. Subsequently, Charley O's filed signed amended returns with the Division and timely appealed the Final Determination to the Tax Court.

After the filing of the appeal, attorneys for both parties agreed that the Division would review the audit. The auditor and his new supervisor spent almost two days reexamining

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Charley O's records and a spreadsheet reconciling gross receipts and bank deposits ("spreadsheet") with the sales and use tax returns. The Division's auditor and his supervisor were both satisfied with the spreadsheet analysis reflecting that \$21,260.10 in sales tax was due, which was less than the \$77,609.99 previously determined. However, the auditor's supervisor recommended the spreadsheet analysis to his manager, who rejected it because there were no register tapes through which the receipts journal could be verified.

The Court found that the Division had no authority to accept the gross receipts on the CBT returns rather than the sales tax returns. The Court ruled that the Division's audit methodology was aberrant in that the auditor stopped the markup analysis and accepted CBT gross sales for sales tax purposes by increasing Charley O's purchases by an arbitrary amount that when multiplied by the markup produced estimated gross receipts in conformance with the gross receipts reported on the CBT return for the test year. Therefore, the Court concluded that the correct sales and use tax assessment was \$21,260.10 as determined on the spreadsheet and agreed to be correct by the Division's auditor and his supervisor. Moreover, the Court found that Charley O's provided a "convincing demonstration" that cash receipts and disbursement journal entries corresponded with various bank statements and also correlated to the spreadsheet.

The Court also found that Charley O's cash receipts and cash disbursements journal were summary records that were adequate

records for sales tax purposes pursuant to the Division's own regulations. The Court cited N.J.A.C. 18:24-2.4(a) stating that a taxpayer may dispose of individual sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes when a taxpayer maintains summary records. Therefore, the Court opined that cash register tapes are not absolutely required by the regulations when verifiable summary records are available. The register tapes may be helpful when an auditor believes the summary records are inaccurate and the auditor may perform a markup analysis in that situation when there are no cash register tapes available. Additionally, the Court opined that if the auditor had completed the markup analysis, then it would have been difficult to find fault with the Division's methodology.

Corporation Business Tax Public Utility Exemption – *Delmarva Power & Light Co., v. Division of Taxation*, decided July 14, 2006; Tax Court Nos. 000343-1999 and 001433-2000.

During the period at issue, 1994–1997, plaintiff (Delmarva) was engaged in the business of making wholesale sales of electricity through an association of seven utilities located in Maryland, New Jersey, and Pennsylvania to New Jersey regulated public utilities which, in turn, sold the electricity to New Jersey retail customers. Delmarva did not have a retail service area and hence had no retail sales in New Jersey.

Delmarva had nuclear generation capacity in New Jersey that was provided by the Salem Nuclear Generation Station, which was owned by Delmarva and New Jersey public

utilities as tenants in common. This facility and others were connected by the Lower Delaware Valley Transmission System that included the Salem conductor and Salem switching station, which both intersected with and extended over New Jersey public streets, highways, and roads. Delmarva's generation and transmission facilities were owned and operated on an integrated basis with those of an association. Although Delmarva was regulated by the Federal Energy Regulatory Commission, it did not apply to the New Jersey Board of Public Utility (BPU) Commissioners for designation as a public utility in New Jersey.

Delmarva filed corporation business tax (CBT) returns and paid taxes in each year from 1994–1997. Subsequently, Delmarva timely filed amended returns claiming a refund of all CBT paid during those years on the basis that it was exempt from CBT because it was subject to the franchise and gross receipts tax (F&GRT). The F&GRT Act levies an excise tax on the gross receipts of electric power corporations that use or occupy public streets, highways, roads, or other public places in New Jersey; however, the F&GRT exempts sales to other public utilities.

In deciding whether or not the F&GRT applied to Delmarva, the Court did not find it determinative whether Delmarva was a New Jersey public utility or that Delmarva did not apply to the BPU for designation as a public utility in New Jersey. The Court opined that Delmarva's 1% ownership in the Salem plant, its New Jersey property valued between \$150 and \$170 million and its receipts of as much

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as \$27 million from wholesale sales of electricity to New Jersey public utilities was sufficient to make it a taxpayer for purposes of the F&GRT Act.

The Court ruled that a taxpayer engaged in utility businesses, like Delmarva, would be exempt from CBT pursuant to N.J.S.A. 54:10A-3(f) if it was subject to the F&GRT, a tax based upon gross receipts. Delmarva's F&GRT returns indicated zero tax liability for all years at issue because its only energy sales in New Jersey were wholesale sales to other public utilities, which sales were excluded from the tax base of the F&GRT. Therefore, the Court opined that Delmarva was not "subject to tax" under the F&GRT from 1994–1997 as it did not owe F&GRT. Moreover, the Court stated that there was no basis for arguing that "subject to tax" did not mean "liable for tax." Delmarva's F&GRT tax base was zero and therefore its gross receipts were not subject to F&GRT.

The Court held that N.J.S.A. 54:10A-3(f), for the period 1994–1997, required that a corporation engaged in a utility business in New Jersey be liable for F&GRT in order to be exempt from CBT. Accordingly, Delmarva was not exempt from CBT. Furthermore, the Court found that it was not unconstitutional to impose CBT on Delmarva because of the way it conducts business in New Jersey and reasoned that a sensible reading of the CBT and F&GRT would not support the conclusion that Delmarva would be exempt from both taxes.

Financial Business Corporation –
Chemical New Jersey Holdings, Inc.

v. Director, Division of Taxation, decided July 31, 2006; Tax Court No. 000213-2001.

On remand from the Appellate Division, the Tax Court was to determine whether plaintiff (Chemical) met the statutory requirements to be taxed as a financial business corporation for the 1992 and 1993 tax years.

Chemical claimed that it met the statutory and regulatory requirements to file its 1992 and 1993 returns as a financial business corporation as a result of its making \$75 million of interest-bearing loans in 1990 and 1991 to its wholly-owned subsidiary, Chemical Bank New Jersey, N.A. (Chemical Bank) that remained outstanding during the tax years at issue. The loans were unsecured and subordinated to other creditors' claims. Chemical Bank needed the loan so that it would have additional capital to satisfy regulatory minimums for its capital ratios that were requested by the Office of the Comptroller of the Currency (Comptroller). In a November 7, 1994, letter, Chemical Bank requested approval from the Comptroller to repay \$75 million to Chemical and included a pro forma capital ratio computation. The Comptroller granted approval for payment and Chemical Bank repaid the \$75 million to Chemical in December 1994. In a November 2000 letter to the Division of Taxation in support of the proposition that Chemical was an investment company, Chemical stated that the transaction between itself and Chemical Bank was not a loan but a capital contribution and, therefore, should be considered investment assets.

Chemical borrowed the funds to make the aforementioned loan from its parent. Chemical charged inter-

est at 10.25% per annum, which was approximately 2% in excess of the interest rate Chemical paid to its parent. Chemical's 1992 and 1993 corporation business tax (CBT) returns indicated that 88% and 86% of its total investment income was the result of the interest received on the Chemical Bank loan. Chemical provided no evidence that would support it was involved with any other loans to qualify it as a financial business corporation.

The Court ruled that under N.J.S.A. 54:10A-4(m) a bank holding company engaged in activities that are "in substantial competition with the business of national banks" could qualify as a financial business corporation if the loan constituted moneyed capital with the object of making a profit. Therefore, the first issue addressed was whether national banks would make loans that were similar to or competitive with Chemical's loan to Chemical Bank in 1992 and 1993. The Court found that Chemical presented no evidence that Chemical Bank could have obtained a loan with similar terms from a national bank or that national banks would have made loans on the same terms. Consequently, the Court concluded that Chemical failed to prove by a preponderance of the evidence that national banks would have competed for loans similar to the loan at issue; a loan that was unsecured, subordinated to all of the borrower's other debts, and required approval by the Comptroller for repayment. The Court did not address the second prong of whether the loan constituted moneyed capital with the object of making a profit.

Chemical appealed this decision.

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Nexus – *Lanco, Inc. v. Director, Division of Taxation*, decided October 12, 2006; Supreme Court of New Jersey No. A-89 September Term 2005.

In a unanimous decision, with one Justice not participating, the New Jersey Supreme Court affirmed the Appellate Division's decision that a foreign corporation is subject to corporation business tax when it derives income from a licensing agreement with a company conducting retail operations in New Jersey notwithstanding the foreign corporation's lack of physical presence in New Jersey. The New Jersey Supreme Court acknowledged the split of authority among the states, but believed that the *Quill* sales and use tax decision did not create a universal physical presence requirement under the Commerce Clause. Additionally, the remand of this case to the Tax Court for further proceedings was also affirmed.

Gross Income Tax

Domicile – *Groudin v. Director, Division of Taxation*, decided August 3, 2006; Appellate Division No. A-5370-04T3, Tax Court decided May 27, 2005, No. 000220-2003.

The Superior Court affirmed substantially for the reasons stated by Judge Kahn in his written decision of May 27, 2005.

Although the taxpayers maintained an apartment in Lithuania, the country of which the wife was a citizen and the husband was a dual citizen, the taxpayers did not abandon their New Jersey domicile for the tax year in question. The evidence showed that the taxpayers used their New Jersey address for their Federal and State tax returns, place of business,

and marriage license. They claimed a deduction for property taxes and mortgage interest for the New Jersey residence. They claimed and received an NJ SAVER rebate. They maintained bank and other financial accounts, and the husband maintained a driver's license in New Jersey. Although it was not clear whether the wife was a New Jersey domiciliary or resident, she attested to the New Jersey address on their joint tax returns and listed that address on her application for a marriage license. Therefore, despite their argument that they intended to make Lithuania their permanent home, the overwhelming evidence supported a finding that the taxpayers did not abandon their New Jersey domicile.

Domicile – *Samuelsson v. Director, Division of Taxation*, decided May 10, 2005; Tax Court No. 03615-04.

Up until the 1998–1999 hockey season, Kjell Samuelsson played hockey for the Philadelphia Flyers, a professional ice hockey team in the National Hockey League (NHL). Mr. and Mrs. Samuelsson owned a home in Voorhees, New Jersey.

In October 1998, Kjell Samuelsson signed a one-year contract (1998–1999 season) to play hockey for the Tampa Bay Lightning of the NHL. The Samuelssons rented a home in Tampa, Florida. The Samuelssons testified that they removed all of their furniture from the house in New Jersey and, at the expense of the Tampa Bay Lightning, moved all their possessions to a rental home in Tampa and a storage facility, also in Florida. They listed their New Jersey home for sale, yet they did not sell it. Mrs. Samuelsson testified that she looked to purchase a home

in Tampa; however, she did not want to purchase a house before they sold their house in Voorhees, New Jersey.

Kjell Samuelsson, at age 41, retired from hockey at the end of the 1998–1999 season. The Samuelsson family spent the summer of 1999 in Sweden visiting relatives and returned to their New Jersey home in September 1999. In November 1999, Kjell Samuelsson was employed as an assistant coach with the Trenton Titans minor league hockey team, an affiliate of the Philadelphia Flyers hockey team of the NHL.

The Court stated that the issue was “Did the Samuelssons abandon their New Jersey domicile in 1998 and resume it in the fall of 1999 or were the Samuelssons New Jersey domiciliaries throughout the (entire) period.”

In order to abandon their New Jersey domicile, the Samuelssons would have had to acquire a Florida domicile in the fall of 1998.

The Court found that the facts supporting the Samuelssons' acquisition of a Florida domicile and the abandonment of their New Jersey domicile were:

1. They moved all of their furniture and belongings to Florida.
2. They listed their New Jersey house for sale.
3. They did not rent out their New Jersey house.
4. Mrs. Samuelsson looked for a house to purchase in Florida.
5. They sadly said farewell to their friends in New Jersey.

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6. They enrolled their children in school in Florida.
7. They closed their New Jersey bank accounts and opened accounts in Florida.
8. Mr. Samuelsson got a Florida driver's license and registered his car in Florida.

The facts supporting the argument that the Samuelssons never abandoned their New Jersey domicile are as follows:

1. They never sold their New Jersey home.
2. They returned to their New Jersey home within one year of moving to Florida.
3. They never purchased, but only rented, a home in Florida.
4. Mr. Samuelsson worked in Florida for less than one year — when he left New Jersey, he was working in Philadelphia; when he returned he worked in Trenton and Philadelphia.
5. Mrs. Samuelsson did not change her voter registration or driver's license to Florida.

The Court determined the key issue to be what the Samuelssons' intention was when they moved from New Jersey to Tampa in the fall of 1998.

In *Lyon v. Glaser*, 60 N.J. 259 (1972), the New Jersey Supreme Court wrote:

“Domicile is very much a matter of the mind—of intention. It has been said that concurrence, even for a moment, of physical presence at a dwell-

ing place with the intention of making it a permanent abode, effects a change of domicile. And once established, the domicile continues until a new one is found to have been acquired through an application of the same tests.”

The Court found that, although Mr. Samuelsson's contract was for less than one year and it was uncertain where he would work after the end of the contract, he had no reason at the time of signing the contract and moving to Florida to believe that he would be in New Jersey rather than Florida or Pittsburgh at the end of the year. Mr. Samuelsson's decision to return to New Jersey was only made after he had abandoned his New Jersey domicile as a result of his declining skills as a hockey player, which became evident during the 1998–1999 season, and his inability to secure a coaching position in Florida.

The Court stated that the Samuelssons had abandoned their New Jersey domicile for Florida when they moved in the fall of 1998. The fact that after that abandonment they returned to New Jersey is a result of facts and circumstances which arose during the 1998–1999 season, after they had abandoned their New Jersey domicile. The fact that the Samuelssons were domiciled in New Jersey up to the fall of 1998 and after the fall of 1999 does not mean that they could not abandon and then reestablish that New Jersey domicile.

Judgment was entered in favor of plaintiffs, dismissing the Director's assessment of taxes based on a conclusion that the plaintiffs were full-year residents for 1999. The Court

found that during 1999, the Samuelssons were part-year residents beginning in September, and that the Samuelssons had filed returns claiming part-year residency from July 1, 1999, to December 31, 1999. Thus, the Samuelssons were not residents of New Jersey during the first half of 1999, and Mr. Samuelsson's salary earned during that period, except for those few dates when he actually played hockey in New Jersey, was not subject to the New Jersey gross income tax. See N.J.A.C. 18:35-5.1 (relating to New Jersey source income for members of professional athletic teams).

Statute of Limitation on Refunds — *Mints v. Director, Division of Taxation*, decided August 23, 2006; Tax Court No. 005360-2005.

In this case, the taxpayer had not filed New Jersey gross income tax returns stating that Division of Taxation employees had verbally told him it was not necessary to file until he had all the necessary information to file his NJ-1040 returns. The Division denied making such statements to the taxpayer.

When the taxpayer filed his NJ-1040 returns, the Division of Taxation granted him a partial refund based on a subsequent change of income by the Federal Government. Per N.J.S.A. 54A: 9-8(c), if a taxpayer is required to report a change in Federal income for Federal tax purposes, to be eligible for a refund such change shall be filed with the Director within two years from the time of the Federal notice of change or correction. The taxpayer had filed his NJ-1040 returns within two years of the Federal change. However, the

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taxpayer was seeking that portion of his refund relating not to the Federal change, but to the original filing of his return that was out of statute for New Jersey gross income tax purposes.

Judge Small stated "In tax matters, strict adherence to deadlines are essential and claims or appeals filed even one day late are late." *FMC Stores v. Morris Plains*, 100 N.J. 418, 426 (1985). "Estoppel is rarely invoked against the government especially in tax matters." *Black Whale v. Director*, 15 N.J. Tax 338, 354-56 (Tax 1995). "Tax consequences must follow what a taxpayer did, not what he could, should, or might have done." *General Trading v. Director*, 83 N.J. 122, 136-38 (1980). And "Just as the government is required to turn square corners when dealing with its citizens, *FMC v. Morris Plains*, *supra*, taxpayers who seek refunds must comply with the government's procedural requirement for obtaining those refunds both as to time and other formalities."

Judge Small further opined, "I understand the unfortunate situation Mr. Mints finds himself in and the equities of his argument; however, our laws with respect to time limitations for filing tax refund claims, the prosecution of crimes, or assessment of taxes (as examples) embody a legislative determination that at some point the values of repose, certainty, and finality outweigh getting to the correct substantive result."

In a letter decision, Judge Small has entered judgment in favor of the Director in this matter.

Trust Income – *Kushner v. Director, Division of Taxation*, decided June 15, 2005; Tax Court No. 002867-2002.

The Tax Court granted summary judgment for the plaintiff, thereby overturning the Division's assessment.

The specific question addressed was whether the distributive share of partnership income received by a trust of which the taxpayer was the sole beneficiary should be treated on the trust's beneficiary gross income tax return as distributive share of partnership income under N.J.S.A. 54A:5-1(k) or income from a trust or estate under N.J.S.A. 54A:5-1(h).

For tax years 1994 and 1995 the receipts from a trust that were required to be distributed to a beneficiary retained their character and could be netted against losses of similarly characterized income.

The gross income tax instructions were changed for the 1996 tax filings so that receipts distributed to a beneficiary were now to be reported as trust income on the "Other Income" line of the NJ-1040. The instant case deals with a 1996 NJ-1040 filing.

The Court stated, that when changing positions, a letter in the *State Tax News* did not amount to sufficient authority to change tax return instructions under the Administrative Procedures Act and *Metromedia v. Director*, 97 N.J. 313 (1984).

Judge Small held that the Division was well within its authority to change the way trust income was to be reported, and in fact the 1999 partnership regulations accomplished the "sufficient authority" premises to enact the change. The

only problem is the instant case deals with a tax year 1996 NJ-1040 return filed in 1997, while the revised partnership regulations were enacted in 1999.

Insurance Tax

Retaliatory Tax – *American Fire and Casualty Company v. Director, Division of Taxation*, decided October 19, 2006; Supreme Court of New Jersey A-134 September Term 2004.

At issue was the determination of the proper method of calculating a foreign company's retaliatory tax obligation pursuant to N.J.S.A. 17:32-15 when the N.J.S.A. 54:18A-6 premium tax cap statute is applicable.

In general, both domestic and foreign insurance companies are subject to a 2.1% tax rate on their New Jersey taxable premiums. However, the premium tax cap statute allows either a domestic or foreign company to pay tax on only 12.5% of its worldwide premiums if its New Jersey premiums account for more than 12.5% of its total worldwide premiums. This tax cap statute was enacted in 1945 and is unique to New Jersey. A foreign insurer is also subjected to a provision that requires it to pay retaliatory tax if its home state's own tax and other obligations would be higher than the tax and other obligations calculated to be due to New Jersey. In 1981, the United States Supreme Court upheld the constitutionality of retaliatory taxation as to insurance companies in *Western & Southern Insurance Co.*

In a four to three decision, the New Jersey Supreme Court decided that the benefits received from the premium tax cap are not included in a

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foreign insurer's retaliatory tax calculation. Therefore, majority determined that foreign insurers must pay retaliatory tax to New Jersey to the extent their home state imposed a higher tax rate than New Jersey's tax rate. The majority stated that their interpretation was a harmonization of the statutes and was not a decision on constitutional grounds. The three-member dissent believed that the foreign insurers should be taxed in New Jersey the same way New Jersey insurers would be taxed in their state. Consequently, the dissent would not have permitted New Jersey's premium tax cap to effectively reduce the amount of retaliatory tax unless the insured's home state had a similar provision(s).

Litter Tax

Paper Products – *Random House, Inc. v. Director, Division of Taxation*, decided August 23, 2006; Appellate Division No. A-1359-05T5.

The Appellate Division affirmed the Tax Court's decision that Random House's sales of books to wholesalers, distributors, and retailers from 1993 to 2000 were not "litter-generating products" and were therefore not subject to the litter control tax.

Sales and Use Tax

Wrapping Supplies Exemption – *Quest Diagnostics, Inc. v. Director, Division of Taxation*, decided August 2, 2006; Appellate Division No. A-901-04T2.

Plaintiff (Quest) purchases and then provides vacutainers to physicians at no charge for their use in collecting samples of human blood and other bodily fluids that are prescribed. Vacutainers are test tubes that are sealed with a vacuum inside and each one contains a chemical essential to the sample for testing purposes. When drawing blood, the physician inserts a needle into the patient's arm and punctures the vacutainer's rubber top with the other end of the needle causing blood to be drawn through the needle into the vacutainer. After the sample collection process is completed, the physician places the vacutainer in a courier box from which Quest or a competitor collects the vacutainer. Quest also maintains a center for patients whose physicians do not collect samples in their own offices.

Quest operates a medical testing laboratory that performs and provides test results. Quest, as does its competitors, provides testing services for both its own supplied vacutainers as well as competitor supplied vacutainers. The vacutainers are destroyed after testing and are never reused.

When the vacutainers were acquired, Quest paid sales tax on the purchase price. Pursuant to an internal audit, Quest determined that the vacutainers should be exempt from sales tax. Quest claims that the product qualifies for the N.J.S.A. 54:32B-8.15 exemption from sales and use tax because they are nonreturnable containers or other wrapping supplies. In general, N.J.S.A. 54:32B-8.15 (8.15) provides an exemption for the sales or use of wrapping supplies including cartons, nonreturnable containers, etc. and all other wrapping supplies that are used incidentally in the delivery of personal property.

The Tax Court previously ruled that the vacutainers were neither other wrapping supplies nor nonreturnable containers and thus were subject to sales and use tax. On Quest's appeal, the Appellate Division (AD) affirmed without adopting the Tax Court's full analysis. The AD stated that the vacutainers are returnable containers even though they are not reusable; however, it opined that the vacutainers were neither containers nor wrapping materials entitled to exemption based upon the objectives of the N.J.S.A. 54:32B-8.15 legislation. The AD noted that the words of this statute as applied to these facts demonstrated the inherent ambiguities in the statute. Therefore, the AD focused on the principle of narrow construction where N.J.S.A. 54:32B-8.15 was ambiguous. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2006 (January 1, 2006 – December 31, 2006) and tax year 2007 (January 1, 2007 – December 31, 2007) for businesses and individuals:

- Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2006](#) [2007](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2006](#) [2007](#)

- Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2006](#) [2007](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
 609-826-4400
Homestead (FAIR) Rebate
Hotline 1-888-238-1233
Property Tax Reimbursement
Hotline 1-800-882-6597
Earned Income Tax Credit
Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4123
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576

New Jersey State Tax news

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FY 2007 Budget Legislation

The following is a list of several recently enacted tax laws related to the fiscal year 2007 budget. For a complete list of budget-related legislation visit the Division's Web site at: www.state.nj.us/treasury/taxation/statebudgetbills.shtml

Sales and Use Tax

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%. The rate change affects all retail sales of taxable merchandise or services that take place on and after July 15, 2006. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/44.PDF

Additional provisions effective October 1, 2006, extend the sales and use tax to new services, limit some existing exclusions and exemptions, and encompass product categories that have come into being with new technologies.

Effective July 15, 2006

- The New Jersey sales and use tax rate increased to 7%.
- Businesses in Urban Enterprise Zones and Salem county businesses that are authorized to charge the 50% reduced rate are required to charge and collect sales tax at the rate of 3.5% on all qualified taxable sales.
- The combined rate for sales subject to both the New Jersey sales and use tax and the Atlantic City

luxury tax increased from 12% to 13%.

- Businesses in Wildwood, North Wildwood, and Wildwood Crest that are subject to the tourism sales tax must collect 9% tax on tourism-related sales (2% tourism tax and 7% sales tax). This is in addition to the 1.85% tourism assessment and the 3.15% State occupancy fee on hotel occupancies.

The new sales tax rate schedules effective July 15, 2006, are available on the Division's Web site at: www.state.nj.us/treasury/taxation/salestaxrates.shtml

For more information on the rate increase visit: www.state.nj.us/treasury/taxation/vendors.shtml

Effective October 1, 2006

The law extends sales and use tax to charges for the following property and services, including the new category "digital property":

- Magazines and periodicals, except those sold by subscription and membership periodicals;
- Space for storage (For more information visit: www.state.nj.us/treasury/taxation/spstorage.shtml);
- Tanning services;
- Massage services, unless prescribed by a doctor;
- Tattooing, including permanent body art and permanent cosmetic makeup;

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- Investigation and security services (For more information visit: www.state.nj.us/treasury/taxation/investsecserv.shtml);
- Information services;
- Limousine services originating in this State, except as provided in connection with funeral services;
- Membership fees (For more information visit: www.state.nj.us/treasury/taxation/membership.shtml);
- Parking, storing, or garaging a motor vehicle (other than residential parking, certain employee parking, municipal metered parking, and parking subject to municipal parking taxes.); and
- “Digital property,” which means electronically delivered music, ring tones, movies, books, audio and video works, and similar products where the customer is granted a right or license to use, retain, or make a copy of such items.

The law changes the taxability of certain property and services as follows:

- **Software.** The current exemption for prewritten software delivered electronically is limited to electronically delivered software that is used directly and exclusively in the conduct of the purchaser’s business, trade, or occupation.
- **Delivery Charges.** The law modifies the exemption for delivery charges that are separately stated from the purchase price of an item on the invoice, bill, or similar document given to the purchaser. Delivery charges on taxable items are now taxable, and delivery charges on nontaxable items like clothing are exempt.

- **Laundering.** The sales tax exemption for laundering, dry cleaning, tailoring, weaving, and pressing is limited specifically to providing those services to clothing. The exemption does not apply to items such as drapery, carpets, blankets, slipcovers, and bed or hospital linens.
- **Floor Covering Installation Services.** The exemption for the installation of floor covering that resulted in capital improvement to real property is eliminated. Thus, the labor charge to install floor covering (e.g., carpeting, linoleum, tile, and padding) is now taxable. For more information, visit: www.state.nj.us/treasury/taxation/floorservices.shtml
- **Landscaping Services.** The exemption for landscaping services that resulted in a capital improvement to land is eliminated. Labor charges for landscaping services, such as seeding, sodding or grass plugging of new lawns; planting trees, shrubs, hedges, plants; and clearing and filling land are now taxable. For more information visit: www.state.nj.us/treasury/taxation/landscape.shtml

For more information on changes effective October 1, 2006, visit the Division’s Web site at: www.state.nj.us/treasury/taxation/salestaxbase.shtml

Urban Enterprise Zones

P.L. 2006, c.34, amends the Urban Enterprise Zones Act which provides an exemption for certain sales made to a qualified urban enterprise zone business. The purchase exemption remains effective; however, procedural amendments to the law now require the sales tax to be

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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collected on sales made to qualified businesses on and after July 15, 2006, unless the business is a “qualified small business” (annual gross receipts less than \$1 million in the prior annual tax period). For this purpose, a business may use its gross receipts from sales as reported for sales tax in the prior year. A qualified business other than a small qualified business must pay the tax and apply for a refund. For more information visit the Division’s Web site at: www.state.nj.us/treasury/taxation/uez.shtml. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/34 .PDF

Tobacco Taxes

Cigarette Tax. P.L. 2006, c.37, increased the cigarette tax, effective July 15, 2006. The rate increase is \$0.175 cents per pack for a total of \$2.575 per pack of 20 cigarettes. Previously, the tax was \$2.40 per pack.

Tobacco Products Wholesale Sales Tax. P.L. 2006, c.37, was also amended to impose a separate tax, effective August 1, 2006, upon the sale, use, or distribution of moist snuff at the rate of \$0.75 per ounce on the net weight, as listed by the manufacturer of the moist snuff, and a proportionate rate on all fractional parts of an ounce of the net weight of moist snuff.

The \$0.75 per ounce tax on the net weight of moist tobacco is to be paid and collected in a manner similar to the 30% tobacco products wholesale tax on other tobacco products and is simply a change in amount of tax assessed from a tax based on price to a tax based on weight. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/37 .PDF

Corporation Business Tax

P.L. 2006, c.38, imposes a 4% surtax in addition to the annual corporation franchise tax. For privilege periods ending on or after July 1, 2006, but before July 1, 2009, each taxpayer shall be assessed and must pay a surtax equal to 4% of the amount of tax liability remaining after applying credits against liability, other than credits for installment payments, estimated payments made with a request for extension to file a return, or overpayments from a prior privilege period. Payments of the surtax are to be made annually as required under N.J.S.A. 54:10A-15. No credits shall be allowed against the surtax liability except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

The law also makes adjustments to the New Jersey minimum tax under the Corporation Business Tax Act. For calendar years beginning in 2006 and thereafter. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/38 .PDF

Domestic Security Fee

P.L. 2006, c.42, amends P.L. 2003, c.34, by providing for an increase in the daily rental fee imposed on motor vehicle rental companies from \$2 to \$5 for each day or part thereof that a motor vehicle is rented under rental agreements of not more than 28 days. The increased fee must be separately stated on the agreement and applies with respect to certain motor vehicle rental agreements in New Jersey entered into on or after July 8, 2006. The fee is separate from, and in addition to, any sales tax imposed on the cost of the rental transaction and is not to be included

in the receipts subject to sales tax liability. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/42 .PDF

Fur Clothing Retail Gross Receipts Tax and Use Tax

P.L. 2006, c.41, enacted July 8, 2006, and effective July 15, 2006, imposes a gross receipts tax at the rate of 6% on the retail sale of fur clothing in this State and a use tax on the use of certain fur clothing in this State for which a tax has not been paid. For more information visit the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/furclothingusetax.pdf. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/41 .PDF

Realty Transfer Fee

P.L. 2006, c.33, enacted July 8, 2006, and effective August 1, 2006, and applying to transfers of property on or after that date, imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million. For more information visit the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/granteefeenotice.pdf. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/33 .PDF □

INHERITANCE/ESTATE TAX **NJ Estate Tax** **Return Preparation**

On July 1, 2002, the New Jersey estate tax was decoupled from the Federal estate tax. The revised statute provides that the New Jersey estate tax is either the amount of the maximum credit for state death taxes

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allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, or an amount determined pursuant to a simplified tax system prescribed by the Director.

Estate representatives may, at their election, use either the Form 706 method or the Simplified Form method to determine an estate's New Jersey estate tax liability. The Form 706 method is based on the provisions of the Internal Revenue Code in effect on December 31, 2001. The Simplified Form method is based on the net estate as determined for New Jersey inheritance tax purposes with certain changes.

The New Jersey Supreme Court's Committee on the Unauthorized Practice of Law concluded in Opinion No. 10 that the preparation of a New Jersey inheritance tax return requires the application of a gamut of technical legal principles and therefore its preparation by a non-

lawyer acting for another would constitute the unauthorized practice of law. The New Jersey Supreme Court opinion *In the Matter of the Application of the New Jersey Society of Certified Public Accountants*, 102 N.J. 231 (1986), modified Opinion No. 10 to permit the preparation and filing of New Jersey inheritance tax returns by qualified certified public accountants licensed in New Jersey.

Under the provisions of prior law the Division permitted the preparation of New Jersey estate tax returns by individuals who were not licensed New Jersey attorneys or certified public accountants. The rationale behind this policy was that the preparation of the New Jersey estate tax return did not involve the practice of law as the tax was a sponge tax based solely upon the credit for state death taxes allowable in the Federal estate tax proceeding. The preparation of the New Jersey estate tax return involved nothing more than copying numbers from the Federal estate tax return filed with the Internal Revenue Service to the New Jersey estate tax return.

Since the New Jersey estate tax is no longer dependent upon a Federal determination and is now a stand-alone tax, the preparation of the estate tax return requires knowledge of technical legal principles similar to that referenced in Opinion No. 10. Therefore, the Division requires that the New Jersey estate tax return be prepared and filed either by the estate representative or his/her New Jersey licensed attorney or certified public accountant. □

LOCAL PROPERTY TAX

PAMS: Building the Future

The PAMS (Property Assessment Management System) project recently completed a series of presentations to county tax boards, the League of Municipalities, and tax collector and assessor associations. Representatives from Property Administration and the Division of Local Government Services discussed the status of the PAMS project, gave a preview of what to expect with the new system, and answered questions.

The presentations were made to counties throughout the State, including the early implementation counties of Salem, Camden, and Hunterdon, from January through April. Stephen Sylvester, Assistant Director of Property Administration, was pleased with the participation. "We are very encouraged to see the interaction occurring between the State, county, and local government in the development of PAMS, and we are further encouraged by the dialogue these presentations generate. This makes us very confident that we will end up with a state-of-the-art system that meets the needs of all stakeholders," said Sylvester.

Another round of presentations is being planned for fall of 2006. In addition, the PAMS information booth will be on display at conferences to be held by the Tax Collectors and Treasurers Association of New Jersey, the Association of Municipal Assessors of New Jersey, and the New Jersey Association of County Tax Boards this spring and summer.

Interest 10.00%

The interest rate assessed on amounts due for the period January 1, 2006 – December 31, 2006, will be 10.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%



PAMS: building the future - from page 4

This article appears in the most recent edition of the PAMS newsletter. To see the entire issue, visit the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/infolinks.shtml □

LOCAL PROPERTY TAX ***Tax Assessor Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Nineteen persons passed the March 25, 2006, C.T.A. exam. Fourteen persons received Tax Assessor Certificates dated July 1, 2006. They are:

Burlington County: Ruth A. Benz, Cinnaminson Township; Barbara A. Manzi, Springfield Township; Anthony D. Porto II, Hainesport Township.

Camden County: Melissa Mallory, Camden City; Joseph P. Pizzoli, Lindenwold Borough.

Monmouth County: Renee Frotton, Atlantic Highlands Borough; Andrew Gambardella II, Marlboro Township; James F. Ryan, Howell Township.

Morris County: Joanna C. Aceto, Morris Township.

Passaic County: Michael P. Soccol, Clifton City.

Somerset County: William A. Radano, Bridgewater Township; Margaret C. Wilson, Somerville Borough.

Union County: Deborah S. Bringuier, Union Township.

Commonwealth of Pennsylvania: Irvin M. Sibert, Washington County, West Finley Township.

The certification examination is offered twice a year, in March and September. The next examination is scheduled for September 30, 2006. The deadline to file applications for this exam was August 31, 2006. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX ***Tax Assessors' Calendar***

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time within which appeals may be heard and determined.

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.

- MOD IV Master file sent to Property Administration via appropriate medium.

- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2007 together with a notice that the completed form must be filed with the assessor by August 1, 2006, in order

to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2007.

August 5-

- All SR-1A forms showing information to be used in compiling 2006 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or a member of the owner's immediate family.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) with respect to tax year 2007 with the assessor for taxing



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district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2007, for machinery, apparatus, or equipment directly used to

manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 29, 2005, in Middletown Twp. Municipal Court, the Office of Criminal Investigation (OCI) charged Kasot, Inc., t/a Atlantic Highlands Nursing Home, with recklessly or negligently failing to pay the New Jersey cigarette tax due on 5,618 cartons of untaxed cigarettes that the nursing home administration had purchased over the Internet for distribution to the residents of the facility. This case was the result of a referral from the Division's Field Audit Branch, which had uncovered the violations in the course of a routine audit.
- On January 4, 2006, in Jersey City, Lan Fan Zhang, 42, and Min Liang Yu, 20, both of New York City, were indicted by a Hudson County Grand Jury on charges of possession of untaxed cigarettes, possession of items bearing a counterfeit trademark, engaging in conduct without a required license with intent to evade tax, failing to file returns with intent to evade tax, failing to pay tax with intent to evade, and failing to maintain required books and records with intent to evade tax. The indictment is the result of the arrest of Zhang and Yu by OCI on April 7, 2004, in possession of 14,757 cartons of untaxed cigarettes in counterfeit Newport packaging, with a retail value of \$856,053, which they were loading into a van from a storage

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation affects the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Streamlined Sales and Use Tax Agreement Uniform Exemption Certificate and Instructions](#)

[Notice: NJ Sales Tax Exemption for Drugs and Medical Equipment](#)

[Streamlined Sales and Use Tax Law: Motor Vehicle Leasing Issues](#)

[Notice: Rental of Equipment With An Operator](#)

[Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)

[Notice: Sales And Use Tax Exemption for Clothing](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us



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container at the U-Store-It self-storage facility in Jersey City. This seizure averted a loss of \$353,881 in cigarette tax and sales and use tax. The case was presented to the grand jury by the Hudson County Prosecutor's Office.

- On January 6, 2006, in Camden, OCI, assisted by Camden Police, arrested Jun Pan, 35, of Camden, in possession of 64 cartons of untaxed cigarettes shipped via U.S. mail from an Indian reservation. The investigation is continuing.
- On January 6, 2006, in Pine Hill Municipal Court, Joseph Friedman and Sons of NJ, Inc., a cigarette wholesaler in Pennsauken, was charged with offering and giving rebates in connection with the sale of cigarettes between January 1 and June 30, 2005.
- On January 20, 2006, in Superior Court – Monmouth County, Michael J. Buonopane, 45, of Rumson, was sentenced to four years' imprisonment. He was immediately taken into custody for transfer to State prison. This is the largest criminal tax case ever prosecuted in State history. He had pled guilty on June 3, 2005,

to misapplication of a total of \$4,848,815 in taxes between 1999 and 2004 (\$2,014,386 in sales and use tax, \$106,012 in gross income tax, \$654,055 in unemployment and disability contributions, and \$2,074,362 in Federal withholdings) at 20 Mr. Good Lubes and Country Sudser Car Washes in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties. He has paid the Division restitution of \$2,120,398 in taxes and must pay \$772,120 in penalties and interest within three years. He was also ordered to surrender his license to practice law and his CPA license. This was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, and was prosecuted by the State Office of the Attorney General.

- On January 26, 2006, in Trenton, Tormu E. Prall, 33, of Trenton, was arrested by OCI on a warrant which charged him with possession and sale of 70 cartons of untaxed cigarettes on September 2, 2005. At the time of his arrest, Prall was in possession of an additional 37 cartons of untaxed cigarettes. Search warrants were

then executed on Prall's house and two cars resulting in the seizure of an additional 140 cartons of untaxed cigarettes, \$3,300 in cash, several hundred DVDs, CDs, video games, computer hard drives, CD/DVD burners, a large quantity of blank CDs and DVDs, and a 1995 Lexus. Prall was also charged with failure to maintain records with intent to evade tax, failure to pay cigarette tax, failure to file cigarette tax returns, possession of 100 or more cartons of untaxed cigarettes, and possession of sound/video recordings with fraudulent manufacturer/performer names with intent to sell. Prall was held at the Mercer County Correction Center in lieu of \$75,000 bail. This was a joint investigation by OCI and the Mercer County Prosecutor's Office, with assistance from the Trenton Police Department, begun by OCI in response to numerous complaints from the Trenton Downtown Association concerning sale of untaxed cigarettes on street corners and at bus stops.

- On February 8, 2006, in Vineland, OCI disrupted the distribution network of a counterfeit

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Enforcement Summary Statistics

First Quarter 2006

Following is a summary of enforcement actions for the quarter ending March 31, 2006.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	3,329	• Seizures	82
Total Amount	\$31,172,205	• Auctions	8
• Jeopardy Assessments	169	• Referrals to the Attorney General's Office	1,036

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.shtml

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cigarette tax stamp operation by arresting Loan Nguyen, 56, of Falls Church, Virginia, in possession of 81.8 cartons of cigarettes bearing counterfeit New Jersey cigarette tax stamps that she was attempting to sell. Nguyen was charged with sale of untaxed cigarettes, possession of untaxed cigarettes, possession of 10 or more cartons of cigarettes with counterfeit tax stamps, transportation of untaxed cigarettes, failure to file returns with intent to evade, failure to pay tax with intent to evade, and engaging in conduct without required registration or license with intent to evade. A 2005 Chrysler Town and Country van was also seized. Nguyen was held in lieu of \$25,000 bail.

- On February 23, 2006, in Pennsville, OCI and the Pennsville Police arrested Sukhdev S. Jaswal, 46, of Salem, New Jersey, at his sole proprietorship, Rachel's Market, following undercover purchases of untaxed cigarettes and inspections of the market and a Riggins gas station he owns in Quinton Township. Seized were 19.2 cartons of untaxed cigarettes and about 500 untaxed cigars. Jaswal was charged with sale of untaxed cigarettes, failure to pay cigarette tax, failure to maintain books and records, and possession of untaxed goods.
- On March 3, 2006, in Trenton, OCI agents, assisted by the Trenton Police, arrested Willie Howlen, 35, of Morrisville, Pennsylvania, in possession of untaxed cigarettes he was attempting to

sell on the street. Seized were 22.8 cartons of Newport cigarettes with no tax stamps, a 2000 Land Rover registered to Howlen and used to transport the cigarettes, numerous bootleg DVDs Howlen was attempting to sell, and \$507 cash. Howlen was charged with sale of untaxed cigarettes, possession of untaxed cigarettes, and transportation of untaxed cigarettes. Additional charges are pending.

- On March 7, 2006, in Dover Township, OCI and Dover Township Police arrested Richard Carroll, 49, of Brick, New Jersey, at his sole proprietorship, Towne Stationery, after an investigation and inspection established that Carroll was engaged in the sale of untaxed cigarettes. Seized were 39.1 cartons of untaxed cigarettes found in a locked, hidden compartment under the store counter and secreted in a wall of the store's bathroom, and \$1,221 currency, including \$1,150 found in the hidden compartment with the untaxed cigarettes. Carroll was charged with sale of untaxed cigarettes and possession of untaxed cigarettes. Carroll was awaiting sentencing on previous charges of sale of untaxed cigarettes and failure to maintain books and records with intent to evade payment of \$12,342.60 in sales tax, and has a record of two earlier tax offenses.
- On March 7, 2006, beginning in Carney's Point, OCI, New Jersey State Police, and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducted a continuous 22-hour joint investigation and mobile surveillance

resulting in the arrest of Abel Concepcion, 33, of Miami, Florida, and seizure of 48,000 cartons of stolen, untaxed cigarettes which he was transporting in a tractor-trailer. The street value of the seized cigarettes is \$2,986,560. This seizure averted a cigarette tax and sales and use tax loss of \$1,320,960. Concepcion was charged with failure to maintain records with intent to evade, possession of 100 or more cartons of untaxed cigarettes, dealing with unlicensed persons, engaging in conduct requiring registration or licensure without same, and transportation of untaxed cigarettes. He was subsequently turned over to ATF and charged with Federal offenses relating to possession and transportation of the cigarettes, which had been stolen in-transit in North Carolina.

- On March 15, 2006, a Monmouth County Grand Jury returned a five-count indictment against Joan and Richard Orlando, Dover Twp., charging them with conspiracy, failure to pay New Jersey gross income tax, and theft-related crimes. Joan Orlando, 60, had been the bookkeeper of St. Benedict's Church in Holmdel since 1998. The allegations are that Ms. Orlando submitted grossly inflated salary figures for herself to Automatic Data Processing, Inc. (ADP), a payroll processing company, from 2001 to June 2005. Through this scheme Orlando received over \$800,000 in excess salary. To conceal the theft Ms. Orlando altered tax records that ADP forwarded to St. Benedict's. Ms. Orlando was charged by the

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grand jury with theft by deception and two counts of failure to pay tax with intent to evade. Richard Orlando, also 60, received nearly \$300,000 in cash and checks from his wife's bank account between January 2003 and June 2005. These payments of monies misappropriated by Joan Orlando are the basis for the second-degree conspiracy and receiving stolen property charges. This investigation was jointly conducted by OCI, the Monmouth County Prosecutor's Office, and the Holmdel and Dover Township Police Departments.

- One hundred twenty-six (126) complaints alleging tax evasion were evaluated from January through March 2006, in the Office of Criminal Investigation.
- During the same period, one hundred eight (108) charges were filed in court and fourteen (14) arrests were made in twenty-five (25) cases involving violations of the Cigarette Tax Act. Seized were 48,546.2 cartons of untaxed cigarettes, having a total value of \$3,020,544.56 and including 156.4 cartons bearing counterfeit New Jersey tax revenue stamps. □

Tax Briefs

Corporation Business Tax
IRC §1033 Involuntary Conversion of Business Assets — The term “entire net income” refers to the corporation's total net income from all sources, whether inside or outside New Jersey and includes any gain derived from the employment of capital and/or labor and profit gained through the sale or conversion of capital assets. A corporation's Federal taxable income, before net operating losses and other special deductions and subject to certain modifications, is deemed to be, *prima facie*, the taxpayer's entire net income for corporation business tax purposes. N.J.S.A. 54:10-4(k); N.J.A.C. 18:7-5.1(a); N.J.A.C. 18:7-5.2.

Items reported above Line 28 on Schedule A of Form CBT-100 must be the same as those reported to the IRS for Federal income tax purposes. There is no adjustment required by New Jersey for IRC Section 1033 involuntary conversion of business assets. Therefore, to the extent that a gain resulting from an IRC Section 1033 involuntary conversion is recognized for Federal purposes, such a gain will be recognized for New Jersey purposes.

Gross Income Tax

Credit for Taxes Paid to Other Jurisdictions Clarified — Taxpayers are often confused about how to calculate the credit for taxes paid to other jurisdictions in situations where there is income reported to another jurisdiction (e.g., a state) and its political subdivision (e.g., a city). Detailed information and examples illustrating the calculation of the credit are provided in N.J.A.C. 18:35-4.1(a)11, Tax Topic Bulletins GIT-3W and GIT-3B, and *Jenkins v. Director*, 4 N.J. Tax 127 (1982).

N.J.A.C. 18:35-4.1(a)11 states, “A New Jersey resident taxpayer in determining the resident credit allowed, as defined in this section, shall not combine in the numerator (Schedule A, Line 1, N.J. 1040) the same income subject to tax by the jurisdiction and/or political subdivision. The amount of income or wage tax during the tax year shown on Schedule A, Box B, N.J. 1040 for the taxpayer paying both a tax to another state and to a political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and political subdivision of such state where the same amount of income is subject to tax in both the other state and political subdivision of such state.”

If the income taxed by the political subdivision is more than the income taxed by the other state, then a separate Schedule A must be completed to calculate the additional credit for taxes paid to the political subdivision. For example, a taxpayer earned \$95,000 of wages in City A located in State B. If State B taxed \$90,000, and City A imposed tax on \$95,000,

Current Amnesty Programs

Rhode Island is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

RI Jul 15 – Sep 30 <http://www.tax.ri.gov/amnesty/>



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the taxpayer may claim an additional credit based on the \$5,000 of income that was taxed by City A but not by State B.

Please keep in mind when calculating the potential credit for taxes paid to another state and its political subdivision that the limitations of a credit for taxes paid to another jurisdiction as noted in N.J.S.A. 54A:4-1 and N.J.A.C. 18:35-4.1 still apply. That is to say, the total income from all jurisdictions in which the taxpayer may be seeking a credit may not be in excess of the income taxed by New Jersey. For detailed examples of how to calculate the credit when the same income is taxed by more than one jurisdiction outside New Jersey, refer to Tax Topic Bulletins GIT-3W, *Credit for Taxes Paid to Other Jurisdictions (Wage Income)*, and GIT-3B, *Credit for Taxes Paid to Other Jurisdictions (Business/Nonwage Income)*.

LLC Electing Disregarded Entity Status — New Jersey filing requirements for a limited liability company (LLC) depend on Federal tax treatment. The entity is treated the same for State purposes as it is for Federal purposes. If a single-member LLC elects “disregarded entity status,” the LLC is treated as a sole proprietorship rather than as a corporation, and income from the LLC must be reported on Form NJ-1040.

Realty Transfer Fee

Senior Citizen Partial Exemption — An inquiry was received regarding whether a senior citizen occupying a home to which she had conveyed title from herself as an individual to a trust in her name, can now, when selling the property,

receive the senior citizen’s partial exemption from the realty transfer fee upon the recording of the deed for the conveyance of the property.

This question has been resolved by the New Jersey Tax Court. In *Terrell v. Director, Division of Taxation*, 22 N.J. Tax 297 (Tax Ct. 2005), the Court said:

“The statute [N.J.S.A. 46:15-10.1a(1)] specifically defines a ‘senior citizen’ as ‘any resident of this State of the age of 62 years or over.’ N.J.S.A. 46:15-5(f). A trust, not being a natural person, cannot be a senior citizen, and so it cannot claim the partial exemption from the realty transfer fee that is accorded to property owned, occupied, and sold by a senior citizen. In administering a transactional tax, the clerk has no duty to look beyond the grantor named in the deed. The taxpayer cannot later recharacterize the form in which they elected to hold the property. See *Zimmerer v. Clayton*, 7 N.J. Tax 15, 22 (Tax Ct. 1984).”

Accordingly the claim of partial exemption is not permitted in the situation described.

Sales and Use Tax

Artificial Fireplace Logs — Natural and artificial logs are treated as “fuel delivered to consumers...in bulk” within the meaning of N.J.S.A. 54:32B-8.7 and are exempt from sales tax. This provision was not changed by the Streamlined Sales and Use Tax legislation, P.L. 2005, c.126, which took effect October 1, 2005.

Lessor Certification (Form ST-40) — As of October 1, 2005, Form ST-40 is no longer used for leases beginning on or after that date. Prior

to that date, the lessor (not the lessee) was legally obligated to pay the tax on a lease transaction, and lessors were not permitted to charge the lessee “sales tax.” The lessor provided the lessee with a completed Form ST-40, affirming that the tax would be paid directly to the Division of Taxation, or that an exemption was claimed. If the lessor did not pay the tax, the lessee could not be held responsible for the tax as long as the lessee had been given a completed Form ST-40. Under the provisions of the Streamlined Sales and Use Tax legislation (P.L. 2005, c.126) that took effect on October 1, 2005, the lessor is no longer the taxpayer but, rather, must collect sales tax from the lessee on both leases and rentals. Therefore, the ST-40 is no longer applicable.

Additional information on leases and rentals is available at: www.state.nj.us/treasury/taxation/pdf/ssutlease.pdf

Nonalcoholic Mixers — An inquiry was received regarding the taxability of nonalcoholic drink mixes. Pursuant to the changes enacted in the Streamlined Sales and Use Tax legislation (P.L. 2005, c.126) that took effect October 1, 2005, liquid nonalcoholic drink mixes that are sold for use in creating mixed drinks generally fall within the definition of taxable “soft drinks” as they contain natural or artificial sweeteners. However, if they contain milk or milk products (including soy, rice, or similar milk substitutes) or more than 50% vegetable or fruit juice by volume, they are excluded from the taxable soft drink definition and are considered exempt “food ingredients.” N.J.S.A. 54:32B-8.2. Powdered nonalcoholic drink mixes

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are exempt as “food and food ingredients.”

Storage of Cargo Containers and Truck Chassis — The Division received an inquiry concerning the taxability of the storage of cargo containers and truck chassis at off-pier depots.

Sales tax is generally imposed on storage services; however, there is a specific exemption for certain storage services for the marine terminal industry. Sales of commercial ships, barges, and other 50-ton-burden vessels, including cargo containers and repairs to such, and machinery and equipment for use at a marine terminal facility in loading, unloading, and handling cargo, as well as *storage and other services rendered with respect to such loading, unloading, and handling of cargo at a marine terminal facility*, are exempt. Thus, storage services for cargo containers that are provided *at a marine terminal facility* are exempt. There is no provision that would exempt the storage of cargo containers at a location other than a marine terminal facility.

Trucks, tractors, trailers, and semi-trailers are not included within the exemption for the marine terminal industry described above, since they are not machinery or equipment used to load, unload, or handle cargo

at a marine terminal facility. Thus, storage services provided for trucks and trailers are subject to tax, regardless of where the storage occurs. However, an exemption applies to sales of commercial trucks, tractors, semi-trailers, and vehicles used in combination with a gross vehicle weight rating in excess of 26,000 pounds, or those engaged exclusively in interstate commerce. N.J.S.A. 54:32B-8.43. □

In Our Courts

Sales and Use Tax

Bulk Sale Notice – *GABGEO v. Division of Taxation, Division of Alcoholic Beverage Control, and Township of Colts Neck*, decided April 21, 2006; Tax Court Nos. 007640-2004 and 007676-2004.

George Mavrookas was the owner/chief executive of P. Phaneromeni Corp. (Phaneromeni), which owned and operated a restaurant in Colts Neck, New Jersey. The Division had filed numerous judgments in the form of certificates of debt against Phaneromeni for deficient and/or delinquent taxes. On September 17, 1996, the Division notified Phaneromeni that the Division had obtained a judgment against Phaneromeni, George Mavrookas, and fellow officers and partners for approximately \$195,356 of sales and use tax and corporation business tax

liabilities regarding tax years 1996 and prior. Between October 1996 and July 1997 there was correspondence between the Division and Mr. Giacomo Duva, the attorney for Phaneromeni, regarding payment of the liabilities. On July 7, 1997, Mr. Duva notified the Division that Phaneromeni had “contracted to sell the business, assets, liquor license, and real property to a bona fide buyer who presently has a loan commitment.” The letter also stated that the buyer’s lender had set a July 17, 1997, closing date, but that date could not be guaranteed. This letter did not disclose the identity of the buyer, a sales price, firm closing date, or if the purchaser would assume Phaneromeni’s tax liabilities.

Plaintiff (GABGEO) purchased the assets and liquor license of Phaneromeni on July 18, 1997, for an unstated amount of money. GABGEO was incorporated on June 27, 1997, listing Peter Mavrookas (son of George Mavrookas of Phaneromeni) as the sole shareholder of GABGEO and Mr. Giacomo Duva as the registered agent. Although the purchase included the real property in which the business was located, the real estate was deeded in a separately recorded transaction on July 18, 1997, from George Mavrookas and his wife to Peter Mavrookas and his wife for \$1,800,000.

On September 2, 1997, Mr. Duva sent an attorney trust account check to the Division to pay off most of Phaneromeni’s tax liabilities and indicated that GABGEO would assume responsibility for the remaining approximately \$20,000. The Division notified Phaneromeni that the judgments were satisfied and

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warrants for satisfaction would be prepared and forwarded to the Superior Court.

Mr. Duva, acting as the attorney for GABGEO, delivered a Bulk Sale Notice to the Division on September 11, 1997, almost 60 days after the closing. Thereafter, the Division issued a conditional tax clearance certificate that allowed Phaneromeni to transfer the liquor license to GABGEO, and issued a Notice and Demand of Payment From Transferee to GABGEO in the amount of \$34,969. In the following months, Mr. Duva corresponded with the Division inquiring about the status of the clearance of the transfer of the liquor license. In a letter dated April 1, 1998, the Division informed Mr. Duva that GABGEO did not timely file its Bulk Sale Notice and therefore the Division could not inform the purchaser of the requirements to obtain a tax clearance certificate and did not perform an analysis of Phaneromeni's food and liquor purchases and gross receipts. Nonetheless, the letter stated that the Division would relinquish the escrow requirement and issue a conditional clearance certificate to allow the transfer of the liquor license with the caveat that upon completion of the current audit pertaining to Phaneromeni the Division would pursue collection activities against Phaneromeni and/or GABGEO.

In 1999, the Division issued a clearance certificate for the renewal of the liquor license indicating that there were no outstanding liabilities for sales through September 1997. Thereafter, the Division issued a tax clearance certificate for the transfer of the liquor license to GABGEO.

In a letter dated October 18, 1999, the Division issued a notice to Phaneromeni that it owed \$417,187 in sales tax and interest for tax years 1995 through 1997. On May 15, 2003, the Division notified GABGEO of their additional transferee liability of \$429,790 as a result of the audit of Phaneromeni.

At issue is whether GABGEO is responsible for the taxes, interest, and/or penalties of Phaneromeni as a result of the 1999 audit. In essence, N.J.S.A. 54:32B-22(c) requires that a purchaser in bulk of the business or business assets must notify the Division by registered mail at least 10 days prior to the sale or possession and include the price, terms, and conditions as well as acknowledge that the seller has informed the purchaser that the seller owes taxes or the purchaser will be personally liable for any taxes determined to be due from the seller.

The Court determined that the July 7, 1997, notification to the Division did not substantially comply

with N.J.S.A. 54:32B-22(c). Mr. Duva sent the notice on behalf of the seller, not the purchaser, the purchaser was not named, and the notification was not the form of notice required by the statute. The letter did not inform the Division whether the seller informed the purchaser of the outstanding taxes or that the purchaser would assume liability of any taxes owed. As to the September 11, 1997, notice, the Court found that it was a proper notice but was untimely to put the Division on notice as it was not provided at least 10 days before the July 18, 1997, sale as required by the statute. Therefore, the Division could not perform a quick bulk sales audit, address potential liabilities after an audit, and prescribe an escrow until after the sale closed.

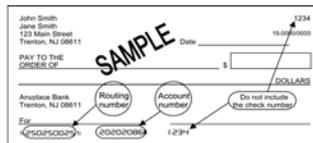
The Court also questioned whether the transaction was a bona fide sale because the same attorney represented both the seller, whose principal was the father, and the

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purchaser, whose principal was the son; the sales price of the business assets was miniscule in comparison to the separate price paid for the real estate; and there was no proof of the true values of the real estate and the business.

In addressing whether the Division should be equitably estopped from collecting the liabilities of Phaneromeni from GABGEO because of the months of negotiations prior to the sale between Mr. Duva and the Division regarding the amount of monies owed to secure transfer of the liquor license, the Court decided that the Division could only be estopped in this case if the bulk sales notification provisions were complied with or pursuant to a closing agreement. The Court found that the Division's April 1, 1998, letter was fair warning to GABGEO that an audit was in process and the Division reserved the right to collect against Phaneromeni and/or GABGEO.

In affirming the Division's assessment and holding GABGEO responsible for the tax liabilities of Phaneromeni, the Court reiterated that GABGEO did not comply strictly or substantially with the bulk sale notice provisions, GABGEO was on notice that it would be held responsible for Phaneromeni's audit liabilities, and there was no evidence presented at trial disputing the amount of the assessment.

Tax Separately Stated – *Great American Railway Co. v. Division of Taxation*, decided March 3, 2006; Tax Court No. 005006-2004.

Plaintiff operates a museum containing a doll collection, pipe organ, model railroads, as well as an out-

door railroad train. Customers paid an admission charge for entrance and received an admission ticket. The ticket stated only the admission price and did not provide the amount of sales tax.

The Division's auditor (Auditor) found that the gross receipts used to calculate sales tax plus 6% of that amount equaled plaintiff's gross receipts as recorded in a notebook by plaintiff's principal for the fourth quarter of 1997. Dividing the gross receipts by 1.06 produced taxable gross receipts. Plaintiff's accountant described this method of determining sales tax from the gross receipts as backing into the sales tax. The Auditor disagreed and determined that the entire admission price was taxable because the admission tickets did not separately state the tax as required by N.J.S.A. 54:32B-12(a) and the interpretive regulation. In other words, hypothetically, if the admission ticket price was \$10.60, plaintiff contends that \$10 is the gross receipt and \$0.60 is the sales tax. On the other hand, the auditor claims that the entire \$10.60 is the gross receipt and therefore subject to the 6% sales tax of \$0.636.

At trial, plaintiff's principal testified that the 6% sales tax was included in the admission price and that signs were posted indicating such for the four-year period at issue. On the other hand, the Auditor as well as an assistant testified that they did not see any posted signs relating to the sales tax.

In evaluating the testimony, the Court noted that this was not a case of concealment, plaintiff maintained adequate books and records, taxes were consistently reported and paid timely, and plaintiff's principal was a credible witness. The Court then

opined that a sign was posted during the entire audit period. The Auditor's testimony was discounted because the Division did not produce any evidence such as a photograph in support of its position. Furthermore, the Auditor's testimony was found to be due possibly to faulty recollection or a failure to observe the sign.

N.J.S.A. 54:32B-12(a) provides as follows:

Every person required to collect the tax shall collect the tax from the customer when collecting the price, service charge, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, service charge, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the State.

The Court determined that plaintiff's sign "satisfied the purpose if not the letter of the statutory requirement" of N.J.S.A. 54:32B-12(a) even though sales tax was not separately shown on the admission tickets as required by the statute. The Court reasoned that the "purpose" of N.J.S.A. 54:32B-12(a) was to notify the customer of the amount of sales tax collected as well as to provide a basis for a sales tax refund where appropriate. Furthermore, the Court stated that additional sales tax was not retained by the plaintiff and that the Division sought to effectively impose additional sales tax on

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the sales tax reported and remitted. Alternatively, the Court opined that even if a sign was not posted, that additional sales tax was not due. “No provision of the sales tax statutes or regulations states that a failure to disclose separately the amount of sales tax being collected will automatically result in liability for payment of tax on the portion of the admission charge used to pay sales tax.” □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2005 (January 1, 2005 – December 31, 2005) and tax year 2006 (January 1, 2006 – December 31, 2006) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2005](#) [2006](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2005](#) [2006](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2005](#) [2006](#) □



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numbers*

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 609-826-4400

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 Information 609-292-6400

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Business Paperless Telefiling
 System 1-877-829-2866

Speaker Programs 609-984-4101

Alcoholic Bev. Tax 609-984-4123

Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323

Director’s Office 609-292-5185

InheritanceTax 609-292-5033

Local Property Tax 609-292-7221

Motor Fuels Tax
 Refunds 609-292-7018

Public Utility Tax 609-633-2576

New Jersey State Tax news

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- [Division Organization Chart](#)

Director John Baldwin
Remembered, [page 2](#)

State Treasurer Sworn In



Bradley Abelow was designated Acting Treasurer effective January 23, 2006, and served in that capacity until being sworn in as State Treasurer on March 13, 2006.

With oversight of 11 divisions and 3,700 employees, the Treasury Department, under the leadership of the State Treasurer, is responsible for the generation and collection of revenues, the distribution of appropriations that fund the operations of State government, assets management, and the administration of statewide support services.

In 2005, Mr. Abelow worked for the Executive Office of Goldman, Sachs & Co. of New York, NY. He retired

in January 2006, following a 15-year career with the company. Mr. Abelow was Head of the Operations Division for Goldman Sachs, overseeing the Global Operations, Corporate Real Estate, and Corporate Services departments. Prior to that role, he was responsible for the Operations, Technology and Finance Division in Asia, based in Hong Kong.

Before his career at Goldman Sachs, Mr. Abelow was Program Officer for the Urban Coalition of Minneapolis, Minnesota.

Mr. Abelow earned a master's degree in Public and Private Management from Yale University's School of Management in 1989 and a bachelor of arts degree from Northwestern University in 1983.

Mr. Abelow is married and has three children. □

LOCAL PROPERTY TAX Implementation of PAMS Project

The Division of Taxation continues to host design sessions for the PAMS project. In addition we are participating in meetings throughout the State to inform collectors, assessors, and tax administrators about the project. Several members of the

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John Baldwin, Director

John Baldwin, former Director of the Division of Taxation, died on March 9, 2006, at the age of 68. Mr. Baldwin, a career public servant, began his State service at the Division of Taxation in 1960 in the local property tax field. He was appointed Assistant Director in 1978 and served as Director from 1983 to 1990.

During his career with the Division, Mr. Baldwin was instrumental in establishing the administrative systems required at the inception of the sales and use tax. He also played a key role in implementing the State income tax and the original Homestead Rebate Program. Of his many accomplishments, he was most proud of the New York/New Jersey Cooperative Interstate Tax Agreement, the first pact in the nation in which two states agreed to collect and administer each other's sales and use taxes.

Mr. Baldwin was also active in various organizations. He was a former president of both the Federation of Tax Administrators and the North Eastern States Tax Officials Association, vice president of the National Tax Association/Tax Institute of America, and a former vice president of the Delaware Valley United Way. He was also one of the first state tax administrators to serve on the Commissioner's Advisory Group of the Internal Revenue Service, and most recently he served as chairman of the New Jersey Sales and Use Tax Review Commission.

Joseph C. Small, presiding justice with the Tax Court of New Jersey, fondly remembers Mr. Baldwin. "John was bright, tough, and decisive. His decisions on tax matters were always made with the public's best interests in mind," recalled Judge Small.

Mr. Baldwin earned his bachelor's degree in economics from the College of the Holy Cross, Worcester, Massachusetts, in 1959. He is survived by his wife, Janet; a daughter, Susan; stepdaughters, Kathleen Keegan and Eileen Notarnicola; stepsons, Kevin Dunshee and Roy F. Dunshee; a sister, Janet Stokes; and seven grandchildren. □

implementing PAMS - from pg. 1

project team have joined Stephen Sylvester, Assistant Director, Property Administration, in making presentations and answering questions about PAMS and how it will benefit municipalities.

The presentations include information on the design process, current status, and highlights of the new system. Assessors, collectors, and tax administrators will have the

opportunity to view a demonstration of the system later in the year.

The team has already spoken to assessors, collectors, and county tax administrators from Hunterdon, Somerset, Camden, Gloucester, Salem, Cumberland, Atlantic, Cape May, and Bergen counties. Presentations to the remaining counties as well as the New Jersey State League of Municipalities and other meetings are scheduled throughout 2006.

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www.state.nj.us/treasury/taxation/publnews.shtml

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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For a list of scheduled meetings, visit the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml, then scroll down and select "Meetings & Presentations."

In other PAMS news, a committee from the Association of Municipal Assessors of New Jersey met in January to discuss enhancements to the New Jersey Residential Cost Manual. Input from this committee will be considered as the PAMS team modifies Tyler's *iasWorld* software specifically for use in New Jersey. □

INHERITANCE/ESTATE TAX ***Domestic Partners***

P.L. 2005, c.331, approved on January 12, 2006, provides a surviving domestic partner with the same intestacy rights as a surviving spouse. Additionally, a surviving domestic partner now has the right to take an elective share in a deceased partner's estate, be appointed administrator of the estate, and make funeral arrangements.

The Domestic Partnership Act, which was approved on January 12, 2004, formally recognized domestic partnerships and provided certain rights and benefits to individuals participating in them. The Act made significant changes to the New Jersey inheritance tax for individuals dying on or after July 10, 2004. Transfers made to a surviving domestic partner, as defined in section 3 of P.L. 2003, c.246 (N.J.S.A. 26:8A-3), were made exempt from the inheritance tax. Thus,

all transfers made by a decedent to a surviving domestic partner whether by will, survivorship, contract, under the laws of intestacy, under the elective share provisions of the statute, or by any other means are exempt from inheritance tax.

The New Jersey estate tax is based upon the Federal estate tax credit for state death taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001. The provisions of the Internal Revenue Code do not provide a deduction for property passing to a surviving domestic partner. □

LOCAL PROPERTY TAX ***Tax Assessor Recertification***

June 30, 2005, marked the close of the first five-year continuing education cycle requirement for Certified Tax Assessors. The Director, Division of Taxation, has issued certificates of renewal to approximately 600 holders of CTA certificates. Of the almost 2,000 CTA certificate holders, nearly 1,400 have been removed from the Certified Tax Assessor list due to noncompliance with continuing education requirements, failure to timely submit the required renewal information and fees, retirement, etc.

Information regarding continuing education courses can be found on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/lpt/recert.shtml □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. April 1 deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.
- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Board.



assessors' calendar - from page 3

May 1-

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- For REAP recipients, the tax credit rate is calculated by dividing the total REAP aid by total taxable value of qualified residential property.

- General tax rates certified by County Tax Boards.

May 23-

- Members of the County Board of Taxation shall sign the Table of Aggregates and transmit it to the County Treasurer who shall file, print in its entirety, and transmit certified copy to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- If Director, Division of Taxation, requires, assessors shall report to

the Director the description and valuation of railroad property not used for railroad purposes.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Fifty-seven individuals were recently indicted as a result of a nearly six-year investigation conducted by the Federal Bureau of Investigation with the assistance of the Office of Criminal

Interest 10.00%

The interest rate assessed on amounts due for the period January 1, 2006 – December 31, 2006, will be 10.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%



criminal enforcement - from pg. 5

- On December 8, 2005, in Atlantic City, New Jersey, OCI agents, assisted by the Atlantic City Police Department, arrested Anthony R. Minor, 43, of Atlantic City, and charged him with sale of untaxed cigarettes and engaging in conduct without required registration or licensure with intent to evade tax, both indictable offenses. 10.5 cartons of untaxed cigarettes with a retail value of \$622.20 were seized.

On the same date Atlantic City Police arrested Garrett S. Wilkerson of Atlantic City on charges related to his sale of trademark-counterfeit CDs and DVDs. Information regarding Wilkerson's unregistered business was turned over to OCI for investigation of possible sales and use tax and gross income tax violations.

These arrests were in response to complaints received by OCI from legitimate retailers regarding

sales on the streets by unregistered vendors, and were carried out utilizing video surveillance to document the violations.

- On December 16, 2005, in Newark, New Jersey, OCI assisted New Jersey State Police and other agencies of the Essex Anti-Crime Partnership in the execution of a search warrant at Scratch Records, a CD/DVD retail store at which both stolen goods and trademark-counterfeit goods are known to have been sold. The search resulted in the recovery of a large volume of business records which were turned over to OCI for investigation of possible sales and use tax and gross income tax violations. Victor Sanks, 40, of East Stroudsburg, Pennsylvania, the responsible person of Scratch Records II LLC, was arrested and charged with failure to turn over \$66,665.74 in sales tax collected (3rd degree crime), failure to collect \$13,582.48 in sales tax with intent to evade (3rd degree crime), failure to pay sales tax in the amount of \$80,248.22 with intent to evade (3rd degree crime), failure to file quarterly and monthly sales tax returns with intent to evade (3rd degree crime), dealing in stolen property (3rd degree crime), and conspiracy to deal in stolen property (3rd degree crime) between January 2002 and November 2005. Sanks was released on \$250,000 bond.

- On December 19, 2005, in Superior Court, Ocean County, Richard Carroll, 48, of Brick Township, New Jersey, who had been indicted on October 19,

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation affects the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Notice: NJ Sales Tax Exemption for Drugs and Medical Equipment](#)

[Streamlined Sales and Use Tax Law: Motor Vehicle Leasing Issues](#)

[Notice: Rental of Equipment With An Operator](#)

[Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)

[Notice: Sales And Use Tax Exemption for Clothing](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us

continued on page 7



criminal enforcement - from page 6

2005, pled guilty to selling unstamped cigarettes on June 13, 2005, and failure to maintain records as required by both the Cigarette Tax Act and the Sales and Use Tax Act with the intent to evade tax between 2001 and 2004 in connection with Towne Stationery, a convenience store operated by Carroll as a sole proprietor in Toms River, New Jersey. Carroll also agreed to pay restitution of \$12,342.60 in sales and use tax. This case was investigated jointly by OCI and the Dover Township Police and prosecuted by the Ocean County Prosecutor's Office. The case resulted from numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. Carroll had previously pled guilty in municipal court to possession of 42.1 cartons of untaxed cigarettes in May 2002 and possession of 35.6 cartons of untaxed cigarettes in November 2002.

- On December 23, 2005, in Mount Olive Municipal Court, Lakeview Energy LLC, trading as Lakeview Gulf, was charged with engaging in business as a seller of special fuels (diesel fuel) without first obtaining a license from the Division of Taxation to do so. This case was opened as a result of a referral of information from the Division's Audit Services Branch.
- One hundred fourteen (114) complaints alleging tax evasion were evaluated from October

through December 2005 in the Office of Criminal Investigation.

- During the same period, one hundred two (102) charges were filed in court and twenty-two (22) arrests were made in thirty-four (34) cases involving violations of the Cigarette Tax Act. 5,725.3 cartons of untaxed cigarettes, having a total value of \$356,228.17 and including 250 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

Wireless Phone Cards — A fee of \$.90 is charged by (1) mobile telecommunications companies on each mobile telephone number of a customer with a primary place of use in New Jersey, and (2) telephone exchange companies for each voice grade access service line. The fee is only imposed on periodic bills received by the customer for such service. Since periodic bills are not issued for prepaid wireless phone cards and prepaid pay-as-you-go service, the sales of these cards and services are not subject to the fee.

Telephone Bills: Taxes and Fees —

Of the various charges that appear on telephone bills, the Division of Taxation administers only the "9-1-1 System and Emergency Response" fee, which is assessed on mobile and land telephone numbers, and sales tax, which is imposed at a rate of 6%. Information on sales tax and the 9-1-1 fee is available on the Division's Web site or by calling the Customer Service Center at 609-292-6400. Customers with questions regarding any other tax or fee on a telephone bill

should contact his or her service provider. In addition, the FCC maintains an informative Web site at: <http://ftp.fcc.gov/cgb/phonebills/WirelessPhonebill.html> explaining various charges found on telephone bills.

Corporation Business Tax

Federal Employment Credits — In general, the amount reported on Line 28, Schedule A of the New Jersey CBT-100 should be the same as the amount reported on Line 28 of Federal Form 1120. If a Federal deduction, such as for wages, is reduced because a taxpayer elects to take a Federal credit, the amount shown on Line 28, Schedule A, Form CBT-100 also reflects the reduced wage deduction as shown on the Federal return above Line 28. The election to take a Federal credit is a choice made by the taxpayer. No wage adjustment can be made at the State level to increase the deduction to what it would have been if the Federal credit had not been elected by the taxpayer.

A taxpayer is not entitled to take a deduction for State purposes which it could not take Federally when it elected to take a credit at the Federal level. This principle was litigated successfully by the Division in the context of the ESOP credit in *AT&T Co. v. Director, Division of Taxation*, 13 NJ Tax 534 (1993).

Net Operating Losses: Liquidation

— Net operating loss (NOL) carryover deductions not due to expire in 2002 or 2003, which were disallowed due to the suspension in 2002 and 2003 of the NOL deduction, could be carried forward for use in 2004 and 2005, subject to limitations. Legislation enacted June 29, 2004 (P.L. 2004, c.47),

continued on page 8



allowed for a limited NOL for privilege periods beginning during calendar years 2004 and 2005. The deduction permitted a reduction of entire net income by up to 50% during those tax periods.

Corporations dissolving in 2004 or 2005 had to limit the deduction of unused NOLs as indicated. There is no exception allowing corporation business taxpayers that dissolve and completely liquidate to deduct an amount greater than the statutory limits.

Trucking Companies: Filing Requirements — One way corporations become subject to New Jersey corporation business tax is by “doing business” in the State of New Jersey. Under N.J.A.C. 18:7-1.9 et seq., whether a corporation is considered to be doing business in New Jersey is based upon the nature and extent of the activities of the corporation in this State. Other factors include the continuity, frequency, and regularity of the activities of the corporation in New Jersey.

A foreign (out-of-State) corporation may complete a “Nexus Questionnaire” to determine whether it engages in activity within New Jersey that makes the company subject to corporation business tax. This form is not yet available on the Division of Taxation’s Web site; however, you may request the questionnaire by contacting the Nexus Audit Group at 609-984-5749.

A foreign (out-of-State) corporation providing routine trucking services, such as the pickup or delivery of goods within New Jersey, is considered to be deriving receipts from transporting freight in this State and

is therefore subject to New Jersey corporation business tax pursuant to N.J.S.A. 54:10A-2. In addition to filing the corporation business tax return (Form CBT-100 or CBT-100S), the entity must pay at least the minimum tax of \$500 (or \$2,000 in certain situations) or a tax based on the alternative minimum assessment, whichever is greater. Taxpayers may obtain Form CBT-100 or CBT-100S, along with complete filing instructions, through the Division’s Web site at: www.state.nj.us/treasury/taxation/prntcbt.shtml

Any entity that intends to do business in New Jersey must register with the State for tax purposes at least 15 days before starting business by completing and filing a Business Registration Application (Form NJ-REG) contained in the New Jersey Registration Package (NJ REG). This form can be completed [online](#), or downloaded and printed from the Division of Revenue’s New Jersey Business Gateway Services Web site at: www.state.nj.us/njbgs/ There is no fee for filing Form NJ-REG.

In addition, certain business entities (profit or nonprofit corporations, limited partnerships, limited liability partnerships, or limited liability companies) must complete and file a Public Records Filing for New Business Entity form to create the business entity, or to receive authorization to conduct business in New Jersey if the business is a foreign entity. This registration form is available in the NJ REG package and can also be completed [online](#). A fee must be submitted with the Public Records Filing for New Business Entity form. Sole proprietorships and partnerships are not subject to

the Public Records Filing requirement. Foreign entities without nexus to this State that need a Business Registration Certificate to contract with New Jersey public agencies may not need to complete this filing.

Foreign corporations that do not have a Certificate of Authority to do business in New Jersey, but carry on certain activities in the State are required to file a [Notice of Business Activities Report](#) (Form CBA-1).

Cosmetic Medical Procedures Gross Receipts Tax

Removal of Skin Tags — Removing a person’s skin tags is subject to the 6% cosmetic medical procedures gross receipts tax (CMPGRT) under N.J.S.A. 54:32E-1 if the procedure is performed in order to improve the patient’s appearance without significantly serving to prevent or treat illness or disease or to promote proper functioning of the body. In other words, if the skin tags are being removed simply to make the patient look better, the service is subject to the CMPGRT.

If, instead, the growths are suspicious and need to be biopsied, then their removal has a significant medical purpose (preventing disease) and is not subject to the CMPGRT. When skin tags tend to bleed or become painful because of friction with the patient’s clothing or jewelry or when they protrude from the eyelid and cause itching or interference with the patient’s field of vision, then their removal significantly serves to promote the proper functioning of the body. In those cases, the fees for removing skin tags are not subject to the CMPGRT.



tax briefs - from page 8

Gross Income Tax

Partnership Filing Requirements

— Every partnership that has income or loss derived from New Jersey sources, or has a New Jersey resident partner during the tax year, must file a New Jersey Partnership Return (Form NJ-1065) even if its principal place of business is outside of New Jersey. Tax is imposed on the partners on income derived from a partnership, whether or not the income is actually distributed. The partnership must include a Schedule NJ-NR-A with Form NJ-1065 if (1) the partnership is doing business both inside and outside of New Jersey, or (2) 100% of the partnership's business is carried on outside of New Jersey.

Under the New Jersey Gross Income Tax Act, individual members of a partnership are subject to tax on their distributive share of partnership income (loss), whether or not the income has actually been distributed. The partner's share of the partnership's income (gain or loss) is determined by the partnership agreement in the same manner as determined for Federal income tax purposes. N.J.S.A. 54A:2-2; N.J.S.A. 54A:5-4. Each member receives a Schedule NJK-1 from the partnership showing that particular partner's distributive share of the partnership's income (loss). Nonresident partners are subject to New Jersey gross income tax on their distributive share of partnership income only to the extent the income is derived from sources within New Jersey.

A partnership is required to make a payment of tax on behalf of its nonresident partners with Form NJ-1065 unless it is classified as a qualified investment partnership, an

investment club, or listed on a United States national stock exchange. The amount of tax is based on each partner's share of the partnership's income and is calculated at the rate of 6.37% for individual partners and 9% for corporate partners. Under N.J.A.C. 18:7-17.6, when the Division receives a payment from a partnership, the amount of tax paid is "credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class as set forth in N.J.A.C. 18:7-17.5." An individual nonresident partner may claim a credit on their New Jersey nonresident income tax return (Form NJ-1040NR) for the amount of tax allocated to it by the partnership. The partner may also request a refund for any excess tax payments that are made. N.J.A.C. 18:7-17.6(c). A copy of the partner's Schedule NJK-1 showing the amount of tax paid on their behalf must be included with Form NJ-1040NR.

Transportation Fringe Benefit —

For New Jersey income tax purposes, qualified employer-provided transportation benefits up to a specified limit per employee are excluded from the employee's New Jersey gross income under N.J.S.A. 54A:6-23. Qualified benefits include those provided in connection with alternate means of commuting, including public transportation, car pools, van pools, bus pools, ferries, and bicycling. The exclusion provided in N.J.S.A. 54A:6-23 does not apply to any commuter transportation benefit unless such benefit is provided in addition to, and not in lieu of, any compensation otherwise payable to the employee.

The inflation-adjusted limit for employer-provided commuter

transportation benefits excludable by an employee for New Jersey gross income tax purposes is \$1,310 for calendar year 2005, and \$1,360 for 2006.

Additional information is available on the Division's Web site at:

www.state.nj.us/treasury/taxation/pdf/regs/commutrlimits.pdf

Sales and Use Tax

Ingestible Telemetric Gastrointestinal Capsule Imaging Systems —

The Division received several inquiries regarding the taxability of ingestible telemetric gastrointestinal capsule imaging systems (PillCams) sold to gastroenterologists who use them in providing virtual endoscopies to view and diagnose small bowel problems.

The pill-sized camera is swallowed by the patient. While in the patient's body, the camera transmits images to computer equipment contained in a belt worn by the patient during the procedure. After the photographing is completed, the doctor downloads the images from the computer and interprets them in order to find the source of intestinal bleeding or find other abnormalities. The camera passes through the patient's digestive system and is eventually excreted. It is not retrieved.

The purchase of the ingestible camera, which is consumed by the patient and then discarded and not returned to the physician for analysis or use, is treated as exempt from sales or use tax. N.J.S.A. 54:32B-8.1. The purchase of the hard drive worn on the patient's body during the procedure and of any equipment used to download the images or to read them is taxable and not subject to any exemption.



Promotional Gift Cards — The Division responded to an inquiry concerning the following transaction:

Retailer XYZ owns and operates department stores nationwide. A number of these stores are located in New Jersey. XYZ has a marketing program to encourage the public to shop at its department stores on a regular basis. The program rewards customers who spend a predetermined amount of money in the store with a gift card redeemable as cash on the customer's next purchase in the store. The gift card can only be used in XYZ stores and may not be exchanged with XYZ for cash. For example, every customer who spends \$50 on a single visit to the store will receive a \$10 gift card to be used on the customer's next purchase.

In general, the sale of a gift card or gift certificate is not a taxable transaction; when the gift card is redeemed, it is treated as money and sales tax is collected on the full price of the taxable goods. On the other hand, where a vendor issues a store coupon entitling a purchaser to receive a discount upon presentation, and the vendor receives no reimbursement from any person, the sales tax is due from the purchaser on only the discounted price, which is the actual receipt.

In the situation described above the gift card is not "sold." Instead, it is offered as a promotional item to customers who make the minimum purchase of goods. Unlike the transaction where a gift card is purchased and then valued as money when redeemed, the store receives no compensation whatsoever for the gift card. Rather, it is more like a store

coupon transaction where the store discounts the subsequent purchase by the amount of the gift card. Thus, the redemption of gift cards that are given away by the vendor in transactions as described above should be treated in the same manner as a store coupon. The customer will only pay sales tax on the amount actually charged after the gift card amount is deducted. □

In Our Courts

Corporation Business Tax Nexus: Activities of Delivery Drivers – *Chester A. Asher, Inc. v. Director, Division of Taxation*, decided January 5, 2006; Tax Court No. 004061-2003.

Plaintiff (Asher) is a Pennsylvania corporation that manufactures and sells candies and confection products. Asher's primary place of business is in Pennsylvania and it did not own or lease any real property in New Jersey during the years at issue.

Asher held a certificate of authority to conduct business in New Jersey and during the three years at issue consummated over \$8 million of gross sales to customers located in New Jersey. Asher's salespersons regularly visited customers in New Jersey to solicit orders that would be written up and faxed to the Pennsylvania headquarters. Daily deliveries were made in Asher trucks that advertised the company logo. Pursuant to company policy, the delivery drivers also would collect and return goods and damaged products from its customers as well as collect payments on delivery and on outstanding balances from certain New Jersey customers.

Asher claimed that the activities of its delivery drivers did not result in the loss of immunity granted under P.L. 86-272 as the activities were ancillary to the solicitation of sales. Alternatively, Asher contended that the delivery driver activities were immune under P.L. 86-272 because the activities were *de minimis*.

The Court's analysis centered on P.L. 86-272 and *Wrigley*. In general, P.L. 86-272 prohibits states from imposing a net income tax on income derived within the State from business activities involving interstate commerce where the only activities in the State involve the solicitation of orders. In *Wrigley*, the United States Supreme Court determined that *Wrigley's* activities of replacement of stale gum, as a matter of company policy on a continuing basis by sales representatives, supplying gum through agency stock checks, and the storage of gum exceeded the scope of the term solicitation of orders because the activities did not facilitate the requesting of sales and therefore were not protected activities under P.L. 86-272. However, the *Wrigley* Court recognized that an unprotected activity would not result in the loss of immunity from state income taxation where the activity was only *de minimis*; where the unprotected activity only established a trivial additional connection to the taxing state. The Court decided that *Wrigley's* unprotected activities taken together amounted to more than *de minimis* even though the activities were not large compared to *Wrigley's* other operations in the State.

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Addressing the instant case, the Court decided that Asher's salesmen's activities did not exceed the boundaries of solicitation of orders of P.L. 86-272. However, the Court found that the activities of Asher's delivery drivers did not facilitate the requesting of sales and thereby exceeded the scope of solicitation of orders. The Court determined that the drivers' collecting of New Jersey customers' damaged, spoiled, or overshipped packages was an unprotected activity similar to the salespersons picking up stale gum in *Wrigley*. Furthermore, the Court determined that the drivers' collection activities existed independently of solicitation of orders and were therefore also unprotected activities.

Turning to the issue of whether the unprotected activities were *de minimis*, the Court found that the collection of money and returned goods from customers was regular and pursuant to company policy rather than picked up on a few occasions as a courtesy to the customer. Therefore, the Court concluded that the unprotected activities constituted more than a *de minimis* connection to New Jersey regardless of the total amount. Consequently, the Court held that Asher must file New Jersey corporation business tax returns for the years at issue as it was not protected by P.L. 86-272.

Net Operating Loss and Dividend Exclusion – *Ronson Corporation v. Director, Division of Taxation*, decided November 21, 2005; Appellate Division No. A-6776-03T2.

In determining its corporation business tax income for tax year 1995, plaintiff (Ronson) used its net operating loss (NOL) carryover deduction from 1991, 1993, and 1994 to reduce its net income. From that figure, Ronson deducted its N.J.S.A. 54:10A-4(k)(5) dividend exclusion to reduce its income to a negative net income figure.

Ronson utilized the 1995 negative income as an NOL deduction for 1996 and then applied the dividend exclusion to generate another negative income figure that it used as an NOL carryover for 1997.

In 1998, 1999, and 2000, Ronson sought to reuse the NOL carryover that it had used in 1995 on the basis that the dividend exclusion would eliminate the 1995 net income and therefore the pre-1995 NOL carryover was available.

At issue was whether an NOL carryover must be applied to the first available income and before the subsidiary dividend exclusion, and whether the subsidiary dividend exclusion could generate or add to an NOL that could be carried forward.

After analyzing the relevant statutes, the Tax Court found that the statutes required that the NOL carryover must be used against available net income as soon as the income is available and that the NOL carryover be applied to entire net income before application of the dividend exclusion. Consequently, the pre-1995 NOL carryover had to be used in 1995 before utilizing the dividend exclusion. Secondly, the Tax Court stated that an NOL is statutorily defined as where there are excess deductions over gross income when computing entire net income without considering the NOL deduction and other statutory exclusions such as the dividend exclusion. Therefore, Ronson's dividend exclusion could not create an NOL.

Ronson appealed to the Appellate Division claiming that the two relevant statutes, N.J.S.A. 54:10A-4(k)(5) and (6), contradict each other and that if the NOL carryover is applied first, then the purpose of the dividend exclusion could be negated because dividends could be subject to double taxation. Specifically, Ronson asserts that (k)(5) states that entire net income is calculated by excluding dividends whereas (k)(6) defines the NOL carryover deduction as the excess "of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in [N.J.S.A. 54:10A-4(k)(4) and N.J.S.A. 54:10A-4(k)(5)]."

The Appellate Division ruled that although (k)(5) creates a dividend exclusion from entire net income, it is not and does not change the definition of entire net income. Therefore, the Court determined that there

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was no inconsistency pertaining to the definition of entire net income. As to the argument regarding double taxation, the Appellate Division found that dividends would not be taxed in the situation where there was a profit, loss, or an NOL carryover and noted that the legislature was aware of the interplay between (k)(5) and (k)(6) because (k)(5) was amended at the same time (k)(6) was enacted in 1985. Consequently, the Appellate Division affirmed the decision of the Tax Court.

Gross Income Tax

Sale, Exchange, or Other Disposition of Property – *Diana King v. Director, Division of Taxation*, decided May 25, 2005; Appellate Division No. A-5189-03T2.

In April 1991 plaintiff, Ms. Diana King (King), entered into a loan agreement with Amiro Fiorintino Associates, Inc. (AFA). The loan was evidenced by a revolving credit note. The principal shareholder of AFA was the guarantor of the loan. The loan was also secured pursuant to a security agreement granting King a security interest and lien in certain AFA collateral. When King recorded her security interest pursuant to the Uniform Commercial Code (UCC), King's loan was subordinated to a bank loan. In 1992 and 1995 the loan agreement was amended. Essentially, Ventura Entertainment Group (VEG) was an additional guarantor of AFA's obligation and the loan was secured pursuant to a security agreement that granted King a security interest in 100,000 shares of VEG.

In 1996 AFA filed Chapter 11 bankruptcy. King filed a proof of claim

as a secured creditor in the amount of \$568,857.35 consisting of the \$450,000 principal, \$106,090.65 interest and \$12,766.70 arrears. As a junior secured creditor, King consented to the sale of AFA's assets conditioned upon her receipt of \$120,000 and that she be released from claims against the debtor. King's consent was evidenced on a bankruptcy document titled "Response of Diana King to the Debtor's Application for an Order Approving a Purchase Agreement and Authorizing a Sale of Assets." Thereafter, King terminated her UCC filings and the bankruptcy proceeding was later dismissed.

On her 1996 Form NJ-1040, King reported a \$330,000 loss (\$450,000 principal less \$120,000 payment) and \$32,973 of attorney fees as a \$362,973 nonbusiness bad debt deduction. Thereafter, she filed an amended return reclassifying the \$362,973 as a long term capital loss, claiming that it was an investment loss on the disposition of a security.

On both her NJ-1040 return and amended return, King offset this loss against other gains included under N.J.S.A. 54A:5-1(c) disposition of property category. However, the Division disallowed the deduction claiming that it was a nondeductible, nonbusiness bad debt.

N.J.S.A. 54A:5-1(c) includes net gains, net losses, and net income derived from the sale, exchange, or other disposition of property. At issue is whether King engaged in a sale, exchange, or disposition of property. The Court found that King settled her claim for a reduced amount by giving up her right to sue on the note and that she did not sell or transfer the note evidencing the debt or any other security. Also, the Court noted that King presented no evidence that she exchanged the note. Citing *Vinnick* and *Walsh*, the Court upheld the Division's assessment.

On appeal, King argued that her loan was an investment that produced a

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capital asset that sold at a loss during bankruptcy proceedings and therefore she is entitled to a loss on the sale or exchange or other disposition of property pursuant to N.J.S.A. 54A:5-1(c). The Appellate Division disagreed with King by affirming the well-reasoned opinion of the Tax Court. Furthermore, the Appellate Division commented that although under the Internal Revenue Code notes from nonbusiness loans implicate Federal capital gain or loss when they become worthless, New Jersey statutes do not allow for the deduction of worthless nonbusiness debts. Similarly, unlike Federal tax law, New Jersey does not generally recognize discharge of indebtedness as income. In the instant case, King did not sell, exchange, or dispose of the note, King focused on collecting and securing the debt for herself and not on transferring the note, and in her "counsel's own words, 'sur-rendered' the debt."

**Sales and Use Tax
Evidence of Food Consumed Off
the Premises Where Sold –
Bubbles, Inc. t/a Auntie Anne's Pretzels v. Director, Division of Taxation,
decided June 2, 2005; Tax Court No.
003209-2002.**

Plaintiff (Bubbles) is a franchise of Auntie Anne's, Inc., that sold hand-rolled soft pretzels, dips, carbonated soft drinks, lemonade, and Dutch Ice at the Quakerbridge Mall (Mall). Bubbles sold its products from a leased store as well as a kiosk-type cart or stand. The store was not accessible to customers as the front of the store is bounded by a counter where products are sold to customers standing in a common area of the

Mall. Like the store, customers purchased products over the counter of the kiosk. Testimony indicated that other Mall stores had their own dine-in seating and that there were no tables or chairs in the common areas of the Mall.

Bubbles prepared pretzels from raw ingredients that are placed in an oven for baking. After they are baked, most of the pretzels are dipped in butter and placed in a piece of equipment so that the butter is baked into the pretzels. Occasionally, pretzels are sold immediately after they are removed from the oven without being buttered. When pretzels are purchased, Bubbles delivers them in either a wax paper bag that holds six pretzels or another bag that holds up to three or four pretzels depending upon the quantity purchased. Each bag has instructions for reheating the pretzels. Pretzels are served with napkins. Bubbles did not collect sales tax on the sale of pretzels, noncarbonated lemonade, and the Dutch Ice believing that the sales were not subject to sales tax.

Bubbles argued that the pretzels were not sold for consumption on its premises because it had no premises on which its customers could consume food. Bubbles claimed the areas leased by it were not open to the public, that there was no seating made available for consuming food, and that the Mall, not Bubbles, controlled the common areas of the Mall.

The Court found that N.J.S.A. 54:32B-3(c) imposes sales tax on sales of food and drink for consumption on the premises where sold and that N.J.A.C. 18:24-12.2 defined the

phrase "on the premises."

In *Campo*, the Tax Court recently upheld the Division's regulation in defining premises broadly as the total space and facilities in or on which a vendor conducts his business to mean that Campo's premises constituted the entire stadium and arena despite the fact that its license did not grant Campo the right to use any specific area of the facilities for either preparation or sales. Therefore, as to Bubbles, the Court ruled likewise that the phrase "on the premises" meant within the Mall even though the lease did not grant Bubbles any rights to the Mall beyond the boundaries of its store and kiosk.

Bubbles further argued that the pretzels were not sold for consumption in the Mall because 75% of the pretzels sold were either purchased in quantities greater than one or exited the doors of the Mall unconsumed. N.J.S.A. 54:32B-12 presumes that all N.J.S.A. 54:32B-3(c) sales are taxable unless the contrary is established by the person contesting the tax. Moreover, case law recognizes that the Division's assessments are presumed correct. The Court concluded that Bubbles' testimony and evidence did not overcome the Division's presumption of correctness. The Court did not find Bubbles' witnesses' testimony credible or reliable as to where the customers consumed the pretzels and beverages. The Court opined that Bubbles failed to establish with credible evidence the percentage of sales that were consumed off the Mall's premises as it did not produce any documentary evidence, such as cash register tapes, to support its contentions. The Court cited case

law that “A taxpayer’s ‘naked assertions,’ without supporting records or documentation are insufficient to rebut the presumption that the Director’s assessment is correct.” Consequently, the Court concluded that Bubbles’ sales of food and beverages were for consumption on the premises as Bubbles could not overcome the presumption that the Division’s assessment is correct by proving with “evidence that is definite, positive, and certain in quality and quantity” that any portion of the food and beverages were consumed off the premises.

Plaintiff appealed this decision to the Appellate Division. □

In Our Legislature

Inheritance/Estate Tax

Surviving Domestic Partners — P.L. 2005, c.331, enacted January 12, 2006, provides that a surviving domestic partner would have the same intestacy rights as a surviving spouse and would have authority to make funeral arrangements. For more information, see [Domestic Partners](#) on page 3. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2005 (January 1, 2005 – December 31, 2005) and tax year 2006 (January 1, 2006 – December 31, 2006) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2005](#) [2006](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2005](#) [2006](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2005](#) [2006](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
FAIR Rebate
 Hotline 1-888-238-1233
Property Tax Reimbursement
 Hotline 1-800-882-6597
Earned Income Tax Credit
 Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
 System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4123
Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323
Director’s Office 609-292-5185
InheritanceTax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
 Refunds 609-292-7018
Public Utility Tax 609-633-2576

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2005 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
19	1/19/05	Revises the 1% fee on transfers of residential property purchased for more than \$1 million, exempts transfers to certain charitable organizations, and provides for refunds of certain fees paid.	RTF	A-3302(2R)
20	1/19/05	Clarifies that the minimum payment of estimated gross income tax on the sale of real property in this State by a nonresident is 2% of the consideration paid on the sale.	GIT	A-3510
44	3/21/05	Increases membership of County Boards of Taxation.	LPT	S-1086(1R)
63	4/07/05	Excludes housing and subsistence allowances of certain military personnel from New Jersey gross income.	GIT	S-250(1R)
64	4/07/05	Extends certain benefits to veterans of Operations Northern and Southern Watch.	LPT	S-1139
85	5/04/05	Establishes the "Cigarette Sales Act" to facilitate the collection of taxes on retail sales of cigarettes shipped from outside this State.	CIG	A-1838(1R)
121	7/02/05	Makes a supplemental appropriation of \$400,000,000 to pay homestead rebate claims beginning July 1, 2005.	PTRP	S-2646
124	7/02/05	Provides for enhanced collection of certain debts owed to the State.	MIS	S-3002
125	7/02/05	Authorizes a multistate reciprocal personal income tax refund set-off program.	GIT	S-3004
126	7/02/05	Amends the State's Sales and Use Tax Act to conform to the requirements of the Streamlined Sales and Use Tax Agreement.	S&U	A-3473
127	7/02/05	Uncouples corporation business tax and gross income tax from Federal deduction for certain qualified production activities income.	GIT/ CBT	A-4294
128	7/02/05	Modifies the insurance premiums tax treatment of health service corporations.	IPT	ACS for A-4401
130	7/02/05	Limits the pension and other retirement income exclusions to taxpayers with gross income of \$100,000 or less.	GIT	A-4404
141	7/07/05	Repeals the air toxics surcharge.	ENV	ACS for A-3667 & A-3868

2005 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
160	7/19/05	Makes certain corrections to statutory provisions governing wills and estates.	TIT/ET	S-2104(2R)
210	8/29/05	Requires that certain persons be notified of the availability of the Federal and New Jersey earned income tax credits.	GIT	S-753(1R)
288	1/09/06	Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated gross income taxes to end "double withholding."	GIT	S-1892(2R)
297	1/09/06	Authorizes the Director of the Division of Taxation to extend gross income tax filing and payment deadlines to conform to similar extended deadlines established for Federal personal income tax returns.	GIT	A-3826
298	1/09/06	Provides for voluntary contributions by taxpayers on gross income tax returns for the New Jersey World Trade Center Scholarship Fund.	GIT	ACS for A-3900 & A-4010
318	1/12/06	Allows corporation business tax or gross income tax credits for businesses employing handicapped persons at sheltered workshops.	CBT/GIT	S-487(1R)
345	1/12/06	Allows corporation business tax or gross income tax credits for qualified film production expenses.	CBT/GIT	S-2533(2R)
374	1/12/06	Extends eligibility for sales and use tax exemption on retail purchases of energy and utility services to certain qualified businesses in Urban Enterprise Zones and to certain businesses located in a county that qualifies for 50% sales tax exemption.	S&U	A-3484(2R)
384	1/15/06	Raises the minimum age for the sale and purchase of cigarettes from 18 to 19.	CIG	S-2783(1R)

***Legend for 2005 Tax Laws**

ABT	=	Alcoholic Beverage Tax	LIT	=	Litter Control Fee
ALL	=	All Taxes Administered by the Division	LPT	=	Local Property Tax
CAS	=	Casino Taxes and Fees	MFT	=	Motor Fuels Tax
CBT	=	Corporation Business Tax	MIS	=	Miscellaneous
CIG	=	Cigarette Tax	PPT	=	Petroleum Products Gross Receipts Tax
CMC	=	Cape May County Tourism Sales Tax	PTRP	=	Property Tax Relief Programs
CMPT	=	Cosmetic Medical Procedures Gross Receipts Tax	PUT	=	Public Utility Taxes
ENV	=	Environmental Taxes	RTF	=	Realty Transfer Fee
ERF	=	9-1-1 System & Emergency Response Fee	S&U	=	Sales and Use Tax
FBT	=	Financial Business Tax	SCC	=	Spill Compensation & Control Tax
GIT	=	Gross Income Tax	TIR	=	Motor Vehicle Tire Fee
HMO	=	Hotel Motel Occupancies	TIT/ET	=	Transfer Inheritance & Estate Tax
IPT	=	Insurance Premiums Tax	TPT	=	Tobacco Products Tax

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from the director's desk

Practitioners' E-File Mandate

All practitioners (firms and individuals) who prepared 200 or more 2004 New Jersey income tax resident returns are required to use one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ E-File — to file 2005 New Jersey income tax resident returns for their clients. Practitioners who filed fewer than 200 New Jersey resident returns in 2004 are not required to file electronically for the 2005 tax year, but are strongly encouraged to do so.

A [list](#) of links to materials relating to this requirement appears on page 11.

Streamlined Sales and Use Tax

Current information about the effect of the Streamlined Sales and Use Tax Agreement on New Jersey's sales and use tax is available at:

[Streamlined Sales and Use Tax Legislation and Notices](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

We will be updating the information on an ongoing basis. A [list](#) of links to the materials that have already been published appears on page 6.



What's New for Tax Year 2005

There have been some important changes affecting the preparation of New Jersey income tax returns and instructions this year:

Income Tax

- **Form NJ-1040EZ discontinued** — The NJ-1040EZ resident return form has been discontinued. Taxpayers who need to file a paper return must use Form NJ-1040.
- **Sign Form NJ-1040 on Page 1** — The signature section of the 2005 New Jersey resident income tax return has been moved. Taxpayers now sign the return at the bottom of the first page.
- **Dependents' Information** — Taxpayers must list the full name, social security number, and birth year of each dependent child or other dependent claimed on their New Jersey resident return. Taxpayers who qualify for a New Jersey earned income tax credit must also provide this information for any "qualifying child" listed on the Federal Schedule EIC who is not claimed as a dependent for New Jersey purposes.
- **Health Enterprise Zone Deduction** — Taxpayers who provide "primary care" medical and/or dental services at a qualified practice located in or within five miles of a Health Enterprise Zone may be eligible for a deduction.
- **Underpayment of Estimated Tax** — Taxpayers who owe interest for failing to pay the required amount of estimated tax now report the interest amount on a separate line of the New Jersey resident and nonresident income tax returns.

- **NJ TeleFile** — Taxpayers can use NJ TeleFile if their interest income and dividend income are each less than \$10,000. The limit in each category was increased from \$2,500.

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2005 is .038197.

- **IRC Section 199 Deduction** — New Jersey has uncoupled from many provisions of IRC Section 199. The New Jersey allowable IRC Section 199 deduction should be taken into consideration in calculating the gain or loss on disposition of applicable property.

The New Jersey adjustments affect the determination of income in the categories net profits from business; net gains or income from disposition of property; net gains or income from rents, royalties, patents, and copyrights; income from estates or trusts; distributive share of partnership income; and net pro rata share of S corporation income.

- **Retirement Income Exclusions** — The pension and other retirement income exclusions are limited to use by taxpayers with gross income of \$100,000 or less (before subtracting any pension exclusion).

- **Extension of Time to File** — An extension of time to file the New Jersey income tax return will be granted for a single, 6-month period, provided all requirements are met. □

New Jersey State Tax news

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Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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GROSS INCOME TAX

Estimated Payment Verification

Taxpayers who need to verify the amounts of their New Jersey estimated tax payments and credits to complete their 2005 gross income tax returns can review their payment history on the Division of Taxation’s Web site. Payment information is available for tax years 2004 through 2006 for individuals, both resident and nonresident, and estates and trusts.

To obtain an estimated payment statement of account taxpayers need the following:

- Social Security Number (Federal Identification Number for estates or trusts)
- Date of Birth (Estates or trusts use either the date of the decedent’s death or the date the trust was created)

- Amount of refund or balance due from the taxpayer’s 2004 New Jersey income tax return

Taxpayers whose filing status is “Married, filing joint return” must use the social security number and date of birth of the spouse who is listed first on their estimated payment voucher (Form NJ-1040-ES) or last year’s New Jersey income tax return to obtain their account information.

A 2004 New Jersey income tax return must be on file for a taxpayer to use the online inquiry. If the taxpayer did not file a 2004 return or needs to verify payments or credits for tax years prior to 2004, the Division’s Customer Service Center has representatives available at 609-292-6400 to provide assistance during normal business hours.

To access the estimated payment inquiry visit the Division’s Web site at: www.state.nj.us/treasury/taxation/online.shtml and choose “Gross Income Tax Estimated Payments Statement of Account.” □

- **CD-ROM Version (\$15.00)** — Tax forms and instructions plus various tax information publications such as *New Jersey State Tax News*, *Division of Taxation Annual Report*, etc.
- **3-Ring Binder (\$10.00)** — Standard 3-ring binder to hold printed version. (Binder does not include printed version of *Package NJX*, which must be purchased separately.)

Anyone who purchased *Package NJX* materials last year received a notice from the Division of Taxation that contains instructions for ordering online as a “Registered User.” Those who did not order last year and who want to purchase *2005 Package NJX* materials should follow the instructions for “New User.”

[Order 2005 Package NJX](#) □

LOCAL PROPERTY TAX PAMS

On behalf of the Division of Taxation, I would like to extend my appreciation to the following assessors, collectors, and county tax administrators who volunteered their time for the PAMS (Property Assessment Management System) Gap/Fit Analysis Sessions. Their enthusiasm, dedication, and contributions to these sessions have been invaluable to the success of the project.

Assessors: Frank Bucino, Ron Fijalkowski, David Gill, Tom Glock, Gil Goble, Bernie Haney, Patricia Hice, Burnham Hobbs, Maureen Kaman, Mike Kane, Edwin Kay, Joan Koziensky, Matcene Hopkins Kubler, Anthony

Interest 10.00%

The interest rate assessed on amounts due for the period January 1, 2006 – December 31, 2006, will be 10.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%

Order Package NJX Online

The *2005 Package NJX* can be ordered online through our automated ordering and payment system. Payment must be made by electronic check (e-check).

Three *Package NJX* products are being offered for 2005:

- **Printed Version (\$25.00)** — Reproducible tax forms and instructions printed on loose-leaf pages that are hole-punched to fit a standard 3-ring binder.



PAMS - from page 3

Leone, Mary Mastro, Chuck Palumbo, Marie Procacci, Joe Ravitz, Don Seifrit, Denise Siegel, and Marcia Sudano.

Collectors: Kristine Blanchard, Maureen Cosgrove, Carl Dileo, Jack Early, Bonnie Fleming, Cindy McBride, Bruce MacLeod, Suzanne Olha, Margie Saharic, and Elaine Urion.

County Tax Administrators: Matt Clark, Chris Duryee, Tom Estathiou, Lois Finifter, Marty Guhl, Kelly Heppe, Bill Linville, Melissa Pritchett, and Ozzie Vituscka.

The implementation of PAMS is continuing on schedule. For information about the PAMS project, including upcoming meetings, project history, and the latest news, visit the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml

Volunteers from the assessor, collector, and county tax administration communities will be participating in upcoming Gap/Fit sessions on topics such as conversion, interfaces, and reports. I look forward to their continued commitment to and involvement in the PAMS project.

Robert K. Thompson
Director □

**CONFERENCE AND APPEALS
Branch Moves to
Bordentown**

The Division of Taxation's Conference and Appeals Branch has moved to Bordentown from Mercerville. The new office is located at:

INTERCHANGE 7 BUSINESS PARK
TWO ADVANTAGE COURT, 2ND FLOOR
BORDENTOWN, NJ 08505-9630

Phone: 609-291-7854

Fax: 609-324-4094

For driving directions and additional information, visit our Web site at: www.state.nj.us/treasury/taxation/organization/confappl.shtml □

How to

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Use your computer to file your return.

Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.

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See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.

www.njfastfile.com



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3 ways to a faster refund.





**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Fifteen persons passed the September 24, 2005, C.T.A. exam and received Tax Assessor Certificates dated January 1, 2006. They are:

Burlington County: Robin L. Bucchi, Mansfield Township; Joseph C. Rahman, Maple Shade Township; Amanda L. Scholtz, Tabernacle Township.

Camden County: Craig H. Zeyher, Haddonfield Borough.

Cape May County: Megan A. McAfee, Upper Township.

Cumberland County: David E. Tannehill, Millville City.

Essex County: Kevin M. Esposito, Nutley Township.

Hudson County: Bennie G. Anderson, Jersey City.

Monmouth County: Shelly A. Maddocks, Spring Lake Heights Borough.

Morris County: Peter A. Hodges, Montville Township.

Ocean County: Justin L. Lamicella, Dover Township.

Somerset County: John F. Guerrero, Somerville Borough.

Union County: Roberto Franco, Roselle Borough.

State of Connecticut: Eugenia H. Flynn, Tolland County, Town of Tolland.

Commonwealth of Pennsylvania: Paul H. Jacobs, Chester County, West Whitehead Township. □

**LOCAL PROPERTY TAX
Tax Assessor
Exam**

New Jersey Tax Assessor Certificates are granted to those who successfully pass the certification examination, which is offered twice a year, in March and September.

The March certified tax assessor examination will be held on Saturday, March 25, 2006. The deadline for filing applications for the examination was February 23, 2006.

The September examination is scheduled for Saturday, September 30, 2006, and the deadline to file applications is August 31, 2006.

To obtain an application for the assessor certificate examination, write to Gary R. DalCorso, PO Box 251, Trenton, NJ 08695-0251 or call 609-292-7813. The application is also available on our Web site at: www.state.nj.us/treasury/taxation/pdf/lpt/ac_1.pdf

A fee of \$10 must accompany the completed application. □

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file “U.E.Z. Exemption Report” with County Tax Board.

January 25–

- Assessor to give schedule of hours and appointment availability to County Tax Administrator and post in the municipal building.

February 1 (prior)–

- Notices of current assessment and preceding year’s taxes mailed to each taxpayer by assessor.



assessors' calendar - from pg. 5

February 1-

- After February 1, the assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer will have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.

- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10-

- Certification by assessor filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, "within 10 days" of the

date the bulk mailing of notifications of assessment completed.

February 15 (on or before)-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services; and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation affects the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

- [Notice: NJ Sales Tax Exemption for Drugs and Medical Equipment](#)
- [Streamlined Sales and Use Tax Law: Motor Vehicle Leasing Issues](#)
- [Notice: Rental of Equipment With An Operator](#)
- [Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)
- [Notice: Sales And Use Tax Exemption for Clothing](#)
- [Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)
- [Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)
- [Notice on Leases and Rentals of Tangible Personal Property](#)
- [Notice to the Direct Mail Industry](#)
- [Notice to Retailers of Fur Clothing](#)
- [SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)
- [Certificate of Mailing and Service](#)
- [Streamlined Sales and Use Tax Agreement Response Letter](#)
- [Streamlined Sales Tax Petition](#)
- [Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On July 15, 2005, in Superior Court – Monmouth County, Freehold, New Jersey, Norman Levine, 60, of Barnegat, New Jersey, was sentenced to two and one-half years' probation, fined \$305, and ordered to pay to the Division of Taxation restitution in the amount of \$17,858 in cigarette tax and sales tax pursuant to

continued on page 7



criminal enforcement - from page 6

his guilty plea on July 12, 2004, to one count of possession of untaxed cigarettes. The Division of Taxation's Office of Criminal Investigation (OCI) had arrested Levine after an investigation identified Levine as the recipient of untaxed cigarettes by way of a FedEx shipment from Virginia. Levine appeared in court in Maryland on December 12, 2003, in a case stemming from a previous arrest. Immediately after pleading guilty to a felony count of transportation/possession of contraband cigarettes, Levine was followed by agents of the Maryland Comptroller of the Treasury to Virginia and North Carolina where they observed him purchasing cigarettes again and shipping them from Virginia Beach to a New Jersey business. OCI surveillance led to the arrest of Levine after he took possession of the cigarettes and was placing them in a storage unit in Neptune Township. Levine was actively engaged in a mail-order cigarette business with an Internet site. A total of 754 cartons of contraband cigarettes were seized; 457 cartons were in the delivery that had been observed, and the remainder were found in his storage unit. A combination of Delaware tax stamped, Virginia tax stamped, and unstamped cigarettes (from North Carolina) were seized along with \$2,138 in cash and a 1998 Mercury, which has been forfeited to the State.

- On July 20, 2005, in Teaneck Municipal Court, Xiu Ming Liu, 32, of Bergenfield, New Jersey, entered a plea of guilty to one

count of sale of untaxed cigarettes at Fook Yong Restaurant, Teaneck, New Jersey. Liu was charged after a joint investigation by OCI and the Teaneck Police Department in which a confidential informant purchased untaxed cigarettes from Liu. Pursuant to her guilty plea, Liu was fined \$1,155. At the same time, Jin Gui Li, the owner of Fook Yong Restaurant, pled guilty to possession of untaxed cigarettes and engaging in the purchase of untaxed cigarettes without a license. Although the maximum fine for each of these offenses is normally \$1,000, Li was fined double that amount, or \$4,000, as provided by law because Li has a prior conviction for possession of untaxed cigarettes.

- On July 28, 2005, in Newark Municipal Court, Elvis M. Manjarraz, 36, of Newark, was charged with transportation of untaxed cigarettes as a result of a cooperative investigation with U.S. Customs and Border Protection that resulted in the seizure at Newark Liberty International Airport of 50 cartons of cigarettes which Manjarraz was attempting to smuggle from Ecuador.
- On August 3, 2005, in Woodbury Municipal Court, cigarette retail dealer Bhupendra Shah, 45, of East Greenwich Twp., New Jersey, pled guilty to selling cigarettes without a license at his store, Woodbury Food & News, Woodbury, New Jersey, in May 2005. Shah was fined \$658. Prior to the plea and sentencing, Shah satisfied sales tax delinquencies which had caused the Division to withhold renewal of his cigarette retail dealer license as part of the

enforcement initiative known as the License Suppression Project. In the same Court session, cigarette wholesale dealers Klein Candy Co. of Wilkes-Barre, Pennsylvania, and Allen Brothers Wholesale Distributors, Inc., of Philadelphia each pled guilty to one count of selling cigarettes at wholesale to Shah, a person not licensed as a retailer at the time of the transactions. The two wholesalers were each fined \$700. The Shah case was the result of a referral from the Division of Taxation's Audit Activity as part of the Division's comprehensive cigarette tax enforcement program, which includes field audits of selected cigarette vendors.

- On August 17, 2005, Ramoni Mustapha, 50, of Newark; Blessing Iwarimie, 35, of Elizabeth; and Gladys Soto, 31, of Linden, were indicted by a State Grand Jury on charges of conspiracy and theft by deception. Mustapha, a self-employed tax preparer, fraudulently received hundreds of New Jersey earned income tax credit checks for tax years 2001, 2002, and 2003, filed from February 2004 through March 2005. As a result of the fraudulent filings, 401 earned income tax credit (EITC) refund checks totaling \$265,397 were obtained by Mustapha. The indictment further charges that Iwarimie and Soto, tellers at Bank of America, cashed the EITC refund checks obtained by Mustapha in exchange for a portion of the proceeds. Mustapha was arrested on April 15, 2005, at his Orange office. A search of his office



criminal enforcement - from pg. 7

pursuant to a search warrant resulted in the seizure of tax returns, various tax documents and records, computer systems, false/fraudulent credit cards and identification documents, and related evidence. Each defendant faces up to 20 years in State prison and fines of up to \$300,000 upon conviction of the second-degree charges. This is a joint investigation by OCI and the New Jersey Division of Criminal Justice-Financial Crimes Bureau.

- On August 24, 2005, an indictment was unsealed charging Brenda McGinty and her sister, Toni Carlisi, both residents of the Commonwealth of Pennsylvania, with one count of theft by deception, three counts of failure to file New Jersey gross income tax returns, and three counts of failure to pay New Jersey gross income tax. The subjects were indicted by a State Grand Jury in Mercer County on November 17, 2004. The indictments arose from a joint investigation with the Mercer County Prosecutor's Office which determined that Brenda McGinty, the bookkeeper for a Mercer County business, embezzled \$1,085,457.50 during

the years 2001, 2002, and 2003. It was also determined that, during those three years, she wrote checks to her sister, Toni Carlisi, which totaled \$979,789. Neither individual filed New Jersey non-resident income tax returns reporting the illegal income. The amount of New Jersey gross income tax evaded for the three-year period by Brenda McGinty was \$62,812.93 and the amount evaded by Toni Carlisi was \$51,064.91.

- On August 31, 2005, in Superior Court – Mercer County, Trenton, New Jersey, Thomas Boller, 42, of Denville, New Jersey, waived his right to indictment by grand jury and entered a guilty plea to an accusation charging him with one count of filing fraudulent New Jersey gross income tax returns for tax years 1997 through 2000 and one count of failing to pay New Jersey gross income tax. Upon entry of the plea, Boller was sentenced to five years' probation, and was ordered to pay restitution to the State of gross income tax in the amount of \$158,496.99 and penalty and interest in the amount of \$109,378.30, for a total restitution of \$267,875.29. The case was initiated by the Money

Laundering Task Force of the New Jersey Division of Criminal Justice based on Boller's gambling history in Atlantic City. A joint investigation by OCI, the Division of Criminal Justice-Casino Prosecutions Bureau, and the Internal Revenue Service-Criminal Investigation Division established that Boller had underreported revenue and misclassified expenses of API Systems Inc., a computer services firm that Boller owns. The case was prosecuted by the State Office of the Attorney General.

- On September 6, 2005, in Superior Court – Salem County, Salem, New Jersey, Jaswinder S. Dhillon, currently a resident of Henderson, Nevada, who on June 20, 2005, pled guilty to a charge of failing to file motor fuels tax returns, was sentenced to four years' probation and ordered to pay restitution to the State of \$70,000 in motor fuels tax. He had been indicted on February 2, 2005, by a Salem County Grand Jury on three criminal charges as a result of an investigation which established that Dhillon, the principal of MJS Truck Plaza Inc. in Carneys Point, New Jersey, failed

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Enforcement Summary Statistics Third Quarter 2005

Following is a summary of enforcement actions for the quarter ending September 30, 2005.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	3,098	• Seizures	56
Total Amount	\$41,679,133	• Auctions	3
• Jeopardy Assessments	236	• Referrals to the Attorney General's Office	202

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jgdiscsl.shtml



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to file tax returns and remit motor fuels tax he collected from customers as a trustee for the State. Dhillon closed his truck stop on July 31, 2000, and failed to turn over the entrusted tax dollars he had collected for June and July 2000, the last two months of business. The matter was investigated by OCI and prosecuted by the Salem County Prosecutor's Office.

- On September 9, 2005, Anthony Murphy, 49, of West Orange, New Jersey, was sentenced to repay more than \$25,500 after pleading guilty to fraudulently misrepresenting that he and his family were qualified for Medicaid benefits. Essex County Superior Court Judge Michael Ravin ordered him to pay more than \$25,590 in restitution and to serve two concurrent one-year probation terms. Judge Ravin clarified that Murphy will serve probation until the restitution has been paid back in full. On June 29, 2005, Murphy pled guilty to a criminal accusation filed by the Division of Criminal Justice. The accusation charged Murphy with Medicaid fraud and failure to pay income taxes. At the guilty plea hearing, Murphy admitted that between May 30, 2001, and March 30, 2004, he wrongfully obtained more than \$16,000 in health benefits from the Medicaid Program. Murphy admitted that he applied for FamilyCare for himself, his wife, and his three children by falsely advising the Division of Medicaid Assistance and Health Services that he did not have health insurance through his employment and could otherwise not afford health coverage.

Murphy further admitted that he is a self-employed contractor and the owner of A. Murphy Contracting. A joint investigation with the Division of Criminal Justice-Office of Insurance Fraud Prosecutor determined that Murphy falsely advised Medicaid that his income level qualified him to enroll in the FamilyCare program sponsored by Medicaid. The investigation further determined that the income and profits Murphy received from that business far exceeded the \$25,071 per year income limit necessary to qualify for FamilyCare.

- One hundred forty-seven (147) complaints alleging tax evasion were evaluated from July through September 2005 in the Office of Criminal Investigation.
- During the same period, one hundred thirteen (113) charges were filed in court and twenty-four (24) arrests were made in thirty-eight (38) cases involving violations of the Cigarette Tax Act. 1,223.6 cartons of untaxed cigarettes, having a total value of \$76,132.39 and including 396.3 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

Gross Income Tax

Proof of Payment of Estimated Tax Made by Nonresident Seller of New Jersey Real Estate — The question was raised as to what form of receipt, if any, is to be given to a nonresident seller of New Jersey real estate as proof of payment of estimated gross income tax for reference when filing a nonresident gross income tax return.

Estimated tax must be paid by the nonresident seller of a property before a deed can be recorded, but there is nothing in the law requiring that a receipt for the tax paid be provided to the seller. The seller can request that the settlement agent forward a copy of the recorded deed and completed GIT/REP form (GIT/REP-1, Nonresident Seller's Tax Declaration, or GIT/REP-2, Nonresident Seller's Tax Prepayment Receipt) which the seller gave to the buyer at closing. However, the agent is not required to comply with this request. The payment of estimated tax by the nonresident seller, which can be made in advance or at the time of closing, is documented as follows:

Prepayment made at a Division regional office. If a nonresident seller chooses to pay the estimated tax prior to closing, the seller goes to a Division of Taxation regional office, completes Forms GIT/REP-2 and NJ-1040-ES (New Jersey Gross Income Tax Declaration of Estimated Tax Voucher), and makes payment (by check or money order only). The original GIT/REP-2 with the Division's raised seal is given to the seller to provide to the buyer or settlement agent at closing. The GIT/REP-2 and the deed are then forwarded to the county clerk for recording.

If the seller paid by check, the cancelled check is proof of payment. The seller may also make a copy of the GIT/REP-2 form as proof of actual payment made in the Division's regional office.

Payment made at closing. Alternatively, the seller may complete Forms GIT/REP-1 and NJ-1040-ES and give them, along with the

continued on page 10



estimated tax payment, to the buyer or settlement agent at closing. The forms, payment, and deed are then forwarded to the county clerk for recording.

The county clerk may or may not issue a receipt to the settlement agent for the estimated tax payment. The seller may request a copy of the completed GIT/REP-1 form from the settlement agent; however, the copy does not prove actual payment. The seller may give the agent a check at closing in order to get back the cancelled check as proof of payment, but the check may not reflect the actual amount of the estimated payment. The settlement agent usually deducts closing costs, realty transfer fees, etc. from the gross amount due from the seller and then makes disbursements, including the estimated tax payment, out of the agent's trust account set up exclusively as the conduit for real estate disbursement payments.

Resolution Funding Corporation Bonds — The Resolution Funding Corporation is a government agency established by Congress in 1989 to issue bailout bonds and raise funds for the activities of the Resolution Trust Corporation, as well as to administer struggling institutions inherited from the disbanded Federal Savings and Loan Corporation. The Resolution Funding Corporation is established under the same Federal law (Title 12, Chapter 11) as the Federal Home Loan Banks in the United States Code.

New Jersey exempts the interest and gains received from obligations of the State of New Jersey and the Federal Government from gross income tax. N.J.S.A. 54A:6-14. Specifically, pursuant to N.J.S.A. 54A:5-1(c) and

N.J.S.A. 54A:6-14, gross income does not include gains and interest derived from: (1) obligations of New Jersey or any of its political subdivisions, agencies, authorities, commissions, instrumentalities and public corporations (including such corporations created or existing under an interstate agreement or compact); and (2) obligations free from State or local taxation under any Federal or New Jersey law.

As the Federal Home Loan Bank is treated as an agency of the United States whose obligations are exempt from New Jersey gross income tax, the Resolution Funding Corporation is treated in a similar manner, and its obligations are considered exempt from gross income tax under N.J.S.A. 54A:6-14 both as to the interest and gains to the same extent as any obligation issued by the Federal Home Loan Bank.

Medical Malpractice Fund Assessments

2005 Attorney Fee Mailing — The New Jersey Medical Care Access and Responsibility and Patients First Act (P.L. 2004, c.17) assesses an annual surcharge of \$3 per employee for all employers who are subject to the New Jersey unemployment compensation law. In addition there is a \$75 fee for all State licensed physicians, podiatrists, chiropractors, dentists, optometrists, and attorneys. The Division of Taxation is responsible for collection of the annual \$75 fee from attorneys only. The fee expires in three years and will be collected for 2004, 2005, and 2006. The 2005 attorney fee assessment was mailed by the Division in December 2005.

The fee applies to all attorneys licensed to practice law in New Jersey except those attorneys: (1)

constitutionally or statutorily barred from the practice of law; (2) that can show that they do not maintain a bona fide office in New Jersey for the practice of law; (3) who have retired completely from the practice of law; (4) on full-time duty in the armed forces, VISTA, or the Peace Corps and not engaged in the practice of law; (5) ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment; or (6) newly admitted to the bar that have not practiced law for at least one year.

All revenues from the surcharges and fees are deposited into the Medical Malpractice Liability Insurance Premium Assistance Fund. The fund is administered by the New Jersey Department of Banking and Insurance and is used for a variety of health care purposes, including providing relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in this State and providing payments to hospitals as charity care subsidies.

Inquiries regarding payments made from the fund should be directed to the New Jersey Department of Banking and Insurance at 609-777-9470. Inquiries regarding the attorney fee should be directed to the Regulatory Services Branch, Division of Taxation, 609-292-5994.

Miscellaneous

Business Registration Requirement: Bid Threshold — The public contracting law, P.L. 2004, c.57, which went into effect September 1, 2004, requires business organizations that provide goods or services to public entities to obtain proof of

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business registration. Businesses located outside of New Jersey are not exempt from this requirement.

However, if the dollar amount of the cost of providing goods or services in the aggregate on an annual basis is below the 15% bid threshold level, then the governmental entity may waive the business registration certificate requirement by administrative procedures established by the Department of Community Affairs, Division of Local Government Services, along with the Divisions of Taxation and Revenue in the Department of Treasury.

Sales and Use Tax

Chemical and Catalyst Exemption

— The Division responded to an inquiry regarding whether the purchase of dry ice is exempt from tax under N.J.S.A. 54:32-8.20.

The taxpayer provided sterilization services for the producers of single-use medical devices. One of the items processed are single-use thermometers. Due to the heat that is generated during sterilization (which would activate the thermometers and render them useless), the thermometers must be packed in dry ice during the sterilization process.

Receipts from sales of materials, such as chemicals and catalysts, used to induce or cause a refining or chemical process, where such materials are an integral or essential part of the processing operation, but do not become a component part of the finished product, are exempt from the tax imposed under the Sales and Use Tax Act. N.J.S.A. 54:32B-8.20.

The term “finished product” used in the above exemption does not

contemplate the furnishing of a service. Therefore, since sterilization is a service rather than the sale of tangible personal property and, as such, is not a “finished product” for purposes of the catalyst exemption, the dry ice used during the sterilization process is not exempt from sales and use tax pursuant to the above exemption.

Interior Decorators — The Division views separately stated interior design or decorator services as a professional service transaction which is exempt from sales tax under N.J.S.A. 54:32B-2(e)(4)(A). If the decorator also sells tangible property to the customer, such charges are subject to tax pursuant to N.J.S.A. 54:32B-3(a). Interior decorators registered in New Jersey may use a New Jersey Resale Certificate (Form ST-3) to purchase tangible personal property intended for resale in its present form or which will be incorporated into other property intended for sale. Sales tax is collected from the decorator’s customer when these items are sold at retail.

Thus, when an interior decorator purchases property which will be resold to their customer, the interior decorator issues Form ST-3 to either the wholesaler or manufacturer. This exempts the interior decorator from the sales tax on the purchase.

The definition of “receipt” does not allow a deduction for expenses of the seller. N.J.S.A. 54:32B-2(d). Thus, expenses incurred in connection with the taxable sale of property (e.g., procurement fees) are also subject to tax. Expenses that directly relate to separately stated and non-taxable design/consulting services are not subject to tax.

Leases: No Further Use for ST-40 Under Streamlined Sales Tax Legislation

— The Lessor Certification, Form ST-40, was previously used when it was the lessors who were legally obligated to pay tax on leases and the lessors were not permitted to charge the lessees sales tax on a lease. By giving the customer

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[Practitioners’ E-File Mandate](#)

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 200 or more 2004 New Jersey resident income tax returns (Form NJ-1040) to file all their clients’ 2005 New Jersey resident income tax returns electronically. More information is available at:

[E-File Mandate](#)

[Frequently Asked Questions](#)

[Opt Out Request Form, NJ-1040-O](#)

[Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [email us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us.

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(lessee) a completed Form ST-40, a lessor was affirming that he would, in fact, pay this tax directly to the Division of Taxation, i.e., the lessee would not be responsible for the tax.

Under the amended sales and use tax provisions included in the Streamlined Sales and Use Tax Agreement legislation, the lessor must now *collect* sales tax from the lessee on both short-term (six months or less) and extended-term (more than six months) rentals and leases. Therefore, there is no further need for the ST-40 in leases beginning on or after October 1, 2005. Lessors should not use the ST-40 in any leases beginning on or after that date. □

In Our Courts

Administration

Res Judicata – *Hamburg Music Corp. v. Robert Winter; Robert K. Thompson; David M. Gavin; Ronald Cavanaugh; Cheryl Fulmer; Harold Fox; Thomas McDonald; John Doe*, decided September 8, 2005; United States Court of Appeals for the Third Circuit No. 04-2738.

This is an appeal from Hamburg's complaint in the United States District Court for the District of New Jersey claiming that its due process rights were violated because of the named defendants' seizure and sale of its liquor license at auction without advance notice.

Previously, the New Jersey State Tax Court dismissed Hamburg's complaint against the Division of Taxation because the complaint was untimely. On appeal to the Appellate Division of the Superior Court, the Appellate Division affirmed the Tax Court's dismissal noting that

Hamburg presented no factual foundation that its procedural due process rights were violated by the Division of Taxation's actions. Hamburg then filed a complaint against the above named defendants with the District Court, which dismissed the complaint for failure to prosecute. On a motion to reinstate the complaint, the District Court opined that even if the complaint was reinstated that it would be dismissed on grounds of res judicata or qualified immunity.

The Third Circuit ruled that the District Court did not abuse its discretion by refusing to reinstate the complaint and that the complaint presumably would have been dismissed on res judicata grounds because the New Jersey courts dealt with the same factual and legal arguments raised in the Federal action. In concluding, the Court quoted language in a Seventh Circuit case that "[f]ederal litigation is not a replechage round for losers of earlier contests, or for those who overslept and missed the starters' gun."

Corporation Business Tax

Add-Back of PPGRT – *Ross Fogg Fuel Oil Co. v. Director, Division of Taxation*, decided June 7, 2005; Tax Court No. 006544-2003.

The Division added back the petroleum products gross receipts tax (PPGRT) that plaintiff deducted in arriving at its reported taxable income for tax years 2000 and 2001.

In relevant part, N.J.S.A. 54:10A-4(k)(2)(C) states that New Jersey entire net income shall be determined without deducting taxes paid or accrued (1) to a state or a political subdivision thereof that are measured by profits or income, business presence, or business activity and (2) for the tax imposed by this act.

The Court inquired into whether the corporation business tax (CBT) required an add-back of New Jersey taxes other than the CBT itself and whether the term "a state" referred only to states other than New Jersey or included New Jersey. The legislative history indicated that

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

A sample E-Check form with the following fields: Name (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), Date (12/31/2000), Amount (\$ 1234.00), Routing number (080000001), Account number (12345678901234), and a note: "Do not include the check number".

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com



* Fee of 2.5% of tax payment applies.

in our courts - from page 12

N.J.S.A. 54:10A-4(k)(2)(C) was passed to equalize the tax burden on corporations doing business only in New Jersey. To effect that purpose, “a state” meant states other than New Jersey. Therefore, the Court determined that the add-back of taxes paid to “a state” did not include taxes paid to New Jersey, other than the CBT. The Court also reasoned that the PPGRT would not be “added-back” on the grounds it was similar to an excise or sales tax and was not a tax on “profits or income, or business presence or business activity” that was required by statute. Consequently, the Division’s assessment was dismissed.

Litter Control Tax

Paper Products – *Random House, Inc. v. Director, Division of Taxation*, decided September 13, 2005; Tax Court No. 006262-2003.

The Division assessed litter control tax on plaintiff publisher’s sales of hardcover and softcover books to wholesalers, distributors, and retailers for tax years 1993–2000.

The dispositive issue was whether plaintiff’s books are “paper products” and thereby “litter-generating products” that are subject to tax. The Division argued that the term “paper products” included books as they are made wholly or primarily of paper.

The Court decided that the term “paper products” as defined in N.J.S.A. 13:1E-94(e)(12) was not to be read literally. Finding that the Division recognized that not all paper products were intended to be “litter-generating products” and even excluded newspapers and magazines from the definition of paper products, the Court compared books to newspapers, magazines,

and other products on paper. The Court determined that the value of the paper was secondary to the value of the content that was on the paper and that the main function of the paper, binding, and book jacket was to contain the text or other information sought by the book purchaser. Therefore, the Court determined that the books are not paper products and not subject to the litter control tax.

The Division appealed this decision to the Appellate Division.

Realty Transfer Fee

Senior Citizen Exemption – *Norman and Thalia B. Terrell v. Director, Division of Taxation*, decided May 10, 2005; Tax Court No. 004258-2000.

Plaintiffs created and appointed themselves the trustees of the Terrell Family Trust. In January 1995 the plaintiffs transferred a property, known as 214 Windsor Avenue, Cape May, New Jersey, by deed to this trust. In May 2000 the trust as grantor sold this property to grantees Cynthia and George Yesgiosh, Jr. for \$335,000. The affidavit of consideration attached to the deed requested a partial exemption from the realty transfer fee stating that the grantor is a senior citizen who owned and occupied the property at the time of sale. The Division denied the request.

N.J.S.A. 46:15-10.1(a)(1) grants a senior citizen, defined as age 62 or over who is a New Jersey resident, a partial exemption from the realty transfer fee on qualifying property.

The Court ruled that a trust cannot be a senior citizen as it is not a natural person. Furthermore, the Court found that the Legislature did not include senior citizens’ trusts on the exemption list. Consequently, the Court held that the senior citizen exemption did not apply to the sale of this property. □

In Our Legislature

Cigarette Tax

Minimum Age for Sales and Purchases — P.L. 2005, c.384, enacted January 15, 2006, and effective April 15, 2006, raises the minimum age for the sale and purchase of cigarettes from 18 to 19 years of age. It also imposes personal liability on employees of retail dealers that are licensed under the Cigarette Tax Act and specifies that they will be subject to penalties if they sell or provide tobacco products to a person younger than 19.

Corporation Business Tax

Tax Credit for Employing Handicapped Persons at Sheltered Workshops — P.L. 2005, c.318, enacted January 12, 2006, and effective immediately, applies to privilege periods and taxable years beginning after enactment.

The Act allows a credit against the corporation business tax or the gross income tax in an amount equal to 20% of the salary and wages paid by the taxpayer during the privilege

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Tax Relief for Hurricane Katrina/Rita Victims

For information on NJ tax relief for hurricane victims, go to:
www.state.nj.us/treasury/taxation/katrinarelieft.shtml

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period or taxable year for the employment of a handicapped person who qualifies as an "extended employee" pursuant to N.J.S.A. 34:16-40 and who has worked for the taxpayer in a "sheltered workshop" arrangement for at least the minimum amount of time set forth in the Act. The credit may not exceed 50% of the tax liability otherwise due.

Tax Credit for Film Production Expenses — P.L. 2005, c.345, enacted January 12, 2006, and effective immediately, applies to qualified film production expenses incurred on or after the date of enactment. The credit provisions apply to privilege periods and taxable years beginning on or after July 1, 2005, and will expire with privilege periods and taxable years beginning after July 1, 2015.

"Qualified film production expenses" are expenses incurred in New Jersey for the production of a feature film or a television series or show of at least 15 minutes and intended for a national audience, and also include post-production costs incurred in New Jersey. Such expenses include, for example, wages paid to individuals employed in production, costs of editing, photography, sound synchronization, lighting, wardrobe, and facilities rental. Qualified expenses do not

include expenses incurred in marketing or advertising a film.

The Act allows a credit against corporation business tax in an amount equal to 20% of the qualified film production expenses paid by the taxpayer during the privilege period, provided that at least 60% of the total production expenses (other than post-production) will be for services performed or goods used in New Jersey, and provided that the principal photography begins within 150 days after the credit application is approved.

The Act allows a similar credit against the gross income tax. The credit is applied against the gross income tax otherwise due after other credits are applied. If the credit exceeds the amount of tax otherwise due, the excess credit will be treated as an overpayment.

Gross Income Tax

Treatment of Tax Payments Made By Pass-Through Entities on Behalf of the Owners — P.L. 2005, c.288, enacted January 9, 2006, and effective for privilege periods beginning on or after January 1, 2007, requires partners and other owners of pass-through entities (excluding qualified investment partnerships or investment clubs or entities listed on a United States stock exchange) to credit against their estimated gross income taxes certain payments that

the entities have made on their behalf.

Director's Authority to Extend Gross Income Tax Deadlines — P.L. 2005, c.297, enacted January 9, 2006, and effective immediately, authorizes the Director of the Division of Taxation to extend the gross income tax filing or payment deadlines to coincide with similar extended dates established for Federal personal income tax returns.

Checkoff for New Jersey World Trade Center Scholarship Fund — P.L. 2005, c.298, enacted January 9, 2006, effective immediately, and applicable to tax years beginning on or after January 1, 2006, allows taxpayers to donate to the New Jersey World Trade Center Scholarship Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Tax Credit for Employing Handicapped Persons at Sheltered Workshops — P.L. 2005, c.318. See Corporation Business Tax.

Tax Credit for Film Production Expenses — P.L. 2005, c.345. See Corporation Business Tax.

Sales and Use Tax

Exemption for Sales of Energy to UEZ Businesses — P.L. 2005, c.374, enacted January 12, 2006, and effective immediately, amends the New Jersey Urban Enterprise Zones Act by extending eligibility for sales and use tax exemption on retail purchases of energy and utility services by those qualified UEZ businesses that employ at least 250 people (the previous threshold was 500 people), 50% of whom are

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directly employed in a manufacturing process, when the energy and utility purchased is for the exclusive use of the qualified business in the zone. The exemption is also extended to groups of two or more qualified UEZ businesses in a single “redevelopment area” (pursuant to N.J.S.A. 40A:12A-1 et seq.) when they collectively employ at least 250 people, at least 50% of them directly employed in a manufacturing process, and the energy and utility service is for the exclusive use of each of such qualified businesses.

The Act also extends the exemption to business facilities located within a county that qualifies for 50% sales tax exemption, under certain circumstances, pursuant to N.J.S.A. 54:32B-8.45 (currently Salem County), provided that the business certifies that it employs at least 50 people at the facility, at least 50% of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2005 (January 1, 2005 – December 31, 2005) and tax year 2006 (January 1, 2006 – December 31, 2006) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2005](#) [2006](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2005](#) [2006](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2005](#) [2006](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
FAIR Rebate
 Hotline 1-888-238-1233
Property Tax Reimbursement
 Hotline 1-800-882-6597
Earned Income Tax Credit
 Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
 System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4123
Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
 Refunds 609-292-7018
Public Utility Tax 609-633-2576

New Jersey State Tax NEWS

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from the director's desk

Streamlined Sales and Use Tax

Current information about the effect of the Streamlined Sales and Use Tax Agreement on New Jersey's sales and use tax is available at:

[Streamlined Sales and Use Tax Legislation and Notices](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

We will be updating the information on an ongoing basis. A [list](#) of links to the materials that have already been published appears on page 6 of this issue.

Enforcement Highlights

The Division of Taxation's ongoing enforcement and prosecution efforts resulted in several arrests and indictments recently.

Tax Fraud Schemes

- In September, an Essex County man was sentenced after pleading guilty to Medicaid fraud and failure to pay income taxes.
[View U.S. Attorney's press release](#)
- In August, an Essex County tax preparer was indicted for filing nearly 400 fraudulent New Jersey income tax returns claiming \$265,397 in earned income tax credit refunds.
[View Attorney General's press release](#)

Cigarette Trafficking Operations

- An Ocean County businessman faces criminal charges as a result of enforcement efforts targeting cigarette and cigar sales to juveniles.
[View Treasurer's press release](#)
- In August, dozens were arrested in New Jersey and other states on charges of smuggling counterfeit cigarettes into the U.S. as well as other offenses.
[View Attorney General's press release](#)
- Increased enforcement prevented the loss of \$1.9 million dollars in unpaid cigarette and sales and use taxes in fiscal year 2005.
[View Treasurer's press release](#)

Robert K. Thompson



GROSS INCOME TAX Grantor Trusts

For tax year 2004, the Division of Taxation revised its position on the reporting of taxable income from a grantor trust, changing the reporting requirement to be the same as that of a beneficiary. The grantor was to net all income from the trust, regardless of its character, and report the result in the category "net income from estates and trusts" on the grantor's tax return.

The Division's prior position was that income from a grantor trust retained its character, as reflected on the trust's NJ-1041, and was reportable by the grantor in the appropriate categories on the grantor's tax return.

A grantor trust is different from other trusts and has unique income reporting requirements. Income and deductions of a grantor trust are taxable to or reportable by the grantor even though the grantor does not receive the trust income. A grantor trust is a legal entity created under State law that is not recognized as a separate tax entity for income tax purposes because the grantor or other substantial owners retain certain powers over or interests in the trust. A grantor is generally the person who sets up the trust.

Clearly, a grantor is not the same as a beneficiary and as such is treated differently for Federal income tax purposes and for the same reasons should be treated differently for New Jersey gross income tax purposes. Therefore, the Division is reinstating its previous position on the reporting of income from a grantor trust by a grantor.

For tax years 2005 and after, income from a grantor trust retains its

character and is reportable on the grantor's tax return in the appropriate categories of income.

For tax year 2004 only (for taxpayer convenience and to avoid the filing of amended returns with no real tax impact), the Division will accept the reporting of income from a grantor trust by a grantor under either position.

Should you have questions or require additional information on this issue, please contact the Division of Taxation's Individual Tax Audit Branch at PO Box 288, Trenton, New Jersey 08695. □

GROSS INCOME TAX Post-Retirement Contributions to 403(b) Plan

Under provisions of the Federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA), employers may make post-retirement contributions to a §403(b) plan up to five years following an employee's separation from service. For Federal tax purposes, these contributions are not taxable to the employee when made to the plan but are taxable upon withdrawal from the plan.

The New Jersey Gross Income Tax Act, unlike the Internal Revenue Code of 1986, does not have a provision deferring the tax on contributions made by an employer or employee to a §403(b) plan. As such, these contributions are taxable for New Jersey tax purposes in the year made and are subject to withholding like any other wage or remuneration paid to an employee.

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www.state.nj.us/treasury/taxation/publnews.shtml

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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403(b) plan contributions - from page 2

Thus, employers making post-separation contributions to a former employee's §403(b) account must issue the employee a W-2 indicating the amount contributed in the State wages box and must withhold New Jersey gross income tax if the amounts contributed require withholdings.

When completing their gross income tax return(s), the employee must report these contributions reflected on the W-2 received as wages in the year(s) made, calculate their tax accordingly, and claim any withholdings listed on the W-2. Any distributions the employee receives from the §403(b) plan must be adjusted/reduced for the contributions already reported and taxed for gross income tax purposes. □

INHERITANCE/ESTATE TAX
Common Filing Errors

When filing a New Jersey Inheritance Tax Return (Form IT-R) or a New Jersey Estate Tax Return (Form IT-Estate), there are a number of common errors and omissions which may result in a delay in the processing of the return and the issuance of tax waivers or in an estate being selected for audit. The forms referred to below are available on the Division's Web site at:

www.state.nj.us/treasury/taxation/prntinh.shtml

Decedent's Social Security Number. The decedent's social security number must be entered in the space provided. Common errors include entering the social security number of the decedent's spouse or the executor, or entering the decedent's social security number incorrectly.

It is important to verify that the decedent's social security number is entered correctly on all submissions including estimated payments; applications for extensions of time to file; and Forms L-4, L-8, and L-9.

Other Social Security Numbers. The social security number of the executor or administrator and beneficiaries must be entered where indicated.

Missing or Incomplete Schedules. All schedules must be attached even though they may contain no information. All questions listed on Schedule C of Form IT-R must be answered and all beneficiaries must be listed on Schedule E of the form.

Missing Supporting Documents.

1. The decedent's last will and testament, along with any codicils, must be attached to the return even though they may not have been probated.
2. A copy of the decedent's last full-year Federal income tax return must be included or a statement attached to the return indicating that none was filed.
3. If real estate was held other than in the decedent's name alone (joint tenants with right of survivorship or tenants-in-common), a copy of the deed is required.
4. If an appraisal was made of real estate listed in the return filed, a copy should be submitted. It is generally not necessary to include the supporting documentation for the appraisal.
5. A supplemental affidavit should be submitted fully explaining:
 - a. The basis for a claim that the full value of any jointly held asset should not be subject to tax.

- b. Extraordinary expenses incurred by the estate which are claimed as deductions.
- c. Legal actions involving the decedent and/or the estate.

Missing or Invalid Signatures. The tax return must be signed and notarized by the legal representative of the estate.

Incorrect Distributions and/or Tax Calculations.

1. Inheritance tax
 - a. The amount distributed on Lines 10–14 of the first page of the inheritance tax return must equal the amount listed on Line 9.
 - b. Each Class C beneficiary is entitled to an exemption of up to \$25,000. The lesser of \$25,000 or the amount received by a Class C beneficiary is exempt from tax. Only the excess over \$25,000 is subject to tax.

continued on page 4

Interest 9.50%

The interest rate assessed on amounts due for the period October 1, 2005 – December 31, 2005, will be 9.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%



common filing errors - from pg. 3

- c. If a Class D beneficiary receives property valued at less than \$500, the property received is exempt from tax. If a Class D beneficiary receives property valued at \$500 or more, there is no exemption and the full value of the property received is subject to tax.
2. Estate tax
 - a. The simplified method (column A) cannot be used if a Federal estate tax return has been filed or is required to be filed.
 - b. The New Jersey estate tax is based upon the provisions of the Internal Revenue Code in effect on December 31, 2001, and the credit for State Death Taxes allowable thereunder. The New Jersey exclusion amount is \$675,000.

Other Causes for Delay. The processing of an inheritance tax return or an estate tax return and the issuance of tax waivers may also be delayed by:

1. The filing of duplicate copies of returns.
2. The submission of copies of items previously filed such as estimated payment forms, applications for extensions of time to file, and Form L-4.
3. The submission of duplicate sets of supporting documentation when the inheritance tax return and the estate tax return are filed at the same time. Only one set of supporting documentation is required.
4. The use of binders or large staples.

5. Stapling items other than the check to the front of the return.

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.shtml

LOCAL PROPERTY TAX Two-Year PAMS Project Under Way

Efforts to replace the State's outdated MOD IV property assessment system with a new Property Assessment Management System (PAMS) are well under way since the announcement of the implementation assignment to Tyler Technologies' CLT Division in May. Tyler/CLT is working closely with Division of Taxation staff to examine how the company's integrated assessment and tax collection product will be modified to suit the needs of New Jersey jurisdictions.

Approximately 120 people on two dozen committees were involved in developing the requirements for the

new system, and the Division is continuing to seek input from assessors, collectors, and county tax board representatives as the project team conducts a "gap/fit analysis." The analysis is conducted through a series of meetings that examine assessment and tax collection business processes in New Jersey. Throughout the meetings, participants discuss best practices and reach a consensus on how to incorporate a requirement within the framework of the new system.

Representatives from the assessment and tax community have been enlisted to provide feedback on a variety of topics such as: changes to the block/lot qualifier, revisions to the New Jersey manual and tables for residential properties, SR-1A processing, and a new farmland module. The Division appreciates the additional time and effort being volunteered by these assessment and tax collection professionals.

The Division has estimated that approximately 70% of Tyler/CLT's product, *iasWorld*, already fits the required functionality of PAMS and has been implemented in other jurisdictions across the United States. As a result, the State will see significant cost and time savings by modifying an existing product.

"We are putting our efforts into modifying the system for New Jersey," said Stephen Sylvester, Assistant Director of Property Administration. "This is an opportunity to take a fresh look at our assessment and tax business processes. We want to be sure the State's requirements make sense for today and the future, instead of being tied to 20-year-old paper-based procedures."

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PAMS project underway - from page 4

The gap/fit analysis is expected to be completed in October. Additional information about upcoming events and milestones for the project will be available on the PAMS Web site, through association meetings and publications, and from various communication pieces developed during the two-year project.

If you have questions or comments about PAMS, contact the PAMS Project Manager, Tom Bishop, at 609-984-8235. □

LOCAL PROPERTY TAX Realty Transfer Fee Collections

Realty transfer fees, which replaced the expiring Federal documentary tax in 1968, are collected when a deed is offered for recording.

A record amount of realty transfer fees was collected for fiscal year 2005. A total of \$653.3 million in realty transfer fees was collected by the counties. \$83.5 million was remitted to the county treasurers for the use of the counties, \$37.1 million was collected by the counties for deposit into the Public Health Priority Fund, and \$532.7 million was forwarded to the State for deposit into various State funds. This was a 64% increase over the amount collected for fiscal year 2004.

Much of the increase was due to the enactment of Chapter 66, P.L. 2004, effective August 1, 2004, which increased fees to their current level. The realty transfer fee totals were also increased by the imposition of a 1% fee on the buyers of certain residentially classed property for consideration in excess of \$1 million and a general purpose fee paid by

the seller in increments based on the entire consideration. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 1–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in 2003 base year and assessed value changes of such parcels in current year attributable to successful appeals, revaluations, or reassessments.

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Tax Relief for Hurricane Katrina/Rita Victims

For information on NJ tax relief for hurricane victims, go to:
www.state.nj.us/treasury/taxation/katrinarelieft.html



assessors' calendar - from pg. 5

December 20–

- County Tax Board certifies to Director, Division of Taxation, the aggregate decline, if any, in the true value of vacant land, comparing current year to 2003 base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2006 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 6, 2005, in Union City Municipal Court, Amparo I. Cagigas, 64, of Union City, was charged with the fourth-degree crime of sale of untaxed cigarettes to an undercover Union City detective at Botanica El Negro in Union City on December 20, 2004. Follow-up investigation by the Office of Criminal Investigation (OCI) and Union City Police resulted in the seizure of an additional quantity of untaxed

cigarettes at the bodega. Alexis Lopez-Garcia, 46, of Union City, who identified himself at different times as either an employee or the owner of the store, was charged with possession of the cigarettes. Cagigas faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.

- On April 11, 2005, in Camden Municipal Court, Darrel A. Vail, 40, of Oaklyn, was charged with the fourth-degree crime of sale of untaxed cigarettes after he was observed by a Camden Police lieutenant selling untaxed cigarettes in the 100 block of Broadway. Follow-up investigation by OCI resulted in the seizure of 13 cartons of untaxed Newport cigarettes, worth \$800, which Vail had purchased over the Internet and was attempting to resell for \$4 per pack. Vail faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.
- On April 11, 2005, in Camden Municipal Court, Christ Townsend, 45, of Pine Hill, was charged with the fourth-degree crime of sale of untaxed cigarettes from his car in the 2800 block of Mt. Ephraim Avenue. Townsend had been arrested by Camden Police responding to a call from a citizen. Follow-up investigation by OCI resulted in the seizure of 15 cartons of Kool, Newport, and Salem cigarettes worth \$933, which Townsend had purchased in Delaware and was attempting to resell for \$4 per pack. Townsend faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conforms the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation will affect the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Notice: Rental of Equipment With An Operator Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)

[Notice: Sales And Use Tax Exemption for Clothing](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](#) us at: [Contact Us](#)

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criminal enforcement - from page 6

- On April 15, 2005, Ramoni Mustapha, 50, of 221 Custer Avenue, Newark, Essex County, was arrested and charged via a criminal complaint with theft by deception and filing and/or preparing false or fraudulent tax returns. Mustapha, a self-employed tax preparer and the owner/operator of Ramsalam Business and Tax Consultancy located at 103-105 South Day Street, Orange, Essex County, was arrested at his Orange business location by State investigators from the Division of Criminal Justice – Financial Crimes Bureau and tax agents from the Division of Taxation’s Office of Criminal Investigation. A joint-agency tax fraud investigation targeting the theft of thousands of dollars from the State Treasury resulted in the arrest of Mr. Mustapha on charges of filing hundreds of false or fraudulent New Jersey State income tax returns which resulted in refunds being issued in the names of fictitious “tax-payers.” The ongoing investigation has uncovered the filing of nearly 300 fraudulent New Jersey tax returns seeking over \$195,000 in illegal refunds. In conjunction with Mustapha’s arrest, the State law enforcement agents conducted a search of Mustapha’s office pursuant to a court-authorized search warrant. As a result of the search warrant, State investigators confiscated and seized tax returns, various tax documents and records, computer systems, false/fraudulent credit cards and identification documents, and related evidence. Mustapha has been released

from the Mercer County Jail after posting \$100,000 bail. The second-degree charge carries a maximum penalty of up to ten years in State prison and a fine of up to \$150,000 upon conviction.

- On April 20, 2005, the Superior Court – Monmouth County confirmed that Asif Hafeez, 50, formerly of Millstone Township, New Jersey, pled guilty to charges of possession of counterfeit New Jersey cigarette tax stamps, possession of 2,000 or more cigarettes bearing counterfeit tax stamps, and conspiracy. Hafeez had been arrested by OCI in Matawan, New Jersey, in the act of selling 319 cartons of counterfeit-stamped cigarettes to a retailer on June 27, 2001. A subsequent search of Hafeez’s home in Millstone resulted in the seizure of 29,793 counterfeit New Jersey, New York, and Oregon cigarette tax stamps. Hafeez later jumped bail and fled to Canada. While in Canada he was convicted in Canadian court of illegally exporting pseudoephedrine (which can be used in the manufacture of methamphetamine) into the United States and sentenced to probation, but was held by Canadian immigration officials. He was subsequently extradited to New Jersey. Hafeez was scheduled to be sentenced on April 29, 2005, and also faces in Pennsylvania a charge of violation of probation which had been imposed for an earlier violation of Pennsylvania’s cigarette tax. This investigation was conducted by OCI with assistance from the Matawan Police Department and was prosecuted by the Monmouth County Prosecutor’s Office, whose efforts included pursuit of international extradition

of the subject and his transportation back to New Jersey.

- On May 9, 2005, in Paterson, New Jersey, the Passaic County Grand Jury released an indictment of Francisco P. Delgado, 59, of Clifton, New Jersey. The indictment charges that Delgado, as the responsible person of Estrella Rental Car Incorporated, in Paterson, New Jersey, did, with the intent to evade tax, fail to file a 2003 corporation business tax return; fail to pay 2003 corporation business tax; fail to file sales and use tax returns for the second, third, and fourth quarters of 2003 and the first quarter of 2004; fail to pay over to the State the sales and use tax for the corresponding quarters; fail to file domestic security fee returns for the second, third, and fourth quarters of 2003 and the first quarter of 2004; and fail to pay over to the State the domestic security fee for the corresponding quarters. Delgado was also charged with making false statements in documents submitted to the Division of Motor Vehicles and with presenting false documents for filing with the Division of Motor Vehicles. This was a joint investigation by OCI and the Bergen County Sheriff’s Office which commenced after Delgado was arrested by the Sheriff’s Office for selling “international driver’s licenses” to illegal aliens. The “international driver’s license” is similar in appearance to a legitimate driver’s license, but is not issued by or honored by any government agency. This case marks the first indictment for

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criminal enforcement - from pg. 7

criminal tax violations involving the domestic security fee, which was instituted after the September 11, 2001, terrorist attacks to fund New Jersey counter-terrorism operations. The fee is collected by vehicle rental businesses at the rate of \$2 per day per vehicle rented. This case was presented to the grand jury by the Bergen County Prosecutor's Office.

- On May 12, 2005, OCI began an analysis of the records of cigexpress.com in Richmond, Virginia, relating to Internet sales of cigarettes to New Jersey residents in 2001–2004. Preliminary analysis indicates that this vendor made approximately 315 separate sales to New Jersey residents during this period and failed to report these sales to the Division of Taxation, a violation of the Federal Jenkins Act. This information will be forwarded to Audit Activity for billing of consumers for the appropriate cigarette tax and sales and use tax.
- On May 12 and 13, 2005, as part of a program of enhanced cigarette tax enforcement, OCI conducted inspections of 20 cigarette retailers identified by the Field Audit Branch as candidates for comprehensive audits involving sales and use tax, cigarette tax, corporation business tax, and gross income tax. Three of the retailers were cited by OCI for cigarette tax and sales tax violations, 13.3 cartons of untaxed cigarettes were seized, and data regarding retailer identification, volume of cigarette sales, and retail price markup was forwarded to Field Audit.

- Between March 4 and May 20, 2005, at Secaucus, New Jersey, OCI seized 1,750 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by Internet vendors for delivery to customers. This brings the total number of cartons of cigarettes seized in this ongoing investigation, which began on November 24, 2004, to approximately 45,582. The approximate values of these seizures are as follows:

Retail value	\$2,836,112.04
Tax loss averted:	
Cigarette	\$1,093,968.00
Sales & Use	<u>160,448.64</u>
Total	\$1,254,416.64

These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection, as a result of information developed by the U.S. Postal Inspection Service. Since the beginning of this operation, the number of cartons being shipped into New Jersey by air per month has declined from 16,297 in November 2004 to 351 in May 2005. In addition, as a result of our investigation U.S. Customs has instituted a policy of holding and turning over to the Division all untaxed cigarettes shipped into New Jersey. That

agency previously had not interdicted cigarettes being shipped by air freight.

- On June 3, 2005, in Superior Court – Monmouth County, Freehold, New Jersey, Michael J. Buonopane, 44, of Rumson, New Jersey, pled guilty to charges of collecting and failing to remit \$4.9 million of taxes including \$2,014,386 in sales and use tax, \$106,013.51 in State gross income tax withheld from employees' wages, \$653,965.41 in State unemployment and disability contributions, and \$2,074,362.16 in Federal taxes, and of failing to file corporation business tax returns in connection with the operation of Mr. Good Lube, Inc., and seven other corporations which provided retail automobile maintenance and car wash services at 17 locations in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties between 1999 and 2004. This case was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, who initiated the inquiry, and was prosecuted by the New Jersey Office of the Attorney General.

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Current Amnesty Programs

The city of Chicago is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

Chicago Oct 24 – Dec 16 www.cityofchicago.org



criminal enforcement - from page 8

- On June 10, 2005, in Superior Court – Monmouth County, Mitesh J. Shah, 34, of Middletown, New Jersey, was sentenced to three years’ probation and ordered to pay restitution in the amount of \$25,000 to the Division of Taxation and a fine of \$5,000. Shah had been arrested by OCI on June 27, 2001, after an investigation determined that he was engaged in the sale of untaxed cigarettes, bearing counterfeit New Jersey tax revenue stamps, at the Krauszer’s convenience store he operated in Matawan, New Jersey. This case was prosecuted by the Monmouth County Prosecutor’s Office.
- On June 13, 2005, in Dover Township, New Jersey, Brian C. Swedberg was arrested by investigators from the Ocean County Prosecutor’s Office based on an arrest warrant charging him with misapplication of entrusted funds (second degree). Mr. Swedberg operated The Christian Counseling Center and Guardian Elder-care Management, both located on Route 37 in Dover Township. In addition, auditors from the Office of Criminal Investigation assisted in the execution of a search

warrant at the business locations which resulted in the seizure of computers, business records, and financial records. Mr. Swedberg is suspected of abusing his position as a court-appointed legal guardian of the elderly. This joint investigation with the Ocean County Prosecutor’s Office is continuing.

- On June 17, 2005, in Dover Township Municipal Court, Richard Carroll, 48, of Brick Township, New Jersey, was charged with sale of untaxed cigarettes and eight disorderly person offenses for violations of the Cigarette Tax Act and the Tobacco Products Wholesale Sales and Use Tax Act, as a result of a joint investigation at Towne Stationery, Toms River, by OCI and the Dover Township Police which resulted in the seizure of 8 cartons of untaxed cigarettes and 173 cigars for which there was no record of payment of tobacco products tax. The investigation was opened after Dover Township Police received numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. This case coincides with an initiative ordered by State

Treasurer John E. McCormac. Taxation’s enforcement agents have begun inspections of retail establishments frequented by minors to ensure that no untaxed cigarette or cigar products are being sold and that no sales of single cigarettes, referred to as “loosies,” are being made. Any untaxed tobacco products or loose cigarettes will be seized and the appropriate charges filed.

- On June 20, 2005, in Freehold, New Jersey, a Monmouth County Grand Jury handed up a 27-count indictment charging Joseph W. Hughes, the former pastor of The Church of the Holy Cross in Rumson, New Jersey, with the theft of \$2,032,422 from The Church of the Holy Cross. Hughes stands accused of eight second-degree counts and one third-degree count of theft by deception and 18 tax-related charges for filing false New Jersey State gross income tax returns and failure to pay New Jersey gross income tax in the amount of \$120,229.50. Joseph W. Hughes wrote and endorsed checks to cash and wrote checks to cover personal expenses

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Enforcement Summary Statistics Second Quarter 2005

Following is a summary of enforcement actions for the quarter ending June 30, 2005.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	3,506	• Seizures	60
Total Amount	\$36,601,442	• Auctions	5
• Jeopardy Assessments	380	• Referrals to the Attorney General’s Office	393

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdiscl.shtml

criminal enforcement - from pg. 9

against church bank accounts between 1997 and 2004. He used these funds to support a lavish lifestyle; neither the church nor its parishioners received benefit from these expenditures. This case was a joint investigation by the Office of Criminal Investigation and the Monmouth County Prosecutor's Office. The Diocese of Trenton referred this case to the Prosecutor's Office and fully cooperated in the investigation.

- On June 20, 2005, in Superior Court – Salem County, Jaswinder S. Dhillon, currently a resident of Henderson, Nevada, pled guilty to a charge of failing to file motor fuels tax returns. Singh had been indicted on February 2, 2005, by a Salem County Grand Jury on three criminal charges as a result of an investigation which established that Dhillon, the principal of MJS Truck Plaza Inc. in Carneys Point, New Jersey, failed to file tax returns and remit motor fuels tax and sales tax he collected from customers, as a trustee for the State, in an amount greater than \$75,000, a second-degree offense. Dhillon closed his truck stop on July 31, 2000, and failed to turn over the entrusted tax dollars he had collected for June and July 2000, the last two months of business. The matter was investigated by OCI and prosecuted by the Salem County Prosecutor's Office.
- Two hundred eight (208) complaints alleging tax evasion were evaluated from April through June 2005 in the Office of Criminal Investigation.

- During the same period, one hundred forty-four (144) charges were filed in court and thirty-two (32) arrests were made in thirty-four (34) cases involving violations of the Cigarette Tax Act. 968.2 cartons of untaxed cigarettes, having a total value of \$60,241.19 and including 351.2 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

9-1-1 System and Emergency Response Assessment — Legislation enacted last year imposes a “9-1-1 System and Emergency Response Assessment” fee of \$.90 to be charged on each mobile and land-line telephone number on and after July 1, 2004. If the customer is capable of accessing 9-1-1 through the public-switched network, the line or number will be subject to the fee. The fee is imposed on customers with a primary place of use in this State.

According to the legislation, revenue collected from the fee will serve to replace the current 9-1-1 infrastructure statewide with a state-of-the-art enhanced 9-1-1 system.

With regard to telecommunications services, the Division only administers sales tax and the 9-1-1 fee. If a customer has questions regarding any other tax or fee on a telecommunications bill, the customer should contact his or her carrier for more information. In addition, the FCC maintains an informative Web site at www.fcc.gov explaining various charges found on a telephone bill.

For more information on the 9-1-1 fee, please see “Notice to Telecommunications Providers” available on the Division's Web site at:

www.state.nj.us/treasury/taxation/pdf/911fee.pdf

Corporation Business Tax

AMA Consent After December 31, 2006 — As indicated in N.J.S.A. 54:10A-5a.e., after December 31, 2006, a corporation whose net income is exempt from taxation pursuant to U.S.C. §381 et seq. (Pub. L. 86-272) will be relieved of Alternative Minimum Assessment (AMA) responsibilities if it consents to jurisdiction to pay corporation business tax (CBT).

Between June 30, 2006, and December 31, 2006, a corporation whose income is exempt from CBT based upon Pub. L. 86-272 must continue to calculate the AMA. Consent to jurisdiction is required after December 31, 2006.

Under N.J.A.C. 18:7-18.5(b), an AMA credit may be carried forward to subsequent privilege periods, including periods when the AMA is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the AMA provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the AMA for that period;
2. The credit applied shall not reduce the amount of tax otherwise due by more than 50%; and
3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

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Specific procedures have not yet been implemented for filing the “consent” referenced above. As 2006 approaches, the Division will notify taxpayers of the proper procedure for filing consent with regard to the AMA calculation.

Converting an LLC to an S Corporation — Some states and statutes have particular legislative authority to convert a particular entity that has been formed pursuant to one title to another title. For example, conversion from a for-profit to a not-for-profit corporation may be made pursuant to N.J.S.A. 15A:1-4b. In New Jersey there is no analogous provision that authorizes “conversion” in the context of an LLC.

Thus, a business owner must choose whether its business is to be operated as an LLC under the terms of LLC law, N.J.S.A. 42:2B-1 et seq., or as a corporation operated under the terms of corporate law, N.J.S.A. 14A:1-1, et seq. In the case of corporations, the owners have transferable shares to signify ownership. In the case of LLCs, the owners are members governed by an operating agreement rather than a certificate of incorporation and bylaws.

For tax purposes, the Federal Form 8832 entity classification filing governs taxability but does not affect entity governance. If the business owners decide to be governed by corporate law and to be taxed as an S corporation, then they could terminate the LLC registration (Form L-109), incorporate as a C corporation by filing a certificate of incorporation, and then file the Federal Election by a Small Business Corporation (Form 2553) and a New Jersey S Corporation or New Jersey

QSSS Election (Form CBT-2553) to be taxed as an S corporation for New Jersey purposes. Under some circumstances there may be tax consequences to terminating and commencing a new entity.

Alternatively, the members of the LLC may file a Federal Form 8832 Entity Classification Election and a Federal Form 2553 so that the LLC is taxed as an S corporation Federally. For New Jersey tax purposes this change in classification would meet the definition of “corporation” under the corporation business tax pursuant to N.J.S.A. 54:10A-4(c) which, for tax purposes, defines a corporation as an “entity classified as a corporation for federal income tax purposes.” Accordingly, the S corporation registration section for the New Jersey Division of Revenue will accept the filing of a Form CBT-2553 to allow an LLC to be taxed as a New Jersey S corporation (assuming that the Federal Forms 8832 and 2553 have been properly filed.) Under this scenario neither the Request for Change of Registration Information (Form REG-C-L) nor the Business Entity Amendment Filing (Form REG-C-EA) would be required by the S corporation registration staff.

Dissolution Without Assets — Pursuant to N.J.S.A. 14A:12-16, a Certification of Dissolution Without Assets (Form C-159C) may be used to dissolve a corporation only if the corporation meets the criteria as provided in N.J.S.A. 14A:12-4.1. If cash is still in the bank, then the corporation has assets which can be distributed to shareholders and the corporation is precluded from filing Form C-159C. However, if the cash has been distributed 24 months prior, the corporation may file Form C-159C.

N.J.S.A. 14A:12-16 also provides that distributions to shareholders may be made in cash and/or in kind.

Gross Income Tax

Taxation of Employee Stock Options Earned in New Jersey and Exercised by a Nonresident — For New Jersey income tax purposes, stock options are taxable as wages/compensation and are included in gross income under N.J.S.A. 54A:5-1(a). Nonqualified stock options are taxable as compensation in the same manner as prescribed for Federal purposes. Taxpayers, however, will not realize a taxable gain until the options are exercised. The gain is then measured by the difference between the fair market value of the options at the time of exercise and the taxpayer’s exercise price.

Nonresidents are subject to tax on income earned from sources within New Jersey. Included in the definition of New Jersey source income is income earned in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State. Regardless of the taxpayer’s current residence, the stock options the taxpayer received while working in New Jersey, or for a New Jersey company, will be taxable as New Jersey source income when exercised.

Nursing Home Assessment

Pass-Through to Residents — The Division of Taxation received an inquiry regarding the Nursing Home Assessment: specifically, whether the obligation is the nursing home’s alone or if it can be passed on to the nursing home residents.

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The New Jersey “Nursing Home Quality of Care Improvement Fund Act” was signed into law on July 1, 2003, as P.L. 2003, c.105, and was subsequently amended on June 29, 2004, by P.L. 2004, c.41. The Act establishes a quarterly assessment on nursing homes in order to provide additional funds for improving the quality of care by increasing Medicaid reimbursement for services delivered to those senior citizens and other persons residing in New Jersey nursing homes. The law was made effective on July 1, 2004.

Although the assessment is on the nursing care provider, the provider may pass on the assessment to residents or third-party payers to the extent that the provider would recoup its net loss taking into account any Medicare reimbursement funds received. The Division of Taxation does not have the authority to regulate whether or not a facility chooses to pass on the assessment or in what manner the facility chooses to do so.

Sales and Use Tax

Direct Pay Permits — Under the New Jersey Sales and Use Tax Act, the Director of the Division of Taxation may use his discretion to authorize a purchaser who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the Director and waive the collection of the tax by the vendor. N.J.S.A. 54:32B-12(b). The holder of a valid Direct Payment Permit (Form ST-6) may issue a Direct Payment Certificate (Form ST-6A) at the time of purchase if the taxable status of the purchase is

unknown at the time of purchase. To obtain a Direct Payment Permit Application contact Audit Services at 609-984-5775. The Division publishes a list of the current ST-6 holders, which is available at: www.state.nj.us/treasury/taxation/taxinfo.shtml

Under certain circumstances, taxpayers may be able to enter into Sales and Use Tax Compliance Agreements, also known as Effective Use Tax Rate Agreements (“EUTRA”), which allow the use of an “effective tax rate” to calculate sales and use taxes owed. A taxpayer must apply and meet certain qualifications in order to participate in the program. Specific information regarding the agreement program is available in the notice located on the Division’s Web site at:

www.state.nj.us/treasury/taxation/sucta.shtml

Virtual Tour Services — The Division responded to an inquiry about the application of the New Jersey

Sales and Use Tax Act to a photographer who sells brochures and also provides virtual tours of real estate online.

If a photograph is either scanned, taken with a digital camera, or computer-generated and then transmitted solely by e-mail or other form of electronic transmission, the transaction is treated as the sale of intangible property, which is not subject to tax. As such, photography services rendered in producing photographs used solely in virtual tours are not subject to tax as long as the photographs are only accessible electronically and the customer does not receive anything in tangible (hard-copy) form, such as prints, negatives, or discs.

Sales of portraits, photographs, motion pictures, slides, frames, photograph albums, picture post cards, and brochures are subject to sales tax as sales of tangible personal property. N.J.S.A. 54:32B-3(a).

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

Make a payment directly
from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com



* Fee of 2.5% of tax payment applies.

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For more information on the taxability of photography services, see ANJ-2, *Professional Photographers and New Jersey Sales Tax*, which is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj2.pdf □

In Our Courts

Administration

Power of Attorney – Corallos, Inc. v. Director, Division of Taxation, decided June 13, 2005; Tax Court Nos. 006766-2003 and 006985-2003.

Vincenzo Carollo was the sole shareholder and president of the plaintiff (Corallos). Mr. Carollo is a 56-year-old with a fifth-grade education who can speak and understand English; however, he can read and write only a little English. Mr. Carollo has run a business for ten years and has obtained bank loans for the business. With help, Mr. Carollo testified that he could understand the terms of the loan documents that he was required to sign.

In an initial contact letter, the Division notified Corallos that an audit was to be conducted. The letter also included the Division's standard power of attorney (POA) form advising that if Corallos desired to be represented by someone else, that it should complete and return the document. The POA testified that he filled in the blanks on the POA form except for Mr. Carollo's signature, his title, the date signed, and the years covered under the POA. The POA form contained language indicating that the POA had authority to "executive consents extending the statutory period for assessments." Mr. Carollo acknowledged that it was his signature on the POA form

naming his accountant as the POA. The POA form was faxed to the Division by the POA who testified that he did not explain the legal effect of the POA form to Mr. Carollo.

After the audit commenced, the POA signed a form that consented and agreed to extend the statute of limitations (SOL) for assessment to a date certain in the future at which time certain periods under audit would have been beyond the SOL period for assessment. Later, Corallos's POA signed a similar form extending the SOL for assessment further into the future. The POA testified that he was certain that he did not explain the consent form to Mr. Carollo.

During the audit, the auditor went to the POA's office to examine Corallos's books and records and obtained information from the POA concerning the business. The auditor visited the business where the POA introduced the auditor to Mr. Carollo. At the site visit, the auditor questioned the POA regarding business activities while in the presence of Mr. Carollo, who gave the auditor no reason to doubt the POA's authority to act. At one point, the POA did not respond to several of the auditor's telephone inquiries and the POA's receptionist indicated that the POA may not be representing Corallos. Thereafter, the auditor phoned Mr. Carollo who confirmed to the auditor that the POA represented Corallos. The audit later concluded with the issuance of the Division's notice of assessment related to final audit determination from which Corallos appealed.

Corallos claims that the consent forms signed by its POA to waive or extend the SOL for assessment past the date that the statute would

expire were invalid because Corallos did not delegate that authority to its POA and therefore any reliance the Division placed on the POA form was unreasonable. Corallos also contends that there are deficiencies in the POA document: plaintiff's name is misspelled; the dates for which the POA is appointed are not specified; there is no title or date in the blanks next to Mr. Carollo's name; and the POA form states that it authorizes the POA to "executive" rather than "execute" consents extending the SOL. Furthermore, Corallos relies on the auditor's unsuccessful attempts to contact the POA as evidence that the POA could not have been reasonably relied upon.

The Court concluded that the consent forms to extend the SOL executed by Corallos's POA were valid waivers of the SOL because Mr. Carollo signed the POA form that expressly authorized the POA to consent to any extension of time to make assessments. The Court also determined that the Division reasonably relied on the POA document despite the defects in the document claimed by Corallos. Furthermore, the Court concluded that even if the Division should have required that the POA document be dated and the dates of the years at audit filled in, that the POA had apparent authority to waive the SOL because Mr. Carollo's actions would make one believe that the POA had authority to act.

Corporation Business Tax Nexus and Physical Presence – Lanco, Inc. v. Director, Division of Taxation, decided August 24, 2005; Appellate Division No. A-3285-03T1.

continued on page 14

in our courts - from page 13

At issue is whether New Jersey may constitutionally subject a foreign corporation to the corporation business tax (CBT) where the foreign corporation, pursuant to a license agreement, derives royalty income from a corporation that operates a retail business in New Jersey and has no physical presence (real or personal property or personnel) in New Jersey.

The Tax Court previously held that subjecting plaintiff (Lanco) to the CBT would violate the Commerce Clause of the United States Constitution because Lanco did not have a physical presence in New Jersey. The Appellate Division disagreed and reversed the judgment of the Tax Court.¹

The Appellate Division opined that the physical presence requirement that was needed to satisfy the Commerce Clause in the context of the sales and use tax arena in the United States Supreme Court decision in *Quill*², as established by *National Bellas Hess*³, was not applicable to taxes other than sales and use taxes. The Appellate Division quoted from *Quill* where it stated that “[w]e have not, in our review of other types of taxes, articulated the same physical-presence requirement that *Bellas Hess* established for sales and use taxes.” Turning to the issue of taxability in the income tax area, the

Appellate Division held that the CBT may be constitutionally applied to impose tax on Lanco’s income derived from licensing fees attributable to New Jersey. In reaching its decision, the Appellate Division found persuasive the reasoning in *Geoffrey*⁴, *A&F Trademark*⁵, and *The Gap*⁶, as well as *Roadway Express*⁷, which stated that “the CBT statute is clearly intended to reach foreign corporations engaged in business activities to the full extent that is constitutionally permissible.”

Lanco has filed a Notice of Petition for Certification and a Notice of Appeal with the New Jersey Supreme Court.

¹ *Lanco, Inc. v. Director, Division of Taxation*, 21 N.J. Tax 200 (Tax 2003).

² *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992).

³ *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967).

⁴ *Geoffrey Inc. v. South Carolina Tax Comm’n*, 437 S.E.2d 13, 18, cert. denied, 510 U.S. 992, 114 S. Ct. 550, 126 L. Ed. 2d 451 (1993).

⁵ *A & F Trademark, Inc. v. Tolson*, 605 S.E.2d 187 (N.C. Ct. App. 2004), petition for cert. filed, 73 U.S.L.W. 3719 (U.S. June 6, 2005) (No. 04-1625).

⁶ *Secy, Dep’t of Revenue v. Gap (Apparel), Inc.*, 886 So.2d 459, 461-62 (La. Ct. App. 2004).

⁷ *Roadway Express, Inc. v. Director, Division of Taxation*, 50 N.J. 471, 483 (1967), appeal dismissed, 390 U.S. 745, 88 S. Ct. 1443, 20 L. Ed. 2d 276 (1968).

Sales and Use Tax

Garbage Removal – *Blue Diamond Disposal, Inc. v. Director, Division of Taxation*, decided June 30, 2005; Tax Court No. 005008-2004.

Plaintiff Blue Diamond Disposal, Inc., (BDD) is a solid waste hauler. At issue is whether BDD’s One Shot Deal, as coined by BDD, is subject to tax under the Sales and Use Tax Act. A One Shot Deal is where BDD places an empty dumpster or similar container at a customer’s location for the customer to fill with unwanted personal property. When the customer is finished with the container, BDD returns and hauls it to a disposal site.

BDD claimed that the One Shot Deal is the transportation of property, which is exempt from taxation under N.J.S.A. 54:32B-8.11. On the other hand, the Division argued that the One Shot Deal is subject to taxation under N.J.S.A. 54:32B-3 where sales tax is imposed upon maintaining and servicing real property excluding garbage removal performed on a regular contractual basis for a term not less than 30 days.

The Court found that transportation was only incidental to the primary service of garbage removal. The One Shot Deal was a trash removal service and the Court opined that it made no difference who owned the container or what container the garbage was in. The Court determined that BDD’s service was similar to an example of trash removal in N.J.A.C. 18:24-13.2 where a private

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company picks up garbage at a house. Therefore, the Court upheld the Division's assessment concluding that receipts from the One Shot Deal are subject to sales tax under N.J.S.A. 54:32B-3.

Adequate Books and Records – *Max Dufner, Inc. v. Director, Division of Taxation*, decided June 24, 2005; Tax Court No. 004367-2004.

Plaintiff Max Dufner, Inc., (MDI) sold sandwiches and other foods as well as beverages. An audit of MDI revealed that MDI did not maintain purchase journals, sales records, or exemption certificates to support its reported sales or nontaxable sales. Therefore, the Division estimated and assessed additional sales tax.

MDI claims that the majority of its sales were tax-exempt wholesale sales to lunch truck vendors and/or were exempt because the sales were food that was not ready to be eaten. The Court ruled that the burden is on MDI to prove that taxes were reported correctly noting that the mere appearance of qualification for exemption is not sufficient to even partially prevail. MDI did not retain cash register tapes and admitted that it did not keep books or journals indicating the amount of sales and which sales were exempt. MDI's method of determining sales was based upon the amount of bank deposits that were deposited into its bank account. The Court found that no records were kept showing which sales qualified for tax exemption and indicated that it had no way of knowing whether receipts from any day were entirely deposited.

Concluding that MDI presented no credible evidence to show that the audit was arbitrary, capricious or

unreasonable, the Court determined that it was reasonable for the Division to estimate MDI's tax liability and upheld the Division's assessment. □

In Our Legislature
Gross Income Tax

Earned Income Tax Credit — P.L. 2005, c.210, enacted August 29, 2005, and effective immediately, requires the State Treasurer to develop a statement regarding the earned income tax credit allowed under Federal and State income tax laws, and requires the Commissioners of the Departments of Labor and Workforce Development, Human Services, Community Affairs, and all employers to notify certain people about these credits by means of the written statement developed by the Treasurer.

Inheritance/Estate Tax
Corrections Governing Wills and Estates — P.L. 2005, c.160, enacted July 19, 2005, and applied retroactively to February 27, 2005, makes minor technical changes in the provisions governing wills and estates. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

• **Chronological List of Filing Deadlines —** This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the

instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

• **Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

• **Payment Dates for Weekly Payers —** An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2004](#) [2005](#) □



*important
phone
numbers*

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400

FAIR Rebate
Hotline 1-888-238-1233

Property Tax Reimbursement
Hotline 1-800-882-6597

Earned Income Tax Credit
Information 609-292-6400

NJ TaxFax 609-826-4500

Business Paperless Telefiling
System 1-877-829-2866

Speaker Programs 609-984-4101

Alcoholic Bev. Tax 609-984-4123

Corp. Liens, Mergers, Withdrawals & Dissolutions 609-292-5323

Director's Office 609-292-5185

Inheritance Tax 609-292-5033

Local Property Tax 609-292-7221

Motor Fuels Tax
Refunds 609-292-7018

Public Utility Tax 609-633-2576

New Jersey State Tax news

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from the director's desk

Streamlined Sales and Use Tax

I am pleased to report that New Jersey's Sales and Use Tax Act was recently amended (P.L. 2005, c.126, enacted July 2, 2005) to conform our law to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA). For over five years, New Jersey has participated in the Streamlined Sales and Use Tax Project, which is a multi-state effort to simplify and modernize the collection and administration of sales and use taxes, and which developed the SSUTA.

The adoption of the Streamlined Sales and Use Tax Agreement Legislation will mean significant changes in New Jersey's tax policy and administration. The uniform product definitions, which are a key feature of the SSUTA, will mean changes in the taxability of specific items in New Jersey. For example, while "candy" remains subject to sales tax, anything that doesn't meet the new, standard definition of "candy" will be exempt. In addition, the treatment of leasing, direct mail processing, and deductions for bad debts will be affected. However, I believe that in the long run, the simplifications and uniformity provided by the new "streamlined" system will lessen the burden of complying with New Jersey's sales tax laws for both sellers and purchasers.

The new streamlined sales tax provisions take effect October 1, 2005. Information about many of the coming changes has already been posted on our Web site at: www.state.nj.us/treasury/taxation/streamchanges.shtml. Please check this page frequently; we will be updating the information on an ongoing basis. A [list](#) of links to the materials that have already been published appears on page 6 of this issue.

Other Legislation

Summaries of other important legislation enacted recently appear on page 17, including:

[P.L. 2005, c.125](#) Multistate Reciprocal Personal Income Tax Set-Off Program

[P.L. 2005, c.127](#) Uncoupling Certain Qualified Production Activities Income

[P.L. 2005, c.130](#) Pension and Other Retirement Income Exclusions



Budget Funds 2004 FAIR Rebates

The State Budget for fiscal year 2006 provides continued funding for the FAIR Rebate Program. Rebate amounts for tax year 2004 remain unchanged for residents who are 65 or older, blind, or disabled; however, the budget limits rebate amounts for homeowners and tenants under age 65 who are not blind or disabled.

Unlike previous years, homeowners file the single FAIR rebate applica-

tion that is sent to them in the mail instead of the two separate applications (NJ SAVER and homestead rebate). Tenants continue to use the rebate application that is part of the New Jersey income tax return.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2004, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2004 FAIR rebate,

continued on page 3

2004 FAIR Rebate Payment Dates

H O M E O W N E R S

Age 65 or Older and/or Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$200,000	Early August 2005
\$ 200,000	Not eligible

Under Age 65 and NOT Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$200,000	Fall 2005
\$ 200,000	Not eligible

T E N A N T S

Age 65 or Older and/or Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$100,000	Early August 2005
\$ 100,000	Not eligible

Under Age 65 and NOT Disabled

2004 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$100,000	Early August 2005

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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FAIR rebates - from page 2

provided that their gross income for the entire year does not exceed the income limit. The income limit is \$200,000 for homeowners and \$100,000 for tenants.

How to Apply

The deadline for both homeowners and tenants to file their FAIR rebate applications has been extended to October 17, 2005.

Homeowners: FAIR homeowner rebate applications were mailed in April to those homeowners whom the Division of Taxation was able to identify as 65 years of age or older or disabled on the last day of the 2004 tax year. Application packets were mailed in early July to non-senior, non-disabled homeowners. Most homeowners can file their FAIR rebate applications by phone by calling 1-877-658-2972 or online at: www.state.nj.us/treasury/taxation/

Any eligible homeowner who has not received a 2004 FAIR homeowner rebate application can call the FAIR Rebate Hotline (1-888-238-1233) or [e-mail](mailto:) the Division to have one mailed to them.

Tenants: Applicants who are required to file a 2004 New Jersey income tax return complete their FAIR tenant rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, Form NJ-1040EZ, or return filed electronically using NJ WebFile, or approved vendor software).

Tenants who are eligible for a 2004 FAIR tenant rebate and who have already filed a 2004 New Jersey income tax return have until

October 17, 2005, to file the FAIR tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2004 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 to apply.

Rebate Amounts

Rebate amounts differ for homeowners and tenants, and are also determined by income, amount of property taxes (or rent) paid, filing status, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: For tax year 2004, rebates for eligible homeowners age 65 or older or disabled range from a minimum of \$500 up to a maximum of \$1,200. Homeowners under age 65 and not disabled are eligible for a minimum of \$300 up to a maximum of \$350. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2004, tenants age 65 or older or disabled are eligible for a minimum rebate of \$150 up to a maximum of \$825. Tenants under age 65 and not disabled are eligible for a rebate of \$75.

Funding for 2004 Rebates

P.L. 2005, c.121, signed into law on July 2, 2005, made a supplemental appropriation of \$400 million to pay for the FAIR rebates. The revenue to support this appropriation was generated by an unanticipated increase in final New Jersey gross income tax payments received this spring. Revenues from payments

made in April and May were up 98% over the same period last year.

Although the exact source of this “April surprise” may not be known for some time, a number of possibilities exist. One explanation is that the millionaires’ tax, an increase in the gross income tax rate for individuals with taxable income over \$500,000 which was signed into law in June 2004, left many high-income taxpayers with larger balances due in April, accounting for an estimated \$450 million. Other explanations for the additional income include gains in the stock market recognized in 2004 and a first-time dividend paid by Microsoft Corporation.

This unexpected growth is not unique to New Jersey. Other states’ revenues were also up 30–50% this year during the same period. Without taking the millionaires’ tax into consideration, New Jersey’s revenue increase was in line with these figures.

More information on the FAIR rebate programs is available at: www.state.nj.us/treasury/taxation/fair/rebateinfo.shtml □

Paper ST-50/ST-51 Returns Eliminated

For more than 10 years New Jersey has been encouraging taxpayers to use “paperless” filing for both their State income tax and their New Jersey business tax returns. And, we have continued to expand our Internet-based and telephone filing systems to accommodate the increasing number of taxpayers who chose to file electronically.

S&U returns - from page 3

Electronic filing has been required for some business taxes and fees since 2002, and in January 2004, the Division of Taxation began to phase out the use of paper sales and use tax returns (Form ST-50/ST-51). Over the past 18 months we have been notifying groups of taxpayers that they were required to file their sales and use tax returns electronically either online or by phone and to make their payments by electronic check (e-check), electronic funds transfer (Automated Clearing House debit or credit), or credit card.

The phase-out of paper returns is now complete and all ST-50/ST-51 sales tax filers must file and pay electronically. The Division no longer issues Form ST-50/ST-51 coupon booklets. Information about filing sales and use tax returns is available on our Web site at:

- [Filing Sales and Use Tax Returns](#) (Forms ST-50/ST-51)
- [How to Pay Sales and Use Tax](#) □

INHERITANCE/ESTATE TAX
Brokerage
Account Waiver
Requirements

The New Jersey inheritance tax and estate tax statutes provide that property which belongs to or stands in the name of a resident decedent may not be transferred without the written consent of the Director of the Division of Taxation. The taxes remain a lien until paid on all the property of a decedent.

The Division has received numerous inquiries regarding the tax waiver requirements for brokerage accounts.

Harry Scheidell Scholarship



Sally Hayban of Hamilton (second from left), a May 2005 accounting/finance graduate of Rider University, is congratulated by members of the New Jersey Department of the Treasury’s Division of Taxation and fellow Rider alumni on receiving the Harry Scheidell Memorial Scholarship. They are (from left to right) Samantha Scheidell, Taxpayer Accounting Branch staff member (2005 graduate) and daughter of the late Mr. Scheidell; Robert K. Thompson, Director, Division of Taxation (1970 graduate); Harold E. Fox, Deputy Director (1970 graduate); and Richard W. Schrader, Assistant Director, Audit Activity (1972 graduate). Friends and colleagues of Mr. Scheidell, also a Rider alumnus and member of the Division of Taxation for more than 30 years, established the one-time scholarship in his memory for a student pursuing an accounting degree.

An inheritance/estate tax waiver is required for all brokerage accounts belonging to or standing individually or jointly in the name of a resident decedent. A tax waiver is required if the brokerage firm had an office in New Jersey regardless of where the account was opened.

Assets held in a brokerage account which are registered in street name may be bought and sold without the necessity of first obtaining a tax waiver. The assets must, of course,

remain in the account and nothing may be transferred or released to the estate or beneficiaries until a tax waiver is obtained.

In those situations where an account passes to a decedent’s surviving spouse, child, stepchild, legally adopted child, issue of any child or legally adopted child, parent, grandparent, or surviving domestic partner and the taxable estate plus adjusted taxable gifts as determined under the

continued on page 5



brokerage accounts - from page 4

provisions of the Internal Revenue Code in effect on December 31, 2001, does not exceed \$675,000, Form L-8 may generally be used. Form L-8 is an affidavit and self-executing tax waiver which is filed directly with the brokerage firm.

The blanket waiver provisions of N.J.A.C. 18:26-11.1(c) are applicable to brokerage accounts. Up to 50% of the account balance on a decedent's date of death may be released without a tax waiver.

Questions regarding tax waivers may be forwarded to the Inheritance and Estate Tax Section of the Individual Tax Audit Branch at PO Box 249, Trenton, New Jersey 08695-0249. The Inheritance and Estate Tax Section may be reached by phone at 609-292-5033. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Thirteen persons passed the March 19, 2005, C.T.A. exam and received Tax Assessor Certificates dated July 1, 2005. They are:

Camden County: Lynda A. Marchewka, Barrington Borough.

Mercer County: Erin K. Serfass, West Windsor Township.

Monmouth County: Samuel Befarah, IV, Long Branch City.

Morris County: Michelle L. Hess, Parsippany-Troy Hills Township.

Ocean County: Jeffrey A. Cranmer, Stafford Township; Andrew T. Lacey, Long Beach Township; Joseph J. Rogus, Dover Township.

Salem County: Irene Scarpaci, Penns Grove Borough; James G. Waddington, Salem City.

Somerset County: Frank Dallessio, Somerville Borough; Mark W. Tinder, Bridgewater Township.

Union County: John M. Capage, Union Township.

Commonwealth of Pennsylvania: John R. Ingram, Allentown, Lehigh County.

The next examination is scheduled for March 25, 2006. The deadline to file applications for this exam is February 23, 2006. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension within which appeals may be heard and determined.

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2006 together with a notice that the completed form must be filed with the assessor by August 1, 2005, in order to claim continuance to each taxpayer whose land was assessed for tax year 2005 under the Act.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2006.

August 5-

- All SR-1A forms showing information to be used in compiling 2005 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

continued on page 6



assessors' calendar - from page 5

September 1-

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2006, to be filed with the assessor for taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2006, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 23, 2004, the Office of Criminal Investigation (OCI) received confirmation that in United States District Court, Richmond, Virginia, Adib Mograbi and Laurie Patterson, a husband and wife residing in Richmond, pled guilty to a charge

of conspiracy to traffic in contraband cigarettes as a result of an investigation that established that between 1999 and 2004 the couple sold cigarettes both over the counter in Virginia, knowing that these cigarettes would be shipped to various other states, and over the Internet under the names Cigoutlet.com and Affordable-cigs.com directly to consumers in other states, including New Jersey. As part of the pleas, Mograbi and Patterson agreed that the amount of New Jersey cigarette tax evaded as a result of their operation is \$441,857, and they supplied the Division with the customer names and addresses, purchase dates, and amount of cigarettes which they shipped to New Jersey. This information was forwarded to Audit Services for appropriate assessment and collection.

- On January 7, 2005, criminal complaints were filed in Superior Court in Somerville, charging Rafael Rosario, 43, of West Meadow Drive, Bound Brook, New Jersey, with eight crimes arising from his operation of Café Imperial Restaurant/Bar located in Bound Brook. The charges are second-degree failure to turn over taxes, in violation of N.J.S.A. 54:52-15; second-degree failure to make required disposition of property received, contrary to N.J.S.A. 2C:20-9; second-degree theft by deception, contrary to N.J.S.A. 2C:20-4a; third-degree filing false tax reports, contrary to N.J.S.A. 54:52-10; third-degree misapplication of entrusted property, contrary to N.J.S.A. 2C:21-15; third-degree

continued on page 7

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conforms the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation will affect the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[New Jersey Sales Tax Rates and Boundaries](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us



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tampering with public records, contrary to N.J.S.A. 2C:28-7a(1); fourth-degree deceptive business practices, contrary to N.J.S.A. 2C:21-7h; and fourth-degree false swearing, contrary to N.J.S.A. 2C:28-2a. The charges allege that Rosario consistently under-reported the amount of sales tax collected by Café Imperial for the years 2001, 2002, and 2003. The charges further allege that Rosario illegally failed to turn over to the State more than \$75,000 in sales tax collected from customers for those tax years. The New Jersey Division of Taxation's Office of Criminal Investigation, the New Jersey Division of Alcoholic Beverage Control, and the New Jersey Department of Labor and Workforce Development have all joined an ongoing investigation being conducted by the Somerset County Prosecutor's Office. Rosario and Kenneth Henderson, suspended Bound Brook Police Chief, were arrested on October 19, 2004, by the Somerset County Prosecutor's Office detectives and charged with second-degree official misconduct and conspiracy to commit official misconduct. Rosario was arraigned on the complaints by the Honorable Edward M. Coleman. Judge Coleman continued the defendant on bail, previously set at \$100,000 cash, after having denied Rosario's motion to reduce the original bail amount.

- On January 20, 2005, in Superior Court – Hudson County, Jersey City, Manuel Mier, 50, of Irvington, New Jersey, entered guilty pleas to three counts: failure to file motor fuels tax

returns; failure to pay \$95,909 in motor fuels tax in connection with 76 Tonnelle Friendly Service LTD in North Bergen, New Jersey, from 1997 to 2000; and failure to pay \$181,199.30 in motor fuels tax in connection with Leticia, Inc., in Hillside, New Jersey, from 1999 to 2002. The plea agreement calls for Mier to make restitution of the total tax, \$277,108.30, prior to sentencing. This prosecution is being handled by the State Office of the Attorney General.

- On January 20, 2005, OCI assisted the Division of Criminal Justice – Alcoholic Beverage Control in the execution of a search warrant at JWTA, Inc., 1641 Route 70, Cherry Hill, a food and liquor wholesaler operating without an ABC license. The Division of Criminal Justice seized 107 cartons of untaxed cigarettes and several thousand bottles of beer and wine, which were seized because of the subject's unlicensed status. Alcoholic beverage tax will be assessed on the seized products, and previously filed alcoholic beverage tax returns will be compared with business records seized.
- On February 2, 2005, in Salem, New Jersey, Jaswinder S. Dhillon, whose last known address is in Virginia Beach, Virginia, was indicted by a Salem County Grand Jury on three criminal charges as a result of an investigation which established that Dhillon, the principal of MJS Truck Plaza Inc. in Carneys Point, New Jersey, failed to file tax returns and remit motor fuels tax and sales tax he collected from customers as a trustee for the State in an amount greater

than \$75,000, a second-degree offense. Dhillon closed his truck stop on July 31, 2000, and failed to turn over the entrusted tax dollars he had collected for June and July 2000, the last two months of business. If convicted, Dhillon faces up to 25 years in jail and fines of up to \$315,000. The matter was presented to the grand jury by the Salem County Prosecutor's Office.

- On February 18, 2005, in Secaucus, New Jersey, OCI seized approximately 4,094 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by unidentified Internet vendors for delivery to customers. This brings the total number of cartons of cigarettes seized in this ongoing investigation to approximately 43,823. The approximate retail value of the seized cigarettes is \$2,726,667.06; the averted tax loss is \$1,206,008.96. These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection as a result of information developed by the U.S. Postal Inspection Service.
- On March 14, 2005, Lamine Ouattara of East Orange pled guilty to charges of theft by deception and theft of identity in Essex County. Mr. Ouattara had been indicted on April 13, 2004, based on evidence that he had filed 13 false and fraudulent New Jersey gross income tax returns wherein he claimed and received earned income tax credit refunds totaling \$9,311. In addition, evidence was presented that he

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committed theft of identity by using social security numbers and names other than his own. He was scheduled for sentencing on May 23, 2005, after which he faced a deportation hearing. This case was opened based on a referral from the East Orange Police Department and was prosecuted by the Essex County Prosecutor's Office.

- On March 16, 2005, in Freehold, a Monmouth County Grand Jury returned an indictment of Fred Harari, 42, of West Long Branch, New Jersey, Murad Kassin, 30, of Oakhurst, New Jersey, and Michael Adjmi, 45, of Eatontown, New Jersey, who are all officers of American Dream Home Furnishings, Inc., which operated retail furniture stores in Howell and Ocean Townships. The indictment charges that between August and December 2002 the three corporate officers defrauded Citifinancial Retail Services, which provided financing for purchases made by American Dream Home Furnishings' customers, of \$900,000 by accepting payment for furniture which had not been delivered, and that between January and April 2003 the corporate officers failed to file sales and use tax returns, and collected and failed to turn over sales and use tax. This case was a joint investigation between OCI and the Monmouth County Prosecutor's Office, which presented the matter to the grand jury.
- On March 18, 2005, Harvey Schneider, Jr., the responsible party for Shore Transmissions,

LLC, was sentenced to a five-year term of probation, ordered to make restitution to the Division in the amount of \$46,271.04, and signed a civil consent judgment in favor of the Division. The sentencing stemmed from the April 2, 2003, indictment of Harvey Schneider, Jr., and Shore Transmissions, LLC, by a State Grand Jury on various third-degree charges of theft by deception, theft by failure to make required disposition of property received, misapplication of entrusted property, failure to file New Jersey sales tax returns, and failure to pay or turn over New Jersey sales tax collected. The charges arose from the operation of a transmission repair business in Point Pleasant by the corporation and Mr. Schneider. In addition to the charges associated with the tax violations, there are also charges associated with consumer fraud wherein Mr. Schneider failed to make repairs, or misrepresented work performed, and fraudulently billed customers. Because Schneider engaged in consumer fraud, this case was investigated jointly by OCI and the New Jersey Division of Consumer Affairs' Office of Consumer Protection. Subsequent to the indictment, Mr. Schneider fled New Jersey but was arrested in New York and extradited here for trial. He pled guilty to all six counts of the indictment on January 11, 2005. The case was prosecuted by the Division of Criminal Justice.

- One hundred eighty-four (184) complaints alleging tax evasion were evaluated from January through March 2005 in the Office of Criminal Investigation.

- During the same period, one hundred fourteen (114) charges were filed in court and twenty-six (26) arrests were made in thirty-six (36) cases involving violations of the Cigarette Tax Act. A total of 16,040.1 cartons of untaxed cigarettes, having a total value of \$998,016.15 and including 237.5 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

Collection and Payment — All businesses required to collect the 9-1-1 system and emergency response fee must register to do so and must file quarterly returns (Form ERF-100) for each calendar quarter even if no fees were due for that particular quarter. Returns are due on or before the 20th day of the month following the close of the calendar quarter and must be filed by phone. The Division will not accept paper returns. There is no charge for filing 9-1-1 system and emergency response fee returns by phone.

In addition to filing Form ERF-100 electronically, quarterly payments must be made electronically either by electronic check (e-check), credit card, or electronic funds transfer. E-check payments can be made during the phone call when filing Form ERF-100 through the business paperless telefiling system. Credit card payments can be made by calling 1-800-2PAYTAX toll-free or online at www.officialpayments.com after completing the telephone filing and receiving a confirmation number. Payments made by credit

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card are subject to a convenience fee of 2.5% of the tax liability paid directly to Official Payments Corporation. Taxpayers who choose to pay by electronic funds transfer (Automated Clearing House debit or credit) must first [enroll](#) with the Division of Revenue. Enrollment is not required prior to making e-check or credit card payments.

More information about the electronic payment options is available at www.state.nj.us/treasury/taxation/payelect.shtml

**Corporation Business Tax
Net Operating Loss Deduction** —

Legislation enacted on June 29, 2004, (P.L. 2004, c.47), allows for a limited net operating loss (NOL) deduction for privilege periods beginning during calendar years 2004 and 2005. The deduction permits a reduction of entire net income by up to 50%. To the extent that any NOL is disallowed by reason of this limiting provision, the date on which the disallowed deduction would otherwise expire is extended by a period equal to the period of disallowance.

An NOL originating in 2002 may be carried over for use beginning in 2004, subject to the limitations referenced above. The deduction for an NOL carryover is prohibited for periods beginning in calendar years 2002 and 2003.

NJ QSSS Filing — To maintain the separate entity principle, every New Jersey Qualified Subchapter S Subsidiary (QSSS) must file Form CBT-100S and pay the minimum tax of \$500 as required under N.J.S.A. 54:10A-5(e). For a taxpayer that is a member of an affiliated or controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the amount of minimum tax is \$2,000.

Further, N.J.A.C. 18:7-3.4(i) provides: If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are also required to file returns with New Jersey. Such returns shall reflect the minimum tax.

The parent corporation (a New Jersey S corporation) must consent to taxation by New Jersey by filing a Form CBT-100S which includes the assets, liabilities, income, and expenses of the QSSS. Failure of the parent to either consent or file Form CBT-100S for a period will result in the denial of the New Jersey QSSS status and the subsidiary will be subject to taxation in New Jersey as a C corporation.

S Corporations — When a corporation elects to register as a New Jersey S corporation, in order for the election to be valid, every shareholder of the corporation must consent to the election and the jurisdictional requirements as detailed in Part II of the New Jersey S corporation election form (CBT-2553). The corporation, in turn, consents to the election and the assumption of any tax liabilities of any nonconsenting shareholders who were not initial shareholders as indicated in Part III of Form CBT-2553.

When a nonresident shareholder of an S corporation that has become a New Jersey S corporation does not consent to the election, the S corporation is required to withhold gross income tax from that shareholder's pro rata share of S corporation income. Payments made by the S corporation on the shareholder's behalf will be reported on Line 4, Part II, of Schedule NJ-K-1 which is part of Form CBT-100S. These payments must be included as estimated payments on the nonresident shareholder's New Jersey income tax return (Form NJ-1040NR or Form NJ-1041).

S Corporation Dissolution — Once a corporation has elected to register as a New Jersey S corporation and the election has been accepted, the corporation remains a New Jersey S corporation as long as it is a Federal S corporation. The filing deadline for a letter of revocation is on or before the last day of the first tax year of the election. To terminate New Jersey S corporation status after the first year, a corporation must terminate its Federal S corporation status. Therefore, an S corporation

Current Amnesty Programs

Indiana is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

IN Sep 15 – Nov 15 www.in.gov/dor/amnesty/

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that elected New Jersey S corporation status two or three years prior cannot revoke its New Jersey S corporation status without first terminating its Federal S corporation status.

Cosmetic Medical Procedures Gross Receipts Tax

Exempt Organizations — The Division responded to a question regarding whether hospitals that are deemed to be “exempt organizations” within the meaning of N.J.S.A. 54:32B-9(b) are required to collect the cosmetic medical procedures gross receipts tax pursuant to N.J.S.A. 54:32E-1(a). (Note that while the Act itself does not specify a short title, it is being commonly referred to as the “Cosmetic Medical Procedures Gross Receipts Tax Act.”) Despite similarities (including tax rate, time for quarterly filing, and the obligation of the seller of taxable items to collect the tax from the recipient of the taxable services, goods, and occupancies), the cosmetic medical procedures gross receipts tax is entirely separate from the sales tax, and the act that imposes it is separate and distinct from the Sales and Use Tax Act.

N.J.S.A. 54:32B-9(b), which is part of the Sales and Use Tax Act, provides an exemption for nonprofit organizations organized and operated exclusively for certain purposes. This provision applies only to sales and use tax, that is, the taxes imposed under N.J.S.A. 54:32B-1 et seq., known as the “Sales and Use Tax Act.” N.J.S.A. 54:32E-1 (Cosmetic Medical Procedures Gross Receipts Tax Act), on the other hand, does not include any provision exempting specific types of providers. It also does not contain any provision incorporating by reference the exempt organization provision or any of the other exemption provisions that are part of N.J.S.A. 54:32B-1 et seq.

Hospitals that are 501(c)(3) organizations for Federal income tax purposes and which have been granted exempt organization status for sales and use tax purposes under N.J.S.A. 54:32B-9(b) are not exempt from the tax collection requirements of the Cosmetic Medical Procedures Gross Receipts Tax Act. N.J.S.A. 54:32E-1. They must, therefore, collect tax from patients on cosmetic medical procedures and related goods and occupancies that are subject to the tax imposed under this new tax law.

Multiple Taxes

Partnership Withholding and Millionaire’s Tax — The withholding for out-of-State corporate and non-corporate partners is based on distributed and undistributed taxable income. The nonresident partner withholding rate is 9% for corporate partners and 6.37% for unincorporated partners subject to the gross income tax. Withholding is based on the partner’s share of “entire net income” multiplied by the partnership’s New Jersey allocation factor computed under the corporation business tax, rather than partnership rules. The corporate partner will still be subject to the partnership corporation business tax payment provisions even when the corporate partner has nexus with New Jersey, unless the partner has a bona fide office in New Jersey consistent with N.J.S.A. 54:10A-6.

The nonresident withholding tax is set forth at N.J.S.A. 54:10A-15.11(a) which states that: “A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period,

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**Enforcement Summary Statistics
First Quarter 2005**

Following is a summary of enforcement actions for the quarter ending March 31, 2005.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	3,630	• Seizures	72
Total Amount	\$34,602,315	• Auctions	1
• Jeopardy Assessments	275	• Referrals to the Attorney General’s Office	386

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.shtml



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remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.”

Therefore, as stated in N.J.S.A. 54:10A-15.11(a), the highest partnership nonresident withholding rate for individuals is 6.37%. The partnership nonresident withholding rate will remain at 6.37% unless the statute is amended to provide for a higher withholding rate.

Sales and Use Tax

Contract Occupancies — The Sales and Use Tax Act defines “occupant” as a person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use, or other agreement. N.J.S.A. 54:32B-2(1). A “permanent resident” is any occupant of any room or rooms in a hotel for at least 90 consecutive days. N.J.S.A. 54:32B-2(m).

The Division is of the opinion that when a company, such as an airline, contracts up front for a room for at least 90 days, no sales tax should be

charged regardless of the fact that different employees occupy the room(s) each night. A written contract with the airline is unnecessary; in order to receive the exemption they just have to meet the 90-day continuous stay requirement. If the length of occupancy is uncertain at the outset and the room is rented on a weekly or monthly basis, then sales tax should be charged. Once the continuous occupancy reaches 90 days, the occupant can file a Claim for Refund (Form A-3730) with the Division, which can be obtained by calling our Customer Service Center at 609-292-6400 or from the Division’s Web site at www.state.nj.us/treasury/taxation/pdf/other_forms/sales/a3730.pdf Please note that a sales tax exemption certificate from the company is unnecessary. □

In Our Courts

Cash Business Audits

Mark-On Analysis – Luigi II Pizza Restaurant and Luigi Corsaro, et al. v. Director, Division of Taxation, decided March 31, 2005; Tax Court Nos. 004439-2000 and 004440-2000.

Mr. Luigi Corsaro owned and operated Luigi’s Pizza, a restaurant that sold pizzas, subs, pasta dishes, and other dinners. Pursuant to an audit, the Division increased the corporation’s gross sales and thereby assessed corporation business tax (CBT), sales and use tax (S&U), and litter control tax against the corporation as well as individual gross income tax against Mr. Corsaro and his spouse. The Division also issued a determination that Mr. Corsaro was a responsible person and therefore liable for the sales and use tax and gross income tax withholding

liabilities of the corporation. Luigi’s Pizza, Mr. Corsaro, and his spouse appealed the Division’s assessments to the Tax Court directly from the audit determination.

In the process of auditing Luigi’s Pizza, the auditor requested Luigi’s Pizza’s books and records. Although purchase records were available, Luigi’s Pizza was unable to supply guest checks, log books, register receipts, etc. Consequently, the auditor determined that there was insufficient information available to conduct an audit and reconstructed Luigi’s Pizza’s gross receipts based upon a mark-on analysis of the food and drink purchases. The auditor used the reconstructed gross receipts to adjust Luigi’s Pizza’s reported gross receipts on their CBT, S&U, and litter control tax returns. In turn, Luigi’s Pizza’s CBT income was also increased. These adjustments also resulted in the imposition of an individual gross income tax assessment against Mr. and Mrs. Corsaro.

The Court found that Luigi’s Pizza did not maintain books, records, or any information useful to the Division that would confirm or deny their allegations and testimony. Although it retained bank deposit and purchase information, Luigi’s Pizza failed to supply guest checks, register receipts, etc. The Court ruled: “Without actual books and records to support their claims, the presumption of correctness that attaches to the Director’s assessment in this case is not overcome.” Consequently, the Court upheld the Division’s assessments as well as the determination that Luigi Corsaro was a responsible person of Luigi’s Pizza.

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Markup Analysis – Yilmaz, Inc. v. Director, Division of Taxation, decided April 1, 2005; Tax Court No. 000240-2003.

Plaintiff (Yilmaz) operated a restaurant and bar known as the Bridgewater Pub. Pursuant to an audit, the Division increased the corporation's gross sales utilizing a markup method and thereby issued corporation business tax (CBT) and sales and use tax (S&U) assessments against the corporation. The auditor also assessed gross income tax withholding (GIT-ER). Yilmaz protested the audit assessment to the Division's Conference and Appeals Branch (CAB) where several minor adjustments were made to the markup analysis that both increased and reduced the markup but reduced the S&U and CBT assessments overall; however, the conferee also denied Yilmaz's deduction for trucking expenses claimed on the CBT returns due to Yilmaz's failure to substantiate the deduction. Yilmaz then appealed CAB's final determination to the Tax Court contending that the Division utilized unreasonable and arbitrary assumptions in the markup analysis and failed to account for its inventories.

In Court it was determined that Yilmaz did not use guest checks and did not retain cash register tapes for any portion of the audit period. Allegedly, sales information from the cash register tapes was entered each night into a spreadsheet program after the cash registers were closed by Yilmaz. Plaintiff's accountant testified that the spreadsheet program became corrupted and consequently the information it contained was not reliable. Therefore, the accountant used the bank deposit

method to determine CBT sales after making adjustments for loans, intercompany transfers, and cash payouts.

After testing Yilmaz's reported cost of goods sold for one tax year to determine if they were reported correctly, the auditor opined that Yilmaz had underreported CBT purchases by a ratio of 1.0516 of audited purchases to reported CBT purchases. The difference was entirely attributable to purchases of produce and cigarettes for which Yilmaz did not retain receipts. This ratio was applied to all other years under audit and increased Yilmaz's cost of goods sold (COGS) for each year. The auditor did not account for inventories in the computation of COGS because Yilmaz neither reported CBT inventories nor did he have any inventory records.

The auditor opined that Yilmaz's books and records were insufficient to verify reported gross sales and therefore resorted to a markup method to verify reported sales. Essentially, the auditor marked up the cost of food and beverages obtained from purchase invoices based upon their selling prices to determine a markup by category. Then the auditor multiplied the category markup by the amount of category purchases to determine the total gross sales for that year and an overall markup. Using the overall markup, the auditor recomputed the S&U and CBT gross sales for each year of the four-year audit period.

While comparing payroll to sales, the auditor concluded that payroll was insufficient to support the audited sales. Therefore, the auditor applied the ratio of reported wages and salaries to reported sales to determine audit wages and salaries

based upon audited sales for each year of the audit period.

At trial, Yilmaz contested the amount of the Division's allowances for happy hour sales, specials, coupons, discounts, etc.; however, Yilmaz offered no books, records, or other documentation as to the correctness of its own claimed amounts. Yilmaz also contested the Division's denial of the trucking expense on the CBT return based upon Yilmaz's accountant's testimony that he calculated the expense based upon verbal information provided by Mr. Yilmaz. Apart from testimony, Yilmaz could not produce any evidence as to the salaries and wages paid to its employees.

The Court referenced case law ruling that the burden of establishing that the Division's assessment is incorrect is on the taxpayer and that a taxpayer's naked assertions are insufficient to overcome the Division's presumption of correctness. Moreover, the Court stated that cumulative naked assertions are also insufficient to overcome the presumption even as here where the accountant's testimony corroborated Yilmaz's testimony. The Court ruled that statutes and regulations require that the taxpayers must retain records for the statute of limitations period and referred to *Alpha I* where the Tax Court ruled that a taxpayer who destroys records before the statute of limitations expires places itself in jeopardy for additional tax assessments.

The Court concluded that the Division is not required to establish that it used the most reasonable means to independently verify tax liabilities. The Division is permitted wide

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latitude to determine the tax due from such information as may be available, including external indices. Addressing Yilmaz’s contention that the assessment’s reasonableness was not supported by Yilmaz’s lifestyle, the Court responded that it is within the Division’s discretion to determine whether it is cost-effective to perform a lifestyle investigation into the owners of every bar and restaurant that appear to have under-reported its sales and income. Furthermore, the Court ruled that the Division was not required to guess the amount of plaintiff’s inventory.

The Court affirmed the Division’s final determination holding that Yilmaz failed to overcome the Division’s presumption of correctness. In a case involving only factual issues and the Division’s methodology, such as the audit of a cash business, the presumption of correctness can only be overcome by cogent evidence that is “definite, positive, and certain in quality and quantity to overcome the presumption” focusing on the reasonableness of the underlying data and the methodology used. The Court ruled that although proof of an aberrant methodology will overcome the presumption of correctness, proof of an imperfect methodology will not overcome it.

**Corporation Business Tax
Alternative Legal Theory –
Chemical New Jersey Holdings, Inc.
v. Director, Division of Taxation,**
decided December 17, 2004; Appellate Division No. A-5175-02T2.

In 1992 and 1993, plaintiff (Chemical) filed corporation business tax returns as an “investment company” on September 23, 1993, and

October 13, 1994. In 1999, the Division assessed additional corporation business tax based on Chemical’s filing as a common corporation after it determined that Chemical failed to qualify as an investment company. Chemical appealed timely to the Tax Court in February 2001 on the basis that it was denied its status as an “investment company.” Approximately one year later, Chemical filed an amended complaint retracting its initial claim and alleged that its filing status should be as a “financial business corporation.” Chemical never filed returns as a “financial business corporation” for either year at issue. The Tax Court held that Chemical was not entitled to change its filing status from an “investment company” to a “financial business corporation” more than seven years after it filed its original returns because the statute of limitations had run on amending the original returns and because the business decision rule bound it to its initial filing status.

The Appellate Division found that the Tax Court properly concluded that Chemical’s choice to file as an “investment company” rather than a “financial business corporation” was a business decision; however, the Appellate Division opined that the business decision rule does not bar challenges to the assessed tax based upon these circumstances. Furthermore, the Appellate Division opined that the issue is the propriety of the Division’s assessment, not whether plaintiff may re-file or seek a refund. The Appellate Division reasoned that the Division’s denial of Chemical’s filing status as an “investment company” was the basis of the Division’s assessment and to resolve this issue Chemical’s actual corporate status needed to be established. Noting that alternative legal theories may be presented at Tax Court because it is a trial *de novo*, the Appellate Division reversed and remanded the case to the Tax Court.

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Gross Income Tax

Gain on Sale of Rental Real Estate Not Held By a Business Entity – *Moroney v. Director, Division of Taxation; Denitzio v. Director, Division of Taxation*, decided March 14, 2005; Appellate Division, Nos. A-3424-03T1 and A3423-03T1.

Both taxpayers sold property that was rental real estate not owned by a business entity. (See [New Jersey State Tax News, Summer 2004](#).) In determining gain or loss in this situation, the Division assessed tax based upon its announcement in the *State Tax News* that depreciation would reduce the adjusted basis of the property only to the extent that annual depreciation offset annual gross income before considering any other expenses or deductions. This calculation resulted in limiting basis reductions to depreciation that resulted in tax benefits to the taxpayer. The Division's announcement was in response to the New Jersey Supreme Court's decision in *Koch v. Director, Division of Taxation*, 17 N.J. Tax 321 (A.D. 1997), certification granted 152 N.J. 12, 702 A.2d 351, reversed 157 N.J. 1, 722 A.2d 918, that tax could not be imposed unless there is recovery of a past tax benefit or an accession to wealth and therefore that a partner's basis in his partnership interest could not be reduced by nondeductible partnership losses.

In calculating gain (loss) from the disposition of property in the instant cases, the Tax Court ruled that basis could only be reduced by depreciation to the extent that depreciation could offset income remaining after first deducting operating expenses (actual out-of-pocket expenses as opposed to accounting expenses such as depreciation) against gross income. The Tax Court determined that although N.J.S.A. 54A:5-1(c) authorized the Division to assign priority and assignment to deductions for S corporations, that otherwise there was no statutory language applicable to the sale of other types of property, such as rental property. Also, the Court found that the Division's assignment of a first priority deduction to depreciation produced a result that was both contrary to *Koch* and inconsistent with the Internal Revenue Code.

The Appellate Division affirmed the Tax Court's decision stating that it was satisfied that the *Koch* imposition of a tax on economic gain, rather than fictitious income, provided sufficient support to calculate the amount of unused depreciation by first applying actual out-of-pocket expenses to income before considering an accounting deduction such as depreciation.

Refund Claim Raised in Complaint – *William B. Smith and Mary Ann Smith v. Director, Division of*

Taxation, decided January 27, 2005; Tax Court No. 001665-2000.

Plaintiffs (Smiths) filed their 1994 joint New Jersey gross income tax return on April 15, 1995, and therein reported income from the gain on the husband's disposition of his interest in a limited partnership. On January 27, 1998, the Division issued a notice of deficiency that assessed tax on unreported 1994 partnership income from the cancellation of a mortgage on property in which the partnership held an interest. Although the Smiths challenged this issue, the Division's January 10, 2000, final determination upheld the assessment.

The Smiths filed a complaint in Tax Court on April 10, 2000, contesting the Division's final determination and, as a separate count, claimed for the first time that they were entitled to a refund on the reported income from the husband's disposition of his partnership interest due to the New Jersey Supreme Court's January 14, 1999, decision in *Koch v. Director, Division of Taxation*, 17 N.J. Tax 321 (A.D. 1997), certification granted 152 N.J. 12, 702 A.2d 351, reversed 157 N.J. 1, 722 A.2d 918. The Division moved to dismiss the refund claim on the grounds that the claim was untimely.

As a general rule, under N.J.S.A. 54A:9-8(a), refund claims must be filed within three years from when the return was filed or two years from when the tax was paid, whichever date is later. However, where a taxpayer is issued a notice of deficiency, N.J.S.A. 54A:9-8(e) and 9-9(b) permit a taxpayer's assertion of a claim of overpayment or refund that might otherwise be time-barred under the general statute

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of limitations provision of N.J.S.A. 54A:9-8(a). Specifically, 9-8(e) provides:

(e) Effect of petition to director. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 54A:9-2 and if the taxpayer files a timely petition with the director under section 54A:9-9, he may determine that the taxpayer has made an overpayment for such year (whether or not he also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund shall be allowed or made, except —

(1) As to overpayments determined by a decision of the director which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the director which has become final; and

(3) As to any amount claimed as a result of a change or correction described in subsection (c).

The Division contends that the statute's extension of the statute of limitations concludes with the final administrative decision. The Smiths claim that the statute read in conjunction with N.J.S.A. 54:9-10(e) suspends the running of the period for filing a refund claim until the Director's decision becomes final, which is not until completion of the judicial proceedings where a complaint is filed.

Upon analyzing the statutes, the Court found the Division's position to be persuasive. The Court opined that the statutes are reasonably understood to provide an administrative review process for a deficiency assessment concerning all questions regarding the gross income tax liability for a given period, which is then subject to judicial review. Consequently, the Court determined that the plaintiffs' refund claim was untimely under the statute as the claim was not presented before the final administrative determination. The Court reasoned that the taxpayers' interpretation would create an anomaly. If the statute suspended the running of the period to file a refund claim until after judicial review proceedings concluded, then the statute of limitations would begin to run again and presumably be subject to a separate administrative determination and judicial review.

The Court noted that even under a claim of equitable recoupment or alternative legal theory that the claim for refund would have to be dismissed because both equitable recoupment and alternative legal theory require that the refund claim must arise out of the same transaction as the assessment. Here, the refund claim on *Koch* grounds related to the disposition of the partnership interest, which is distinct and independent from the tax assessment on unreported income from mortgage cancellation.

Therefore, the Court dismissed the count of the complaint relating to the refund claim because it was not presented to the Division before the Division's final administrative determination.

Property Tax Relief Programs

Verification of Eligibility for the Homestead Rebate – *Susan Clayton v. Director, Division of Taxation*, decided December 22, 2004; Tax Court No. 000914-2004.

Plaintiff (Clayton) filed a timely application for a 2002 homestead rebate as a tenant. The Division requested written verification of Clayton's status as a tenant. Clayton provided the Division with a letter, purporting to be signed by her landlord, stating that Clayton resided at the claimed residence from December 1, 2001, till July 18, 2003. The Division compared the landlord's signature on this document with the landlord's signature on the landlord's gross income tax return and determined that the signatures did not match. Therefore, the Division requested additional documentation including the rental agreement covering the 2002 calendar year. Clayton forwarded a rental agreement for the period of April 2000 to March 31, 2001, a letter from the landlord with the landlord's name handprinted, and copies of preprinted money receipts with the words indicating the landlord's name and Clayton's name.

N.J.S.A. 54:4-8.62 provides that the Division may require verification of eligibility for the rebate. The Court opined that the Division had ample reason to question the authenticity of the documents, as the landlord's signature on the rental agreement did not match the signature on the letters and the handwriting on the receipts was different than the handwriting on the documents signed by the landlord. Therefore, the Court upheld the Division's denial of



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Clayton's 2002 homestead rebate, finding that the Division reasonably concluded that Clayton did not establish her entitlement to the rebate.

Sales and Use Tax

Food For Consumption On The Premises Where Sold – *Campo Jersey, Inc. v. Director, Division of Taxation*, decided May 10, 2005; Tax Court No. 005483-2002.

Plaintiff (Campo), a franchisee of Mrs. Fields Cookies, sold cookies and brownies at Giants Stadium and the Brendan T. Byrne Arena pursuant to a license agreement with Harry M. Stevens Inc. of New Jersey, who held the sole concession rights to sell food and beverages at the Meadowlands Sports Complex from the New Jersey Sports and Exposition Authority (Authority). The subcontract between Campo and Stevens provided that Campo was a licensee, and not a lessee, and that no real or personal property was leased to Campo. Campo sold the brownies and cookies at all events, concerts, and games where admission fees were charged, unless otherwise provided by the subcontract, but otherwise did not have regular hours for conducting business.

During the years at issue and pursuant to the terms of the contract, Stevens trained, provided, and compensated the employees used in Campo's operations. Campo had a baking facility in one area containing equipment that was not permanently installed, but did not sell any products from that area. Mrs. Fields products were shipped to the Meadowlands Complex where they were stored in a freezer that is not owned by Campo. Stevens' em-

ployees removed the products from the freezer, baked the cookies and brownies, washed the baking sheets and utensils, cleaned the baking area, and transported the cookies and brownies to approximately 30 free-standing mobile carts owned by Campo. These carts were plugged into electrical outlets in order to maintain the cookies and brownies at the ambient temperature and illuminate the Mrs. Fields logo. The carts were not assigned to permanent locations and Campo was not permitted to maintain or repair the carts at the Meadowlands Complex.

Stevens' employees sold the cookies and brownies from the carts in unsealed wax bags. Customers purchased either two cookies or one brownie per bag with each bag selling for \$3.50. Sales tax was not charged on these sales. At the end of the event, a Campo employee collected the receipts from Stevens' employees.

The Division assessed sales tax on the sales of cookies and brownies pursuant to N.J.S.A. 54:32B-3(c)(1), which imposes sales tax on receipts of all food sales for consumption on the premises where sold. Campo claimed that all food was sold for consumption off the premises because Campo had no premises according to the license agreement. Furthermore, Campo claimed that its customers did not eat the food on the carts or even next to the carts but rather ate them at other areas.

In this case of first impression, the Court determined that the issue was whether the word "premises" should be defined broadly as the total space and facilities in or on which the vendor conducts his business

(See N.J.A.C. 18:24-12.2) or whether it should be construed narrowly to require the vendor control the premises where the vendor is located, as Campo contended it does not as a licensee. The Court commenced its analysis with the query of whether the food would be taxable if the Authority, as owner or operator, sold food to patrons at the Meadowlands Sports Complex. The Court found that the Authority would be obligated to collect sales tax because the food would be sold on the Authority's premises and no exemption applies to this transaction. The Court reasoned that if control of the premises was required for taxability that vendors could decide per agreement whether a sales transaction would be taxable and that subjectivity to taxability cannot be contracted away.

After determining that the plain meaning of the word "premises" is the total space in or on which a vendor conducts his business, the Court then undertook to determine whether the plain meaning of the word comported with the legislative intent. The Court noted that N.J.S.A. 54:32B-12(b) states that there is a presumption that all receipts for property or services of any type mentioned in N.J.S.A. 54:32B-3(c) are taxable. Therefore, the Court found that a reasonable interpretation of N.J.S.A. 54:32B-3(c) is that it was intended to subject to tax a sale of food enhanced with a service performed for the customer. This service may be the preparation of food or making the food available at a site where the customer wishes to consume it, or both. Consequently, the Court upheld the Division's assessment. □



In Our Legislature

Administration

Enhanced Debt Collection Procedures — P.L. 2005, c.124, enacted July 2, 2005, and effective immediately, provides enhanced procedures for the Department of Treasury in the collection of certain debts owed to a New Jersey State department or agency.

Cigarette Tax

Facilitating Tax Collection — P.L. 2005, c.85, enacted on May 4, 2005, and effective November 1, 2005, requires that retail sales of cigarettes may be made only when the purchaser is in the physical presence of the seller, unless the seller has fully complied with certain requirements, including collecting or verifying payment of applicable State cigarette and sales and use taxes and verifying certain information about the purchaser.

Corporation Business Tax

Uncoupling Certain Qualified Production Activities Income — P.L. 2005, c.127, enacted July 2, 2005, and effective immediately, applicable to privilege periods beginning after December 31, 2004, for corporation business tax purposes and to taxable years beginning after December 31, 2004, for gross income tax purposes, amends the Corporation Business Tax Act and the Gross Income Tax Act to disallow a deduction for certain qualified production activities income that was provided for Federal income tax purposes under the American Jobs Creation Act of 2004. The uncoupling does not apply to gross receipts from qualifying production property manufactured or produced by the taxpayer, but *will* apply to the activities that are described in Section 199 of the IRC, and *will* apply to

qualified production property grown or extracted by the taxpayer.

Environmental Taxes

Repeal of Air Toxics Surcharge — P.L. 2005, c.141, enacted July 7, 2005, and effective immediately, repeals the air toxics surcharge imposed under P.L. 2004, c.51 (N.J.S.A.13:1D-59 et seq.), and applies retroactively to calendar year 2004 and calendar years thereafter.

Gross Income Tax

Multistate Reciprocal Personal Income Tax Set-Off Program — P.L. 2005, c.125, enacted July 2, 2005, and effective immediately, authorizes the implementation of a multistate reciprocal personal income tax set-off program which allows the Director of the Division of Taxation to withhold another state's tax claims from New Jersey gross income tax refunds if the other state withholds New Jersey gross income tax claims from its personal income tax refunds.

Pension and Other Retirement Income Exclusions — P.L. 2005, c.130, enacted July 2, 2005, and effective immediately for taxable years beginning on or after January 1, 2005, eliminates the New Jersey gross income tax pension exclusion and other retirement income exclusion for certain taxpayers. The exclusions remain available for taxpayers that have gross income of not more than \$100,000.

Insurance Premiums Tax

Taxable Premiums Cap — P.L. 2005, c.128, enacted July 2, 2005, and effective immediately for periods beginning January 1, 2005, amends the maximum tax rule capping taxable premiums at 12.5% of total premiums for any company whose taxable premiums in New

Jersey exceed 12.5% of its total taxable premiums by excluding all health service corporations established pursuant to the provisions of P.L. 1985, c.236 (N.J.S.A.17:48A-1 et seq.) from the coverage of the cap. The law also imposes the insurance premiums tax on all premiums of health services corporations and on any life, accident, or health insurance corporation which a health services corporation owns stock in, controls, or otherwise becomes affiliated with.

Property Tax Relief Programs

Increase in Homestead Rebate Appropriations — P.L. 2005, c.121, enacted July 2, 2005, and effective immediately, makes a supplemental appropriation of \$400,000,000 to pay homestead rebate claims beginning July 1, 2005. See [Budget Funds 2004 FAIR Rebates](#), page 2.

Sales and Use Tax

Major Changes to Sales and Use Tax Act — P.L. 2005, c.126, enacted July 2, 2005, and effective October 1, 2005, conforms the State's Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The law allows New Jersey to join with 42 other states and the District of Columbia to continue the task of modernizing the administration of sales and use tax by adopting common definitions and uniformly understood tax principles.

The law makes amendments and supplements to the New Jersey Sales and Use Tax Act that are necessary to make the laws conform to the terms of the Streamlined Sales and Use Tax Agreement. Significant areas of the Act that were changed include sections on leasing, direct mail operations, sales of food and clothing, and deductions for bad debts.

□

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

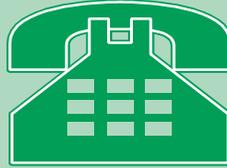
[2004](#) [2005](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

- Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2004](#) [2005](#)



important phone numbers

Customer Service Center	609-292-6400
Automated Tax Information System	1-800-323-4400
.....	609-826-4400
FAIR Rebate Hotline	1-888-238-1233
Property Tax Reimbursement Hotline	1-800-882-6597
Earned Income Tax Credit Hotline	609-292-6400
NJ TaxFax	609-826-4500
Business Paperless Telefiling System	1-877-829-2866
Speaker Programs	609-984-4101
Alcoholic Beverage Tax	609-984-4123
Corporation Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director’s Office	609-292-5185
Inheritance and Estate Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576

New Jersey State Tax news

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More Taxpayers Choosing Paperless Filing

Electronic filing — either online or by phone — is replacing the traditional paper return for many New Jersey business taxpayers as well as for individuals filing New Jersey income tax returns.

Electronic filing is faster, easier, and more secure than paper. Taxpayers have fewer chances to make mistakes, and they receive immediate confirmation that their return and payment have been submitted. The State benefits from electronic filing in reduced processing and mailing costs.

Individual Income Tax

The number of individual taxpayers choosing to file paperless income tax returns has grown exponentially since the option was first offered for tax year 1995. The number of returns filed electronically for 2004 had reached 1.7 million by the April 15 filing deadline. This represents a 48% increase over 2003, when the number of paperless returns filed first topped 1 million.

New Jersey's three user-friendly "FastFile" systems include NJ TeleFile, NJ WebFile, and NJ ELF, which enable taxpayers to submit paperless returns by phone, via the Internet, or through use of a computer software package. Filers who use NJ FastFile receive their refunds more quickly and can choose to have

their refunds directly deposited into a bank account, an option which is not available when filing a paper return. For more information, visit www.njfastfile.com

Business Taxes

Paperless filing for business taxes has shown strong growth over the past year as well, in part because electronic returns and payments are now mandatory in certain cases. Most sales and use tax filers, certain partnerships, as well as all taxpayers responsible for filing returns for: domestic security fee, State

continued on page 2



important phone numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
FAIR Rebate Hotline	
Homeowners	1-888-238-1233
Tenants	609-292-6400
Property Tax Reimbursement	
Hotline	1-800-882-6597
Earned Income Tax Credit	
Hotline	1-888-895-9179
NJ TaxFax	609-826-4500
Business Paperless Telefiling	
System	1-877-829-2866
Speaker Programs	609-984-4101
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals, & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax	
Refunds	609-292-7018
Public Utility Tax	609-633-2576



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hotel/motel occupancy fee and municipal occupancy tax, motor vehicle tire fee, cosmetic medical procedures gross receipts tax, and 9-1-1 system and emergency response fee are required to file and pay electronically. The Division encourages all business taxpayers to file and pay electronically whenever possible, even if they are not yet required to do so.

Online filing for sales and use tax returns was introduced in 1997 for a limited number of filers. The system was gradually expanded so that now anyone filing either a monthly (Form ST-51) or quarterly (Form ST-50) sales and use tax return can file and pay online.

In December 2003 the Division began to phase out paper sales and use tax returns and notified certain taxpayers that they were required to file and pay electronically. At the same time, the Division added sales and use tax returns to the Business Paperless Telefiling System so that taxpayers would be able to file by phone as well as online. The phase-out of paper sales and use tax returns is continuing, and beginning with monthly returns for August 2005 (due September 20, 2005), *all* taxpayers will be required to file their ST-50/51 returns and make the related payments electronically.

In January 2004 some 20,000 businesses filed their 4th quarter sales and use tax returns either online or by phone. By April 2005 that number had increased fivefold to over 107,000.

Employers and others who withhold New Jersey gross income tax are also filing electronically with increasing frequency. The number of

Form NJ-927/NJ-927-W withholding returns filed online more than doubled between January 2004 when almost 10,000 returns were filed online and April 2005 when over 27,000 online returns were filed. Plans are being made to implement mandatory paperless filing and payment for employer withholding returns, and telefiling (by phone) will also be introduced.

An overview of the paperless filing and payment methods available to business taxpayers can be found in the Division of Revenue's [Guide to Electronic Filing and Payment Services](#).

To file online or to obtain worksheets and instructions for filing by phone through the Business Paperless Telefiling System, go to: www.state.nj.us/treasury/taxation/online.shtml

To file by phone through the Business Paperless Telefiling System call 1-877-829-2866 from a Touch-tone phone. The system currently accepts returns for sales and use tax, domestic security fee, motor vehicle tire fee, cosmetic medical procedures gross receipts tax, and 9-1-1 system and emergency response fee. □

Partnership Filing Requirements

Entities classified as partnerships for Federal income tax purposes that have a New Jersey resident partner or that have income or loss derived from New Jersey sources must file a New Jersey Partnership Return, Form NJ-1065, along with the Partners Directory. Partnerships that have ten or more partners are required to file the return

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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electronically. The return is due on or before the 15th day of the fourth month following the close of each taxable year.

Additionally, partnerships that are not classified as a qualified investment partnership, an investment club, or listed on a United States national stock exchange are required to remit tax pursuant to N.J.S.A. 10A-15.11, which is based upon the nonresident partners' share of New Jersey entire net income. The nonresident partners are then credited with their proportional amount of the tax paid by the partnership. The tax is due on or before the 15th day of the fourth month succeeding the close of each privilege period.

Entities classified as partnerships for Federal income tax purposes, other than investment clubs, that have income or loss derived from New Jersey sources and that have more than two owners are subject to a filing fee. The entity shall make a payment of \$150 for each owner up to a maximum of \$250,000. The filing fee is due on or before the 15th day of the fourth month succeeding the close of each privilege period. An installment payment for the next year equal to 50% of the filing fee is also required at the same time. No installment payment is due in a partnership's final year.

The filing fee, installment payment, and tax are reported on the Partnership Return Voucher, Form PART-100. If you file Form PART-200-T, Partnership Tentative Return and Application for Extension of Time to File, you must still file Form PART-100 when you file Form NJ-1065.

For tax years beginning on or after January 1, 2004, if assets were placed in service on or after January 1, 2004, and the Federal 50% Special Depreciation Allowance or Section 179 expense was deducted, a New Jersey depreciation adjustment is required. The adjustment is calculated on Worksheet GIT-DEP. Worksheet GIT-DEP must be submitted with the partnership return, Form NJ-1065.

The partnership is to furnish all partners with a copy of their New Jersey Schedule NJK-1 on or before the due date of the partnership return (Form NJ-1065). Schedule NJK-1 provides each partner with information regarding that partner's share of partnership income or loss and for nonresidents, the amount of tax paid on their behalf. □

Inheritance and Estate Tax Refunds

R.S. 54:35-10 and N.J.A.C. 18:26-10.12(a) provide that all applications for a refund of inheritance taxes paid are to be made within three years from the date of payment or from the date of any final determination of a court of competent jurisdiction which establishes the fact that the decedent had no legal or equitable interest in the property on which the tax was assessed, whichever is later, but in no event shall a refund be made where such final determination occurs more than 20 years after the date of the decedent's death.

R.S. 54:38-3, N.J.A.C. 18:26-3.9(a), and N.J.A.C. 18:26-3A.12(a) provide that all applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the

Director within three years from the date of payment.

The inheritance and estate tax statutes and regulations provide that the date of payment or a court determination (inheritance tax) is the date that must be used in determining whether an inheritance or estate tax refund request is made in a timely manner.

Example 1

Payment	7/1/01
Return Filed	9/1/01
Notice of Assessment	11/1/01
Refund Request	8/1/04

The refund request would be denied as it was made more than three years after the payment.

Example 2

Payment	9/1/01
Return Filed	4/1/01
Notice of Assessment	7/1/01
Refund Request	8/1/04

The refund request would be accepted for consideration as it was made within three years of the payment.

Example 3

Payment	3/1/01
Payment	9/1/01
Return Filed	3/1/01
Notice of Assessment	7/1/01
Refund Request	8/1/04

The refund request would be accepted for consideration as it was made within three years of a payment. However, the refund would be limited to the amount of the 9/1/01 payment.

Example 4

Payment	7/1/01
Inheritance Tax Return Filed	9/1/01
Notice of Assessment	11/1/01
Court Final Determination – No legal/equitable interest	12/1/01
Refund Request	8/1/04

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inheritance/estate tax - from pg. 3

The refund request would be accepted for consideration as it was made within three years of the date on which the court made a final determination that the decedent had no legal or equitable interest in the property on which inheritance tax was assessed.

After final assessment of the New Jersey inheritance or estate tax has been made, any amount determined to be overpaid will be refunded in the due course of business without the necessity of an Application for Refund being filed provided that the overpayment or court determination (inheritance tax) was made within three years of the date on which the audit is completed by the Division. □

MOTOR VEHICLE TIRE FEE
Out-of-State Auto Dealers

The new motor vehicle tire fee is imposed at \$1.50 per tire on sales of new tires, including those that are a component part of a vehicle sold or leased, if the transaction is subject to New Jersey sales tax. The Division's position is that an out-of-State auto dealer or leasing company registered to collect and remit the use tax on behalf of its New Jersey customers is not required to collect the New Jersey motor vehicle tire fee with respect to motor vehicles sold or leased from a location outside New Jersey. Thus, such out-of-State dealers and lessors can complete and return the Subjectivity Waiver and they will be removed from the taxpayer list. The waiver is available at www.state.nj.us/treasury/taxation/tirefee.shtml □

SALES AND USE TAX
Zero Emission Vehicles

P.L. 2003, c.266 created an exemption from sales tax for sales of zero emission vehicles sold on or after May 1, 2004. "Zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board standards for the applicable model year. The list of qualifying vehicles is available on the Division's Web site at www.state.nj.us/treasury/taxation/zeroemission.shtml

Even without exemption from sales tax, the number of sales of ultra low emission (ULE) vehicles may reach 100,000 for the year 2004 as car manufacturers make "ULE" a standard or low-cost feature in an increasing number of vehicle models. Section 5 of P.L. 2003, c.266 establishes the Low Emission Vehicle Review Commission. One of the functions of the Commission is to make recommendations on any additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or "advanced technology partial zero emission vehicles." □

LOCAL PROPERTY TAX
Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.

- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Board.

May 1-

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.

- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and



assessors' calendar - from page 4

Taxation Director's certification of 2nd class railroad property.

- The tax credit rate is calculated by dividing the total REAP aid by total taxable value of qualified residential property.
- General tax rates certified by County Tax Boards.

May 23-

- Members of the County Board of Taxation shall sign the Table of Aggregates and transmit it to the County Treasurer who shall file, print in its entirety, and transmit certified copy to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- If Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Nine persons passed the September 18, 2004, C.T.A. exam and received Tax Assessor Certificates dated January 1, 2005. They are:

Hudson County: Roxanne Addie Haynes, Jersey City.

Mercer County: Christopher B. Cuccia, Lawrence Township; John P. Greenbaun, Hopewell Township.

Monmouth County:

George D. Lockwood, Aberdeen Township.

Morris County: Ann Marie Obiedzinski, Chester Borough.

Ocean County: Christine E. Allen, Lacey Township; John E. Butow, Point Pleasant Beach Borough; Edward R. Seeger, Jr., Little Egg Harbor Township.

Salem County: Cynthia A. Strang, Elmer Borough.

The next examination is scheduled for September 24, 2005. The deadline to file applications for this exam is August 25, 2005. The filing fee is \$10. For applications, or if you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

Interest 8.00%

The interest rate assessed on amounts due for the period January 1, 2005 – December 31, 2005, will be 8.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%



Criminal Enforcement

Criminal Enforcement over the past several months included:

- As part of a cooperative enforcement effort by the Office of Criminal Investigation (OCI) and the Division of Taxation's Audit Services Branch, OCI conducted inspections of cigarette retailers Watchung Liquors, Inc., in Plainfield, New Jersey, and Sufi & Gupta, Inc., a gas station in Fort Lee, New Jersey, based on information from Audit Services that the subjects had filed 2004 cigarette floor tax returns, but were not licensed to sell cigarettes. Inspections were also conducted at F&M Food Market and at Family Food Center in Camden, and at Chin's Caribbean American Store, Inc., in Irvington after auditors observed contraband cigarettes during floor tax audits. (A floor tax return is required from all cigarette wholesalers and retailers for the purpose of paying the additional tax due on cigarette inventory held on July 1, 2004, when the tax was raised from \$20.50 per carton to \$24 per carton.) OCI investigations resulted in the seizure of

30.9 cartons of untaxed cigarettes, including 27.2 cartons bearing counterfeit New Jersey cigarette tax stamps, and determined that several of the retailers were selling cigarettes without a current license as a result of the License Suppression Project, which ensures that no cigarette or motor fuel industry licenses can be renewed if the applicant has outstanding liabilities in any State tax. The subjects were charged in the appropriate municipal courts.

- On October 1, 2004, in Superior Court – Passaic County, Dipan P. Patel of North Bergen, New Jersey, was sentenced to four years' probation and ordered to pay a fine of \$625 pursuant to his guilty plea to charges of sale of untaxed cigarettes and failing to maintain books and records with intent to evade tax. Patel had been arrested by OCI on January 14, 2004, in Totowa, New Jersey, during a joint investigation with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, in which Patel sold Virginia-stamped and unstamped cigarettes to an undercover operative on two separate occasions.

- On October 8, 2004, Richard J. Nardone, 46, of San Diego, California, pled guilty to charges of filing false and fraudulent New Jersey income tax returns, failure to pay New Jersey gross income tax with intent to evade, and misconduct by a corporate official. Nardone's sister, Donna M. Januik, 51, of Union County, pled guilty to filing false and fraudulent New Jersey income tax returns and failure to pay New Jersey gross income tax with intent to evade. Nardone and Januik were charged via a State Grand Jury indictment returned on February 10, 2004. At the guilty plea hearing, Nardone admitted that between January 1, 1998, and May 31, 1999, he transferred and withdrew large sums of money from his chiropractic business and from related medical treatment, diagnostic, and rehabilitation facilities he owned, operated, or controlled. Nardone and Januik were scheduled to appear on December 3 for sentencing.
- On October 15, 2004, an Appellate Court decision was rendered that is of importance to criminal tax prosecutions. The decision,

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Enforcement Summary Statistics Fourth Quarter 2004

Following is a summary of enforcement actions for the quarter ending December 31, 2004.

• Certificates of Debt:		• Jeopardy Seizures	70
Total Number	3,175	• Seizures	47
Total Amount	\$37,094,859	• Auctions	3
• Jeopardy Assessments	346	• Referrals to the Attorney General's Office	453

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.shtml



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State of New Jersey v. Larry Barasch, explores and defines the burden of proof required in a criminal tax case. The defendant argued that his conviction on a charge of second-degree failure to remit taxes collected or withheld, N.J.S.A. 54:52-15, must be reversed because the jury instructions were faulty. He argued that more specific criminal intent is required, and the jury should have been advised that a crime is committed only if the defendant purposely failed to pay the taxes in order to avoid or evade his responsibilities. When dealing with a failure to collect the tax, as contrasted with the failure to remit the tax after its collection, the Legislature has provided that criminal culpability requires “the intent to evade, avoid, or otherwise not make timely payment of any tax.” The Legislature provides, however, that after the tax is collected criminal culpability requires “purposely failing to turn over the taxes to the Director in the manner and at the time prescribed by law.” Accordingly, criminal conduct occurs when the person “purposely fails to turn over the taxes to the Director in the manner and at the time prescribed.” It is not necessary for the State to prove that the failure to remit the collected or withheld tax was with the purpose to evade or avoid payment.

- On October 22, 2004, the president of a Linden, New Jersey, luxury used car dealership, Hisham Sadek, was sentenced to a five-year term of probation and ordered to make restitution in the amount of \$340,200. The

sentencing was the result of Mr. Sadek’s having pled guilty to charges arising from a scheme uncovered by the Office of Criminal Investigation to evade turning over \$350,000 in sales tax collected from customers and filing fraudulent tax returns under the New Jersey Tax Amnesty Program indicating no liability. The dealership, Auto Village, Inc., and Mr. Sadek had failed to file New Jersey sales tax returns for the year 1994. Mr. Sadek instructed his Certified Public Accountant to take advantage of the 1996 amnesty legislation by preparing sales tax returns reporting no sales tax had been collected for the period. Our investigation revealed that the business had collected sales tax in excess of \$90,000 during the amnesty period. The investigation also revealed that fraudulent sales tax returns were filed for the periods after amnesty and that sales tax in excess of \$350,000 was in fact collected by Auto Village, Inc., but not turned over to the State. Although originally accepted into the Tax Amnesty Program, which would have precluded criminal prosecution for tax liabilities truthfully disclosed by the taxpayer, the corporation, Mr. Sadek, and the accountant were prosecuted after the investigation determined the returns filed under amnesty were fraudulent. Auto Village, Inc., pled guilty to purposely failing to turn over taxes (2nd degree), Hisham Sadek pled guilty to misapplication of property withheld for the benefit of the government (3rd degree), and the accountant with having participated in the scheme to evade taxes. This case was

prosecuted by the State Office of the Attorney General.

- On October 27, 2004, OCI assisted the Bergen County Prosecutor’s Office in the execution of search warrants at gas stations in Upper Saddle River, Ridgewood, Wallington, and Lodi in an investigation of the use of fraudulent credit cards by the operators of these gas stations to purchase large quantities of cigarettes, which were then resold to consumers through the gas stations. OCI personnel are providing assistance in determining via stamp numbers the probable origin of cigarettes found on the premises, and in examination of business records to determine whether the records provide evidence of an illegal source of cigarettes. The investigation of possible sales tax and motor fuels tax violations is also continuing.
- On October 29, 2004, in Superior Court – Burlington County, Mt. Holly, New Jersey, Nhi L. Wiget, 47, of South El Monte, California, was sentenced to five years in State prison, and Kenny Choi, 41, of Pomona, New Jersey, was sentenced to three years in State prison, and both were ordered to pay restitution of cigarette tax and sales tax to the State in the amount of \$797,946.49 as a result of their guilty pleas on March 29, 2004, to charges of failure to pay tax and possession of counterfeit cigarettes. Wiget and Choi had been arrested by Mansfield Township Police and OCI on October 15, 2003, in possession of 33,550 cartons of untaxed cigarettes with a retail

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value of \$1,946,235.50. Investigation by OCI established that the cigarettes were determined to be counterfeit (verified by samples submitted to Lorillard Tobacco Company). At the conclusion of the sentencing hearing, Wiget and Choi were immediately remanded to the custody of the Department of Corrections to begin serving their prison terms. This case was prosecuted by the Burlington County Prosecutor's Office.

- Between November 24 and December 21, 2004, in Secaucus, New Jersey, OCI seized approximately 28,664 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by unidentified Internet vendors for delivery to customers. The approximate value of these seizures is as follows:

Retail value \$1,783,474.08

Tax loss averted:

Cigarette \$687,936.00

Sales & Use 100,897.28

Total \$788,833.28

These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection, as a result of information developed by the U.S. Postal Inspection Service, with critical assistance from Facilities Management. The investigation is continuing.

- On November 30, 2004, in Lodi, New Jersey, OCI executed a search warrant on a storage unit and seized 9,097 cartons of

untaxed cigarettes. 8,947 cartons were counterfeit Newport cigarettes labeled in violation of the New Jersey Trademark Counterfeiting Act. 150 cartons were of a Chinese brand of cigarettes.

Retail value \$566,015.34

Tax loss averted:

Cigarette \$218,328.00

Sales & Use 32,021.44

Total \$250,349.44

The Bergen County Prosecutor's Office assisted in obtaining and executing this search warrant.

- On November 30, 2004, in Trenton, New Jersey, a State Grand Jury indicted Michael Buonopane, 44, of Rumson, New Jersey, for failing to remit almost \$5 million in taxes (consisting of \$2,014,386 in sales and use tax collected from customers, \$106,013.51 in State gross income tax, \$653,965.41 in State unemployment and disability contributions, and \$2,074,362.16 in Federal taxes withheld from the wages of employees) and for failing to file 31 corporation business tax returns in connection with the operation of Mr. Good Lube, Inc., and seven other corporations which provided retail automobile maintenance and car wash services at 20 locations in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties between 1999 and 2004. This case was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, which initiated the inquiry, and was presented to the grand jury by the

New Jersey Office of the Attorney General.

- On December 7, 2004, in Superior Court – Camden County, Jeffre Levy and Cynthia Levy of Cherry Hill, New Jersey, were sentenced for tax fraud. The sentencing stems from the criminal complaint filed against the Levys which alleges that between 1994 and 2001 the couple collected sales tax from customers of their janitorial companies and withheld income tax from their employees' wages, but failed to file returns and forward the taxes to the State. A joint investigation conducted by the Camden County Prosecutor's Office and the New Jersey Division of Taxation's Office of Criminal Investigation revealed that the Levys attempted to hide the diversion of funds by operating through a succession of business entities: Executive Maintenance Company, Executive Maintenance, Inc., and Executive Maintenance Industries, Inc. The companies, all located in Cherry Hill, New Jersey, were owned by one or both of the Levys. On September 22, 2004, Jeffre and Cynthia Levy pled guilty to purposely failing to turn over taxes to the State. Jeffre Levy, 41, and Cynthia Levy, 48, admitted before Superior Court Judge David G. Eynon to keeping approximately \$170,000 in sales and income tax proceeds from their janitorial companies and failing to forward the money to the State as required. The Levys attempted to evade the payment of the taxes by operating a business for a relatively short period of time before forming a



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successor business which would also fail to comply with the tax laws of this State. The Levys, owners of commercial cleaning businesses, will now be cleaning Camden County after being sentenced under the Sheriff's Labor Assistance Program (SLAP). Jeffrey Levy was sentenced to three years' probation and 60 days in the SLAP Program. Cynthia Levy was sentenced to two years' probation and 30 days in the SLAP Program. In addition, they both signed consent judgments requiring them to pay almost \$400,000 in taxes, penalties, and interest.

- On December 20, 2004, the Office of Criminal Investigation created the TIP (Tobacco Interdiction Program) hotline, a 24-hour hotline for reporting suspected cigarette tax violations. Anyone with information regarding untaxed, smuggled, or counterfeit cigarettes or Internet sales of cigarettes is encouraged to call the TIP hotline at 609-984-1225.
- One hundred ninety-nine (199) complaints alleging tax evasion were evaluated from October through December 2004 in the Office of Criminal Investigation.
- During the same period, ninety (90) charges were filed in court

and twenty-one (21) arrests were made in thirty (30) cases involving violations of the Cigarette Tax Act. A total of 37,945.1 cartons of untaxed cigarettes, having a total value of \$2,360,944.12 and including 106.6 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

Attorney Fee

Notice for 2004 Fee — The New Jersey Medical Care Access and Responsibility and Patients First Act was signed into law on June 7, 2004, as P.L. 2004, c.17. The Act provides for a comprehensive set of reforms affecting the tort liability system, health care system, and medical malpractice liability insurance carriers to ensure that health care services continue to be available and accessible to residents of the State.

The Act also establishes a fund called the "Medical Malpractice Liability Insurance Premium Assistance Fund." Revenues generated for this fund will be used for a variety of health care purposes, including providing relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in this State and providing payments to hospitals as charity care subsidies.

The fund receives revenues from annual \$75 fee charges to all State physicians, podiatrists, chiropractors, dentists, optometrists, and attorneys, along with an annual \$3 per employee charge for all employers subject to the unemployment compensation law. The New Jersey Division of Taxation is charged with the responsibility of assessing the annual \$75 fee on attorneys. The fee expires in three years. Fees will be collected for the years 2004, 2005, and 2006.

The annual \$75 fee applies to all attorneys licensed to practice law in New Jersey except those attorneys:

1. Constitutionally or statutorily barred from the practice of law.
2. That can show that they do not maintain a bona fide office in New Jersey for the practice of law. A bona fide office is a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to conduct law-related business.
3. Who have retired completely from the practice of law.
4. On full-time duty in the armed forces, VISTA, or the Peace Corps and not engaged in the practice of law.
5. Ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.
6. Newly admitted to the bar that have not practiced law for at least one year.

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An exemption claim may be verified with information maintained by the New Jersey Lawyers' Fund for Client Protection with respect to attorneys qualified to practice law in New Jersey.

The Division of Taxation sent a notice and remittance invoice for the 2004 calendar year to each person licensed to practice law in New Jersey during the last week in November or the first two weeks in December 2004. Attorneys on record with the New Jersey Supreme Court as qualified for an exemption may not receive a notice and invoice. Payment of the \$75 fee or claim of exemption is due within 30 days of the date of the notice. Make check or money order payable to "State of New Jersey - ATF" and mail to the Division of Taxation, Revenue Processing Center, PO Box 645, Trenton, NJ 08646-0645.

Information on P.L. 2004, c.17 can be found at www.njleg.state.nj.us. Click on Chapter Laws under the heading "Laws and Constitution" in the left-hand column. The fee imposition can be found on page 12, subsection 27 (N.J.S.A. 17:30D-29).

Inquiries regarding this fee may be directed to the New Jersey Division of Taxation Customer Service Center at 609-292-6400, or by e-mail to the Division at nj.taxation@treas.state.nj.us

Corporation Business Tax

Gross Profit: Alternative Minimum Assessment (AMA) — It is possible to have an AMA of \$0 if the taxpayer's gross profits and gross receipts are under the AMA thresholds. For a taxpayer using the gross profits method, if the corporation's

gross profits are less than or equal to \$1,000,000, the AMA based on gross profits is zero. For a taxpayer using the gross receipts method, if the corporation's gross receipts are less than or equal to \$2,000,000, the AMA based on gross receipts is zero.

Corporations are not liable for the AMA if they have New Jersey gross receipts of less than \$2.36 million or New Jersey gross profits of less than \$1.18 million.

Gross Income Tax

Gifts-in-Kind — A gift-in-kind is typically an item or a service donated to a charitable organization. The New Jersey Gross Income Tax Act does not allow a taxpayer to deduct charitable contributions, whether those donations are made in cash or as gifts-in-kind.

The only deduction from New Jersey gross income tax for charitable contributions is for qualified conservation contributions. A qualified conservation contribution means a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. For New Jersey income tax purposes, taxpayers are allowed a deduction against gross income for a qualified conservation contribution if qualified under the Federal I.R.C. Section 170(h).

Motor Vehicle Tire Fee

Sales to Nonresidents — The motor vehicle tire fee of \$1.50 per tire is due on all sales of new tires that are subject to New Jersey sales tax. The fee is also imposed on tires sold as part of a motor vehicle.

If an out-of-State resident comes into New Jersey, purchases a tire, and takes delivery here, the fee must

be collected since New Jersey sales tax would apply. For sales to customers that take delivery out of State, a New Jersey tire seller will have documentation that the tires were delivered out of State (invoice, shipping document, etc.). There is no specific exemption form for the sale of tires delivered outside of New Jersey, but such sales are not subject to sales tax or the tire fee.

Sales and Use Tax

Safe Deposit Box Repair — The rental of safe deposit boxes is subject to sales tax under N.J.S.A. 54:32B-3(b)(3). The taxpayer inquired whether the purchase of locksmith services to replace keys, drill boxes, or otherwise make repairs to boxes is exempt from sales tax.

The New Jersey Sales and Use Tax Act provides for the imposition of sales tax on the repair or servicing of tangible personal property "not held for sale in the regular course of business..." N.J.S.A. 54:32B-3(b)(2). Since the repairs at issue are to be performed upon the safe deposit boxes that are held in inventory and offered as rentals, there is no sales tax imposed for repair services. A properly completed Resale Certificate (Form ST-3) must be issued to claim the exemption. The purchaser checks the box at (5)(b) on the form.

Wireless Enhanced Services — The Division responded to an inquiry concerning the taxability of "wireless enhanced services." These products are peripheral-type services that wireless customers can subscribe to on either a monthly basis or a usage basis. Customers may acquire a permanent copy of a song,

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movie, or video game by “downloading it” onto their cell phone. The New Jersey Sales and Use Tax Act defines “telecommunications” as the act or privilege of originating or receiving messages or information through the use of any kind of one-way or two-way communication, including mobile telecommunications service, and all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-2(cc).

The Division views wireless enhanced downloads as electronically transmitted products rather than as services. Sales tax is not imposed on goods that are delivered solely by electronic means. Therefore, it is the Division’s position that the following are not subject to sales tax when downloaded to the customer’s cellular telephone:

1. Ring tones
2. Digitized music
3. Video game downloads

On the other hand, text-messaging charges that allow users to send and receive word messages are directly related to “the act or privilege of originating or receiving messages or information”; therefore, text messaging charges are subject to tax. □

In Our Courts

Corporation Business Tax

Net Operating Losses – A.H. Robins Company, Inc. v. Director, Division of Taxation, decided December 7, 2004; Supreme Court of New Jersey No. A-96 September Term 2003.

The Chapter 11 Reorganization Plan granted A.H. Robins (Robins), the surviving entity in the bankruptcy,

the rights and property of the company that initially filed for bankruptcy. One of those assets was a multi-million dollar New Jersey corporation business tax (CBT) net operating loss (NOL). Therefore, Robins filed a CBT refund claim that utilized the NOL. In accordance with N.J.S.A. 54:10A-4.5, which permits NOLs to be used only by the corporation that incurs the loss, the Director denied the refund because the surviving corporation was a different corporation than the entity that incurred the loss and that was later dissolved.

The New Jersey Supreme Court unanimously affirmed the Appellate Division’s decision for substantially the reasons contained in the Appellate Division’s opinion. Previously, the Appellate Division affirmed the Tax Court’s decision upholding the Director based on the New Jersey Supreme Court’s decision in *Richards Auto City, Inc.* Also, the Appellate Division affirmed the Tax Court’s ruling that N.J.S.A. 54:10A-4.5 was constitutional despite its retroactivity provision.

Property Tax Relief Programs

Homestead Rebate: Good Cause – Evelyn N. Bonda v. Director, Division of Taxation, decided November 17, 2004; Tax Court No. 006258-2003.

Bonda is a 72-year-old taxpayer who has a “wide array of medical conditions: a chronic thyroid condition, bipolar disorder, hyper-somnolence, narcolepsy and signs of low-level myocardial injury.” She was on social security disability from 1989 until she turned age 65, and claimed she has no one except her elderly brother who holds power of attorney over her affairs and resides in California.

Bonda filed her 2001 New Jersey income tax return on December 22, 2002. In the process of filing her return, she alleges that she requested two extensions to file her Federal income tax return. Although she produced evidence of a first extension to August 15, 2002, she was unable to produce any documentary evidence of a second extension. On April 30, 2003, Bonda received a final determination letter denying her homestead rebate request due to an untimely filing and stating that an appeal must be sent to and received by the Tax Court within 90 days from the date of the letter. On June 12, 2003, Bonda directed a letter indicating an intention to appeal to the Division of Taxation, but not to the Tax Court. On July 18, 2003, Bonda received a letter from the Division indicating that more time would be required to process her correspondence due to the mail volume. Bonda contacted the Tax Court Management Office on September 11, 2003, and discovered that the Tax Court did not receive her papers. On September 19, 2003, Bonda was admitted into an inpatient epilepsy-monitoring program. Bonda testified that she filed with the Tax Court on September 30, 2003.

As a general rule, the homestead rebate application must be filed with the New Jersey income tax return. If a taxpayer is granted either a State or Federal income tax extension, then the rebate application is also extended. Here, Bonda undisputedly filed her rebate application on December 22, 2002, which was after the August 15, 2002, extension. As Bonda could not produce evidence of a subsequent extension, the Court

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ruled that the rebate application was untimely.

In the case of an untimely filing, N.J.S.A. 54:4-3.87 permits the Division to extend the time period for a reasonable period where good cause is shown. In *Hovland*, the Tax Court found that good cause existed where Hovland was diagnosed with cancer of the spine and continuously hospitalized with severe pain. When Hovland returned from the hospital, he completed his application and submitted it one day late. Although Hovland was married, it was found that his wife only took care of their simple financial affairs. Applying the good cause standard to the present case, the Court ruled that Bonda did not present sufficient evidence of a medical inability to timely file the application and, therefore, did not meet the good cause standard required to extend the filing deadline.

Addressing the issue of the timeliness of Bonda's appeal to the Tax Court, the Court stated that a complaint involving the homestead rebate or NJ SAVER claim must be filed within 90 days of the issuance of the Director's denial. The Court noted that on very rare occasions the Tax Court has allowed a tolling of the statute of limitations. Although it was sympathetic to taxpayer's medical conditions, the Court ruled that these circumstances do not warrant a tolling of the filing deadline. Therefore, the Court dismissed the complaint as untimely.

Sales and Use Tax

Derivative Exemption – *Sodexho Operations, LLC v. Director, Division of Taxation*, decided November 30, 2004; Appellate Division No. A-1460-03T2.

Sodexho provided management services for the food and cleaning service departments of various

hospitals and other institutions that qualified as tax-exempt organizations under the Sales and Use Tax Act. As part of the management services, Sodexho purchased supplies for use in the cleaning department, various paper goods for the food service departments, and furniture and materials to renovate the cafeterias and dining rooms.

At trial, Sodexho claimed that these purchases were not subject to sales and use tax because either it acted as a procurement agent for the tax-exempt organizations and therefore is entitled to a derivative exemption, or because these purchases are for resale to the tax-exempt organizations. The Tax Court rejected both of Sodexho's arguments. The Court determined that Sodexho's agency relationship with the tax-exempt organizations was not sufficient for Sodexho to stand in the shoes of the organizations to qualify for the organizations' tax exemption had the organizations purchased the items directly. Secondly, the Court determined that the resale exemption did not apply because Sodexho's purchases were incidental to the true object of providing management services.

On appeal, the Appellate Division affirmed the Tax Court substantially for the reasons stated in the Tax Court opinion. □

Pay NJ Taxes Electronically

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www.state.nj.us/treasury/taxation

A sample E-Check form with the following fields: Payee Name (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), Date (12/31/2000), Amount (\$ 1000.00), Routing Number (080000000), and Account Number (1234). A 'SAMPLE' watermark is overlaid on the form.

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In Our Legislature

Gross Income Tax

Exclusion of Certain Military Housing Allowances From Gross Income — P.L. 2005, c.63, enacted April 7, 2005, and applicable immediately to tax years beginning on or after January 1, 2004, amends the Gross Income Tax Act by excluding from gross income the housing and subsistence allowances given to National Guard members on active duty and members of the active and reserve components of the United States Armed Forces.

Local Property Tax

County Boards of Taxation — P.L. 2005, c.44, enacted March 21, 2005, and effective immediately, increases the membership of County Boards of Taxation.

Expansion of Eligibility for Veteran's Property Tax Deduction

— P.L. 2005, c.64, enacted April 7, 2005, expands the definition of “veterans” who are eligible for various benefits. It includes “Operation Northern Watch” and “Operation Southern Watch,” occurring on or after August 27, 1992, among those operations that constitute “active service in time of war.” Participants in these operations are now eligible for the \$250 annual property tax deduction or the property tax exemption for 100% disabled veterans. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2004](#) [2005](#) □

from the director's desk

NJ Tax Relief for April 2005 Storm Victims

Nine New Jersey counties that were struck by storms and flooding April 1–3, 2005, have been declared a Presidential Disaster Area. The counties are: Bergen, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Sussex, and Warren.

The New Jersey Division of Taxation will follow the guidelines provided by the Internal Revenue Service for special tax relief for New Jersey taxpayers in the disaster area. Any qualified taxpayer granted additional time by the IRS to file Federal tax returns or to make tax payments will receive the same treatment for New Jersey tax purposes. Affected taxpayers include businesses and individuals located in the disaster area, those whose tax records are in the disaster area, and relief workers.

Affected taxpayers have until June 20, 2005, to file New Jersey returns and submit payments for any return and/or payment, including estimated payments, that have either an original or extended due date between April 1, 2005, and June 20, 2005. To qualify for this relief, taxpayers must identify themselves by writing “Presidential Disaster Area: Storms and Floods-NJ,” on their returns and payments.

Information on Federal tax relief for those in Presidential Disaster Areas is available on the [IRS Web site](#). Also see “Presidential Disaster Relief Areas” in the [Winter 2004](#) issue of *New Jersey State Tax News*.

For additional information about New Jersey tax relief for April 2005 storm victims, contact the Division of Taxation’s Customer Service Center at 609-292-6400 or send us an [e-mail](#).

Robert K. Thompson

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2004 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
17	6/07/04	Creates a Medical Malpractice Liability Insurance Premium Assistance Fund comprised of the following revenues: \$3 per employee surcharge for employers subject to the unemployment compensation law; \$75 annual charge on each physician, podiatrist, chiropractor, dentist, optometrist, and lawyer licensed in the State.	MIS	ACS for A-50(2R)
40	6/28/04	Folds the NJ SAVER Rebate Program into the Homestead Rebate Program; increases property tax relief benefits to New Jersey homeowners and tenants; and increases gross income tax rate for taxpayers with taxable income over \$500,000.	GIT PTRP	A-100(1R)
42	6/29/04	Revises outdoor advertising law and local tax treatment of certain outdoor advertising signs.	MIS	A-3101(1R)
43	6/29/04	Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges and modifies the annual rates.	PUT	A-3102
46	6/29/04	Imposes a fee of \$1.50 on the sale of new motor vehicle tires.	TIR	ACS for A-3106
47	6/29/04	Limits the application of net operating loss deductions under the corporation business tax for privilege periods beginning in calendar years 2004 and 2005 to up to 50% of entire net income.	CBT	A-3110
48	6/29/04	Imposes a fee of \$.90 on mobile telecommunications and telephone exchange customers for funding certain costs of the 9-1-1 system and certain other emergency response systems.	ERF	A-3112(1R)
49	6/29/04	Establishes a special interim assessment on health maintenance organizations and requires a comparative study of the equity of the various taxes imposed on all health care insurance companies.	MIS	A-3116
50	6/29/04	Increases the tax rate imposed on hazardous substance transfers and discharges.	SCC	A-3117(1R)
51	6/29/04	Imposes annual air toxics surcharge ranging from \$.10 to \$10 per pound of toxic substance based on emissions at certain facilities.	ENV	A-3118(1R)
52	6/29/04	Lowers the threshold for requiring that taxpayers make State tax payments by electronic funds transfer to \$10,000.	ALL	A-3119
53	6/29/04	Imposes a 6% gross receipts tax on certain cosmetic medical procedures.	CMPT	A-3125

2004 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
55	6/29/04	Requires the payment of estimated gross income tax on income from the sale of real property in this State by nonresidents.	GIT	A-3128
56	6/29/04	Requires the use of an electronic reporting system for the Division of Taxation to obtain information from financial institutions regarding accounts of tax debtors.	MIS	A-3129
57	6/29/04	Expands business registration verification program for contractors doing business with the State to include local government contracts, and requires contractors and their affiliates to collect State sales and use tax.	MIS	A-3130(1R)
58	6/29/04	Establishes a State tax clearance process for certain business operators that use State licenses to conduct business and for other holders of licenses from State agencies.	MIS	A-3131
65	6/30/04	Decouples corporation business tax and gross income tax from changes in Federal depreciation and certain expense deductions; provides incentives for business relocation and retention.	CBT GIT	ACS for A-3111
66	6/30/04	Imposes a “general purpose fee” on the transfer of property valued at more than \$350,000 and a fee on the purchase of residential property for over \$1 million; clarifies provisions governing realty transfer fees.	RTF	A-3115
67	6/30/04	Increases the cigarette tax by \$.35 per pack.	CIG	A-3113(1R)
75	7/1/04	Authorizes an additional urban enterprise zone in New Brunswick.	S&U	A-263
79	7/2/04	Permits Secretary of State to request and requires the Division of Taxation to prepare a report containing certain basic information for the Governor’s Study Commission on Discrimination in State Employment and Contracting.	MIS	S-1498(2R)
85	7/7/04	Establishes a Property Tax Convention Task Force and appropriates \$250,000 to fund its activities.	LPT	A-97
96	7/9/04	Prohibits the sale of cigarettes in packs of less than 20.	CIG	A-1770(1R)
120	8/10/04	Establishes the “Highlands Water Protection and Planning Act” to protect and preserve the drinking water and natural resources of the New Jersey Highlands Region.	ENV	S-1(1R)
128	8/30/04	Transfers administration of certain casino taxes and fees to the Casino Control Commission and provides for phase-out of the casino complimentary tax.	CAS	A-3120(1R)

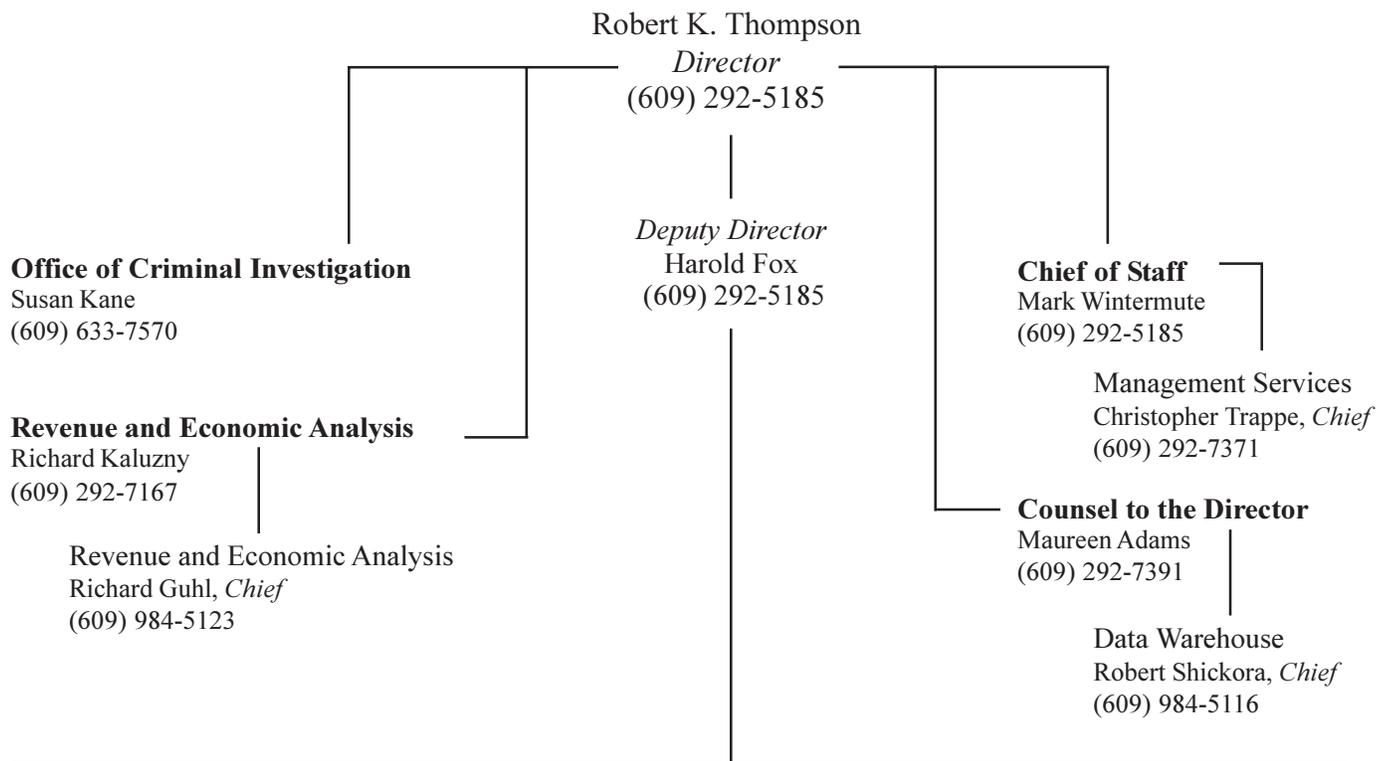
2004 TAX LAWS *(continued)*

129	8/25/04	Extends the investment alternative tax obligation of casino licensees to 50 years, adds five districts under Casino Reinvestment Development Authority (CRDA) Urban Revitalization Act, and allows grants to the Authority for 20 years from certain sales tax revenues.	CAS	ACS for A-3121
132	8/31/04	Revises the way estates and trusts must be administered in New Jersey.	TIT/ET	S-708(1R)
139	9/02/04	Creates Health Enterprise Zones in certain municipalities to encourage establishment of certain primary care practices in medically underserved areas.	GIT LPT	A-2638(2R)
181	12/22/04	Repeals the December 31, 2004, expiration of certain municipalities' authority to impose parking and payroll taxes.	MIS	S-2037(1R)
183	12/22/04	Revises qualifications required to obtain a property tax exemption as a historic site.	LPT	A-2697(2R)

*Legend for 2004 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	TPT = Tobacco Products Tax

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What's New for Tax Year 2004

There have been some important changes affecting the preparation of New Jersey income tax returns, and the preparation of applications for New Jersey's various property tax relief programs:

Income Tax

- **Increased Tax on Income Over \$500,000** — The New Jersey gross income tax rate on income over \$500,000 has increased from 6.370% to 8.970% for tax years beginning on or after January 1, 2004.
- **Domestic Partnership** — Taxpayers who are members of a domestic partnership registered in New Jersey on the last day of the tax year may claim an exemption for their domestic partner only if the domestic partner does not file a New Jersey income tax return. A copy of the New Jersey Certificate of Domestic Partnership must be enclosed the first time the exemption is claimed and the taxpayer may be asked to provide additional information at a later date.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2004 is .038801.
- **Depreciation Adjustment** — New Jersey income tax law has decoupled from certain changes in Federal depreciation and

expense deduction limits. A New Jersey depreciation adjustment may be required for assets placed in service on or after January 1, 2004. The New Jersey adjustments affect the determination of income in the categories net profits from business; net gains or income from disposition of property; net gains or income from rents, royalties, patents, and copyrights; income from estates or trusts; distributive share of partnership income; and net pro rata share of S corporation income. Taxpayers must complete the Gross Income Tax

continued on page 2



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline .. 1-888-238-1233
Property Tax Reimbursement
Hotline 1-800-882-6597
Earned Income Tax Credit
Hotline 1-888-895-9179
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576



what's new for 2004 - from pg. 1

Depreciation Adjustment Worksheet GIT-DEP to calculate the adjustment.

- **Nonresident Estimated Tax Payments on Real Estate Transactions** — Nonresident individuals, estates, or trusts that sell or transfer real property in New Jersey after July 31, 2004, may be required to make estimated payments on the gain from a transfer or sale of the property as a condition of the recording of the deed.
- **Use Tax** — An optional Estimated Use Tax Chart is available for residents who are paying the New Jersey use tax they owe with their resident income tax return. Taxpayers who have incomplete or inaccurate receipts may use the chart to estimate the amount of use tax due on purchases costing less than \$1,000 each. Taxpayers must calculate the exact amount of use tax due on purchases costing \$1,000 or more each.
- **E-Filing Requirement for Practitioners** — Tax practitioners who prepared or filed 200 or more 2003 New Jersey income tax resident returns must now use one of the three New Jersey electronic filing methods (NJ WebFile, NJ TeleFile, and NJ ELF) to file their clients' 2004 New Jersey income tax resident returns.

Electronic Funds Transfer

- **Threshold Lowered to \$10,000** — Beginning July 1, 2004, taxpayers with a prior-year liability of \$10,000 or more in any one tax are required to make their payments for all taxes by electronic funds transfer (EFT).

- **Payment Options** — Taxpayers who are required to make all their tax payments by EFT now have a choice of several payment options: Automated Clearing House (ACH) debit or credit, electronic check (e-check), or credit card.

Property Tax Relief Programs

- **FAIR (Fair and Immediate Relief) Rebate Program** — The NJ SAVER Rebate and Homestead Rebate Programs have been combined into the FAIR Rebate Program. The homestead rebate and NJ SAVER rebate applications have been replaced with the FAIR tenant rebate application (Form TR-1040) which can be found in the income tax return booklet, and a separate FAIR rebate application for all homeowners, which is *not* in the booklet.

Eligible tenants file the FAIR tenant rebate application, Form TR-1040, with the New Jersey income tax return. FAIR rebate applications are currently scheduled to be mailed to eligible homeowners at the end of April.

- **Property Tax Deduction/Credit** — Schedule 1-A, which replaces Schedule HR-A, must be completed by residents who: had more than one New Jersey residence during the year; owned a principal residence with more than one unit; shared ownership of their principal residence with anyone other than a spouse; or shared rent for an apartment or other rental dwelling with anyone other than a spouse. Schedule 1-A is used to calculate the amount of property taxes and/or rent to

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Robert K. Thompson

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what's new for 2004 - from page 2

be used on Schedule 1 (or Schedule A and Worksheet F). Homeowners and tenants complete Schedule 1 (or Schedule A and Worksheet F) to determine whether they receive a greater tax benefit from the property tax deduction or the property tax credit.

Schedule 1-A is included in the NJ-1040 instruction booklet.

- **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2004 must have total annual income *less than*:

2003: \$40,028 if single, or \$49,082 (combined income) if married, and

2004: \$40,869 if single, or \$50,113 (combined income) if married.

Benefits available under this program may be affected by State budgetary constraints.

2004 Package NJX

- The Division of Taxation has automated the process of ordering *Package NJX* materials. Materials can only be ordered [online](#) and payments must be made by electronic check (e-check). □

EFT Payment Options

Businesses with a prior-year tax liability of \$10,000 or more in any one tax are required to remit their payments for all taxes by electronic funds transfer (EFT).

Taxpayers who are required to pay electronically are no longer limited to the Automated Clearing House (ACH) debit or credit option. There are now two additional payment options that can be used to meet the EFT payment requirement: electronic check (e-check) and credit card.

Taxpayers must [enroll](#) with the Division of Revenue before they can pay by ACH debit or credit. This process may take several weeks. Enrollment is not required prior to making e-check or credit card payments.

The e-check and credit card payment options are not available for all business taxes. Consult the online [Guide to Electronic Filing and Payment Services](#) to learn which taxes can be paid by electronic check and credit card.

A list of [Frequently Asked Questions](#) about the EFT Program can be found on the Division of Revenue's Web

site. Taxpayers may contact the Division of Revenue's EFT Unit at 609-984-9830 or by [e-mail](#). Requests for information on EFT may also be faxed to 609-292-1777. □

GROSS INCOME TAX Tax Rate Used on Form NJ-1080C

For tax year 2004, the New Jersey Income Tax Nonresident Composite Return (Form NJ-1080C) has been modified to permit the use of two tax rates, 6.37% and 8.97%. Recent legislation (P.L. 2004, c.40) creating a new top income tax rate of 8.97% retroactive to January 2004 provided a disincentive for nonresident individuals who had participated on a Form NJ-1080C in the past. The Division has, therefore, announced that the 6.37% gross income tax rate applies to

continued on page 4

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 200 or more 2003 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2004 New Jersey resident income tax returns electronically. More information is available at:

- [Frequently Asked Questions](#)
- [Electronic Filing Handbook for EROs](#)
- [NJ WebFile](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)
- [List of E-File Approved Software Vendors](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [email us](mailto:taxation@tax.state.nj.us) at taxation@tax.state.nj.us.



tax rate on nj-1080c - from pg. 3

participants with income of less than \$250,000 each. The 8.97% rate applies to participants with income of \$250,000 or more.

Preparers of composite returns will notice the following changes:

1. The face of the return has two columns: Column A for income of those participants reporting New Jersey income from the entity of less than \$250,000; and Column B for those participants reporting income of \$250,000 and over.
2. There are three supporting directories:

Schedule A — Participants with New Jersey income from the entity of less than \$250,000;

Schedule B — Participants with New Jersey income from the entity of \$250,000 or more; and

Schedule C — Nonparticipants.

For years the composite return has been a popular choice for those nonresidents with limited New Jersey sources of income. Even with the imposition of the highest individual income tax rate, nonresident individuals participated in composite returns as a matter of convenience. Individual nonresident returns are not necessary when all the New Jersey source income is reported and taxed on a composite return. Now, with the availability of two income tax rates, eligible nonresident individuals will still find participation in the NJ-1080C to be an acceptable alternative to filing an individual nonresident return, Form NJ-1040NR. □

GROSS INCOME TAX Presidential Disaster Relief Areas

The IRS provides special tax law provisions to help taxpayers recover financially from the impact of a disaster, especially when the President declares their location to be a major disaster area. The Federal government designates Presidentially declared disaster relief areas on a county-by-county basis.

Depending on the circumstances, the IRS may postpone for up to one year certain tax filing deadlines for taxpayers that are affected by a Presidentially declared disaster relief area. The tax deadlines the IRS may postpone include those for filing income and employment tax returns, paying income and employment taxes, and making contributions to a traditional IRA or Roth IRA.

If any tax deadline is postponed, the IRS publicizes the postponement in the affected area and publishes a news release, revenue ruling, revenue procedure, notice, announcement, or other guidance in the Internal Revenue Bulletin (IRB) and on their Web site at www.irs.gov

It is the New Jersey Division of Taxation's general policy to follow the guidelines provided by the IRS for special tax relief for taxpayers in the Presidential disaster relief areas. The relief granted to affected taxpayers is limited in time to the periods during which emergencies actually occurred and/or during which relief and recovery activities were ongoing. Affected taxpayers include businesses and individuals located in the affected areas, those whose tax records are in the affected areas, and relief workers.

Qualified taxpayers may file New Jersey tax returns and submit payments for any return and/or payment, including estimated payments, that have either an original or extended due date in accordance with the special tax filing deadlines as provided by the IRS. To qualify for this relief, affected taxpayers must write in red ink "Presidential Disaster Relief Area" and the Presidential disaster relief area designation as provided by the IRS at the top, center of their New Jersey tax return when filed.

If you are not sure whether your area qualifies for tax relief, more specific information about Presidential disaster relief areas is available on the IRS Web site or you may [e-mail](mailto:taxation@tax.state.nj.us) the Division with your question at taxation@tax.state.nj.us

If you are affected by a Presidentially declared disaster area and the New Jersey Division of Taxation postpones the due date for filing your return and for paying your tax,

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Interest 8.00%

The interest rate assessed on amounts due for the period January 1, 2005 – December 31, 2005, will be 8.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%



disaster relief areas - from page 4

you may be eligible for interest and penalty abatement on underpaid tax that would otherwise accrue for the period of the postponement. For information concerning potential abatement of penalties and/or interest, affected taxpayers should call our Customer Service Center at 609-292-6400. □

LOCAL PROPERTY TAX

County Tax Board Judgments

Under N.J.A.C. 18:12A-1.12(c), rules for county boards of taxation, a copy of any judgment rendered by the county board of taxation involving the appeal of a veteran's property tax deduction or a property tax deduction for a senior citizen, disabled person, and certain surviving spouses *must* be furnished by the county board of taxation to the Division of Taxation. The copy of the judgment must be mailed within 10 days from the date of its entry to the Division of Taxation, Property Administration, 50 Barrack Street, PO Box 251, Trenton, New Jersey 08695-0251. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

January 1 –

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before) –

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10 –

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25 –

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior) –

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1 –

- After February 1, the assessor or County Board of Taxation shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10 –

- Certification by assessor filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, "within 10 days" of the date the bulk mailing of notifications of assessment completed.

February 15 (on or before) –

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

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TIP Hotline

The Division of Taxation's Office of Criminal Investigation has established the **TIP** (Tobacco Interdiction Program) Hotline at 609-984-1225. Anyone with information about the illegal sale of untaxed, smuggled, or counterfeit cigarettes is encouraged to call the TIP Hotline to report such violations.



assessors' calendar - from page 5

March 1 –

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services; and post a copy at the courthouse.

March 10 (before) –

- Equalization table hearings completed by County Tax Board.

March 10 –

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the

Division of Local Government Services. □

Criminal Enforcement

Criminal Enforcement over the past several months has included:

- On June 23, 2004, confirmation was received that a Passaic County Grand Jury had returned an indictment against Dipan P. Patel of North Bergen, New Jersey, charging him with possession and sale of untaxed cigarettes. Patel had been arrested by the Office of Criminal Investigation (OCI) on January 14, 2004, in Totowa, New Jersey, during a joint investigation with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives in which Patel sold Virginia-stamped and unstamped cigarettes to an

undercover operative on two separate occasions.

- On June 29, 2004, in Superior Court – Mercer County, Oscar Kirkconnell of Elizabeth, New Jersey, was admitted into the Pre-trial Intervention (a program of supervision by the Probation Services Division for nonviolent defendants with no criminal record) for a term of six months, pursuant to his indictment on charges of theft, misapplication, and failure to pay over \$88,308.44 in sales tax collected, filing fraudulent sales tax returns, and failure to maintain records with intent to evade sales tax, from January 1, 1999, to September 30, 2002, in connection with Cinderella's Go-Go Palace, a go-go bar Kirkconnell, a sole proprietor, operates in Elizabeth. As

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How to
Get Your NJ Income Tax Refund
FASTER!

NJTeleFile 

Call 1-888-235-FILE (3453)
 Fill out the NJTeleFile worksheet in your tax packet. Then, use a Touch-tone phone to call our toll-free number to file your return.

NJWebFile 

Use your computer to file your return.
 Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.

NJELF 

Use tax software or ask your tax preparer.
 See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.

www.njfastfile.com

NJFastFile
 3 ways to a faster refund.   



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conditions of admission into Pretrial Intervention, Kirkconnell is required to sell the business in question, and has paid restitution to the State of \$99,094.07 in tax, penalty, and interest. The Elizabeth Police Department assisted in the investigation. The matter was prosecuted by the State Office of the Attorney General.

- On July 16, 2004, Bernard Davidson, a former court officer in Morris County, was sentenced to a one-year term of probation and ordered to make restitution as a result of his guilty plea to charges of filing a false and fraudulent 1998 New Jersey gross income tax return. The charge stemmed from Bernard Davidson's actions as a court officer in Morris County, his theft of official receipts in excess of \$75,000, and his failure to report the illegal income on his New Jersey gross income tax return.
- On July 16, 2004, in United States District Court in Texas, Gary Dewayne Dennington, an inmate at the State Correctional Facility in Beaumont, Texas, was sentenced to a 37-month term of incarceration for a mail fraud scheme involving the filing of fraudulent tax returns. Inmate Dennington will go to Federal prison after completing his State sentence. This joint investigation with the Federal Bureau of Investigation revealed that Dennington had filed fraudulent state income tax returns in New Jersey, Missouri, and Connecticut. He did not receive refunds from New Jersey; however, his efforts did

reward him with an extra 37 months of jail time.

- On July 19, 2004, in Newark Municipal Court, Miguel A. Puca of Newark, New Jersey, pled guilty to failing to file motor fuels tax returns and failing to pay \$60,397 in motor fuels tax during the period April 2003 through April 2004 in connection with Puca's business, Puca & Son Fueling, which sells diesel fuel at retail to trucking companies. Puca was fined \$1,500 and is subject to restitution of the tax and an additional \$16,902 in civil penalty and interest. This case was opened based on a letter from the owner of a local gas station, who complained that the subject was harming legitimate businesses by evading the motor fuels tax.
- On August 3, 2004, Notices of Complaint were served upon Rite Aid of New Jersey, Wharton, New Jersey, and Resa Enterprises, Inc., Paramus, New Jersey, in cigarette retail license suspension actions by the Director of the Division of Taxation, as requested by local boards of health following the conviction of each of the licensees for two separate violations of State law which prohibits the sale of cigarettes to minors.
- On August 12, 2004, the Mercer County Prosecutor's Office confirmed that in Superior Court – Mercer County, Mohinder Braich of Freehold, New Jersey, pled guilty to a charge of failure to turn over \$617,000 in motor fuels tax which he collected between 1992 and 2002 in connection with the retail sale of diesel fuel at MLB Sunshine Service Station, a gas station/truck stop which he

operated in Old Bridge, New Jersey. Braich is scheduled to be sentenced October 10, 2004. This matter was investigated by OCI and prosecuted by the Mercer County Prosecutor's Office.

- On August 23, 2004, in Superior Court – Monmouth County, a hearing was held in the matter of Asif Hafeez, formerly of Millstone Township, New Jersey. Hafeez had been arrested by OCI on June 27, 2001, in possession of 319 cartons of untaxed cigarettes and 29,793 counterfeit cigarette tax stamps. Hafeez later jumped bail and fled to Canada. He was arrested as he tried to cross into the United States from Canada recently and was extradited to New Jersey and held in the Monmouth County Jail. At the August 23, 2004, hearing it was determined that Hafeez would be turned over to Pennsylvania authorities to answer a charge of violation of probation which had been imposed for an earlier violation of the Pennsylvania cigarette tax. Extradition proceedings and prosecution in this matter are being conducted by the Monmouth County Prosecutor's Office.
- On September 3, 2004, the Office of Attorney General confirmed that in Superior Court – Union County, Edward Mongon of Union City, New Jersey, and Mikhael Centeno of Jersey City, New Jersey, pled guilty to racketeering, consisting of burglary, theft, receiving stolen property, fencing, money laundering, failure to file State personal



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income tax returns, and failure to pay State tax from 1992 to 2003, and were sentenced to 13 years and 12 years, respectively, in State prison, and that Edward Troisi of Hoboken, New Jersey, pled guilty to failure to file State personal income tax returns and pay tax for tax years 1999 through 2002, and was admitted into Pretrial Intervention, a program of supervision for nonviolent first offenders. The charges to which the above defendants pled guilty resulted from their operation of an enterprise engaging in large-scale theft of cargo from trains and trucks. Based on these guilty pleas, OCI will pursue civil assessment and collection of sales and use tax due on the disposition of tangible personal property in the amount of more than \$5 million. This case was a joint investigation with the New Jersey Division of Criminal Justice – Organized Crime and Racketeering Bureau.

- On September 14, 2004, in Jersey City, OCI seized 17,100 cartons of untaxed, counterfeit-product cigarettes which had been abandoned in two self-storage units by traffickers

following previous arrests and seizures by OCI at this location. It is believed the counterfeit products were manufactured in China. The value of the seized cigarettes is \$1,063,962. The amount of tax loss averted is \$410,400 cigarette tax and \$60,192 sales and use tax, for a total of \$470,592. This investigation is continuing.

- On September 17, 2004, John B. Forrest, a fugitive and one of the Division of Criminal Justice’s ten most wanted, was arrested by U.S. Customs at the border in Pharr, Texas. On September 12, 2003, in Superior Court – Middlesex County, New Brunswick, New Jersey, Forrest, of Colts Neck, New Jersey, had entered guilty pleas on behalf of himself and his corporation, Tri-State Ticket Exchange, Ltd., Old Bridge, New Jersey, to charges of theft by deception of approximately \$647,000 from customers who ordered sports and entertainment events tickets that were never delivered, misapplication of \$122,626.37 in sales taxes of New Jersey and eight other states which Forrest collected from his customers but failed to turn over to tax agencies, credit card fraud, failure to file New Jersey sales and use tax returns for the period January

2001 through December 2002, and failure to turn over \$33,280 in New Jersey sales and use tax collected in that period. Forrest had agreed to make restitution of all of the above amounts, and never again to engage in business as a ticket seller or broker in New Jersey. Forrest was scheduled to be sentenced on January 9, 2004, but fled the country one day prior to sentencing and is believed to have lived in Brazil and Mexico during his flight. This was a joint investigation between OCI and the Division of Criminal Justice, who prosecuted the matter.

- On September 22, 2004, in Superior Court – Camden County, Jeffre and Cynthia Levy of Cherry Hill, New Jersey, pled guilty to purposely failing to turn over taxes to the State. Jeffre Levy and Cynthia Levy admitted to keeping approximately \$170,000 in sales and income tax proceeds from their janitorial companies and failing to forward the money to the State as required. The money was collected between January 1, 1994, and December 31, 2001, and included State income taxes they withheld from employees and

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Enforcement Summary Statistics Third Quarter 2004

Following is a summary of enforcement actions for the quarter ending September 30, 2004.

• Certificates of Debt:		• Jeopardy Seizures	2
Total Number	3,619	• Seizures	58
Total Amount	\$2,332,480.44	• Auctions	6
• Jeopardy Assessments	340	• Referrals to the Attorney General’s Office	500

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc.html



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sales taxes they collected from customers of their Cherry Hill-based companies – Executive Maintenance Co., Executive Maintenance Inc., and Executive Maintenance Industries Inc. The Levys attempted to evade the payment of the taxes by operating a business for a relatively short period of time before forming a successor business which would also fail to comply with the tax laws of this State. The Levys were sentenced in December 2004 to perform community service, serve probation, and to repay almost \$400,000 in taxes, penalties and interest.

- Two hundred two (202) complaints alleging tax evasion were evaluated from July through September 2004 in the Office of Criminal Investigation.
- During the same period, one hundred twenty-one (121) charges were filed in court and twenty-seven (27) arrests were made in twenty-nine (29) cases involving violations of the Cigarette Tax Act. 17,799.7 cartons of untaxed cigarettes, having a total value of \$1,107,497.33, and including 340.4 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

Corporation Business Tax Credit Unions — This article replaces the tax brief that appeared in this issue when it was published on March 21, 2005.

Additional information reviewed pertaining to the Federal tax treatment of credit unions prompted the Division to reconsider its position on the tax status of credit unions in New Jersey.

Federal credit unions organized and operated in accordance with the Federal Credit Union Act, as amended, are instrumentalities of the United States and, therefore, exempt under I.R.C. section 501(c)(1). They are included in a group exemption letter that is issued to the National Credit Union Administration.

State-chartered credit unions and other mutual financial organizations may file applications for recognition of exemption from Federal income tax under I.R.C. section 501(c)(14). An organization that wishes to obtain recognition of exemption as a credit union without capital stock, organized and operated under state law for mutual purposes and without profit, must apply for the exemption by supplying facts, information, and attachments that demonstrate it meets the qualifying criteria to the Internal Revenue Service. For

Federal income tax purposes, state-chartered credit unions receive nonprofit status and are thereby exempt from income tax.

In New Jersey, financial business corporations must file a Corporation Business Tax Return for Banking and Financial Corporations (Form BFC-1) pursuant to N.J.A.C. 18:7-1.16(g). Currently, credit unions organized under the laws of New Jersey are not included in the definition of a financial business corporation. N.J.A.C. 18:7-1.16(c)7.

Under the New Jersey Corporation Business Tax Act, (54:10A-1.1 et seq.), “nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under provisions of...Title 17...” are exempt from corporation business tax. N.J.S.A. 54:10A-3(e). Organizations meeting the criteria of the statutory and regulatory references above would be exempt. Credit unions organized pursuant to “The Credit Union Act of 1984,” which falls under Title 17 of the New Jersey Statutes, are eligible for exemption from New Jersey corporation business tax. It is also a matter of policy that New Jersey exempts credit unions due to their status as nonprofit corporations, associations, or organizations which are eligible for Federal exemption.

Examples Under Refund Regulation — The Division offered some clarifying examples regarding the operation of the corporation business tax refund regulation, N.J.A.C. 18:7-13.8(a). Under that rule the four-year period for filing a claim for refund commences to run from the later of the payment of the tax

Current Amnesty Programs

California is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

CA Feb 1 – Mar 31 www.taxes.ca.gov/index.html

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for the taxable year or from the filing of the final return for the taxable year. If a return is filed and payment is made before the original due date of the return, the original due date of the return is deemed the payment date.

Example: The original due date of the tax return is April 15, 1994. The due date was extended until October 15, 1994. The tax was paid in full on September 30, 1994, with the final return. A refund claim was filed on October 13, 1998. The claim is late because the refund claim was filed after the four-year period, which began on September 30, 1994, when the tax was paid.

Example: A taxpayer pays 90% of its corporation business tax liability with its tentative return (Form CBT-200-T) and requests an extension of time to file its final return. Two weeks before the extended due date for the return, taxpayer files its final return (Form CBT-100) and pays the additional 10% tax plus interest. In this situation the four-year period for filing a claim for refund is measured from the date of filing the final return (Form CBT-100). If the taxpayer files a refund claim for the full tax amount paid before four years from the date the final return was filed on extension, the claim is timely. However, a claim filed after four years from the date the final return was filed, but before four years from the extended due date, is untimely. In the case of final returns filed after the original due date, the four-year period for filing a claim for refund is measured from the date of filing the final return (Form CBT-100), not from the extended due date.

Immune Activity: Contract Carrier

— A foreign corporation whose income is immune from tax must complete Schedule N, Nexus-Immune Activity Declaration, and remit the alternative minimum assessment or the minimum tax with Form CBT-100.

Pub. L. 86-272, 15 U.S.C. §381-384(1959) restricts the power of the states to tax net income derived from sources within the state from interstate commerce if the “only business activity within such state by or on behalf of such person” is the solicitation of orders for sales of tangible personal property where the orders are sent outside of the state for approval or rejection and are filled by shipment or delivery from a point outside of the state. As long as this activity is not combined with additional activities or contacts that will subject a corporation to tax based on or measured by income, the income may be immune from New Jersey corporation business tax.

An international shipping company that excludes income from Federal taxation pursuant to I.R.C. Section 883 and is therefore not required to file Federal income tax returns may also exclude income from New Jersey corporation business tax. However, international shipping companies are required to file a corporation business tax return (Form CBT-100) and pay the minimum tax pursuant to N.J.S.A. 54:10A-4(k)(9), or the alternative minimum assessment, whichever is greater. N.J.S.A. 54:10A-5.

A contract carrier providing trucking services within New Jersey is considered to be deriving receipts from sources within this State and is, therefore, subject to New

Jersey corporation business tax pursuant to N.J.S.A. 54:10A-2. N.J.A.C. 18:7-8.10(c)4iii provides guidance on how to allocate inland trucking receipts.

Minimum Tax and Affiliated or Controlled Groups

— Under N.J.S.A. 54:10A-5(e), any taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, is subject to a \$2,000 minimum tax. Each member is subject to the minimum tax during that privilege period. See also N.J.A.C. 18:7-3.4(g).

Affiliated groups cannot elect to file on a consolidated basis for New Jersey purposes. A corporation which is included in a consolidated Federal income tax return must complete all schedules on its own separate basis without consolidation with any other corporation. Such corporation must also attach a copy of the Affiliations Schedule, Form 851, which it filed with Form 1120 for Federal income tax purposes. A schedule of payroll per member must also be submitted with the corporation business tax return.

If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are also required to file New Jersey returns which shall reflect the minimum tax.

Nonprofit Corporations: Residential Homeowners' Association

— Nonprofit corporations, associations, and established organizations may be exempt from corporation

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business tax in New Jersey under N.J.S.A. 54:10-3(e). In addition, other statutes may contain tax exemption provisions specifically applicable to nonprofit housing organizations as well. (e.g., N.J.S.A. 55:16-1 et seq., N.J.S.A. 40A:20-19).

Residential homeowners' associations are normally exempt from corporation business tax under N.J.S.A. 54:10A-3(e). Generally, a condominium association is exempt as long as the units are being used for residential purposes. On the other hand, the exemption does not apply to an association of unit owners if the units are used for business purposes and not for residential purposes.

In order to be considered exempt from corporation business tax, it is recommended that a nonprofit corporation obtain an exemption opinion from the Regulatory Services Branch of the Division of Taxation. In making the request, the applicant organization must submit:

1. An affidavit, signed by an officer of the corporation, indicating that the corporation is:
 - a. A nonprofit corporation that is not operated to make a profit, without regard as to whether there is profit or loss for a particular year;
 - b. Organized without capital stock;
 - c. Incorporated under the provisions of Titles 15, 15A, 16, or 17 of the Revised Statutes of New Jersey or under a special charter or under any similar general or special law of this or any other state; and

- d. Not conducted for the pecuniary profit or benefit of any private shareholder or individual;
2. A copy of the organization's Certificate of Incorporation; and
3. A copy of the organization's bylaws.

Exemption opinion requests may be directed to:

NEW JERSEY DIVISION OF TAXATION
 REGULATORY SERVICES BRANCH
 PO Box 269
 TRENTON, NEW JERSEY 08695-0269

Unless the entity's operations or activities cause it to be considered a profit-making corporation, no further corporation business tax returns or Federal returns are required to be filed with the Division of Taxation. The Division of Taxation does not require the filing of a copy of Federal Form 990. Questions regarding the exemption letter process may be directed to 609-292-5994.

A nonprofit organization properly exempted from filing corporation business tax returns may have other filing requirements with other agencies of the State of New Jersey including, for example, the following:

1. Responsibilities under the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq. and N.J.A.C. 13:48; or
2. Responsibility to file Annual Reports, N.J.S.A. 15A:4-5.

Receipts Fraction: Dock Sales Outside New Jersey — The Division responded to a question regarding "dock sales" outside New Jersey. Specifically, this inquiry related to the effect on New Jersey apportionment where the buyer, either directly or via a common carrier that the buyer engaged, picks up inventory from the seller at a site outside New Jersey and then transports the goods into New Jersey. This is the inverse

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 200 or more 2003 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2004 New Jersey resident income tax returns electronically. More information is available at:

- [Frequently Asked Questions](#)
- [Electronic Filing Handbook for EROs](#)
- [NJ WebFile](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)
- [List of E-File Approved Software Vendors](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [email us](mailto:taxation@tax.state.nj.us) at taxation@tax.state.nj.us.

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of the New Jersey dock sale rule where goods are shipped to a non-New Jersey customer and possession is transferred in New Jersey resulting in receipts allocable to New Jersey. N.J.A.C. 18:7-8.8(a)1ii.

The Division stated that if a purchaser took direct receipt of the property outside New Jersey in its own vehicles or through a common carrier agent that it had engaged, such sale would be considered a non-New Jersey sale. Thus, the position of the Division is that the inverse of the fact pattern referenced in the rule cited above results in a non-New Jersey sale.

Trade Show Nexus — The nature and frequency of a foreign corporation's activities in this State are determining factors in assessing whether a corporation is "doing business" in New Jersey under N.J.A.C. 18:7-1.9(b). The number of employees in New Jersey is another determining factor.

A state's jurisdiction to impose a tax based on net income is subject to Federal statutory limitations of Pub. L. 86-272, 15 U.S.C. §§361-384(1959), which restricts the power of the states to tax net income derived from sources within the state from interstate commerce if the "only business activity within such state by or on behalf of such person" is the solicitation of orders for sales of tangible personal property where the orders are sent outside of the state for approval or rejection and are filled by shipment or delivery from a point outside of the state.

While the solicitation of business is not enough to establish nexus for New Jersey corporation business tax purposes under Pub. L. 86-272, the

corporation may still be subject to a tax on its gross profits or gross receipts earned in New Jersey based on New Jersey's Alternative Minimum Assessment ("AMA"). Corporations are not liable for the AMA if they have New Jersey gross receipts of less than \$2.36 million or New Jersey gross profits of less than \$1.18 million. If not liable for the AMA, the taxpayer must file a return and pay the minimum tax. If liable for AMA, either the alternative minimum tax or the minimum tax of \$500 (\$2,000 for members of affiliated or controlled groups) must be paid, whichever is greater.

The presence of employees at trade shows in New Jersey for the purpose of soliciting or generating business establishes physical presence within the State and creates nexus and triggers tax obligations. If the trade show activities are limited solely to: (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order, and involve maintaining a display at a single location for less than two weeks during the tax year, a foreign corporation will not be subject to corporation business tax based on or measured by income. N.J.A.C. 18:7-1.9(d) and 18:7-1.9(d)3v; N.J.A.C. 18:7-1.9(d)2ix.

Gross Income Tax

Military Stipend — A taxpayer recently inquired about the gross income tax consequence of a military stipend paid by an employer to an employee.

The IRS has ruled in Rev. Rul. 69-136 that payments made by employers to former employees who are actively serving in either the Armed Forces of the United States or the

National Guard are not subject to FICA, FUTA, and income tax withholding as they are not wages for services performed.

More specifically, Federal law provides that payments made by an employer to employees temporarily serving in a State National Guard that are equal to the difference between their normal wages and the amounts received from the state for their services are wages for the purpose of withholding. But where the employment relationship was terminated when the employee enlisted or was called for active military service with the U.S. government or State National Guard, the wage differential payments made by the employer are not wages subject to withholding.

Therefore, if the payments made to employees by the employer for serving in a military combat zone are not considered wages for services performed during employment with the company and they are not subject to Federal income tax withholding, they are not subject to New Jersey gross income tax withholding.

Motor Fuels Tax

Racing Gasoline — Gasoline is defined by the regulations included in the Administrative Code at N.J.A.C. 18:18-1.1: " 'Gasoline' means any liquid or gaseous substance commonly or commercially known or sold as gasoline regardless of its classification or use." Therefore, under the New Jersey Motor Fuels Tax Act, racing gasoline would be subject to the motor fuels tax. However, there is a provision that allows the taxpayer to apply for a refund when the fuel is used for a specific purpose as set



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forth in the Motor Fuels Tax Act at N.J.S.A. 54:39-66(i): “Any person: (1) Who shall use any fuels as herein defined for any of the following purposes: ... (i) Such highway motor vehicles as are operated exclusively on private property...”

While racing gasoline is subject to motor fuels tax, a refund claim can be filed by the user under N.J.S.A. 54:39-66(i).

Sales and Use Tax

Early Termination Fee: Wireless Service — The New Jersey Sales and Use Tax Act imposes tax on telecommunications services charged to a service address in this State, including all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-3(f). Thus, most components of a cellular telephone bill are subject to the 6% sales tax. However, an early termination fee imposed when a customer cancels service with the carrier prior to the end of the contract term is similar to a penalty or a charge for damages, rather than for any taxable goods or services. Thus, the early termination fee imposed in this case is not subject to New Jersey sales tax.

Restocking and Cut Fees — The Division responded to a question regarding the application of the New Jersey Sales and Use Tax Act to restocking and cut fees.

The vendor imposes a “restocking fee” if a customer cancels an order. A fee imposed on “restocking” is not subject to sales tax since there is no “sale” because the item is returned. The restocking fee is not considered an expense of any taxable transaction and by itself is not subject to sales tax. N.J.S.A. 54:32B-3(a).

The vendor imposes a “cut fee” if a customer requires a special size of the goods. Cut fees are inseparable from the underlying product. N.J.S.A. 54:32B-2(d). Thus, if the merchandise is a taxable item, the cut fee will be subject to tax since it is part of the taxable receipt. N.J.S.A. 54:32B-3(a). Conversely, if the underlying item is an exempt item (such as the sale of clothing), the cut fee is exempt since the underlying item is not subject to tax. N.J.S.A. 54:32B-8.4. □

In Our Courts

Local Property Tax

Denial of Tax Exemption – *Essex Properties Urban Renewal Associates, Inc. v. City of Newark*, decided September 4, 2002; Tax Court of New Jersey.

Plaintiff (Essex Properties Urban Renewal Associates, Inc.) requested property tax exemption pursuant to N.J.S.A. 54:4-3.6. Essex Properties is incorporated as a nonprofit

organization in New Jersey and owns the subject property which it administers as a 24-unit apartment facility for developmentally and/or physically disabled persons. A property tax assessment of \$278,700 was imposed on the subject property for tax year 2000.

In 1999 plaintiff applied for property tax exemption with the assessor of Newark. Upon the assessor’s denial of the exemption request, taxpayer appealed to the Essex County Board of Taxation. The county board of taxation affirmed the assessment without prejudice. Essex Properties appealed to Tax Court.

To qualify for exemption under N.J.S.A. 54:4-3.6, a taxpayer must satisfy the following conditions: (1) must be organized exclusively for a tax-exempt purpose; (2) property must be actually and exclusively used for the tax-exempt purpose; and (3) use and operation

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

Sample E-Check Form Fields:
 Payee: John Smith, 123 Main Street, Trenton, NJ 08611
 Date: 10-09-2000
 Amount: \$1234.00
 Bank: Anystate Bank, Trenton, NJ 08611
 Routing Number: 080301000
 Account Number: 123456789
 Note: Do not include the check number.

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.5% of tax payment is paid directly to Official Payments Corporation.

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of the property must not be conducted for profit. Both parties stipulated to conditions (1) (organization for an exempt purpose) and (3) (non-profit operation). The sole issue before the Court is whether Essex Properties' activity qualifies as an actual and exclusive use for an exempt charitable purpose within the meaning of the statute.

The burden of proving tax-exempt status is upon the party claiming exemption. In this case, plaintiff fails to prove that its activity qualifies as an actual and exclusive use for a charitable purpose within the exempt purposes set forth under N.J.S.A. 54:4-3.6. Depending upon the specific facts and circumstances of each case, the courts have granted property tax exemption to certain charitable organizations. Plaintiff relies on *Salt and Light Co., Inc. v. Mount Holly Twp.*, 15 NJ Tax 274 (Tax 1995), aff'd, 16 NJ Tax 40 (App. Div. 1996), cert. denied, 148 NJ 458, 690 A.2d 606 (1997) in support of its claim for tax exemption. *Salt and Light* provided temporary housing and counseling services to homeless persons. They operated 24 residences in Mount Holly Township, which were purchased and renovated using funds from HUD, Federal home loan grants, government grants and funds, including charitable contributions.

Two-thirds of its residents received public assistance, which included some form of government welfare, distributed directly to *Salt and Light*. To the extent they were able, the remaining residents paid up to 30 percent of their income as rent. *Salt and Light* showed that its average daily cost to support the homeless was less than it would cost the government to do so. Rental payments were below market and no individual was evicted solely because of an inability to pay. Under these facts, the Tax Court held that although *Salt and Light* received government subsidies, it qualified for tax exemption in its use of its facilities to provide temporary shelter and services to the homeless.

Essex Properties argues that, like *Salt and Light*, they are entitled to tax exemption because they are a nonprofit corporation which provides housing and counseling to low-income, developmentally and/or physically disabled persons, and thereby relieves the government from doing so. However, unlike *Salt and Light*, Essex Properties failed to show evidence that (1) their rents were below market; (2) individuals not eligible for aid would be admitted into the facility; (3) plaintiff evicts or does not evict tenants who are unable to pay rent left uncovered by HUD; and (4) plaintiff would admit or retain a disabled person who could pay no rent at all.

Essex Properties also argues that, in addition to housing, they provide on-site counseling and support similar to *Salt and Light*. While *Salt and Light* provided case managers who offered regular sessions, Healthcare Foundation and HUD paid for Essex Properties' social worker at no cost to plaintiff. This Court found that plaintiff's counseling service is not so unique as to warrant tax exemption. The Court also found that plaintiff's counseling and support service is incidental to plaintiff's main function of renting apartments.

As per *Presbyterian Homes*, 55 NJ at 286, 261 A.2d 143 "nonprofit status cannot be equated with charitableness." It is only one factor to consider when determining if property is being used for charitable purposes. Accordingly, plaintiff's IRS nonprofit charitable organization 501(c)(3) designation is not, in and of itself, enough to qualify plaintiff for property tax exemption under N.J.S.A. 54:4-3.6.

The Court stated in *Salt and Light* that "A truly charitable use is not necessarily vitiated by the receipt of government support on behalf of beneficiaries...so long as the charitable entity to some extent relieves a burden on government." Plaintiff fails to demonstrate that its operation of the subject property relieves the government of any burden. In *Southern Jersey Family Medical Centers, Inc. v. City of Pleasantville*, 351 NJ Super. 262, 798 A.2d 120 (App. Div. 2002), plaintiff's policy was to "treat anyone," and charged patients without insurance according to a sliding fee scale based on each patient's income. No person was denied

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service solely because of inability to pay. Southern Jersey received funds for services rendered (Medicaid payments) and funds received from Federal grants. The Court found that the facility earned the former by providing medical services to indigent patients and “receipt of these funds...does not impact upon its...exclusive operation for charitable purposes.”

Contrary to *Southern Jersey, supra*, plaintiff received funds from HUD to construct the subject property and continues to receive Federally subsidized rent income. These amounts are rents paid by HUD for plaintiff’s tenants, all of whom qualified for assistance. These payments are not earned for services rendered, such as healthcare or medical services, but simply rental payments. There is no evidence that plaintiff’s rental rates are below market, that plaintiff serves disabled persons who are not supported by government subsidies, or if plaintiff subsidizes tenants who are unable to pay, thus relieving the government of this burden. If a tenant was evicted for financial reasons, that person would become a public charge, and the State would be obligated to provide care.

This Court finds that plaintiff’s case is analogous to *1711 Third Avenue, Inc. v. Asbury Park*, 16 NJ Tax 174 (Tax 1996). *Third Avenue*, a non-profit corporation, owned property which housed tenants suffering from mental illness. The property was funded in large part by HUD’s Section 811 supportive housing program. The tenants were unemployed and derived their income from social security payments. The tenants

made rental payments equal to 30 percent of their income. Management provided counseling and other services to the tenants. The Court held that *Third Avenue* failed to offer the proper proofs to bring itself clearly within the exempting statute of N.J.S.A. 54:4-3.6.

The Court held that the following can be used as evidence in determining a plaintiff’s exemption claim: (1) financial statements of plaintiff and its managing company, (2) detailed explanation of plaintiff’s and management company’s use of revenues, including amounts paid for salaries, (3) proof that plaintiff charges below market rents, (4) explanation of financial arrangements between plaintiff and management company, (5) breakdown of plaintiff’s and management company’s sources of revenues, (6) whether plaintiff competes with for-profit entities providing housing, and (7) whether plaintiff evicts tenants who are unable to pay rent. *St. Luke’s Village, Inc. v. Peapack & Gladstone Borough*, 11 NJ Tax 76 (Tax 1990) held that providing affordable housing to low-income persons was not a charitable purpose where there was security for rental payments and residents were required to leave if unable to pay for operating expenses. Plaintiff was unable to demonstrate that the subject property is used for charitable purposes within the meaning of N.J.S.A. 54:4-3.6. Plaintiff failed to meet its burden of proof and bring itself clearly within the meaning of the exempting statute. Without such proof in the record, the Court can only conclude that plaintiff is subject to property tax.

Gross Income Tax Sale, Exchange, or Other Disposition of Property – *Diana King v. Director, Division of Taxation*, decided April 16, 2004; Tax Court No. 005337-2002.

In April 1991 plaintiff, Ms. Diana King (King), entered into a loan agreement with Amiro Fiorintino Associates, Inc. (AFA). The loan was evidenced by a revolving credit note. The principal shareholder of AFA was the guarantor of the loan. The loan was also secured pursuant to a security agreement granting King a security interest and lien in certain AFA collateral. When King recorded her security interest pursuant to the Uniform Commercial Code (UCC), King’s loan was subordinated to a bank loan. In 1992 and 1995 the loan agreement was amended. Essentially, Ventura Entertainment Group (VEG) was an additional guarantor of AFA’s obligation and the loan was secured pursuant to a security agreement that granted King a security interest in 100,000 shares of VEG.

In 1996 AFA filed Chapter 11 bankruptcy. King filed a proof of claim as a secured creditor in the amount of \$568,857.35 consisting of the \$450,000 principal, \$106,090.65 interest, and \$12,766.70 arrears. As a junior secured creditor, King consented to the sale of AFA’s assets conditioned upon her receipt of \$120,000 and that she be released from claims against the debtor. King’s consent was evidenced on a bankruptcy document titled “Response of Diana King to the Debtor’s Application for an Order Approving a Purchase Agreement and Authorizing a Sale of Assets.”

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Thereafter, King terminated her UCC filings and the bankruptcy proceeding was later dismissed.

On her 1996 Form NJ-1040, King reported a \$330,000 loss (\$450,000 less \$120,000) and \$32,973 of attorney fees as a \$362,973 nonbusiness bad debt deduction. Thereafter, she filed an amended return reclassifying the \$362,973 as a long-term capital loss, claiming that it was an investment loss on the disposition of a security. On both her NJ-1040 return and amended return, King offset this loss against other gains included under N.J.S.A. 54A:5-1c disposition of property category. However, the Division disallowed the deduction, claiming that it was a nondeductible, nonbusiness bad debt.

N.J.S.A. 54A:5-1c includes net gains, net losses, and net income derived from the sale, exchange, or other disposition of property. At issue is whether King engaged in a sale, exchange, or disposition of property. The Court found that King settled her claim for a reduced amount by giving up her right to sue on the note and that she did not sell or transfer the note evidencing the debt or any other security. Also, the Court noted that King presented no evidence that she exchanged the note. Citing *Vinnick and Walsh*, the Court upheld the Division's assessment.

Sales and Use Tax

Wrapping Supplies Exemption – *Quest Diagnostics, Inc. v. Director, Division of Taxation*, decided September 9, 2004; Tax Court No. 005140-2002.

Plaintiff (Quest) operates a laboratory that performs and provides test

results on human blood and other bodily fluids. Initially, Quest purchases vacutainers or similar devices, which are test tubes used to collect specimens, that are empty except that they contain chemical anticoagulants or clot activators. The vacutainers are shipped to Quest in sealed packages. Quest provides these vacutainers at no charge to physicians or to facilities operated by Quest. Then, Quest collects them from the physician's office when specimens are filled for testing and delivers them to the Quest laboratory. Unused vacutainers can be returned to Quest in their original packaging. Quest's competitors also provide physicians with the same or similar vacutainers and none of the vacutainers are identifiable to indicate whether they were provided by Quest or a competitor. After Quest completes testing, it destroys the used vacutainers and invoices the patient or the insurance company.

At issue is whether Quest's purchases of vacutainers qualify for an exemption from the Sales and Use Tax Act. In general, N.J.S.A. 54:32B-8.15 (8.15) provides an exemption for the sales or use of wrapping supplies including cartons, nonreturnable containers, etc., and all other wrapping supplies that are used incidentally in the delivery of personal property.

The Court determined that whether the vacutainers were wrapping supplies and whether their use was incidental to the delivery of personal property must be determined based upon Quest's use of the vacutainers and not the physician's later use of collecting specimens and their return to the Quest laboratory for testing and destruction. Under the statutory definition of "use," the

Court concluded that both Quest's purchase of the vacutainers and its delivery to physicians was a "use" of the product. First, the Court found that the vacutainers qualified as containers. In order to qualify for the 8.15 exemption, the statute specifically requires that containers be nonreturnable. The Court determined that Quest's sole purpose in providing vacutainers to physicians was to encourage physicians to return vacutainers containing specimens for testing purposes. Therefore, the Court held that the vacutainers were returnable containers and did not qualify for the 8.15 exemption. Additionally, the Court reasoned that as containers the vacutainers could not also qualify under the category of "all other wrapping supplies" because the statutory nonreturnable container requirement would be meaningless if a returnable container could qualify under another category.

The Court proceeded to discuss whether the vacutainers would have qualified for the "incidental to the delivery of personal property" requirement. The Court found that providing empty vacutainers, except for chemicals, to physicians was not a use that was "incidental to the delivery of personal property" because Quest did not use the vacutainers to deliver personal property. Only the physicians placed specimens, personal property, into the vacutainers for delivery to plaintiff. The Court opined that Quest's delivery of the vacutainers to the physicians was the use that determined the issue of taxability and that the physician's use of placing specimens in them and returning them to Quest is a separate,

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independent, second use of the container that could not be imputed to Quest. Additionally, the Court noted that the physician's use could not be attributable to Quest because Quest-purchased vacutainers may be returned to Quest or a competitor and likewise a competitor-purchased vacutainer may be returned to Quest or the competitor. Therefore, the physician's use of a Quest vacutainer may not be as a facilitator for Quest. Finally, the Court concluded that the statute refers to wrapping supplies used to deliver personal property to a third party and not to oneself. The Court found that the facts indicated that Quest used vacutainers to deliver personal property to itself regardless of whether an independent physician or Quest's facilities used the vacutainers to collect specimens and return them to Quest. □

In Our Legislature

Gross Income Tax

Estimated Tax on Nonresidents' Sale of Real Property — P.L. 2005, c.20, enacted January 19, 2005, and applied retroactively to August 1, 2004, clarified that nonresidents must pay a minimum estimated gross income tax of 2% of the consideration paid on their sale of real property in New Jersey.

Local Property Tax

Changes in Historic Site Property Tax Exemption — P.L. 2004, c.183, enacted on December 22, 2004, and effective immediately, revised the criteria for designation as an "historic site" for purposes of property tax exemption.

Miscellaneous

Local Tax Changes — P.L. 2004, c.181, enacted December 22, 2004, and retroactive in application to September 21, 1999, repeals the December 31, 2004, expiration of certain municipalities' authority to impose payroll taxes.

Realty Transfer Fee

Revisions — P.L. 2005, c.19, enacted January 19, 2005, effective February 1, 2005, and applicable to transfers of real property occurring on or after that date, made various changes in the statute imposing a 1% transfer fee on the buyer of real property purchased for more than \$1 million. It limits the fee to transfers of property that is classified as Class 2 residential; or property that includes both Class 3A farm property and a structure suitable for residential use, as well as any other real property transferred to the same grantee in conjunction with that transfer; or property that constitutes a "cooperative unit" within the meaning of N.J.S.A. 46:8D-3. It also exempts transfers to charitable organizations that are exempt from Federal income tax pursuant to 26 U.S.C.A. §501(c)(3). □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$20,000 or more.

[2004](#) [2005](#) □

from the director's desk

Tax season is well underway, so if you haven't filed your 2004 New Jersey income tax return yet, consider using one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ ELF — and enjoy the simplicity and security of electronic filing. As of March 15, 2005, just under 1 million 2004 New Jersey income tax returns have been filed electronically. That's a 31% increase over the number of electronically filed returns at this time last year.

Paperless filing is the fastest and most accurate way to file your return because once you enter your information all the necessary calculations are done for you. With NJ FastFile you also spend less time waiting for your refund because electronic returns can be processed more quickly. And, only taxpayers who file electronically can have their refunds deposited directly into their bank account. Taxpayers who owe State income taxes for 2004 can file now and wait until April 15, 2005, to pay.

New Jersey now requires all tax practitioners who prepared or filed 200 or more 2003 New Jersey income tax resident returns to file their clients' 2004 returns electronically using NJ WebFile, NJ TeleFile, or NJ ELF. Consequently, many New Jersey residents who have their returns prepared by a tax practitioner are experiencing the benefits of electronic filing: faster refunds, direct deposit, more accurate processing, and greater security of sensitive information.

For more information about any of the NJ FastFile options, visit www.njfastfile.com or call 1-800-323-4400. If you are looking for an easier way to file your return, or just want to get your refund faster, make the switch from paper to NJ FastFile. Put your pencils and calculators away and call or log on today!

Robert K. Thompson

New Jersey State Tax news

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Some tax practitioners are now required to use electronic filing for their clients' 2004 New Jersey income tax returns.

[More information inside...](#)

Preparer Sentenced to Prison for Tax Fraud

A joint-agency investigation with the Division of Criminal Justice aimed at targeting tax fraud has uncovered the largest "tax refund fraud" scheme investigated in State history by the Division of Taxation. The investigation resulted in the filing of criminal charges against Rosa M. Castro, a tax preparer from Clifton, New Jersey. The charges allege that she has prepared close to 2,000 fraudulent New Jersey gross income tax returns seeking over \$1,000,000 in illegal refunds.

The tax fraud investigation was initiated by the Division of Revenue which, in February of 2003, identified 21 suspicious tax returns bearing certain similarities. The investigation conducted by the Division of Taxation identified 1,978 fictitious and/or fraudulent New Jersey gross income tax returns allegedly prepared and filed by Rosa Castro for herself, family members, friends, and others using actual and fictitious names and social security numbers. Two types of fraud have been identified, including "Earned Income Tax Credit" fraud and "Refund" fraud. Undercover investigators were able to meet with Rosa Castro at her home office. During these meetings, Rosa Castro prepared false and fraudulent tax returns utilizing fictitious information on behalf of the undercover investigators.

On March 1, 2004, agents from the Division of Criminal Justice and the Division of Taxation executed a search warrant at the residence of Rosa M. Castro which resulted in the seizure of records relating to refund fraud and the preparation of false and fraudulent New Jersey gross income tax returns. Ms. Castro was charged in a complaint summons with theft by deception (second degree) and filing false and fraudulent tax returns (third degree). Bail was set at \$50,000 with no 10% option.

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important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Earned Income Tax Credit
Hotline 1-888-895-9179
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576



preparer sentenced - from pg. 1

As part of a plea agreement, Rosa Castro entered guilty pleas in Passaic County to the charges on June 30, 2004. On August 20, 2004, Ms. Castro was sentenced to five years in State prison and ordered to make restitution of \$141,354. In addition, Ms. Castro, who is on Federal probation for having committed similar crimes in the 1990s, faces revocation of her Federal probation and incarceration for the balance of her Federal sentence. The investigation is continuing and additional charges may be forthcoming for others that conspired with, and/or received monies as a result of Rosa Castro's actions.

This case represents only the most visible of a number of initiatives the Division of Taxation has undertaken to combat tax refund and tax credit fraud. In addition to investigating and prosecuting preparers of fraudulent returns and the recipients of fraudulent refunds, the Division also employs a sophisticated system of internal controls to identify questionable refund applications and prevent the issuance of funds to which the applicants are not entitled, while insuring the timely payment of legitimate refunds.

This is another example of outstanding cooperation between agencies to level the playing field for New Jersey's taxpayers and to insure that the State's financial resources are protected from those seeking to personally profit by fraud at the expense of honest taxpayers. □

CORPORATION BUSINESS TAX New Jersey Throw Out

Regulation 18:7-8.7(d) details the Division's interpretation of the "throw-out" provision of the Business Tax Reform Act of 2002.

Receipts sourced to a state, a possession or a territory of the United States or the District of Columbia, or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction of the allocation factor.

Recently the Division has received inquiries regarding how this provision would apply to sales sourced to states which do not impose corporate income or franchise taxes as well as to sales sourced to states where the taxpayer is protected from taxation by Pub. L. 86-272. The question becomes whether or not the taxpayer is subject to tax.

In the case of sales to a state or jurisdiction which does not impose a tax, such as Nevada, the taxpayer clearly would not be subject to a tax, so any sales sourced to that jurisdiction would be thrown out of the receipts fraction denominator.

In situations where a corporation is sourcing receipts to a state where the taxpayer is immune from income taxation due to Pub. L. 86-272, the question becomes whether the state subjects the taxpayer to tax based on business presence or business activity. These types of taxes can include net worth taxes or gross receipts taxes. Therefore, a corporation taxpayer selling into a

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Division of Taxation Director:
Robert K. Thompson

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new jersey throw out - from page 2

state that imposes only a net income tax, and whose activity is limited to solicitation of sale of tangible personal property, is therefore immune from taxation and is required to “throw out” those receipts sourced to that state from the New Jersey receipts fraction denominator. However, if the same state, in addition to its corporate income tax, imposed an apportioned net worth tax, the receipts sourced to that state and subject to the net worth tax would not be “thrown out” of the New Jersey denominator. □

Order Package NJX Online

The New Jersey Division of Taxation has automated the ordering and payment process for *Package NJX*. The materials can only be ordered and paid for online through our secure server. Payment must be made by electronic check (e-check).

Three *Package NJX* products are being offered for 2004:

- **Printed Version (\$25.00)** — Reproducible tax forms and instructions printed on loose-leaf pages that are hole-punched to fit a standard 3-ring binder.
- **CD-ROM Version (\$15.00)** — Tax forms and instructions plus various tax information publications such as *New Jersey State Tax News*, *Division of Taxation Annual Report*, etc.
- **3-Ring Binder (\$10.00)** — Standard 3-ring binder to hold printed version. (Binder does not include printed version of *Package NJX*, which must be purchased separately.)

Anyone who purchased *Package NJX* materials last year will receive a notice from the Division of Taxation that contains their ID number and a temporary password as well as instructions for ordering online as a “Registered User.” Those who did not order last year and who want to purchase *2004 Package NJX* materials should follow the instructions for “New User.”

The *2004 Package NJX* materials are expected to be shipped by January 31, 2005. To ensure timely delivery, orders and payments must be submitted by December 22, 2004.

[Order 2004 Package NJX](#) □

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act (CTA), requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Seven persons passed the March 27, 2004, CTA exam. They are:

Bergen County: Deborah Claire Boyle, New Milford Borough; Edward H. Hynes, Upper Saddle River Borough.

Hunterdon County: Glenn A. Stives, Raritan Township.

Middlesex County: Celeste P. Florek, Old Bridge Township.

Monmouth County: William J. FitzPatrick, Avon-by-the-Sea Borough.

Morris County: Kathleen Minahan, Dover Town.

Ocean County: Irene F. Raftery, Brick Township.

The next examination is scheduled for March 19, 2005. The deadline to file applications for this exam is February 17, 2005. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX Tax Assessors’ Calendar

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 Veteran’s property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses eligibility established (pretax year).

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Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%



assessors' calendar - from pg. 3

- Agricultural land values for farmland assessment under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax

bills for the omitted assessments, whichever is later.

December 31–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2005 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months has included:

- On March 1, 2004, Hiteshkum Patel of Edison, New Jersey, was arrested by police at the Delaware Memorial Bridge, Pennsville Township, New Jersey, attempting to smuggle 239 cartons of Delaware-stamped cigarettes into New Jersey. The Office of Criminal Investigation (OCI) determined that Patel owns stores in Newark, Linden, and Irvington. OCI seized 32 cartons of Delaware-stamped cigarettes and 157 untaxed tobacco products from the Newark store, 119.1 cartons of Delaware-stamped cigarettes from the Linden store, and 3 cartons of Delaware-stamped cigarettes from the Irvington store. The repeated offenses have resulted in a joint investigation with the Bureau of Alcohol, Tobacco, Firearms, and Explosives
- On March 23, 2004, confirmation was received from Superior Court – Hudson County, that John Drzymkowski of Berkeley Heights, New Jersey, was

admitted into the Pretrial Intervention Program (a supervision program for first-time offenders charged with nonviolent crimes) for a term of 36 months and ordered to make restitution of \$331,039.36 pursuant to his guilty plea on July 28, 2003, to one count of failing to file tax returns. The charges involve \$301,000 in petroleum products gross receipts tax which Drymco, Inc., a now-defunct heating oil company collected on diesel fuel sales in 1999 and 2000. This matter was prosecuted by the State Attorney General.

- On March 24, 2004, Wifki A. Seed of West New York, New Jersey, the manager of a convenience store in Newark, was found in possession of 856 counterfeit New Jersey cigarette tax stamps along with 110 cartons of untaxed cigarettes. He was in the process of applying the counterfeit stamps to packs that appear to have had another state's stamp removed. A computer, printer, and other counterfeiting paraphernalia were seized from the subject's residence. The investigation is continuing.
- On April 7, 2004, Lan Fang Zhang and Min Liang Yu, both of New York City, were arrested by OCI while loading a van with untaxed cigarettes from a storage unit at the U-Store-It facility in Jersey City, New Jersey. The cartons consisted of counterfeit/trademark violation Newports as well as illegal Chinese and British import cigarettes. 14,757 cartons of cigarettes, two vans, three cell phones, \$550 in cash, documents, and ledgers were

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criminal enforcement - from page 4

seized. The subjects were held in the Hudson County Jail on \$100,000 bail each. Taxation's Facilities Management Activity assisted in securing this large volume of contraband. The tax loss averted was \$353,881.

- On April 13, 2004, a grand jury indicted Lamine Ouattara of East Orange on charges of theft by deception, impersonation, and theft of identity arising from his filing of multiple fraudulent 2002 New Jersey gross income tax returns and subsequent receipt of \$9,300 in refunds. Ouattara created fictitious identities and claimed the Earned Income Tax Credit on the returns. The case is a joint investigation with the Essex County Prosecutor's Office and the East Orange Police Department.
- On April 13, 2004, OCI arrested Ming Gan Zhang of New York in possession of 2,354.4 cartons of untaxed cigarettes in a van and storage unit at U-Store-It, Jersey City, New Jersey. The cigarettes were counterfeit/trademark violation Marlboro and Newport, and Chinese imports. The van, two cell phones, and \$707 were also seized. Zhang was held on \$100,000 bail. The tax loss averted was \$56,458.50.
- On April 20, 2004, Gary Dewayne Dennington pled guilty in United States District Court, Beaumont, Texas, to six counts of mail fraud. Dennington, a Federal prison inmate in Beaumont, prepared counterfeit W-2 forms and filed fraudulent New Jersey gross income tax returns for the years 1998, 1999, and 2002 to claim refunds, but

security procedures in place blocked his receipt of the funds. This case is a joint investigation with the Federal Bureau of Investigation in Beaumont, Texas.

- On April 22, 2004, a State Grand Jury in Trenton, New Jersey, indicted Oscar Kirkconnell of Elizabeth, New Jersey, on charges of theft, misapplication and failure to pay over \$88,308.44 in sales tax collected, filing fraudulent sales tax returns, and failure to maintain records from January 1, 1999, to September 30, 2002, in connection with Kirkconnell's go-go bar in Elizabeth. The Elizabeth Police Department assisted in the investigation. The matter was presented to the grand jury by the State Office of the Attorney General. This case is part of the Division of Taxation's program of progressive enforcement, utilized in cases in which taxpayers fail to comply with the Division's civil audit, enforcement, and educational outreach programs. In this case, a civil audit in 1998 resulted in a \$19,000 sales tax assessment against this taxpayer, which was not satisfied until the business was seized by the Division's Compliance Activity.
- On April 22, 2004, Norman D. Levine of Manchester was

indicted by a Monmouth County Grand Jury on charges of possession and sale of untaxed cigarettes. Levine was arrested by OCI in December 2003 after an investigation identified Levine as the recipient of untaxed cigarettes by way of a FedEx shipment from Virginia. Levine appeared in court in Maryland on December 12, 2003, in a case stemming from a previous arrest. Immediately after pleading guilty to a felony count of transportation/possession of contraband cigarettes, Levine was followed by agents of the Maryland Comptroller of the Treasury to Virginia and North Carolina where they observed him purchasing cigarettes again and shipping them from Virginia Beach to a New Jersey business. OCI surveillance led to the arrest of Levine after he took possession of the cigarettes and was placing them in a storage unit in Neptune Township. Levine was actively engaged in a mail-order business with his own Internet site, keeping in contact with his customers via e-mail. The storage unit was set up much like a shipping facility to support his illegal enterprise. There he categorized and stored numerous brands of cigarettes, preparing them for shipment in specially manufactured,

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Hurricane/Flood Disaster Relief

For information on tax relief for those affected by the July 2004 flooding in Burlington and Camden counties in New Jersey, go to: www.state.nj.us/treasury/taxation/floodrelief.shtml

For information on NJ tax relief for Florida hurricane victims, go to: www.state.nj.us/treasury/taxation/floridarelieff.shtml



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unmarked shipping boxes. A total of 754 cartons of contraband cigarettes were seized; 457 cartons were in the delivery that had been observed, and the remainder was found in his storage unit. A combination of Delaware tax stamped, Virginia tax stamped, and unstamped cigarettes (from North Carolina) were seized along with \$2,138 in cash and a 1998 Mercury. Levine was charged with transportation and sale of untaxed cigarettes and possession of more than 20,000 unstamped cigarettes, and released on \$25,000 bail.

- On April 22, 2004, confirmation was received that Antonio Couso of Wayne, New Jersey, who had pled guilty to one count of possession of counterfeit stamped cigarettes in the Bergen County Superior Court, was sentenced to three years' probation, thirty days' community service, one day's jail credit, and \$155 in fees and costs.
- On April 29, 2004, Jeffrey and Cynthia Levy of Cherry Hill, New Jersey, were charged with failing to pay the State almost \$170,000 in sales tax collected

from customers and income tax withheld from employees of several janitorial businesses the husband and wife couple operated between 1994 and 2001. A joint investigation conducted by the Camden County Prosecutor's Office and the Division of Taxation's Office of Criminal Investigation revealed that the couple attempted to hide the diversion of funds by conducting business through a succession of business entities: Executive Maintenance Company, Executive Maintenance, Inc., and Executive Maintenance Industries, Inc., all located in Cherry Hill, New Jersey.

- On May 21, 2004, Philip McKeaney of Cherry Hill, New Jersey, was sentenced to jail for seven years and ordered to pay over one million dollars in restitution as a result of pleading guilty to charges of insurance fraud and failure to pay various State taxes. McKeaney, through his insurance brokerage company, defrauded clients of over \$1.6 million by failing to provide medical insurance coverage for their employees. McKeaney diverted some of the stolen funds to his data processing business,

Cambria Corporation, which was found to have failed to remit New Jersey gross income tax and Department of Labor withholdings that totaled \$72,343. Michael Evangelista, president of Cambria, was sentenced to five years' probation and full restitution of the tax.

- On June 8, 2004, three executives of JCA Associates, Inc., a Burlington County-based engineering firm, pled guilty to filing false and fraudulent corporation business tax returns to conceal illegal campaign contributions. As a result Mark Neisser, President, Henry Chudzinski, Director of Marketing, and William Vuokoder, CFO will all have to resign and divest themselves of any associations with JCA, its subsidiaries, or any entity that has a business relationship with the firm. The resignations and divestitures will be for terms ranging from two to five years. JCA will also pay a \$100,000 fine.
- On June 8, 2004, Mitesh "Gary" Shah was arrested at his retail store in Middletown Township, New Jersey, after execution of a

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Enforcement Summary Statistics Second Quarter 2004

Following is a summary of enforcement actions for the quarter ending June 30, 2004.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,598	• Seizures	57
Total Amount	\$31,823,231	• Auctions	11
• Jeopardy Assessments	361	• Referrals to the Attorney General's Office	523

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.shtml



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search warrant by the Middletown Township Police Department and OCI resulted in the discovery of 26.8 cartons of unstamped cigarettes obtained via the Internet, 1,752 other tobacco products on which tax had not been paid, and 30 bags of heroin. Shah had been on probation as a result of his prior arrest by OCI in a cigarette counterfeiting case.

- On June 18, 2004, in Superior Court – Hudson County, Ivo Perez of Paramus, New Jersey, was sentenced to five years' probation and restitution totaling \$141,417 pursuant to his guilty plea to charges of failure to file sales and use tax returns and failure to pay over \$72,639.80 in sales and use tax from October 1996 to December 2001 at his vehicle rental business, Metro Rental Services Inc., North Bergen, New Jersey. A plea agreement requires that Perez also file and pay delinquent sales tax, gross income tax withholding and corporation business tax returns and turn over the books and records of his businesses. This investigation was conducted in cooperation with the Division of Taxation's Field Investigations Branch and was prosecuted by the State Attorney General.
- On June 23, 2004, in Newark Municipal Court, Miguel A. Puca of Newark, New Jersey, was charged with failing to file motor fuels tax returns and failure to pay \$60,397 in motor fuels tax from April 2003 to April 2004 in connection with retail sales of diesel fuel to trucking companies.

This case was based on a letter from the owner of a local gas station who complained that the subject was harming legitimate businesses by evading the motor fuels tax.

- One hundred twenty-three (123) complaints alleging tax evasion were evaluated from April through June 2004 in the Office of Criminal Investigation.
- During the same period, one hundred forty-seven (147) charges were filed in court and thirty-one (31) arrests were made in thirty (30) cases involving violations of the Cigarette Tax Act. Items seized were: 18,113.2 cartons of untaxed cigarettes having a total value of \$1,050,056.60 and including 225.5 cartons bearing counterfeit New Jersey tax revenue stamps, and three vehicles. □

Tax Briefs

Administration

Business Registration Requirements — N.J.S.A. 52:32-44, as amended by P.L. 2004, c.57, bars a "contracting agency" from entering into any contract with a "business organization" (denoted as a "contractor" or "subcontractor") for the providing of goods or services or to construct a construction project, unless the contracting agency has been provided with a copy of the business registration of the contractor (and any subcontractor as the case may be) by the contractor. No contractor under any contract with a contracting agency may contract with a subcontractor to carry out the terms of the contract with the agency, unless the subcontractor

first provides proof of its valid business registration to the contractor.

The law defines "contracting agency" as meaning "the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by the Legislative Branch or the Judicial Branch, or any independent State authority, commission, instrumentality or agency or any State college or university, any county college, or any local unit." "Local Unit" includes county and municipal governments, private firms providing water supply and wastewater treatment services, and incorporated nonprofit associations providing wastewater treatment services to a city of the first class.

All business organizations normally register with the State by completing and filing a Business Registration Application (Form NJ-REG) which can be found on the Division of Revenue's Web site at: www.state.nj.us/njbgs/revprnt.htm.

Individuals having no sales, business tax, or employer obligations with the State of New Jersey, but still doing business with an in-state contracting agency as defined, should still complete the Certification and Registration for Individuals Contracting With State Agencies (Form NJ-REG-A). Form NJ-REG-A is available on the Division of Revenue's Web site at: www.state.nj.us/treasury/revenue/pdf/forms/reg_a.pdf.



Corporation Business Tax

S Corporation Member of LLC —

If a single member of a single-member LLC is considered a corporation for Federal purposes, the member corporation will be subject to New Jersey corporation business tax. An S corporation shall be considered a C corporation for New Jersey corporation business tax purposes unless it elects New Jersey S corporation status. A C corporation is required to file a New Jersey Corporation Business Tax Return, (Form CBT-100), an annual report, and pay all applicable fees and taxes.

A Federally recognized S corporation may elect to be a New Jersey S corporation as long as it is registered as a foreign corporation authorized to do business in New Jersey. The corporation must properly complete and file a New Jersey S Corporation Election (Form CBT-2553) to request recognition as an S corporation for New Jersey corporation business tax purposes. Approved New Jersey S corporations must complete and file an S Corporation Business Tax Return, (Form CBT-100S), along with the annual report.

Despite having no income, any corporation subject to New Jersey corporation business tax must pay no less than the minimum tax when filing its corporation business tax return unless specifically exempted by law, N.J.S.A. 54:10A-5(e). The minimum tax for a corporation is \$500 unless it is part of a controlled or affiliated group having \$5,000,000 or more in payroll; then the minimum tax is \$2,000.

Gross Income Tax

Resident Aliens — The New Jersey Gross Income Tax Act does not distinguish between aliens and citizens. Therefore, an alien working in New Jersey will be subject to New Jersey tax as either a resident or a nonresident of New Jersey.

N.J.S.A. 54A:1-2(m)(2) defines a resident taxpayer to include an individual who is not domiciled in New Jersey, but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the tax year in New Jersey, unless such individual is in the United States Armed Forces. All income, including wages, earned by a resident taxpayer of New Jersey, even if they are an alien, is subject to New Jersey gross income tax even though such income is exempt from Federal income tax. Nonresidents are subject to tax only on income derived from sources within New Jersey.

The same would be true despite the existence of a tax treaty between the alien's country of domicile and the United States, unless such treaty specifically exempts the alien from all tax obligations rather than providing an exemption solely from Federal tax obligations.

Employer-Provided Commuter Transportation Benefits —

The Division responded to an inquiry regarding employer-provided commuter transportation benefits and whether employees can make a pretax deduction to pay for non-employer-provided section 132 transportation benefits.

The statute provides for employer-provided commuter transportation benefits and it does not allow employees to make a pretax

deduction on their own accord as stated at N.J.S.A. 54A:6-23(c), which states that "the exclusion provided by subsection a. of this section shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee."

Therefore, employees cannot make a pretax deduction to pay for non-employer-provided commuter transportation expenses.

Motor Fuels Tax

Tax on Stolen Motor Fuel — The Division responded to a question regarding the motor fuels tax on stolen motor fuel. The taxpayer asked if New Jersey gives any kind of tax allowance on motor fuels tax for "driveaways" in which the purchaser of the motor fuel drives away without paying.

The theft of motor fuels is treated as a sale of motor fuel as set forth at N.J.S.A. 54:39-7, which states that "... 'Sale' means and includes, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In every case where fuels are exchanged, given, stolen or otherwise disposed of, they shall be deemed to have been sold...."

The regulations also define a theft as a sale as set forth at N.J.A.C. 18:18-1.1, which states that "... 'Sale' means, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In every case where fuels are exchanged, given, stolen, or otherwise disposed of, they shall be deemed to have been sold...."

Therefore, since the sale of motor fuel is defined to include the theft



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of motor fuel, New Jersey does not provide an allowance or percentage on a motor fuels tax return to compensate the seller for tax on stolen motor fuel.

Stolen motor fuel is treated as if it were sold for motor fuels tax purposes.

Sales and Use Tax

Canine Dental Cleaning — Professional cleaning of a dog's teeth is considered a medical-surgical procedure when performed under anesthesia. It is done in order to remove tartar from the teeth and to examine the dog's mouth for signs of gum disease, loose or broken teeth, and other oral conditions requiring further surgery, medical treatment, or monitoring. The professional cleaning under anesthesia is therefore part of the "practice of veterinary medicine, surgery and dentistry," as defined in N.J.A.C. 13:44-3.1, and as used in the regulations of the State Board of Medical Examiners governing the veterinary profession. N.J.A.C. 13:44-1.1 et seq. This service is treated the same as other veterinary diagnostic and surgical procedures. It is deemed not to fall within any of the categories of services enumerated as taxable in N.J.S.A. 54:32B-3 and is therefore exempt from sales and use tax.

Because of concerns for the groomers' safety, it is unlikely that pet groomers regularly perform nonprofessional dental cleaning services, which would be limited to lightly scrubbing a dog's teeth with a washcloth or soft brush, as pet owners might do at home. Pet groomers bathe dogs, cut their fur, clip their nails, and brush and groom their fur. If they also use dips, flea sprays, tick

applications, and other pesticides as part of their grooming services, they are subject to the training and licensing requirements of the Department of Environmental Protection regarding the commercial use of pesticides. N.J.A.C. 7:30-6.3(a)8 vi. But, as service providers not schooled and trained in medicine, they would not be qualified to administer the anesthesia necessary in order to perform a professional dental cleaning service, which is not deemed to be a "grooming" service for the purposes of the Sales and Use Tax Act.

Gap Insurance — The Division responded to an inquiry concerning whether the cost for a debt cancellation contract is taxable under the Sales and Use Tax Act when it is included in the amount financed by the lessee or purchaser.

The inquirer markets a product called Guaranteed Auto Protection (GAP) coverage. This product provides protection to a consumer who finances a vehicle in the event the vehicle is totaled and the settlement amount paid by the primary insurance carrier is not enough to cover the value of the loan balance. This is often the case in the first few years of a loan, especially when the consumer has a very small down payment. This product can be marketed in two ways:

- An insurance product — the product is marketed to consumers by auto dealers or directly by an insurance company. The cost of the insurance is paid as a premium and the borrower makes claims to the insurance company itself; or
- A debt cancellation contract — the product is marketed to

consumers through auto dealers on behalf of the lenders who are the insured and who enter into a contractual agreement with the borrower (for a fee) to waive any further indebtedness of the borrower in the event the vehicle is totaled. These waivers are backed up by insurance indemnification between the lenders and an insurance company.

The sale of GAP insurance by the licensed insurance company to the automobile dealer-lessor or to the creditor financial institution is viewed as an exempt insurance service transaction. Therefore, the premiums paid by the insured to the licensed insurer are not subject to sales and use tax. N.J.S.A. 54:32B-2(e)(4)(A).

However, if the insured automobile dealer or financial institution then contracts with a particular customer for an extra amount of money in exchange for either waiving a GAP deficiency or assigning rights under the policy to the lessee, this additional billing is not deemed to be the sale of an "insurance service." It is simply an increase in the taxable lease receipt and is therefore included in the tax base for purposes of computing the lessor's use tax liability under the lease-payment method. N.J.S.A. 54:32B-2(d).

Parasailing — The Division received an inquiry concerning the taxability of parasailing. Customers go out on a boat manned with a captain and crew member and either parasail, observe, or sightsee under their supervision and control.

The charge for parasailing is not subject to sales tax. Under the



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circumstances described above, the charge is not for either an admission to a place of amusement or a rental of tangible property. Rather, it is similar to a charge for sightseeing or transportation, which is exempt from tax in New Jersey. □

In Our Courts

Corporation Business Tax Interest-Free Loans – Metro Touch, Inc. v. Director, Division of Taxation, decided Letter Opinion March 26, 2004, and Formal Opinion May 11, 2004; Tax Court No. 004359-2002.

In 1996, Ida Shapiro owned 100% of the corporate stock of plaintiff Metro Touch, Inc. Shapiro also owned 75% of the corporate stock of Perfect Host, Inc. as well as a 75% ownership interest in its successor, Perfect Host, LLC. In 1997, Shapiro’s ownership interest in Perfect Host, LLC decreased to 49.3097%.

Since January 1, 1996, Metro Touch’s balance sheet reflected non-interest-bearing loans to Perfect Host, Inc. or Perfect Host, LLC. The Division therefore imputed interest income to Metro Touch pursuant to N.J.S.A. 54:10A-10 of the Corporation Business Tax Act (CBTA).

N.J.S.A. 54:10A-10a permits the Division to make adjustments to and redetermine a corporation’s income where the income is improperly or inaccurately reflected. Additionally, N.J.S.A. 54:10A-10b allows the Division to include in a corporation’s income the “fair profits” from a transaction where it

is determined that the transaction was entered into at less than a fair price for the direct or indirect benefit of a shareholder. Under the regulations, N.J.A.C. 18:7-5.10(a)(5) provides that interest should be charged on loans between related parties.

Relying on guidance from Federal court decisions, the Court found that marketplace loans would not be made on an interest-free basis and as a result the loans in question were at less than a fair price and resulted in plaintiff’s income being improperly or inaccurately reflected. Furthermore, the Court determined that the Division’s imputation of interest income was not dependent on the two entities being controlled by the same person or persons because the statutory standard is whether the arrangement benefits a shareholder directly or indirectly. Therefore, the Court upheld the Division’s assessment finding it neither arbitrary nor unreasonable and a proper exercise of his discretion under the statute and regulation. The Court also noted that N.J.A.C. 18:7-5.10(b) “represents a reasonable exercise by the Director of the discretion granted to him by the Legislature.”

Metro Touch, Inc. did not appeal the Tax Court’s decision.

Real Estate Investment Trust – UNB Investment Company, Inc. v. Director, Division of Taxation, decided May 12, 2004; Tax Court No. 004760-2003.

Bridgewater Mortgage Company, Inc. (BMC) is a wholly owned subsidiary of plaintiff (UNB), a New Jersey corporation. BMC qualifies as a real estate investment trust (REIT) under both Federal income tax law and the New Jersey Corporation Business Tax Act (CBTA).

In 1997, BMC paid an \$11.7 million dividend to UNB, which BMC deducted on its corporation business tax (CBT) return when it computed taxable income. UNB reported the dividend as dividend income on its CBT return and then excluded the dividend pursuant to N.J.S.A. 54:10A-4(k)(5), which provided for a 100% dividends-received deduction from 80% or more owned subsidiaries.

The Division acknowledged that BMC’s deduction from taxable income for dividends paid was proper as it was in accordance with the *Corporate Property Investors* decision, where the Court held that for New Jersey CBT purposes a REIT is permitted the same dividends-paid deduction as is

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Current Amnesty Programs

Mississippi is conducting a tax amnesty program. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

MS Sep 1 – Dec 31 www.mstc.state.ms.us/amnesty.htm

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permitted under Federal income tax law. However, the Division denied UNB's N.J.S.A. 54:10A-4(k)(5) dividends-received deduction as a logical consequence of the *Corporate Property Investors* decision. The Division recognized that Internal Revenue Code §243(a) generally permitted corporations to deduct dividends received; however, Internal Revenue Code §857(c) denied this deduction where dividends were received from REITs.

In analyzing the legislative history and case law, the Court concluded that the Division's interpretation of the CBTA was reasonable and made with sufficient statutory authority; however, the Court voided the assessment because of the Division's failure to promulgate a regulation addressing this issue pursuant to the Administrative Procedure Act (APA). The Court reasoned that the denial of the deduction was consistent with the legislative intent to attract REITs into New Jersey, did not result in the double taxation of dividends, and was consistent with the entire statutory scheme. Regardless, the Court found that the statute was ambiguous, that the Division's determination was not obviously inferable from the statute, and that the Division's determination was in the nature of interpretation of law or general policy. Therefore, the Court concluded that the Division's determination constituted a rule that must be formally promulgated pursuant to the APA. The Court also rejected the argument that a regulation was not needed because under N.J.S.A. 54:10A-10 the Director is granted the authority to make adjustments to income amounts to correct distortions of income, or where

income was improperly or inaccurately reflected. The Court concluded that dividends had been properly reported and deducted on UNB's CBT return, and that owning a REIT cannot be regarded as conducting business to distort income.

The Director did not appeal the Tax Court's decision.

Subjectivity – *Home Impressions, Inc. v. Director, Division of Taxation*, decided June 7, 2004; Tax Court No. 000099-2003.

Plaintiff (Home Impressions) is a North Carolina corporation that did not own, rent, or maintain property in New Jersey. Independent sales contractors solicited orders in New Jersey from potential customers of Home Impressions' tangible products and then forwarded orders for approval to Home Impressions' principal place of business in North Carolina. Products were later shipped to the customers from Home Impressions' Virginia distribution center.

The Division determined that Home Impressions was required to file corporation business tax (CBT) returns because it was subject to the minimum flat tax. Home Impressions claimed that it did not have to file income tax returns because it was protected by Pub. L. 86-272.

The Court's analysis commenced with first determining whether the instant tax violated either the Commerce Clause or Due Process Clause of the Federal Constitution. In *Quill*, the United States Supreme Court ruled that the solicitation of orders satisfied the minimum contacts requirement of the Due Process Clause. Therefore, the Court opined that solicitation by Home

Impressions' independent contractors was sufficient.

Addressing Commerce Clause concerns, the Court found that the standard was whether taxpayer's activities created a substantial nexus with the taxing state. Substantial nexus, in turn, requires physical presence. The Court found that the physical presence of the independent contractors in New Jersey constituted the substantial nexus required by the Commerce Clause. As stated in the United States Supreme Court decision in *Scripto*, the fact that independent contractors are not traditional employees is not a distinction of any constitutional significance.

As there was no constitutional impediment, the Court turned to the issue of whether the minimum flat tax conflicted with Pub. L. 86-272. In pertinent part, Pub. L. 86-272 provides that a state may not impose a net income tax on income derived within the state where the only business activity in the state is the solicitation of orders for tangible personalty, where the orders are sent outside the state for approval, and where the products are shipped into the state from a point outside the state. Home Impressions claimed that despite its label as a franchise tax, the CBT minimum flat tax is in reality based on income.

The Court ruled that Pub. L. 86-272 did not protect foreign corporations from the CBT minimum flat tax because this tax is not based on net income. The Court relied on New Jersey case law that the imposition of a reporting requirement on foreign corporations did not conflict with Pub. L. 86-272 and that Pub. L. 86-272 did not apply to the net worth

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portion of the CBT. It should be noted that prior to the CBT minimum flat tax, the amount of CBT liability was measured by both net worth and net income. The Court reasoned that the Director was using the activity of Home Impressions in New Jersey as a reporting requirement and not as a means of calculating the amount of minimum flat tax due.

Insurance Tax

Retaliatory Tax – Pruco Life Insurance Company v. Director, Division of Taxation, decided March 23, 2004; Tax Court No. 004058-2003.

Plaintiff (Pruco) is an Arizona corporation and a wholly owned subsidiary of the Prudential Insurance Company of America, a New Jersey insurance company. Pruco's principal office is located in Newark, New Jersey.

In 1998 and 1999, Pruco filed returns but did not report any retaliatory tax obligation to New Jersey, arguing that the N.J.S.A. 54:18A-6 cap applied to both the New Jersey tax obligation and Arizona tax obligation in the calculation of determining retaliatory tax due to New Jersey. The cap statute functions to limit New Jersey tax liability where New Jersey premiums exceed 12.5% of total worldwide premiums. If this threshold is met, then the tax is applied to 12.5% of the worldwide premiums. Although the Division acknowledged that the 12.5% cap applied, the Division assessed retaliatory tax because Pruco is a foreign corporation. In determining the amount of retaliatory tax liability, the Division calculated the tax that would be due under the tax laws of

Arizona and subtracted the amount of New Jersey tax due using the 12.5% cap.

Relying on its recent decision in *American Fire and Casualty Company & West American Insurance Company* (See *New Jersey State Tax News*, Summer 2004), the Court rejected Pruco's first two arguments. First, the Court found that calculating the retaliatory tax involved a mathematical calculation comparing the actual tax obligation due in New Jersey under New Jersey law with the actual tax obligation that would be due in Arizona pursuant to Arizona law. Therefore, Pruco's arguments relating to statutory interpretation as well as the policies and purposes of the cap and retaliatory tax statutes were rejected. Secondly, the Court rejected Pruco's constitutional challenge that the Division's interpretation converted the retaliatory tax into a revenue measure rather than a regulatory measure and was an equal protection violation. As in *American Fire and Casualty Company*, the Court found that the application of the two statutes served a legitimate State interest and that the Legislature could have determined that the statutes as applied reasonably furthered or fulfilled that State interest.

Plaintiff also challenged the assessment, asserting that the Division was not in compliance with the Administrative Procedure Act (APA) because the Division's policy for applying the cap and retaliatory tax statutes was not embodied in any official promulgation and therefore reflected rulemaking. After weighing and analyzing the six *Metromedia* factors along with the *Airwork Service Division* decision,

the Court determined that the Division's interpretation and application of the N.J.S.A. 17B:23-5 retaliatory tax statute together with the N.J.S.A. 54:18A-6 cap statute did not constitute rulemaking activities under *Metromedia* and therefore did not violate the APA.

Pruco Life Insurance Company has appealed the Tax Court's decision.

Local Property Tax

Exemption Status – Congregation Ahavath Torah v. City of Englewood, decided January 23, 2004; Tax Court No. 004020-1999.

Plaintiff Congregation Ahavath Torah appeals a judgment of the Bergen County Board of Taxation applicable to tax year 1999 which denied a property tax exemption for the home of the church's cantor. Plaintiff Congregation Ahavath Torah claims the building occupied by the cantor is entitled to exemption pursuant to N.J.S.A. 54:4-3.6 because the "Parsonage Exemption" allows an exemption of up to two buildings "actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State."

Plaintiff is a religious corporation of the State of New Jersey which owns two residential properties in Englewood. One of the properties is a parsonage for the synagogue's rabbi and is exempt without dispute. At issue is whether 157 Van Nostrand Avenue (Block 2911, Lot 20), which is used as a residence for the synagogue's cantor, has exempt status.

The full-time, permanent cantor lives in the subject property. He performs a variety of services for the

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congregation including: directing liturgical prayer, conducting various prayer services, assisting in the daily services, participating in weddings and funerals, and reading or chanting from the sacred texts on holidays. Members of this congregation are not allowed to perform duties of a cantor without the cantor's consent. The parties agree that the rabbi's residence is exempt under the statute. However, they disagree about whether the cantor's role is such that a residence set aside by the synagogue for the use of the cantor qualifies for exemption.

Decisions interpreting the Parsonage Exemption undertake a factual inquiry to determine whether the individual in question serves a congregation in a way that is consistent with the concept of an officiating clergy. The cases look to the character and extent of activities within the religious organization. *Friends of Ahi Ezer Congregation, Inc. v. Long Branch City*, 16 N.J. Tax 591 (Tax 1997), *Shrine of Our Lady of Fatima v. Mantua*, 12 N.J. Tax 392 (Tax 1992). The decision examined many factors to determine if an individual is an officiant within the meaning of the Parsonage Exemption, and it is clear that it is not status or title, but services performed that determine if the exemption will apply. The Appellate Division, in *St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals*, 18 N.J. Super 552 (App. Div. 1952), explained that the Parsonage Exemption requires that an "officiating clergyman" when associated with "parsonage" must be a pastor installed over a parish, church, or congregation. When he is an "officiating clergyman of any religious corporation" he must be

serving the needs of a reasonably localized and established congregation.

New Jersey's Parsonage Exemption recognizes that more than one individual with a congregation may be considered officiating clergy under the statute, as evidenced by the 1962 amendment to N.J.S.A. 54:4-3.6, which increased the number of exempt buildings from one to two. The allowance contemplates that two persons may each have officiating clergy duties, either simultaneously or at different times. Federal Courts have recognized that Judaism assigns ministerial functions to both rabbis and cantors. Also, the courts have qualified cantors under the Federal exemptions applicable to members of the clergy.

In this case, the criteria established in *St. Matthew's* and subsequent New Jersey cases supports the interpretation of the exemption statute that permits both rabbis and cantors to qualify as officiating clergy. The Court entered a judgment in

favor of the plaintiff allowing the Parsonage Exemption for the residence occupied by the cantor.

Farmland Assessment – *Alexandria Township v. Philip and Joan Orban and Thomas Pajak, et al.*, decided May 4, 2004.

The issue before the Tax Court on cross-motions for summary judgment is whether the failure to establish and file a woodland management plan pursuant to N.J.S.A. 54:4-23.3(a) before January 1, two years before the year for which farmland assessment is sought, will result in the denial of farmland assessment.

N.J.S.A. 54:4-23.6 provides that, in order to qualify for farmland assessment, the land must be actively devoted to agricultural or horticultural use for "at least two successive years immediately preceding the tax year for which the valuation...is requested." For example, where an

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Pay NJ Taxes Electronically

Electronic Check (E-Check)

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SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Routing Number: 020202020
Account Number: 123456789

Anyplace Bank
Trenton, NJ 08611

For: 123456789

Date: 12/31/2004

1234

15-00000000

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Credit Card*

1-800-2PAYTAX

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* Fee of 2.5% of tax payment is paid directly to Official Payments Corporation.

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application for farmland assessment is made for the year 2003, the land must be actively devoted to agricultural or horticultural use during the entire period of the calendar years 2001 and 2002. N.J.A.C. 18:15-6.2(a)(6) defines "Devoted to agricultural or horticultural use" as "land in which trees and forest products are produced for sale and such land is in compliance with the written approved woodland management plan."

Philip and Joan Orban purchased a parcel of property in Alexandria Township. In May of 2000, the Orbans commenced work on a woodland management plan so that the property could qualify for farmland assessment. John Perry, a registered forester, was hired by Mr. Orban on December 19, 2000, to review the woodland management activities which Mr. Orban had performed since May of 2000. Mr. Perry confirmed that Mr. Orban had been complying with the woodland plan and was involved in the active management of the woodland plan.

Mr. Perry then prepared a written woodland management plan, which was filed by Mr. Orban with the Department of Environmental Protection and the assessor of Alexandria Township on May 26, 2001. During 2001, hardwood trees were sold producing an income in

excess of \$6,000. In 2002, additional trees were cut and sold in accordance with the woodland plan, producing an income in excess of \$6,000. Timely applications for farmland assessment under the woodland management plan were filed on or before August 1, 2001, and August 1, 2002.

The assessor denied farmland assessment for the year 2003 based upon the fact that the formal woodland management plan was not filed until May of 2001. It is the position of the tax assessor that he cannot grant an application for farmland assessment unless the formal plan is filed two full calendar years before the tax year for which farmland assessment is sought.

The township contends that since the woodland management plan was not in effect for two consecutive full years prior to the year for which farmland assessment is sought, the subject property is not entitled to farmland assessment. Property owners, to the contrary, contend that "actively devoted to agricultural or horticultural use" does not require that a woodland management plan be written and filed with a municipality on or before January 1 two years preceding the year in which farmland assessment for the woodlot is sought. Owners contend that so long as their activities conformed to a woodland management plan filed

after their activities commenced, they meet the standards of the statute.

On January 13, 2003, a portion of the parcel was sold to Thomas and Susan Pajak. On March 28, 2003, the Orbans and the Pajaks filed tax appeals with the Hunterdon County Board of Taxation appealing the denial of farmland assessment for the year 2003. On June 13, 2003, the County Board granted the farmland assessment on the properties. On July 28, 2003, Alexandria Township filed appeals with the Tax Court seeking to reverse the County Board's determinations granting farmland assessment for the properties. On February 11, 2004, the township filed this motion for summary judgment, and on March 3, 2004, the property owners filed a cross-motion for summary judgment

In this case, taxpayers seek farmland assessment for tax year 2003, thus N.J.S.A. 54:4-23.6 requires the land to have been actively devoted to agricultural or horticultural use for the two preceding years, 2002 and 2001. N.J.A.C. 18:15-3.1. The Court cited the cases of *Mt. Hope Mining Co. v. Rockaway Twp.*, 8 N.J. Tax 570, 575 (Tax 1986), *Clearview Estates, Inc. v. Mt. Lakes Borough*, 188 N.J. Super. 99 (App. Div. 1982), and *Green Pond Corp. v. Rockaway Twp.*, 2 N.J. Tax 273 (Tax 1981) and statutes to indicate that the use must be during the entire two full calendar years preceding the year for which farmland assessment is sought.

Amended regulations were adopted effective October 6, 1997, so that they would comply with N.J.S.A. 54:4-23.3 as amended by P.L. 1986,

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c.201 and P.L. 1995, c.276. Prior to 1986, the statute did not require a written woodland management plan. The 1986 amendments to the statute were intended to provide a reasonable means of eliminating the widespread practice of indiscriminate cutting of woodlands to meet the earned income requirements of farmland assessment.

Land on which trees and forest products are produced for sale is “actively devoted to agricultural or horticultural use” when it is in compliance with a written approved woodland management plan. N.J.A.C. 18:15-6.2. A woodland management plan was written by Forester John Perry and filed by the defendants on May 26, 2001. Taxpayers maintain that even though the woodland management plan was not written and filed until May 26, 2001, the activities were taking place on the land from January 1, 2001, in accordance with good forestry management and the implementation of the woodland plan that was later filed and approved. However, N.J.A.C. 18:15-6.2 requires the plan to be a “written approved management plan.” Since the plan in this case was not written or filed until May 26, 2001, the land does not meet the definition of actively devoted to agricultural or horticultural use for the full year 2001. Since it was not actively devoted to horticultural use for all of 2001, it cannot qualify for farmland assessment in 2003.

The Court held that in order to be in compliance with a plan, a plan must be drawn up, submitted, and approved *prior* to the activities undertaken in accordance with that plan. Accordingly, a woodland

management plan must be filed by January 1 two years prior to the year for which farmland assessment as a woodlot is sought.

F.M.C. Stores v. Morris Plains, 100 N.J. 418 (1985) stands for two propositions that: (1) filing deadlines are to be strictly construed, and (2) in dealing with taxpayers, the government must turn square corners. Having an ambiguous date on which a woodland management plan can be filed complies with neither of these principles, and although the result in this case may hurt the taxpayer, it is essential in construing beneficial tax provisions that clear lines be drawn so that both taxpayer and municipality can be on adequate notice and make adequate plans for the tax base and so that taxes due can be anticipated.

The township’s motions for summary judgment are granted and taxpayer’s cross-motions are denied as moot. □

In Our Legislature

Environmental Taxes

Aid to Highlands Region — P.L. 2004, c.120, enacted on August 10, 2004, and effective immediately, establishes a Highlands Municipal Property Tax Stabilization Board which will establish procedures for determining the valuation base of a qualified Highlands municipality and determine the amounts needed to compensate a municipality for the decline in vacant land value resulting from implementation of the Highlands Water Protection and Planning Act. It will use information provided by the Division of Taxation, which, in turn, will receive information from county boards of taxation based on reports they receive from municipal tax assessors.

The Act establishes a fund to be used in providing State aid to qualified Highlands municipalities.

Health Enterprise Zones

P.L. 2004, c.139, was enacted on September 2, 2004, and will become effective March 2, 2005, except that the gross income tax deduction provision will apply to entire tax years after enactment, i.e. beginning January 1, 2005. This Act creates “health enterprise zones” (HEZ) in communities which, based on their economic status and the extent of professional health services available, have been designated as “underserved areas.” It provides that qualified primary care physicians and dentists practicing in or within 5 miles of an HEZ will be allowed to deduct from gross income the portion of their net income allocable to qualified receipts of their practice in that geographic area. The Act also allows municipalities to exempt from real property tax structures housing a primary medical or dental care practice located in a HEZ. The amount of such exemption will be available as a rebate if the medical or dental care provider is a tenant, rather than owner, of the structure.

Inheritance/Estate Tax

Estates and Trusts Changes — P.L. 2004, c.132, enacted on August 31, 2004, and effective on the 180th day following enactment, makes important changes in the way estates and trusts must be administered in this State. It clarifies the meaning of critical terms, clarifies when “writings intended as wills” will be allowed, and makes changes in the provisions governing intestate succession.

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Miscellaneous

Phase-Out of Casino Complimentaries Tax — P.L. 2004, c.128, enacted on August 30, 2004, and effective immediately, provides for the gradual phase-out of the tax on casino “complimentaries” until the tax expires on June 30, 2009. It also transfers from the Division of Taxation to the Casino Control Commission the responsibility for administering the casino complimentaries tax, the casino adjusted net income tax, the multi-casino slot machine tax, the casino parking fee, and the \$3 casino hotel occupancy fee.

Casino Reinvestment Development Act Changes — P.L. 2004, c.129, enacted on August 25, 2004, and effective immediately, extends the investment alternative tax obligation of casino licensees from 35 to 50 years, authorizes the Casino Reinvestment Development Authority to approve five additional “entertainment retail districts,” and allows for grants to the Authority for 20 years from sales tax revenue generated in entertainment districts. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2004](#) [2005](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more.

[2004](#) [2005](#) □

from the director's desk

Electronic Filing Required for Some Tax Practitioners

All practitioners (firms and individuals) who prepared 200 or more 2003 New Jersey income tax resident returns are required to use one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ ELF — to file 2004 New Jersey income tax resident returns for their clients. Practitioners who filed fewer than 200 New Jersey resident returns in 2003 are not required to file electronically for the 2004 tax year, but are strongly encouraged to do so.

Electronic filing benefits everyone — taxpayers, practitioners, and State government. Faster refunds, direct deposit, postdated payments, more accurate processing, and greater security of sensitive information are just some of the advantages offered by New Jersey's electronic tax filing systems. Practitioners who file their clients' State income tax returns electronically are providing them with the best possible service.

The 2004 "Opt Out" form (NJ-1040-O) for taxpayers who choose not to have their NJ-1040 filed electronically has recently been posted to our Web site at: www.state.nj.us/treasury/taxation/pdf/041040opt.pdf For more information on the Opt-Out Form, go to: www.state.nj.us/treasury/taxation/pdf/optoutmemo.pdf

Electronic filing fees are not subject to sales tax if included in the full invoice for a tax filing prepared by a tax practitioner. The electronic filing fee will be treated as part of the exempt professional service. Tax practitioners may state that the fee for electronic filing is included in the service charge.

For more information on this electronic filing requirement go to: www.state.nj.us/treasury/taxation/pdf/1040efiling.pdf

Additional information will be provided as the 2004 income tax filing season approaches. If you have questions you would like us to address, email them to us at taxation@tax.state.nj.us. Please enter "Practitioner E-Filing Requirement" on the subject line of your message.

Robert K. Thompson

New Jersey State Tax news

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For information on tax relief for those affected by the July 2004 flooding in Burlington and Camden counties in New Jersey, go to: www.state.nj.us/treasury/taxation/floodrelief.shtml

Changes to Rebate Programs

The Homestead Property Tax Rebate Act of 2004 (P.L. 2004, c.40), signed into law June 28, 2004, folds the NJ SAVER Rebate Program for homeowners into the Homestead Rebate Program. The legislation is expected to provide property tax relief in the form of increased rebates for nearly two million New Jersey residents as part of Governor McGreevey's FAIR (Fair and Immediate Relief) plan.

Even though the programs have been combined, for tax year 2003 homeowners must file applications under both the Homestead Rebate and NJ SAVER Rebate Programs. NJ SAVER rebates will be calculated in the same manner as homestead rebates, taking into account the income of each applicant and the amount of property taxes paid. Eligible applicants will receive *either* the homestead rebate *or* the NJ SAVER rebate. (Tenants, who are not eligible for NJ SAVER rebates, file homestead rebate applications to receive their rebates.)

For 2004 and thereafter, eligible homeowners and tenants will file homestead rebate applications only.

Who is Eligible for 2003

NJ SAVER Rebate: Residents who owned, occupied, and paid property taxes on a home in New Jersey that was their principal residence on October 1, 2003, provided their

gross income does not exceed \$200,000.

Homestead Rebate: Homeowners and tenants who paid property taxes on their principal residence in New Jersey, either directly or through rent, and whose gross income does not exceed \$200,000 (homeowners) or \$100,000 (tenants).

How to Apply for 2003

NJ SAVER Rebate: NJ SAVER rebate application packets were mailed to all eligible homeowners over a two-week period that began July 6, 2004. Most homeowners can file their NJ SAVER rebate applications by phone by calling 1-877-658-2972 (toll-free within NJ,

continued on page 2



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Speaker Programs 609-984-4101
NJ TaxFax 609-826-4500
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576



rebate programs - from page 1

NY, PA, DE, and MD) or 609-826-4288, or on the Division's Web site at: www.njsaverrebate.com. The filing deadline is August 16, 2004.

Homestead Rebate: Applicants who are required to file a 2003 New Jersey income tax return file their homestead rebate application, Form HR-1040, with Form NJ-1040 (or complete the homestead rebate application section of Form NJ-1040EZ, or of a return filed electronically using NJ WebFile, NJ

TeleFile, or approved vendor software) by April 15, 2004. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate application is also extended.

Residents who are not required to file a 2003 New Jersey income tax return because their income is below the minimum filing threshold have an additional nine months — until January 18, 2005 — to file a 2003 homestead rebate application.

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2003 Homestead/NJ SAVER Rebate Payment Dates

HOMEOWNERS

Age 65 or Older and/or Disabled

2003 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$100,000	July 31, 2004
\$ 100,000 — \$200,000	October 15, 2004
\$ 200,000	Not eligible

Under Age 65 and NOT Disabled

2003 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$200,000	October 15, 2004
\$ 200,000	Not eligible

TENANTS

Age 65 or Older and/or Disabled

2003 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$100,000	July 31, 2004
\$ 100,000	Not eligible

Under Age 65 and NOT Disabled

2003 Gross Income	Payment Date
<i>over</i> \$ 0 — <i>but not over</i> \$100,000	July 31, 2004
\$ 100,000	Not eligible

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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rebate programs - from page 2

2003 Rebate Amounts

For 2003, both the homestead rebate and the NJ SAVER rebate will be calculated the same way. Rebate amounts differ for homeowners and tenants, and are also affected by income, amount of property taxes (or rent) paid, filing status, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: For tax year 2003, rebates for eligible homeowners age 65 or older or disabled range from a minimum of \$500 up to a maximum of \$1,200. Homeowners under age 65 and not disabled are eligible for a minimum of \$500 up to a maximum of \$800. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2003, tenants age 65 or older or disabled are eligible for a minimum rebate of \$150 up to a maximum of \$825. Tenants under age 65 and not disabled are eligible for a rebate of \$150.

More information on the rebate programs is available at: www.state.nj.us/treasury/taxation/relief.shtml □

Property Tax Reimbursement

Filing Deadline Extended

The deadline for filing 2003 Property Tax Reimbursement Applications has been extended to September 8, 2004. For more information about the Property Tax Reimbursement Program, visit our Web site at: www.state.nj.us/treasury/taxation/propfrez.shtml

New Employer Withholding Rates

Recent tax legislation (Chapter 40, P.L. 2004) increases the New Jersey gross income tax rates for all taxpayers with gross income over \$500,000. The increase is retroactive to January 1, 2004.

Because of the increase in tax rates, new withholding rates are required. All employers must withhold at the rate of 12% from salaries, wages, and other remuneration paid in excess of \$500,000 during the remainder of 2004. This new rate takes effect immediately and must be instituted by all employers no later than September 1, 2004. On January 1, 2005, the top withholding rate is reduced to 9.9%. Withholding rates for employees with wages of \$500,000 or less are unaffected.

Two sets of revised withholding tables for the percentage method of withholding are available on our Web site at: www.state.nj.us/treasury/taxation/newrates.shtml

The percentage method computation rates in Tables A through E are for weekly, biweekly, semimonthly, monthly, daily or miscellaneous, and annual pay periods. Employers who have a pay frequency other than those provided should divide the amount of tax to be withheld under the Annual Pay Period column for each rate table (but not the withholding percentage rate) by the number of pay periods in the year.

Employers who have questions about their responsibilities can call the Division's Customer Service Center at 609-292-6400 or e-mail us at taxation@tax.state.nj.us. Prerecorded tax information is available by calling our Automated Tax Information Service at 1-800-323-4400. □

Hotel Occupancy Fee, Tax Rates

As of July 1, 2004, the State occupancy fee, which was effective August 1, 2003, on the rental of rooms in a hotel, motel, or similar facility, is reduced from 7% to 5%. At the same time, the municipal occupancy tax, which is imposed only in the municipalities that have enacted a local ordinance, can increase from a rate of up to 1% to a rate of up to 3%. However, in the six municipalities that already had local taxes imposed on occupancies prior to August 1, 2003 (Atlantic City, Newark, Jersey City, Wildwood, Wildwood Crest, and North Wildwood), the rates will not change on July 1. For additional information about the rates in these municipalities, the occupancy fee and tax in general, and a list of the municipalities that have enacted an occupancy tax ordinance, see: www.state.nj.us/treasury/taxation/hotelfeeinfo.shtml □

LOCAL PROPERTY TAX Reciprocity for Property Appraisal Course Credits

The Division of Taxation is pleased to announce that the Tax Assessor Continuing Education Eligibility Board and the New Jersey Board of Real Estate Appraisers have approved reciprocal agreements to accept real property appraisal course credits which are approved by either board. This will make it easier for individuals who are both certified assessors and licensed real estate appraisers to meet their continuing

continued on page 4



course credits - from page 3

education requirements. This agreement is retroactive to January 1, 2003. Any further inquiries can be directed to Judy Miller or Danielle Morris at 609-292-7974. □

LOCAL PROPERTY TAX ***Tax Assessor Recertification***

Four years have passed since the commencement of the Continuing Education Program for all certificate holders. The end of the first five-year cycle is June 30, 2005. All assessors and holders whose certificates were issued prior to July 1, 2000, will have July 1, 2000, as the beginning date of their five-year cycle and June 30, 2005, as their end date. Assessors and holders whose five-year cycle ends next year on June 30, 2005, must file their Form CEU-1 by May 31, 2005. If application is made within six months of the expiration of the certificate, the application may be made in the same manner as renewal, but an additional late fee of \$50 applies. The additional six months are provided to submit required paperwork to the Division of Taxation and may not be used to earn CEU credits for the foregoing period.

To file for assessor certification renewal you must include:

1. Completed Form CEU-1 (*Assessor Certification Renewal Application*)
2. All CEU-3 Forms (*Uniform Request for Continuing Education Credit*)
3. \$50 application fee

As a reminder, certificate holders who are in their first five-year cycle must show proof of earning at least 50 Continuing Education credit hours. The course credit hour minimum is as follows: 20 credit hours in Property Tax Administration and 20 credit hours in Real Property Appraisal. The additional 10 credit hours needed may be fulfilled by any combination of Appraisal or Administration and are considered electives. Any number of credit hours received over the required 50 cannot be carried into the next cycle.

The next five-year group to be recertified passed the C.T.A. (certified tax assessor) exam on September 23, 2000, and were issued certificates dated January 1, 2001. Their renewal deadline will be November 30, 2005, or 30 days prior to their five-year expiration date of December 31, 2005.

After their initial five-year cycle, certificate holders will enter into a three-year cycle in which they will complete 12 credit hours in Property Tax Administration, 12 credit hours in Real Property Appraisal and 6 added credit hours in either concentration.

Certified assessors are reminded to access up-to-date continuing education information on the Internet. The Web site address is: www.state.nj.us/treasury/taxation/lpt/recert.shtml

Also, it is important that any address and/or name changes be reported to the Policy and Planning Section at 609-292-7813. If you have questions concerning assessor recertification, please contact Danielle Morris, Policy and Planning, at 609-943-4399. □

INHERITANCE AND ESTATE TAX ***Affidavit Requesting Tax Waiver***

Form L-9 is an affidavit executed by an executor, administrator, or joint tenant requesting the issuance of a tax waiver for real property located in New Jersey which was held by a resident decedent. The waiver releases the tax lien and allows the estate to sell the property.

Form L-9 may not be used if any of the following conditions exist:

1. Any asset valued at \$500 or more passes to a beneficiary other than the decedent's parents, grandparents, spouse, children, legally adopted children, children's issue, adopted children's issue, or stepchildren.
2. Where a trust agreement exists or is created under the terms of the decedent's will. In the event that all other conditions for the use of Form L-9 are met and there is no possibility that any portion of the trust assets will pass other than to a Class "A" beneficiary, the Division will give consideration to the issuance of a real estate tax waiver.
3. The relationship of a mutually acknowledged child is claimed to exist.
4. Where the decedent's date of death is after December 31, 2001, and his/her gross estate for Federal estate tax purposes under the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000.
5. In any instance where there is an inheritance or estate tax or the possibility of a tax.

continued on page 5



tax waiver - from page 4

6. In any instance where an inheritance or an estate tax return must be filed.

Common errors to avoid when filing Form L-9 include:

1. Using an older version of the form. The form was revised in April 2003. The revision was made necessary due to the changes made in the New Jersey estate tax effective on January 1, 2002.
2. Failure to answer all the questions.
3. Failure to submit a copy of the Letters Testamentary or Letters of Administration, the decedent's will and codicils thereto, and any trust agreement.
4. Failure to submit a copy of the decedent's last full-year Federal income tax return.
5. Failure to submit a full description of realty, including the owner of record and the assessed and market value on the decedent's date of death.
6. Failure to list all beneficiaries, their relationship to the decedent, and their interest in the estate.
7. Failure to properly answer the questions related to the decedent's gross estate, deductions, and adjusted taxable gifts under the provisions of the Internal Revenue Code in effect on December 31, 2001. The "gross estate" is not limited to probate assets and "adjusted taxable gifts" is not the gross estate less deductions. The decedent's gross estate includes all property which was subject to the Federal estate tax

in 2001 including, but not limited to, real estate wherever located, stocks, bonds, bank accounts, annuities, jointly held assets, life insurance policies, and certain transfers. Adjusted taxable gifts are lifetime taxable gifts made by the decedent other than those included in the gross estate.

The completed Form L-9 should be mailed to the Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, New Jersey 08695-0249. Information pertaining to the use of the form may be obtained by calling 609-292-5033. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2005 together with a notice that the completed form must be filed with the assessor by August 1, 2004, in order to claim continuance to each taxpayer whose land was assessed for tax year 2004 under the Act.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2005.

August 5-

- All SR-1A forms showing information to be used in compiling 2004 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

continued on page 6

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%



assessors' calendar - from page 5

September 1-

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2005, to be filed with the assessor for taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2005, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- Table of Aggregates transmitted to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- The Office of Criminal Investigation (OCI) arrested Norman Levine of Manchester Township, New Jersey, after an investigation identified Levine as the recipient of untaxed cigarettes by way of a FedEx shipment from Virginia. Levine appeared in court in Maryland on December 12, 2003, in a case stemming from a previous arrest. Immediately after pleading guilty to a felony count of transportation/possession of contraband cigarettes, he was followed by agents of the Maryland Comptroller of the Treasury to Virginia and North Carolina where they observed him purchasing cigarettes again and shipping them from Virginia Beach to a New Jersey business. OCI surveillance led to the arrest of Levine after he took possession of the delivery and was placing the cigarettes in a storage unit in Neptune Township. Levine was actively engaged in a mail-order business with an Internet site. A total of 754 cartons of contraband cigarettes were seized; 457 cartons were in the delivery that had

been observed, and the remainder were found in his storage unit. A combination of Delaware tax stamped, Virginia tax stamped, and unstamped cigarettes (from North Carolina) were seized, along with \$2,138 in cash and a 1998 Mercury. Levine was charged with transportation and sale of untaxed cigarettes and possession of more than 20,000 unstamped cigarettes, and released on \$25,000 bail.

- On December 31, 2003, a settlement agreement was reached between the Division of Taxation and Mario Capalbo t/a Garden Pinball and Vending Company of Paterson, New Jersey. The agreement stipulated that Capalbo withdraw his appeal regarding the denial of a Cigarette Wholesale Dealer's License, and will not apply for or receive a Cigarette Wholesale and/or Distributor's License in the future. Appellant agreed to a three-year suspension of his cigarette vending machine license. Finally, reactivation of the vending machine license is contingent on continued "good behavior" as it relates to compliance with the tax laws of the State and any other indictable offense.

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**Enforcement Summary Statistics
First Quarter 2004**

Following is a summary of enforcement actions for the quarter ending March 31, 2004.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	3,051	• Seizures	45
Total Amount	\$41,835,712	• Auctions	12
• Jeopardy Assessments	232	• Referrals to the Attorney General's Office	501

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/



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This completes the process of denying a cigarette wholesaler's license to Capalbo on the basis of his criminal conviction for gambling and maintaining an illegal gambling resort.

- On January 5, 2004, Lamine Ouattara of East Orange, New Jersey, was arrested for filing fraudulent personal income tax returns. OCI, the East Orange Police Department, and Wachovia National Bank worked the case together. Ouattara filed 13 fraudulent returns generating \$9,311 in refunds claiming the Earned Income Tax Credit with unsupported Schedule C income. Other aspects of this investigation are ongoing.
- On January 9, 2004, in Superior Court – Middlesex County, New Brunswick, New Jersey, John B. Forrest, formerly of Colts Neck, New Jersey, failed to appear for sentencing pursuant to his guilty plea of September 12, 2003, on behalf of himself and his corporation, Tri-State Ticket Exchange, Ltd., Old Bridge, New Jersey, to charges of theft by deception of approximately \$647,000 from customers who ordered sports and entertainment event tickets that were never delivered; misapplication of \$122,626.37 in sales taxes of New Jersey and eight other states which Forrest collected from his customers but failed to turn over to tax agencies; credit card fraud; failure to file New Jersey sales and use tax returns for the period January 2001 through December 2002; and failure to turn over \$33,280 in New Jersey sales and use tax collected in that period. An arrest

warrant has been issued for Forrest, and he has been listed as one of the New Jersey Division of Criminal Justice's 12 Most Wanted. This was a joint investigation between OCI and the Division of Criminal Justice, who prosecuted the matter.

- On January 14, 2004, in Totowa, New Jersey, Dipan Patel and Switu Patel of North Bergen, New Jersey, and Pritisha S. Patel of Groton, Connecticut, were arrested as a result of sales by the subjects to undercover agents of 373 cartons of untaxed cigarettes. Two vehicles used in the transportation of the contraband were seized. Bail for Dipan Patel was set at \$50,000. The other two subjects were released on their own recognizance. This was a joint investigation by OCI and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives.
- On January 16, 2004, Dennis Fetterman of Williamsburg, Virginia, was arrested by OCI based on information received from the Montville, New Jersey, Police Department for possession and transportation of untaxed cigarettes. Fetterman was involved in selling cigarettes at local businesses. After a brief joint surveillance with the Montville Police, Fetterman was followed to an auto dealership in Parsippany, New Jersey, where he was arrested and 45 cartons of Virginia-stamped cigarettes, less than 50 grams of marijuana, and \$795 were seized. On March 2, 2004, in Parsippany Municipal Court, Fetterman pleaded guilty to charges of transportation of untaxed cigarettes and possession of a controlled dangerous substance (marijuana). He was fined

\$2,925, sentenced to one year's probation with mandatory drug testing and six months' loss of driver's license, and the \$795 was forfeited to the State.

- On January 27, 2004, a grand jury in Morristown, New Jersey, returned an eight-count indictment of Bernard and Shirley Davidson, husband and wife. The indictment included charges of theft by various means and filing false or fraudulent tax returns, failure to pay taxes due, and false swearing. The charges stem from Bernard Davidson's position as a Court Officer in Morris County and his theft of official receipts in excess of \$75,000 and the failure to report the illegal income by Bernard and Shirley Davidson on their New Jersey gross income tax returns. The investigation was conducted jointly with the Morris County Prosecutor's Office.
- On January 27, 2004, in Superior Court – Hudson County, Jersey City, New Jersey, John Drzymkowski of Berkeley Heights, New Jersey, was admitted into the Pretrial Intervention Program (a supervision program for first-time offenders charged with nonviolent offenses) for a term of 36 months, and ordered to make restitution to the State of \$331,039.36 pursuant to his guilty plea on July 28, 2003, to one count of failing to file tax returns. The charges involve petroleum products gross receipts tax which Drymco, Inc., a now-defunct heating oil company of which Drzymkowski was chief operating officer, collected from its customers in connection with

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the sale of diesel fuel to truck stops from September 1999 to December 2000.

- On February 3, 2004, a grand jury in Ocean County charged Kathy J. Manna of Lavallette, New Jersey, with an eight-count indictment. The indictment included charges of aggravated assault, theft by extortion, theft by deception, forgery, and filing false and fraudulent New Jersey gross income tax returns for the years 1999, 2000, 2001, and 2002. Ms. Manna ran a phony investment scam wherein she stole in excess of \$75,000 from seven Ocean County residents and failed to report the illegal income on her tax returns. The investigation was conducted jointly with the Ocean County Prosecutor's Office.
- On February 10, 2004, a State Grand Jury in Trenton indicted Richard J. Nardone of San Diego, California, a chiropractor who previously lived in Garwood, New Jersey, for gross income tax and corporation business tax (CBT) violations. The indictment alleges Nardone concealed approximately \$400,000 in personal income in 1998 and 1999 by having six medical corporations, which he controlled, issue payroll checks to fictitious employees. With aid from his office manager, Donna Januik of Mountainside, New Jersey, who is also his sister, Nardone would have the checks cashed and the currency returned to him. In addition, it is alleged that Nardone and Januik utilized corporate accounts to pay more than \$180,000 in personal expenses without reporting the funds as income. Nardone was charged with filing fraudulent New Jersey personal income tax returns for 1998 and 1999, failing to pay over a total of \$67,467 tax, conspiracy, misconduct by a corporate official, and filing fraudulent CBT returns for the corporations he used. Januik was also indicted and charged with evading \$1,740.77 in personal gross income tax in 1998, conspiracy, and assisting in the filing of the false CBT returns. The total amount subject to restitution to the State will include tax, penalty, and interest. This case was investigated jointly with the Division of Criminal Justice – Office of Insurance Fraud Prosecutor.
- On February 11, 2004, the Division of Taxation suspended for six months the license of K-Mart Corp. store #3523 in Paramus, New Jersey, to sell cigarettes at retail. This action is a result of enforcement of the Sales to Minors statutes by the Paramus Board of Health.
- On February 27, 2004, Rosa M. Castro, a tax preparer from Clifton, New Jersey, was charged with filing false and fraudulent tax returns and theft by deception based on the allegation that she has prepared in excess of 2,000 fraudulent New Jersey gross income tax returns, seeking almost \$1,000,000 in illegal refunds in the largest tax refund fraud scheme investigated in State history. The case was opened based on a referral from the Division of Revenue. Investigation determined two types of fraud being committed: Earned Income Tax Credit (EITC) fraud and excessive medical deduction refund fraud. To date, the investigation has identified 1,329 tax returns claiming refunds of \$908,850.56 for the EITC, and has found more than 500 tax returns claiming in excess of \$5,900,000 in bogus medical expenses, generating over \$80,000 in refunds. Castro is alleged to have prepared and filed fraudulent New Jersey gross income tax returns for herself, family members, friends, and others using actual and fictitious names and social security numbers. Undercover agents met with Rosa Castro at her home office on January 23 and 27, 2004, at which time she prepared fraudulent tax returns utilizing fictitious information which would have generated refunds. On March 1, 2004, the Division of Criminal Justice and OCI raided her home office and seized her computer, financial and business records, and obtained a court order freezing her bank accounts and safety deposit box. Ms. Castro was on Federal probation for tax fraud for perpetrating a similar scheme against the Federal government.
- One hundred eighteen (118) complaints alleging tax evasion were evaluated from January through March 2004 in the Office of Criminal Investigation.
- During the same period, one hundred forty (140) charges were filed in court and thirty-eight (38) arrests were made in forty (40) cases involving violations of the Cigarette Tax Act. Items seized were: 1,452.7 cartons of untaxed cigarettes having a total value of \$84,256.60, including 223.1 cartons bearing counterfeit New Jersey tax revenue stamps, and four vehicles. □



Tax Briefs

Corporation Business Tax

Allocation of Freight Revenues — Trucking companies deriving revenues from transporting freight must calculate their receipts fraction using mileage in the following manner: The taxpayer's receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and N.J.A.C. 13:18-3.12 shall make calculations using such records.

In addition, with regard to the property fraction, movable property such as tractors and trailers shall be allocated to this State using the same mileage fraction set forth above. Such allocated movable property shall be added to the fraction formed by the nonmovable property in New Jersey over nonmovable property everywhere to arrive at the property fraction.

With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth above. Such allocated payroll shall be added to the fraction formed by nonmobile wages everywhere to arrive at the payroll fraction. See N.J.A.C. 18:7-8.10(c)(4)(iii).

Correction: Alternative Minimum Assessment (AMA) — The rule for the selection of the computation method for the Alternative Minimum Assessment is set forth at N.J.A.C. 18:7-18.4(c) which states that: "For the first privilege period that the taxpayer pays the Alternative Minimum Assessment, the

taxpayer may select a computation method for the Alternative Minimum Assessment, based on gross profits or gross receipts. Once selected, that method must be employed for that privilege period, and for the next succeeding four privilege periods."

As such, the taxpayer can defer the selection of the AMA computation method until the first privilege period that AMA is greater than the corporation's corporation business tax liability.

Accordingly, this notice supercedes the item published on page 12 in the [winter 2003 issue](#) of the *New Jersey State Tax News*.

Minimum Tax and Affiliated or Controlled Groups — Under N.J.S.A. 54:10A-5(e), any taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, is subject to a tax not less than \$2,000. Each taxpayer member is subject to at least the minimum tax during that privilege period. See also N.J.A.C. 18:7-3.4(g).

Affiliated groups cannot elect to file on a consolidated basis for New Jersey purposes. A corporation which is included in a consolidated Federal income tax return must complete all schedules of the CBT-100 on its own separate basis and attach a copy of the Affiliations Schedule, Form 851, which it filed with Form 1120 for Federal income tax purposes. Also, a corporation which is included in a consolidated Federal income tax return must complete Lines 1 to 38 of the CBT-100 on its

own separate basis without consolidation with any other corporation. A schedule of payroll per member must also be submitted with the corporation business tax return.

A key corporation must be named when an affiliated group claims the \$20,000,000 threshold during a privilege period. The election is made each year that the affiliated group exceeds the threshold. The key corporation is a single member of an affiliated group that acts as a clearinghouse for adjustments to members of the group under N.J.A.C. 18:7-18.4(d).

Professional Corporation Fees — The Business Tax Reform Act established a \$150 per licensed professional fee for professional corporations with more than two licensed professionals. A corporation is subject to this fee if it has New Jersey source income or New Jersey resident members. A corporation with New Jersey professionals is subject to the filing fee.

Under N.J.A.C. 18:7-19.2(b), if a professional corporation includes nonresident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may be used provided that the professional corporation has an office outside of New Jersey.

The total apportioned professional corporation fee is equal to the sum of:

1. The number of resident professionals multiplied by \$150; plus
2. The number of nonresident professionals with physical nexus to New Jersey multiplied by \$150; plus

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- 3. The number of nonresident professionals without physical nexus to New Jersey multiplied by \$150, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners. The licensed professionals are listed in N.J.A.C. 18:7-19.1.

Inheritance and Estate Tax
Restricted Payment of Life Insurance Benefits — A taxpayer asked if the Division requires a 50% retention of the payment of benefits to beneficiaries by life insurance companies pending a tax waiver from the Division of Taxation.

The life insurance company is not required to retain 50% of any payments or file Form O-71 for the payment of benefits made to a decedent's surviving spouse. Also, with regard to the payments of benefits made to beneficiaries other than the decedent's surviving spouse, all sums payable (100%) under the terms of the life insurance contract may be disbursed by the life insurance company without obtaining a tax waiver from the Director of the Division of Taxation.

The life insurance company must complete and mail Form O-71 to the Director within ten days after any sums payable have been paid, and each beneficiary listed on the form should be advised that information

regarding death claim payments is being supplied to the State.

The instructions to Form O-71 have been amended to reflect the above provisions.

Litter Control Fee
Wholesaler to Wholesaler Deduction — Retailers of litter-generating products must pay a fee of $2.25/100$ of 1% (.000225) on their gross receipts from sales of litter-generating products. The law imposing the fee, however, provides that "retailer" does not include "a restaurant, the principal activity of which consists of preparing... a meal or food to be eaten on the premises." The Division defines "principal activity" as more than 50% of the restaurant's food and beverage sales. The effect of the restaurant provision is to exempt primarily eat-in restaurants (including bars serving meals that are primarily for eat-in) from liability for the fee.

Wholesalers must pay a fee of $3/100$ of 1% (.0003) on their gross receipts from sales of litter-generating products. For purposes of calculating the fee, however, a wholesaler is allowed a deduction for a sale to another wholesaler. Since a primarily eat-in restaurant is not a "retailer" and not liable for the fee, a wholesaler asked whether its sales to an exempt eat-in restaurant are

exempt from the fee. In other words, the wholesaler asked whether the sale to the eat-in restaurant (a non-"retailer") could be considered eligible for the wholesaler-to-wholesaler deduction or otherwise exempt from the fee.

The Division replied that the wholesaler's sales to the eat-in restaurant are not deductible as a sale from a wholesaler to a wholesaler. Although the restaurant is not a "retailer" liable for the fee, the restaurant is not included in the definition of "wholesaler." Under N.J.A.C. 18:38-1.3, for the sale to be considered a sale to a wholesaler, the sale must be to an entity that will resell to another wholesaler or to a retailer. The restaurant is not buying the product to resell to a wholesaler or another retailer. Therefore, a wholesaler is not allowed to deduct a sale of a litter-generating product to any restaurant as a sale from a wholesaler to a wholesaler.

Partnership Filing Fee
Limited Liability Company With No Income — The Division replied to an inquiry concerning whether a New Jersey LLC with no revenues, property, or wages is subject to the new \$150 per partner filing fee.

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Current Amnesty Programs

Arkansas, Nebraska, and West Virginia are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

AR	Jul 1 – Sep 30	www.accessarkansas.org/dfa/amnesty.html
NE	Aug 1 – Oct 31	www.revenue.state.ne.us/amnesty/
WV	Sep 1 – Oct 30	www.wvtaxamnesty.gov/



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Under N.J.A.C. 18:35-11.1, “Income” means income, loss, gain, or expense. If the partnership in question incurred any income, loss, gain, or expense attributable to New Jersey, the partnership will have New Jersey income. Any partnership having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150 for each owner of an interest in the entity. N.J.A.C. 18:35-11.2(a). If the LLC in question is considered a partnership for New Jersey tax purposes and had no New Jersey income, loss, gain, or expense (as noted above) during the taxable year, the LLC would not be subject to the \$150 per owner fee.

Sales and Use Tax

Personal Chef and Catering Services — The New Jersey Sales and Use Tax Act imposes tax on “receipts from the sale of food and drink...by caterers [including]... those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink.” N.J.S.A. 54:32B-3(c); N.J.S.A. 54:32B-3(c)(2). Catering consists of the preparation of food or drink and usually involves delivery and/or the serving of such meals in a prepared or heated state.

On the other hand, personal chef services are exempt from tax as a personal service transaction. N.J.S.A. 54:32B-2(e)(4)(A). Personal chef services typically involve food shopping and preparing meals for the client, packaging, and stor-

ing the meals (e.g., for a one-week period) at the client’s premises. Personal chefs may also prepare the meals off premises and deliver the food cold or frozen for future consumption, similar to the type of meals found in the frozen food section of a supermarket. The client will then heat or otherwise further prepare the meal. However, if the meals are prepared off the client’s premises, and delivered in a heated, ready-to-eat state, the prepared food will be subject to sales tax (similar to take-out food). N.J.S.A. 54:32B-3(c).

“Restocking” Fee — The Division responded to an inquiry about the application of the New Jersey Sales and Use Tax Act to the following set of facts:

1. Consumer buys an item for \$100 and pays 6% tax.
2. Consumer returns the item and is charged a 30% restocking fee or \$30.
3. The consumer expected \$76, but received \$74.20.
4. The business said there was a 6% tax levied on the \$30 restocking fee.

A fee imposed for “restocking” is not subject to sales tax since there is no sale once an item is returned. The restocking fee is not an expense of any taxable sales transaction and, by itself, is not subject to sales tax. Thus, the consumer should have received a full refund of \$70 plus the \$6 sales tax paid.

Travel Agent Sales — Sales of travel services by a travel agency are considered tax-exempt professional services. N.J.S.A. 54:32B 2(e)(4) (A). Thus, the amount charged by a travel agent for a trip or vacation is

neither subject to sales nor luxury tax in New Jersey, whether or not the customer is separately charged for all the various items that comprise the invoice such as hotels, meals, transportation, amusements, etc.

However, each vendor of taxable services or property in this State who sells such services or property to the travel agent is required to impose and collect, if applicable: sales tax; state occupancy fee; municipal occupancy tax; tourism promotion fees, taxes, and assessments; casino room fee; and/or luxury tax, on the receipts from that sale. In effect, the travel agent is considered the retail purchaser of such services, property, admissions, or occupancies, rather than a reseller. □

In Our Courts Administration

Time Period to File Complaint – *James Liapakis v. Director, Division of Taxation*, denied March 9, 2004; Supreme Court of New Jersey No. C-421 September Term 2003, 55,336.

The New Jersey Supreme Court denied the Division of Taxation’s petition for certification. Previously, the Appellate Division ruled that the 90-day period to file an appeal with the Tax Court commences on the date the taxpayer receives the Division of Taxation’s notice rather than on the mailed date.

Cigarette Tax Cigarette Purchases via Internet or Telephone – *Gary Mosher v. Director, Division of Taxation*, decided November 22, 2002; Tax Court No. 001180-2002.

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After viewing vendor's advertisements that claimed cigarettes were sold "tax free," plaintiff (Mosher) purchased 52 cartons of cigarettes over the Internet and/or telephone from Smokers Advantage of Louisville, Kentucky, for his friends and his personal use. Smokers Advantage is an out-of-State, unlicensed distributor of unstamped cigarettes. Smokers Advantage did not remit sales or cigarette taxes to New Jersey, but did inform the New Jersey Division of Taxation (Division) of Mosher's purchases pursuant to the Federal Jenkins Act. In September 2000 the Division notified and assessed Mosher sales and use tax as well as cigarette tax on purchases that occurred between August 1999 and March 2000.

The Tax Court held that Mosher's purchases were subject to sales and use tax, as well as the cigarette tax ruling that the vendor's advertisements stating that the cigarettes were "tax free" did not excuse him from being chargeable with knowledge that the tax could be collected by New Jersey because New Jersey charges tax on cigarettes. Relying on case law, the Court found that the Jenkins Act, Sales and Use Tax Act, and the Cigarette Tax Act were held to be constitutional. The Court also ruled that the Jenkins Act disclosure did not violate Mosher's right of privacy because even if the right asserted was a fundamental right, the State's compelling and substantial need for this information would outweigh Mosher's privacy interest. Finally, the Court found that the assessment was subject to 5% amnesty penalty, pursuant to a law enacted in 2002, of which Mosher was previously notified.

Cigarette Purchases via Internet or Telephone – *Gary Mosher v. Director, Division of Taxation*, decided February 17, 2004; Appellate Division No. A-2515-02T3.

The Appellate Division affirmed the Tax Court for substantially the reasons stated by the Tax Court. Furthermore, the Court found that plaintiff's arguments were without sufficient merit to warrant a written decision.

Mosher filed a petition of certification with the New Jersey Supreme Court.

Gross Income Tax Gain on Sale of Rental Real Estate Not Held by a Business Entity – *John J. and Mary T. Moroney and Thomas J. Jr. and Susan Denitzio v. Director, Division of Taxation*, decided January 8, 2004; Tax Court Nos. 005582-1998 and 005564-2002.

The Moroneys acquired rental real estate for \$327,399 and sold the property eight years later for \$245,000. The property was not held by a business entity. In each year of ownership, the annual operating expenses, exclusive of depreciation, exceeded the annual income. In determining their gain or loss, the Moroneys calculated an \$82,399 capital loss by subtracting the original purchase price from the sales price. Pursuant to an audit, the Division determined that the \$104,330 of depreciation reduced the real estate's basis. Therefore, the Division calculated an N.J.S.A. 54A:5-1(c) gain on this sale under the theory that the property's basis decreased to the extent that annual depreciation offset annual gross income before considering any other deductions. The Denitzios' legal

issue is identical and therefore the cases were heard together, but were not consolidated.

The Tax Court commenced its analysis by reviewing *Koch* where the New Jersey Supreme Court held that tax could not be imposed unless there is recovery of a past tax benefit or an accession to wealth and, therefore, that a partner's basis in his partnership interest could not be reduced by nondeductible partnership losses. The *Koch* decision prevented the Division from taxing what the New Jersey Supreme Court described as a return of capital because the taxpayer did not receive a tax benefit for nondeductible losses. After *Koch*, the Division stated in the *State Tax News* that the *Koch* decision would also apply to the sale of rental real estate that is not held by a business entity. In a later *State Tax News* article, the Division explained that unutilized depreciation expense would adjust basis in that it would increase basis when calculating gain (loss) from the sale of rental real estate that is not held by a business entity. The Division defined unutilized depreciation as the amount that allowed or allowable depreciation exceeds gross income (gross receipts) before considering any other expenses or deductions. This calculation resulted in limiting basis reductions to depreciation that resulted in tax benefits to the taxpayer.

In calculating N.J.S.A. 54A:5-1(c) gain from the disposition of property, the Court ruled that basis could only be reduced by depreciation to the extent that depreciation could offset income remaining after first deducting operating expenses (actual out-of-pocket expenses as

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opposed to accounting expenses such as depreciation) against gross income. The Court determined that although N.J.S.A. 54A:5-1(c) authorized the Division to assign priority and assignment to deductions for S corporations, that otherwise there was no statutory language applicable to the sale of property. Also, the Court found that the Division's assignment of a first priority deduction to depreciation produced a result that was both contrary to *Koch* and inconsistent with the Internal Revenue Code.

Severance Payments – *Donald M. Kopczynski v. Director, Division of Taxation*, decided January 7, 2003; Tax Court No. 008748-1996.

Two days after his 60th birthday, plaintiff's employer notified him by letter that his employment would be terminated in two weeks. The letter outlined severance benefits that were available to him that included \$31,282.02 paid under the severance payment plan in equal monthly installments in accordance with the employer's regular payroll, payment for unused vacation and personal time, and to provide medical and dental benefits for the duration of the severance or until employment was secured in exchange for plaintiff's signed general release form within 21 days. In part, the general release form stated that plaintiff specifically releases his claims and demands against the employer under numerous areas including the Age Discrimination in Employment Act of 1967, as well as any actions that existed as of the date of the release under any tort laws.

Plaintiff consulted an attorney and signed a retainer agreement for pur-

poses of negotiating a settlement agreement of his unspecified claims against his employer. Thereafter, the plaintiff and employer agreed to increase the \$31,282.02 to a \$41,500 severance, and the agreement included all the other provisions stated above. Plaintiff executed the general release form. Employer paid plaintiff \$19,466 in 1993 and \$21,833 in 1994 while withholding taxes for Federal and State income taxes.

Plaintiff filed 1993 and 1994 returns with the Division of Taxation (Division) where he included the severance payments as taxable income from wages, salaries, and other employee compensation. Afterwards, plaintiff filed refund claims asserting that the severance payments were actually received in exchange for plaintiff's not bringing an age discrimination lawsuit against the employer through an agreement with plaintiff's attorney. Thereafter, plaintiff filed a complaint contending that his severance payments were not taxable as damages under N.J.S.A. 54A:6-6(b).

The Tax Court determined that severance and severance-like payments are includable in gross income under N.J.S.A. 54A:5-1(a) as salaries, wages, tips, fees, commissions, bonuses, or other remuneration received for services rendered unless they are excludable under N.J.S.A. 54A:6-6(b). Moreover, the Court ruled that severance payments are includable in gross income, recognizing that the services were previously rendered and that there was not concurrent consideration. The Court reached its result by relying upon guidance from Federal case law regarding taxability of severance payments as it was applied to the Internal Revenue Code.

Under N.J.S.A. 54A:6-6(b), damages received due to personal injury or sickness are excludable from gross income regardless of whether they are received by suit or agreement. As there was no prior New Jersey case law and as the statute is similar to Internal Revenue Code §104(a) (2), the Court looked to Federal cases for guidance. The Court found that the Federal Courts relied on the payer's intent in determining whether the payment was for personal injury or sickness in cases where there was either no express language or evidence as to a specific amount to compensate the person. One Federal Court noted that the withholding of taxes significantly suggests that the employer intended severance payment. Another Federal Court found that the payment was not for personal injury or sickness as it was based on a formula relating to the employer and employee relationship. In *Commissioner v. Schleier*, 515 U.S. 323 (1995), the United States Supreme Court stated that neither the person's reaching age 60 nor being discharged because they are 60 years old could be described as a personal injury or sickness. Furthermore, the Supreme Court ruled that neither back wages nor punitive damages for age discrimination constituted compensation for personal injury or sickness.

Plaintiff presented no evidence or testimony that he received the payments for personal injury or sickness. In fact, the employer withheld income taxes, both State and Federal. Therefore, the Court held that the payments were not excludable under N.J.S.A. 54A:6-6(b) as damages received due to personal injury or sickness.

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Insurance Premiums Tax

Retaliatory Tax – *American Fire and Casualty Company & West American Insurance Company v. Director, Division of Taxation*, decided December 2, 2003; Tax Court No. 004714-2001.

Plaintiffs are foreign casualty insurance corporations that seek refunds of retaliatory tax assessed against each of them pursuant to N.J.S.A. 17:32-15 after they each calculated their tax liability under N.J.S.A. 54:18A-6.

Under N.J.S.A. 54:18A-6, a non-life insurance company may calculate insurance tax on 12.5% of its total premiums where its New Jersey taxable premiums are greater than 12.5% of the company's and all its affiliates' total premiums. However, pursuant to N.J.S.A. 17:32-15, retaliatory insurance tax is imposed against a foreign insurer when the foreign insurer's insurance tax and other obligations in New Jersey are less than what a foreign insurer's insurance tax and other obligations would have been in its home state if it were a New Jersey insurance company doing business there.

In the instant case, the Division permitted each taxpayer to file under the 12.5% statute, but then the Division assessed retaliatory tax on the amount of tax that each would have

had to hypothetically pay to their home state on its New Jersey premiums, if it were a New Jersey insurance company doing business there, to the extent that amount exceeded the tax that they were obligated to pay to New Jersey. Plaintiffs claim that the retaliatory tax provision is unconstitutional in that it denies plaintiff equal protection because the statute functions as a preference for domestic insurers. Alternatively, plaintiffs claim that when the two statutes are read *in pari materia*, the Division's methodology provides an interpretation that is inconsistent with the purpose and policy considerations of both statutes.

The Court read the statutes *in pari materia* because they related to the same subject matter. The Court found that the purpose of N.J.S.A. 54:18A-6 was to encourage foreign and domestic insurance companies to expand their operations in New Jersey, and that the purpose of retaliatory tax statutes was to influence foreign states to reduce insurance company taxation in order to promote interstate insurance business by maintaining low taxes and other obligations on domestic insurers.

In addressing whether there was an irreconcilable conflict between the statutes, the Court found that neither the statutes, amendments, nor legislative history provided any guidance as to one statute's relationship with

the other. Therefore, the Court ruled that there was an inference that the legislative intent was that neither statute should affect the interpretation of the other. The Court reasoned that the Legislature's failure to address any possible conflict was indicative that the statutes function independently and in the manner as applied by the Division.

The Court found that the United States Supreme Court previously upheld the constitutionality of retaliatory tax under the Equal Protection Clause of the United States Constitution using the rational basis test. In applying the rational basis test to the instant case, the Court ruled that the Division's methodology of calculating retaliatory tax served the legitimate purpose of influencing other states regarding taxes imposed on New Jersey insurers, and that the Legislature could have reasonably believed that the method of calculating the tax could achieve that purpose. Therefore, the Court also upheld the Division's methodology on constitutional grounds.

Local Property Tax

Omitted Added and Added Assessments – *Freehold Borough v. Nestle USA*, decided November 10, 2003; Tax Court, Nos. 004915-2001, 004916-2001.

Nestle USA, decided November 10, 2003; Tax Court, Nos. 004915-2001, 004916-2001.

The issue before the New Jersey Tax Court was whether the omitted added assessment of \$1 for tax year 2000 and the added assessment of \$1 for tax year 2001 made by the Freehold Borough assessor against a food processing/manufacturing facility owned by Nestle USA should be voided.

Nestle moved for summary judgment voiding the \$1 assessments and

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dismissing the complaints on grounds that any increases in value attributable to improvements to the subject property should have been included in the regular assessment for the 2000 and 2001 tax years. Nestle alleges that the assessor's use of the omitted added and added assessment procedures was an attempt to manipulate and extend the time for municipal appeals seeking increased assessments on the subject property.

The assessor claims he became aware of projects undertaken by Nestle in late 1999 when he received copies of building permits for various projects at the site taken out by Nestle during 1997, 1998, and 1999. The assessor determined that some permits indicated the subject property's value might change as a consequence of the projects and an inspection would be required. Due to the assessor's lack of expertise in valuing the manufacturing property, he requested an appraiser be hired in 2000. But because of the cost involved, the Borough did not retain an appraiser until 2001. The appraiser was unable to quantify the amount of increase, but confirmed that there was a significant value increase over the current value of the subject property. Prior to the deadline for filing added assessments with the county tax board, the assessor knew that an added assessment in an unknown amount was called for as a result of the construction described in the building permits. He made an omitted added assessment and an added assessment for tax years 2000 and 2001, for \$1 each respectively. Freehold appealed the assessments to the Monmouth County Board of Taxation, which

affirmed them, and then appealed the Board's judgments to this Court.

Nestle contended that the assessor's method of reflecting additional value was invalid. It argued that the admittedly fictitious \$1 omitted added and added assessments were improper attempts to increase erroneous valuations of the subject property as reflected in the regular assessments for tax years 2000 and 2001. It asserted that the omitted added and added assessment for 2000 and 2001 were imposed solely to extend the time for the Borough to contest the value of the improvements constructed prior to September 2001, which it should have appealed as regular assessments for those tax years as permitted by N.J.S.A. 54:3-21. Nestle asked that the assessment be voided.

The purpose of the added assessment law is to permit taxation of real property which becomes assessable during the year following the statutory October 1 assessment date. The assessor is authorized to make an added assessment "when any parcel of real property contains any building or other structure which has been erected, added to or improved after October 1 and completed between January 1 and October 1 following." The added assessment is imposed for the tax year in which the improvement is completed, and is prorated for the months remaining in the calendar year following completion of the project. The omitted assessment statute may be used where the assessor has failed to make an added assessment on an improvement through error. Omitted assessments may be imposed in the year in which the property should have been assessed or in the next succeeding year.

The Court found that both the omitted added assessment for tax year 2000 and the added assessment for 2001 were fictitious as to amount and that the years to which the assessor attributed the completion of the improvement were arbitrary. The assessor admitted he had not inspected the subject property until sometime in 2001. He knew by 1999 that building permits had been taken out by Nestle during 1997, 1998, and 1999, and candidly admitted that there might have been value added to the property by October 1, 1999. He further testified that he was unable to specify which projects resulted in the 2000 omitted added assessment and which projects resulted in the 2001 added assessment.

The courts of New Jersey have prohibited the use of omitted and added assessments to reflect a change in opinion as to the value of property on the regular assessment date. Omitted assessment procedures cannot be used to correct an assessor's valuation error. Also there was no "discovery" of undisclosed improvements here, but rather a refusal to determine the date on which known improvements were completed and their value. An assessor's original assessment is entitled to a presumption of correctness. In this case, the \$1 assessments were so wide of the mark of true value and deficient in assessment methodology that no presumption of correctness could attach to them.

The Court found the assessor failed to perform his statutory duties. The assessments were made contrary to the statutory scheme for added assessments, which mandates that, after examination and inquiry by the

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assessor, such assessments are to be made for the tax year in which the improvements are completed or in the next succeeding year. In addition, the municipality could have timely appealed the regular assessments for 2000 and 2001 when the assessor, by requesting an appraiser, made the Borough aware that the values were inadequate. The assessments appealed from were made only with the knowledge that the improvements had been made sometime before the inspection of the subject property in 2001. The Court, therefore, concluded that the omitted added assessment for tax year 2000 and the added assessment for tax year 2001 must be voided.

Sales and Use Tax

Chemical and Catalyst Exemption – *Atlantic City Linen Supply, Inc. v. Director, Division of Taxation*, decided February 10, 2004; Supreme Court of New Jersey No. C-646, September Term 2003, 55,533.

The New Jersey Supreme Court denied Atlantic City Linen's petition for certification. Previously, the Appellate Division upheld the Tax Court's ruling that chemicals and detergents used in Atlantic City Linen's laundering process were not exempt from sales tax as materials used in the manufacturing and refining process pursuant to N.J.S.A. 54:32B-8.20. The Appellate Division emphasized that A.C. Linen did not create a different end product, but instead performed a service.

Cigarette Purchases via Internet or Telephone – *Gary Mosher v. Director, Division of Taxation*, decided November 22, 2002; Tax Court No. 001180-2002; decided

February 17, 2004; Appellate Division No. A-2515-02T3.

Please see [Cigarette Tax](#), page 12, for both case summaries.

Refunds – *Jennifer Nicoletta and Tzvi Kulger v. Elrac, Inc., D/B/A Enterprise Rent-A-Car*, decided February 17, 2004; Appellate Division No. A-1214-02T2.

Plaintiffs rented cars as individual consumers from the defendant. At the time of rental, plaintiffs obtained optional driver protection options on which they paid sales tax and claim that defendant knew that these transactions were not subject to sales tax. Thereafter, plaintiffs filed a complaint seeking recovery of damages for consumer fraud, unjust enrichment, negligent misrepresentation, and a refund of sales tax paid for themselves and a class of all taxpayers, as well as punitive damages and equitable relief. Initially, the Court granted a class certification and found that defendant improperly charged sales tax. Pursuant to a motion for reconsideration, the Court reversed vacating the prior certification and ruling that filing a refund application to the Division of Taxation was a superior remedy to a class action.

The Appellate Division dismissed the complaint holding that the complaint did not state a cause of action under the Consumer Fraud Act. In order to have a cause of action under the Consumer Fraud Act, there is a requirement that plaintiff prove an "ascertainable loss." The Court determined that plaintiffs' claim was for a refund of sales tax that is specifically governed by Sales and Use Tax Act N.J.S.A. 54:32B-20. Therefore, the Court found it improbable that a similar cause of action would

exist under the Consumer Fraud Act, and that the governing tax statutes indicate an "unmistakable legislative intent that the Sales and Use Tax Act statute is the exclusive framework for refunds of the tax." Finally, the Court noted that unjust enrichment does not occur when a vendor collects and timely remits sales tax to the Division of Taxation. □

In Our Legislature

Administration

Electronic Funds Transfer — P.L. 2004, c.52, enacted on June 29, 2004, and effective immediately, lowers the threshold for mandatory use of electronic transfer as the means of filing State taxes to those taxpayers whose prior year liability was \$10,000 or more.

Bank Account Information — P.L. 2004, c.56, enacted on June 29, 2004, and effective immediately, requires financial institutions, in response to a request by the Director of the Division of Taxation, to transmit electronically a report regarding the accounts of tax debtors.

Contractor Registration Changes — P.L. 2004, c.57, enacted on June 29, 2004, and effective immediately, but remaining inoperative until September 1, 2004, extends to local government agencies the requirement that public entities may enter into public contracts with providers of goods and services only if they have presented documentation showing that they are registered with this State for tax purposes. The act also requires that these providers of goods and services and their affiliates remit sales or use tax on

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tangible personal property delivered to a retail buyer in this State.

License Suspension of Tax-Noncompliant Businesses — P.L. 2004, c.58, enacted on June 29, 2004, and effective immediately, provides a mechanism whereby the Division of Taxation will receive information regarding the identity of entities (including individuals) that are holders of licenses to engage in a particular profession, trade, or business in this State, and will then examine their tax records to identify any areas of noncompliance and will give them an opportunity to contest their indebtedness or delinquency or to come into compliance. The act authorizes the Director to demand the summary suspension of a professional, occupational, or business license of an entity that already has an unsatisfied judgment for tax indebtedness, or who fails to remedy any tax indebtedness after receiving the notice provided for under this act.

Report for Study Commission on Discrimination — P.L. 2004, c.79, enacted on July 2, 2004, and applicable to studies already begun before that effective date, permits the Secretary of State to request from the Division of Taxation, and requires the Division to supply, a report containing basic information, not including tax information, regarding public employees and contractors. This information will be used by the Governor's Study Commission on Discrimination in State Employment and Contracting, solely in assessing the nature and scope of any past or present discrimination.

Cigarette Tax

Rate Increase — P.L. 2004, c.67, enacted on June 30, 2004, and effective July 1, 2004, increases the cigarette tax to \$.12 per cigarette, increasing the tax on a pack by \$.35.

Packaging Requirements — P.L. 2004, c.96, enacted on July 9, 2004, and effective October 1, 2004, amends the Cigarette Tax Act to prohibit the sale of cigarettes in packs of fewer than 20.

Corporation Business Tax

Decoupling — P.L. 2004, c.65, enacted on June 30, 2004, and effective immediately, affects certain expense deductions and depreciation permitted on the New Jersey CBT-100. For property placed in service on and after January 1, 2004, the law decouples the Federal ceiling from the amount permitted to be deducted as an expense for New Jersey corporation business tax purposes under IRC section 179. Returns for periods ending after December 31, 2003, are affected if property has been placed in service on or after January 1, 2004, but during the privilege period. Since the amount of the deduction under prior law was \$25,000, that is the limit of the IRC section 179 deduction for New Jersey purposes. The act also makes clear that property placed in service after September 10, 2001, will not receive the bonus depreciation treatment.

Net Operating Loss Changes — P.L. 2004, c.47, enacted on June 29, 2004, and effective immediately, provides that for privilege periods beginning during calendar year 2004 and calendar year 2005, a limited net operating loss ("NOL") deduction is allowed for the privilege period. The deduction permitted may reduce entire net income by up to 50%. To

the extent that any NOL is disallowed by reason of this limiting provision, the date on which the disallowed deduction would otherwise expire is extended by a period equal to the period of disallowance.

Cosmetic Medical Procedures Tax

P.L. 2004, c.53, enacted on June 29, 2004, and effective immediately, but which remains inoperative until September 1, 2004, imposes a new 6% gross receipts tax on the purchase of certain cosmetic medical procedures, which are medical procedures performed in order to improve a person's appearance, but without significantly serving to prevent or treat illness or disease or to promote proper functioning of the body. "Cosmetic medical procedures" do not include reconstructive surgery or dentistry to correct or minimize abnormal structures caused by birth defects, developmental abnormalities, trauma, infection, tumors, or disease. The tax will be collected from the patient by the cosmetic medical service provider, who will be required to remit the tax quarterly.

Environmental Taxes

Spill Compensation and Control Tax Changes — P.L. 2004, c.50, enacted on June 29, 2004, provides for tax rate increases effective immediately and retroactive to transfers occurring on and after January 1, 2004. The new tax rate for petroleum products, hazardous substances containing precious metals, elemental phosphorous, and elemental antimony or antimony trioxide for fire retardants is \$.023 per barrel transferred. The new tax rate for hazardous substances other than

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the above listed is 1.53% of the fair market value of the substance transferred.

Air Toxics Surcharge — P.L. 2004, c.51, enacted on June 29, 2004, and effective immediately, imposes a new annual surcharge ranging from \$.10 to \$10 per pound of toxic substance, depending on the category of toxin, on toxic air emissions at certain kinds of facilities. A portion of the revenue from this fee will be used to improve security at nuclear power plants in the State.

Gross Income Tax

Increased Tax on High-Income Taxpayers — P.L. 2004, c.40, enacted on June 28, 2004, and effective immediately, increases the gross income tax rate for the highest-income taxpayers. It establishes an additional tier in the graduated gross income tax table for taxpayers with taxable income above \$500,000, providing that the portion of income

exceeding \$500,000 shall be taxed at a rate of 8.97%.

Estimated Tax on Income From Sale of Real Property by Non-residents — P.L. 2004, c.55, enacted on June 29, 2004, and effective August 1, 2004, supplements the Gross Income Tax Act by requiring nonresidents who derive income from the sale of real property in this State to pay estimated gross income tax. The legislation provides that a county recording officer, at the time the deed is filed, must be presented with evidence of filing or payment of estimated tax with respect to the gain realized from the sale.

Local Property Tax

Property Tax Convention Task Force — P.L. 2004, c.85, enacted on July 7, 2004, and effective upon enactment, establishes a Property Tax Convention Task Force to study and make recommendations regarding reform of the local real property tax system and appropriates \$250,000 to fund its activities.

Miscellaneous

HMO Assessment — P.L. 2004, c.49, enacted on June 29, 2004, and effective immediately, establishes an interim assessment on health maintenance organizations and mandates a comparative study of the equity of various taxes imposed on all health care insurance companies.

Mobile Telecommunications Fee

P.L. 2004, c.48, enacted on June 29, 2004, and effective immediately, applicable to billing periods ending on or after July 1, 2004, for most services, and to billing periods ending on or after August 1, 2004, for certain services, imposes a \$.90 fee on periodic billing to mobile telecommunications and telephone exchange customers. The fee shall be used to fund the “911” system and certain other emergency response systems.

Motor Vehicle Tire Fee

P.L. 2004, c.46, enacted on June 29, 2004, and effective August 1, 2004, imposes a fee of \$1.50 on the sale of new motor vehicle tires, including tires sold as a component part of a new motor vehicle either sold or leased in New Jersey.

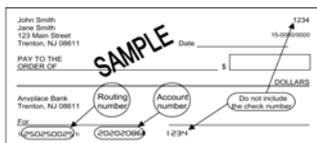
Outdoor Advertising Fee

Fee Changes — P.L. 2004, c.42, enacted on June 29, 2004, and effective immediately, provides for gradual reduction in the rate of the fee imposed on outdoor advertising signs and provides that entities that are treated as exempt organizations for sales and use tax purposes shall be exempt from the outdoor advertising fee as well. It also subjects outdoor advertising signs to real property tax.

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Property Tax Relief Programs
Benefits Increased — P.L. 2004, c.40, enacted on June 28, 2004, and effective immediately, as part of the new FAIR (Fair and Immediate Relief) program, provides increased property tax relief benefits to New Jersey homeowners and tenants. For information on rebate amounts paid in 2004 for applications filed in 2003, see [Changes to Rebate Programs](#), page 1.

Realty Transfer Fee
General Purpose Fee Added — P.L. 2004, c.66, enacted on June 30, 2004, and effective immediately, applicable to realty transfers taking place on or after August 1, 2004, imposes an additional “general purpose fee” at a graduated rate on

grantors of realty where the value of the deed is more than \$350,000, and makes other changes in fees and clarifications in the provisions governing realty transfer fees.

Transitional Energy Facility Assessment

Phase-Out Schedule — P.L. 2004, c.43, enacted on June 29, 2004, and effective immediately, extends the end date of the phase-out period for this assessment to 2010 and modifies the annual rates.

Urban Enterprise Zone

New Zone Created — P.L. 2004, c.75, enacted on July 1, 2004, and effective immediately, establishes a new urban enterprise zone, the 32nd, located in New Brunswick in Middlesex County. □

Tax Calendar

The following three calendars provide listings of filing and payment dates (January 1, 2004 – December 31, 2004) for businesses and individuals:

- [Chronological List of Filing Deadlines](#) — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.
- [Alphabetical Summary of Due Dates by Tax Type](#)
- [Payment Dates for Weekly Payers](#) — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more. □

from the director's desk

New Jersey taxpayers who invested in a variety of bond and option sales strategies, commonly called "Son of BOSS" tax shelters, as well as other Federally listed abusive tax avoidance transactions, will have until September 15, 2004, to submit a written application to resolve the tax issues.

In the late 1990s, the U.S. Treasury Department issued a notice to shut down the abusive tax shelter known as the Bond and Option Sales Strategy (BOSS), which was marketed and sold by investment bankers to tax accountants. One year later, the IRS similarly struck down a scheme with a similar design, known as "Son of BOSS."

As in the BOSS shelter, the "Son of" scheme featured a series of contrived steps to generate artificial tax losses from investments designed to offset income from other transactions. The IRS in 2000 denied taxpayers the purported losses resulting from this shelter transaction because they do not represent bona fide losses reflecting actual economic consequences as required under the tax law.

New Jersey's initiative will require taxpayers to concede 100% of the tax at issue plus interest, computed at prime rate plus 3%. Taxpayers that take advantage of this initiative will avoid all penalties, which may include the imposition of a 50% civil fraud penalty. Transaction costs such as promoter and professional fees will not be deductible.

Taxpayers wishing to participate in this initiative will be required to submit a written application, signed under penalty of perjury, no later than September 15, 2004. The application must identify in detail their participation in the abusive transactions, the entities utilized, the name(s) of the promoter(s), and all information necessary to determine the tax, interest, and penalty, if applicable.

Taxpayers who have additional questions regarding this initiative or who wish to submit an application may contact Richard W. Schrader, Assistant Director, Audit Activity at 609-292-0978.

Robert K. Thompson

New Jersey State Tax news

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Electronic Filing Hits Milestone

New Jersey Treasurer John E. McCormac announced that for the first time since tax year 1995, when the Division of Taxation began offering a paperless tax filing option, the number of paperless tax forms submitted has surpassed the one million mark.

The number of paperless returns filed for 2003 topped 1 million on April 13, and by the April 15 filing deadline the number had reached 1,117,878. This represents a 14.6% increase over tax year 2002, the previous single year record for paperless submissions, when 975,179 filers chose one of New Jersey's three "FastFile" options. The FastFile, user-friendly systems include NJ TeleFile, NJ WebFile, and NJ ELF, which enable taxpayers to submit paperless returns over the telephone, via the Internet, or through use of a computer software package. Based on the total number of returns the Division of Taxation had received by the filing deadline, one out of every three taxpayers has submitted forms through FastFile.

The overall increased usage of the NJ FastFile systems has enabled personnel in the Divisions of Taxation and Revenue to process returns and deliver refunds to taxpayers at an accelerated rate this spring.

"We are pleased with taxpayers' response to the paperless filing options," said Treasurer McCormac. "Our overall paperless success has been made possible though improvements to technology and computer programming. As a result, the State is reducing processing costs while also delivering efficient, user-friendly services to the citizens of our State."

NJ FastFile systems are accessible 24 hours a day, seven days a week. For more information, visit www.njfastfile.com or call our Customer Service Center at 609-292-6400. Representatives are available Monday through Friday, 8:30 a.m. to 4:30 p.m. □



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Speaker Programs 609-984-4101
NJ TaxFax 609-826-4500
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576



Investment Clubs

On January 14, 2004, P.L. 2003, Chapter 256 was signed into law. The act took effect immediately and applies to taxable years and privilege periods beginning on and after January 1, 2002.

Chapter 256 defines an "investment club" as an entity that is classified as a partnership for Federal income tax purposes and all of its owners are individuals. All of the "investment club's" assets must be securities, cash, or cash equivalents. The market value of the total assets can not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity. The "investment club" is not required to register itself or its membership interests with the Federal Securities and Exchange Commission.

If an entity meets the definition of an "investment club," it will be exempt from the \$150 per owner annual partnership filing fee and from the requirement that a partnership make payments of New Jersey gross income tax on behalf of its nonresident owners.

The market value of the total assets, as well as the per owner amount, will increase by an inflation adjustment factor each year beginning on or after January 1, 2003. The adjusted market value of the total assets for years beginning on or after January 1, 2003, is \$253,200 and the adjusted per owner amount is \$35,500. Accordingly, if the investment club had three owners, the market value of the investment club's total assets cannot exceed \$106,500 (3x\$35,500). □

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Four persons passed the Tax Assessor Certification Examination held on September 20, 2003, and received Tax Assessor Certificates dated January 1, 2004. They are as follows:

Bergen County: Peter J. Colao, Cliffside Park Borough.

Burlington County: Linda A. Rogers, Eastampton Township.

Cape May County: Lori Lynn Rosell, Middle Township.

Mercer County: Danielle Cordray Morris, East Windsor Township.

The next examination is scheduled for September 18, 2004. The deadline to file applications for this exam is August 19, 2004. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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<i>Criminal Investigation</i>	Rosemary Tuthill
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tax assessors' calendar - from page 2

Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.

- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County budgets certified by County Tax Boards.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.

- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property. The tax credit rate is calculated by dividing the total REAP aid by total taxable value of qualified residential property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days by County Tax Board to Taxation and Local Government Services Directors, State Auditor, municipal clerks, and the clerk of board of freeholders.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description, and valuation of railroad property not used for railroad purposes to Director, Division of Taxation.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%



Criminal Enforcement

Criminal enforcement over the past several months included:

- A Linden, New Jersey, luxury used car dealer, its president, and their certified public accountant have pled guilty to charges arising from a scheme uncovered by the Office of Criminal Investigation (OCI) to evade turning over \$350,000 in sales tax collected from customers and filing for the New Jersey tax amnesty program indicating no liability. The dealership, Auto Village, Inc., and its president, Hisham Sadek, had failed to file New Jersey sales tax returns for the year 1994. Mr. Sadek instructed his certified public accountant to take advantage of the 1996 amnesty legislation by preparing sales tax returns reporting no sales tax had been collected for the period. Our investigation revealed that the business had collected sales tax in excess of \$90,000 during the amnesty period. The investigation also revealed that fraudulent sales tax returns were filed for the periods after amnesty, and that sales tax in excess of \$350,000 was, in fact, collected by Auto Village, Inc., but not turned over to the State. Although having originally received amnesty, the corporation, Mr. Sadek, and the accountant were prosecuted as a result of the investigation. Auto Village, Inc. pled guilty to purposely failing to turn over taxes (second degree), Hisham Sadek pled guilty to misapplication of property withheld for the benefit of the government (third degree), and the accountant to having participated in the scheme to evade

taxes. Under the terms of plea agreements, the corporation will be faced with fines and restitution totaling more than \$800,000 at the time of sentencing. Mr. Sadek will face a sentence of a four-year term of incarceration, restitution of the tax due, and possible deportation upon his release from prison. The certified public accountant faces criminal sanctions as well as civil sanctions by the Board of Accountancy for his actions. The case is being prosecuted by the State Office of the Attorney General.

- On October 6, 2003, in Superior Court – Mercer County, Trenton, New Jersey, the sentences of Robert S. Brown and William D. Black, Jr. were modified. Brown and Black are, respectively, the president and vice-president of both Employer's Management Group, Inc. and Pratt Temporaries, Inc., which are temporary employment agencies. On November 13, 2000, Brown, Black, and the corporations pled guilty to charges of failing to turn over New Jersey gross income tax withheld and failing to file New Jersey gross income tax returns in 1993–1999. Prior to sentencing, the corporations made full restitution of almost \$1 million in withholding taxes. Brown and Black executed a consent judgment for penalty and interest of \$318,599.52 plus accruing interest. Brown and Black were each sentenced to four years' probation. On October 6, 2003, the Mercer County Superior Court, having been advised by OCI of the amount of restitution still outstanding and that no payments have been received since July

2003, issued a court order which extends the probation of both defendants to five years. The order reflects that the outstanding amount due is in excess of \$100,000.

This case is noteworthy for several reasons. First, the Division of Taxation aggressively pursues criminal prosecution of the willful failure to remit gross income tax withheld, whereas some other agencies have been seen by the business community as treating cases of this kind as solely a civil collection matter. Second, this case illustrates that OCI has and will continue to monitor and participate in the restitution, probation, and parole programs of the State to ensure that financial penalties assessed in cases of tax fraud are carried out. This is done to protect the State's revenues, to maintain criminal prosecution as a meaningful deterrent to tax evasion, and to fairly administer and enforce the State tax laws.

- On October 15, 2003, the Office of Criminal Investigation arrested Kenny Choi of Pomona, New Jersey, and Nhi Wiget of South El Monte, California, for trafficking in counterfeit cigarettes. The Mansfield Township Police stopped their truck for a commercial inspection and it was found to be filled with 22,750 cartons of the counterfeit cigarettes. The cartons were not only unstamped, but were also counterfeit trademark cigarettes. An interview with Mr. Wiget led to a commercial storage facility in Tabernacle Township, Burlington County, New Jersey, where OCI agents conducted a consent search and



criminal enforcement - from page 4

found 10,800 cartons of counterfeit cigarettes. OCI filed initial charges of possession of over 20,000 untaxed cigarettes, no invoices, no consumer license, and possession of over 1,000 counterfeit trademark items. Mansfield Township charged both subjects with illegal transportation and, in the case of Wiget, an additional charge of possession of narcotics paraphernalia. Cash bail was set at \$250,000 for Nhi Wiget and \$200,000 for Kenny Choi (later raised to \$250,000). Additional charges have been filed against Wiget for the cigarettes found in Tabernacle Township, and they include failure to maintain books with intent to evade, engaging in conduct requiring registration or licensure with intent to evade, failure to file returns or reports with intent to evade, failure to pay and turn over taxes with intent to evade, and possession of over 1,000 counterfeit trademark items. The value of the seized cartons, numbering 33,550, is \$2 million with the averted tax loss to the State of New Jersey being \$800,000. On November 21, 2003, Wiget and Choi were subsequently indicted by the Burlington County Grand Jury. The charges included second-, third-, and fourth-degree crimes related to the unstamped and counterfeit products, as well as numerous disorderly person counts.

- On October 24, 2003, in Superior Court – Mercer County, Trenton, New Jersey, Carl F. Monto, of Toms River, New Jersey, pursuant to his guilty plea of May 27,

2003, to charges of failing to file tax returns and misapplication of \$100,454 of motor fuels tax collected from January to September 1997 on the retail sale of diesel fuel at Courtesy Truck Stop, Inc., Jersey City, New Jersey, was sentenced to five years' probation and ordered to make restitution within that period of probation totaling \$249,681 including tax, penalty, and interest. This case was a joint investigation by OCI and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Office of the Attorney General.

- On October 29, 2003, a State Grand Jury handed down an indictment of Michael Evangelista, Cambria Corporation, Philip McKeane, and Clones American Corporation on charges arising from a data entry business in Pennsauken, New Jersey. They were indicted on a total of six third-degree counts, four counts of misapplication of entrusted property, one count of failure to file New Jersey employer withholding returns, and one count of failure to pay New Jersey employee wage withholding. These offenses are based on the withholding and failure to remit to the State New Jersey gross income tax from the employees of Cambria Corporation, later renamed Clones American Corporation. On November 17, 2003, corporate officer Philip McKeane, of Cherry Hill, pled guilty to two counts of misapplication of entrusted property (third degree). Under the terms of a plea agreement, Mr. McKeane will be required to serve five-year con-

current terms of imprisonment on each count. In addition, he entered into a civil consent judgment to pay the New Jersey gross income tax withholdings. Mr. McKeane is scheduled for sentencing on Friday, May 14, 2004.

- On October 30, 2003, in Superior Court – Mercer County, Trenton, New Jersey, Yefim Belotzerkovsky, a.k.a. Fred Bell, of Brooklyn, New York, and a corporation he owns, Raymond Petroleum, Inc., pled guilty to filing fraudulent motor fuels tax returns and misapplication of \$87,282.78 in motor fuels tax collected from retail diesel fuel customers from July 1997 to June 1998 at a truck stop operated by the defendants in Newark, New Jersey. At the time the plea was entered, the defendants made full restitution of \$155,061.27 in tax, penalty, and interest. On December 2, 2003, in Superior Court-Mercer County, Yefim Belotzerkovsky was admitted into the Pretrial Intervention Program for a term of six months, during which time he will be monitored by the Probation Services Division. Also, Belotzerkovsky and Raymond Petroleum, Inc. have waived their right to appeal the suspension, revocation, or non-renewal of the corporation's motor fuels licenses by the Division of Taxation in the event either is convicted of a criminal tax offense subsequent to October 30, 2003. This case was investigated jointly by OCI and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Office of the Attorney General.

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- On December 2, 2003, special agents arrested Jamil Bader of Elizabeth, New Jersey, at his retail store for possession of contraband cigarettes. The cigarettes were unstamped and VA stamped. Previously charged and found guilty of possession of contraband in the Elizabeth Municipal Court in November 2003, Bader was once again charged with possession of untaxed goods, no invoices, no consumer license, and failure to collect the cigarette tax. The Court set bail at \$7,500 cash, no 10%.
- On December 12, 2003, three top executives at JCA Associates, Inc., a Moorestown engineering firm, pled guilty to criminal accusations of filing or preparing false or fraudulent tax returns (third degree), in violation of N.J.S.A. 54:52-10. The accusations stemmed from acts committed between 1995 and 2000 that involved the concealment of campaign contributions to public officials by characterizing them as ordinary and necessary corporate business expenses on the corporation business tax returns filed

by the corporation. The corporate executives from JCA Associates, Inc. are Mark Neisser, President; Henry Chudzinski, Director of Marketing; and William Vukoder, Chief Financial Officer. As a condition of their pleas, Mr. Neisser and Mr. Chudzinski were ordered to resign their positions for two years and divest themselves of stock or ownership interests with the firm. Mr. Vukoder must resign his position for a period of five years and divest himself of all corporate interests. JCA Associates, Inc. will, under the terms of a civil settlement, pay a \$100,000 civil penalty. All parties are also required to cooperate with ongoing criminal investigations being conducted by the Division of Criminal Justice.

- On December 17, 2003, Gary Dewayne Dennington, a prison inmate in Beaumont, Texas, was indicted by a Federal Grand Jury on one count of conspiracy in violation of Title 18, United States Code, Section 371 and six counts of mail fraud in violation of Title 18, United States Code, Section 1341. The charges in the indictment stem from Mr. Dennington's

attempt to obtain New Jersey gross income tax refunds for the years 1998, 1999, and 2002 by filing fictitious New Jersey gross income tax returns with fictitious W-2 forms attached. If convicted of all counts, Mr. Dennington will face a criminal sentence of not more than 35 years and fines of not more than \$500,000. This joint investigation with the Federal Bureau of Investigation resulted in their presentation of Mr. Dennington's acts to the Federal Grand Jury and the resulting indictment.

- Ninety-nine (99) complaints alleging tax evasion were evaluated from October through December 2003 in the Office of Criminal Investigation.
- During the same time period, one hundred and two (102) charges were filed in court on thirty-four (34) cases for violation of the Cigarette Tax Act. Of the thirty-four (34) cases, eleven (11) involved counterfeit tax stamp investigations. Further, a total of thirty-one (31) arrests were made and one (1) vehicle was seized. □

Enforcement Summary Statistics

Fourth Quarter 2003

Following is a summary of enforcement actions for the quarter ending December 31, 2003.

• Certificates of Debt:	• Jeopardy Seizures	3	
Total Number	2,583	• Seizures	61
Total Amount	\$39,964,430	• Auctions	1
• Jeopardy Assessments	315	• Referrals to the Attorney General's Office	636

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/



Tax Briefs

Corporation Business Tax

Extraterritorial Income Exclusion

— The Division replied to an inquiry regarding the Federal Extraterritorial Income Exclusion and whether it is an addback on New Jersey's corporation business tax return. Sub-part F income should be included on Line 28 of the CBT-100, reflecting Federal taxable income. Under the Corporation Business Tax Act's dividend exclusion provision, this amount should be excluded (on Line 33b) even though it is undistributed for that year. A copy of Federal Form 5471 should be included with the filed CBT-100 to explain the deduction. The Division follows the Federal treatment of sub-part F income as "deemed" dividend income.

Federal Renewal Community Employment Credit — For New Jersey purposes, the share of income received by the shareholder would not reflect the reduced Federal amount caused by the IRC Section 1400H Renewal Community Employment Credit. The reduced amount of wages would be used on the New Jersey CBT-100S to compute New Jersey income. N.J.S.A. 54:10A-4(k). The share of income to the shareholder should not be adjusted based upon the amount of the Federal credit because New Jersey law does not recognize this Federal credit. See *AT&T v. Director*, 13 N.J. Tax 534 (1993) regarding Federal credits and the Corporation Business Tax Act.

Nexus on Immune Activity — Every corporation that elects and qualifies pursuant to Section 1361 of the Internal Revenue Code and has qualified and been accepted as

a New Jersey S corporation is required to file a CBT-100S for New Jersey purposes.

Foreign corporations that meet the filing requirements and whose income is immune from tax pursuant to Public Law 86-272, 15 U.S.C. §381 et seq., must obtain and complete Schedule N, Nexus-Immune Activity Declaration, and remit the minimum tax with the CBT-100S.

For additional information, Bulletin GIT-9S, *Income From S Corporations*, is available on the Division's Web site at www.state.nj.us/treasury/taxation/pdf/pubs/corp/git9s.pdf

Gross Income Tax

Tuition Reimbursement — New Jersey has no provision similar to the Federal provision regarding educational assistance plans and education reimbursement. Educational reimbursements are treated as compensation and must be included in the employee's gross income under the New Jersey Gross Income Tax Act in accordance with N.J.S.A. 54A:5-1(a). However, if the tuition reimbursement payments made by the employer are for courses that are job-related, the payments are not subject to withholding and do not have to be included in the employee's gross income. To be considered job-related, the course must: maintain or improve skills required by the employer in his trade, business, or employment; meet the express requirements of the employer or meet the requirements of applicable law or regulations imposed as a condition of the retention of the employee's salary status or employment; and successful completion of the course must be required to meet the minimum requirements for employment.

IRC Section 721(a) — For Federal income tax purposes, section 721(a) provides that no gain or loss is recognized by any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership. The New Jersey Gross Income Tax Act at N.J.S.A. 54A:5-1(c) provides that net gains or net income does not include transactions to the extent to which nonrecognition is allowed for Federal income tax purposes. Thus, for New Jersey income tax purposes, a taxpayer is not required to include gains or income from a "section 721(a)" exchange of property, to the extent of which nonrecognition is allowed for Federal income tax purposes.

Obligation to Withhold PA Income Tax — As a result of the reciprocal income tax agreement which was entered into between New Jersey and Pennsylvania, New Jersey income tax withholdings will not be required with respect to wages, salaries, and other compensation paid to Pennsylvania residents who file an Employee's Certificate of Non-Residence in New Jersey (Form NJ-165) with their employer. If such certificate is not filed, the employer must withhold tax under the New Jersey Gross Income Tax Act in the same manner as from any other employee. The Pennsylvania resident is liable for income taxes in his home state. Therefore, if a Pennsylvania resident files a Certificate of Non-Residence, the employer may withhold taxes for Pennsylvania income tax purposes and remit such taxes directly to Pennsylvania on behalf of such employee. If income tax is not withheld, the employee is requested to file estimated tax returns in Pennsylvania.

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Litter Control Fee

Roll Stock Exclusion — The Division responded to an inquiry regarding the application of the litter control fee to roll stock under N.J.A.C. 18:38-3.1(b)(12). The regulations provide for 15 litter-generating product categories including “paper products and household paper.” This category includes “all items of tangible personal property made or substantially derived from paper including all paper products for home and other personal use but does not include newspapers and magazines, and does not include roll stock produced by paper product manufacturers and wood pulp, sold as such.” N.J.A.C. 18:38-3.1. Two questions were asked about the roll stock exclusion. It was noted that in neither scenario is any ink or print being applied to the paper.

When a paper distributor purchases paper as raw material (e.g., 500 sheet packages of 8.5- × 11-inch paper) and sells such paper to end users without any alteration to the paper, is such a sale by the distributor exempt from the litter control fee? Stated differently, must the seller be the manufacturer for the sale to be exempt or would the subsequent resale of the product qualify? The exclusion relating to receipts derived from the sale of “roll stock” applies only to sales made directly by the paper manufacturer. Therefore, gross receipts deriving from subsequent sales of the same product would be subject to the litter control fee. Further, the exclusion is for “roll stock,” which are large rolls that are the direct result of the paper production process. The transaction described here

involves packages of cut paper. Therefore, the exclusion is not applicable to the sale regardless of the selling party.

If a paper distributor takes paper stock from its inventory and either cuts it down to a smaller size or punches holes in the paper and then sells it to its end-user customer, is such a sale exempt from the litter control fee? Again, the exclusion above relating to receipts derived from the sale of “roll stock” applies only to sales made directly by the paper manufacturer. The scenario provided refers to sales made by a distributor. Further, the “roll stock” exemption is only applicable to the sale of “roll stock” as is, not in a modified state. Therefore, the distributor’s gross receipts from the sale to an end user are subject to the litter control fee.

Outdoor Advertising Fee

Exempt Organizations — The outdoor advertising fee is imposed on the retail seller of billboard advertising space. For purposes of this legislation, the retail seller is the licensee, which is the entity authorized to sell advertising space on billboards pursuant to N.J.S.A. 17:5-5 et seq. The licensee is responsible for remitting the outdoor advertising fee on the gross amounts collected from selling advertising space on billboards.

Although this fee is imposed on the retail seller, there is nothing in the law that prohibits the retail seller from passing on this cost to the customer. If the outdoor advertising fee is separately stated on the invoice or bill provided to the customer, it should be labeled accordingly, “outdoor advertising fee,” and not as a tax. The retail seller may not in any way mislead the customer or misrepresent that the outdoor advertising fee is anything more than a reimbursement of the fee imposed on the retail seller and not a tax on the customer.

The purchase of billboard advertising space by an organization that has obtained exempt status from the New Jersey Division of Taxation is not exempt from the outdoor advertising fee imposed by Chapter 124, P.L. 2003. Since the outdoor advertising fee is not imposed directly on the exempt organization but is merely a cost passed on to the customer (exempt organization) by the licensee, the exempt organization’s exemption certificate (Form ST-5) is not valid.

Sales and Use Tax

Natural Gas and Electricity Sales — The purchase of energy used in the manufacturing process is subject to the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). The

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New Jersey Sales and Use Tax Act does provide an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible personal property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). However, effective January 1, 1998, the retail sales of gas and electricity became subject to sales and use tax in New Jersey. N.J.S.A. 54:32B-2(g); N.J.S.A. 54:32B-3(a). Natural gas and electricity are defined as “energy” which is taxed as tangible personal property. The law does not provide for any exemptions on natural gas sales to commercial and residential accounts. Since the tax is broad-based, there are no exemptions for purchases of energy for use in production, research and development, or by farmers, qualified exempt organizations (such as schools, churches, nursing homes, etc.), qualified Urban Enterprise Zone businesses, or State and local government entities. N.J.S.A. 54:32B-9(c)(3).

Sales of Whitening Products — The Division responded to an inquiry regarding the taxability of whitening gel sold to a dentist’s office. N.J.S.A. 54:32B-8.1 provides an exemption from the New Jersey Sales and Use Tax Act for certain medical supplies and equipment. It states, in pertinent part:

Receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act: sales of medicines and drugs sold pursuant to a doctor’s prescription for human use; over the counter drugs recommended and

generally sold for the relief of pain, ailments, distresses or disorders of the human body....

Receipts from sales of medical equipment, durable medical equipment, and supplies, other than medicines and drugs, purchased for use in providing medical services for compensation, but not transferred to the purchaser of the service in conjunction with the performance of the service, shall be considered taxable receipts from retail sales notwithstanding the exemption from the sales and use tax provided under this section.

Since whitening gel is not customarily used to serve a medical purpose and is generally useful in the absence of illness or injury, such a product does not qualify for the exemption, even if the patient provides a prescription from a physician. Under the law, the existence of a prescription does not determine exempt status. Thus, the sale of whitening gel by a dentist’s office is subject to New Jersey sales tax as the sale of tangible personal property. N.J.S.A. 54:32B-3(a). When purchasing whitening gel, the dentist should provide a New Jersey Resale Certificate (Form ST-3) to its vendor and not pay tax at the point of purchase. The dentist’s office would then collect and remit sales tax on the sale of the product to the patient. On the other hand, if the whitening gel is being used during the treatment of a patient by the dentist at the dentist’s office (i.e., the dentist is not reselling the product), the dentist must pay tax at the time of purchase and should not use a resale certificate. □

In Our Courts

General

Timeliness of Protest – *Harry and Susan Dashoff v. Director, Division of Taxation*, decided July 30, 2003; Tax Court No. 004747-1998.

The Appellate Division remanded this case to the Tax Court for an evidentiary hearing. Previously, the Tax Court held that plaintiff failed to timely file the complaint. At issue on remand is whether the mailing of a Notice of Assessment that was never received by plaintiff triggered the statutory period to file a protest with the Division or an appeal with the Tax Court.

The Division mailed plaintiff a Notice of Assessment (“Notice”) by certified mail, return receipt requested. The Notice’s envelope indicated that unsuccessful attempts to deliver the Notice were made and that therefore the unclaimed mailing was being returned to the Division. Subsequently, the Division mailed a Certificate of Debt (“Certificate”) via certified mail to plaintiff. Plaintiff received the Certificate and thereafter filed a protest with the Division. The Division determined that the protest was untimely, as it was not received within the statutory period to file a protest from the date of the Notice.

This Court found that plaintiff chose not to claim the Notice and that the evidence was conclusive that the Notice was never received by plaintiff. The general rule is that the mailing of a properly addressed notice is presumptive evidence of receipt pursuant to N.J.S.A. 54:50-6a. However, this statute creates only a rebuttable presumption of receipt, not effective receipt. Regardless, the



Court ruled that the presumption of receipt does not apply to certified mail. Therefore, the Court found “that the attempted service of the Notice by certified mail failed regardless of whether the Notice was simply unclaimed or purposely refused by Dashoff.” The Court opined that had the Notice been sent by regular or ordinary mail simultaneously or subsequently that service would have been effectuated.

Gross Income Tax

Basis in Partnership Interest – Eugene and Janet Schenkman v. Director, Division of Taxation, decided November 3, 2003; Tax Court No. 000223-1998.

Plaintiff (Schenkman) was a general partner in Hoes Lane Associates between 1983 and 1991. In 1992, Schenkman, along with other partners of Hoes Lane, contributed his partnership interest in Hoes Lane to S/K Birdsall, another partnership, which then became a general partner in Hoes Lane.

Hoes Lane reported a net loss for each year that it was in existence. Schenkman was able to utilize only a portion of his allocated Hoes Lane losses to offset other partnership income for gross income tax (GIT) purposes.

In 1992, Hoes Lane petitioned for bankruptcy. Hoes Lane transferred its real property to the mortgagor in exchange for discharge of the mortgage. The parties agree that Schenkman’s amount realized from the disposition of property is gain income for GIT purposes. However, the parties disagreed as to whether Schenkman could offset his gain with his GIT basis in Hoes Lane that

he subsequently transferred to S/K Birdsall upon contribution.

Schenkman claimed that his GIT basis in Hoes Lane transferred to S/K Birdsall upon contribution. The Division argued that S/K Birdsall, being an entity, is not entitled to and cannot be transferred the New Jersey adjustments to Federal basis (i.e., the *Koch* effect). Thus, Schenkman’s New Jersey adjusted basis in Hoes Lane (i.e., his basis in Hoes Lane unadjusted by allocated Hoes Lane losses that were not deducted for GIT purposes) before the transfer to S/K Birdsall is also his New Jersey adjusted basis in S/K Birdsall by virtue of his contribution to S/K Birdsall. Also, the Division claimed that Schenkman could obtain the *Koch* adjustment only when he disposed of his interest in S/K Birdsall.

The Court decided that Federal tax partnership rules were applicable, because under N.J.S.A. 54A:5-1 (c), gains and losses from the disposition of property are determined under the Federal income tax method of accounting. Internal Revenue Code (IRC) section 722 states that a contributing partner’s basis in its partnership interest will increase by the amount of the partner’s adjusted basis in the contributed property. IRC section 723 states that the partnership’s basis in contributed property is equal to the contributing partner’s basis. Upon disposition of the contributed property, any built-in gain or loss recognized is allocated to the contributing partner pursuant to IRC section 704(c)(1)(A) and *Treas. Regs.* section 1.704-3.

After reviewing the aforementioned IRC sections, *Walsh v. Director*, 10 N.J. Tax 447 (1989) and *Koch v.*

Director, Division of Taxation, 157 N.J. 1 (1999), the Court found that Schenkman’s GIT basis in his partnership interest in Hoes Lane transferred to and was Schenkman’s basis in S/K Birdsall. The Court also stated that Schenkman’s allocated loss on the disposition of Hoes Lane property occurs with the transaction, and not when Schenkman disposes of his partnership interest in S/K Birdsall.

Sales and Use Tax

Chemical and Catalyst Exemption

– *Atlantic City Linen Supply Inc. v. Director, Division of Taxation*, decided November 6, 2003; Appellate Division No. A-5146-01T1.

Plaintiff (A.C. Linen) is a commercial laundry that uses a variety of chemicals, cleaning agents, and detergents in various stages of the laundering process. A.C. Linen claims that these chemicals and detergents used in its laundering process are exempt from sales tax as materials used in the manufacturing and refining process pursuant to N.J.S.A. 54:32B-8.20. The Tax Court ruled that plaintiff did not qualify for this exemption because the laundry process did not result in a tangible finished product different from the material input into the process. A.C. Linen appealed that determination.

The Appellate Division affirmed the Tax Court for substantially the reasons expressed in its opinion. The Court emphasized that A.C. Linen did not create a different end product, but performed a service on the product, and that this provider of laundry services is entitled to tax exemptions that are not applicable to refining and manufacturing operations.

in our courts - from page 10

Atlantic City Linen filed a petition of certification to the New Jersey Supreme Court.

Floor Covering Materials – *Sanford Rever v. Director, Division of Taxation*, decided August 14, 2003; Tax Court No. 005566-2002.

Plaintiff entered into a contract for the construction of a new house with a contractor. The contractor referred plaintiff to a dealer to select floor covering if plaintiff desired to upgrade items contained in the contract. Plaintiff purchased flooring material and carpeting from this dealer. The invoice detailed three types of materials, the number of units purchased, the item price, and the extended price. In determining

the total invoice price, the dealer calculated sales tax on the materials and then deducted a builder's credit. Dealer refused to accept plaintiff's Form ST-8, Certificate of Capital Improvement, as a basis for sales tax exemption. Therefore, plaintiff paid dealer sales tax. The floor covering was installed by an installer, not the dealer, who plaintiff alleged was a subcontractor. Plaintiff timely filed a sales tax refund claim, which was denied by the Division.

Here, the Tax Court found that the agreement between the plaintiff and the contractor required plaintiff to purchase the upgraded flooring materials himself, with an allowance towards their cost to be paid by the contractor. *This allowance reflected*

the cost that was presumably included in the original selling price of the house. Therefore, the contractor did not purchase the upgraded materials *and did not pay sales tax on plaintiff's purchase of upgraded flooring.*

Plaintiff contested the refund denial claiming that the dealer should have paid sales tax when the dealer purchased the inventory it resold to plaintiff because the contractor, which plaintiff identified as the dealer, not the customer is obligated to pay the sales tax. The Tax Court determined that this transaction was the retail sale of floor covering materials from the dealer to the plaintiff and that this transaction is subject to sales tax. Although it was undisputed that the installed floor material constituted a capital improvement, the Court found that a tax exemption existed only for the installation involved in the capital improvement and not for the materials installed.

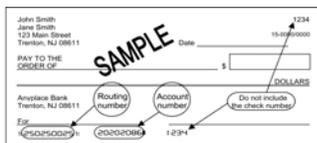
Plaintiff also argued that he contracted with the dealer for the purchase as well as the installation of flooring materials. The Court ruled that the capital improvement installation services are exempt from sales tax where the charges are stated separately on the invoice. Here the Court found that there was no evidence that installation services were contained in the invoice and noted that it was not disputed that there was no separate charge for installation.

Plaintiff filed a motion for amendment pursuant to R. 1:7-4(b) that was denied by the Court on September 26, 2003, as the Court addressed the same issues in its previous decision. □

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Tax Calendar

The following three calendars provide listings of filing and payment dates (January 1, 2004 – December 31, 2004) for businesses and individuals:

- [Chronological List of Filing Deadlines](#) — This calendar is for use by both businesses and indi-

viduals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

- [Alphabetical Summary of Due Dates by Tax Type](#)

- [Payment Dates for Weekly Payers](#) — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more. □

from the director's desk

The Division of Taxation's ongoing enforcement and prosecution efforts recently resulted in the arrest and indictment of several individuals.

- **Cigarette Trafficking Operations.** In January, three individuals were arrested in Totowa and 323 cartons of Virginia-stamped cigarettes were seized; in February, a Virginia man was arrested in Parsippany for possession of 45 cartons of untaxed cigarettes; and in April, 14,757 cartons of contraband cigarettes were seized during the arrest of two individuals in Jersey City.
- **Tax Refund Schemes.** In February, two inmates were indicted for attempting to defraud New Jersey by filing State income tax returns using fictitious wages and withholding figures on W-2 forms they created; and a California chiropractor and his sister were indicted for cheating New Jersey out of more than \$117,000 in business and income taxes. In March, criminal charges were filed against a Passaic County tax preparer who filed more than 1,970 fraudulent tax returns, seeking over \$708,000 in illegal refunds.

As part of our ongoing efforts to motivate people to comply with our tax laws, the Division of Taxation publicly displays a list of delinquent taxpayers on our Web site under "Largest Judgmednted Taxpayer Listings." The Web site separately lists business and individual delinquents, and distinguishes between recent and older tax debts. These postings have resulted in the collection of \$7.4 million to date.

We have an obligation to enforce our tax laws to ensure that all taxpayers pay their fair share. If you are aware of any individuals or business owners who don't pay State tax, call the Division at 609-292-6400. You don't have to give your name, but please be prepared to give as much information as you can. Stop New Jersey tax cheats now!

Robert K. Thompson

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2003 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	1/27/03	Makes technical amendments to the Urban Enterprise Zones Act.	S&U	SCS for S-1751
9	1/27/03	Exempts from gross income tax the income of individuals who died as a result of injuries caused by the September 11, 2001, terrorist attacks.	GIT	ACS for A-2233 & A-1912
25	2/27/03	Imposes requirements on tobacco product manufacturers, and authorizes revocation or suspension of the license or certificate of authority of distributors with contraband cigarettes or tobacco products produced by manufacturers that are not in compliance with these requirements.	TPT	A-3079(1R)
30	3/14/03	Changes the deadline for filing property tax reimbursement applications to June 1.	PTR	S-1341(2R)
33	3/24/03	Permits fiduciaries to employ and compensate accountants from fiduciary funds and permits certain out-of-State banks to be treated similarly as New Jersey banks.	MIS	S-1479(2R)
42	4/14/03	Allows vendors, under limited circumstances, to advertise that they will pay the sales tax for their customers on taxable transactions, and to do so, specifying the amount of tax paid on any invoice or receipt given to the customer.	S&U	A-1786
59	5/1/03	Makes changes in the Neighborhood Revitalization State Tax Credit Act.	MIS	S-1634
105	7/1/03	Imposes a new assessment payable by nursing homes to the Division of Taxation. The revenue generated from this fee shall be dedicated to various nursing home purposes as specified in the act.	MIS	ACS for A-3686
112	7/1/03	Creates a Hospital Care Payment Commission to which hospitals may assign their claims for unpaid patient accounts, which will then be paid partly through use of the existing Set Off of Individual Liability (SOIL) Program.	MIS	A-3708
113	7/1/03	Imposes a new, supplemental fee on the transfer of real property, payable by the grantor to the county in which the deed is recorded.	RTF	ACS for A-3709
114	7/1/03	Imposes a State hotel and motel occupancy fee (7% for FY 2004, 5% for FY 2005 and thereafter) and an optional municipal hotel and motel occupancy tax. The optional municipal tax will be 1% for FY 2004 and up to 3% for FY 2005 and thereafter. The legislation makes special rate provisions for those municipalities that already impose local taxes or fees for hotel/motel occupancies.	HMO	ACS for A-3710

2003 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
115	7/1/03	Increases the cigarette tax from \$.075 to \$.1025 per cigarette, resulting in an increase of \$.55 per pack.	CIG	ACS for A-3711
116	7/1/03	Imposes a 4.25% State tax on casino licensees on the value of rooms, food, beverages, or entertainment given away for free or at a reduced price as a “complimentary.” Imposes an 8% State tax on multi-casino progressive slot machine revenue. Imposes a new 7.5% State tax on the adjusted net income of casino licensees. Imposes a \$3.00 per day fee on each hotel room occupied by a guest in a casino hotel. Increases the minimum casino hotel parking charge from \$2.00 to \$3.00.	MIS	ACS for A-3713
117	7/1/03	Raises numerous State fees, including, for example, those for engineering and real estate broker licenses, equipment inspection, penalties for operating unlicensed health care facilities, filing divorce proceedings, certificates of need applications, criminal background checks and fingerprinting, brewery licenses, and imposes several new fees, including, for example, for licenses to operate a mental health facility and limousine licenses.	MIS	A-3719(3R)
124	7/2/03	Imposes a 6% State fee on the gross amount collected by retail sellers of outdoor billboard advertising space.	MIS	ACS for A-3714
125	7/9/03	Makes various changes in the law governing long-term real property tax exemptions.	LPT	S-2402(4R)
136	8/1/03	Provides that receipts from rental of tangible personal property between “related persons” (including business entities that are 80% or more owned by each other or 80% or more owned by the same third parties) are exempt from sales and use tax.	S&U	S-704(1R)
165	8/31/03	Exempts from sales and use tax the receipts from sales at concession stands at State-owned residential veterans’ facilities.	S&U	S-493
166	9/2/03	Expands the New Jersey Business Employment Incentive Program, which is designed to promote economic development, and provides for additional funding by authorizing the Economic Development Authority to issue bonds.	MIS	ACS(1R) for A-3705
194	11/21/03	Expands the economic incentives for rehabilitation and economic recovery in certain fiscally distressed municipalities.	CBT	S-2336(1R)
197	12/16/03	Extends eligibility for real property tax deduction or exemption to veterans who served in the theaters of operation of “Operation Enduring Freedom” or “Operation Iraqi Freedom.”	LPT	A-3564

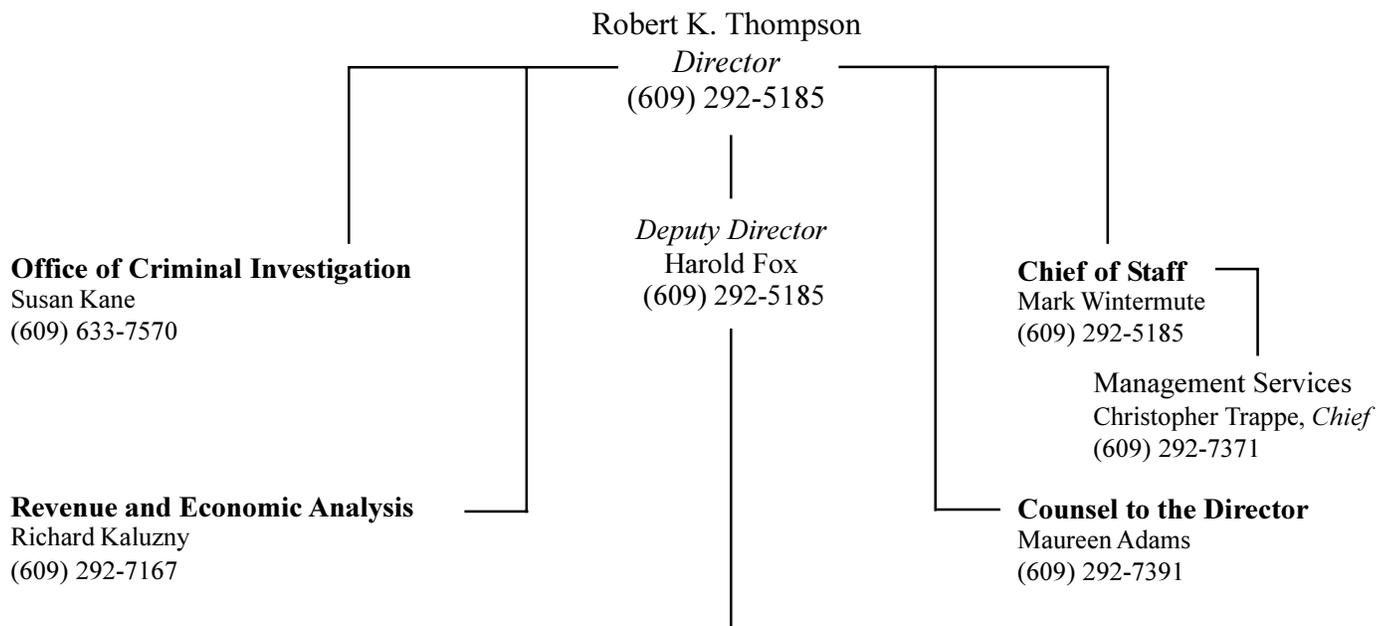
2003 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
224	1/9/04	Makes changes in the Spill Compensation and Control Act and the Brownfield and Contaminated Site Remediation Act. Provides a method of calculating developers' sales and use tax liability on materials used for remediation or for construction of new residences or other structures at a brownfield site.	MIS	A-2585(3R)
246	1/12/04	Establishes the criteria for a qualified domestic partnership. Provides, for purposes of transfer and inheritance tax, that property held jointly by domestic partners will be treated the same as property held jointly by spouses; that transfers to a domestic partner shall not be subject to tax; and that the value of a pension, annuity, or return of pension contribution paid to a domestic partner shall not be subject to tax. For gross income tax purposes, a domestic partner may be claimed as a "dependent" for a \$1,000 personal exemption.	GIT TIT/ET	A-3743(2R)
256	1/14/04	Exempts investment clubs from the \$150 per owner annual partnership filing fee and from the requirement that partnerships remit gross income tax payments based on a share of the partnership's net income allocated to its nonresident noncorporate partners.	CBT GIT	SCS(1R) for S-1770 and S-1773
266	1/14/04	Provides a sales and use tax exemption for the sale of "zero emission" motor vehicles.	S&U	SCS(1R) for S-2351
285	1/14/04	Designates Gloucester City in Camden County as an additional Urban Enterprise Zone.	S&U	A-2059(2R)
296	1/14/04	Provides for a corporation business tax credit for 100% of the costs of remediating certain contaminated sites during a three-year period.	CBT	A-2628(3R)

*Legend for 2003 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PPT = Petroleum Products Gross Receipts Tax
CIG = Cigarette Tax	PTR = Property Tax Relief Programs
CMC = Cape May County Tourism Sales Tax	PUT = Public Utility Taxes
FBT = Financial Business Tax	RTF = Realty Transfer Fee
GIT = Gross Income Tax	S&U = Sales and Use Tax
HMO = Hotel Motel Occupancies	SCC = Spill Compensation & Control Tax
IPT = Insurance Premiums Tax	TIT/ET = Transfer Inheritance & Estate Tax
LIT = Litter Control Fee	TPT = Tobacco Products Tax

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New Jersey State Tax news

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What's New for Tax Year 2003

There have been some important changes affecting the preparation of New Jersey income tax returns and sales and use tax returns for tax year 2003:

Income Tax

- **Date of Birth Replaces PIN** —

The Division of Taxation no longer assigns Personal Identification Numbers (PINs) for individuals who are filing their tax returns or making payments electronically. Instead, taxpayers will use their date of birth when using NJ TeleFile or NJ WebFile or when paying their income taxes by electronic check (e-check). Taxpayers may also be asked to enter their last name. Taxpayers who use NJ ELF will still need a Federal PIN but not a New Jersey PIN.

- **Forms on Web Can Be Printed and Filed** — Forms NJ-1040, NJ-1040 EZ, and HR-1040 are no longer required to be submitted on original forms (i.e., those printed with red, "dropout" ink). These income tax returns can now be printed from the Division's Web site at www.state.nj.us/treasury/taxation/prntgit.htm and used for filing.

Forms obtained by calling NJ TaxFax (609-826-4500) from your fax machine's phone may also be used for filing.

- **Nonresident**

Servicepersons Filing Form

NJ-1040NR — Recent Federal legislation (Servicemembers Civil Relief Act, P.L. No. 108-189, signed into law on December 19, 2003) prohibits a state from considering military income when determining the tax rate to be imposed against other income earned in that state by a nonresident serviceperson or spouse. As a result, when completing a New Jersey nonresident return, Form NJ-1040NR, nonresident servicepersons should not report their military pay on the wages line in *either* Column A (Amount of gross income everywhere) or Column B (Amount from New Jersey sources) on Form NJ-1040NR.

continued on page 2



important phone numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax	
Refunds	609-292-7018
Public Utility Tax	609-633-2576



what's new for 2003 - from pg. 1

- **Retirement Income Exclusions: Phase-In Complete** — The maximum amount of pension and/or other retirement income that may be excluded from New Jersey gross income was increased over a four-year period, which began in 2000. Exclusion amounts for 2003 and thereafter, which vary by filing status, are: \$20,000 (married, filing joint return), \$10,000 (married, filing separate return), and \$15,000 (single, head of household, or qualifying widow(er)).
- **New Jersey Earned Income Tax Credit: Phase-In Complete** — The credit was phased in over a four-year period, which began in 2000. For tax year 2003 and thereafter, the New Jersey credit will be equal to 20% of the applicant's Federal earned income credit.
- **NJ TeleFile Exemptions** — Taxpayers can now use NJ TeleFile to claim the exemption for "other" dependents. Previously, TeleFile filers were limited to the exemptions for qualified dependent children and qualified dependent children attending colleges.
- **Documentation MAY be Required** — Some filers will be required to submit copies of W-2s before their refunds will be issued. Such taxpayers will receive instructions during their TeleFile call or WebFile session.
- **Designated Contribution** — In addition to the charitable funds listed on the return, taxpayers may designate a contribution to one of six other funds. The new fund added for 2003 is the New Jersey Prostate Cancer Research Fund (06).

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2003 is .039127 from January 1 to June 30, 2003, and .038801 from July 1 to December 31, 2003.

Sales and Use Tax

- **Sales and Use Tax EZ File** — Some 20,000 businesses filed their 4th quarter New Jersey sales and use tax returns (Form ST-50) electronically in January 2004. Over 17,000 returns were received through the Division of Taxation's online filing program and another 3,000 returns were TeleFiled.

Businesses who are required to make their sales and use tax payments through electronic funds transfer (EFT) were notified by the Division late last year that their sales and use tax quarterly and monthly returns should be filed using either EZ File Online or EZ TeleFile beginning with the 4th quarter of 2003 return due January 20th. *Eventually, electronic filing will replace paper returns for all sales and use tax filers.*

Notices will be sent to all taxpayers before they are required to file electronically. Although only EFT taxpayers are now required to file electronically, *any* New Jersey sales and use tax filer can choose to file electronically at any time.

To EZ File Online: Visit the Division's Web site, choose [File Online](#), and follow the directions.

To EZ File by Phone: Complete the [EZ File Worksheet](#) and call 1-877-829-2866 (toll-free anywhere) to file. □

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Robert K. Thompson

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ESTATE TAX

Life Insurance Disbursements

The New Jersey Transfer Inheritance Tax and Estate Tax regulations were readopted with changes on March 17, 2003. The changes were a result of the July 1, 2002, revisions to the New Jersey Estate Tax which apply to estates of decedents dying on or after January 1, 2002.

N.J.A.C. 18:26-11.30 and 11.31 were modified to provide that all corporations, associations, societies, and other organizations which sell life insurance or annuities in New Jersey must:

1. Give notice to the Director of all sums payable by them as the result of the death of a resident decedent by filing Form O-71 as soon as practicable after the death of a decedent, but in any event, not later than 10 days after any full or partial payment has been made; and
2. Retain 50% of all sums payable pending receipt of a tax waiver from the Director.

Form O-71 must be submitted in all cases where:

1. Payment is made as a result of the death of a resident decedent under the terms of a life insurance policy, endowment policy, or an annuity contract owned by the decedent; or
2. Payment is made as a result of the death of a resident decedent under the terms of a supplementary optional settlement or similar contract issued to effectuate the distribution of benefits originally payable to the decedent under the terms of a life insurance policy,

endowment policy, or an annuity contract; or

3. A partnership, firm, or corporation is entitled to receive payment in its own right.

Both the Inheritance Tax and the Estate Tax are due and payable on a decedent's date of death. Amounts reported on Form O-71 must reflect date of death values. Accumulated dividends, post-mortem dividends, terminal dividends, and premium refunds are required to be reported on Form O-71.

Form O-71 is not required for any payment or payments made outright to a decedent's surviving spouse. If any payment or payments have or will be made to a beneficiary or beneficiaries other than the decedent's surviving spouse, Form O-71 must be submitted.

Provided that a fully completed copy of Form O-71 has been (or will be) mailed to the Director, and that each beneficiary listed on the form has been (or will be) advised that information regarding death claim payments is being supplied to the State pursuant to requirements of the New Jersey Division of Taxation, and that it is the position of the Division of Taxation that a beneficiary or beneficiaries may be personally liable for any and all inheritance and/or estate taxes until paid, all sums payable (100%) under the terms of the policy or contract may be disbursed without obtaining a tax waiver from the Director. No retention is required.

N.J.A.C. 18:26-11.31 requires that Form O-71 be mailed to the Division as soon as practicable after a decedent's death, but in any event, not later than 10 days after the date of any payment. However, completed forms may be mailed to the

Division on a monthly basis. A completed form which is made part of a monthly mailing will be deemed to have been mailed in a timely manner, provided that the monthly mailing is within one month of the date on which the form would otherwise be required to be mailed.

For decedents with a date of death after December 31, 2001, Forms O-71 required to be mailed on or before November 1, 2003, will be deemed to have been mailed in a timely manner provided that they are mailed no later than July 1, 2004. If payment was made to a beneficiary or beneficiaries prior to November 1, 2003, the beneficiary or beneficiaries need not be notified.

Form O-71 and its instructions are available on the Division's Web site at: www.state.nj.us/treasury/taxation/prntinh.htm

Form O-71, its instructions, and additional information pertaining to the use of the form may be obtained

continued on page 4

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%



life insurance - from page 3

by contacting the Inheritance and Estate Tax Section of the Individual Tax Audit Branch by mail at the Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, New Jersey 08695-0249, or by phone at 609-292-5033. □

License Suppression Project

During the fall of 2002, as the Division prepared for the next cigarette and motor fuels tax license renewal period, the Audit Services Branch performed a data match which revealed a substantial number of license holders that had existing delinquent or deficient items.

Through a coordinated effort with the Division's Audit Services, Technical Support, and Compliance Branches, as well as the Division of Revenue and the Office of Information and Technology, criteria were drafted to identify those registrants that would require notification. This letter informed them that unless their delinquent and/or deficient items were addressed, their license to sell cigarettes or motor fuels would not be renewed.

There were 4,689 letters mailed in January 2003 notifying license hold-

ers that their license would not be renewed as of April 1, 2003, unless listed delinquent/deficient items were addressed. It should be noted, however, that notices were not sent to taxpayers with conference, deferred payment, bankruptcy, and audit cases that were active at the time of mailing.

After issuance, the telephone response received by Audit Services was heavy, and in many cases, taxpayers were requested to provide additional information. Matters that required an in-depth analysis were forwarded to the Compliance Branch.

A summary of the project as of January 2, 2004, is as follows:

Collections	
Attributed to Project	\$2,951,272
Remaining	
Suppressed Taxpayers	1,463
Unsuppressed	
(license issued)	<u>3,226</u>
Total	4,689

Based upon the above results, approximately 5,000 notices were issued in December 2003 to begin the 2004 License Suppression Project. As part of this project, field visits will be made to those taxpayers that failed to respond for the 2003 licensing period. □

CORPORATION BUSINESS TAX Bonus Depreciation

A question has been raised about the application of N.J.S.A. 54:10A-4(k)(12)(A). This portion of section 3 of New Jersey's Business Tax Reform Act was intended to decouple from the 30% bonus depreciation. As the legislative history states: "the bill disallows the deduction of the 30% 'bonus' depreciation that was allowed for certain property for federal tax purposes under the federal 'Job Creation and Worker Assistance Act of 2002,' Pub L. 107-147. The bill returns the New Jersey depreciation rules to New Jersey law as it stood before the enactment of the federal law, and gives the Director of the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments" [page 8, Statement to A2501, dated June 27, 2002].

The statutory section reads in pertinent part, with emphasis added, "Notwithstanding the provisions of subsection (k) of section 168...and subsection (b) of section 1400L... for property acquired after September 10, 2001 and before September 11, 2004 the depreciation deduction otherwise allowed pursuant to section 167...shall be determined pursuant to the requirements and limitations of section 168...and section 280F...as if that subsection (k) and that section 1400L were not in effect."

On May 28, 2003, the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub L. 108-27 was approved. Section 201 of that law added a new subsection (4) to IRC

Correction

The [fall 2003](#) issue of the *State Tax News* has been updated to reflect a revision to the article entitled "Billing and Enforcement Changes on the Way." The article now states that one of the conditions for not imposing the \$100 late filing penalty is that the taxpayer pays the bill "within 30 days of the date on the notice." The time period was originally stated as "within 45 days."



bonus depreciation - from page 4

168(k), and changed the dates in IRC 168(k)(2) by deleting September 11, 2004, and inserting January 1, 2005. The heading in IRC 1400L was amended to delete existing language and insert “BONUS DEPRECIATION PROPERTY UNDER SECTION 168(k).”

It is the Division of Taxation’s position that the New Jersey statute, P.L. 2002, c.40, section 3, froze the Internal Revenue Code of 1986 *as if section 168(k) and 1400L were not in effect (for property acquired after September 10, 2001, and before September 11, 2004)*, and that, therefore, the Federal changes to IRC 168(k) that occurred in 2003 are not recognized at the present time for New Jersey purposes because New Jersey law requires that IRC 168(k) is ignored for privilege periods on and after January 1, 2002.

Since the 50% depreciation was created Federally in 2003 by amending IRC 168(k), for the reasons set forth in the prior paragraph, this change is ignored for New Jersey purposes, at least until September 12, 2004, at which time New Jersey law will again diverge from Federal law. (The Federal provision was extended to January 1, 2005). Accordingly, New Jersey has decoupled from the 50% bonus depreciation through the language of P.L. 2002, c.40, at least until September 12, 2004.

It should be noted that IRC section 179 depreciation was changed by section 202 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, and it is not decoupled from New Jersey depreciation. □

CORPORATION BUSINESS TAX
Refund Claims and
Lanco v. Director

On October 23, 2003, the New Jersey Tax Court ruled in favor of the taxpayer in *Lanco, Inc. v. Director, Division of Taxation*. Specifically, the Court held that because the taxpayer did not have a physical presence in the State, New Jersey could not impose its corporation business tax on the taxpayer, a foreign trademark holding company, under the United States Constitution’s Commerce Clause. That ruling is not yet final since the Division of Taxation intends to appeal the decision to the New Jersey Superior Court, Appellate Division. After the Tax Court issues a judgment, the Division has 45 days to file an appeal.

Prior to the judicial ruling becoming final, taxpayers contending that they have claims similar to *Lanco* may file tax refund claims to record these claims with the Division. After reviewing the refund requests, the Division will deny *Lanco* type refund claims because the *Lanco* decision is not final and could be reversed on appeal.

Taxpayers may appeal the denial of their refund claim by filing a timely protest and request for hearing with the Division of Taxation’s Conference and Appeals Branch. A hearing will be scheduled to determine whether the *Lanco* decision is the only issue in dispute. If it is found that other non-*Lanco* issues exist, a final determination letter addressing these issues will be issued.

If Conference and Appeals determines that the *only* issue in dispute is a *Lanco* issue, for administrative

convenience and to limit the size of the Tax Court’s docket, a final determination letter will be issued *when the highest appellate court issues a final decision in the Lanco case*. If taxpayers desire final determination letters before a final judicial resolution of the *Lanco* decision, they should specifically advise the Conference and Appeals Branch. □

LOCAL PROPERTY TAX
PAMS Update

The Division of Taxation recently opened bid proposals to purchase a Statewide Property Assessment Management System (PAMS). The system will integrate, streamline, and standardize the business functions performed by all levels of state and local government to administer the local property tax code and share information.

PAMS is intended to be a centralized, Web-based (thin client) solution that replaces MOD IV and its peripheral systems, currently provided by various data centers across the State.

The new system will facilitate Statewide standardization by creating a centralized relational database of all real property in New Jersey and associated applications, including parcel management, computer assisted mass appraisal (CAMA), sales information and analysis, tax appeals, and tax collection. Assessors and collectors who presently use a private CAMA or collections system will be afforded the opportunity to retain their vendors at their cost, or to fully participate in PAMS with minimal expenditures.



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New Jersey Sales & Use Tax EZ File

WHO can use it?

Anyone who files New Jersey sales and use tax returns and makes New Jersey sales and use tax payments.

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New Jersey S&U EZ File is a totally paperless filing and payment system for New Jersey sales and use tax returns. Filing and payment will be easier than ever with EZ File. There is no preregistration needed, and it's FREE!

WHERE can I file?

File from the comfort of your home or business using your phone or computer. No paper forms to submit. Nothing to mail. File and pay anytime, day or night.

WHEN will it start?

Beginning in early 2004, the Division of Taxation began moving sales and use tax filers away from filing paper returns (ST-50/51s) to filing electronically. You can choose to file either through our Internet filing service or through our telephone filing service.

WHY file electronically?

Because it's easier, safer, and more secure than paper, and there's less chance of making mistakes. And, you'll receive immediate confirmation that your return has been received.

HOW do I file?

It's as EZ as 1-2-3.

1. Log on to our Web site at www.state.nj.us/treasury/taxation/ or call our toll-free number (1-877-829-2866).
2. Enter the required information.
3. Decide whether you will pay by e-check, electronic funds transfer, or credit card.

Then, just record your confirmation number and you're done!!

For more information on S&U EZ File visit our Web site at:

www.state.nj.us/treasury/taxation/



PAMS update - from page 5

The Property Assessment Management System will benefit taxpayers by: improving access to data, enhancing property tax equity by providing the ability to maintain assessments at market value each year, and possibly permitting one filing for property tax relief programs. The benefits for local government include: lower costs and increased revenue enhancements that can help stabilize taxes, valuation equity equaling tax equity, and better planning that can improve quality of life. The State of New Jersey will also benefit from a centralized database. PAMS will allow for instantaneous access to up-to-date parcel information used for such applications as 911/emergency planning, voter registration, citizen services, school planning, GIS (geographic information system), and environmental analysis.

The Division of Taxation anticipates that this project will take several years to fully implement. In the short term, the design calls for initial implementation in three counties (Camden, Salem, and Hunterdon). Once the system is accepted in these three counties, the remaining 18 counties will be transitioned according to a future schedule.

The PAMS project is currently in the bid evaluation process. Once the contract is awarded, the designing of the system will begin. To aid in a smooth transition, the Division of Taxation has created a conversion team that will guide the assessors in the pilot counties. The team is consulting with the assessors to determine where additional fields may be needed in PAMS. Team members are also assisting the assessors in

preparing their MOD IV file for a seamless conversion. □

UNCLAIMED PROPERTY ***First Auction Held***

Unclaimed Property's Safekeeping Unit had its very first auction at the Atlantic City Antique Show on October 18 and 19, 2003. The event exhibited a magnificent assortment of some of the finest pieces of jewelry, collectibles, and coins, which were available to buyers from around the region.

This auction represented the first of many auctions scheduled to take place in the near future for Unclaimed Property. The Safekeeping Unit is planning to utilize all available auction methods, including the very popular Internet Web site eBay, while continuing to host live auctions in varying sizes and venues. These auctions will exhibit the many valuable items currently in the possession of Unclaimed Property, which include, but are not limited to, all types of jewelry, uncirculated coins/currency, precious gems, stamps, and other fine collectibles.

The main function of Unclaimed Property's Safekeeping Unit is to collect commercially valuable, tangible personal property that has been abandoned by its owners. This type of property comes predominantly from safe deposit boxes in banking institutions. In performing its fiduciary duties for the State, the Unit first attempts to contact the rightful owners of the contents of the boxes in an attempt to reunite owners with their property. If no contact can be made, the Unit then collects, inventories, appraises, and now auctions the valuable items. The generated

revenue will then be safeguarded in the Unclaimed Property Trust Fund in the names of the rightful owners until they can be located. When the rightful owners file claims with Unclaimed Property, they will receive a check for the sale price of the property, plus interest that has accrued from the time the office auctioned the property.

Unclaimed Property expects to receive a positive response from both antique enthusiasts and the general public and hopes to generate a substantial amount of revenue from the sales. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

January 1 –

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before) –

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10 –

- Copies of Initial Statement and Further Statement filed with County Tax Board.
- Assessment List and duplicates filed with County Tax Board.



assessors' calendar - from pg. 7

- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25 –

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior) –

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1 –

- After February 1, the assessor or county board of taxation shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.

- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10 –

- Certification, by assessor, filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, "within 10 days" of the date the bulk mailing of notifications of assessment completed.

February 15 (on or before) –

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1 –

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services, and post a copy at the courthouse.

March 10 (before) –

- Equalization table hearings completed by County Tax Board.

March 10 –

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

Criminal Enforcement

- On June 24, 2003, a New Jersey State Grand Jury returned a five-count indictment charging Yefim Belotzerkovsky, a.k.a. Fred Bell, of Brooklyn, New York, and Raymond Petroleum, Inc. with theft by failure to make required disposition of property received (second degree), failure to turn over New Jersey taxes (second degree), misconduct by a corporate official (second degree), misapplication of entrusted property (second degree), and filing false and fraudulent New Jersey motor fuels tax returns (third degree). The State Grand Jury indictment identifies Belotzerkovsky as the owner and operator of Raymond Petroleum located in Newark, New Jersey. Raymond Petroleum is a retail service station selling gasoline, diesel fuel, and kerosene to motorists and truckers in the Newark area. The indictment alleges that between July 1, 1997, and July 20, 1998, Belotzerkovsky underreported 646,539 gallons of diesel fuel sold at retail, thereby evading the payment of more than \$87,282 in New Jersey motor fuels excise taxes to the Division of Taxation. This was a joint investigation between the New Jersey Division of Taxation, Office of Criminal Investigation (OCI) and the New Jersey State Police-Organized Crime Unit, with cooperation from the Division of Criminal Justice in obtaining search warrants. The State Attorney General's Office presented this matter to the Grand Jury.



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- On July 10, 2003, a State Grand Jury indicted Edward V. Mongon of Union City, New Jersey, Mikhael Centeno of Jersey City, New Jersey, and Edward Troisi of Hoboken, New Jersey, on charges of failing to file and failure to pay New Jersey gross income tax for the period 1999 through 2002 in connection with their illegal income from the theft of property worth over \$5,000,000 by an organized cargo theft ring of which the three subjects were principals. A joint investigation by the New Jersey Division of Criminal Justice and various other agencies, including OCI, resulted in the indictment, which comprised 38 counts including racketeering, conspiracy, leading an organized crime enterprise, fencing, burglary, eluding, aggravated assault, theft, weapons possession, and money laundering against 24 defendants.
- On July 28, 2003, in Superior Court – Hudson County, John Drzymkowski of Berkeley Heights, New Jersey, entered a plea of guilty to one count of failing to file returns, and Drymco, Inc. a corporation of which Mr. Drzymkowski was owner/chief

administrative officer, entered a plea of guilty to one count of misapplication of entrusted funds. The charges involved \$301,000 in petroleum products gross receipts tax which Drymco, Inc. collected from its customers in connection with the sale of diesel fuel to truck stops from September 1999 to December 2000. The assets of Drymco, Inc., which had been located in Kearny, New Jersey, were sold in 2002. The defendants have made partial restitution of \$50,000, and at the time of his guilty plea, Mr. Drzymkowski signed a consent judgment for the outstanding tax, penalty, and interest in the amount of \$331,039.36. This matter was investigated by OCI and prosecuted by the State Attorney General’s Office.

- On August 1, 2003, Donna L. Burke of Toms River, New Jersey, was sentenced to 90 days in jail based on her guilty plea to one count of misapplication of entrusted property (second degree) involving her failure to remit sales tax collected from customers. In addition, Ms. Burke was placed on five years’ probation and ordered to make restitution to the Division of Taxation in the amount of \$227,242.86.

Ms. Burke, as president of Buddy Motors, Inc., a defunct used car dealership that was located in Burlington, New Jersey, collected and failed to remit \$227,242.86 in sales tax. The investigation revealed that Ms. Burke acquired the business in 1976 and failed to file and report approximately \$3.8 million in taxable sales involving 592 used car sales over a 2½-year period. In addition to the court-ordered restitution, Ms. Burke is personally liable for additional penalties and interest that accrue pursuant to civil statutes.

- On August 1, 2003, Richard Lugero, formerly of Millstone Township, New Jersey, was sentenced to five years in prison based on his guilty plea to failure to pay gross income tax with intent to evade, theft by deception, and theft by failing to make the required disposition (all third-degree crimes). The involved tax return years are 1993 and 1994. It was alleged that Mr. Lugero derived his income by acquiring goods and services by defrauding various creditors and businesses. Lugero was sentenced to five years in prison on each count to

continued on page 10

Enforcement Summary Statistics Third Quarter 2003

Following is a summary of enforcement actions for the quarter ending September 30, 2003.

<ul style="list-style-type: none"> • Certificates of Debt: <li style="padding-left: 20px;">Total Number 3,168 <li style="padding-left: 20px;">Total Amount \$39,006,964 • Jeopardy Assessments 400 	<ul style="list-style-type: none"> • Jeopardy Seizures 4 • Seizures 44 • Auctions 1 • Referrals to the Attorney General’s Office 521
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For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/

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run concurrently and was immediately incarcerated; the judge entered a Civil Judgment for the taxes, penalties, and interest due to the Division of Taxation in the amount of \$113,584. This case is the result of a joint investigation between the Office of Criminal Investigation and the Monmouth County Prosecutor's Office.

- On August 15, 2003, Shravan Baile of Staten Island, New York, was sentenced based on his guilty plea to failure to turn over taxes collected involving his failure to remit sales tax collected from customers. Mr. Baile, as the president of Best Liquors of Lakewood, Inc. and Best Liquors of Lakehurst, Inc., collected and failed to remit \$54,194 in sales tax at the two liquor stores he owns. Mr. Baile was fined \$10,000, placed on probation for five years, and ordered to make restitution of the sales tax collected and not remitted. Just prior to sentencing, full restitution of the tax was made. This case was referred to OCI from Audit Activity, where a review determined that these two businesses may have been intentionally under-reporting the amount of sales tax collected.
- On September 5, 2003, in Superior Court – Mercer County, Mark L. Stahl of Point Pleasant Beach, New Jersey, was sentenced to five years' probation, 300 hours of community service, and fined \$5,000 pursuant to his guilty plea of December 23, 2002, to two counts of misapplication of entrusted property, to wit, \$110,833.24 in motor fuels tax collected and not remitted. The sentencing judge indicated he did not impose a jail term because of the defendant's claim of ill health. The defendant has made restitution of the full tax amount. The case was investigated by OCI and prosecuted by the State Attorney General's Office.
- On September 12, 2003, in Superior Court – Middlesex County, New Brunswick, New Jersey, John B. Forrest of Colts Neck, New Jersey, entered guilty pleas on behalf of himself and his corporation, Tri-State Ticket Exchange, Ltd., Old Bridge, New Jersey, to charges of theft by deception of approximately \$647,000 from customers who ordered sports and entertainment events tickets that were never delivered, misapplication of \$122,626.37 in sales taxes of New Jersey and eight other states which Forrest collected from his customers but failed to turn over to tax agencies, credit card fraud, failure to file New Jersey sales and use tax returns for the period January 2001 through December 2002, and failure to turn over \$33,280.00 in New Jersey sales and use tax collected in that period. Forrest has agreed to make restitution of all of the above amounts and never again to engage in business as a ticket seller or broker in New Jersey. Forrest was scheduled to be sentenced in January 2004. This was a joint investigation between OCI and the Division of Criminal Justice, who prosecuted the matter.
- On September 16, 2003, in Superior Court – Bergen County, Hackensack, New Jersey, Daniel Provenzano of Upper Saddle River, New Jersey, was sentenced to ten years in State prison and ordered to make restitution to the State of \$47,306.58 tax, and penalty and interest of \$64,181.75, totaling \$111,488.33, pursuant to his guilty plea on November 6, 2002, to charges of operating a now-defunct printing business in Fort Lee, New Jersey, as a racketeering enterprise; using violence and criminal means to extort payments from customers and suppliers of the business; and failure to file a gross income tax return for 1996 with intent to evade \$47,306.58 tax on income of \$827,000.00. This case was a joint investigation by OCI and the New Jersey Division of Criminal Justice-Organized Crime and Racketeering Bureau, and was prosecuted by the State Attorney General's Office.
- One hundred eleven (111) complaints alleging tax evasion were evaluated from July through September 2003 in the Office of Criminal Investigation.

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criminal enforcement - from page 10

- During the same period, seventy-four (74) charges were filed in court on fifty-five (55) cases for violation of the Cigarette Tax Act. Of the fifty-five (55) cases, five (5) involved counterfeit tax stamp investigations and eighteen (18) arrests were made. □

Tax Briefs

Corporation Business Tax Alternative Minimum Assessment (AMA) Calculation — Parent (“P”) is a company incorporated in the state of Delaware with its principal place of business in New Jersey. P is principally engaged in the business of manufacturing and making sales of consumer products to both wholesale and retail customers throughout the United States and on a global basis. P wholly owns Subsidiary (“S”), a company incorporated in the state of Delaware with its principal place of business in New Jersey. S’s sole business activity is the financing arrangement with P described below.

P designs, manufactures, markets, and sells consumer products to retail and wholesale customers. Retail sales of P’s products are made to consumers through local and national retailers. Such retailers purchase P’s products from P. Commercial users of P’s products make purchases directly from P. Customers who purchase P’s products are given a grace period within which payment must be made to P. Such payments due from its customers are entered into P’s accounts as customer trade receivables (“Receivables”), and normally remain on P’s books until paid.

In order to resolve liquidity issues, P has entered into a financing arrangement with S. Under this arrangement, P makes sales of its Receivables to S. As stated above, Receivables arise in the normal course of P’s business and represent payments due from customers who purchase P’s products. In return for the Receivables, S compensates P with cash and one or more notes payable.

S, in turn, has entered into a financing arrangement with a third-party lender bank (“Bank”). Under this arrangement, S transfers to the Bank a beneficial interest (“Beneficial Interest”) in a fixed percentage of the total Receivables (the “Receivables Pool”), e.g., 80% of the Receivables Pool. In return, the Bank gives S a sum of money equal to the value of the Beneficial Interest in the Receivables Pool received. For example, if S held \$100 in Receivables, S may transfer Beneficial Interest in \$80 of the Receivables Pool to Bank, and Bank would remit \$80 to S.

The Beneficial Interest transferred gives Bank only the right to receive payments on the Receivables. The Beneficial Interest in the Receivables transferred does not specify individual receivables from which payments are due. Rather, it only conveys the right to receive payment on an unspecified portion of the Receivables Pool held by S, e.g., 80% of the Receivables Pool. As such, S retains the risk and burden in the case of any default on the Receivables. Also, by taking less than 100% of the value of the Receivables Pool held by S, Bank is not at risk for any individual customer defaulting on payments. S has the responsibility for replacing any individual Receivable in the Receiv-

ables Pool that has been paid in full, or has become worthless.

It is noted that transactions such as the sale of Receivables from P to S and the transfer of the Beneficial Interest in the Receivables from S to Bank are standard business practice in the consumer products industry, as well as numerous other industries, used in order to resolve liquidity issues.

P and S file a consolidated Federal income tax return, and each files separate corporation business tax returns in New Jersey.

For Federal income tax purposes, P reports net gains and losses on the sale of Receivables to S. Receipts from the sale of the Receivables to S are not included as receipts on the Federal return.

Also, for Federal income tax purposes, S reports net gains and losses on the transfer of the Beneficial Interest in the Receivables Pool to the Bank. Receipts from the transfer of the Beneficial Interest in the Receivables to Bank are not included as receipts for Federal income tax purposes.

The specific questions raised under these facts are (1) whether for P’s calculation of gross receipts for AMA purposes, P will include only net gains on the sale of the receivables by P to S; and (2) whether for AMA purposes in S’s calculation of gross receipts, S will include receipts from the transfer of the Beneficial Interest from S to the Bank.

First, for AMA purposes, only net gains are included in calculating gross receipts from the sale of capital assets. Capital assets are property not held by the taxpayer for sale

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to customers in the regular course of business. See *AT&T v. Director*, 194 N.J. Super. 168 (App. Div. 1984), certification denied 97 N.J. 627 (1984). In addition, since P includes in its gross receipts receipts from the sale of products to customers, to include the receipts from this transaction on a gross basis would effectively double count the receipts. Accordingly, it is the opinion of the Division that gross receipts from the sale of Receivables from P to S would not be included in the receipts calculation, but net gains, if any, would be included. (It should be noted that a factoring transaction between certain affiliates is subject to special treatment as a related party transaction under N.J.S.A. 54:10A-4.4).

Second, with regard to the payment to S by the Bank in exchange for the transfer of the Beneficial Interest in the Receivables Pool from S to the Bank, such receipts would be considered other business receipts. For Federal income tax purposes, S includes only gains or losses derived from the transfer of the Beneficial Interest in calculating its taxable income, not the gross receipts. For New Jersey purposes, the methodology used by S on its Federal tax return would be respected with regard to inclusion of only net gain with regard to payments from Bank to S for New Jersey gross receipts purposes. Accordingly, it is the opinion of the Division that for purposes of the AMA, S should not include amounts received from Bank for transfers of the Beneficial Interest in the Receivables Pool. But any gains derived from the transfer should be included in the measure of S's New Jersey gross receipts.

Making an Alternative Minimum Assessment (AMA) Election —

The Division recently reviewed the application of two statutory provisions regarding tax calculation and payment responsibilities to a particular fact pattern. Under N.J.S.A. 54:10A-5a.c., a taxpayer is required to pay the greater of the amount computed under the AMA or the CBT (corporation business tax). Under N.J.S.A. 54:10A-5, an election to pay the AMA using either the gross receipts or gross profits method is effective for the next four privilege periods.

These sections are to be applied to the below situation as follows:

For its privilege period, taxpayer calculates an AMA gross profits tax of \$600, a CBT of \$700, and an AMA gross receipts tax of \$1,000. Taxpayer pays the CBT of \$700.

By paying the CBT, taxpayer made an election to follow the gross profits method for the next four years. The choice of comparing the tax under gross profits to CBT (rather than the tax under gross receipts) actually determined the amount of tax that taxpayer was required to remit to New Jersey for the taxable year under the CBT.

Massachusetts Interest Income and New Jersey Throwout —

The Division recently responded to a question regarding the operation of the New Jersey throwout rule in the context of a Massachusetts taxpayer.

Corporation X is a manufacturing corporation for Massachusetts tax purposes. It includes its product sales, royalties, and interest income in Massachusetts net income subject to tax on its Massachusetts return. Corporation X files a New Jersey corporation business tax return

according to New Jersey's statutes and rules. Corporation X properly treats the sale of product, the generation of the royalty income, and the earning of the interest income as operational income for New Jersey purposes. As a result, royalties and interest income are properly treated as apportionable income for New Jersey purposes.

The issue is whether or not, given the following facts as summarized here, Corporation X's interest income should be thrown out of its New Jersey receipts fraction denominator.

1. The interest is included in New Jersey allowable "entire net income";
2. The interest income is sourced to Massachusetts for purposes of the New Jersey receipts fraction numerator;
3. Corporation X is subject to, and files a Massachusetts corporation income tax return;
4. The interest income is included in Corporation X's Massachusetts apportionable net income; and
5. Massachusetts excludes all interest income from the denominator and the numerator of the Massachusetts receipts fraction.

This summary is based upon the following analysis:

The interest income appears above line 28 of the CBT-100 filed in New Jersey and is included in New Jersey "entire net income." As such, it is a receipt for purposes of determining New Jersey's receipts fraction. Applying N.J.A.C. 18:7-12(e), the

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interest income is sourced for New Jersey purposes to Massachusetts, the location of the commercial domicile of Corporation X.

Under applicable Massachusetts law, the interest income is included in the determination of net income that is subject to tax. However, taxable net income for a Massachusetts manufacturing corporation is apportioned based on its sales fraction. Under Massachusetts General Law c. 63, Sec 38(f), when determining its sales fraction, interest income is not included in either the numerator or denominator of the taxpayer's sales fraction.

The management of the assets which generate the interest income occurs exclusively at Corporation X's commercial domicile in Massachusetts. All of the management and decision

making activities regarding the investment assets occur at the commercial domicile and corporate headquarters of Corporation X in Massachusetts.

It may also be noted that the applicable rule, N.J.A.C. 18:7-8.7(d), reads in pertinent part as follows: "The receipts sourced to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction." In the situation under consideration, the taxpayer is subject to tax in Massachusetts, and the interest income is a measure of the taxes in Massachusetts.

Accordingly, under the facts presented, where the interest income is

clearly subject to tax by both Massachusetts and New Jersey, and Corporation X files a tax return in both these jurisdictions, the interest income should not be thrown out of the denominator of the New Jersey receipts fraction.

Gross Income Tax

Common Pay Agent — The Division of Taxation responded to an inquiry asking if a Qualified Subchapter S Subsidiary (QSSS) may withhold New Jersey income tax under the same employer identification number as its parent company. The QSSS stated it withholds under one employer identification number for Federal income tax purposes.

The New Jersey Division of Taxation recognizes common pay agents for income tax withholding, reporting, and registration purposes. Even

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<p>www.njfastfile.com</p>	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p style="font-size: 8px; color: #0056b3;">NJTeleFile</p> </div> <div style="text-align: center;"> <p style="font-size: 8px; color: #0056b3;">NJELF</p> </div> </div> <div style="text-align: center; margin-top: 10px;"> <p style="font-size: 8px; color: #0056b3;">NJWebFile</p> </div> <p style="font-size: 24px; font-weight: bold; color: #0056b3; margin-top: 10px;">NJFastFile</p> <p style="font-size: 10px; color: #0056b3;">3 ways to a faster refund.</p>	

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though there is no statute or regulation regarding common pay agents, the NJ-WT, *New Jersey Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings*, provides guidance in such situations. The NJ-WT is available on the Division's Web site at: www.state.nj.us/treasury/taxation/prntempl.htm

As stated in the NJ-WT booklet, "employers with multiple divisions or locations having the same Federal Employer Identification Number must file combined withholding returns for all locations under one number."

Therefore, the QSSS may use the same employer identification number as its parent and report New Jersey income tax withholding in the same way as used for Federal income tax purposes.

However, the New Jersey Department of Labor may not recognize common pay agents for employment tax purposes. For more information, contact the New Jersey Department of Labor at 609-633-6400.

Employee Business Expenses — The Division received an inquiry asking if employee business expenses are excludable from gross income.

N.J.A.C. 18:35-1.2(b) provides that, for New Jersey gross income tax purposes, if an individual is an employee, all earnings in connection with employment are deemed to be and shall be reported by the taxpayer as wages, salaries, commissions, bonuses, and other remuneration received for services rendered, pursuant to N.J.S.A. 54A:5-1(a).

N.J.S.A. 54A:5-1(a) provides that all wages or other remuneration received for services rendered are taxable.

However, the Division provides a limited exception for certain employee business expense reimbursements reported on Form W-2. Taxpayers may only exclude these amounts from the New Jersey gross income tax return provided that:

1. The reimbursed expenses are job-related;
2. The taxpayer is required to and accounts for these expenses to the employer; and
3. The employer reimburses the taxpayer in the exact amount of the allowable expenses.

Taxpayers *must* enclose the following with their NJ-1040: a statement explaining that they are excluding a portion of the wages reported on the W-2 and the reasons for excluding this amount; and a photocopy of Federal Form 2106. Any reimbursement amount that exceeds the qualified excluded expenses of the employee is treated as taxable gross income for New Jersey purposes.

Outdoor Advertising Fee

Responsible Party — The outdoor advertising fee authorized by P.L. 2003, c.124 is imposed on the retail seller of billboard advertising space. For purposes of this legislation, the retail seller is the licensee, which is the entity authorized to sell advertising space on billboards pursuant to N.J.S.A. 27:5-5 et seq.

The licensee is responsible for remitting the outdoor advertising fee on the gross amounts collected from selling the advertising space on billboards. "Gross amounts" do not include fees received by an adver-

tising agency or broker that is not related to the retail seller (licensee).

In the situation where an advertising agency or broker is involved, the advertising agency or broker will be considered an agent of the customer, and thus, not responsible for the outdoor advertising fee, unless the advertising agency or broker is itself a licensee and is directly selling billboard advertising space.

Although this fee is imposed on the retail seller, there is nothing in the law that prohibits the retail seller from passing on this cost to the customer. If the outdoor advertising fee is separately stated on the invoice or bill provided to the customer, it should be labeled accordingly, "outdoor advertising fee," and not as a tax. The retail seller may not in any way mislead the customer or misrepresent that the outdoor advertising fee is anything more than a reimbursement of the fee imposed on the retail seller and not a tax on the customer.

Type of Sign Subject to Fee — A license is required to sell or rent billboard advertising pursuant to N.J.S.A. 27:5-5 et seq. Therefore, if a license is required by the Department of Transportation to sell advertising space on a particular outdoor sign, then the gross receipts from the sale of that advertising space are subject to the 6% outdoor advertising fee. However, if a license is not required, then the gross receipts for the sale of space on that sign are not subject to the outdoor advertising fee.

Realty Transfer Fee

Conveyance From Dissolved Corporation to Shareholder — The Division replied to an inquiry concerning whether the realty transfer

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fee applies to a deed conveyance between a dissolved corporation and its single shareholder. Any deed that is to be recorded with the appropriate county governmental recording office is subject to the realty transfer fee (N.J.S.A. 46:15-1 et seq.). Exemptions from the fee are set forth in N.J.S.A. 46:15-10. The mere fact that the corporation is dissolved and the sole shareholder now desires to take legal title to real property owned by the corporation is not, in and of itself, reason for exemption from the fee if the shareholder desires to record the deed. The list of exemptions should be consulted to determine if any of them apply to a particular deed conveyance when the deed is to be recorded.

Sales and Use Tax

Exempt Organization Application Process — To apply for exempt status with New Jersey, a nonprofit organization must file an Application for ST-5 Exempt Organization Certificate (Form REG-1E). Form REG-1E is a combination tax registration form and application for exempt organization permit. This must be accompanied by the organization's:

- Articles of Organization (Articles of Incorporation, charter, trust agreement, or constitution) and by-laws; and
- Internal Revenue Service Determination Letter stating that the organization is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code (not required from volunteer fire companies; and emergency, first aid, veterans', and parent-teacher organizations).

The application may be acquired by calling 609-292-5994, or by printing it directly from the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/pdf/other_forms/sales/reg1e.pdf

The completed application should be sent to:

NEW JERSEY DIVISION OF TAXATION
REGULATORY SERVICES BRANCH
PO BOX 269
TRENTON, NEW JERSEY 08695-0269

Once approved, an organization will receive only one Exempt Organization Certificate (Form ST-5). The organization's name, address, and exempt organization number, along with the effective date and the signature of the Director of the New Jersey Division of Taxation, will appear on this certificate.

When the representative of an approved exempt organization purchases merchandise and/or services to be used exclusively by the organization, sales tax is not due, provided a copy of the organization's New Jersey Exempt Organization Certificate (Form ST-5) and payment made directly from the organization's account are furnished to the seller. Only organizations which have been granted exempt status by the New Jersey Division of Taxation may use the New Jersey

Exempt Organization Certificate to make purchases without paying New Jersey sales tax. Some examples of organizations which may have exempt status are: churches, hospitals, veterans' organizations, and fire companies. Senior citizens' clubs, political organizations, and fraternal organizations, such as the Knights of Columbus, the Elks, the Rotary and Kiwanis Clubs, are not eligible for exempt status, and they may not issue New Jersey Exempt Organization Certificates. N.J.S.A. 54:32B-9. For more information on this topic, please see the Division's publication RSB-100, *Starting a Nonprofit Organization in New Jersey - Questions and Answers*, available at: www.state.nj.us/treasury/taxation/pdf/pubs/exemptfaq.pdf

Genealogical Research — Genealogical research provided to a customer is similar to the sale of a "customized report," which is treated as the sale of a personal service. Personal services are exempt from sales tax as long as any property that is transferred is inconsequential and not separately charged for. N.J.S.A. 54:32B-2(e)(4)(A). Thus, charges for providing a service resulting in a research product that is specific to the customer are not subject to sales tax.

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However, the sale of research which is not customized for a particular purchaser, but rather is provided to a number of customers without substantial and material custom research modification, is the sale of tangible property which is subject to sales tax. N.J.S.A. 54:32B-3(a). Sales of such reports that are delivered to clients in New Jersey in either hard copy, CD-ROM, or other tangible means are subject to sales tax. If the information is transmitted solely in electronic form, the transaction is one for intangible property, which is not taxable.

Therefore, a bound, written, and custom research report of genealogical research provided to a specific customer who requested the research (or the same thing transferred on CD-ROM or on video) is exempt from tax as an inconsequential element of a personal service. N.J.S.A. 54:32B-2(e)(4)(A).

Layaway Sales and Service Charges — Layaway payments are considered deposits on a future sale. Sales tax is not due on a deposit until actual delivery of the taxable merchandise occurs to which the deposit applies. If a sale is cancelled, there is no taxable transaction, and the deposit is not subject to sales tax.

The statute is clear that any elements of cost to the seller (with the exception of transportation costs, dealt with under N.J.S.A. 54:32B-8.11), are includable in the taxable receipt. N.J.S.A. 54:32B-2(d). Layaway service charges are fees for the expense of the seller related to the temporary storage of goods. Therefore, such charges are subject to sales tax as part of the taxable receipts. □

In Our Courts

Administration

Time Period to File Complaint — *James Liapakis v. Director, Division of Taxation*, decided September 15, 2003; Appellate Division No. A-5341-00T5.

The Division's gross income tax determination letter was sent by certified mail on August 18, 2000, and received by plaintiff (Liapakis) on August 21, 2000. Liapakis filed his complaint on November 17, 2000, which was 91 days after the determination letter was mailed and 88 days after Liapakis received it. The Tax Court ruled that the complaint was untimely as it was filed beyond the 90-day time period to file a complaint because the mailing date commenced the calculation of the 90-day period. Liapakis appealed arguing that the date the letter was received should start the running of the 90 days.

In determining whether the mailed or received date commenced the running of the 90 days, the Appellate Division's analysis commenced with N.J.S.A. 54A:9-10(a), which requires that a taxpayer appeal the Director's decision within 90 days in conformity with the State Tax Uniform Procedure Law. Thereafter, there is an apparent inconsistency among the statutes. On one hand, the State Tax Uniform Procedure Law N.J.S.A. 54A:51-18 states that all matters regarding the complaint and practice in the Tax Court are prescribed by the rules of court unless otherwise specifically provided by law. Rule 8:4-2(a) states that the time period is calculated from the date of service, and Rule 1:5-4(b) provides that service is complete upon the date of acceptance of cer-

tified mail. On the other hand, State Tax Uniform Procedure Law N.J.S.A. 54:49-18a states that the time to appeal commences from the final determination date, which date is defined by N.J.S.A. 54A:9-10(e) as the mailing date.

The Court ruled in favor of Liapakis noting that ambiguities in the tax law are construed in the taxpayer's favor and relied upon its previous ruling in *Township of Holmdel v. Director, Division of Taxation*, 12 N.J. Tax 112 (1991), as well as *Winberry v. Salisbury*, 5 N.J. 240, cert. denied, 340 U.S. 877 (1950), a New Jersey Supreme Court case involving a separation of powers issue. In *Holmdel*, this Court previously held that N.J.S.A. 54:51A-18 itself "constitutes express legislative recognition of the judiciary's responsibility to prescribe the procedure for the calculation of the limitation period." Consequently, the Court reversed the Tax Court and held that Liapakis's complaint was timely because the date that the certified mail was received and signed for begins the calculation of the 90-day period.

The Director, Division of Taxation filed a petition of certification to the New Jersey Supreme Court.

Corporation Business Tax

Nexus and Physical Presence — *Lanco, Inc. v. Director, Division of Taxation*, decided October 23, 2003; Tax Court No. 005329-97.

Plaintiff ("Lanco") is a Delaware corporation that owns trademarks, trade names, and service marks, but has no real or tangible property, offices, or employees in New Jersey. Lanco licenses these intangibles to Lane Bryant, Inc., an affiliated

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corporation, that has retail operations in New Jersey as well as in other states. Lanco and Lane Bryant, Inc. have a direct, long-term contractual relationship. For the use of these intangibles, Lane Bryant, Inc. remits royalty payments to Lanco; therefore, Lanco derives income from a New Jersey source. Although Lane Bryant, Inc. received a deduction for the royalty payments on its corporation business tax return, Lanco did not pay income or franchise tax on the royalty income to Delaware. The Division of Taxation determined that Lanco was required to file New Jersey corporation business tax returns due to the activity under the license agreement.

In general, states must comport with the Due Process and Commerce Clauses of the United States Constitution in their taxation of entities engaged in interstate commerce. The Court opined that the major issue for the instant case was whether the Commerce Clause's physical presence requirement for sales and use taxation, following *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), to establish nexus with the taxing state also applied to the imposition of a state income or franchise tax. After reviewing and analyzing the leading cases in the nexus arena, the Court ruled that the Commerce Clause requires physical presence in the taxing jurisdiction for the constitutional exercise of State taxing power. Therefore, in order for the taxpayer to have nexus and be subject to taxation, physical presence must be established, as it is a necessary element of Commerce Clause nexus for taxation. The Court reasoned that the differences between the income tax and use tax are not significant enough to justify a dif-

ferent rule regarding physical presence, and that pre-*Quill* cases suggest that physical presence is required.

The Court recognized that the South Carolina Court case of *Geoffrey Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993) found Commerce Clause nexus without physical presence and that other cases existed. However, after dissecting *Geoffrey*, it dismissed the holding as relying on dictum and not being supported by the authorities it cited. The Court noted that because the United State Supreme Court denied *certiorari* it did not address the merits of the holding, and that the ruling is only binding precedent in South Carolina. Moreover, the Court found that despite considerable activity in the nexus area, other courts were not following *Geoffrey*. In other cases where courts stated that physical presence was not required for nexus, this Court dismissed them as it found that the taxpayer did have physical presence in the taxing jurisdiction anyway.

The Court recognized that Lanco had no real or tangible property, offices, or employees in New Jersey, or anything else that would constitute physical presence. Therefore, the Court held Lanco was not subject to New Jersey corporation business tax in "that the state may not assert nexus, absent physical presence, against a corporation that receives income from the use of trademarks or other intangibles employed in a New Jersey business conducted by an affiliated corporation."

The Division of Taxation intends to appeal this decision to the New Jersey Superior Court, Appellate

Division. (See separate article on refund procedures on page 5.)

Net Operating Loss Carryover – *Macy's East, Inc. v. Director, Division of Taxation*, decided March 26, 2003; Tax Court Nos. 000018-98, 003989-1998, 00415-2000, 002019-2001 and 002754-2002.

Macy's East was incorporated on December 13, 1994, as an Ohio corporation. Macy's Northeast, a Delaware corporation, and Macy's South were merged into Macy's East on December 19, 1994, after conclusion of bankruptcy proceedings. Jordan Marsh, a Delaware corporation, and Abraham and Strauss, an Ohio corporation, were merged into Macy's East in 1995. Abraham and Strauss Real Estate, a Delaware corporation, was merged into Macy's East in 1998. Each entity, except Macy's South, that was merged into Macy's East had a New Jersey net operating loss carryover before the merger. However, the Division disallowed Macy's East from deducting the net operating loss carryovers of the other entities that merged into it.

The Court reviewed the legislative and regulatory background concerning net operating loss carryovers. As enacted in 1985, N.J.S.A. 54:10A-4(k)(6) permitted net operating loss carryovers. In 1986, the Division's regulation N.J.A.C. 18:7-5.13(b) permitted only the actual corporation that sustained the loss and the net operating losses of the surviving corporation of a statutory merger to be utilized in the carryover. Furthermore, the regulation disallowed a taxpayer that changed its state of incorporation or which was part of

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substantial tort litigation, filed a Chapter 11 reorganization petition in the Richmond, Virginia Bankruptcy Court. The reorganization plan granted Robins, the surviving entity in the bankruptcy, the rights and property of the company that initially filed for bankruptcy. One of those assets was a multi-million dollar net operating loss (NOL) for New Jersey corporation business tax purposes. New Jersey net operating loss tax law, codified in the Business Tax Reform Act as N.J.S.A. 54:10A-4.5, allows NOLs to be used only by the corporation that incurs the loss. The Director denied the refund claim because the corporation which survived under the reorganization plan is a different corporation than the entity that incurred the loss and was later dissolved. Robins sought relief in both the Virginia Bankruptcy Court and the New Jersey Tax Court. A Federal Court judge in Virginia found the New Jersey Division of Taxation to be immune from Robins' suit under the United States Constitution Eleventh Amendment. Robins did not appeal the Federal Court's decision.

Then the matter returned to the New Jersey Tax Court. The Appellate Division affirmed the Tax Court's opinion finding that N.J.S.A. 54:10A-4.5 is constitutional. The taxpayer had argued that the retroactivity provision of this statute is unconstitutional because it violates the due process clauses of the United States and New Jersey Constitutions, the New Jersey Constitution's prohibition against special legislation, and the separation of powers doctrine. The Appellate Division also affirmed the Tax Court's decision upholding the Director's denial

of taxpayer's refund claim for corporation business tax based on the New Jersey Supreme Court's decision in *Richards Auto City, Inc. v. Director, Division of Taxation*.

Local Property Tax

Exemption Status – *Regent Care Center, Inc. v. Hackensack City*, 19 N.J. Tax 455 (2001); aff'd Appellate Division, No. A-540-01T2 (July 22, 2003).

The issue before the Superior Court, Appellate Division, on appeal from the Tax Court of New Jersey, was whether plaintiff Regent Care Center, Inc.'s increased assessment was an illegal spot assessment for tax year 1998. They also claimed that "assessment maintenance" was unconstitutional. A further claim was that if assessment maintenance was a valid practice, it should not be permitted because there were no uniform regulatory standards in place.

After a trial, the Tax Court, in a published opinion, *Regent Care Center, Inc. v. Hackensack City*, 19 N.J. Tax 455 (2001), upheld the increased assessment, concluding it was not a constitutionally prohibited spot assessment.

On appeal, Regent Care contends the trial court erred, asserting that because the increased assessment was not based on a change in the zoning, change in legal status, or physical change to the property, and it was one of only a small group of properties for which assessments were changed, it is a prohibited spot assessment. Regent Care further urges the practice of "assessment maintenance" be declared an unconstitutional device creating spot assessments. Finally, Regent Care argues that even if assessment main-

tenance is a constitutionally permissible practice, it was conducted in this case without the benefit of uniform guidelines from either the Division of Taxation or the Bergen County Board of Taxation, and therefore the resulting increase in the assessment of its property cannot be sustained.

Hackensack's last prior revaluation was in 1988, followed by a district-wide reassessment in 1993, approved by the Bergen County Board of Taxation, in which all 11,209 line items were reviewed. As of October 1, 1996, for tax year 1997, as part of an assessment maintenance plan, the assessor changed the assessment, leaving the land at \$546,000, but increasing the improvement to \$7,544,300, for a total of \$8,090,300, which remained in place through the time of the trial in 2001. The assessor reviewed the 11,209 property record cards for the entire city, all available sales ratio data, all available "Chapter 91" income and expense information, and applicable zoning changes. In doing so, the assessor determined that about 150 commercial properties were grossly underassessed.

In order to determine the value of the nursing home, the assessor used comparable sale prices allocated on a per bed basis. He was aware of recent nursing home sales in surrounding communities in the range of \$40,000 to \$60,000 per bed. Regent Care's original assessment was \$24,000 per bed. Regent Care did not present any evidence as to value, did not challenge the assessor's per bed valuation method, and did not contend its property was overassessed or assessed outside the corridor permitted by Chapter 123, P.L. 1973.

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The Court reviewed the *Van Decker* Welcome Stranger principles and concluded that the assessor did not use the “sale of the subject” factor, but relied upon appropriate data (sales of nursing homes in neighboring municipalities) to determine the increased assessment. The Court noted, however, that spot assessing was not limited to the Welcome Stranger scenario. The Court found that the reassessment of Regent Care’s nursing home did not constitute arbitrary intentional discrimination. The reassessment was implemented as part of a comprehensive review of all properties in the district. All commercial and industrial properties were evaluated. Those that were not underassessed were not changed. But all were evaluated and considered. Those selected for increases were not selected arbitrarily, but based upon objective, non-sales-related evidence, and in relation to other similarly situated properties within the class.

The Appellate Court then addressed Regent Care’s declaration that the practice of “assessment maintenance” was an unconstitutional device creating spot assessments. “Assessment maintenance” refers to the practice by which an assessor changes some assessments in a year when a districtwide revaluation or reassessment is not performed. The Court declined to declare that all “assessment maintenance” is impermissible stating that such a declaration was not warranted, would be contrary to established precedent, and must be decided on a case-by-case basis.

The Appellate Court also rejected Regent Care’s contention that the absence of formal uniform guidelines pertaining to assessment maintenance renders the practice illegal. The Court noted that guidelines do exist. The *Handbook for New Jersey Assessors*, New Jersey Division of Taxation (1989), was cited with approval in *Van Decker* as a source of proper assessment maintenance. In particular, the Court cited sections of Chapter 9, which is devoted to assessment maintenance. Further, assessors are trained, tested, and certified professionals. Whether assessors fulfilled their obligations under N.J.S.A. 54:4-23 in a fair and non-discriminatory manner should be judged by their actions on a case-by-case basis.

The dominant principle of the State Constitution’s uniformity clause is to mandate equality of treatment and burden. Taxpayers must be treated in a manner comparable to other taxpayers. Although performing a districtwide revaluation or reassessment every year would be the best way of meeting that mandate, it is simply not feasible. And yet, assessors cannot be expected to do nothing in years between districtwide revaluations or reassessments. The Court noted that although “‘assessors are prohibited from arbitrarily singling out property for increased assessment,’ they nevertheless ‘have a statutory obligation to monitor all available indicia of property value and to correct inequities in tax years other than years of district-wide revaluations. N.J.S.A. 54:4-23.’” It was held that the assessor properly discharged his statutory obligation to assess all property annually at full and fair value. The increased assessment was upheld. □

In Our Legislature

Corporation Business Tax Business Employment Incentive Program — P.L. 2003, c.166 (signed into law on September 2, 2003) expands the New Jersey Business Employment Incentive Program, which is designed to promote economic development, and provides for additional funding by authorizing the Economic Development Authority to issue bonds. This act took effect immediately.

Economic Development Incentives — P.L. 2003, c.194 (signed into law on November 21, 2003) expands the economic development incentives for rehabilitation and economic recovery in certain fiscally distressed municipalities.

Chapter 194 expands both the business incentive program and the jobs creation credit program to extend eligibility for the credits allowed under each beyond corporation business tax payers to include insurance companies subject to insurance premiums taxes under P.L. 1945, c.121 (C.54:18A-1) and foreign insurance companies subject to “retaliatory” taxes.

This law also increases the maximum percentage of the rebate base allowable against either corporation business tax or the premiums or retaliatory taxes under the business incentive program from 75% to 100% in cases as to which the New Jersey Economic Development Authority finds that a particular business relocation or expansion will more effectively effectuate the purposes of the “Municipal Rehabilitation and Economic Recovery Act.”

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The act took effect immediately, and applies to privilege periods and reporting periods beginning on or after June 30, 2002.

Tax Credit for Environmental Remediation Costs — P.L. 2003, c.296 (signed into law on January 14, 2004) provides a corporation business tax credit for 100% of the eligible costs of the remediation of certain contaminated sites in the State performed during privilege periods beginning on or after January 1, 2004, and before January 1, 2007. The amount of the credit cannot exceed 50% of the tax liability due and cannot reduce the tax liability to an amount below the statutory minimum tax. However, in most cases any unused tax credit not utilized because of these limitations may be carried over for the next five privilege periods.

In addition, the tax credit, when combined with the property tax exemption received under the Environmental Opportunity Zone Act, less any “in lieu of” tax payments made pursuant to that Act, or any other State, local, or Federal tax incentive or grant to remediate a site, cannot exceed 100% of the total cost of the remediation.

Only taxpayers that are not liable for the contamination of the site as “responsible parties” under the Spill Compensation and Control Act are eligible for the credit.

This act took effect immediately.

Miscellaneous

Investment Clubs — P.L. 2003, c.256 (signed into law on January 14, 2004) exempts investment clubs from the \$150 per owner

annual partnership filing fee and from the requirement that a partnership make payments of New Jersey gross income tax on behalf of its nonresident noncorporate partners.

The act provides that a qualified “investment club” is an entity that is classified as a partnership for Federal income tax purposes in which all of the owners are individuals; and all of the assets are securities, cash, or cash equivalents; and the market value of the total assets does not exceed an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity, as measured on the last day of its taxable year. Also, the partnership is not required to register itself or its membership interests with the Federal Securities and Exchange Commission.

Chapter 256 also provides for an annual inflationary adjustment for the cap on the total assets of the entity and average assets of the owners.

The act took effect immediately, and applies to taxable years and privilege periods beginning on and after January 1, 2002.

Low Emission Vehicle Program — P.L. 2003, c.266 (signed into law on January 14, 2004) requires that the Department of Environmental Protection implement the California Low Emission Vehicle program in New Jersey beginning on January 1, 2009. A provision in this act provides that receipts from sales of zero emission vehicles sold on and after May 1, 2004, are exempt from the tax imposed under the Sales and Use Tax Act.

Chapter 266 defines “zero emission vehicle” and also provides that the Commissioner of Environmental

Protection shall certify to the State Treasurer the make and model of those motor vehicles that are zero emission vehicles eligible for the exemption.

The act took effect immediately.

Veterans’ Benefits — P.L. 2003, c.197 (signed into law on December 16, 2003) extends eligibility for certain veterans’ benefits to veterans who served at least 14 days in the theater of operation of Operations “Enduring Freedom” and “Iraqi Freedom.” Section 5 of the law provides that an eligible person is entitled to the annual \$250 property tax deduction or a property tax exemption if the eligible person has a total and permanent service-incurred disability.

Chapter 197 also makes technical changes and updates to descriptions of what constitutes service during Operation “Restore Hope” in Somalia, and Operations “Joint Endeavor” and “Joint Guard” in the Republic of Bosnia and Herzegovina.

Chapter 197 took effect immediately, but section 6 (the implementation section) remained inoperative until January 1, 2004.

Multiple Taxes

Domestic Partnership Act — P.L. 2003, c.246 (signed into law on January 12, 2004) sets forth the requirements that must be met to establish a domestic partnership.

This act provides that for transfer and inheritance tax purposes, property held jointly by qualified domestic partners that is transferred to a domestic partner will be treated as property held jointly by a spouse.

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Chapter 246 also states that no tax is imposed on transfers of property to a qualified domestic partner for transfer inheritance tax purposes. In addition, the value of any pension, annuity, retirement allowance, or return of contribution payable to a domestic partner is exempt from tax.

The act provides that for gross income tax purposes, the meaning of “dependent” will include a qualified domestic partner, which will allow the taxpayer to claim an additional \$1,000 personal exemption for a qualified domestic partner who does not file a separate tax return.

The act takes effect on the 180th day after enactment. The provisions of sections 47 through 56, which pertain to health service providers, will apply to policies or contracts issued or renewed on or after the effective date.

Sales and Use Tax

Cleanup of Hazardous Substances — P.L. 2003, c.224 (signed into law on January 14, 2004) amends certain provisions of the Spill Compensation and Control Act and the Brownfield and Contaminated Site Remediation Act concerning site remediation.

The amendments provide that if the redevelopment of the property is

performed in phases, payments to reimburse the developer may commence prior to the completion of the redevelopment at the entire site.

This act also provides a method of computing the sales and use tax on the purchase of materials used for remediation, the construction of new structures, or the construction of new residences at the site. When an exact accounting is not available, the Director of the Division of Taxation will presume the tax equals 1% of the developer’s contract price for the remediation and improvement. An amount not to exceed 3% may be approved by the Director when clear and convincing evidence that the tax on materials is greater than 1% is presented.

This act took effect immediately.

Urban Enterprise Zones

New Zone Designated — P.L. 2003, c.285 (signed into law on January 14, 2004) designates Gloucester City in Camden County the 31st qualifying Urban Enterprise Zone based on the required population criteria. Qualified businesses in the designated Urban Enterprise Zone are permitted to collect sales tax at a reduced rate of 3% rather than at the current 6% rate. The reduced sales tax rate is applicable for a period of at least 20 years, and potentially as long as 35 years, dur-

ing which the revenues collected at that reduced rate are divided between the municipality and the State under a formula that is adjusted according to a statutory schedule.

Chapter 285 takes effect on April 1, 2004. □

Tax Calendar

The following three calendars provide listings of filing and payment dates (January 1, 2004 – December 31, 2004) for businesses and individuals:

- [Chronological List of Filing Deadlines](#) — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.
- [Alphabetical Summary of Due Dates by Tax Type](#)
- [Payment Dates for Weekly Payers](#) — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more.

from the director's desk

Haven't filed your 2003 New Jersey income tax return yet? What are you waiting for? Go paperless! Use one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ ELF — and experience the simplicity of electronic filing. Not only is it secure, it's the fastest and most accurate way to file your return because once you enter your information, all the necessary calculations are done for you. In fact, last year nearly one million New Jersey taxpayers chose one of these alternative methods instead of filing a paper return.

This year we have made electronic filing even easier by eliminating the New Jersey Personal Identification Numbers (PINs). Taxpayers who use NJ ELF will still need a Federal PIN.

With NJ FastFile you also spend less time waiting for your refund because electronic returns can be processed more quickly. You can even save yourself a trip to the bank by having your refund or homestead rebate (or both) deposited directly into your bank account. Do you owe us money? You can file your return now and wait until the due date to pay.

For more information about the eligibility requirements for any of the NJ FastFile options, visit www.njfastfile.com or call 1-800-323-4400. Whether you are looking for an easier way to file your return or just want to get your refund faster, make the switch from paper to NJ FastFile. It's the way to go.



from the director's desk

Because this is the first issue of the *State Tax News* to be published solely in electronic format, I'd like to point out some new features in our newsletter. The electronic version will include the same mix of articles, tax briefs, and summaries of court decisions as before, but this format allows us to include links to sources on our Web site that are being updated on an ongoing basis — giving you access to up-to-the-minute information. For example, clicking on the link at the end of the Municipal Occupancy Tax article on page 5 will take you to the most recent listing of municipalities that have adopted ordinances imposing the new tax.

Enhancements can also be found in the tax calendar. In the printed version space limitations allowed us to include filing due dates for the current calendar quarter only. Now, you can link to a listing of due dates for the entire year. And, although the online *State Tax News* looks the same as the paper version (even if you print it out to read later instead of online), the table of contents allows you to navigate quickly through the issue to articles that interest you.

To be notified by e-mail when future issues of the *State Tax News* and other Division of Taxation publications become available online, subscribe to our online information service, *NJ Tax E-News*, at: www.state.nj.us/treasury/taxation/listservice.htm. Subscribers to *NJ Tax E-News* can also receive information on New Jersey income tax, property tax relief programs, and sales tax.

The Division of Taxation would like to thank the many faithful *State Tax News* subscribers for their support and interest. We hope that you continue to enjoy the *State Tax News* in its electronic format.

Robert K. Thompson

New Jersey State Tax news

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Hotel/Motel Occupancy Fee

Recently enacted legislation (P.L. 2003, c.114) imposes a 7% State Occupancy Fee on the rent for every occupancy of a room in a hotel, motel, or similar facility in most New Jersey municipalities, between August 1, 2003, and June 30, 2004. For occupancies on and after July 1, 2004, the fee is reduced to 5%. A hotel/motel is a building regularly used and kept open for the lodging of guests, including bed and breakfasts, inns, etc. The State Occupancy Fee is imposed on the room rentals that are currently subject to the 6% New Jersey sales tax and is in addition to the sales tax.

Special Transitional Option

The State Occupancy Fee, as well as the Municipal Occupancy Tax, if applicable (see below), must be charged and collected on the rental of rooms on and after August 1, 2003, regardless of whether the customer contracted for, placed a deposit, or prepaid for the room prior to that date.

However, for transitional purposes only, on occupancies where the customer has contracted for, placed a deposit, or prepaid for the room at a specific room rate prior to August 1, 2003, the lodging facility may, at its option, renegotiate the customer's room rate so that the additional occupancy fee/tax is not required to be collected from the customer. If the facility opts to renegotiate the room rate, it is responsible for remit-

ting the occupancy fee/tax based on the renegotiated room rate.

If a guest has only made a reservation for a room occupancy on or after August 1, 2003, without placing a deposit, the transitional option is not applicable and the occupancy fee/tax will be due on the reservation rate.

Special Rate Provisions

Since Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood already impose local taxes or fees on hotel/motel occupancies, the new State Occupancy Fee is imposed at a lower rate in those areas:

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important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Speaker Programs 609-984-4101
NJ TaxFax 609-826-4500
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576



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	State Occupancy Fee
Newark	1%
Jersey City	1%
Atlantic City	1%
The Wildwoods	3.15%

On and after July 1, 2004, when the general State Occupancy Fee rate is reduced from 7% to 5%, the State Occupancy Fee in Newark, Jersey City, Atlantic City, and the Wildwoods remains at the above rates.

Municipal Occupancy Tax

In addition, between August 1, 2003, and June 30, 2004, any New Jersey municipality, *other than* Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood, may adopt an ordinance which imposes a uniform municipal tax on occupancies in that municipality, which can be less than or equal to 1%. For occupancies on and after July 1, 2004, the municipal tax may be imposed at a rate less than or equal to 3%.

During 2003, once an *adopted* ordinance is received by the Division of Taxation, the Municipal Occupancy Tax will be effective on the first day of the first full month following 30 days after transmittal of the adopted ordinance. The Municipal Occupancy Tax will be reported and paid to the Division of Taxation in the same manner as the State Occupancy Fee.

Sample Municipal Ordinance. The New Jersey League of Municipalities has drafted a sample ordinance, which can be found at: www.njslom.org/ml070203b.html

Adopted Municipal Ordinances must be sent to: New Jersey Division of Taxation, Technical Services Activity, PO Box 255, Trenton, NJ 08695-0255.

Exemptions From the Fee/Tax

No State Occupancy Fee is imposed on the rental of a room where the purchaser, user, or consumer is a New Jersey State or Federal agency, instrumentality, or political subdivision, or the United Nations, or any other international organization of which the United States is a member.

NOTE: Other exempt organizations such as religious, educational, and charitable organizations, which may qualify for exemption from New Jersey sales and use tax on purchases are *not* exempt from the State Occupancy Fee or the Municipal Occupancy Tax which may be imposed by the municipalities. Exempt organizations, which by law are not required to collect sales tax on occupancies which are directly related to their organizational purposes, are also not required to collect the State Occupancy Fee or Municipal Occupancy Tax (e.g., Y.M.C.A.).

For purposes of administration, the same exemptions that exist for the State Occupancy Fee are also applicable to the Municipal Occupancy Tax. Therefore, governmental entities, as described above, are also exempt from the Municipal Occupancy Tax. Other exempt organizations are subject to both the State Occupancy Fee and the Municipal Occupancy Tax.

The occupancy fee/tax is not imposed on the charge for the rental of a room in a hotel/motel for the *purpose of assembly* (e.g., a meeting, seminar, wedding, etc.).

The occupancy fee/tax is not imposed on the rental of a room to a *permanent resident*, which is a person who rents a room or rooms for at least 90 consecutive days. As with the exemp-

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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tion from New Jersey sales tax, if the guest contracts up front by written contract for an occupancy in excess of 90 consecutive days, the facility is not required to bill the occupancy fee/tax. If the guest vacates prior to the 90 days, the entire period of occupancy is subject to both the sales tax and the occupancy fee/tax.

Filing and Payment

The State Occupancy Fee, as well as the Municipal Occupancy Tax, if applicable, is collected from the customer by the hotel and reported and paid to the New Jersey Division of Taxation. The first return/remittance for the State Occupancy Fee was due on September 20, 2003. A new monthly return (HM-100) will be sent to the facility, along with filing and payment instructions.

Campgrounds

The occupancy fee/tax is imposed on hotel room occupancies currently

subject to the New Jersey sales tax. Campsites are treated as the rental of *real property*, which is not subject to New Jersey sales tax and, therefore, also not subject to the occupancy fee/tax. The rental of a trailer or a cabin that is not real property is subject to sales tax; however, it is taxable as the rental of tangible personal property, *not* as a hotel occupancy. Therefore, such rentals are also not subject to the occupancy fee/tax.

“Breakfast-Included” Occupancies

There are several types of lodging facilities (e.g., bed and breakfasts and hotel/motel chain facilities) which provide guests with breakfast (whether continental or full service) as part of the amount charged for the accommodation. Thus, the rent for an occupancy in such facilities includes breakfast, just as it may also include free parking, use of fitness facilities, afternoon snacks, and various other amenities, all of which

are provided by the facility as part of the occupancy.

The total amount charged to the guest is currently subject to New Jersey sales tax. The law specifies that the occupancy fee/tax is based on the same amount charged for an occupancy that is currently subject to sales tax. Therefore, for “breakfast-included” occupancies, the total amount charged to the guest is also subject to the occupancy fee/tax.

Package Deals

Tour Operators. A tour operator may sell packages which include accommodations, as well as other components, such as meals, tickets, admissions, transportation, discounts, etc. When a tour operator contracts with third parties to provide all of the components of the package, the operator pays any sales tax due and includes the tax expense in the package price charged to the customer. Thus, packages are sold which *include* any applicable taxes and fees that were paid by the operator. The tour operator must pay the occupancy fee/tax on the purchase of accommodations in a lodging facility.

The new occupancy fee/tax is treated in the same manner as taxes, gratuities, and other fees are currently treated in a package deal; it is part of the tour operator’s expense, which is passed along to the customer as part of the package price.

Packages Sold by Lodging Facilities.

A hotel may also sell packages which include accommodations at its facility, as well as other components, such as meals, tickets, admissions, transportation, discounts, etc. The packages are generally sold *including* any applicable taxes and fees.

J. Robert Murphy, Deputy Director

J. Robert Murphy, former deputy director of the Division of Taxation, passed away on September 19, 2003. Mr. Murphy began his state service in 1970, after retiring from a distinguished career with the Internal Revenue Service, to undertake the restructuring of the Division. The restructuring reorganized the Division from ten separate bureaus to three major activities and created the basis of the organizational structure of the Division of Taxation as we know it today. The elimination of specialized bureaus gave the Division the opportunity to cross-train professional employees to meet peak work loads and resulted in increased productivity and great cost savings.

Mr. Murphy received a B.S. from Seton Hall University and served as a first lieutenant in the U.S. Army with an honorable discharge in September 1945. He was a lecturer and author and served on the executive boards of the National Tobacco Tax Association and the National Association of Tax Administrators. He is survived by his wife of 55 years, Veronice Short Murphy, his children, Patricia and Robert Murphy and Colleen Ker, his son-in-law, Richard Ker, and his grandchildren, Catherine, Elizabeth and Jacqueline Ker and Austin and Erin Murphy.

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For purposes of computing the amount subject to the occupancy fee/tax on a package sold by the hotel, the hotel may deduct any amounts it actually pays to an unrelated third party for the various components of the package, as well as any pass-through of applicable taxes and other fees. Thus, if a hotel contracts with other businesses to provide meals and tickets to an attraction as part of a package, the occupancy fee/tax base will not include the amounts paid for meals and tickets, including applicable taxes. The balance of the package price is deemed to relate to the room occupancy and the occupancy fee/tax is due based upon that amount.

If the lodging facility itself provides meals as part of a package, and the customer has the option of the same package without meals for a lower price, the amount paid by the customer for the meals portion is not subject to the occupancy fee/tax.

Customer Billing Guidelines

The State Occupancy Fee and the Municipal Occupancy Tax are imposed directly on the customer and must be separately stated on any bill, invoice, or other document given to the customer. A vendor may not advertise that the fee/tax is not due, that it will pay the fee/tax for the customer, or that the fee/tax will be refunded to the customer.

Reference

The State Occupancy Fee and the Municipal Occupancy Tax should be referred to as the New Jersey State Occupancy Fee and the Municipal Occupancy Tax.

Inquiries

Inquiries concerning the State Occupancy Fee or Municipal

Occupancy Tax should be directed in writing to: New Jersey Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, NJ 08695-0269; or via e-mail to: taxation@tax.state.nj.us

Questions concerning the municipal ordinance should be directed to the municipality.

Allocation

The State Occupancy Fee is allocated in varying percentages to the following: the New Jersey State Council on the Arts, the New Jersey Historical Commission, the New Jersey Commerce & Economic Growth Commission, and the New Jersey Cultural Trust. The Municipal Occupancy Tax is distributed back to the municipality. □

Billing & Enforcement Changes on the Way

New Billing Procedure

Plans are underway to eliminate the issuance of Statements of Account (the first notice sent to taxpayers). Instead, the first notice will be a bill and it will show *two* "Amount Due" figures.

The first Amount Due will be good only through the "Pay By" date shown on the bill and will be comprised of:

- Tax
- Interest
- Late filing penalty (5% per month to 25%), and
- Amnesty penalty if applicable

Any bill not paid by the Pay By date indicated will be subject to the second Amount Due. In addition to the items listed above, the second Amount Due will include a late payment penalty of 5%.

Interest will continue to accrue on the liability until paid, and additional penalties and fees may be assessed as allowed by law.

This is not an increase in the penalties assessed, or a shortening of the time allowed for payment before the imposition of the late payment penalty. It is merely the collapsing of two separate notices (the Statement of Account and the first bill) into one notice.

Referral Cost Recovery Fee

Beginning sometime in November 2003, the Division will be imposing a Referral Cost Recovery Fee as authorized by N.J.S.A. 54:49-12.3 and N.J.A.C. 18:2-2.5(d). In cases where any State tax remains unpaid and the Division refers a taxpayer's account to an outside debt collection agency, a Referral Cost Recovery Fee in the amount of 10% of the amount referred will be assessed. This fee will be in addition to any interest or penalties imposed.

\$100 Late Filing Penalty

The Division of Taxation will begin imposing the \$100 per month late filing penalty as authorized by N.J.S.A. 54:49-4. The law provides that this penalty may be imposed for each month (or fraction thereof) that a return is late. It will be assessed in addition to the late filing penalty of 5% per month of the underpayment (up to 25%) and, where applicable, the 5% late payment penalty, the referral cost recovery fee, and the cost of collection fee.

The \$100 per month penalty will be applicable to business tax delinquencies, including but not limited to gross income tax-employer, corporation business tax, and sales and use tax filings due after December 31, 2003.

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The penalty will *not* be imposed if:

- The taxpayer pays the bill within 30 days of the date on the notice; **and**
- The taxpayer has not previously received 3 delinquency notices for any business tax return due on or after December 31, 2003.

The penalty *will* be imposed if:

- The delinquency is not satisfied within 45 days of the date on the notice; **or**
- The taxpayer previously received 3 prior delinquency notices for any business tax return on which the \$100 per month penalty was imposed. □

Municipal Occupancy Tax

As authorized by P.L. 2003, c.114, the following municipalities have adopted an ordinance imposing a 1% Municipal Occupancy Tax. On and after the effective date, lodging facilities in these municipalities will collect the tax on the rental of a room in a hotel or similar facility in New Jersey, as described in the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-2. The Municipal Occupancy Tax is in addition to the State Occupancy Fee, which was effective for room occupancies on and after August 1, 2003.

Effective September 1, 2003

East Brunswick Township
Edison Township
Gloucester City
Hanover Township
Mount Olive Township
Princeton Borough
Secaucus Town
Vernon Township

West Orange Township
West Windsor Township

Effective October 1, 2003

Bordentown Township
Branchburg Township
Clifton City
East Windsor Township
Eatontown Borough
Elizabeth City
Elmwood Park Borough
Fair Lawn Borough
Florence Township
Fort Lee Borough
Galloway Township
Green Brook Township
Hasbrouck Heights Borough
Lawrence Township
Little Ferry Borough
Lyndhurst Township
Mahwah Township
Montville Township
Morristown
Mount Arlington Borough
Mount Laurel Township
New Brunswick City
North Bergen Township
Parsippany-Troy Hills Township
Plainsboro Township
Point Pleasant Beach Borough
Rochelle Park Township
Rockaway Borough
Saddle Brook Township
South Plainfield Borough
Spring Lake Borough
Stockton Borough
Totowa Borough
Weehawken Township
Woodbridge Township
Woodcliff Lake Borough

Effective November 1, 2003

Absecon City
Belleville Township
Bernards Township
Brooklawn Borough
Buena Vista Township
Burlington Township
Carlstadt Borough
Carteret Borough

Cherry Hill Township
Cinnaminson Township
Clark Township
Colts Neck Township
Denville Township
Eastampton Township
East Rutherford Borough
Fairfield Township
Florham Park Borough
Franklin Township (Hunterdon)
Franklin Township (Somerset)
Frenchtown
Hopewell Township
Irvington Township
Lakehurst Borough
Livingston Township
Long Branch City
Monroe Township
Morris Township
Ocean Township
Paramus Borough
Park Ridge Borough
Piscataway Township
Rahway Township
Rockaway Township
Roxbury Township
Rutherford Borough

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Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003, will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%



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- Sayreville Borough
- South Brunswick Township
- South Hackensack Township
- South River Township
- Teaneck Township
- Tenafly Borough
- Trenton City
- Union Township
- Voorhees Township
- Washington Township (Warren)
- Wayne Township
- Westampton Township
- Wrightstown Borough

Effective December 1, 2003

- Carney's Point
- Clinton Township
- Hackensack City
- Lebanon Borough
- Maple Shade Township
- Millburn Township
- New Providence Borough
- Pequannock Township
- Ramsey Borough
- Tinton Falls Borough

To view the most current list of municipalities that have adopted this ordinance, visit www.state.nj.us/treasury/taxation/munitaxlist.shtml □

New Realty Transfer Fees

New legislation (P.L. 2003, c.113) adopted June 30, 2003, and signed into law on July 1, 2003, amends the Realty Transfer Fee law (N.J.S.A. 46:15-5 et seq.) and provides for the imposition of new transfer fees on the sale of real estate. The new Realty Transfer Fee rates must be calculated on all deeds physically submitted or delivered to the county recording officer on or after Monday, July 14, 2003, regardless of the date on which the deed was executed or mailed for recording.

Rates: The Realty Transfer Fee rates on standard transactions and on new construction will be calculated as follows:

1. For each \$500 of consideration or fractional part not in excess of \$150,000, a supplemental fee of \$.25.
2. For each \$500 of consideration or fractional part in excess of \$150,000, but not in excess of \$200,000, a supplemental fee of \$.85.
3. For each \$500 of consideration or fractional part in excess of \$200,000, a supplemental fee of \$1.40.

Calculation: The Realty Transfer Fee should now be calculated as follows:

1. \$2.00 (\$1.75 + \$.25)/\$500 of consideration or fractional part not in excess of \$150,000.
2. \$3.35 (\$1.75 + \$.75 + \$.85)/\$500 of consideration or fractional part in excess of \$150,000 but not in excess of \$200,000.
3. \$3.90 (\$1.75 + \$.75 + \$1.40)/\$500 of consideration or fractional part in excess of \$200,000.

The new law does not increase the Realty Transfer Fee rates on transfers by senior citizens, blind persons, disabled persons, and on the transfer of property that is low- and moderate-income housing. The Affidavit of Consideration must still be recorded with all deeds claiming a partial exemption from the Realty Transfer Fee. However, deeds transferring new construction will no longer be required to file an Affidavit of Consideration. Transfers of new construction should now include a cover letter stating that the

property is new construction or the deed should clearly indicate on the first page that the property is new construction to ensure the proper distribution of funds.

Proceeds of the supplemental fees collected by the county recording officer will be accounted for and remitted to the County Treasurer, who will retain \$.25 of the supplemental fee for each \$500 of consideration for the purposes set forth in the new law. The balance will be remitted to the State Treasurer on the tenth day of each month following the month of collection. □

NJ & IRS Partner to Combat Tax Abuse

Tax officials from New Jersey and seven other jurisdictions (California, Louisiana, Maryland, Massachusetts, New York, Virginia, and the District of Columbia) joined Internal Revenue Service (IRS) Commissioner Mark W. Everson in Washington, D.C. recently to announce the establishment of a new, nationwide partnership to combat abusive tax avoidance. Under agreements with individual states, the IRS will share information about abusive tax avoidance schemes and those taxpayers who engage in such transactions.

Forty states (including New Jersey) and the District of Columbia have already signed the Abusive Tax Avoidance Transactions (ATAT) memorandum of understanding with the IRS, and more states are expected to sign the agreement in the future. Under the partnership, the IRS will then exchange information with participating states about abu-



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sive tax avoidance leads. The states and the IRS will share information about any resulting tax adjustments, thus avoiding duplication and reducing the need for taxpayer examinations by both a state and the IRS.

“This is just one more example of the IRS and the New Jersey Division of Taxation working together to ensure that all taxpayers pay their fair share and that the costs of good tax enforcement are borne by those who are truly noncompliant. It further highlights the fact that taxpayers that use high-priced tax preparers are held to the same standard as all others,” said Robert K. Thompson, Director, Division of Taxation.

Earlier this year the Division announced that New Jersey taxpayers participating in the Internal Revenue Service’s Offshore Voluntary Compliance Initiative for those using illegal tax shelters could avoid State prosecution if they amend their New Jersey income tax returns and remit to the State by October 15, 2003, all taxes, penalties, and inter-

est due. Those interested in taking advantage of the Offshore Voluntary Compliance Initiative and correcting unreported income tax liabilities to New Jersey should write to:

NEW JERSEY DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
PO BOX 288
TRENTON, NJ 08695-0288

or call 609-292-2163. □

**CIGARETTE TAX
Notice to Licensees**

The following is the text of a bulletin regarding changes in the New Jersey cigarette tax that was recently sent to all cigarette distributors, wholesalers, and retailers:

Recently, Governor James E. McGreevey signed legislation raising the excise tax on cigarettes from \$1.50 to \$2.05 per pack **effective July 1, 2003**, an increase of 55 cents per pack of 20. The new tax rate applies to all New Jersey tax stamps, floor stock, and to all cigarettes in the possession of any licensed distributor, wholesaler, or retailer licensed by the State of New Jersey on July 1.

On June 30, 2003, at midnight, every pack of cigarettes held for sale by New Jersey licensees bearing an excise tax stamp is subject to the additional tax. In order to account for the additional tax, you must complete an inventory of all affixed and unaffixed excise tax stamps and remit the tax using the Cigarette Floor Tax Return. Please read the form carefully and complete it before moving or selling any cigarettes on July 1, 2003. This report and the additional tax due can be filed any time after July 1, but must be submitted no later than September 1, 2003, to the New Jersey Division of Revenue, Floor Tax Unit, PO Box 250, Trenton, NJ 08646-0250.

The Director’s office may elect to do a physical inventory at selected distributor, wholesaler, and/or retailer locations on or about July 1.

All cigarettes stamped on or after July 1, 2003, must be stamped with either an old stamp that has been inventoried and listed on the Floor Tax Return, or a new stamp to evidence payment of the increased tax. The new stamps will be available for

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Current Amnesty Programs

Several states, as well as New York City, are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

Arizona	Sep 1 – Oct 31	www.taxamnesty.az.gov/
Florida	Jul 1 – Oct 31	sun6.dms.state.fl.us/dor/amnesty/
Illinois	Oct 1 – Nov 17	www.revenue.state.il.us/Amnesty/
Kansas	Oct 1 – Nov 30	www.ksrevenue.org/amnesty/
Maine	Sep 1 – Nov 30	www.state.me.us/revenue/amnesty/homepage.htm
Missouri	Aug 1 – Oct 31	www.dor.mo.gov/tax/amnesty/
New York City	Oct 20 – Jan 23	home.nyc.gov/html/dof/html/txamn.html
North Dakota	Oct 1 – Jan 31	www.state.nd.us/taxdpt/amnesty/
Virginia	Sep 2 – Nov 3	www.vataxamnesty.com

notice to licensees - from page 7

purchase at the new rate when available.

Cigarette distributors need to be aware that they will need to proportionally increase their surety bond if they wish to continue to have the ability to purchase the same quantity of stamps on credit. Failure to do so will necessitate stamp purchases by cash for any purchase order in excess of a distributor's credit limit.

For those retail dealers who have multiple locations, you may file a consolidated Floor Tax Return in the same manner as you do for sales and use tax. You must complete the reverse side of the Floor Tax Return listing the cigarette tax license number, location, and quantity of cigarettes on hand being reported for each location.

Should you have any questions regarding the above, please contact Henry Ryan, Cigarette Tax, at 609-984-4108. We ask for your usual cooperation to help make this a smooth transition." □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the Accounting, Financial and Tax Professionals of New Jersey (formerly the NJAPA), and cooperating colleges. The one-day institutes are geared toward the intermediate and advanced tax preparer.

The topics presented by the New Jersey Division of Taxation are:

- New Jersey Gross Income Tax Update and Review
- Corporation Business Tax
- Dissolving a Corporation
- Audit and Sales Tax
- Inheritance Tax Update
- Doing Business with the State of New Jersey (including Property Tax Relief Program Update and Review)

The topics presented by Internal Revenue Service are:

- Taxpayer Advocate's Office
- Key Messages for Practitioners (E-File/EFTPS)
- EITC and Child Tax Credit
- Jobs Growth and Tax Relief Act of 2003
- Tax Issues and Divorce Matters

This year there will be six (6) seminars compared to the eight (8) held in previous years. All sessions begin at 9:00 a.m., conclude at 4:00 p.m., and include lunch. Registration desks will open 30 minutes before the beginning of the session, and coffee will be served. Six (6) CPE credits will be issued in taxation to those who complete the session.

The preregistration fee for commercial tax preparers is \$90 (\$15 for full-time students, ID required). Those who register at the door will be required to pay a \$100 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds; however, you can reschedule for another location. The locations, dates, and registration form appear on the next page. □

Outdoor Advertising Fee

On July 1, 2003, P.L. 2003, c.124 imposed a fee of 6% on the gross amounts collected by a retail seller of billboard advertising space. For purposes of this legislation, the retail seller is the licensee, which is the entity authorized to sell advertising space on billboards pursuant to N.J.S.A. 27:5-5 et seq.

Licensees are responsible for remitting the Outdoor Advertising Fee on the gross amounts collected from selling advertising space on billboards. "Gross amounts" do not include fees received by an advertising agency or broker that is not related to the retail seller (licensee).

In the situation where an advertising agency or broker is involved, the advertising agency or broker will be considered an agent of the customer and thus not responsible for the Outdoor Advertising Fee, unless the advertising agency or broker is itself a licensee and is directly selling billboard advertising space.

Although this fee is imposed on the retail seller, there is nothing in the law that prohibits the retail seller from passing on this cost to the customer. If the Outdoor Advertising Fee is separately stated on the invoice or bill provided to the customer, it should be labeled accordingly, "Outdoor Advertising Fee," and not as a tax. The retail seller may not in any way mislead the customer or misrepresent that the Outdoor Advertising Fee is anything more than a reimbursement of the fee imposed on the retail seller and not a tax on the customer.

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2003 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Oct. 22	Sewell	GLOUCESTER COUNTY COLLEGE Allied Health Building – Room 500	Nancy Ritchie (609) 387-2127
Nov. 1	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov. 10	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990
Nov. 12	Union	KEAN UNIVERSITY University Center – Room 228	Alice Weinstein (973) 379-3275
Nov. 13	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov. 14	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355

2003 Practitioner Institutes Registration

6 CPE Credits

Fee \$90 – Preregistration

Detach and Mail to:

**The Accounting, Financial and Tax Professionals of
New Jersey (AFTP NJ)
Attn: Niles Breslau
101 N. Washington Place, Suite 1B
Margate, NJ 08402 TEL: (609) 823-9103**

(Make check payable to AFTP NJ)

Name of Attendee	Firm or Company Name
Business Phone	Member of AFTP NJ (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No
Firm or Company Address	

City	State
Zip Code	
E-mail Address: _____	
College Location	Amount Remitted

advertising fee - from page 8

A license is required to sell or rent billboard advertising pursuant to N.J.S.A. 27:5-5 et seq. Therefore, if a license is required by the Department of Transportation to sell advertising space on a particular outdoor sign, then the gross receipts from the sale of advertising space on such sign are subject to the 6% Outdoor Advertising Fee. However, if a license is not required, then the gross receipts for the sale of space on that sign are not subject to the Outdoor Advertising Fee.

The fees will be reported and paid on a quarterly basis on the New Jersey Outdoor Advertising Fee Return (Form OA-100). The first return was due October 15, 2003, for the period July 1, 2003, to September 30, 2003. For more information on the Outdoor Advertising Fee, including Form OA-100 and instructions, visit: www.state.nj.us/treasury/taxation/outdoorfeeinfo.shtml □

ENFORCEMENT

Tax Fraud Results in Prison Sentence

John Tredy, the former controller of a Bergen County tire and automobile repair business, has been sentenced by Superior Court Judge Joseph Conte to a four-year prison term for stealing more than \$1.2 million in State sales and employee withholding taxes. Because the criminal sentence does not resolve any tax debt, liability, or restitution owed to the New Jersey Division of Taxation, the Division has obtained a judgment against Tredy and will pursue any tax liabilities, penalties, and interest via separate civil proceedings.

State Attorney General Peter C. Harvey, who announced Tredy's sentencing, stated that the Division of Criminal Justice—Special Prosecutions Bureau, along with the Division of Taxation, share the goal of "investigating, prosecuting, and convicting tax cheats who steal from the State of New Jersey." He also stated that tax fraud cases will be fully prosecuted, and that unpaid taxes will be recovered and paid to the State treasury.

State Treasurer John E. McCormac added, "There is a new resolve to combat the criminal evasion of taxes. We are confident that our joint efforts will result in the improved recovery of taxes due and a higher rate of voluntary compliance."

Tredy was indicted by a State Grand Jury on October 23, 2002. The indictment identified Tredy as the former controller of the T.&S. Tire Service Corporation (doing business as Bergen Tire) with retail shops in Carlstadt and Wayne. Bergen Tire is privately owned with administrative offices located in Saddle Brook. The investigation determined that the owners had entrusted Tredy with complete financial control of the company, and had no knowledge about the alleged theft of tax revenues. They discharged Tredy from the controller position once the allegations came to light. Tredy plead guilty to second-degree charges of theft by deception and misapplication of entrusted property.

The indictment charged that between June 1994 and August 2000 Tredy collected and failed to turn over to the State a total of \$1,060,000 in collected sales taxes and \$101,000 in employee withholding taxes. During this period, Bergen Tire paid no State sales or

employee withholding taxes even though the funds were collected. From December 1999 through August 2000 Tredy engaged in other acts of theft, including a scheme in which he allegedly obtained more than \$300,000 by double-billing scores of Bergen Tire customers by utilizing credit card numbers to double-bill credit companies for services purchased from the retail stores.

The joint investigation by the Division of Criminal Justice—Special Prosecutions Bureau and the Division of Taxation determined that Tredy, to avoid detection of his failure to remit tax payments, enlisted the cooperation of Kevin Dolan, a tax investigator with the Division of Taxation. Dolan was charged with, and plead guilty to, receiving nearly \$10,000 in gifts from Tredy (a third-degree charge of gifts to a public servant). Dolan was sentenced to two years' probation and was forever barred from holding government employment.

Criminal Justice Director Vaughn L. McKoy said, "We are watching and we are acting. We are watching government programs, elected officials, and corrupt businesspersons who would misuse their office or government relationships for personal gain and greed. This investigation and prosecution was aggressively pursued by the Division of Criminal Justice—Special Prosecutions Bureau and the Division of Taxation."

The investigation was coordinated by Deputy Attorney General William Porter (Division of Criminal Justice—Special Prosecutions Bureau) and conducted by Detective Myles Cappiello and Detective Gerald Nachurski (New Jersey State

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tax fraud - from page 10

Police Official Corruption Unit). Additional investigative support was provided by Pete Richards, Jack Grady, and Carolyn Fox (Division of Taxation, Office of Criminal Investigation). □

CORPORATION BUSINESS TAX ***Regular Place of Business***

As part of the Business Tax Reform Act (BTRA) of 2002, a “throwout” receipts factor apportionment rule was adopted for corporation business tax purposes. Under a “throwout” system, receipts which are sourced to taxing jurisdictions where the taxpayer does not file and pay a franchise or income tax type of tax would be excluded from New Jersey’s receipts fraction denominator. The adoption of this “throwout” provision has *not* eliminated the requirement that in order for a corporation to allocate (apportion) business activity away from New Jersey, it must maintain a “regular place of business” outside of New Jersey.

A “regular place of business” is defined as any bona fide office (other than statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied, and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance.

In order to satisfy the maintenance requirement, the taxpayer must be directly responsible for the expenses incurred for that regular place of business. The location must be either owned or rented in its own name and not through a related person or entity. This requirement has been reviewed by several court cases. In

Hoeganaes Corp. v. Director, Division of Taxation, 145 N.J. Super. 352 (App. Div. 1976) the Court held that an out-of-State employee’s home did not constitute a “regular place of business.” In *Rocappi, Inc. v. Director, Division of Taxation*, 182 N.J. Super. 163, N.J. Tax 311 (Tax 1981) the Court held that a salesman’s use of an out-of-State office maintained by its parent corporation did not qualify, and in *Shelter Development Corp. v. Director, Division of Taxation*, 6 N.J. Tax 547 (Tax 1984) that an out-of-State office leased by a taxpayer’s parent company and used by the taxpayer did not constitute a “regular place of business.”

A regular employee is one who is in attendance during normal business hours performing duties on behalf of the taxpayer that are of a significant nature. The employee must be under the direction and control of the taxpayer. The courts have reviewed this requirement as well. In three related cases, *River Systems, Inc., Rubachem International, Ltd., and Rubachem, Inc. v. Director, Division of Taxation*, 19 N.J. Tax 599 (Tax 2001) (which was affirmed by the Appellate Division of the Superior Court on March 14, 2003) the Court ruled that employees who are on the payroll of other companies or are employed in an employee leasing arrangement are not regular employees of the taxpayer and do not satisfy the requirement that a regular employee occupy and use the out-of-State office during normal working hours.

When a corporation has nexus and is paying corporate taxes to other taxing jurisdiction(s) but does not maintain a regular place of business outside of New Jersey, it is entitled to relief from double taxation. Regulation 18:7-8.3 allows a taxpayer

who is not entitled to allocate (apportion) to take a credit against its New Jersey corporation business tax liability for taxes paid to another jurisdiction on income taxed by both that jurisdiction and New Jersey. □

GROSS INCOME TAX

Assignment of NJ Lottery Winnings

The New Jersey Gross Income Tax Act at N.J.S.A. at 54A:6-11 provides that gross income shall not include lottery winnings from the New Jersey lottery. Likewise, if a New Jersey lottery winner sells the right to collect the winnings, the proceeds from the sale are also exempt from New Jersey income tax. *McCauley v. Director, Division of Taxation*, No. 005061-98 (Tax Court, November 20, 2001).

In *McCauley*, plaintiff won a New Jersey Pick-6 State lottery prize that was payable in 20 installments from 1987 to 2006. After receiving seven payments, plaintiff assigned the next five installments to a corporation in exchange for \$200,000. Pursuant to the State Lottery statutes, the agreement was conditioned upon a judicial order indicating that the State acknowledged and permitted the assignment and would direct the payments to the assignee. The order was granted. Thereafter, plaintiff received the \$200,000, but did not report the income on his 1994 New Jersey gross income tax return. The Director determined that the \$200,000 was includable in gross income as a gain from the disposition of property under N.J.S.A. 54A:5-1c. The Tax Court disagreed, holding that proceeds from the

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lottery winnings - from pg. 11

assignment of State lottery winnings are exempt from New Jersey gross income tax.

The Court found it “difficult to articulate a basis for providing an exemption for lottery prizes, but not for proceeds from the assignment of lottery prizes.” The Court relied on the following in support of its decision in *McCauley*: (1) in enacting N.J.S.A. 54A:6-11, which exempts New Jersey lottery winnings from New Jersey gross income tax, the Legislature’s interest was to encourage lottery ticket sales by allowing this exemption to benefit lottery prize winners. (2) In encouraging other particular investments (i.e., dispositions of government obligations that generate tax-free income) the statute exempted both the interest and the gain on disposition of such obligations. (3) There would be no double exemption for lottery winnings in an assignment because the character of the income is different in the hands of the assignee here (a corporation that is not subject to gross income tax). (4) Only the state of Oregon had addressed this issue and held that the exemption extends to the proceeds of an assignment. (Since January 1, 1998, Oregon has taxed winnings from the Oregon Lottery that exceed \$600 per winning ticket.) □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eighteen persons passed the Tax Assessor Certification examination held on March 29, 2003, and received Tax Assessor Certificates dated July 1, 2003. They are as follows:

Burlington County: Chris Czvornyck, Mount Laurel Township.

Camden County: Darlene D. Campbell, Gibbsboro Borough.

Essex County: Thomas L. Small, Maplewood Township.

Hunterdon County: Edward G. Cahill, Clinton Township.

Middlesex County: JoAnn Ghigliotty Jimenez, Perth Amboy City; Nancy J. McCarthy, Sayreville Borough.

Monmouth County: Donna J. Taylor, Upper Freehold Township.

Morris County: Brien Danko, Washington Township.

Ocean County: Susan A. Galgano, Stafford Township; Tracy Ann Hafner, Little Egg Harbor

Township; Walter R. Higgins, Ship Bottom Borough; Carol T. Rado, Lacey Township; P. G. Waxman, Lakewood Township.

Somerset County: Robert C. Heuner, Somerville Borough.

Union County: Joseph G. Colacitti, Elizabeth City; Christopher R. Duryee, Roselle Park Borough.

Commonwealth of Pennsylvania: Stephen Douglas White, Millcreek Township, Erie County; Robert George Engel II, Mount Pleasant Township, Washington County.

The next examination is scheduled for March 27, 2004. The deadline to file applications for this exam is February 26, 2004. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX Tax Assessors’ Calendar

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- Veteran’s property tax deduction eligibility established, pretax year (\$250 for tax year 2004).
- \$250 real property tax deduction for senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.

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assessors' calendar - from page 12

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1 –

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1 –

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 31 –

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2004 must be filed with

assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Dr. Samuel Evenstein, a chiropractor from Edison, New Jersey, entered the State of New Jersey's Pretrial Intervention (PTI) Program for first-time offenders. Dr. Evenstein had previously entered a guilty plea to a three-count accusation of failure to pay New Jersey gross income tax, a crime of the third degree. The case arose from the failure of Dr. Evenstein to report in excess of \$800,000 of taxable income for the years 1997, 1998, and 1999 and his failure to pay New Jersey gross income tax on the unreported income. As a condition of successfully completing the Pretrial Intervention Program, Dr. Evenstein will have to make full restitution of the unpaid New Jersey gross income tax together with the statutory penalties and interest that have accrued. This case was a joint investigation by the Office of Criminal Investigation (OCI) and the New Jersey Division of Criminal Justice-Office of the Insurance Fraud Prosecutor.
- On March 31, 2003, Carmello Mami, Richard Mami, and Arthur Rose entered guilty pleas to various third-degree charges that included promoting prostitution, conspiracy, money laundering, and the failure to pay New Jersey gross income tax and corporation

business tax. Carmello Mami and Richard Mami were the operators of a health club known as Eve's Garden of Eden in Red Bank, New Jersey, and Arthur Rose was their accountant and business associate. The subjects were indicted on October 1, 2002, and the matter was scheduled for trial in May of this year. A total of 95 witnesses from around the country were scheduled to testify at the trial. As a result of the plea agreements reached with the defendants, all personal and corporate tax liabilities will be satisfied, and Arthur Rose will lose his Certified Public Accountant status. On May 9, 2003, Carmello Mami and Richard Mami were sentenced to a three-year period of probation. On May 16, 2003, Arthur Rose was sentenced to a two-year period of probation and all parties were ordered to make restitution of all personal and corporate tax liabilities. This investigation was initiated in 1999 by the Red Bank Police Department based on allegations of prostitution at the health club. The investigation expanded to include the Bayshore Narcotics Task Force, the Middletown Police Department, the Monmouth County Prosecutor's Office, and the Division of Taxation.

- On April 1, 2003, John R. and Kathleen A. Bukowiec, husband and wife from Howell, New Jersey, were indicted by a State Grand Jury on various third-degree charges of Medicaid fraud, theft by deception, and filing false and fraudulent New Jersey gross income tax returns.

criminal enforcement - from pg.13

The indictment alleges that the Bukowiecs misrepresented their earnings on applications for Medicaid benefits and New Jersey gross income tax returns. In addition, it is alleged that they fraudulently received unemployment benefits and failed to report weekly "off-the-books" earnings of \$700 per week received from Michael Stavitski, a Monmouth County pharmacist currently under indictment for submitting \$1.3 million in fraudulent billings to the Medicaid program.

- On April 2, 2003, Harvey Schneider, Jr. and Shore Transmissions, L.L.C. were indicted by a State Grand Jury on various third-degree charges of theft by deception, theft by failure to make required disposition of property received, misapplication of entrusted property, failure to file New Jersey sales tax returns, and failure to pay or turn over New Jersey sales tax collected. The charges stem from the operation of a transmission repair business in Point Pleasant, New Jersey, by the corporation and Mr. Schneider, the responsible corporate officer. In addition to

the charges associated with the tax violations, there are also charges associated with consumer fraud wherein Mr. Schneider failed to make repairs, or misrepresented work performed, and fraudulently billed customers.

- On April 22, 2003, Jia Feng Wang of Los Angeles, California, was found in possession of 22,500 cartons of suspected counterfeit brands of Philip Morris cigarettes. The brands were Marlboro and Marlboro Lights. Hamilton Township (Atlantic County) Police Department observed a large Ryder truck operating in and around the Hamilton Township Mall. Upon investigation, the vehicle was found to contain the above cigarettes. The Office of Criminal Investigation (OCI) confirmed the products were counterfeit. The subject was charged by OCI with possession of 1,000 or more items bearing a counterfeit mark (second-degree crime), transportation of untaxed cigarettes, and other related charges. The street value is approximately \$1,141,200. The subject was held on \$100,000 bail and on a Department of Homeland Security/Immigration and Customs

Enforcement retainer. OCI, in cooperation with the Federal government, is continuing the interstate transportation investigation.

- OCI played an integral role in a Multi-State/Federal Task Force that was created to deter smuggling of contraband cigarettes from Virginia to the Northeast states. The Task Force operated under the auspices of the US Attorney's Office for the Eastern District of Virginia. This successful operation resulted in the arrest of twelve individuals for trafficking in contraband cigarettes. This investigation began with an advertisement in a local Arabic language newspaper offering the sale of cigarettes and with New York State operating the undercover sting in Virginia. New Jersey personnel participated in surveillance and arrested a trafficker as part of the operation. That one arrest resulted in 2,520 cartons of contraband cigarettes being seized, as well as information leading to a tax stamp counterfeiting operation.
- On May 27, 2003, Donna L. Burke of Toms River, New Jersey, plead guilty to one count of misapplication of entrusted

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Enforcement Summary Statistics Second Quarter 2003

Following is a summary of enforcement actions for the quarter ending June 30, 2003.

<ul style="list-style-type: none"> • Certificates of Debt: <table style="margin-left: 20px; border: none;"> <tr> <td style="width: 30%;">Total Number</td> <td style="text-align: right;">2,746</td> </tr> <tr> <td>Total Amount</td> <td style="text-align: right;">\$40,889,793</td> </tr> </table> • Jeopardy Assessments 	Total Number	2,746	Total Amount	\$40,889,793	<ul style="list-style-type: none"> • Jeopardy Seizures • Seizures • Auctions • Referrals to the Attorney General's Office
Total Number	2,746				
Total Amount	\$40,889,793				
	1 46 2 599				

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/

criminal enforcement - from page 14

property (second degree). Ms. Burke had been indicted by a State Grand Jury on various charges involving the collection and failure to remit New Jersey sales tax collected from the customers of Buddy Motors, Inc. Ms. Burke, as president of the defunct used car dealership in Burlington, New Jersey, was responsible for the failure to remit New Jersey sales tax in the amount of \$227,242.86. Ms. Burke was scheduled to be sentenced in August 2003.

- On May 27, 2003, in Superior Court – Mercer County, Carl Monto of Toms River, New Jersey, entered a plea of guilty to one count of theft by failure to make required disposition of property received, and one count of failure to file a tax return with respect to \$100,454.83 in New Jersey motor fuels tax. Mr. Monto collected and failed to remit the tax on the retail sale of diesel fuel from January to September 1997 at a truck stop which Monto, as responsible person of Courtesy Truck Stop, Inc., operated in Jersey City, New Jersey. Mr. Monto faces a maximum of 15 years' imprisonment and \$107,500 in fines when he is sentenced. Sentencing was scheduled for September 2003. This case was a joint investigation by the Office of Criminal Investigation and the New Jersey State Police Organized Crime Unit, and was prosecuted by the State Attorney General's Office.
- On June 9, 2003, Keyur Patel of Newark, Delaware, was arrested on the New Jersey Turnpike subsequent to a motor vehicle

stop wherein New Jersey State Police observed 569 cartons of Delaware stamped cigarettes in the rear of the vehicle in plain view. The subject was charged by OCI with possession of untaxed goods, no invoices, no consumer license, and transportation of untaxed cigarettes.

- On June 16, 2003, Richard Lugero, a former resident of Millstone Township, New Jersey, plead guilty to failure to pay gross income tax with intent to evade, theft by failure to make required disposition, and theft by deception, all third-degree crimes. On the basis of a joint investigation between the Office of Criminal Investigation and the Monmouth County Prosecutor's Office, Mr. Lugero had been indicted by a Monmouth County Grand Jury on counts of failing to file income tax returns, filing false and fraudulent returns, theft by illegal retention, and theft by deception. It was alleged that Mr. Lugero derived his income by acquiring goods and services by defrauding various creditors and businesses. Sentencing was scheduled for August 2003.
- One hundred twenty-three (123) complaints alleging tax evasion were evaluated from April through June 2003 in the Office of Criminal Investigation.
- During the same period, forty-five (45) charges were filed in court on twenty-six (26) cases for violation of the Cigarette Tax Act. Of the twenty-six (26) cases, five (5) involved counterfeit tax stamp investigations and twelve (12) arrests were made. □

Tax Briefs

Gross Income Tax

New Jersey/Pennsylvania Income Tax Withholding — Pennsylvania residents who receive wage compensation from New Jersey sources are not subject to New Jersey income tax on those earnings. Under the State of New Jersey and the Commonwealth of Pennsylvania Reciprocal Personal Income Tax Agreement, a New Jersey employer is not permitted to withhold New Jersey income tax from wages paid to its Pennsylvania resident employees who file Form NJ-165, Employee's Certificate of Non-Residence in New Jersey, with their employer. The reverse holds true for Pennsylvania employers with New Jersey resident employees. However, withholding Pennsylvania Personal Income Tax from a Pennsylvania resident's salary is left to the discretion of the New Jersey employer once the employee has filed a Certificate of Non-Residence in New Jersey.

Sales and Use Tax

Exempt Organizations and Hotel Charges — The Division replied to a sales and use tax inquiry regarding whether an organization that has been granted sales tax exemption in New Jersey is required to pay sales tax on charges for food, meeting rooms, hotel rooms, AV (audio-visual) equipment, etc., made by a hotel to members of the organization.

An exempt organization is exempt from paying sales tax on the above expenses at a hotel, so long as the organization issues the hotel a valid ST-5 Exempt Organization Certificate and payment is made *directly with organizational funds*. N.J.A.C.

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tax briefs - from page 15

18:24-9.12(a)(3). The sales tax exemption does not apply when payment is made with personal funds (cash, personal check, credit card, etc.) of an organization member even though he or she may be reimbursed later by the exempt organization.

A hotel would be correct in charging organization members sales tax where the organization required its members to pay for the room and apply for reimbursement. In order for the exemption to apply, payment must be made with organizational funds at the point of purchase.

Finally, note that rentals of real property for purposes of assembly are not subject to sales tax. Thus, charges for occupying a meeting room are exempt from tax. If the charge for the meeting room is billed with the charge for a taxable item or service and the amount is stated as one lump sum, the entire amount is subject to sales tax.

Sales of Advertising Material — The Division responded to an inquiry regarding the sales or use tax that applies where advertising material (brochures) is purchased from an out-of-State vendor. The items were shipped to the taxpayer's office in New Jersey, and then sent to a direct-mail house in New Jersey for distribution across the country. The ultimate users across the country received the items free of charge.

Advertising or promotional tangible personal property mailed or otherwise sent without charge to recipient individuals or companies and any related direct-mail processing services delivered in New Jersey are subject to sales tax. However, the New Jersey Sales and Use Tax Act

exempts from tax the portion of tangible personal property distributed to out-of-State recipients and the portion of receipts for processing services in connection with distribution to out-of-State recipients. N.J.S.A. 54:32B-8.39.

This exemption applies "to receipts from charges for the printing or production of advertising and promotional materials whether prepared in, or shipped into New Jersey after preparation and stored for subsequent shipment to out-of-State customers." N.J.S.A. 54:32B-8.39. Thus, the total cost of the brochures can be allocated based on in-State versus out-of-State delivery, with tax due on the in-State portion.

The exemption also applies "to receipts from charges for all processing services for distribution to out-of-State recipients, including but not limited to the following: preparing and maintaining mailing lists, addressing, separating, folding, inserting, sorting and packaging advertising or promotional material and transporting to the point of shipment by mail service or other carrier." N.J.S.A. 54:32B-8.39.

Where the *purchaser of advertising or promotional material* takes delivery of such property in this State, he may issue the vendor an Exempt Use Certificate (Form ST-4) in lieu of paying sales tax. The purchaser is then liable for use tax on that portion of the advertising or promotional material delivered to recipients in New Jersey or otherwise used or consumed by him in New Jersey. Tax also applies where the purchaser has advertising material delivered to addresses in New Jersey from a location outside the State. Delivery to addresses in New Jersey is considered a use by the purchaser in this State.

The *purchaser of direct-mail services* may issue an Exempt Use Certificate (Form ST-4) to the vendor in lieu of sales tax on that portion of both the property which the vendor will deliver to recipients outside New Jersey and the related processing service. The vendor must collect sales tax on the portion of the advertising or promotional material delivered to recipients in New Jersey, and also collect sales tax on the direct-mail service charge that relates to in-State delivery of the material.

In conclusion, the portion of the brochures distributed to New Jersey recipients and the portion of receipts for processing services in connection with distribution to New Jersey recipients are subject to sales tax. Therefore, the taxpayer is responsible for sales or use tax on the charge for the brochures delivered to New Jersey, including the corresponding direct-mail services. □

In Our Courts

Administration

Responsible Person — *David Lee v. Director, Division of Taxation*, decided May 15, 2003; Appellate Division No. A-3784-01T2.

The Appellate Division upheld the Tax Court's determination that plaintiff (Lee) was liable as the responsible person for sales and use taxes of the corporation Exterior Power Sweeping (EPS) for substantially the reasons and conclusions expressed by the Tax Court below.

Lee was the owner, president, and sole officer of EPS until the termination of the business. EPS ceased business operations in September 1989, and was dissolved in 1991. In

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1991, the Division assessed sales and use tax against the corporation for the period October 1, 1983, to June 30, 1989. Sales and use tax returns were not filed with the Division for that period, nor were they filed thereafter. EPS protested the assessment and the Division issued a Final Determination in 1993. EPS filed a complaint with Tax Court that vacated the assessment in 1997. The Division appealed, and the Appellate Division reversed the Tax Court on April 30, 1999. On May 21, 1999, the Division issued a Notice of Finding of Responsible Person Status to Mr. Lee for the sales and use tax liabilities of EPS.

Lee did not really dispute that he was a responsible person of EPS; however, he claimed that the responsible person notice was inequitable and barred by either laches, or estoppel, or both. The Tax Court would not set aside the assessment on the basis of laches or estoppel. The Tax Court found that Lee was chargeable with knowledge of the statutes and his admitted actual knowledge renders less forceful his equitable arguments. Lee did not demonstrate detrimental reliance on any action or inaction of the Division, and failed to demonstrate that the Division deferred sending the responsible person notice to him so that interest would accrue. Furthermore, the Tax Court noted that there is a general reluctance of the courts to grant estoppel against a public official entity.

Lee also claimed that the May 21, 1999, responsible person notice was untimely due to the three-year statute of limitation period. Although no returns were ever filed, he alleged that the providing of information to

the Division during the audit was a *de facto* filing of those returns. The Tax Court rejected the theory of *de facto* filing. However, the Tax Court stated that even if it accepted *de facto* filing, the statute did not limit the time period to collect taxes from a responsible person that were determined to be due within three years of the alleged *de facto* filing date.

Corporation Business Tax Change of Filing Status – *Chemical New Jersey Holdings, Inc. v. Director, Division of Taxation*, decided April 25, 2003; Tax Court No. 000213-2001.

In 1992 and 1993, plaintiff (Chemical) filed corporation business tax returns as an investment company. In 1999, the Division assessed additional tax after it determined that

Chemical failed to qualify as an investment company. After receiving its Final Determination, Chemical timely appealed to the Tax Court in February 2001 on the basis that it was denied its status as an investment company. Approximately one year later, Chemical filed an amended complaint retracting its initial claim and alleged that its filing status should be as a financial business corporation. Chemical never filed returns as a financial business corporation for either year at issue.

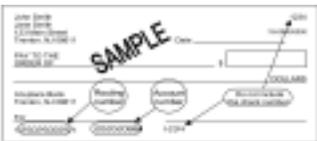
In its previous September 2002 bench decision, the Court decided that (1) the Division's assessment was timely, (2) the doctrine of equitable recoupment was inapplicable

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- Gross Income Tax Withholding and UI/DI Contributions
- Domestic Security Fee
- Deficiency payments

* Fee of 2.5% of tax payment applies.

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because the case did not involve an effort to set off or credit previous tax payments against the assessment, and (3) Chemical could not obtain a refund as the time period for refund claims had expired before Chemical alleged its status as a financial business corporation.

The Court was left to decide the sole issue of whether Chemical could change its filing status by asserting that it was a financial business corporation more than seven years after it filed its return as an investment company. After determining that it had jurisdiction to decide whether the assessment could be challenged on those grounds, the Court noted that the issue was analogous to a local property tax appeal where the claim for farmland assessment is different than the claim contained in the application for farmland assessment. In those cases, the Tax Court consistently held that an applicant is bound by the application unless there was a timely amendment. The Court stated that the rationale was that the initial filing was regarded as establishing the basis for government examination and that the government was limited to a statutory period to analyze, inspect, and investigate the taxpayer's filing. Therefore, the Court held that Chemical could not circumvent the statutory requirement that it file timely amended returns as a financial business corporation within the statutory period for refunds by claiming that it was entitled to a different filing status in the Tax Court appeal. The Court noted that plaintiffs could assert alternative legal theories subject to the considerations of due process and unfair prejudice; however, the Court determined that a change in filing status was not sim-

ply an alternative legal theory because filing status controlled the entire taxing process.

Recoupment of Erroneous Refund – *Lenox, Incorporated v. Director, Division of Taxation*, decided December 4, 2002; Tax Court No. 007049-98 and 007050-98.

On July 8, 1992, the Division issued plaintiff a refund check based upon refund claims and a Form IRA-100 report of IRS changes, neither of which was timely filed as determined by the Tax Court. (See *Lenox, Incorporated v. Director, Division of Taxation*, decided April 20, 2001; Tax Court No. 007049-98 and 007050-98, summarized in the spring 2003 issue of *New Jersey State Tax News*, Vol. 32, No. 1, page 12.)

In December 1996, the Division issued plaintiff a Notice of Erroneous Refund requesting that the refund be returned due to the untimely filing of the refund claims and the Form IRA-100 report of changes made by the IRS. Plaintiff refused to return the refund claiming that the Division has neither statutory nor inherent authority to recover the refund; the refund recovery is equivalent to a tax assessment that would be barred by the statute of limitations; due to the four and one-half years between the date of payment of the refund and the request for its return that the recovery is barred by laches or estoppel; and that by issuing the refund the Division waived defenses to the timeliness of the refund claims.

The Tax Court relied on *Playmate Toys* where the Appellate Division held that the Division had inherent authority to recoup erroneous refunds. In affirming the Appellate

Division's decision, the NJ Supreme Court added that the Division's powers were not "boundless" and that here the Division's recovery was similar to the correction of a clerical error rather than an error in judgment.

After reviewing other court cases, the Tax Court defined the term "error in judgment" as used in *Playmate Toys* to "refer only to an erroneous final determination of the merits of a taxpayer's liability for tax, resulting from a mistaken interpretation of substantive law or a misunderstanding of the facts relating to the determination." Therefore, the Court ruled that the Division's error as to the timeliness of plaintiff's filing the IRA-100 and refund claim was a clerical error. Consequently, the Court held that plaintiff must return the erroneous refund with interest from the date plaintiff received the Notice of Erroneous Refund. The Court reasoned that the term "clerical error" should be broadly construed so that the Division may protect the public fisc and promote public interest.

Gross Income Tax
S Corporations and Charitable Contributions – *Myron and Elaine Adler v. Director, Division of Taxation*, decided March 24, 2003; Tax Court No. 002025-2001.

Plaintiffs (Adlers) were shareholders of Myron Corporation, which was organized for tax purposes as an S corporation. In 1994 and 1995, Myron Corporation made charitable contributions to qualified charitable organizations. The Division determined that the charitable contribution deductions for purposes of determining Myron Corporation's

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corporation business tax liability were proper. However, the Division disallowed the deductions of Myron Corporation's charitable contributions in calculating the Adlers' share of S corporation income for gross income tax liability purposes.

The Tax Court ruled that the statute's express language permitted the Adlers to deduct Myron's charitable contributions in determining their share of S corporation income. The Court found that N.J.S.A. 54A:5-10 provided that a shareholder's share of S corporation income for gross income tax purposes was to be calculated in accordance with I.R.C. 1366. In turn, I.R.C. 1366 stated that deductions pursuant to I.R.C. 702(a)(4) are included in determining an S corporation shareholder's Federal income tax liability. Finally, I.R.C. 702(a)(4) permitted partners to deduct qualified charitable contributions in determining their distributive share of partnership income. Even though I.R.C. 702(a)(4) stated partners, it was found to be applicable to S corporation shareholders because of the specific I.R.C. 1366 reference.

Sales and Use Tax

Derivative Exemption – *Sodexho Operations, LLC v. Director, Division of Taxation*, decided August 13, 2003; Tax Court No. 001793-2001.

Sodexho contracted to provide management services for the food and cleaning service departments of various hospitals and other institutions that qualified as tax-exempt organizations for sales and use tax purposes. As part of the management services, Sodexho purchased supplies for use in the cleaning department; various paper goods such as

plates, cups, napkins, straws, and utensils for the food service department; and furniture and materials to renovate the cafeteria and coffee shops. Sodexho claims that these purchases are not subject to sales and use tax because it acted as an agent for the tax-exempt organizations, and therefore is entitled to a derivative exemption. Alternatively, Sodexho argues that all the purchases are exempt as a purchase for resale to the tax-exempt organizations, and that the furniture and material purchases are exempt because Sodexho should be considered a contractor.

In addressing the issue of derivative exemption, the Court reviewed the New Jersey Sales and Use Tax Act and case law. The Court found that there was no express statutory authorization to permit Sodexho to use the exempt organizations' sales and use tax exemption, nor did New Jersey case law exist regarding this issue. After discussing both state and Federal case law, the Court determined that United States Supreme Court decisions dealing with the extension of sovereign immunity to government contractors were applicable to resolving Sodexho's claim of derivative exemption. The Court decided that in order for Sodexho to be entitled to the exempt organizations' tax exemption, Sodexho must meet the Supreme Court standard as stated in *United States v. New Mexico* that Sodexho and the exempt organization "cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." The Court determined that although an agency relationship existed between Sodexho and the exempt organizations, the evidence indicated that Sodexho retained substantial elements of discretion and

control while performing its management services, and that it operated an independent business in pursuit of its own profit-making purposes and objectives. Consequently, the Court held that Sodexho could not use the exempt organizations' tax exemption, as it could be viewed as a separate entity. The Court noted that even though the ultimate burden of the tax would fall upon the tax-exempt organizations, that fact does not affect its decision.

Turning to the alternative argument that Sodexho's purchases are exempt as the purchases were for purposes of resale to the exempt organizations, the Court stated that N.J.S.A. 54:32B-2(e)(1) excludes from tax a sale for resale of tangible personalty "either as such or as converted into or as a component part of a product produced for sale by the purchaser." In addressing the issue of whether tangible personalty or services were sold to the exempt organizations "as such," the Court found that it needed to determine what was the true or real object sought by the buyer, and whether the tangible personalty was a critical element of the transaction. The Court opined that the true object of the agreements between the parties was for Sodexho's expertise in providing management services, and that the purchase of tangible personalty was merely incidental to providing these management services, such as training the tax-exempt organizations' employees and determining appropriate inventory levels, as well as convenience for the tax-exempt organizations. The Court concluded that the purchases could not be exempt as converted into or as a component part of a product

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produced by Sodexho for sale to the tax-exempt organizations because Sodexho did not produce a product. The Court stated that the fact that Sodexho was reimbursed by the tax-exempt organizations for the cost of most of the items was not determinative to the issue of whether there was a resale. Finally, the Court found that language contained in the agreements between the parties contradicted that there was a sale to the tax-exempt organizations where the agreement stated that the inventory shall remain the property of Sodexho, Sodexho would absorb the cost, and after a time period the tax-exempt organizations would not have to pay for the materials.

Finally, the Court addressed Sodexho's claim that the furniture and material purchases are exempt because it should be considered a contractor. The Court ruled that Sodexho was not a contractor as it did not produce evidence that qualified itself for the statutory definition of contractor. Furthermore, the Court determined that the true object of these purchases was for Sodexho to earn its management fees, and for the tax-exempt organizations not to terminate the agreements.

Exemption for Production Equipment and the Catalyst Exemption – *Atlantic City Linen Supply, Inc. v. Director, Division of Taxation*, decided April 26, 2002; Tax Court No. 001617-2001.

Plaintiff (Atlantic City) operates a commercial laundry. Employees sort the soiled laundry by hand and process it in loads of approximately 125 pounds into a continuous batch washer, which is a computer-controlled machine. This machine is

approximately 60 feet long and 10 feet high. It is capable of performing 75 different chemical processes with various chemicals that break the surface tension of the water, allowing the water to suspend and flush away soil from the fabric, break up soil trapped in the fabric, dissolve organic oils and fatty acids, and produce soaps that enable the removal of items from linen causing the items to be dissolved in the surrounding water, and oxidizing organic compounds, and neutralizing any remaining chemicals. Different types of laundry are processed using different concentrations of chemicals, varying water temperatures, and different timing of passage through the continuous batch washer. After the washing process, the laundry is pressed dry at approximately 360 degrees Fahrenheit by other special high-capacity machinery. Finally, the laundry is folded, bundled, weighed, and returned to the customer. Atlantic City serves 12 casinos as well as other customers.

Atlantic City alleged its purchases of equipment as well as parts therefor are exempt from sales and use tax under N.J.S.A. 54:32B-8.13, which provides an exemption for, *inter alia*, equipment and machinery for use or consumption directly and primarily in the production of tangible personal property by processing. The Court found that the equipment at issue satisfied the statutory requirements that it be equipment or machinery used directly and primarily in processing. However, the Court stated that there is also a requirement that the equipment produce tangible personal property, which issue is discussed below.

Atlantic City also sought exemption from sales and use tax on its purchases of chemicals pursuant to N.J.S.A. 54:32B-8.20, which grants an exemption for chemicals and catalysts that induce or cause a refining or chemical process where the chemicals are an integral or essential part of the processing operation, but are not a component part of the finished product. The Court determined that Atlantic City did use chemicals that were used to induce or cause a chemical or refining process. However, the Court stated that the statute also required that there be a finished product.

The Court ruled that the statutory and regulatory requirements of producing tangible personalty and a finished product both contemplate the creation of a new product or a substantial change in form, composition, or character, or a change resulting in the transformation of property into a different or substantially more usable product, but that it did not include the furnishing of a service. Here, the Court ruled that Atlantic City's equipment is used to perform the operation of transforming dirty, soiled, stained laundry into clean, pressed, and folded laundry. Although this cleaned laundry was found to be more usable, the Court reasoned that this was not the kind of transformation either the legislation or the regulations intended. Furthermore, the Court found that no product, within the statutory meaning, was the result of this process. The Court concluded that the predominant use of Atlantic City's equipment was in connection with the performance of a service, not the production of a product. Therefore, Atlantic City was denied a sales and use tax exemption on both its purchases of equipment and chemicals. □

In Our Legislature

Cigarette Tax

Rate Increases — P.L. 2003, c.115 (signed into law on July 1, 2003) increases the cigarette tax from \$.075 to \$.1025 per cigarette (from \$1.50 to \$2.05 per pack of 20). It also specifies that an additional amount of the cigarette tax revenue is to be appropriated for health programs each year. This act took effect immediately.

Miscellaneous

Nursing Home Assessment — P.L. 2003, c.105 (signed into law on July 1, 2003), known as the Nursing Home Quality of Care Improvement Fund Act, imposes an assessment payable by nursing homes to the Division of Taxation in order to attract Federal matching funds to improve nursing home services. The aggregate amount of this assessment paid by all nursing homes combined shall not exceed 6% of the annual revenues received by all of the nursing homes (in accordance with Federal regulations).

This act took effect July 1, 2003; however, implementation of the assessment will not commence until 30 days after Federal approval of any necessary amendments in the State's plan for distribution of the proceeds of the Nursing Home Quality of Care Improvement Fund established under the act.

Hospital Debts — P.L. 2003, c.112 (signed into law on July 1, 2003) creates a Hospital Care Payment Commission to which hospitals may assign their claims for unpaid patient accounts. One of the ways the debts can be collected is through use of the existing SOIL (Set-Off of Individual Liability) program, which offsets certain debts against income tax and certain other tax rebates,

refunds, and benefits that would otherwise be due to the debtor. The funds collected will be deposited in the newly created New Jersey Hospital Care Payment Fund, and then paid 50% to each participating hospital and 50% to the State after administration expenses are paid. This law took effect on July 31, 2003.

Hotel/Motel Occupancy Fee — P.L. 2003, c.114 (signed into law on July 1, 2003) imposes a 7% State occupancy fee on the rental of a room in a hotel, motel, or similar facility in most New Jersey municipalities between August 1, 2003, and June 30, 2004. For occupancies on and after July 1, 2004, the fee is reduced to 5%. It also authorizes most New Jersey municipalities to impose a uniform municipal tax on occupancies in that municipality. Between August 1, 2003, and June 30, 2004, the optional municipal tax can be less than or equal to 1%. For occupancies on and after July 1, 2004, the municipal tax may be imposed at a rate of less than or equal to 3%. The legislation makes special rate provisions for those municipalities that already impose local taxes or fees on hotel/motel occupancies. This law took effect immediately.

Casino Taxes and Fees — P.L. 2003, c.116 (signed into law on July 1, 2003) imposes on casino licensees a 4.25% tax on the value of rooms, food, beverages, and entertainment that are provided at no cost or reduced price. It also imposes an 8% tax on casino service industry multi-casino progressive slot machine revenue. In addition, Chapter 116 imposes, for State fiscal years 2004 through 2006, a 7.5% tax on the adjusted net income of casino licensees in calendar year 2002. It

also imposes a fee of \$3.00 per day on each casino hotel room that is occupied by a guest and increases the minimum casino parking fee in Atlantic City to \$3.00 per day. This law took effect immediately.

Outdoor Advertising Fee — P.L. 2003, c.124 (signed into law on July 2, 2003) imposes a 6% fee on the gross amount collected by retail sellers for billboard advertising space in New Jersey. The fee is imposed directly on the retail seller of the advertising space and must be reported and paid on a quarterly basis. This act took effect immediately and applies to billboard advertising fees collected for any period on or after July 1, 2003, through June 30, 2004.

Realty Transfer Fee

Supplemental Fee — P.L. 2003, c.113, (signed into law on July 1, 2003) imposes a new, graduated, supplemental fee on transfers of realty that is payable by the grantor to the county in which the deed is recorded. The new law does not increase the realty transfer fee rates on transfers by senior citizens, blind or disabled persons, and on the transfer of property that is low- and moderate-income housing. This act took effect on July 14, 2003.

Sales and Use Tax

Rentals Between Closely Related Entities Exempt — P.L. 2003, c.136 (signed into law on August 1, 2003) provides that receipts from the rental of tangible personal property on which sales tax was paid or use tax obligations have been satisfied between related persons not engaged in the regular trade or business of renting that property to other persons are exempt from sales and use

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tax. For this purpose, “related persons” means persons that are 80% or more owned by each other, or by the same third party. This law took effect immediately but will remain inoperative until November 1, 2003.

Concession Stand Sales in Veterans’ Homes Exempt — P.L. 2003, c.165 (signed into law on August 31, 2003) exempts from sales and use tax retail sales made at concession stands (canteens) that are located in State-owned and operated residential veterans’ homes. This act took

effect immediately, and applies to sales made on or after December 1, 2003. □

Tax Calendar

The following three calendars provide listings of filing and payment dates (July 1, 2003 – June 30, 2004) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to

the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

- **Alphabetical Summary of Due Dates by Tax Type**
- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more. □

Package NJX for 2003

Decisions regarding the publication of *Package NJX* are pending. Continue to check here www.state.nj.us/treasury/taxation/pdf/other_forms/03ordrfm.pdf for updates.

New Jersey State Tax news

A Quarterly Newsletter

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NOTICE TO SUBSCRIBERS

This will be the last issue of the *New Jersey State Tax News* to appear in printed form. See "Notice to Subscribers" on page 2 for more information.

New Laws Fund FY 2004 Budget

The following is a general overview of fiscal year 2004 budget related legislation. A more detailed discussion will be included in the fall 2003 issue of the *State Tax News*. Updates will be posted to our Web site as they become available.

Realty Transfer Fee

P.L. 2003, c.113, which takes effect on July 14, 2003, imposes a new, graduated supplemental fee on transfers of realty. The fee is payable by the grantor to the county in which the deed is recorded. The new rates are as follows:

- \$2.00 for every \$500 of consideration not in excess of \$150,000;
- \$3.35 for every \$500 of consideration in excess of \$150,000 but not in excess of \$200,000;
- \$3.90 for every \$500 of consideration in excess of \$200,000.

The new law does not increase the Realty Transfer Fee rates on transfers by senior citizens, blind or disabled persons, or on the transfer of property that is low and moderate income housing.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/transferfees.shtml.

Cigarette Tax

P.L. 2003, c.115 increased the cigarette tax from \$.075 to \$.1025 per cigarette, effective July 1, 2003, resulting in a tax increase of \$.55 per

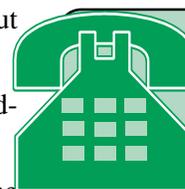
pack and bringing the total levy to \$2.05 per pack of 20. The legislation specifies that an additional amount of the cigarette tax revenue is to be appropriated for health programs each year.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/cignew.shtml.

Hotel/Motel Occupancy Fee

P.L. 2003, c.114 imposes a State hotel and motel occupancy fee. Beginning August 1, 2003, the State will impose a 7% occupancy fee. For fiscal year 2005 and thereafter, a 5% fee will be imposed.

The legislation makes special rate provisions for those municipalities
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important phone numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576

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that already impose local taxes or fees on hotel/motel occupancies:

- In Atlantic City, where there is currently a combined rate of sales and luxury taxes of 12%, the occupancy fee will be 1%.
- In the Wildwoods, where there is currently a combined rate of sales and local taxes of 9.85%, the occupancy fee will be 3.15%.
- In Newark and Jersey City, where a 6% local hotel tax is currently collected in addition to the 6% sales tax, the occupancy fee will be 1%.

The law authorizes all other municipalities to adopt an ordinance to impose a local tax of up to 1%. The earliest possible effective date for the local tax is September 1, 2003. For fiscal year 2005 and thereafter, when the State occupancy tax is reduced from 7% to 5%, the local tax may be imposed at a rate up to 3%.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/hotelfee.shtml.

Casino Taxes and Fees

P.L. 2003, c.116, effective July 1, 2003, imposes a State tax of 4.25%

on casino licensees on the value of rooms, food, beverages, and entertainment that they give away free or at a reduced price as a “complimentary.” For those “complimentaries” provided at a reduced price, the 4.25% tax is calculated on the value of the room, food, beverage, or entertainment, reduced by any consideration paid by the customer. This tax, payable by the casino licensee, is in addition to any tax due under the Sales and Use Tax Act on receipts from the sale of food, beverages, room occupancies, and entertainment.

In addition, P.L. 2003, c.116 increases the Atlantic City casino hotel parking fee from \$2.00 to \$3.00, imposes a \$3.00 per day fee on each hotel room occupied by a guest in a casino hotel, an 8% gross revenue tax on companies that administer and service multi-progressive casino slot machine systems, and a 7.5% tax on the adjusted net income of casino licensees.

Billboard Advertising Fee

P.L. 2003, c.124 imposes a 6% fee on the gross amount collected by retail sellers for billboard advertising space.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/outdooradv.shtml.



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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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NOTICE TO SUBSCRIBERS

This will be the last issue of the *New Jersey State Tax News* to appear in printed form. Beginning with the fall 2003 issue, this newsletter will be published electronically on the Division of Taxation's Web site. The Division has implemented an e-mail subscription service, *NJ Tax E-News*, that will notify subscribers when the *State Tax News* and other Division publications become available online.

More information on *NJ Tax E-News* is available on our Web site at: www.state.nj.us/treasury/taxation/listserv.shtml



NJ Tax E-News Service Launched

Subscribers to *NJ Tax E-News*, the Division of Taxation's new online information service, will have taxation news delivered directly to their electronic mailboxes.

NJ Tax E-News messages will contain news on various topics and/or links to publications and other material recently posted on the Division's Web site. Areas of interest covered by the service currently include: New Jersey income tax, property tax relief programs, and sales tax. Subscribers can also choose to be notified when new or revised publications, including future issues of the *New Jersey State Tax News*, become available online. The service will be expanded to include additional topics in the future.

To subscribe to *NJ Tax E-News* visit: www.state.nj.us/treasury/taxation/listserv.html □

Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003, will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%

Tax Relief for 9/11 Victims

Governor James E. McGreevey signed legislation, P.L. 2003, c.9, on January 27, 2003, that exempts from New Jersey gross income tax the income of those victims who died as a result of the September 11, 2001, terrorist attacks at the World Trade Center and the Pentagon or who were killed when United Airlines Flight 93 crashed in Somerset County, Pennsylvania.

The legislation applies to the tax year 2000 and all later years up to and including the year of death. Generally, the two years for which tax will be forgiven will be 2000 and 2001. Only decedents with a New Jersey gross income tax liability for the qualified years are eligible for income tax relief. Any gross income tax liability eligible for forgiveness that is owed but not paid will be forgiven and payment will be waived. Any gross income tax eligible for forgiveness that is already paid will be refunded.

A claim for refund must be filed within four (4) years after the taxable year in which the victim died. For example, if a calendar year taxpayer died on September 11, 2001, the claim for tax forgiveness must be filed on or before December 31, 2005.

A claim for tax forgiveness must be submitted on Form NJ-0911, "Gross Income Tax Forgiveness for Victims of the September 11, 2001 Terrorist Attacks," and must include proof of death, IRS Form 1310, or a copy of a court certificate showing appointment as personal representative of the decedent.

The Division of Taxation will make every effort to expedite claims for

tax forgiveness. For additional information or assistance, call the Division of Taxation at 609-292-2163 or e-mail us at nj.taxation@treas.state.nj.us To obtain Form NJ-0911, call 609-292-2163 or visit the Division's Web site at <http://www.state.nj.us/treasury/taxation/taxprnt.shtml> □

GROSS INCOME TAX 9/11 Disaster Relief Payments

The September 11th Victim Compensation Fund of 2001 was enacted by the Federal government to provide compensation to any individual who was physically injured and to the families and beneficiaries of any individual who was killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The Victims of Terrorism Tax Relief Act of 2001 provides qualified disaster relief payments to individuals for certain qualified expenses occurring in connection with the terrorist attack such as personal, family, living, or funeral expenses incurred or expenses incurred for the repair or rehabilitation of a personal residence.

For Federal income tax purposes, payments from the September 11th Victim Compensation Fund and qualified disaster relief payments are not considered taxable income of the recipient. More specifically, these payments are not included in taxable income unless the payment is for insurance or other reimbursements for expenses, or income replacement payments, such as payments of lost wages or lost business income.

For New Jersey income tax purposes, qualified disaster relief pay-

continued on page 4

9/11 disaster relief - from page 3

ments are excludable from income to the extent they are excluded from Federal income tax. Any payments that are taxable for Federal income tax purposes, such as payments for wages or lost business income, are taxable for New Jersey purposes in the appropriate category of income.

□

Overview of Estate Tax Revisions

The New Jersey estate tax was revised on July 1, 2002, and made to apply retroactively to decedents dying after December 31, 2001. Prior to its revision, the New Jersey estate tax was a "sponge" or "pickup" tax whose sole purpose was to absorb any credit for state inheritance, estate, succession, or legacy taxes available in the Federal estate tax proceeding. The revised New Jersey estate tax is decoupled from the Federal estate tax.

The New Jersey estate tax is now imposed upon the transfer of the estate of every resident decedent which would have been subject to a Federal estate tax under the provisions of the Internal Revenue Code in effect on December 31, 2001. The tax is, at the election of the person or corporation liable for its payment, either the maximum credit for state inheritance, estate, succession, or legacy taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, or an amount determined pursuant to the Simplified Tax System prescribed by the Director, Division of Taxation.

Numerous inquiries related to the revised New Jersey estate tax and

its filing requirements have been received by the Division.

The following summarizes the filing requirements and important provisions of the revised estate tax:

1. The person or corporation responsible for payment of the tax may choose the Form 706 method or the Simplified Tax System (Alternative) method of filing the New Jersey estate tax return. The Form 706 method is based upon the provisions of the Internal Revenue Code in effect on December 31, 2001 (2001 Federal estate tax return). The Simplified Tax System method is based upon the method which has been prescribed by the Director.

2. A New Jersey estate tax return must be filed if the decedent's gross estate, as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. It must be filed within nine months of the decedent's death (nine months plus 30 days if the Form 706 method is used). Additionally, a copy of any Federal estate tax return filed or required to be filed with the Federal government must be submitted within 30 days of the date it is filed with the Internal Revenue Service, and a copy of any communication received from the Federal government must be submitted to the Division within 30 days of its receipt from the Internal Revenue Service.

3. The New Jersey estate tax is due on the decedent's date of death and must be paid within nine months. Any tax not paid within nine months bears interest at the rate of ten percent (10%) per annum from the expiration of nine months until paid. The Director may extend the time for the filing of the return, but not

for the payment of the tax. Payments are first credited in satisfaction of accrued interest.

4. The Form 706 method requires that the Form IT-Estate be prepared and filed along with a 2001 Federal Form 706 completed in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001. The New Jersey estate tax is based upon the Federal credit for state inheritance, estate, succession, or legacy taxes as it existed on December 31, 2001, and not as it existed on the decedent's date of death.

If a Federal estate tax return has been or will be filed, or is required to be filed with the Internal Revenue Service, any election made by a taxpayer to treat an asset in a particular manner for Federal estate tax purposes must also be made for New Jersey estate tax purposes. A taxpayer may not make one election for Federal purposes and another for State purposes.

5. The Director has prescribed a Simplified Tax System (Alternative) method pursuant to the provisions of the revised statute. This method may only be used in those situations where a Federal estate tax return has not, and will not be filed, nor is a tax return required to be filed with the Internal Revenue Service. The Simplified Tax System is not intended for use in all estates.

The Simplified Tax System requires that a Form IT-Estate be prepared and filed along with a New Jersey Inheritance Tax Return (Form IT-R) completed in accordance with the provisions of the inheritance tax statute in effect on December 31, 2001.

continued on page 5



estate tax revisions - from page 4

The taxable value of the estate using the Simplified Tax System (Alternative) method is the net estate as determined and reflected on the New Jersey Inheritance Tax Return (Form IT-R) filed and adjusted to reflect:

- Real and tangible personal property located outside of New Jersey; plus
- The proceeds of life insurance on the decedent's life owned by the decedent (or transferred within three (3) years of his/her death) paid to any beneficiary other than the estate, executor, or administrator; plus
- All transfers made by the decedent within three (3) years of death not included in the net estate as determined and reflected on the New Jersey inheritance tax return; less
- Property passing outright to the decedent's surviving spouse. This deduction does not include QTIP (Qualified Terminable Interest Property) or similar property. QTIP property is property that passes from the decedent and in which the surviving spouse has a qualifying income interest for life. The surviving spouse has a qualifying income interest for life if he/she is entitled to all of the income from the property payable annually or at more frequent intervals, or has a usufruct interest in the property (right to enjoy the property) for life, and during the surviving spouse's lifetime no person has a power to appoint any part of the property to any person other than the surviving spouse. Additionally, the surviving spouse must be a citizen of the United States on the decedent's date of death.

If QTIP property or the surviving spouse's citizenship is a significant factor, consideration should be given to the use of the Form 706 method of filing; less

- Property passing for charitable purposes.
6. The New Jersey estate tax may be reduced by estate, inheritance, succession, or legacy taxes actually paid to any state or territory of the United States or the District of Columbia including inheritance taxes actually paid to this State.

Unlike the prior New Jersey estate tax, the revised estate tax limits the reduction for taxes paid to other jurisdictions to the proportion of the tax otherwise due as the portion of the property taxable in both New Jersey and the foreign jurisdiction bears to the entire estate taxable (gross estate) for New Jersey purposes.

$$\frac{\text{Property Taxed by NJ and Other Jurisdiction}}{\text{Entire NJ Estate Subject to Tax (Gross Estate)}} \times \frac{\text{NJ Estate Tax Otherwise Due}}{\text{NJ Estate Tax Otherwise Due}} = \text{Allowable Reduction}$$

7. Unlike the prior New Jersey estate tax, the revised estate tax is a lien on all the property of a decedent. Additionally, the statute provides that the decedent's property may not be transferred without the written consent of the Director (commonly known as a "waiver"). The tax waiver form has been modified to release both the inheritance and the estate tax lien and permit the transfer of the property listed thereon for both inheritance and the estate tax purposes. Generally, regulations which previously pertained only to inheritance tax waivers have been amended to apply also to es-

state tax waivers. For example, an estate tax waiver is not required for any property which is not subject to the estate tax, nor for any property held as a tenancy by the entirety in the estate of the first spouse to die. Additionally, the blanket waiver rule may be used for estate tax purposes to secure one half (1/2) the funds on deposit on a decedent's date of death in a banking institution.

8. Inheritance and estate tax waivers are now required for life insurance policies, annuity contracts, endowment policies, and supplementary contracts issued to effectuate the distribution of the benefits payable thereunder.

9. Waiver requirements are set forth in the recently adopted inheritance and estate tax regulations beginning at N.J.A.C. 18:26-11.1. Form L-8 may not be used if the taxable estate plus adjusted taxable gifts as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. Form L-9 may not be used if the gross estate as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. In situations where the taxable estate plus adjusted taxable gifts exceeds \$675,000, Form L-4 may be used to request the issuance of waivers prior to the filing of the New Jersey estate tax return, completion of the review of the return filed by the Division, and payment of the tax. When reviewing a request for the early issuance of waivers, the Division will withhold waivers and/or require a payment on account or other security sufficient to insure the payment of the tax and interest for

estate tax revisions - from page 5

which the decedent's estate is ultimately determined to be liable.

Questions related to the revised New Jersey estate tax may be forwarded to:

NJ DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
INHERITANCE AND ESTATE TAX
ATTENTION: ESTATE TAX SECTION
PO BOX 249
TRENTON, NEW JERSEY 08695-0249

Additional information may also be obtained by calling 609-292-5033.

□

Inheritance Tax Deductions

N.J.S.A. 54:34-5 provides that the inheritance tax is to be computed on the clear market value of property transferred and that in determining the clear market value only certain deductions are permitted. N.J.S.A. 54:34-5(c) provides that the ordinary expenses of administration including the ordinary fees allowed executors and administrators are allowable deductions. N.J.A.C. 18:26-7.1 provides that no deductions are allowable against any property which is exempt or not subject to the inheritance tax.

The Division's long-standing administrative construction of N.J.S.A. 54:34-5(c) has been that administrator or executor commissions are allowable on the fair market value of real property owned by a decedent less any outstanding mortgage balance. The Division reasoned that as a mortgage is deductible from the corpus of an estate the mortgage amount is exempt property against which deductions are not allowed under N.J.A.C. 18:26-7.1.

However, in the case of *Estate of Lillian Becker v. Director, Division of Taxation*, No. 4875-2001, decided December 17, 2002, the Tax Court determined that the allowable deduction for an administrator's commission for New Jersey inheritance tax purposes must be calculated as a percentage of the gross fair market value of the real property owned by the decedent, not the value of the property less the outstanding mortgage payable at the time the administrator sold the property. The Court found that the statute and regulations indicated that all allowable deductions should be made from the gross value of any property so long as the property as a whole was not exempt or otherwise not subject to the inheritance tax. Therefore, the Division will no longer require the exclusion of an outstanding mortgage in determining the base amount from which an administrator's fees will be calculated.

On March 24, 2003, Governor McGreevey signed Public Law 2003, chapter 33, which permits fiduciaries to employ and compensate accountants from fiduciary funds for services rendered to an estate. Fees incurred in the preparation of accountings do not reduce the commissions due a fiduciary so long as the accountings are not a usual, customary, or routine service provided by the fiduciary in light of the nature and skills of the fiduciary. Factors considered in evaluating the actions of a fiduciary include the size and complexity of the fiduciary fund, the length of time for which an accounting is rendered, and the increased risk and responsibilities imposed on fiduciaries as a result of revisions to laws affecting fiduciaries.

The Division's long-standing policy regarding the allowance of accounting fees as an inheritance tax deduc-

tion complies with the recently enacted legislation. The reasonable and ordinary fees of Certified Public Accountants and Public Accountants are allowed for the preparation of an inheritance tax return and for other professional services rendered to the executor or administrator of an estate. Accounting fees incurred for services of a nature that could have been performed by the executor or administrator are not allowed as a deduction. □

Shorter Wait Time for New Protests

The Conference and Appeals Branch has implemented procedures designed to increase responsiveness to taxpayers' requests for conferences and final determinations. Taxpayers who are appealing decisions made by the Division of Taxation now have a shorter wait time for conferences and receive decisions faster once the conference is held. This is a result of new and improved administrative procedures and a decrease in the number of cases pending because of those settled during the recent Tax Amnesty.

In-Depth Review of Incoming Protests. An intensive review of the incoming protests is now undertaken and more comprehensive information is requested from the taxpayer at that time. This helps both the taxpayer and the conferee assigned to the case to be better prepared for the conference, and the review and discussion process may even eliminate the need for an in-person conference.

Perfecting Protests. Where issues are black and white, and the taxpayer has adequately documented

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shorter wait time - from page 6

their protest, every attempt is made to resolve matters quickly, often by way of a telephone conference.

Expedited Conferences. When a protest has received a full review and/or the protest has been perfected, there may still remain a need to have an in-person conference. “Conferences on demand” (taxpayer initiated) or “conferences on short notice” (Division initiated) provide a taxpayer who is ready to meet, or has no additional proofs to present, with an opportunity to be heard. Decisions in these types of situations are typically issued within days of the conference.

These procedures reduce the wait times for taxpayers and allow conferees to focus on cases with more complex legal, auditing, and accounting issues. □

Business Tax Reform Changes

The New Jersey Division of Taxation is modifying its administrative practice with respect to implementation of the Business Tax Reform Act (P.L. 2002, c.40) in three instances. These may be found in rules proposed in the *New Jersey Register*, April 7, 2003, at N.J.A.C. 18:7-5.18(a)(1), N.J.A.C. 18:7-17.6, and N.J.A.C. 18:7-8.7. The changes are retroactive and apply to taxpayers with privilege periods beginning on and after January 1, 2002. It is anticipated that, upon adoption of these rules, the changes made will be reflected in the adoption notice as changes not detrimental to the public.

First, a lower threshold is being introduced for a taxpayer to qualify for

an interest expense deduction. An exception to the interest deduction addback, N.J.A.C. 18:7-5.18(a)(1), is being revised to reflect that a related party need not actually pay a tax to a jurisdiction in a single entity state in order for the exception to apply. The related member must simply include the interest income in the calculation of its income subject to tax for the exception to apply. If the interest paid is subject to a tax regardless of whether a tax is actually paid by the entity receiving the income, then the payor of the interest may qualify for the exception and be eligible to deduct its interest expense.

Similarly, and consistent with the principle, N.J.A.C. 18:7-8.7 will be revised to reflect the Division’s position regarding the throw-out rule. Where a corporate taxpayer that is subject to tax but pays no tax to a tax jurisdiction, the numerator of that tax jurisdiction’s receipts fraction would not be subject to New Jersey’s throw-out provision (unless it is as a result of that state’s throw-back provision). The only requirement is that the taxpayer must actually be subject to tax in that taxing state’s jurisdiction and file a return. The throw-out rule applies to single entity taxing jurisdictions as well as postapportionment combination states. The rule also permits the throwout of receipts to preapportionment combination states. Receipts from preapportionment combination states are still required to be thrown out from the denominator of the New Jersey receipts fraction.

Finally, N.J.A.C. 18:7-17.6 will be liberalized to permit partnerships with New Jersey sourced income to make estimated payments on behalf

of nonresident, non-corporate partners that elect to participate in the partnership’s composite return. This revision will allow nonresident, noncorporate partners participating in a composite return to avoid the economic effects of payment of estimated tax while having taxes remitted on the partnership level for the same period. Under the new methodology, if a composite return is filed and the estimated payments associated with it are made on a timely, quarterly basis, then the partnership itself will not be responsible for remitting a tax at the close of the tax period with its Form NJ-1065 with respect to the New Jersey sourced income of those foreign, noncorporate partners participating in the partnership’s composite return whose estimates were paid quarterly. □

GROSS INCOME TAX

Credit for Camden Homebuyers

P.L. 2002, c.43, as amended by P.L. 2002, c.108, created a nonrefundable gross income tax credit of up to \$5,000 for individuals or married couples who purchase and occupy, or plan to occupy within one year, residential property in Camden City. The taxpayer must occupy the property, within one year of purchase, as the taxpayer’s principal residence. The law establishing the credit defines residential property as land, a dwelling house, or a condominium unit. A taxpayer is disqualified from eligibility if the taxpayer, or his or her current spouse, if any, has previously owned residential property and occupied it as a principal residence.

The credit is available for any qualifying purchase made after July 1,

credit for homebuyers - from pg. 7

2002. A qualifying taxpayer may be eligible for the credit for the year of purchase and for the next four years if the taxpayer continues to occupy the property as the taxpayer's principal residence. A taxpayer must repay any tax credits if he or she fails to occupy the property within one year of purchase or if the taxpayer ceases to occupy the property as the principal residence within ten years of purchasing or first occupying the property, whichever is later.

To receive the credit, qualifying taxpayers must complete the Municipal Rehabilitation and Economic Recovery Tax Credit Application. The Division of Taxation will be mailing the application form to purchasers of Camden property who may qualify for the credit. □

Mergers and Tax Clearance

If the surviving or resulting business of a merger is not a registered or authorized domestic or foreign business entity, a Tax Clearance Certificate for each participating corporation must be obtained and attached to the merger filing submitted to the Business Services Bureau in the Division of Revenue.

Each corporation participating in such a merger obtains a Tax Clearance Certificate from the Division of Taxation for a \$25 fee using forms A-5052-TC, Estimated Summary Tax Return, and A-5088-TC, Application for Tax Clearance. The surviving unauthorized foreign corporation receives a "nonassessment" Tax Clearance Certificate. □

SALES AND USE TAX

Vendors Can Pay Tax for Customers

Recently enacted legislation (P.L. 2003, c.42) authorizes most New Jersey retail vendors to advertise that the vendor will pay the 6% New Jersey sales tax for the customer in particular transactions. This is a change from prior law, which prohibited vendors from advertising in this way. Sellers of natural gas, electricity, and utility services are *not* authorized to advertise in such a manner.

In order to take advantage of the new law, the vendor must meet the following conditions:

1. The advertisement *must* indicate that the vendor is paying the tax for the customer and cannot imply that the sale is not subject to tax;
2. If the customer receives a sales receipt, invoice, or other written statement of the transaction, it *must* indicate that the 6% New Jersey sales tax is being paid by the vendor; and
3. The vendor *must* pay the tax as trustee for the State and is liable for the tax in the same manner as if it were collected from the customer.

The tax is to be reported and remitted as "sales tax," not as "use tax" because the vendor is assuming the obligation to pay the sales tax for the customer. All sales where the vendor pays the tax under these conditions must be included in the vendor's gross receipts and the tax must be remitted accordingly. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

July 1–

- Where the County Board of Taxation cannot hear and determine all of the appeals within the prescribed time, board may apply to the Director of Taxation for extension within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail form (FA-1) to claim a continuance under the Farmland Assessment Act for the tax year 2004 together with a notice that the completed form must be filed with the assessor by August 1, 2003, to each taxpayer whose land was assessed for tax year 2003 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the

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NOTICE TO SUBSCRIBERS

This will be the last issue of the *New Jersey State Tax News* to appear in printed form. See "Notice to Subscribers" on page 2 for more information.



tax assessors' calendar - from page 8

assessor to have land assessed under Farmland Assessment Act for tax year 2004.

August 5–

- All SR-1A forms showing information to be used in compiling the 2003 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2004, to be filed with the assessor for the taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2004, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation. ☐

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 4, 2003, in Superior Court – Monmouth County, Larry E. Barasch of Marlboro, who is the former owner and president of the now-defunct Great Feeling Spas, Inc., a spa and hot tub re-

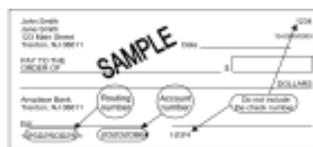
tailer that operated in Marlboro from 1994 to 2002, was found guilty by a jury, at the conclusion of a four-week trial, of theft of \$187,742.46 in sales tax which Barasch had collected from his retail customers in 2001 and failed to remit to the State. Barasch had also been charged with theft from his customers of \$395,000 in deposits paid for goods which were never delivered, but he was found not guilty of the second charge. On July 10, 2003, Barasch was ordered to make restitution of the tax to the State, and was sentenced to five years imprisonment. The sentencing judge denied the request of Barasch's attorney that Barasch be freed on

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* Fee of 2.5% of tax payment applies.

criminal enforcement - from pg. 9

bail pending appeal, and the defendant was immediately turned over to the State Department of Corrections for transportation to a prison facility. The verdict and sentence clearly illustrate that retail vendors act in a fiduciary capacity on behalf of the State in the collection of and accounting for sales tax from customers, and that this tax money cannot be diverted to fund business expenses. New Jersey law specifically provides that it is a crime to fail to file a return or pay over a tax with the intent to not make timely payment of that tax. At sentencing, the judge noted that with respect to the sales tax funds, Barasch "...didn't pay them when they were due and owing, and didn't pay them in the proper form." This investigation was conducted jointly with the Monmouth County Prosecutor's Office, with significant assistance from Taxation's Field Investigation Branch, Jersey Shore Regional Office. The Monmouth County Prosecutor's Office represented the State at trial.

- On January 6, 2003, Shravan Baile of Staten Island, New York,

entered a guilty plea on behalf of Best Liquors of Lakewood, Inc. to one (1) count of an indictment relating to the failure to turn over sales tax as required by law. Mr. Baile, Best Liquors of Lakewood, Inc., and Best Liquors of Lakehurst, Inc. had been indicted by a State Grand Jury on eight (8) counts relating to his failure to turn over \$54,194 in sales tax collected during the years 1997 and 1998. The investigation determined that Best Liquors of Lakewood collected and failed to remit \$29,093 in sales tax monies, and Best Liquors of Lakehurst collected and failed to remit \$25,101 in sales tax monies. Under the terms of the plea agreement, Mr. Baile will make full restitution of the sales tax collected and not remitted on or before sentencing. This case was referred to the Office of Criminal Investigation (OCI) from Audit Activity and was jointly investigated with the New Jersey State Police Alcoholic Beverage Control Enforcement Unit and was prosecuted by the State Attorney General's Office.

- On January 8, 2003, in Belvidere, New Jersey, Arminder Singh,

whose last known address was in Hasbrouck Heights, New Jersey, was indicted by a Warren County Grand Jury on three (3) second-degree counts, i.e., collecting and failing to turn over more than \$75,000 tax, misapplication of entrusted property, and failure to make required disposition of property received, resulting from his collecting and failing to remit over \$75,000 in motor fuels tax on the retail sale of diesel fuel at a truckstop he operated in White Township, New Jersey, under the names HP Oil, Inc. and Rockaway Fuel Corp. from September 2000 to June 2001. He was also indicted on ten (10) third-degree counts of writing bad checks to his fuel suppliers. Mr. Singh is currently a fugitive whose whereabouts is unknown. This case was investigated by the Office of Criminal Investigation and presented to the Grand Jury by the Warren County Prosecutor's Office.

- OCI has completed a three-year investigation of the tax preparation firm run by George Halpern and his son, Todd. The investigation was opened as a result of information received from

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Enforcement Summary Statistics

First Quarter 2003

Following is a summary of enforcement actions for the quarter ending March 31, 2003.

• Certificates of Debt:		• Jeopardy Seizures	5
Total Number	2,989	• Seizures	31
Total Amount	\$36,677,519	• Auctions	1
• Jeopardy Assessments	249	• Referrals to the Attorney General's Office	434

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/

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Taxation's Audit and Compliance Activities, whose personnel had documented a pattern of incompetent and possibly illegal actions by the Halperns in their preparation of tax returns for their clients and in their dealings on behalf of their clients with the Division of Taxation. Our investigation resulted in guilty pleas by both George and Todd Halpern in 2000 to charges of filing fraudulent tax returns. Both defendants were sentenced to probation and prohibited from operating an accounting or tax preparation business. Continued investigation, however, revealed that both defendants continued to engage in the preparation of tax returns in violation of the court's orders. Subsequently, in 2001 George Halpern was sentenced to 364 days in jail and Todd Halpern to a 90-day jail term. The Halperns entered into the work release program. OCI investigation determined that they continued to engage in the tax preparation business while on work release. The court then revoked their work release and they were remanded to jail full time. Further investigation determined that Todd Halpern had not only been improperly servicing and representing his clients, he also engaged in systematic theft from his clients on a large scale. On September 6, 2002, Todd Halpern entered a plea of guilty to a charge of theft by misapplication of \$367,261 in New Jersey sales tax payments, which had been entrusted to him by 70 small businesses who had been clients of Halpern's tax preparation business. Halpern also pled guilty to

theft in excess of \$45,000 in personal income tax estimated payments. Halpern made full restitution payments in excess of \$400,000. Halpern was sentenced to five years imprisonment for the above offenses. This case was prosecuted by the State Attorney General's Office.

- One hundred thirty-seven (137) complaints alleging tax evasion were evaluated from January through March 2003 in the Office of Criminal Investigation.
- During the same period, sixty-three (63) charges were filed in court on twenty-three (23) cases for violation of the Cigarette Tax Act. Of the twenty-three cases, four (4) cases involved counterfeit tax stamp investigations and nineteen (19) arrests were made. □

Tax Briefs

Corporation Business Tax

Alternative Minimum Assessment

— Corporations subject to the corporation business tax are required to compute the alternative minimum assessment and pay the greater of the CBT or the AMA.

The method of computation for the alternative minimum assessment is left to the discretion of the taxpayer. A taxpayer shall, for the first privilege period for which it is required to compute the alternative minimum assessment, elect the gross profits method or the gross receipts method. This computation method must then be used by the taxpayer for the computation of the alternative minimum assessment for that privilege period and for the next succeeding four privilege periods.

The taxpayer may change its election at any time after the initial five privilege periods. However, when a taxpayer elects to change the method of computation of the alternative minimum assessment, the new method must be used for the privilege period for which the change is effective and for the next succeeding four privilege periods.

Gross Income Tax

Employee Purchases Under Commuter Choice Program

— In regard to commuter transportation benefits provided under N.J.S.A. 54A:6-23, the Division responded to an inquiry regarding whether the TRIP (Transportation Reimbursement Incentive Program) spending account that allows employees to set aside pretax dollars for the cost of qualified public transportation and parking expenses is subject to tax under the New Jersey Gross Income Tax Act.

The requirements of employer-provided commuter transportation benefits that can be excluded from New Jersey gross income tax are set forth in N.J.S.A. 54A:6-23. However, the exclusion is provided in addition to, and not in lieu of, any compensation otherwise payable to the employee. The New Jersey Gross Income Tax Act only provides an exclusion for employer-provided commuter transportation benefits. Commuter transportation expenses are not excluded from income when purchased by the employee.

Because the TRIP plan is provided by the employees for their own benefit, contributions are subject to New Jersey gross income tax. Income received as compensation for commuting to work will not be taxed

continued on page 12

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as long as the employer provides the funds and the compensation is within the limits of N.J.S.A. 54:A-6.23.

Hedge Fund Partner Withholding

— A taxpayer inquired about the responsibilities of hedge fund partnerships under P.L. 2002, c.40, the New Jersey Business Tax Reform Act of 2002.

Under the New Jersey Business Tax Reform Act of 2002, partnerships meeting “hedge fund” status under N.J.S.A. 54A:5-8(c) are not required to remit tax payments on the intangible income of nonresident, noncorporate partners if the nonresident, noncorporate partners of hedge funds are not required to include any gains or losses resulting from trading activities in their income.

Also, as provided under the Act, the \$150 per partner filing fee assessed on partnerships with more than two partners and having income or loss derived from New Jersey sources is applicable to all New Jersey hedge fund partnerships if they are classified as partnerships for Federal income tax purposes.

Partnership Guaranteed Payments

— The Division responded to an inquiry regarding the treatment of a Maryland resident who is a guaranteed-income partner of a New

Jersey partnership. It was stated that the partnership has its main office in New Jersey, but it also has offices in New York, Connecticut, Pennsylvania, Delaware, and Maryland. The taxpayer, who is a resident of Maryland and a guaranteed-income partner of the partnership, does not perform any services for the partnership in New Jersey, or any other state, other than Maryland.

Guaranteed payments must be reported as distributive share of partnership income, with the exception of guaranteed payments received by a retired partner who receives such payments as a result of a period of service to the partnership pursuant to a retirement agreement or pension plan. N.J.A.C. 18:35-1.3(c)(2). Where the partnership’s activity is carried on within and outside New Jersey, the taxpayer’s distribution is subject to allocation pursuant to N.J.A.C. 18:35-1.3(c)(3)(iii), which states that: “Where a partnership’s activity is carried on both within and outside New Jersey, the portion of the partnership’s income, gains, expenses or losses attributable to sources within New Jersey shall, except as provided in (c)3iv below, be determined by use of the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), as prepared by the partnership. Failure to provide such schedule may result in

allocation of all income to New Jersey.”

Litter Control Fee

Principal Activity Test for Restaurant Sales

— The Division received an inquiry regarding the recently enacted litter control fee from an operator of concession stands at ballparks, stadiums, and concert halls in New Jersey. The Division responded that the litter control fee is imposed on the gross receipts from wholesale sales and retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of such litter-generating products. “Retailer” means every person engaged in the business of exchanging goods for cash or barter or any consideration on the presumption that the purchaser of such goods has acquired the same for ultimate consumption or use. “Retailer” includes the owner or operator of a take-out or drive-through restaurant, the principal activity of which consists of selling any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. “Retailer” does not include (1) the owner or operator of a restaurant with less than ten percent (10%) in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or (2) the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises. “Principal Activity” means more than fifty percent (50%) of the restaurant’s food and beverage sales.

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The business operates concession stands at ballparks, stadiums, and convention or concert halls. It was stated that these establishments are not open to the general public, but rather open to event ticket holders only. As food and beverages are prepared and served on premises, these establishments are deemed to be restaurants for purposes of the litter control fee. As such, the percentage of gross receipts derived from eat-in versus take-out food sales must be examined to determine whether these restaurants are “retailers” as described above. The location and nature of the restaurants require consumption to take place within the facilities in which they are situated. This is determined to be “on-premises” consumption for litter control fee purposes. Since the businesses’ sales of food and beverages are more than 50% for on-premises consumption, the restaurants are excluded as “retailers” and not subject to the fee for that calendar year.

Seller of Service Not Paper Products — An inquiry was received as to whether a “broker of printed forms for various printing plants” is subject to the litter control fee. The litter control fee is imposed on the gross receipts derived from wholesale and retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of such litter-generating products. Litter-generating products include all “paper products.”

If this business acts only as a broker, never taking title to the printed materials, it has no gross receipts

from the sale of litter-generating products. Rather, it collects only a fee or commission on the service of brokering the deal. Therefore, the business is not subject to the fee. If, however, the business possesses any ownership rights to the paper products and cannot be viewed strictly as a broker, but as seller of tangible property, the business would be subject to the fee.

For further information, please see the Division’s Web site for the Litter Control Fee Guidelines at www.state.nj.us/treasury/taxation and click on “Tax Topics,” or contact Regulatory Services at 609-292-5994.

Sales and Use Tax

Construction Site Cleaning Services — The Division responded to a letter regarding the taxability of construction site cleaning services. Construction site cleaning services were described as the cleaning of newly constructed homes or the cleaning of homes under construction, but between construction phases (e.g., after sheetrock has been installed but before the flooring is installed).

“Maintaining, servicing or repairing real property...” is subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(4). As the construction site cleaning services described above fall within the scope of the above-stated provision, they are taxable. Taxable services purchased by a contractor are subject to tax unless they are performed exclusively in the fulfillment of a contract with an exempt organization. N.J.A.C. 18:24-5.5.

Although new construction generally qualifies for sales tax exemption under N.J.S.A. 54:32B-3(2)(v)

as it results in a capital improvement, the capital improvement exemption does not reach those services performed for the construction trade that are merely related to the installation of property that becomes an improvement to real property. Taxable services which are performed for a construction contractor in connection with a capital improvement, but which would not alone result in a capital improvement, are subject to tax upon purchase by the contractor. N.J.A.C. 18:24-5.5.

Therefore, the use of a Resale Certificate (Form ST-3) by a developer or ground contractor is not appropriate in these situations. The construction site cleaning service provider must collect sales tax from the contractor purchasing its services.

Marketing Survey Reports — Whether or not the sale of a market research report is subject to tax depends on whether the research is syndicated or customized. Syndicated research is generally based on information that is received from two primary sources: point-of-sale data from retailers, and information in consumer surveys compiled by the marketing company. Essentially, all of the clients receive the same report. The reports contain no information that is specific to particular clients and are available for purchase by any

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subscriber. Many, but not all, of a marketing company's clients may receive individualized consulting services. These services are not separately stated but are included in the client's bill for the syndicated research.

Customized research involves the individualized analysis of the point-of-sale and panelist data or specific research studies. These reports are only provided to a requesting client, and the marketing company is generally prohibited from disclosing the results to any other clients. Most clients also receive individualized consulting services which are not separately stated but included in the client's bill for customized research.

In New Jersey, the sale of a customized report is treated as the sale of a professional service which is not subject to tax. Such a service involves the production of a report containing information specific to a particular taxpayer. However, the sale of a report which is not customized for a particular purchaser, but rather is provided to a number of customers without any modification, such as a syndicated report, is treated as the sale of tangible property which is taxable under N.J.S.A. 54:32B-3(a). When such reports are delivered to a customer in New Jersey either in hard copy, CD-ROM, or by other tangible means, the transaction is subject to sales tax. If the information is transmitted solely in electronic form, the transaction is for intangible property which is not taxable under New Jersey law.

Medical Testing — The Division responded to an inquiry regarding the application of the New Jersey

Sales and Use Tax Act to a business which performs medical testing services for doctors. The inquirer stated that the taxpayer "brings the equipment to a doctor's office with a technician. The technician performs the test with the doctor present. There is a fee paid by the doctor for the use of the machine and technician."

On these facts, it does not appear that this is a true rental transaction because the doctor does not have possession or control of the equipment. Under the Sales and Use Tax Act, a "rental" is defined as a short-term transaction with an original contract term of no more than 28 days. The fee paid by the doctor in this instance is exempt from tax as a professional testing service. N.J.S.A. 54:32B-2(e)(4)(A). The business that performs the test must pay tax on the purchase of the test equipment since the business is considered the end user of the property.

Telecommunications Sourcing Act — The New Jersey Sales and Use Tax Act was recently amended to bring existing provisions on mobile telecommunications services into compliance with the Federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. §124 (Public Law 106-252), referred to as MTSA. The amendments to the Sales and Use Tax Act became effective for customer bills issued after August 1, 2002. The MTSA enacted a uniform method for sourcing mobile telecommunications services for sales tax purposes.

The new legislation changes the way mobile telecommunications services are taxed by sourcing all calls to a place of primary use, re-

gardless of origination or termination of the service or the intrastate character of the call. The new method assumes that all wireless calls are made at the customer's residential or business street address, whichever is the place of primary use, and allows taxing jurisdictions to tax all the calls charged to that place of primary use. No other state can tax the mobile calls, even if the call originates or terminates in that state.

Thus, if the caller resides in New Jersey, all cellular calls, regardless of where they are made or where the person called is located, will be subject to 6% New Jersey sales tax.

Universal Service Assessment — Effective January 1, 1998, the Federal Communications Commission imposed the Universal Assessment on telecommunications carriers in order to fund the Government's Universal Service Program, which subsidized telecommunications services to low-income and rural communities as well as schools, libraries, and healthcare facilities. The telecommunications company passes this cost on to its customers as part of the monthly bill for service.

The New Jersey Sales and Use Tax Regulations provide that excise taxes which are imposed on vendors, such as the Universal Service Assessment, are included in the receipt on which sales tax is computed. N.J.A.C. 18:24-1.4(b). Since telecommunications services, including cellular, are subject to New Jersey sales tax, the Universal Service Assessment is also subject to State sales tax. □

In Our Courts

Corporation Business Tax

Regular Place of Business – *River Systems, Inc. v. Director, Division of Taxation; Rubachem International, LTD. v. Director, Division of Taxation; and Rubachem, Inc. v. Director, Division of Taxation*, decided March 14, 2003; Appellate Division No. A-2741-01T3.

The Appellate Division affirmed the Tax Court's holding for the Division for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News*, Volume 31, Numbers 2/3, Summer/Fall 2002, page 31. Previously, the Tax Court held that taxpayers did not maintain a regular place of business outside New Jersey because the New York business office and employees belonged to a separate, related company.

Local Property Tax

Exemption Status – *City of Long Branch v. Ohel Yaacob Congregation*, decided January 21, 2003; Tax Court No. 002643-2001.

Plaintiff City of Long Branch appeals a judgment of the Monmouth County Board of Taxation applicable to tax year 2001 which exempts property used to house visiting rabbis and other clergy and also to store books and furniture. Defendant Ohel Yaacob Congregation claims that the property is entitled to exemption pursuant to N.J.S.A. 54:4-3.6 because it is a parsonage or, alternatively, because it is a building actually used in the work of an association or corporation organized exclusively for religious purposes.

The Congregation first claims that the subject property is a parsonage

and exempt under N.J.S.A. 54:4-3.6, which states that the property eligible for exemption includes "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State...." The subject property was purchased for the purpose of housing visiting clergy. While the Congregation ordinarily consists of 60 to 80 families, the summer influx of an additional 400 to 500 families requires that additional clergy serve the synagogue. The Court found that visiting clergy did not fit within the definition of "officiating clergyman," which has been defined as "a settled or incumbent pastor or minister, that is, a pastor installed over a parish, church or congregation." The Court also found that the property was not used as a parsonage meaning a residence or home and not just a hotel room or other temporary housing. Therefore, the property was not eligible for exemption as a parsonage.

This leads to the issue of whether or not a parsonage is the only type of residential property owned by a religious organization which is eligible for exemption, or does the specific exemption for parsonages preclude qualification for exemption of other categories of residential property used for religious purposes? There is no evidence that the Legislature ever intended for parsonages to be included in the general category of property used for religious purposes. Parsonages have always been treated separately and as a historical matter have not been regarded as property used for religious purposes. The Court found that although a residential property not amounting to a parsonage may be exempt as used for religious pur-

poses, a residence principally used as a parsonage is not eligible for the same exemption and is limited to the express provisions for parsonages.

The Court, citing *City of Long Branch v. Monmouth Medical Center*, 138 N.J. Super. 524 (App. Div. 1976), aff'd, 73 N.J. 179 (1977), applied a test of "reasonable necessity": the exemption claimant must demonstrate a compelling need for the services performed by the resident of the property for which exemption is claimed and also that those services are integral with the exemption functions of the entity. The Court found that the subject building used for the housing of the visiting clergy is necessary for the proper and efficient operation of the Congregation during summer months and is not a mere convenience. Furthermore, the visiting clergy make it possible to accommodate the enlarged membership during the summer, and it is that membership which provides much of the financial support for the year-round operation of the Congregation.

Finally, the Congregation claims exemption because the property was used for storage of religious books and furniture. The Court, citing *Roman Catholic Archdiocese of Newark v. East Orange City*, 17 N.J. Tax 298, 313-315 (Tax 1998), aff'd, 18 N.J. Tax 649 (App. Div. 2000), concluded that "the storage of documents and artifacts of a religious nature or related to the operation of the church should be deemed a religious purpose consistent with the exemption granted by the statute."

Because the Court found that the housing of visiting clergy was a use

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of the subject property for religious purposes, and because the use of an otherwise qualified property for the storage of books and personal property used in the operation of the religious organization is consistent with the exemption of property used for religious purposes, the Court affirmed the judgment of the Monmouth County Board of Taxation, citing that the subject property was actually and exclusively used for religious purposes.

Note: N.J.S.A. 54:4-3.6 was amended by P.L. 2001, c.18, to delete the word "exclusively," from the religious property exemption when referring to use.

Property Tax Relief Programs
NJ SAVER Rebate: Untimely Filing – *David Curzie v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005346-2002.

Plaintiff received the 2000 NJ SAVER rebate application but thought it pertained to his income taxes and therefore placed it with his other income tax documentation. After relatives mentioned that he should be receiving his rebate soon, plaintiff became concerned. Plaintiff alleges that he called the Division and was told to file the application regardless of its timeliness. Thereafter, plaintiff filed the 2000 application on January 25, 2002.

The Tax Court affirmed the Division's denial of plaintiff's rebate for failure to timely file after finding that the rebate application was due on or before October 22, 2001. Turning to plaintiff's argument that rather than being denied the entire

rebate he should either be fined or at least entitled to a partial rebate, the Tax Court denied this request explaining that the rebate was all or nothing as there were no relief provisions for untimely filers.

NJ SAVER Rebate: Untimely Filing – *Adam Ress v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005242-2002.

Plaintiff received his 1999 and 2000 NJ SAVER rebate applications but thought they pertained to his income taxes and therefore kept them with other income tax documentation that would later be provided to his tax preparer. The tax preparer of his 2000 income tax return apparently did not consider the application. Plaintiff hired a new tax preparer for his 2001 income tax return who saw the 1999 and 2000 applications and inquired as to whether plaintiff filed for the rebates. Thereafter, plaintiff filed his 1999 and 2000 NJ SAVER rebate applications on January 10, 2002.

Finding that the 2000 rebate application was due on or before October 22, 2001, the Tax Court affirmed the Division's denial of plaintiff's 2000 rebate for failure to file timely. Also, the Tax Court found the 1999 rebate application to be untimely filed as it was due August 31, 2000.

NJ SAVER Rebate: Untimely Filing – *Gail Zeyack v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005345-2002.

Plaintiff filed her 2000 NJ SAVER rebate application on December 26, 2001, which was past the October 22, 2001, deadline. Plaintiff testified that the application was filed

late because she had a very bad year causing her to be depressed and overwhelmed. Plaintiff's father suffered a stroke, lost his speech, and then passed away in January 2000. As the only child, she administered her father's funeral arrangements. Plaintiff had to take care of her mother, who had rheumatoid arthritis and could not be left alone. Plaintiff was not working due to disability and received disability payments from February 11, 2000, to July 28, 2000. Plaintiff lost her job, suffered from and was treated for back pain, took medication for pain and for depression, and was in the process of being divorced. Plaintiff's doctor provided a letter requesting that plaintiff be allowed to file the application late because she was unable to file timely due to a medical condition.

The Court pointed out that the rebate application was due on or before October 22, 2001, and that the information plaintiff provided pertained to the calendar year 2000, not to 2001. Plaintiff then testified that her mother was in and out of the hospital six times in 2001, her mother was given six months to live, and that her mother died in May 2001. As to her divorce proceedings, plaintiff testified that a guardian had to be appointed for her in July 2001. Defendant noted that plaintiff filed her income tax returns timely for tax years 2000 and 2001; however, plaintiff stated that was due to her husband's help because they were filing jointly.

Although the Court sympathized with plaintiff's medical conditions as well as the events occurring in plaintiff's life and accepted that plaintiff had an illness, the Court stressed that plaintiff did not prove

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why she was unable to file the application timely. The Court noted that plaintiff filed her income tax returns timely and took care of her day-to-day business. The Court found that the physician's note was general and insufficient, it did not state the time period she was sick or the extent of her disability, and did not state why she was unable to file the application. Consequently, the Court ruled that plaintiff provided no evidence that showed that she was physically or mentally unable to file the application in a timely manner. Also, the Court referred to the case of *Hovland* where the Tax Court held that plaintiff had good cause to file the 1982 homestead rebate late because plaintiff was diagnosed with spinal cancer in November 1982, hospitalized until early January 1983, bedridden until January 18, 1983, and filed his rebate application within a reasonable time on January 21, 1983, four days after the January 17, 1983, deadline.

Sales and Use Tax

Regular Place of Business — *Lucisano Brothers, Inc. v. Director, Division of Taxation*, decided January 24, 2003; Appellate Division No. A-6466-00T5.

The Appellate Division affirmed the Tax Court's holding for the Division, which principally relied on the reasoning of *Stephen Little Trucking* that was summarized in the *New Jersey State Tax News*, Volume 30, Number 4, Winter 2001, page 19, stating that the statutory analysis was well-founded and the achieved result was substantially correct.

Lucisano is a Pennsylvania building supply company that sold and delivered building materials to New Jersey contractors and subcontractors

without collecting sales tax because it argued that pursuant to N.J.S.A. 54:32B-2(w) it was not a person required to collect sales tax. The Tax Court reasoned that N.J.S.A. 54:32B-2(w) must be read in harmony with the simultaneously adopted provisions contained in N.J.S.A. 54:32B-12(b) that place the obligation to collect tax from the contractor on the vendor unless the contractor obtained a direct pay permit. The Appellate Division also gave deference to the regulations that interpret the statutes to reach the same result. □

In Our Legislature

Sales and Use Tax

Payments of Sales Tax by Vendors — P.L. 2003, c.42 (signed into law on April 14, 2003) permits certain vendors of goods and services to advertise that they will pay New Jersey sales tax for their customers. The legislation requires that the advertisement must indicate that the vendor will pay the tax for the customer and it will not indicate or imply that the sale or charge is exempt from taxation. Any sales slip, invoice, receipt, or statement given to the customer must state that the tax will be paid by the vendor; and the vendor must pay the amount of tax due as trustee for and on account of the State. Vendors must remit the tax due on the retail sales or service receipts to the State in the same manner as tax collected from a customer. This act took effect immediately.

Legislation Not Previously Reported:

Public Utility Taxes

Energy Tax Receipts Property Tax Relief Fund Distribution Date Changed — P.L. 2002, c.3 (signed into law on March 18, 2002) extends

by 15 days (from on or before June 30 to on or before July 15) the time for distribution of a portion of the State aid paid from the Energy Tax Receipts Property Tax Relief Fund to municipalities operating on a calendar year basis for funds distributed after January 1, 2002. This act took effect immediately.

Miscellaneous

Brownfield and Contaminated Site Redevelopment Reimbursement Program — P.L. 2002, c.87 (signed into law on October 22, 2002) amends the Brownfield and Contaminated Site Remediation Act to expand the redevelopment reimbursement program under which the State and a redeveloper may enter into an agreement to reimburse the developer of a brownfield site for up to 75 percent of the costs of remediating the site. Reimbursement payments are made from revenues derived from new State taxes generated from the redevelopment of the site. Chapter 87 broadens the category of redevelopers eligible for participation in the program to include developers of residential property, allowing them to receive reimbursement upon completion of the construction of one or more new residences. It also expands the list of taxes that may be considered in estimating the amount of new State revenue to be derived from the redevelopment project. This act took effect immediately. □

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2003 tax calendar

July

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
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July 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

July 15

- NJ SAVER Rebate**—Application
- CBT-100 Corporation Business Tax**—Annual return for accounting period ending March 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

July 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14 Motor Fuels Tax—Monthly export report

MFT-60 Motor Fuels Tax—Monthly storage facility operator report

SCC-5 Spill Compensation and Control Tax—Monthly return

SCC-6 Spill Compensation and Control Tax—Public storage terminal information return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

July 30

NJ-927 & NJ-927-W Gross Income Tax—Employer's quarterly report

GCC-1 Motor Fuels Tax—Carrier's monthly report

July 31

DSF-100 Domestic Security Fee—Quarterly return

August

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31						

August 11

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

August 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending April 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

August 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used



- GA-1X** **Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10** **Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14** **Motor Fuels Tax**—Monthly export report
- MFT-60** **Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5** **Spill Compensation and Control Tax**—Monthly return
- SCC-6** **Spill Compensation and Control Tax**—Public storage terminal information return
- ST-21** **New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- ST-51** **Sales and Use Tax**—Monthly remittance
- ST-250** **Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350** **Cape May County Tourism Sales Tax**—Monthly return
- ST-451** **Sales and Use Tax—Salem County**—Monthly remittance
- TP-20** **Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50** **Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

August 25

- PPT-41** **Petroleum Products Gross Receipts Tax**—Monthly return

September

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	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

September 2

- GCC-1** **Motor Fuels Tax**—Carrier's monthly report

September 10

- CWIP-1,2** **Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2** **Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1** **Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

September 15

- CBT-100** **Corporation Business Tax**—Annual return for accounting period ending May 31
- CBT-150** **Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500** **Gross Income Tax**—Employer's monthly remittance

September 22

- CR-1 & CNR-1** **Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1** **Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D

Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J

Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X

Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10

Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14

Motor Fuels Tax—Monthly export report

MFT-60

Motor Fuels Tax—Monthly storage facility operator report

SCC-5

Spill Compensation and Control Tax—Monthly return

SCC-6

Spill Compensation and Control Tax—Public storage terminal information return

ST-21

New Jersey/New York Combined State Sales and Use Tax—Monthly remittance

ST-51

Sales and Use Tax—Monthly remittance

ST-250

Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350

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UZ-50

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September 25

PPT-41

Petroleum Products Gross Receipts Tax—Monthly return

September 30

GCC-1

Motor Fuels Tax—Carrier's monthly report

from the director's desk

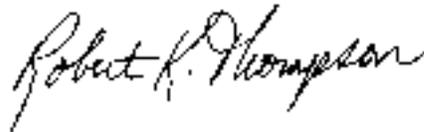
ST-50/ST-51 Filing Going Paperless

The Division of Taxation will be moving to a totally paperless filing and payment system for New Jersey sales and use tax over the next year. Filing Sales and Use Tax Returns (Form ST-50) and Monthly Remittances (Form ST-51) will become faster, easier, and more accurate. We also expect paperless filing and payment to reduce processing errors and costs.

In addition to the Sales and Use Tax Internet Filing we already offer, we will soon be providing a Sales and Use Tax telephone filing service. The transition to paperless filing will take place in phases so that vendors will be able to try our Internet and "telefile" systems before paper returns are eliminated.

In the coming months, the Division of Taxation will be sending information about the new paperless filing requirements to all vendors who are registered to collect and remit New Jersey sales and use tax. If you haven't already used Internet filing, just log on to our Web site at www.state.nj.us/treasury/taxation/online.shtml, fill out a sales and use tax return, hit "Submit" and the return is filed. Payments can also be made online.

And, while you are on our Web site, we invite you to join our e-mail subscription service, *NJ Tax E-News* (www.state.nj.us/treasury/taxation/listservice.shtml), to receive sales and use tax filing news and information via e-mail.



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- List of 2002 Tax Legislation
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Deductibility of Keoghs: Reck v. Director

On December 19, 2002, the Supreme Court of New Jersey rendered its opinion in the matter of *Reck v. Director, Division of Taxation*. It upheld the Division's long-standing position that payments made by partnerships to Keogh plans are not deductible in determining a partner's distributive share of partnership income for gross income tax purposes.

The Supreme Court stated that the judgment was affirmed substantially for the reasons set forth in the Appellate Division's opinion reported at 345 N.J. Super. 443 (2001) which overturned the Tax Court's opinion in *Reck v. Director, Division of Taxation*, 18 N.J. Tax 598 (Tax 2000).

The Appellate Division in its opinion stated that only payments made by a partnership that qualify under section 401(k) of the Internal Revenue Code are deductible in determining a partner's distributive share of partnership income. Keogh plans are not within the meaning of N.J.S.A. 54A:6-21, contributions to certain employee trusts, which provides that "Gross income shall not include amounts contributed by an employer on behalf of and at the election of an employee to a trust which is part of a qualified cash or deferred arrangement which meets the requirements of section 401(k) of the 1954 Internal Revenue Code, as amended."

To view the Supreme Court opinion, visit <http://lawlibrary.rutgers.edu/courts/supreme/a-93-01.opn.html>. To view the Appellate Division opinion visit <http://lawlibrary.rutgers.edu/courts/appellate/a5379-99.opn.html> □

Litter Control Fee

The Clean Communities and Recycling Grant Act was recently signed into law in New Jersey as P.L. 2002, c.128. This Act imposes a litter control fee on manufacturers, wholesalers, distributors, and retailers on their sales of litter-generating products within or into New Jersey. The litter control fee is essentially identical to the litter control tax which was imposed in New Jersey from

continued on page 2



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Speaker Programs 609-984-4101
NJ TaxFax 609-826-4500
Alcoholic Bev. Tax 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576

litter control fee - from page 1

1986 through 2000 under N.J.S.A. 13:1E-99.1. The litter control tax terminated on December 31, 2000. There was no tax or fee on the gross receipts from sales of litter-generating products for the 2001 calendar year. The litter control fee is similar to the expired litter control tax and is imposed annually on the previous calendar year's gross receipts from sales of litter-generating products. It is due and payable on March 15th of each year. The fee rates and litter-generating product categories remain the same. Revenues from the litter control fee furnish support to the Clean Communities Program for litter pickup and removal, and provide recycling grants to New Jersey counties and municipalities.

Unlike the prior litter control tax, the new litter control fee exempts:

1. All retailers with less than \$500,000 in annual retail sales of litter-generating products (the prior tax had a \$250,000 retail sales exclusion);
2. Restaurants if more than 50% of their food and beverage sales are for on-premises consumption (but continues to include restaurants with 50% or more of sales of food and beverages for off-premises consumption); and
3. Paper product sales of roll stock produced by paper product manufacturers and wood pulp.

The new litter control fee applies retroactively to the year beginning January 1, 2002. Thus, the 2002 return will include the gross receipts from all sales of litter-generating products back to that date. The return and fee payment were due on or before March 15, 2003. Litter

control fee returns and instructions were sent to all businesses that were eligible for the litter control tax.

Inquiries regarding the litter control fee should be directed to the Regulatory Services Branch at 609-292-5994, by e-mail at taxation@tax.state.nj.us, or in writing at New Jersey Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, NJ 08695-0269. □

Estate Tax Filing Requirements

The Division has received numerous inquiries regarding waiver and filing requirements under the estate tax legislation passed in July 2002 (P.L. 2002, c.31).

The revised statute applies to estates of resident decedents dying on or after January 1, 2002, and provides that the tax shall remain a lien on all property of the decedent until paid. No property owned by the decedent on his date of death may be transferred without the written consent of the Director.

Excluded from the waiver requirement are items such as bank accounts in institutions not conducting business in New Jersey, stocks of foreign or alien corporations, real property not located in New Jersey, non-New Jersey bonds, cars and personal effects, wages, and mortgages. The new estate tax lien and waiver requirements are similar to the existing lien and waiver requirements under the New Jersey inheritance tax statutes.

If an estate is not subject to New Jersey estate tax and meets the lien and waiver requirements under New

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taxation@tax.state.nj.us

The *State Tax News* is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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<i>Criminal Investigation</i>	Rosemary Tuthill
<i>Property Admin.</i>	Richard Stier
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estate tax filing - from page 2

Jersey inheritance tax, the estate may use Form L-8 (Self-Executing Waiver) and/or Form L-9 (Request for Real Property Tax Waiver) to release the decedent's assets.

A New Jersey estate tax return must be filed where the decedent's taxable estate plus adjusted taxable gifts for Federal estate tax purposes under the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000 (Line 5 of the 2001 Federal estate tax return).

Further information is available on the Division's Web site at www.state.nj.us/treasury/taxation/estate.shtml and www.state.nj.us/treasury/taxation/estatetax.shtml □

SPILL TAX

New Hazardous Substances List

The following notice was sent to all spill compensation and control tax registrants:

The New Jersey Department of Environmental Protection recently adopted a new List of Hazardous Substances under the Spill Compensation and Control Act which must be used for spill compensation and control tax purposes.

The new List of Hazardous Substances is in two versions — sorted alphabetically by substance name and also sorted by CAS number. The List of Hazardous Substances also includes all petroleum and petroleum products as per N.J.A.C. 7:1E-

1.7. Any flammable substance or inert gas on the List of Hazardous Substances which is designated by an asterisk immediately after the substance is not considered a hazardous substance subject to tax. This List of Hazardous Substances must be used for all taxable transfers and for all major facility determinations immediately. All prior Lists of Hazardous Substances should be discarded.

Hazardous substance clarifications should be directed to:

BUREAU OF DISCHARGE PREVENTION
DEPT OF ENVIRONMENTAL PROTECTION
4 STATION PLAZA 3RD FLOOR
22 SOUTH CLINTON AVE
TRENTON, NJ 08625
Phone: 609-633-0610

Spill tax inquiries or requests for copies of the new List of Hazardous Substances may be directed to:

NEW JERSEY DIVISION OF TAXATION
REGULATORY SERVICES BRANCH
PO Box 269
TRENTON, NJ 08695-0269
Phone: 609-292-5994

The List of Hazardous Substances is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/faqs.shtml □

Sidney Glaser, Director

Sidney Glaser, former Director of the Division of Taxation, died on February 8, 2003, at the age of 91. Mr. Glaser, who headed the Division at the time the State income tax was enacted, began his career with the Division of Taxation in 1946 as a legal analyst. He was named Acting Director in 1969 and served as Director from 1971 until he retired in 1983.



Current Taxation Director Robert K. Thompson remembered Sidney Glaser as "the yardstick by which each of us that occupies the Director's chair measures our careers."

His extensive knowledge of taxation issues was key to his success. "He was a walking encyclopedia of State taxes," said former State Treasurer James DiEleuterio.

Mr. Glaser was also known for his honesty. "I remember a time in the early '70s when he and Martha had just come home from vacationing (I think China)," recalled Director Thompson. "First day back to work he asked for an ST-18. Hardly any of us knew what an ST-18 was, but half the building was looking for a copy of this form. We finally got one to our Director who simply wanted to report and pay the use tax on items they purchased outside the country and brought back to New Jersey. Probably the first ST-18 we ever processed."

Mr. Glaser earned his bachelor's degree at City College of New York, and a law degree from New York University Law School in 1936. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Seventeen persons passed the September 28, 2002, C.T.A. exam. They are:

continued on page 4



assessor certificates - from pg. 3

Bergen County: Claire Psota, Franklin Lakes Borough.

Cape May County: Michael P. Brady, Middle Township.

Essex County: John W. Kelly, Belleville Township.

Hunterdon County: Anne L. Bircsak, Bethlehem Township.

Mercer County: Vincent J. Pratico, Trenton City; Deborah M. Rishko, Hamilton Township.

Middlesex County: Margaret J. Ackerman, South Plainfield Borough.

Monmouth County: Scott R. Imbriaco, Neptune Township; Robyn A. Palughi, Wall Township.

Morris County: Jeanne M. Brown, Kinnelon Borough.

Passaic County: Thomas A. Poalillo, Wayne Township.

Somerset County: Kristen N. Peel, Franklin Township.

Sussex County: Kathleen Kieb, Frankford Township; Lynne A. Schweighardt, Vernon Township.

Union County: Jason H. Cohen, Springfield Township.

Warren County: Melissa D. Pritchett, Phillipsburg Town.

Commonwealth of Pennsylvania: Melissa Ann Rockwell, Dingmans Ferry, Pike County.

The next examination is scheduled for September 20, 2003. The deadline to file applications for this exam is August 21, 2003. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court, as appropriate.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

- County budgets certified to County Tax Boards.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Board.

May 1-

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23-

- Tables of Aggregates signed and transmitted within three days by County Tax Boards to Directors of Taxation and Local Government Services, State Auditor, municipal clerks, and the clerk of board of freeholders.

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Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003 will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%



assessors' calendar - from page 4

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description, and valuation of railroad property not used for railroad purposes to Director, Division of Taxation.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On September 27, 2002, Brenda Grungo was sentenced to four years in State prison for violation of a term of five years' probation which was imposed on May 17, 2000, pursuant to her guilty plea regarding a scheme to evade the payment of \$158,000 in petroleum products gross receipts tax in the case known as "Operation Boilermaker," a joint investigation between the Office of Criminal Investigation (OCI) and the Division of Criminal Justice.
- On October 11, 2002, an officer of a wholesale motor fuel distributor was sentenced to three years' probation pursuant to a guilty plea on April 15, 2002, to

one (1) count of failure to turn over \$168,402.44 petroleum products gross receipts tax collected. This was a joint investigation between OCI and the New Jersey State Police-Organized Crime Unit, with substantial assistance from the Audit Services Branch-Excise Tax Group, and was prosecuted by the State Attorney General's Office.

- On November 4, 2002, Stephen George Lang of Pennsville plead guilty to two (2) felony counts, including one (1) count of attempting to evade State of Delaware personal income taxes and one (1) count of filing false statements with the Delaware Division of Revenue. He was sentenced to two years' probation and ordered to make full restitution. Mr. Lang, a New Jersey resident who formerly worked at Dupont in Wilmington, Delaware, had a long history of protesting against the constitutional authority of New Jersey and Delaware tax laws. This investigation involved the States of New Jersey and Delaware working together to develop a prosecution strategy to reduce duplication of effort while accomplishing a mutually beneficial result.

continued on page 6

**Enforcement Summary Statistics
Fourth Quarter 2002**

Following is a summary of enforcement actions for the quarter ending December 31, 2002.

• Certificates of Debt:		• Jeopardy Seizures	5
Total Number	2,607	• Seizures	47
Total Amount	\$32,681,648.26	• Auctions	5
• Jeopardy Assessments	380	• Referrals to the Attorney General's Office	507

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/

criminal enforcement - from pg. 5

- On November 6, 2002, in Superior Court, Bergen County, Daniel Provenzano of Upper Saddle River, New Jersey, plead guilty to one (1) count of racketeering and one (1) count of failing to file a gross income tax return for tax year 1996, with intent to evade \$47,306.58 tax on income of \$827,000. Mr. Provenzano was charged with operating a now-defunct printing business as a racketeering enterprise in Fort Lee, New Jersey, using violence and criminal means to extort payments from the customers and suppliers of the business. This case was a joint investigation by OCI and the New Jersey Division of Criminal Justice-Organized Crime and Racketeering Bureau, and was prosecuted by the State Attorney General's Office.
- On November 20, 2002, confirmation was received that in Superior Court, Morris County, Truyen T. Vo of East Hanover, New Jersey, had been sentenced to two years' probation, concurrent, on each of four (4) counts of failing to pay over taxes, to which Mr. Vo had previously entered a guilty plea. Mr. Vo was also ordered to pay to the Division of Taxation restitution of tax in the amount of \$26,048.00, to wit, gross income tax due on unreported, illegal income derived from promoting gambling in 1995 through 1998. This case was a joint investigation by OCI and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Attorney General's Office.
- On November 22, 2002, Dr. Samuel Evenstein of Edison en-

tered a guilty plea to a three-count accusation of failure to pay New Jersey gross income tax. The accusations arose from the failure of Dr. Evenstein to report \$845,595 of taxable income for the years 1997, 1998, and 1999, and his failure to pay \$50,645 in New Jersey gross income tax on said income. Dr. Evenstein will make full restitution of the tax, penalties, and interest at his sentencing scheduled for early 2003. This case was a joint investigation with the Division of Criminal Justice, Insurance Fraud Unit.

- On November 22, 2002, Ppassim M. Elder of Staten Island, New York, was arrested by OCI for possession of 460 cartons of unstamped cigarettes. The ciga-

rettes were purchased from Native American cigarette suppliers located on reservation lands in upstate New York. Further, the subject was found to be on probation in New York State. The Rahway Municipal Judge set bail at \$100,000 cash/bond.

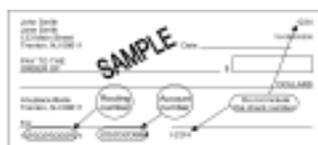
- On December 11, 2002, OCI arrested a male subject from New York City for transporting 2,520 cartons of contraband cigarettes valued at \$130,000. This subject was found to be a member of an organized trafficking group. Charges have been filed for violation of the Cigarette Tax Act.
- On December 23, 2002, in Superior Court, Mercer County, Mark

continued on page 7

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- **Sales and Use Tax**
- **Gross Income Tax Withholding and UI/DI Contributions**
- **Domestic Security Fee**
- **Deficiency payments**

* Fee of 2.5% of tax payment applies.



criminal enforcement - from page 6

L. Stahl of Point Pleasant, New Jersey, plead guilty to two (2) counts of misapplication of entrusted property, to wit, \$110,833.24 in State motor fuels tax which had been collected and not remitted on the sale of diesel fuel at truck stops which Mr. Stahl had operated in Knowlton Township and Englewood, New Jersey. The case was investigated by OCI and prosecuted by the State Attorney General's Office.

- One hundred nineteen (119) complaints alleging tax evasion were evaluated from October through December 2002 in the Office of Criminal Investigation.
- During the same time period, sixty-three (63) charges were filed in court on twenty (20) cases for violation of the Cigarette Tax Act. All twenty (20) court cases involved contraband cigarettes. Further, twenty-two (22) arrests were made and one (1) vehicle was seized. □

Tax Briefs

Corporation Business Tax

New Jersey Economic Development Authority Grants — The Division responded to a question regarding the taxability of Business Employment Incentive Program (BEIP) grants made under N.J.S.A. 34:1B-124 et seq. The grant is calculated pursuant to N.J.S.A. 34:1B-129.

First, if a BEIP grant is made to a C corporation, the grant is deemed a contribution to capital under provisions of IRC 118 and 362(c) which taken together are tantamount to a tax deferral. Under IRC 362(c) a cor-

poration must reduce the basis of property acquired as a contribution to capital to zero. If a BEIP grant is paid in cash, the basis of the property acquired with such money during the 12-month period beginning on the day the cash is received shall be reduced by the amount of such grant. The governmental grant is intended to produce indirect benefits to the general population.

Second, if the grant is received by a conduit-type entity like a partnership or subchapter S corporation, the grant is to be "apportioned among the persons to whom the income or profit of the partnership, subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed." The BEIP grant is considered to be a "prize and award" and, as such, is taxable under the Gross Income Tax Act. N.J.S.A. 54A:5-11.

Domestic Security Fee

Leases — The new Domestic Security Fee legislation provides for the imposition of a \$2-per-day fee on motor vehicle rental companies. The fee is applicable to motor vehicles rented without a driver under rental agreements for a period up to and including 28 days. The rental fee is due from the rental company whether the renter or any third party pays for the rental or reimburses the rental company for the fee.

For purposes of this legislation, "lease agreement" means any agreement for a stated term of more than 28 days (usually six months or longer) that requires the party leasing from a rental company to pay for State motor vehicle registration, maintain the vehicle for ordinary wear and tear at his own expense, and purchase liability and casualty

insurance for the vehicle.

If a company is simply leasing motor vehicles and the lease agreements entered into contain a stated term of more than 28 days, the company would not be responsible for the domestic security fee.

Property Tax Relief Programs

NJ SAVER Rebate for Trust Beneficiary —

The NJ SAVER rebate is designed to afford tax relief to owners of real property who occupy that property as their principal residence and pay real estate taxes on that property. In order to be eligible for the rebate for tax year 2002, the applicant must have owned and occupied the home as his/her principal residence as of 12:01 a.m., October 1, 2002, and have paid property taxes on the property for that year.

In the case of a trust that owns a home, however, a beneficiary of the trust having the right to and residing in the home on October 1, 2002, as of 12:01 a.m., is eligible for the rebate. To apply for the rebate, the trustee or beneficiary must file a paper application and attach a legal document (such as the deceased's will, deed, and/or trust agreement) that established the beneficiary's right to occupy the home. In no case does a trust itself qualify for the rebate.

Sales and Use Tax

Videotaped Depositions —

Videographers who produce videotapes for legal uses must charge sales tax on the videotapes produced. The Division takes the position that since the main object of the transaction is the videotape, then the transaction must be taxable as the sale of tangible personal property under N.J.S.A. 54:32B-3.

continued on page 8

tax briefs - from page 7

For sales tax purposes, a law firm is not treated as the reseller of certain goods and services, although the law firm does often charge its clients for goods and services that would be taxable if purchased at retail. A law firm is not required to collect sales tax on items that the law firm charges its clients for in conjunction with the professional legal services. The law firm is treated as the retail purchaser of such services as copying or faxing, and must pay sales tax on those services rather than collect tax from their clients. This same analysis is used in purchasing a videotaped deposition or "Day in the Life" videotape.

A videotape production company may use a Resale Certificate (Form ST-3) when purchasing blank tapes, but must collect sales tax on the sale of the videotape regardless of how billed. Separately stated charges for a video playback service at hearings, depositions, trials, etc. are not subject to sales tax.

Executive Search Firm and Related Services — The following was in reply to a question regarding the sales tax treatment of executive search firm services under the New Jersey Sales and Use Tax Act. It was stated that executive search firms perform three categories of services. Executive search fees are charged to place a candidate in a new employment position. Additionally, testing and assessment fees are charged for the testing of candidates to see if they are suitable for a particular position, or to determine an individual's strengths and weaknesses. Moreover, these types of firms charge fees for other consulting services.

Under the New Jersey Sales and Use Tax Act, services are exempt from sales tax unless they are specifically enumerated and taxed by the Act itself. Executive search fees, testing and assessment fees, and other consulting fees are not specifically enumerated under the provisions of the New Jersey Sales and Use Tax Act. Therefore, executive search fees, testing and assessment fees, and other consulting fees are exempt from sales tax.

Beds and Pillows for Medical Purposes — Although frequently used for therapeutic or rehabilitative purposes, beds and pillows specifically designed to provide back and neck support are also commonly used to enhance the comfort of people who do not have any illness or injury. Therefore, such items do not qualify for exemption as durable medical equipment under N.J.S.A. 54:32B-8.1.

However, in some cases, such equipment might qualify for exemption if specifically designed for a medical purpose and not generally useful to a person who does not have an illness, injury, or disability. Even if the beds and pillows are customarily and primarily used to serve a medical purpose, the exemption does not apply when such items are sold to medical service providers who use them to provide services for their patients. For example, if a doctor, physical therapist, nursing home, or hospital purchases the specifically designed beds and pillows and they are used by the patients within medical facilities and not transferred to the patient for home use, there is no exemption. On the other hand, if the items are sold to the patients for home use, the exemption applies.

Storage of Biological Components

— The Division received an inquiry concerning the service of stem cell preservation which includes a charge for storing the cells for an indefinite period. The New Jersey Sales and Use Tax Act imposes tax on the storage of tangible personal property. N.J.S.A. 54:32B-3(b)(3).

Due to the nature of the property, the Division has determined that human stem cells, as well as other human body parts, are not considered to be "tangible personal property" for purposes of the New Jersey Sales and Use Tax Act. Thus, the storage of stem cells and similar human biological components is not subject to tax.

Tennis Clothing — The New Jersey Sales and Use Tax Act provides an exemption for clothing and footwear for human use, except fur garments.

The relevant regulation clarifies that clothing and footwear worn in connection with sporting activities that are *not* adaptable to regular daily use are subject to tax. N.J.A.C. 18:24-6.4. For example, fishing waders, golf shoes, protective masks, skin diving suits, and ski boots would not be appropriate everyday attire and are therefore subject to tax. See *Ski Haus, Inc. v. Taxation Division Director*, 5 N.J. Tax 26 (1982). However, articles of clothing which may be worn for general use are entitled to the clothing exemption. Since a tennis outfit would be adaptable to general use, it is exempt from sales tax as clothing.

Noncarbonated Beverage Fruit Drinks — Prepared food and beverages sold for immediate consumption by drive-through restaurants,

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food service and hot dog carts, and other mobile service facilities are subject to New Jersey sales tax. Mobile vending operators engaged in the sale of food and drink for consumption either on or off the premises are required to collect sales tax. N.J.A.C. 18:24-12.3(b). Therefore, prepared noncarbonated fruit drinks, such as “smoothies,” sold for immediate consumption by a mobile concession are subject to New Jersey sales tax.

Trash Removal/Shredding Service

— The Division received an inquiry from a trash removal and shredding service. The trash removal/shredding service is performed on a regular contractual basis for a term of 30 days or more. The operation consists of picking up, physically removing contained waste from the premises, shredding, and disposing of waste.

Trash removal services “performed on a regular contractual basis for a term not less than 30 days” are not subject to sales tax. N.J.S.A. 54:32B-3(b)(4). Removal “includes only the operation of picking up and physically removing contained waste from the premises, and does not include activities related to maintaining or servicing property or any processing of the waste product.” N.J.A.C. 18:24-13.2(b). Shredding is considered the processing of tangible personal property and is not considered

part of the trash removal service. A shredding service is subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(1).

In this case, the charges for the trash removal service are not subject to sales tax as long as separately stated on the invoice. However, if the charges for trash removal and shredding are not separately identified, then sales tax must be charged on the entire bill. □

In Our Courts

Administration

Time Period to Protest, Request a Revision, or File Refund Claim – *Dennis Boggi Enterprises, Inc. v. Director, Division of Taxation*, decided January 3, 2003; Tax Court No. 003859-2002.

After conducting an audit, the Division issued its notice of assessment related to final audit determination on January 22, 2001, for the sales and use tax period beginning January 1993 and ending December 1999. Although plaintiff claimed that its accountant filed a protest on January 31, 2001, the Division had no record of this protest being received and plaintiff’s accountant’s mailing records indicated that the notice was mailed on February 6, 2001. The Division acknowledged that it received a protest letter dated May 17, 2001, that stated that the

accountant intended to protest the assessment and inquired as to why a hearing date was not yet set. On September 3, 2001, plaintiff executed an installment payment agreement that was later terminated because plaintiff did not comply with it. On November 26, 2001, plaintiff filed a claim for revision of the audit assessment that was denied on April 29, 2002, because the paperwork did not represent a claim for refund. Plaintiff appealed that denial claiming that there are three methods to protest an assessment: (1) appeal it; (2) pay the tax and file a refund claim; and (3) request a revision of the assessment.

Pursuant to the statutes, a taxpayer is permitted to either apply to the Division for a hearing or appeal to Tax Court within 90 days after the date of the determination notice to challenge the assessment. The Court found that although plaintiff’s accountant’s mailing records indicated that the protest was mailed on February 6, 2001, there was no reliable, corroborated evidence of this fact. On the other hand, the Division submitted an affidavit that no protest was received within the statutory period. Therefore, the Court ruled that the May 17, 2001, letter was the initial protest and that this date was beyond the statutory time to request a hearing.

Plaintiff’s claim that it is entitled to a refund or revision is governed by N.J.S.A. 54:32B-20(b), which states that a person is not entitled to a revision, refund, or credit where either the person had the opportunity for a hearing or had a hearing unless the person meets the requirements of N.J.S.A. 54:49-14 as follows: (1) the assessment was neither protested nor appealed; (2) the assessment was

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paid in full within one year of the expiration of the period to protest; (3) the refund claim is filed within 450 days of the expiration of the period to protest; and (4) the amount of the refund claim does not exceed the assessment paid. The Court found that because plaintiff never paid the tax assessment it would not be entitled to file for a refund claim. The Court ruled that a claim for revision is effectively either a claim for refund or an untimely protest of the audit assessment and that plaintiff is not entitled to an additional opportunity to appeal where plaintiff has not paid the tax and previously had an opportunity to appeal the audit assessment. It was also noted by the Court that N.J.S.A. 54:49-14 applies only to returns filed on or after January 1, 1999.

Calculation of 90-Day Time Period to File Complaint – *Somnuk Suecharon t/a Sammy's Bagel & Deli v. Director, Division of Taxation*, decided November 4, 2002; Tax Court No. 002857-2001.

On February 15, 2002, the Division issued by certified mail its Final Determination to plaintiff which stated that plaintiff had 90 days from the date of the Final Determination to appeal to the Tax Court in accordance with N.J.S.A. 54:51A-13 et seq. Plaintiff alleges that the Division informed its accountant, pursuant to the accountant's telephone call, that plaintiff must file on or before May 17, 2002. Plaintiff forwarded its complaint on May 16, 2002, and it was filed with the Tax Court on its May 17, 2002, received date, 91 days after the date of the Final Determination. The Division moved to dismiss the complaint as being untimely filed.

The Court found that there was no merit in plaintiff's argument that the Division was estopped from disputing the timeliness of the appeal because a representative of the Division allegedly advised plaintiff's accountant that the filing deadline was May 17, 2002. Furthermore, the Court stated that plaintiff is charged with knowledge of the law.

The Court ruled that the calculation of the 90-day period is pursuant to the *rules of court*. One of the *rules of court* permits three days to be added to the period to file the complaint when service of the notice is made by ordinary mail. Finding that there were good reasons to apply the same rule to notices sent by certified mail in order to secure a just determination, the Court held that the complaint was timely filed. The Tax Court acknowledged that its determination in this case is inconsistent with another Tax Court case, *Heico*, where the Court determined that the *rules of court* did not apply to this issue. (See *New Jersey State Tax News*, Volume 31, Numbers 2/3, Summer/Fall 2002, page 27.)

The Director, Division of Taxation, has filed an interlocutory appeal with the Superior Court, Appellate Division.

Corporation Business Tax Receipts Earned in New Jersey – *Mayer & Schweitzer v. Director, Division of Taxation*, decided September 18, 2002; Tax Court No. 001800-2000.

Plaintiff is a New Jersey corporation that purchased securities with its capital for its own inventory that is held in a trust account with a trust company in New York. Plaintiff is engaged in the business of selling those securities for profit and did not

charge commission on the sales. The plaintiff operated offices in New Jersey, Florida, Illinois, and Colorado. The New Jersey offices housed traders, sales, administration, operations, systems, and compliance personnel. The Florida and Illinois offices contained traders, sales, and service personnel, and the Colorado office operated with sales and service personnel. The traders were not limited in geographic scope and therefore dealt with customers in the 22 states where plaintiff was registered or licensed and other states where license or registration was not required. However, the majority of the securities were purchased and sold from the New Jersey office. Most customer orders were electronically executed and processed through the New Jersey office where the data processing system was located. After a sale was consummated, the trust company electronically transferred the stock from plaintiff's account into the customers' accounts throughout the United States, but physical transfer of the securities was rare. Title passed to the purchaser in the state in which the purchaser was located. Plaintiff's customers were mainly other broker dealers and institutional customers who needed the securities to perform transactions for their own customers.

The New Jersey Corporation Business Tax (CBT) allowed multi-state businesses to apportion income among states in which they conduct business in determining the amount of tax owed to New Jersey. On its 1992-1995 CBT returns, plaintiff calculated its New Jersey receipts, for purposes of the numerator of the N.J.S.A. 54:10A-6(B) receipts fraction, by including the trading profits from trades performed by its New

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2002 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	3/18/02	Establishes a 60-day tax amnesty period for outstanding tax liabilities due between January 1, 1996, and December 31, 2001.	ALL	SCS for S-16, S-404
31	7/1/02	Changes the computation of the estate tax for resident decedents who died after December 31, 2001, and also makes the property of New Jersey estates subject to State tax liens.	TIT/ET	ACS for A-2302
33	7/1/02	Increases the cigarette tax rate to \$0.075 per cigarette or \$1.50 per pack.	CIG	A-2504(1R)
34	7/1/02	Establishes, increases, and modifies fees and penalties that are imposed by and on behalf of the State.	MIS	ACS for A-2506(1R)
35	7/1/02	Reduces the amount of time that private financial organizations and businesses may hold property before transferring it to the State as unclaimed or abandoned property.	MIS	A-2507(1R)
40	7/2/02	Changes the system of taxation for corporations and other business entities.	CBT GIT	A-2501(1R)
43	7/22/02	Establishes the "Municipal Rehabilitation and Economic Recovery Act," which attempts to rehabilitate and restore the economic vitality of Camden.	MIS	SCS for S-428(1R)
45	7/30/02	Amends the Sales and Use Tax Act to comply with the Federal "Mobile Telecommunications Sourcing Act."	S&U	A-2513
51	8/3/02	Requires counties with a population of more than 510,000 to have county tax boards of five members, no more than three of whom belong to the same political party.	LPT	S-1103(2R)
65	8/14/02	Makes changes to the Casino Control Act and the Casino Reinvestment Act.	MIS	S-1656(1R)
68	8/14/02	Modifies the population criteria for designation as a joint urban enterprise zone.	MIS	A-2187
72	8/14/02	Authorizes new tourism development district levies, including a 1.85% assessment on hotel room rentals; revises permitted uses for current tourism levies; and allows broader tourism marketing efforts.	CMC	ACS for A-2312

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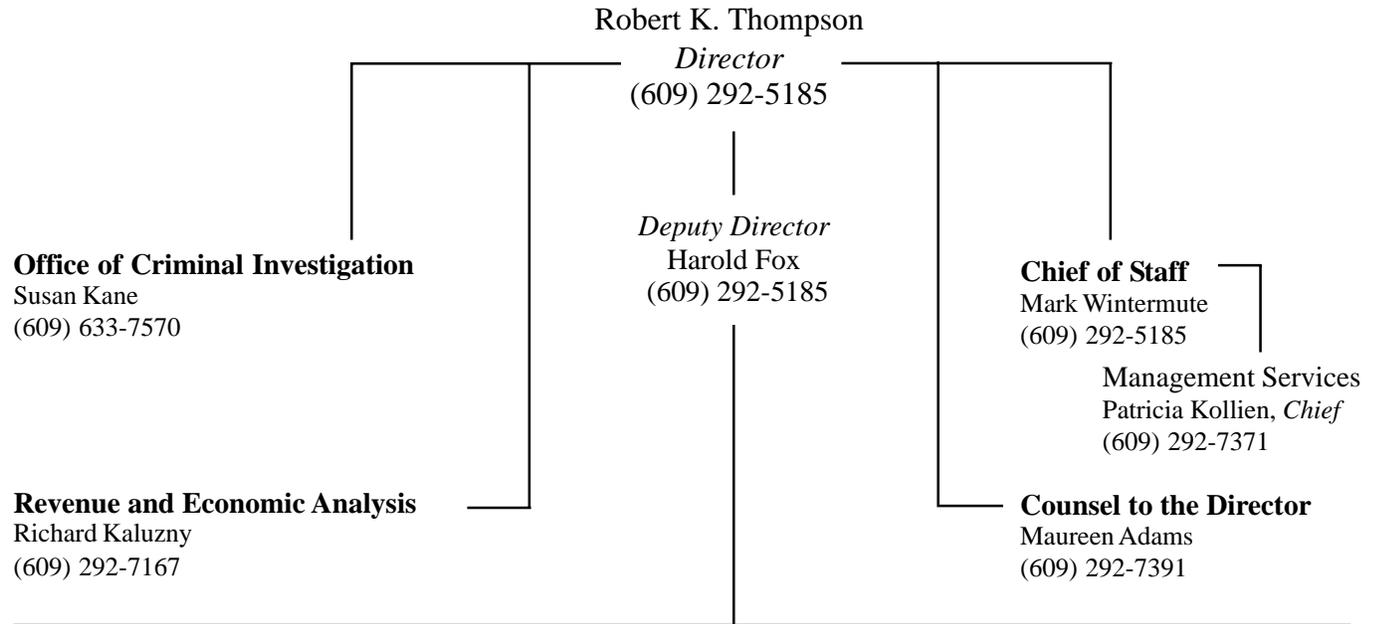
108	12/4/02	Amends the "Municipal Rehabilitation and Economic Recovery Act" (P.L. 2002, c.43).	MIS	S-1878
128	12/20/02	Revises the Clean Communities Program and imposes a litter control fee on sales of litter-generating products.	LIT	ACS for A-2069 & A-2110

*Legend for 2002 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PUT = Public Utility Taxes
CIG = Cigarette Tax	SCC = Spill Compensation & Control Tax
CMC = Cape May County Tourism Sales Tax	S&U = Sales and Use Tax
FBT = Financial Business Tax	TPT = Tobacco Products Tax
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	PPT = Petroleum Products Gross Receipts Tax
LIT = Litter Control Fee	



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Jersey employees. Plaintiff filed amended returns that included only sales to customers located within New Jersey in the New Jersey receipts calculation and therefore resulted in refunds due plaintiff. The Division denied the refunds by not accepting the basis for amending the returns.

In deciding whether the receipts were attributable to New Jersey, the Court looked to N.J.A.C. 18:7-8.12, which essentially stated that intangible income is included in New Jersey receipts where the taxable situs of the intangible asset is in New Jersey. The taxable situs of an intangible is defined as the commercial domicile of the owner unless the intangible has been integrated with business carried on in another state. The Court noted that the Legislature had not defined the term "integrated with" so that its parameters needed to be determined on a case-by-case basis.

The Court held that plaintiff's sales are allocated to the state of the customer's location. The Court determined that plaintiff was carrying out its business throughout the United States and that its business involved the exploitation of out-of-State markets. Therefore, the security sales were ruled to be "integrated with" business carried on in other states. The Court reasoned that its decision is consistent with the statute and regulation, principles of fairly apportioning income to states in which the corporation does business, as well as prescribed by the current N.J.S.A. 54:10A-6(B) as it was amended in 2002.

Timeliness of Refund Claim – *Lenox, Incorporated v. Director, Division of Taxation*, decided

April 20, 2001; Tax Court Nos. 007049-98 and 007050-98.

Plaintiff filed timely Federal income tax returns and New Jersey Corporation Business Tax (CBT) returns for fiscal years ending (FYE) April 30, 1985, 1986, and 1987.

On January 17, 1989, plaintiff filed amended Federal returns (Form 1120X) with the Internal Revenue Service (IRS) to claim abandonment losses for FYE April 30, 1985 and 1986. On March 1, 1989, plaintiff forwarded copies of these 1120X forms to the Division. The Division completed their audit on July 21, 1989, and allowed the full amount of abandonment losses. The IRS completed its audit of the FYE April 30, 1984, and 1985 returns in July 1990 and issued a revenue agent's report (RAR) on July 27, 1990. The IRS recommended the full amount of the claimed FYE April 30, 1985, abandonment loss and further stated that plaintiff was also entitled to an additional loss due to adjustments from the reallocation of basis. Plaintiff consented to the RAR. By letter dated October 26, 1990, the IRS advised plaintiff that it accepted the FYE April 30, 1984, and 1985 returns with the July 27, 1990, RAR adjustments. Plaintiff claimed that it received this letter on October 31, 1990.

On July 30, 1990, plaintiff filed a second 1120X form for FYE April 30, 1986, and initial forms for FYE April 30, 1987, and 1988 with the IRS. These amended returns incorporated the adjustments from the July 27, 1990, RAR because they flowed through to these following years. The IRS revenue agent accepted these adjustments with some changes and the IRS accepted this report on November 19, 1992.

On January 23, 1991, plaintiff sent the Division certified mail that contained the CBT Form IRA-100, which reports IRS changes to Federal taxable income, for FYE April 30, 1984 and 1985, worksheets reflecting the calculation of "corrected taxable income" for FYE April 30, 1986 and 1987, and amended CBT returns for FYE April 30, 1988 and 1989. The Division received the certified mail on January 25, 1991.

In 1992, the Division refunded to plaintiff amounts attributable to FYE April 30, 1985, 1986, and 1987. In 1996, the Division issued plaintiff a Notice of Erroneous Refund requesting that the refund be returned due to the untimely filing of the refund claims and reports of changes made by the IRS.

In determining whether CBT refund claims were timely filed for periods prior to July 1, 1993, the applicable statute and regulations differentiated between refund claims and refund claims pursuant to IRS changes. In general, N.J.S.A. 54:49-14 restricted refund claims to a two-year statute of limitation period commencing from the date of payment of the original or additional assessed tax. An exception to the general rule involved a refund due to IRS changes. In this situation, N.J.A.C. 18:7-13.8(d) stated that the refund claim's two-year limitation period commenced on the date the IRA-100 was timely filed with the Division. In order for the IRA-100 to be timely filed, N.J.S.A. 54:10A-13 required that the IRA-100 be received by the Division within ninety days after the IRS final determination of change or correction.

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The Court determined that plaintiff's claimed abandonment losses for FYE April 30, 1985 and 1986, were not IRS changes to the extent the losses were allowed in connection with an audit by the Division. As plaintiff forwarded copies of the 1120X forms to the Division on March 1, 1989, these refund claims were held to be subject to and barred by the N.J.S.A. 54:49-14 two-year statute of limitation period to file a refund claim.

The Court decided that the revenue agent's finding of the additional loss for FYE April 30, 1985, due to reallocation of basis was an IRS change. Turning to the claimed losses for the FYE April 30, 1986 and 1987, the Court found that these losses were the flow-through effects of the July 27, 1990, RAR relating to the FYE April 30, 1985, amended return. Therefore, the Court determined that the FYE April 30, 1986 and 1987, losses were IRS changes because the July 27, 1990, RAR did not directly change the tax liability for those years.

Both plaintiff and defendant agreed that the IRS final determination, for purposes of N.J.S.A. 54:10A-13, referred to the IRS October 26, 1990, letter. However, the parties disagreed as to when the 90-day period commenced for purposes of filing the IRA-100. The Court ruled that the date of the IRS final determination letter commenced the 90-day period reasoning that if date of taxpayer receipt controlled then evidence of receipt would be solely based upon the plaintiff's testimony. The Court noted that the IRS was not required to send the final determination by certified or registered mail. Finding that the IRS final determi-

nation was dated October 26, 1990, the Court calculated the 90th day as January 24, 1991. Although plaintiff mailed the IRA-100 on January 23, 1991, the Division did not receive the IRA-100 until January 25, 1991. Consequently, the Court held that the IRA-100 was filed one day late and therefore plaintiff was not able to file a refund claim pursuant to N.J.A.C. 18:7-13.8(d). In refusing to exercise equitable powers, the Court noted, among other things, that plaintiff could have delivered the IRA-100 by hand or overnight service and thereby timely filed the form. As to upholding the regulation's condition that the timely filing of the IRA-100 was required to extend the statute of limitation period, the Court noted that this issue had previously been decided in *Sharps, Pixley, Inc.* and that the regulation had not since been changed by the Legislature.

Gross Income Tax

Keogh Plan Contributions – *John and Barbara Reck v. Director, Division of Taxation*, decided December 19, 2002; Supreme Court of New Jersey No. A-93 September Term 2001.

Plaintiff husband is a partner in an accounting firm. Contributions on each partner's behalf were made by the partnership to a qualified Internal Revenue Code (IRC) 401(a) Keogh plan. In calculating his distributive share of partnership income for the 1992 and 1993 tax years, plaintiff deducted those contributions. The Division of Taxation denied those deductions on the basis that only 401(k) Keogh Plan contributions were deductible per statute.

In a 5–2 decision, the majority of the New Jersey Supreme Court upheld the Appellate Division's ruling that

the partnership's pension plan contributions are deductible only under a 401(k) plan substantially for the reasons expressed in the Appellate Division's opinion. The Appellate Division found that although N.J.S.A. 54A:6-21 stated that gross income does not include employer contributions on behalf of its employees to a 401(k) plan, it does not address 401(a) plans. Hence, the Appellate Division reasoned that 401(a) contributions are not deductible even though the contributions are not expressly prohibited as deductions by statute.

The minority of the New Jersey Supreme Court dissent would have upheld the Tax Court's reasoning that the partnership's contributions on behalf of partners to the Keogh Plan are deductible in calculating the partner's distributive share of partnership income because the contributions constitute ordinary and necessary deductible business expenses pursuant to N.J.S.A. 54A:5-1b, which defines net profits from business.

Partnership's Discharge of Indebtedness Income – *Michael and Patricia Scully and James Scully v. Director, Division of Taxation*, decided January 13, 2003; Appellate Division Nos. A-1816-01T3 and A-2360-01T3.

The Appellate Division affirmed the Tax Court's holding for plaintiff for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News*, Volume 31, Number 1, Spring 2002, page 15, and is reprinted below for the reader's convenience.

Plaintiffs Michael Scully and James Scully each own a

continued on page 14

in our courts - from page 13

48.5% limited partnership interest and a 1% general partnership interest in Port-O-Call Associates, a New Jersey limited partnership (the "Partnership"). Additionally, each owns 50% of the corporate stock of a Pennsylvania corporation that owns a 1% general partnership interest in the Partnership.

The Partnership purchased a hotel with a \$7 million mortgage. Subsequently, the mortgagee became insolvent and the mortgage was assigned to a corporation that acted as the receiver. Thereafter, the receiver sold the mortgage loan to Optimum Mortgage Investment Company for approximately \$2 million less than the note's principal balance. Optimum's mortgage purchase was financed by the plaintiffs pursuant to an agreement that paid Optimum a fee and obligated Optimum to assign the mortgage to plaintiffs. Thereafter, plaintiffs assigned the mortgage to the Partnership.

The Partnership's Federal income tax return reported the current principal balance of the note as a capital contribution and the \$2 million difference between the previous and current principal balance of the mortgage as debt-forgiveness income. The Partnership's Pennsylvania information return reported the same capital contribution but reported the \$2 million difference as "Net profits from business... apportioned to Pennsylvania."

The Director determined that the Partnership realized discharge of indebtedness income in the amount of approximately \$2 million, the difference between the prior mortgage principal balance and the amount of the mortgage principal when the plaintiffs contributed the loan to the Partnership which thereby discharged the mortgage debt. The Director contended that this amount is attributable to plaintiffs as discharge of indebtedness income that occurred "within a business entity" under N.J.S.A. 54A:5-1(k) and (b).

The issue before the Court was whether partners are subject to gross income tax on discharge of indebtedness income realized by the Partnership. Relying on *Smith v. Director* the Court determined that a partnership's discharge of indebtedness income must arise in the ordinary course of partnership business operations to be includable in the partner's gross income. Otherwise the discharge of indebtedness income would retain its character, and as such, discharge of indebtedness, is not a category of income subject to gross income tax.

Holding for plaintiffs, the Court decided that the transaction generating the income was the discharge of the loan not the plaintiffs' contribution of the mortgage loan to the Partnership. The Court found that neither the discharge of the loan nor the financing of the hotel was part of the Partnership's ordinary business for purposes of N.J.S.A. 54A:5-1(b). The Court noted that there were very

few, if any, circumstances where discharge of indebtedness income would be includable in a partner's distributive share of partnership income under N.J.S.A. 54A:5-1(k) because it is unlikely that a partnership would receive discharge of indebtedness from third parties as a regular part of its business operations.

Partnership's Discharge of Indebtedness Income – *Richard and Sharon Miller v. Director, Division of Taxation*, decided January 14, 2003; Appellate Division No. A-2287-01T3.

The Appellate Division affirmed the Tax Court's holding for plaintiff for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News*, Volume 31, Number 1, Spring 2002, page 15, and is reprinted below for the reader's convenience.

Plaintiff Richard Miller is a partner of a New Jersey general partnership (the "Partnership"). The Partnership's only asset is one piece of real estate encumbered by a mortgage that is owned as real estate investment. This real estate is leased to a law firm some of whose partners are partners in the Partnership. When the real estate's value dropped significantly below the principal balance of the mortgage loan, the mortgagee reduced the principal balance upon the Partnership's request for a reduction.

The Partnership reported the reduction in the principal balance as other income on its Federal income tax return but

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did not report it on the Partnership's New Jersey tax return. Plaintiff's Federal Schedule K-1 reported his proportionate share of the mortgage reduction as other income but did not report it on either plaintiff's Schedule NJK-1 or New Jersey gross income tax return. The Director determined that the mortgage reduction resulted in forgiveness of indebtedness income to the Partnership and thereby was includable in the partner's distributive share of partnership income.

The Court applied its legal analysis in *Scully*, above, to the facts of this case. The Court noted that there were three differences between the cases most notably that in the instant case there was no question that the Partnership received discharge of indebtedness income and that here the real estate is owned as an investment as opposed to as a hotel and restaurant. As in *Scully*, the Court stated that discharge of indebtedness income "is taxable to a partner only if attributable to a partnership's ordinary business operations."

The Court ruled that the plaintiff was not subject to the gross income tax on the Partnership's discharge of indebtedness income because the income relating to the mortgage loan is not includable in the Partnership's net profits from business. The transaction involving the mortgage loan is

in the nature of a capital transaction, not an ordinary business operation. Moreover, the Court added that even if the loan transaction constituted part of the partnership's ordinary business operations, the income-generating event is the reduction in principal balance, which is not part of the partnership's ordinary business operations.

Property Tax Relief Programs
NJ SAVER Rebate: Eligible Resident – *Joel Cooper v. Director, Division of Taxation*, decided December 6, 2002; Appellate Division No. A-2074-01T2.

Plaintiff is the sole shareholder of a corporation that has the sole purpose of holding title to plaintiff's primary residence. Plaintiff resides in this residence and filed for an NJ SAVER rebate. Although the Division denied his NJ SAVER rebate because title to the property was held by a corporation, the Tax Court reversed and ruled that in this case the sole shareholder of a corporation should be treated the same way as a partner of a partnership, who is entitled to a rebate to the extent of his partnership interest. See *New Jersey State Tax News*, Volume 31, Numbers 2/3, Summer/Fall 2002, page 33.

The Appellate Division reversed, holding that plaintiff was not entitled to the rebate because the corporation held title to the property. The Appellate Division reasoned (1) that the statute was clear and unambiguous on its face as it included ownership through partnerships but not through corporations on the list of eligible legal entities, (2) that there was nothing in the legislative history indicat-

ing that the Legislature intended to treat partnerships and corporations alike, and (3) because there is a legal distinction between a corporation and its shareholders. □

In Our Legislature

Miscellaneous

Use of Fiduciary Funds — P.L. 2003, c.33 (signed into law on March 24, 2003) permits fiduciaries to employ and compensate accountants from fiduciary funds for services rendered to the estate or trust without reducing the commissions due to the fiduciary, provided such accountings are not the usual services provided by the fiduciary.

The law also allows out-of-State banks with trust offices in New Jersey to receive equal treatment under State law as New Jersey banks with respect to the simultaneous fiduciary administration of trusts and administrative work done for operators of mutual funds.

This act took effect immediately, except for the subsection pertaining to employing and compensating accountants from fiduciary funds, which takes effect on June 22, 2003.

Property Tax Relief Programs

Property Tax Reimbursement — P.L. 2003, c.30 (signed into law on March 14, 2003) changes the annual deadline for filing an application to June 1. The law provides that property tax reimbursement checks are to be mailed to eligible applicants on or before July 15, except that payments for applications filed during the period May 1 through June 1 will be mailed on or before September 1 annually. This act took effect immediately. □

2003 tax calendar

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
April			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30			

April 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

April 15

- CBT-100/ Corporation Business Tax**—Annual return for accounting period ending December 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- HR-1040 Homestead Rebate**—Application
- NJ-1040/ NJ-1040EZ Gross Income Tax**—Resident return for calendar year filers
- NJ-1040NR Gross Income Tax**—Nonresident return for calendar year filers
- NJ-1041 Gross Income Tax**—Fiduciary return for calendar year filers
- NJ-1065 Gross Income Tax**—Partnership return for calendar year filers
- NJ-1040ES Gross Income Tax**—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage terminal information return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

April 25

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

April 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report
- GCC-1 Motor Fuels Tax**—Carrier's monthly report
- DSF-100 Domestic Security Fee**—Quarterly return

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
May					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

May 1

- ST-18B Sales and Use Tax**—Annual use tax return for qualified businesses

May 12

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

May 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending January 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance



May 20

- CR-1 & CNR-1** **Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1** **Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D** **Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** **Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X** **Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10** **Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14** **Motor Fuels Tax**—Monthly export report
- MFT-60** **Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5** **Spill Compensation and Control Tax**—Monthly return
- SCC-6** **Spill Compensation and Control Tax**—Public storage terminal information return
- ST-21** **New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- ST-51** **Sales and Use Tax**—Monthly remittance
- ST-250** **Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350** **Cape May County Tourism Sales Tax**—Monthly return
- ST-451** **Sales and Use Tax—Salem County**—Monthly remittance
- TP-20** **Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50** **Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

May 27

- PPT-41** **Petroleum Products Gross Receipts Tax**—Monthly return

May 30

- GCC-1** **Motor Fuels Tax**—Carrier's monthly report

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
<i>June</i>	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30					

June 2

- PTR-1,2** **Property Tax Reimbursement**—Application

June 10

- CWIP-1,2** **Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2** **Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1** **Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

June 16

- CBT-100** **Corporation Business Tax**—Annual return for accounting period ending February 28
- CBT-150** **Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500** **Gross Income Tax**—Employer's monthly remittance

June 20

- CR-1 & CNR-1** **Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1** **Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D

Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J

Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X

Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10

Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14

Motor Fuels Tax—Monthly export report

MFT-60

Motor Fuels Tax—Monthly storage facility operator report

SCC-5

Spill Compensation and Control Tax—Monthly return

SCC-6

Spill Compensation and Control Tax—Public storage terminal information return

ST-21

New Jersey/New York Combined State Sales and Use Tax—Monthly remittance

ST-51

Sales and Use Tax—Monthly remittance

ST-250

Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350

Cape May County Tourism Sales Tax—Monthly return

ST-451

Sales and Use Tax—Salem County—Monthly remittance

TP-20

Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50

Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return

June 25

PPT-41

Petroleum Products Gross Receipts Tax—Monthly return

June 30

GCC-1

Motor Fuels Tax—Carrier's monthly report

from the director's desk

New Jersey taxpayers participating in the Internal Revenue Service's (IRS) Offshore Voluntary Compliance Initiative for those using illegal tax shelters will avoid State prosecution if they amend their New Jersey income tax returns and remit to the State by October 15, 2003, all taxes, penalties, and interest due.

The IRS has implemented several programs designed to investigate illegal tax shelter arrangements and those who promote them. The Offshore Voluntary Compliance Initiative targets individuals who deposit income into offshore bank accounts and later use credit cards issued by the banks accepting such deposits in order to reclaim the untaxed funds. Recently, the IRS obtained a large volume of offshore credit card records and has begun identifying individuals making use of these illegal tax shelters. The IRS is offering anyone engaged in such activity the opportunity to avoid Federal civil fraud penalties and criminal prosecution by voluntarily correcting their tax returns and disclosing information related to their offshore financial accounts prior to April 15, 2003. Participants in this program must also pay any taxes, penalties, or interest owed.

In conjunction with the efforts of the Internal Revenue Service, New Jersey will grant special consideration to individuals who participate in the Offshore Voluntary Compliance Initiative. This presents an opportunity for taxpayers to avoid criminal prosecution as well as penalties for fraud, and to establish a clean slate with the State.

Those interested in taking advantage of the Offshore Voluntary Compliance Initiative and correcting unreported income tax liabilities to New Jersey should contact the Division of Taxation at 609-292-2163 or by mail at Division of Taxation, Individual Tax Audit Branch, P.O. Box 288, Trenton, NJ 08695-0288.



State of New Jersey
Department of the Treasury
Division of Taxation
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Information and Publications Branch
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Reck v. Director

The New Jersey Supreme Court has affirmed the Appellate Division ruling reported at 345 N.J. Super. 443 (2001) which held that partnership contributions to an I.R.C. section 401(a) Keogh Plan on behalf of partners are not deductible under the New Jersey Gross Income Tax Act.

What's New for Tax Year 2002

There have been some important changes affecting the preparation of New Jersey income tax returns and property tax reimbursement applications for tax year 2002:

- **NJ WebFile** — New Jersey residents who are claiming a credit for taxes paid to another jurisdiction will now be able to use NJ WebFile to file their New Jersey returns since these taxpayers are no longer required to submit copies of their out-of-State income tax return(s) when they file. New Jersey is one of the first states to permit taxpayers claiming this credit to file electronically.

Qualified residents who want to use their computers to file a gross income tax return and/or homestead rebate application can visit www.njfastfile.com and link to the Division's secure Internet site to prepare their New Jersey forms free of charge. (**Note:** NJ PC File software is no longer available for the preparation of New Jersey income tax returns.)

- **Proof of Age Now Required in Addition to Proof of Disability** — Proof of age or total and permanent disability must be submitted the first time a taxpayer (or spouse) indicates on the tax return or homestead rebate application that the taxpayer (or spouse) is 65 years of age or older or blind or disabled. The

Division of Taxation has always required taxpayers to submit proof of total and permanent disability the first time they claim this status, but this is the first year proof of age is required. Taxpayers who for the first time this year indicate they are 65 or older or blind or disabled can still file electronically using NJ WebFile, but they may be asked to submit proof of age or disability at a later date.

- **New Jersey Earned Income Tax Credit** — For 2002, the amount of the New Jersey Earned Income Tax Credit has increased to 17.5% of the applicant's Federal earned income credit.
- **Retirement Income Exclusions** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased for 2002.

continued on page 2

important phone numbers

Customer Service Ctr	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax	
Refund	609-292-7018
Public Utility Tax	609-633-2576

what's new for 2002 - from pg. 1

The exclusion amounts, which vary by filing status, are: \$17,500 (married, filing joint return), \$8,750 (married, filing separate return), and \$13,125 (single, head of household, or qualifying widow(er)).

- **Credit for Taxes Paid to Other Jurisdictions** — New Jersey no longer requires taxpayers who are claiming a credit for taxes paid to another jurisdiction on Schedule A to enclose copies of the tax return(s) they filed with the other jurisdiction(s). Copies of any returns filed with another jurisdiction should be retained in the event the New Jersey return is audited.

- **Taxable Interest Income Documentation** — New Jersey taxpayers must enclose a copy of Federal Schedule B (Form 1040) or Schedule 1 (Form 1040A) with Form NJ-1040 or Form NJ-1040EZ *only* when taxable interest income exceeds \$1,500. (This year the IRS increased from \$400 to \$1,500 the threshold for filing a separate schedule to report Federal interest or dividend income.)

- **Designated Contribution** — In addition to the charitable funds listed on the return, taxpayers may designate a contribution to one of five other funds. The two new funds added for 2002 are: New Jersey AIDS Services Fund (04) and Literacy Volunteers of America – New Jersey Fund (05).

- **Property Tax Relief Programs**

Homestead Rebate: The *maximum* rebate amount for tax year 2002 is \$790 for eligible homeowners and tenants who are 65

years of age or older or disabled. (The maximum amount increases each year to reflect changes in the cost of living.)

Property Tax Reimbursement: Income Limits. Residents applying for reimbursements for tax year 2002 must have total annual income *less than*:

2001: \$38,475 if single, or \$47,177 (combined income) if married, and

2002: \$39,475 if single, or \$48,404 (combined income) if married

Proof of Age or Disability Required. Those filing reimbursement applications for the first time must now submit proof that they are either age 65 or older, or receiving Federal Social Security disability benefits.

New Look for Applications. The eligibility requirements for the Property Tax Reimbursement Program have not changed, but the forms have been revised so that applicants can determine more easily whether or not they have met all the qualifications for the reimbursement. Applicants must now state specifically for *each* of the eligibility requirements (age/disability, residency, ownership, and income) that they have met that particular requirement. An applicant who does not meet *all* the requirements is not eligible for a reimbursement. Applicants must also indicate (a) whether or not they own their home (or share mobile home site fees) with someone other than a spouse, and (b) whether or not their home has more than one dwelling unit. □

New Jersey State Tax news

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www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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Partnership Fee

Prepayment of Filing Fee Not Required With “Final Return” (Form NJ-1065) — Under the Business Tax Reform Act (P.L. 2002, c.40), effective for tax years beginning on or after January 1, 2002, each entity classified as a partnership for Federal income tax purposes that has any income or losses derived from New Jersey sources and that has more than two owners is required to pay a \$150 filing fee for each owner of an interest in the entity, up to a maximum of \$250,000. Each partnership required to pay a filing fee must also make an installment payment (prepayment) of its filing fee for the succeeding return period. The prepayment is 50% of the filing fee amount required to be paid with the return being filed. Both the filing fee for the tax year and the installment payment are due on or before the 15th day of the fourth month following the close of the return period.

Exception: A partnership that indicates it is filing a “Final Return” (Form NJ-1065) is not required to make the 50% installment payment (prepayment) of the partnership filing fee for the next year. In this case the partnership is required to pay only the filing fee for the year of the final return. For example: When a partnership that is required to pay the filing fee for its five partners indicates it is submitting a “Final Return” (Form NJ-1065) for 2002, it must pay a \$750 partnership filing fee for 2002, but it does not have to make the \$375 installment payment for 2003 that would otherwise be required.

Fee Waived for Small Investment Clubs — Assessment of the \$150 per owner fee will be waived for members of investment clubs that have less than \$60,000 in combined capital assets. New Jersey Treasurer John McCormac has directed the Division of Taxation to draft regulations exempting the small investment clubs from the fee. The Division will waive the fee where appropriate as if the regulation were already in effect. For more information on the Business Tax Reform Act, see the Summer/Fall issue of the *New Jersey State Tax News*, page 3, or visit the Division of Taxation Web site at: www.state.nj.us/treasury/taxation/cbtfq.shtml □

ESTATE TAX

Property Transfers

R.S. 54:38-6 provides that for decedents dying after December 31, 2001, the New Jersey estate tax is a lien on all property of a decedent as of his or her date of death and that no property owned by a decedent as of his or her date of death may be transferred without the written consent of the Director (commonly known as a “waiver”), or pursuant to such rules as the Director may prescribe.

Forms L-4 (Preliminary Report to Secure Consents to Transfer), L-8 (Affidavit & Self-Executing Waiver), and L-9 (Resident Decedent Affidavit Requesting Real Property Tax Waiver) have been revised. The forms are now used for both the inheritance tax and the estate tax.

The tax waiver form has been revised. One waiver is now issued by the Division which releases both the inheritance tax and the estate tax lien and which permits

the transfer of property for both inheritance and the estate tax purposes.

Pending the approval of pertinent regulations, the following policy has been adopted by the Director:

- **Nonresident Decedents**
Estate tax waivers are not required in the estates of nonresident decedents. Inheritance tax waivers are required for real property located in New Jersey.
- **Real Property Held as Tenants by the Entirety**
Real property held by a husband and wife and tenants by the entirety must be transferred without an estate tax waiver in the estate of the spouse dying first.
- **Transfers to Savings Accounts Without an Estate Tax Waiver**
 1. Funds of a decedent on deposit in a checking account in any bank may be transferred to an interest-bearing account in the same bank in the name of the decedent or his estate without obtaining an estate tax waiver.
 2. Funds of a decedent on deposit in an Individual Retirement Account (IRA) or Keogh retirement plan account may be transferred to another account in the same

continued on page 4

Massachusetts Amnesty Extended

The Massachusetts Department of Revenue has authorized an extended two-month amnesty between January 1, 2003, and February 28, 2003. For more information, visit the Massachusetts DOR Web site at:

www.dor.state.ma.us

property transfers - from page 3

bank without obtaining an estate tax waiver.

3. Any certificate of deposit or any type of a preferred account containing funds of a decedent may be transferred to another account in the same bank without obtaining an estate tax waiver.
 4. The transfers permitted in (1) through (3) above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance and Estate Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08646-0249, containing the following information:
 - a) Decedent's name;
 - b) Date of death and domicile;
 - c) Name and address of the executor or administrator of the estate;
 - d) The account number or certificate number sought to be transferred and the balance on deposit or the maturity value as of the date of death.
 5. The bank is required to retain the same control over the substituted account as the original account until the New Jersey inheritance tax and the New Jersey estate tax are provided for and paid.
- **Transfers From One Fiduciary to Another**
Bonds or stock of a New Jersey corporation or a national bank located in New Jersey, or any money deposited in any trust company, bank, or other institu-

tion in the name of one court-appointed fiduciary as executor, administrator, trustee, or guardian, may, upon the death of such fiduciary, be transferred without an estate tax waiver to, or on the order of, the legally appointed substitute for the deceased fiduciary.

- **Transfer From Joint Fiduciaries to Successors**

Bonds or stock of a New Jersey corporation or a national bank located in New Jersey, or any money deposited in any trust company, bank, or other institution in the names of two or more fiduciaries as executors, administrators, trustees, or guardians may, upon the death of one or more of such fiduciaries, be transferred without an estate tax waiver to, or on the order of, the surviving fiduciary or fiduciaries.

- **Transfer of Partnership Interest**

The written consent of the Director is not required for the transfer of real or personal property, tangible or intangible, owned by a bona fide partnership in which a decedent had an interest.

- **Transfer of Assets Held by a Nonresident Custodian**

An estate tax waiver is not required in order to transfer any assets held by a nonresident custodian on behalf of a resident or nonresident decedent.

- **Transfer of Tangible or Intangible Personal Property**

1. A waiver is not required in order to transfer all other tangible or intangible personal property, including but not limited to:

- a) Wages.
- b) Salaries.
- c) Vacation and sick leave pay.
- d) Payment under pension, profit-sharing, bonus plans, or stock purchase plans.
- e) All automobiles.
- f) Mortgages.
- g) Accounts receivable.
- h) Household goods.
- i) Personal effects.
- j) Funds held in an account in the name of a funeral director in trust for a decedent in accordance with the provisions of N.J.S.A. 2A:102-13 (advance funeral payment).
- k) Funds to a decedent's credit in a credit union plan organized under N.J.S.A. 17:13-26 et seq. in addition to any matching sums paid under any type of credit union plan in the form of life insurance where said matching sum is directed to be paid to a decedent's estate or his or her executor or ad-

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Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003 will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%

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ministrator. However, funds held under the Federal Credit Union Act must be reported and a waiver obtained.

2. All property, including property that can be transferred without a waiver, must, nevertheless, be reported on a decedent's return.

- **Blanket Waiver**

1. A banking institution, trust company, or safe deposit company organized under the laws of this State; a national bank operating in this State; a building and loan or savings and loan association organized in this State; a credit union chartered by the United States and operating in this State; or a corporation or person may release, without an estate tax waiver, any amount up to 50 percent of the entire amount of funds on hand to:
 - a) An executor;
 - b) Administrator;
 - c) Legal representative of the decedent;
 - d) Surviving joint tenant;
 - e) Cestui que trust; or
 - f) The estate of a minor where title to said funds are held in the name of a custodian for said minor without the written consent of the Director, upon the application of such proper party to the institution, association, organization, corporation, or person above mentioned.
2. This section applies to each institution, association, organization, corporation, or person listed above with

whom a decedent has any funds on deposit, including certificates of deposit, and is limited to no more than 50 percent of the funds in the entire account, whether such account is held in the decedent's name only or jointly with another, so that where the decedent holds an account jointly, only one-half of the funds may be released, not the half claimed by the joint owner, and an additional half of the funds belonging to the decedent.

3. In addition to the amount permitted to be released by an institution, association, organization, corporation, or person above mentioned, institutions, associations, organizations, corporations, or persons may, without written consent of the Director:
 - a) Pay any and all checks drawn on any account owned by a decedent individually, jointly, or otherwise, when said checks are issued prior to death and presented for payment within 10 days following the decedent's date of death; except that in the event an executor, administrator, or other proper party above mentioned in this section shall apply for a release of 50 percent of the funds on deposit after 10 days from the decedent's death, the institution, association, organization, corporation, or person mentioned in this section holding the funds shall, after having deducted the amount of any checks issued prior to and

presented for payment within

10 days of the decedent's death, release 50 percent of the balance in a decedent's account to the proper party upon application and without the written consent of the Director;

- b) Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey estate taxes and made payable to New Jersey Estate Tax;
- c) Liquidate the loan of any decedent who has pledged the passbook representing a savings account as collateral for a loan, where upon the death of such a decedent the loan is in default and then make 50 percent of the remaining funds available under the blanket waiver; but
4. Securities of a New Jersey corporation registered in the name of a decedent and issued by any bank or savings and loan association situated in this State are not subject to the blanket waiver rule provided for in this section. Therefore, the written consent of the Director must be obtained in order to transfer or release such assets.
5. The Director reserves the right to direct, at any time, that any sum or sums not yet paid over shall be withheld

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by the informant pending further order of the Director where that course is deemed imperative to protect the interest of the State.

- **Funds Held in a Banking Institution**

A banking institution, trust company, or safe deposit company organized under the laws of the State of New Jersey; a national bank operating in the State of New Jersey; a building and loan or savings and loan association organized under the laws of the State of New Jersey; a credit union chartered by the United States operating in the State of New Jersey; or a corporation or person may, without an estate tax waiver, release or transfer assets held by a decedent as custodian for a minor pursuant to N.J.S.A. 46:38-1 et seq. or as rental security deposits under the provisions of N.J.S.A. 47:8-19 et seq.

- **Funds Held in Bank Accounts**

Where funds are held on deposit in any bank to the credit of a person and payable on the death of such person to a named beneficiary, upon the death of the named beneficiary, no estate tax waiver is required to transfer or release the funds to such person. However, an estate tax waiver is required to transfer or release such funds to the beneficiary upon the death of the principal.

- **Transfer of Collateral**

A state bank, state banking association, trust company, national bank, national banking

association, safe deposit company, or other institution having in its possession, custody, or control securities or other assets pledged as collateral for a loan of a decedent may, for the purpose of liquidating a loan or other debt due from a resident decedent:

1. Transfer such collateral from the name of the decedent to its own name upon receiving the written consent of the Director; or
2. Sell such collateral to satisfy a loan of a decedent without the written consent of the Director, except that where the collateral pledged consists of the stock of a New Jersey corporation, such stock cannot be transferred on the books of such corporation without the written consent of the Director. If any excess moneys are received from a sale, the written consent of the Director must be obtained before delivery of such excess money to a proper party in interest; or
3. Deliver any collateral to the executor or administrator of a decedent upon the full payment of the loan or debt without the written consent of the Director.

- **Release of Safe Deposit Box Contents**

The contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise, or to which a decedent had access may be released without the written consent of the Director.

□

LOCAL PROPERTY TAX

Farmland Acreage

A study summarizing data from farmland assessment applications (FA-1) has recently been completed. The report shows that the total acreage devoted to agricultural or horticultural use in 2002 was 1,111,538 acres for the entire State.

The numbers for tax year 2002 reflect a decrease of 38,435 acres from tax year 2001. Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 12.6% or a total of 160,345 acres.

23.13% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use and Bergen County has less than 1,000 acres. Conversely, Salem with 54.96% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 49.02%; Warren, 48.96%; Gloucester, 33.98%; Sussex, 32.97%; and Mercer, 25.86%.

Copies of the 2002 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX**Category 07,
Nonusable Sales**

The *Handbook for New Jersey Assessors* instructs assessors how to deem real estate transactions usable or nonusable for purposes of the Table of Equalized Valuations. It appears that the guideline for using the nonusable 07 category necessitates a bit of attention and clarity. The Local Property section of the Division of Taxation seeks to lend assistance to municipal assessors on how to use this code more accurately and effectively.

The nonusable 07 category represents the sale of a property that has been substantially improved after its assessment, but prior to the date of the current sale. In order to properly utilize this category, it is imperative that assessors state on the SR1-A and SR-6 forms the exact dates of all improvements, the cost of improvements, the building permit number, and the specific actions that have been taken to improve the property. It is important to note that improvements made to the property must considerably enhance the value of the property in order to support a nonusable 07 claim. This category does not refer to "normal dressing-up maintenance and repair," such as painting, cleaning carpets, or fixing appliances. It refers specifically to *substantial* improvements made to real property. The addition of a bathroom, vinyl siding, a deck, or an enclosed porch are the types of improvements that satisfy the usage of this category. Physical renovations to properties in disrepair also fall within the scope of this code.

Because of the subjective nature of the word "substantial," property sales must be observed at the individual level. Therefore, assessors have been given the authority to exercise educated discretion when using this category. Still, it must be understood that the word "substantial" represents a measurement that absolutely compels one to believe that the improvement is considerable enough to deem the real estate transaction nonusable for purposes of the sales ratio study.

See *Handbook for New Jersey Assessors*, pages X-21, 22; X-9g; and *Local Property Tax Newsletter*: April 1960, page 4; May-June 1964, page 2; September-October 1973, page 2; May-June 1990, page 2; July-August 1990, page 3.

□

LOCAL PROPERTY TAX**Tax Assessors'
Calendar****January 1–**

- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board.

- Assessment List and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms JDC-1 and JDC-2, assessed value of new construction/improvements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25–

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior)–

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1–

- After February 1, the assessor or County Board of Taxation shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.

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assessors' calendar - from pg. 7

- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10-

- Certification, by assessor, filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, of the date the bulk mailing of notifications of assessment completed.

February 15 (on or before)-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services; and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On June 25, 2002, in Essex County Superior Court, Marcus Solomon of Newark, New Jersey, forfeited to the State \$99,019.60 as part of an agreement to resolve charges of health care claims fraud, Medicaid fraud, misconduct by a corporate official, theft by deception, and filing a false or fraudulent 1999 New Jersey gross income tax return. All of the aforementioned charges, contained in an indictment returned on April 5, 2002, are in connection with the operation of his medical transport business, Solomon's Invalid Coach, Inc. The tax liability arising from the fraudulent 1999 return will be satisfied from the forfeited funds. This was a joint investigation by the Office of Criminal Investigation (OCI) and the New Jersey Division of Criminal Justice-Office of the Insurance Fraud Prosecutor.
- On July 12, 2002, Jeffrey Biggiani, trading as A-AAACE Mechanical, Inc., was sentenced for crimes arising from the collection and failure to file and remit sales tax. Three (3) counts were second degree offenses and a fourth count was a third degree offense. Mr. Biggiani was sentenced to four (4) years probation, fined, and ordered to pay restitution of \$81,344 to be remitted to the State within six months of sentencing. A-AAACE Mechanical, Inc. was ordered to pay fines totaling \$1,155 to be

remitted to the Law Enforcement Fund.

- On July 16, 2002, Thanh C. Voung was found guilty in Belleville Municipal Court of one (1) count of possession of untaxed goods (486 cartons of cigarettes) and one (1) count of failure to maintain records. The subject was sentenced to thirty (30) days in Essex County Jail and was fined. The Judge noted that Mr. Voung was a career criminal offender and warranted incarceration. The subject has prior convictions for distribution of cocaine, shoplifting, and theft.
- On August 9, 2002, in Newark Municipal Court, Antonio M. Gomes entered a plea of guilty on behalf of his corporation, A&A Gomes Construction Corp., to a disorderly person charge of failing to obtain the required Motor Fuels Tax Seller-User of Special Fuels License in connection with the corporation's operation of a diesel fuel bulk storage tank in Newark, and was fined. The subject was brought into compliance as he exhibited to the Court proof that he has now obtained the required license. This complaint was based on a referral from the Motor Fuels section of Audit Services.
- On August 13, 2002, Frank Valentino of Toms River, New Jersey, waived his right to prosecution by indictment and trial by jury and pled guilty to accusations that he failed to pay or turn over collected sales tax and that he falsified or tampered with records in an attempt to

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deceive the State of New Jersey. This criminal tax case originated as a referral from Taxation's Field Audit Branch relating to Mr. Valentino's business: Frankie's Auto Body, Inc., of Edison, New Jersey. During the course of a civil field audit, a Taxation auditor requested Frankie's Auto Body, Inc.'s corporate president, Mr. Valentino, to supply documentation in support of his body shop's nontaxable sales. Upon receipt of the requested documentation, the auditor attempted to confirm the validity of these documents. The information she received suggested that the documents supplied by Mr. Valentino had been altered. Based on this, an OCI criminal tax investigation was initiated which ultimately lead to the guilty pleas. The OCI investigation determined that between January 1, 1995, and December 31, 2000, Mr. Valentino, on behalf of Frankie's Auto Body, Inc., acted with intent to defraud the State of New Jersey

in that he collected sales tax which he failed to turn over to the State in an attempt to evade, avoid, or otherwise not make timely payment. It was also determined that he provided false records with the purpose to injure the State of New Jersey. Mr. Valentino provided documents from certain tax-exempt entities, including the Federal Bureau of Investigation, the Government Services Administration and the Middlesex County ARC, in order to lessen the sales tax obligation of his business, knowing that the documents had been altered to contain false information. This case was prosecuted by the New Jersey Division of Criminal Justice.

- On August 15, 2002, Mohamed Chowdhury of Hackensack, New Jersey, was found in possession of 4.1 cartons of untaxed cigarettes when officers of the Hackensack Police Department entered the residence to execute a warrant for the arrest of Mr. Chowdhury's daughter for burglary and theft. OCI

determined, through investigation, that the cigarettes were obtained via a mail order/Internet site: A&B Smoke Shop of Irving, New York. Subsequently, tax charges were filed against Mr. Chowdhury and he pled guilty to possession of contraband cigarettes and was fined.

- On August 16, 2002, a State Grand Jury indicted Carl F. Monto of Toms River, New Jersey, on charges that, as responsible person of Courtesy Truck Stop, Inc., a now defunct truck-stop in Jersey City, he collected and failed to remit \$100,454 in motor fuels tax on the retail sale of diesel fuel from January to September 1997. This was a joint investigation by the Office of Criminal Investigation and the New Jersey State Police-Organized Crime Unit. This matter was presented to the grand jury by the Division of Criminal Justice, who also assisted in obtaining search warrants during the course of the investigation.

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NJFastFile

For Information: 1-800-323-4400 or www.njfastfile.com

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- On August 28, 2002, a State Grand Jury indicted Drymco, Inc., and responsible corporate officer John Drzymkowski, of Berkeley Heights, New Jersey, on charges that the corporation and Mr. Drzymkowski collected and failed to remit in excess of \$300,000 in petroleum products gross receipts tax on the sale, at wholesale, of diesel fuel from September 1999 to December 2000. This matter was presented to the grand jury by the Division of Criminal Justice.
- On September 6, 2002, in Superior Court, Hudson County, Todd Halpern of Livingston, New Jersey, entered a plea of guilty to a charge of theft by misapplication of \$367,261.51 in New Jersey sales tax payments, years 1999 to 2001, which had been entrusted to him by clients of his tax preparation business. At the same time, Mr. Halpern also entered pleas of guilty to one (1) count of theft by obtaining by deception a bank loan in the amount of \$210,178.57, and one (1) count of theft by converting to his own use \$46,051 in Federal and State personal income tax estimated payments and/or refunds

of a client. At the time of his plea, Mr. Halpern was on probation after having served a 90-day jail sentence for filing a fraudulent 1997 NJ personal income tax return. This case was investigated by the Office of Criminal Investigation with assistance from Taxation's Compliance and Audit Activities, and was prosecuted by the State Attorney General's Office.

- One hundred twenty-six (126) complaints alleging tax evasion were evaluated from July through September 2002 in the Office of Criminal Investigation.

During the same time period, forty-five (45) charges were filed in court on fourteen (14) cases for violation of the Cigarette Tax Act. All fourteen (14) court cases involved contraband cigarettes. □

Tax Briefs

Domestic Security Fee

Rental of Ice Cream Trucks — The Division has been asked whether the Domestic Security Fee applies to the rental of ice cream trucks. The law requires that a motor vehicle rental company pay a fee of \$2.00 to the Division of Taxation for each day of a passenger motor vehicle rental, up to 28 days in duration. A rental agree-

ment by its terms exceeding 28 days in duration would only require payment of 28 days worth of the fee. "Rental company" has been defined as "any individual, business, or other entity or person engaged in the business of renting motor vehicles."

To the extent that a rental company enters into agreements with individuals to rent them ice cream trucks, the company would be liable for payment of the \$2.00 per day fee.

Rental of Utility Trailers — The Division answered an inquiry concerning whether a rental company that rents out utility trailers as opposed to trailers connected to a tractor, must pay the fee. The law defines "rental motor vehicle" as "a passenger automobile, truck or semitrailer that is rented without a driver and used in the transportation of persons or property other than commercial freight."

The Division of Taxation has adopted the same definition of the term "semitrailer" as set forth in administrative regulations governing sales and use tax procedures for implementation of the domestic security fee. That definition states that a "semitrailer" "means every

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Enforcement Summary Statistics

Third Quarter 2002

Following is a summary of enforcement actions for the quarter ending September 30, 2002.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	1,738	• Seizures	18
Total Amount	\$35,634,768	• Auctions	5
• Jeopardy Assessments	231	• Referrals to the Attorney General's Office	215

For more detailed enforcement information, visit our Web site at: www.state.nj.us/treasury/taxation/

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vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.” N.J.A.C. 18:24-7.18(f). Utility trailers fall within this definition.

Gross Income Tax

Setoff — The Division responded to an inquiry regarding the setoff of a 2001 homestead rebate.

N.J.S.A. 54A:9-8.1 of the New Jersey Gross Income Tax Act provides for the setoff of a homestead rebate against indebtedness to any agency or institution of State Government. The setoff authority also applies to gross income tax refunds, the earned income tax credit, and the NJ SAVER rebate. Under N.J.A.C. 18:35-10.5 the debtor must contact the claimant State agency regarding resolution of the proposed setoff. The setoff notice sent by the Division of Revenue to the debtor identifies that agency and gives the debtor contact information. No actual set-off will occur until the Division of Revenue receives a certification from the claimant agency that the debt is final. N.J.A.C. 18:35-10.9. At that time the debtor will be notified in writing of the setoff and receive an accounting of the action. N.J.A.C. 18:35-10.10.

Finally, N.J.S.A. 54A:9-8.2 allows an apportionment of any setoff in the case of a debtor filing a joint income tax return or rebate application. In accordance with N.J.A.C. 18:35-10.7 a nondebtor who is a joint recipient of a rebate or refund has standing to establish

that fact. If the claimant agency finds that an apportionment should be made with respect to a joint entitlement, it will be presumed that each party is entitled to one-half of the rebate or refund.

Withholding on Employee Stock Purchase Plans — IRS Notice 2001-72 states that an employer has no Federal income tax withholding obligation when an individual exercises an incentive stock option (ISO) or an option granted under an employee stock purchase plan (ESPP) since no income is recognized at the time of the exercise. The notice explains the reason for this rule is that to satisfy the income tax withholding deposit requirements on a timely basis would be burdensome to former employers and the former employees may not have sufficient cash compensation from which to fund the withholding. The employee is still subject to the Federal income tax on this compensation at the time of the sale of the stock.

Stock options are taxable for New Jersey gross income tax purposes under N.J.S.A. 54A:5-1(c). N.J.S.A. 54A:5-1(c) requires that stock options be reported as compensation in the same manner and in the same period as prescribed for Federal purposes. Additionally, the taxpayer’s accounting method must be the same for New Jersey gross income tax purposes as it is for Federal purposes. N.J.S.A. 54A:8-3(c).

Taxpayers having no New Jersey income tax withholding and who can reasonably expect their tax liability to be greater than \$400 must pay the income tax as they earn or receive income throughout the year by estimated tax payments.

For more information see Tax Topic Bulletin GIT-8, *Estimating Income Taxes*, and Publication NJ-WT, *Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings*.

Both are available on the Division’s Web site at:

www.state.nj.us/treasury/taxation/

Sales and Use Tax

Delaware Retail Gross Receipts Tax — A taxpayer’s sales and use tax liability in New Jersey is not reduced by the amount of gross receipts tax paid to Delaware on a purchase made in that state. Credit is only available for sales tax properly paid to the state in which the items were manufactured, purchased, or shipped. For sales tax purposes, reciprocity means that New Jersey will allow a credit up to the amount paid to the other state provided such other state allows a similar credit for sales tax paid to this State. See N.J.S.A. 54:32B-11(6). If the state of purchase has a sales tax rate equal to or greater than New Jersey’s 6% tax rate, the taxpayer would not owe any use tax. If the state in which a purchase is made has a lower rate than New Jersey, use tax is due for the difference between the rate paid and 6%. Generally, if tax was legally due and paid to another state and that state has reciprocity with New Jersey, credit can be taken. See N.J.S.A. 54:32B-11(6). Since Delaware does not impose a retail sales tax, there is no reciprocity with New Jersey for sales tax purposes.

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Sales of Limousines — The New Jersey Sales and Use Tax Act was recently amended to provide an exemption for the purchase, rental, or lease of a limousine to a person licensed by the New Jersey Division of Motor Vehicles to operate a limousine service. N.J.S.A. 54:32B-8.52. A licensee must obtain a certificate of compliance from the municipality where the licensee resides. N.J.S.A. 48:16-17. The sales and use tax exemption also applies to charges for repair services to limousines, including replacement parts.

A “limousine” is defined as (1) a motor vehicle registered under the provisions of N.J.S.A. 39:3-19.5, or registered as a limousine under the laws of another state; and (2) used exclusively in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis, that is not conducted on a regular route and with a seating capacity of no more than 14 passengers, excluding the driver. N.J.S.A. 54:32B-8.52.

Vehicles such as taxicabs, hotel or airport shuttles, buses used solely to transport children or teachers to and from school, and vehicles owned and operated by a business for its own purposes are not considered limousines. In order to document the applicability of the exemption for the purchase of the limousine, the customer must provide a copy of their license to operate a limousine service and the vehicle must be registered as a limousine *at the time of closing the sale transaction*. An Exempt Use Certificate (ST-4) must also be

provided to the motor vehicle dealer.

Out-of-State Disposal of Excess Advertising and Promotional Material — Recently, the Division was asked to consider the use tax implications of a specific factual situation concerning direct-mail processing services and the use of advertising and promotional material under the following circumstances:

Company A is a New Jersey-based entity engaged in direct-mail processing services. Company A enters into a contract to provide direct-mail processing services for Company B, its client. Company B purchases advertising and promotional material from out-of-State printers who have no nexus with New Jersey. The printers deliver the material directly to a New Jersey warehouse that Company A owns. Pursuant to the contract, Company A processes the advertising and promotional material that is intended for distribution to both out-of-State and in-State recipients from its New Jersey warehouse. Due to various uncertainties, the amount of advertising and promotional material that is held in the New Jersey warehouse exceeds the amount that was initially intended for distribution. The excess advertising and promotional material will not be distributed at all, but will instead be disposed of as scrap.

The sale of advertising material is subject to tax as tangible personal property under N.J.S.A. 54:32B-3(a). However, the Sales and Use Tax Act provides an exemption for advertising or promotional material which is ultimately distributed to out-of-State recipients. N.J.S.A.

54:32B-8.39. Taking into consideration the exemption for advertising material distributed out-of-State, the Division made the following determination with respect to the disposal of advertising material: When advertising or promotional material is no longer held or intended for distribution to either in-State or out-of-State recipients, but is instead removed from a New Jersey storage facility and taken outside of the State for disposal as scrap or waste, use tax will not be imposed pursuant to N.J.S.A. 54:32B-6. This treatment is consistent with the statutory intention to exempt such advertising and promotional material when delivered outside New Jersey. □

In Our Courts

Gross Income Tax Partnership Versus Rental Income – *Joseph DiBianca, et al, v. Director, Division of Taxation*, decided October 26, 2001; Tax Court No. 004391-00.

On its 1996 New Jersey gross income tax return, plaintiff reported \$27,179 as net income from rents by netting a loss from residential real property reported on the Federal income tax return, Schedule E, with net rental income passed through from four partnerships as reported on the K-1 and NJK-1. The Director asserted a deficiency on the basis that the Schedule E \$12,411 loss from residential realty (N.J.S.A. 54A:5-1d) could not offset plaintiff's \$39,590 distributive share of partnership income (N.J.S.A. 54A:5-1k) pursuant to N.J.S.A. 54A:5-2, which prohibits the netting of intercategory income and losses.

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Plaintiff relied upon the regulations. The Court reviewed the regulations and found that partnerships were required to determine their net profits from business in the same manner as an individual taxpayer would. As to rental income, the regulations state that where rental income is not received in the ordinary course of the conduct of a trade or business, the income shall be reported under subsection 5-1d. Conversely, to be included in a taxpayer's net profits from business, rental income must be received in the ordinary course of the conduct of a trade or business of leasing property. Moreover, the regulations provide that a taxpayer is not deemed to be engaged in the conduct of a trade or business of leasing property unless substantial services are rendered in connection with the leasing properties.

Opining that the concept of ordinary business operations was relevant in construing the regulations, the Court relied on the New Jersey Supreme Court's opinion in *Smith*. There the Court determined that it was the Legislature's intent that the category "net profits from business" include income that would be categorized separately where it was not earned in the ordinary course of business; otherwise, the category net profits from business would virtually become a nullity. However, *Smith* stated that if the dividend and gain income represented income from passive partnership investments, then the income would have been reportable under their respective separate categories of income. After reviewing the categories of expenses reported on the partnerships' Federal Form 8825 such as

floral supplies, maintenance and cleaning, commissions, insurance, legal and other professional fees, repairs, taxes, utilities, landscaping, snow removal, lawn care, and elevator maintenance, the Court ruled that the partnerships were actively operating the properties.

Turning to what constitutes a substantial service, the Court found that the regulations do not define the term. However, the regulations do state that the activity of net leasing a property does not constitute the conduct of a trade or business unless taxpayer is in the trade or business of dealing with such property and the property constitutes inventory or stock in trade of the partner. The Court determined that this language was incorporated as a result of the Appellate Division's ruling in

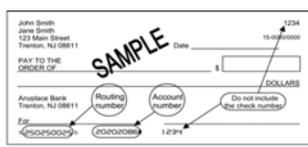
Newark Building Associates where it was determined that the partnership's passive activities of filing documents required by law, accepting net rents, depositing the rents in its bank account, making payments to the mortgagee, and distributing the net proceeds to the partners was a net lease situation and did not constitute a business under the Unincorporated Business Tax Act. There the Appellate Division described the partnership activities as merely serving to maintain its existence as a partnership because the accounting, legal, and other partnership supervisory acts were performed by its attorneys for a stated annual fee plus disbursement for accounting fees.

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* Fee of 2.5% of tax payment applies.

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Applying *Newark Building Associates* to the instant case, the Court ruled that the items of partnership expenses indicated a level of activity and services significantly in excess of those performed there. Applying *Smith* to the regulations, the Court held that the partnerships were involved in the active ordinary business operations of the buildings and that those operations constituted substantial services. The Court noted that it was the ordinary business operations of the partnerships to own and provide the necessary services to operate the buildings even though services constituted less than 35 hours per week. The Court stated that the focus was on whether the partnership, not the partner, is involved in the ordinary business operations. Therefore, the Court upheld the Division's assessment.

Plaintiff alternatively argued that the Division's remedy is against the partnership because they issued the NJK-1, not against the partner who compiled or filed returns in accordance with the NJK-1. The Court ruled that although the partners' NJK-1 forms were issued by the partnerships, this did not insulate the partners from tax liability even though tax return instructions state that income should be reported in accordance with the NJK-1. The Court ruled that the partner is responsible for proper and accurate reporting. The Court reasoned that otherwise partners could control their gross income tax liability by controlling the information reported in the NJK-1s that are thereafter issued to themselves.

Reporting of S Corporation's Sale of Assets and Subsequent Liquidation – *George K. Miller, Jr., and Debra Miller v. Director, New Jersey Division of Taxation*, decided June 17, 2002; Appellate Division No. A-658-01T2.

Miller was the principal shareholder of a Federal and New Jersey subchapter S corporation. In 1996, the corporation sold virtually all of its assets to an unrelated corporation for about \$5 million. Later, in that same tax year, the corporation paid a liquidating dividend to Miller that consisted primarily of the proceeds of the sale.

For New Jersey tax reporting purposes, Miller calculated his income by deducting his Federal basis in the stock from the Federal calculated amount of the liquidated dividend, the property distribution from the stock sale. Miller reported this amount as a gain under N.J.S.A. 54A:5-1c after netting it with other personal capital transactions, mostly losses.

The Division first computed the corporation's gain on its sale of assets as Miller's pro rata share of subchapter S income pursuant to N.J.S.A. 54A:5-1p. Consequently, this amount of gain was also added to Miller's basis in his corporate stock. Secondly, the liquidating payment was considered to be a sale of subchapter S stock in accordance with subsection 5-1c. This resulted in a loss primarily due to the increase in basis from the asset sale. As each of the above transactions resulted in separate categories of income and loss, the Division did not net the income derived from subsection 5-1p with the subsection 5-1c loss

in accordance with N.J.S.A. 54A:5-2, which taxes income on a category-by-category basis and prohibits the netting of income and losses.

The Tax Court ruled for Miller. Although the Appellate Division concurred with the Tax Court's rejection of the Division's interpretation of the Gross Income Tax Act, it reversed and remanded the case because it disagreed with the Tax Court's solution. The Appellate Division found that the Division's methodology was supported by the Gross Income Tax Act's literal language, but that the result is to tax the return of capital, which is inconsistent with the legislative intent of subsection 5-1c and the New Jersey Supreme Court's opinion in *Koch*. However, the Appellate Division also disagreed with the Tax Court's determination that subsection 5-1p did not include S corporation income outside of the ordinary trade or business and disagreed with the Tax Court, allowing Miller to deduct his Federal basis, rather than his New Jersey adjusted basis, to determine the amount of gain. The Appellate Division reasoned that if the Legislature had anticipated the facts in *Miller*, then it believed the Legislature would have provided that the two transactions be treated as a sale of stock to a third party with gain or loss being calculated under subsection 5-1c.

Reporting of S Corporation's Sale of Assets and Subsequent Liquidation – *Joel and Judith Mandelbaum v. Director, Division of Taxation*, decided May 17, 2002; Tax Court No. 004227-2000.

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Mandelbaum was a shareholder of Dalcomp, a Federal and New Jersey subchapter S corporation. In 1995, he and all the other shareholders sold all of their stock to Thompson Municipal Services. Later in that year, Thompson and the former Dalcomp shareholders filed an Internal Revenue Code section 338(h)(10) election, essentially a deemed sale of assets followed by a deemed liquidating distribution, with the Internal Revenue Service. On his 1995 gross income tax return, Mandelbaum reported the transaction as gain or income from the disposition of property after subtracting his stock basis. Mandelbaum later amended his 1995 gross income tax return, reporting the transaction as his net pro rata share of S corporation income after subtracting the cost of his stock. Also, Mandelbaum elected the installment method of reporting the income.

The Division disallowed the deduction for the stock basis from his S corporation income, disallowed the use of the installment method, and decided that the amount of his S corporation income was his proportionate stock ownership share of the corporation's net gain from the deemed sale of assets. The Division deter-

mined that the deemed liquidation resulted in an N.J.S.A. 54A:5-1c loss to Mandelbaum and that the loss could not be netted with the N.J.S.A. 54A:5-1p S corporation income due to the nonnetting of intercategory income and losses rule under N.J.S.A. 54A:5-2.

The Court ruled that the I.R.C. 338(h)(10) election is not applicable to a New Jersey S corporation because there is no statute, interpretative regulation, or other formal promulgation interpreting or referring to the Gross Income Tax Act with respect to I.R.C. 338(h)(10) elections. The Court reasoned that a New Jersey taxpayer reading the Gross Income Tax Act provisions and the regulations thereunder would not be on notice that an I.R.C. 338(h)(10) election subjected him to any tax liability under the Gross Income Tax Act. The Court also refused to impute the Corporation Business Tax Act and regulations thereunder referring to the 338(h)(10) election to an S corporation shareholder as the acts are not in *par materia*. Due to the Division's inability to use I.R.C. 338(h)(10), the Court held that the transaction must be treated as a sale of stock and that the net gain, proceeds of the sale less adjusted basis, be taxed as a disposition of property under subsection 5-1c.

Alternatively, the Court stated that even if the Gross Income Tax Act applied to the I.R.C. 338(h)(10) election, the stock's basis would be deductible in determining gain or loss under subsection 5-1c in accordance with the Tax Court's previous holding in *Miller*. Finally, the Court ruled that the installment method of reporting is applicable to subsection 5-1c income.

Litter Control Tax

Litter-Generating Products –
Feesers, Inc. t/a Feesers Foods v. Director, Division of Taxation, decided June 20, 2002; Tax Court No. 004185-2001.

Feesers is a Pennsylvania wholesale food distributor that sells food products in New Jersey to various institutions including nursing homes, hospitals, and universities. Most of the food products are sold in "large, institutional type," disposable packages and containers. These products include salad dressing, barbecue sauce, muffin, cake, and brownie mixes, shortening, ice cream, flour, beans, chili, salsa, cereal, and pasta. Feesers alleged that the food is prepared at the facility and consumed on premises by residents or invitees and is not intended for resale.

The Division assessed Feesers litter control tax on its New Jersey sales pursuant to the Clean Communities and Recycling Act. Although Feesers concedes that its food products meet the definition of one of the items enumerated in the statute as being subject to tax as a litter-generating product, Feesers claims that its food products are exempt from the litter control tax because its food products are prepared

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for on-premises consumption and the tax is not intended to target institutional food type packages and containers as they are not the types of products "that would...be found on public highways."

The Court stated that the litter tax is levied on the litter-generating products of manufacturers, wholesalers, and retailers of litter-generating products. The Court found that the Tax Court had previously ruled that litter-generating products that satisfy any one of the following three tests are subject to tax: (1) goods that are produced, distributed, or purchased in disposable containers, packages, or wrappings; or (2) goods that are commonly discarded in public places even though they are not usually sold in packages, containers, or wrappings; or (3) goods that are unsightly or unsanitary in nature, commonly thrown, dropped, discarded, placed, or deposited by a person on either public property or on private property that is not owned by the person. (See *United Jersey Bank*).

The Court ruled that Feesers' products clearly satisfied the first test; therefore, it was irrelevant whether the products would be commonly discarded in public places such as the public highway pursuant to the second test because the tests are in the disjunctive. As to whether the litter-generating products were exempt because they were sold for on-premises consumption, the Court found that it was unnecessary to decide whether there is an exemption for retailers that sell food for on-premises consumption because the retailer's transactions with its customers could not be imputed to Feesers' sales to the retailer. Finally, the Court looked at the

exemptions to the litter control tax and found that Feesers did not qualify for an exemption.

Local Property Tax

Exemption Status – *Center For Molecular Medicine and Immunology v. Township of Belleville*, decided May 2, 2001; Tax Court No. 000767-1998; 000580-99.

The question before the New Jersey Tax Court was property tax exempt status for the years 1998 and 1999 for the Center for Molecular Medicine and Immunology, a 501(c)(3) nonprofit entity that conducts cancer research. The disputed property, renamed the Garden State Cancer Center (GSCC), was previously exempt from local property taxes as a county-owned geriatric facility under N.J.S.A. 54:4-3.3 until 1997 when it was transferred from the county to the Essex County Improvement Authority and from the ECIA to the taxpayer. The taxpayer then began a five-phase plan to rehabilitate the deteriorated building.

The first issue was property ownership, county vs. taxpayer (GSCC) and whether exemption should be permitted under N.J.S.A. 54:4-3.3 or N.J.S.A. 54:4-3.6. The two statutes are mutually exclusive. Within the deeds were two sets of reverter clauses that would transfer the property back to the county "by vesting the county with a fee simple absolute interest after a term of 25 years." The taxpayer's present interest was non-freehold and likened to a leasehold with no ownership rights. Because the deeds only granted the taxpayer an interest for a term of 25 years, the taxpayer was essentially leasing the facility and the county retains ownership. Thus, the Court

found that the GSCC was owned by the county and subject to exemption under N.J.S.A. 54:4-3.3.

Another issue requires the plaintiff to prove that the use of the property was for a public purpose which was to be carried out within a reasonable period of time. Public purpose is defined by the courts as "an activity which serves to benefit the community as a whole and which at the same time is directly related to functions of government." N.J.S.A. 52:9U-2 states that the New Jersey Legislature deems cancer research a sufficient public purpose. Being that the taxpayer's primary function was cancer research and has received Federal funding for this research, the GSCC was clearly used for public purposes. The Court also maintained that the broadly defined police power granted to local governments enables them to regulate for the health and safety of the persons within their borders. This is a public purpose.

The remaining issue concerned that portion of the GSCC that was not currently being used. Under N.J.S.A. 54:4-3.3, the property must be wholly taxed or wholly exempt. A five-phase plan was incorporated to complete work on these sections in a reasonable amount of time and these sections were scheduled for public use so that the entire property was deemed intended for public purpose.

For reasons stated, the taxpayer qualifies for property tax exemption under N.J.S.A. 54:4-3.3 for the tax years 1998 through 1999. No analysis under N.J.S.A. 54:4-3.6 is required.

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Sales & Use Tax

Prototypes of Point-of-Purchase Displays – *Urso & Brown, Inc., Predecessor to Al Gar/The Display Connection, Inc. v. Director, New Jersey Division of Taxation*, decided July 8, 2002; Appellate Division No. A-3356-00T2.

As reported in the Summer 2001 *State Tax News*, the Tax Court previously held that Urso & Brown's prototype purchases of point-of-purchase displays, merchandising models used by vendors to market goods to consumers, were subject to either sales tax under N.J.S.A. 54:32B-3(b)(1) or use tax per N.J.S.A. 54:32B-6(C) because the displays constituted tangible personal property upon which fabrication services were performed. The Tax Court ruled that the purchases did not qualify for the (1) N.J.S.A. 54:32B-2(e)(4)(A) exclusion as professional or personal services, (2) N.J.S.A. 54:32B-8.14 research and development exemption, or (3) N.J.S.A. 54:32B-8.14 exemption as being used directly and primarily in production.

The Appellate Division affirmed the Tax Court without discussion of the above issues in a written opinion because it ruled that Urso & Brown's arguments lacked merit. □

In Our Legislature

Gross Income Tax

Exemption from New Jersey Gross Income Tax — P.L. 2003, c.9 (signed into law on January 27, 2003) exempts from New Jersey gross income tax the income of

victims who died in the September 11, 2001, terrorist attacks against the United States.

This act took effect immediately and applies to taxable years ending before, on, or after September 11, 2001.

Litter Control Fee

Clean Communities and Recycling Grant Act — P.L. 2002, c.128 (signed into law on December 20, 2002) imposes a litter control fee on the gross receipts from sales of litter-generating products within or into New Jersey by manufacturers, wholesalers, distributors, and retailers of such products. The act also revises the Clean Communities Program and makes recycling grants available to counties and municipalities.

The litter control fee replaces the former litter control tax, which expired on December 31, 2000. The rates at which the new user fee is imposed and the categories of litter-generating products to which the fee applies are the same as the rates and litter-generating product categories that were subject to the prior litter control tax. However, Chapter 128 exempts retailers with less than \$500,000 in annual retail sales of litter-generating products from the fee (the prior tax had a \$250,000 retailer sales exclusion).

The new litter control fee exempts restaurants if more than 50% of their food and beverage sales are for on-premises consumption (restaurants with 50% or more of sales of food and beverages for off-premises consumption are subject to the litter control fee). Also exempt are paper product

sales of roll stock produced by paper product manufacturers and wood pulp.

The litter control fee for each calendar year is due on or before March 15th of the following year. The fee applies retroactively to the year beginning January 1, 2002. There was no tax or fee due on the gross receipts from sales of litter-generating products for calendar year 2001.

Miscellaneous

Camden Revitalization — P.L. 2002, c.108 (signed into law on December 4, 2002) amends and clarifies the "Municipal Rehabilitation and Economic Recovery Act" (P.L. 2002, c.43) to ensure an accurate expression of legislative intent. Chapter 43 is currently the subject of litigation contending that it is improper.

As a result, the Legislature has imposed certain criteria limiting the application of Chapter 43 to municipalities that have been or may be subject to oversight by both a financial review board and the Local Finance Board, and which receive at least 55 percent of their budgets from State appropriations, now or in the future.

Chapter 108 clarifies and reaffirms that other similarly situated municipalities may meet the criteria of a qualified municipality. It also establishes a process for determining appropriations and allocations of monies to municipalities other than Camden that meet the definition of a qualified municipality. Chapter 108 took effect immediately and is retroactive to June 30, 2002. □

2003 tax calendar

January

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

January 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

January 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported

- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage terminal information return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 27

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

January 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report
- NJ-927-H Gross Income Tax**—Domestic employer's annual report
- GCC-1 Motor Fuels Tax**—Carrier's monthly report

January 31

- DSF-100 Domestic Security Fee**—Quarterly return

February

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

February 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

February 18

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

February 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

February 20 - continued

- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage terminal information return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly remittance
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

February 28

- NJ-W-3 Gross Income Tax**—Annual reconciliation of tax withheld
- GCC-1 Motor Fuels Tax**—Carrier's monthly report

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
<i>March</i>	2	3	4	5	6	7	1 8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					

March 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

March 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance
- LF-5 Litter Control Fee**—Annual return
- PTR-1,2 Property Tax Reimbursement**—Application

March 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

GA-1J

Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X

Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10

Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14

Motor Fuels Tax—Monthly export report

MFT-60

Motor Fuels Tax—Monthly storage facility operator report

SCC-5

Spill Compensation and Control Tax—Monthly return

SCC-6

Spill Compensation and Control Tax—Public storage terminal information return

ST-21

New Jersey/New York Combined State Sales and Use Tax—Monthly remittance

ST-51

Sales and Use Tax—Monthly remittance

ST-250

Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350

Cape May County Tourism Sales Tax—Monthly return

ST-451

Sales and Use Tax—Salem County—Monthly remittance

TP-20

Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50

Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 25

PPT-41

Petroleum Products Gross Receipts Tax—Monthly return

March 31

GCC-1

Motor Fuels Tax—Carrier's monthly report

from the director's desk

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A handwritten signature in cursive script that reads "Robert F. Thompson". The signature is written in black ink and is positioned in the lower right quadrant of the page.

New Jersey State Tax News

Vol. 31, No. 2 & 3 – Summer/Fall 2002

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Amnesty Program A Huge Success

The Division of Taxation received \$276.9 million in net revenue from the 2002 Tax Amnesty Program that began April 15 and ended on June 10, 2002.

Governor James E. McGreevey implemented the Amnesty program to help offset the projected \$2.9 billion budget deficit for the 2002 fiscal year, which ended June 30. The success of the amnesty program helped to address continuing fiscal difficulties experienced by the State, precipitated by significant shortfalls in projected tax revenue collections late in the fiscal year .

Amnesty Administrator, Stephen Sylvester, reported that 101,534 payments were made during the 57-day Amnesty period. He said 32% of the amount collected was from sales and use tax, 38% from corporate tax liabilities, 22% from gross income tax, and the remainder from the 27 other taxes administered by the Division.

During the Amnesty period, the Amnesty hotline received approximately 155,000 phone calls and the Amnesty Web site recorded 78,620 hits.

Under Amnesty the State waived penalties and interest charges on tax liabilities incurred between January 1, 1996, and December 31, 2001 — individuals and businesses were allowed to pay

only what they owed in back taxes. Those who failed to settle their delinquent State taxes during Amnesty now face the reinstatement of the original penalties and interest, plus new penalties, charges, and fees which could increase a base tax bill by 45% or more.

“The Amnesty also reduced our backlog of delinquent and deficient taxpayers and allows our audit and investigative teams to concentrate their efforts on the truly hard-core tax evaders,” added Taxation Director Robert K. Thompson. □

New Laws Generate Revenue

Several important measures were recently enacted by the New Jersey Legislature and signed into law. Salient provisions of the new legislation are summarized below.

Business Tax Reform Act — P.L. 2002, c.40 (signed into law on July 2, 2002) reforms New Jersey’s system of taxation of corporations and other business entities. See *Why CBT Changes Were Needed* on page 5 and *Business Tax Reform Summary* on page 3.

Cigarette Tax — P.L. 2002, c.33 (signed into law on July 1, 2002) increases the cigarette tax from \$0.04 to \$0.075 per cigarette (from \$.80 to \$1.50 per pack); and di-

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rects that certain amounts from cigarette tax revenues be used to support health care programs and antismoking initiatives. The rate increases are effective July 1, 2002.

Estate Tax — P.L. 2002, c.31 (signed into law on July 1, 2002) preserves the New Jersey estate tax notwithstanding the phase-out of the Federal credit upon which the tax is based. See *Estate Tax Changes* on page 9.

Fees and Penalties — P.L. 2002, c.34 (signed into law on July 1, 2002) establishes, increases, and modifies fees and penalties imposed by and on behalf of the State and collected by the State Treasurer.

Commercial Recording Fees. The legislation increases certain commercial recording filing fees for corporations and other business entities. Some of the increased filing fees are:

- Certificate of Incorporation – \$125
- Certificate of Merger or Consolidation – \$75
- Certificate of Limited Partnership – \$125
- Limited Liability Company Certificate of Formation – \$125
- Certificate of Authority to Conduct Business in this State – \$125
- Amendment to Certificate of Incorporation – \$75
- Annual Report – \$50
- Certificate of Cancellation of Shares – \$75
- Termination of Alternate Name – \$75

- Certificate of Dissolution – \$75
- Application for Withdrawal – \$75
- Change of Address of Registered Office or Change of Registered Agent, or both – \$25
- Reinstatement of Charter – \$75

Domestic Security Fee. Motor vehicle rental companies are required to pay a \$2 fee for each day (or part of a day) that a motor vehicle (passenger automobile, truck, semitrailer) is rented in New Jersey under a rental agreement of not more than 28 days. The fee applies to rental agreements entered into on or after August 1, 2002. The fee must be separately stated in the rental agreement and is not subject to New Jersey sales and use tax.

The fees due are to be reported quarterly on Form DSF-100 and paid by the last day of the month next following the close of the calendar quarter. Form DSF-100 is to be filed online or by telephone, and payments are to be made by e-check, credit card, or electronic funds transfer. Paper returns may be used until the electronic filing options become available.

For more information on the Domestic Security Fee, visit the Division of Taxation Web site at: www.state.nj.us/treasury/taxation/domestic.shtml

Penalty for Stopped or Returned Checks. The legislation gives the Director of the Division of Taxation the authority to charge a \$50 fee for any check that is returned due to insufficient funds or stop payment order when the check was issued for payment of any State tax or related penalty.

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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In addition, the legislation addresses fees and penalties administered by other divisions of the State (e.g., Law Division of the Superior Court, Chancery Division of the Superior Court, Department of Agriculture).

Miscellaneous

Camden Revitalization — P.L. 2002, c.43 establishes the “Municipal Rehabilitation and Economic Recovery Act” which attempts to rehabilitate a qualified municipality, namely the City of Camden, and restore its economic vitality, which is necessary for long-term recovery. It provides a pilot program for a limited period of time during which considerable sums of State money will be invested in the qualified municipality with appropriate State supervision by a chief operating officer who is accountable to both city elected officials and the State. The legislation contains a number of tax-related benefits for residents of a qualified municipality and businesses located there.

Unclaimed Property — P.L. 2002, c.35 (signed into law on July 1, 2002) makes several modifications to the Unclaimed Property Act bringing New Jersey’s law into line with those of most other states and with unclaimed property practice nationally. See *Unclaimed Property Act Modified* on page 8. □

Editor’s Note

The Summer and Fall editions of the *New Jersey State Tax News* have been combined in an effort to keep our readers informed of late-breaking developments in tax legislation for the new fiscal year.

Business Tax Reform Summary

The Business Tax Reform Act (P.L. 2002, c.40) is intended to reform New Jersey’s system of taxation of corporations and other business entities through revision of the corporation business tax and other changes of law. Changes to the present corporation business tax (CBT) include: technical changes aimed at large corporations, the addition of an alternative minimum assessment, tracking changes affecting flow-through entities, and the addition of several new tax advantages to small businesses.

Technical Changes

These provisions address various ways in which corporations reduce or avoid tax on income by restoring equity between the corporations that can use these methods and those that cannot, or do not. The Act also makes a number of changes to the tax base in order to make taxation of corporations more equitable.

Disallowance of the deduction of intangible expenses paid to a related party — The Act limits the ability of a taxpayer to deduct royalties and other intangible expenses and costs and related interest when paid to affiliates. The Act continues to allow such deductions in areas that are established as “non-tax avoidance” situations. The Director of the Division of Taxation has the discretion to allow the deduction on a case-by-case basis; however, as the disallowance of the deduction is the general rule, this has the effect of requiring the taxpayer to secure prior approval for the deduction

before departing from the general rule.

Disallowance of the deduction of interest paid to a related third party — The Act restricts deductibility of inter-affiliate interest expenses, but continues to allow such deductions in areas that are established as “non-tax avoidance” situations. Exceptions to the general rule are allowed to prevent duplicate taxation, to avoid unreasonable disallowance of the deduction, to protect income tax treaties between the United States and related entities in a foreign nation, and to allow for situations where debt is “pushed down” from a corporate parent to a subsidiary but involves a regular, market-rate loan from an outside lender.

Establishing a limited throwout rule — This rule applies to corporations with sales earned in other jurisdictions that are not taxed there. The Act requires corporations to “throw out” from the denominator of the sales fraction receipts from sales into such destination states. In order to prevent this change from creating an exceptionally large tax burden on an affiliated group of companies, the additional liability for a group is limited to \$5 million, and may be spread proportionately among the affiliates.

Extending the reach of the CBT to constitutional limits — The Act extends the reach of the New Jersey CBT to a corporation that derives any income from New Jersey sources. This change extends the reach of the CBT to the full extent permitted under the United States Constitution and Federal statutes.

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Nonoperational income fully taxed — The Act requires that, if the principal place from which the trade or business of the taxpayer is directed or managed is in this State, 100 percent of “nonoperational income” be assigned here, to the extent permitted under the Constitution and the statutes of the United States.

Disallowance of the deduction for income taxes paid to foreign nations — The Act disallows a deduction for taxes paid to foreign nations.

Clarification of the research and development expense deduction — The Act disallows the deduction of certain research and development expenses that are used to claim the New Jersey research and development credit but are not used to claim a Federal research and development credit.

Tax on investment company income increased — The Act raises the proportion of an investment company’s net income subject to tax from 25% to 40%.

Savings institutions tax eliminated — The Act repeals the Savings Institution Tax Act and subjects savings banks, building and loan associations, and savings and loan associations to the corporation business tax.

Disallowance of the deduction for dividends received from another corporation — The Act disallows the deduction for dividends received from a corporation in which the taxpayer has less than a 50% ownership interest.

Codification of the net operating loss rule — The Act codifies the

New Jersey regulations governing the use of net operating losses with the goal of foreclosing further challenges to them.

Alternative Minimum Assessment (AMA)

The Act creates an alternative minimum assessment (i.e., a tax on either gross profits or gross receipts, at the election of the taxpayer) to measure a company’s economic activity in New Jersey in situations where the traditional “taxable income” formula is not a fair measure.

S corporations, professional corporations, investment companies, pass-through entities, and corporations operating as cooperatives under Federal requirements will be exempt from the AMA. Corporations subject to the CBT will be required to compute the AMA and pay the greater of the CBT or the AMA.

Pass-Through Entities

Pass-through entity return processing fee — For pass-through entities that have income from New Jersey sources and more than two members, the Act establishes an annual \$150 per owner filing fee, capped at \$250,000 per entity per year. The Act establishes a similar filing fee of \$150 per licensed professional for professional corporations with more than two licensed professionals, also capped at \$250,000 per corporation per year.

Pass-through entity payment on behalf of owners — Pass-through entities, other than those listed on a United States national stock exchange, must make a payment on the share of the income of each nonresident owner (corporation,

partnership, individual, trust, or estate) at a 9% rate for corporate owners and a 6.37% rate for individual owners. The payment is credited to separate accounts for each owner, and may be credited against their respective tax liabilities.

Revenue Measures

Two-year net operating loss suspension — The Act suspends the application of net operating loss deductions for tax years 2002 and 2003. The usual seven-year carry-forward is extended for two years.

Subchapter S corporation phase-out freeze — The Act resets the tax rate on S corporations to the 2001 tax year levels through tax year 2005, and then resumes the phase-out thereafter.

Acceleration of fourth quarter payments for substantial taxpayers — The Act accelerates the fourth quarter estimated tax payment into the second quarter for taxpayers with gross receipts of \$50 million or more. The acceler-

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Interest 8%

The interest rate assessed on amounts due for the period January 1, 2002 – December 31, 2002 will be 8%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%

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ated schedule would remain in effect for these taxpayers for privilege periods beginning in 2002 and thereafter.

Decoupling from Federal “bonus” depreciation — The Act disallows, for corporate income tax purposes, the deduction of the 30% “bonus” depreciation that was allowed for certain property for Federal tax purposes under the Federal “Job Creation and Worker Assistance Act of 2002,” Pub L. 107-147.

Increased minimum tax — The Act increases the annual minimum tax from \$210 to \$500 for tax year 2002 and thereafter for the majority of corporations. However, members of an affiliated or controlled group with total payroll of \$5 million or more shall be subject to a minimum tax of \$2,000 per year.

Small Business Provisions
CBT tax rate reduction for small business — The Act reduces the tax rate from 7.5 percent to 6.5 percent for businesses with less than \$50,000 of net taxable income.

Enhanced new jobs investment tax credit — The Act doubles the value of the new jobs factor under the New Jobs Investment Tax Credit.

Administrative Provisions
Disclosure of inter-affiliate transactions — The Act allows the Director to require the disclosure of inter-affiliate transactions, costs, and expenses, including transactions with related businesses that are not themselves CBT taxpayers, including, but not limited to, management fees, rents,

and charges for other services. Disclosure is required only upon request of the Director and the taxpayer has 90 days to comply.

Net operating loss suspension hold-harmless — The Act forbids the imposition of any penalty for the underpayment of an estimated payment that is due to the two-year suspension of the application of net operating loss carryforwards.

Fourth Quarter 2002 25% estimated payment — For the fourth quarter estimated payment for the 2002 tax year, and only that payment, the Act suspends the usual forgiveness provisions that apply to estimated tax payments and requires the fourth quarter payment to be 25% of the total liability for 2002, calculated under the provisions of the Act.

Air Carriers

Air carrier AMA credit — The Act allows an air carrier that contributes more than 25% of the total amortization for capital improvement projects at Newark International Airport paid through rates and charges to take a credit of 50% of its amortization payment for the privilege period against its calculation of AMA, so long as the credit does not reduce the AMA to less than the CBT statutory minimum.

Study Commission

The Act creates a nine-member, bipartisan Corporation Business Tax Study Commission to study reforms adopted under the Act and examine other aspects of New Jersey corporation business tax.

Excess Revenue Fund

The Act creates a restricted reserve fund known as the Corpora-

tion Business Tax Excess Revenue Fund, into which amounts in excess of the annual target for corporation business tax revenues will be deposited. Balances in the fund will be available for appropriation in Fiscal Year 2004 and Fiscal Year 2005 to assist in covering shortfalls in corporation business tax collections from the target amount for the fiscal year. □

Why CBT Changes Were Needed

In a News release issued July 2, 2002, State Treasurer John E. McCormac listed reasons for the changes enacted in the Business Tax Reform Act (P.L. 2002, c.40).

- Of approximately 200,000 active corporations in New Jersey, 77 percent pay only the minimum corporate tax of \$200. This is not because these companies are unprofitable, it is because corporations use loopholes to drive down their profits on paper, regardless of whether they are reporting record profits to their shareholders.
- Thirty of New Jersey’s 50 largest employers paid only \$200 in corporate taxes last year. A closer examination of ten of these corporations revealed that although \$13.3 billion in profits had been reported to shareholders, after using loopholes and accounting gimmicks not one of the companies had profits to report on its New Jersey tax return, and none of the companies paid more than the \$200 minimum corporate tax. That \$200 is less tax than the amount

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paid by a single parent who earns \$25,000 a year and has one child.

- In 1999, \$1.2 billion of the \$1.6 billion raised in corporate taxes was paid by less than one percent of the businesses. Only 31 companies paid more than \$5 million in corporate taxes that year. These companies contributed one-third of the total corporate tax receipts, while the 77 percent of corporations that paid the minimum \$200 tax contributed just two percent of total tax payments.
- Corporation business tax (CBT) collections in New Jersey and elsewhere don't reflect corporate profit-taking. Over a recent five-year period of significant economic prosperity (1995-2000), the amount of corporate income reported to the Federal government grew by twice the rate reported to state governments over the same period of time. State corporate tax collections grew by three percent and Federal corporate tax collections grew by six percent, while Federal and state tax levels remained essentially stable.
- Corporate taxes are eroding in New Jersey and nationally. The Congressional Budget Office and the Joint Committee on Taxation report that corporate taxes will plummet to only 1.3 percent of gross domestic product this year, the lowest since fiscal year 1983 when corporate taxes bottomed out at 1.1 percent of GDP on the heels of the huge corporate tax reductions enacted in 1981.

- In 1982, New Jersey CBT collections accounted for more than 15 percent of all revenue collected, exceeded only by the gross income tax and the sales tax. The percentage share of total revenue derived from the CBT has declined steadily in the last decade, from 10 percent in fiscal year 1990 to 6.6 percent in fiscal year 2001. It is estimated that receipts from the CBT will provide only about 5 percent of total State revenue in fiscal year 2002. Conversely, since 1982, revenue from the gross income tax has increased by 500 percent and sales tax has increased by 370 percent.
- The continuing shift in this balance means that there is increased reliance in state budgeting on working families (through the income tax) and on consumers (through the sales tax). □

Streamlined Sales Tax Project Update

As reported in the Fall 2000 issue of the *New Jersey State Tax News*, the State of New Jersey has been actively involved with the Streamlined Sales Tax Project. The goal of the Project is to design, test, and implement a new sales and use tax system for the 21st century. The Project is a joint effort by state governments, with input from local governments and the private sector, to simplify and modernize current sales and use tax systems.

There are 45 states with sales taxes, 40 of which are currently involved in the Project. Thirty-four states (including New Jersey) plus the District of Columbia are voting

participants in the Project. In order for a state to be a voting participant, its legislature must have enacted enabling legislation or its governor must have issued an executive order or a similar authorization. The remaining six states are nonvoting participants because they do not have the formal commitment of their state executive or legislative branches.

On December 22, 2000, state representatives to the Project voted to approve a Uniform Sales and Use Tax Administration Act and Streamlined Sales and Use Tax Agreement. The approval of the Act and Agreement establishes the basis for states to enact legislation to provide the benefits of simplification to vendors in their state.

New Jersey joined the 26 states and the District of Columbia (the "Implementing States") that have enacted at least the Uniform Sales and Use Tax Administration Act when P.L. 2001, c.411, was signed January 8, 2002. Thirty-three states plus the District of Columbia had introduced the Act or both the Act and the Streamlined Sales and Use Tax Agreement as of April 1, 2002.

The Project's short-term goal is to have all the significant proposals regarding simplification, uniformity, etc. in legislative form in time to be acted on by all the state legislatures within the next year. The long-term goal is to have 20-25 states with the uniform provisions in place by the time the current extension of the Internet Tax Freedom Act expires in late 2003. It is hoped that Congress would view this as proof of significant simplification and take the necessary steps to require most remote ven-

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dors selling into states that have adopted the simplified system to collect the sales tax on sales in those states.

The Streamlined Sales Tax System the participants are working to develop focuses on improving sales and use tax administration systems for both "Main Street" and remote sellers for all types of commerce. The key features of the system include:

- 1. Uniform definitions within tax bases.** Legislatures still choose what is taxable and exempt but will use the common definitions for key items in the tax base.
- 2. Simplified exemption administration.** Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for incorrect exemptions claimed.
- 3. Rate simplification.** States will be responsible for the administration of all state and local taxes and the distribution of local taxes to the local governments. State and local governments will use common tax bases and accept responsibility for notice of rate and boundary changes.
- 4. Uniform sourcing rules.** The states will have uniform sourcing rules for all property and services.
- 5. Uniform audit procedures.** Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have a limited scope audit,

depending on the technology model used.

Participation in the system by both vendors and states is voluntary. Also, registration by vendors in the Streamlined Sales Tax System does not infer nexus for business activity or income tax purposes.

The system will provide sellers the opportunity to use one of three technology models. However, some sellers may choose to continue to use their current systems and still enjoy the benefits of simplification. A seller may select one of the following technology models for remitting sales tax:

- Model 1 – Certified Service Provider performs all of the seller's sales tax functions, other than the seller's obligation to remit tax due on its own purchases.
- Model 2 – Certified Automated System calculates the amount of tax due on a transaction and seller retains responsibility for remitting tax.
- Model 3 – Certification of proprietary sales tax software systems used by certain large sellers.

The Project will continue to incorporate additional elements into the system, which may include additional uniform definitions, a uniform tax return, and revisions to the technology models based upon information gained through the testing of tax collection software. Up-to-date information about the Project can be found at:

www.streamlinedsalestax.org



Two Versions of 2002 CBT Returns

The Division of Taxation will issue two versions of the 2002 corporation business tax returns, Forms CBT-100 and CBT-100S. Separate versions are needed because of changes contained in the Business Tax Reform Act, P.L. 2002, c.40 (approved July 2, 2002) which affect taxpayers with accounting periods beginning on or after January 1, 2002.

One version of the CBT-100 and CBT-100S returns is to be used by taxpayers with accounting periods beginning *before* January 1, 2002. This version is already available in printed form (call the automated Forms Request System at 1-800-323-4400 or 609-826-4400) and on our Web site:

www.state.nj.us/treasury/taxation/

The second version of Forms CBT-100 and CBT-100S (for tax periods beginning *on or after* January 1, 2002) has required extensive changes due to the complexity of the Business Tax Reform legislation. We expect this version of the 2002 returns to be available in early 2003.

When filing New Jersey corporation business tax (CBT) returns, it is important to use the form for the correct year. The return year of the CBT-100 or CBT-100S a corporation files is determined by the close of its fiscal or calendar accounting period. The 2002 New Jersey corporation business tax returns should only be used for tax periods ending July 31, 2002, through June 30, 2003. The accounting year for New Jersey

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purposes is the same period the taxpayer uses for Federal purposes, and the ending month for Federal and New Jersey purposes must be the same. However, the return year a corporation uses for New Jersey and Federal purposes may differ. (For example, a return for a taxable year ending August 31, 2002, may be filed on a 2001 Federal Form 1120, while a 2002 Form CBT-100 or CBT-100S must be used for that period.)

In addition to choosing the CBT return for the correct year, when filing for tax year 2002 be sure to choose the appropriate version of Form CBT-100 or CBT-100S. A corporation whose taxable year began *before* January 1, 2002, will use one version of the forms, while a corporation whose year began *on or after* January 1, 2002, will use a different version, one which reflects the changes enacted in P.L. 2002, c.40. All CBT returns are due on the 15th day of the fourth month following the end of the accounting period. For example, if a corporation's accounting period ends October 31, 2002, the return due date is February 18, 2003. (When a filing due date falls on a Saturday, Sunday, or State holiday, the return is due the next business day.)

For information on the correct corporation business tax return form to use and return filing dates, contact the Division's Customer Service Center at 609-292-6400.

□

Unclaimed Property Act Modified

P.L. 2002, c.35, which modifies the Uniform Unclaimed Property Act, was signed into law by the Governor on July 1, 2002.

This statute reduces the dormancy period for most types of property from ten years or five years to three years. The shorter abandonment periods will result in more property being reunited with the rightful owners, greater protection for the owners of the property, and increased benefit to all the residents of the State of New Jersey through increased revenues resulting from the program. These changes will ease the record retention burden for most companies. Also, records requested during audits will more frequently fall within the record retention requirements for tax records.

The Act clarifies and expands the types of property covered under the Statute. Several types of property already being reported and remitted to the State will now be more clearly covered under the Unclaimed Property Act such as shares of stock in dividend reinvestment plans, mutual fund shares, credit balances, customer overpayments, security deposits, and refunds. In addition, the scope of the Act extends to the following types of property:

- Property distributable to policyholders by an insurance company pursuant to its demutualization.
- Non-dividend-paying securities based on the return of a second mailing to the owner.
- Underlying registered debt of a business association resulting

from periodic interest payments that have not been negotiated even if this occurs before maturity.

- Undistributed proceeds of a class action.
- Nontraditional individual retirement accounts (i.e. Roth and Education IRAs).

The law clarifies the definition of "holder" as the "original obligor indebted to another on an obligation." This follows the definition espoused in a case recently decided by the New Jersey Supreme Court.

The Act clarifies the burden of proof issue where the obligation on a negotiable instrument is disputed. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. The administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Payment, satisfaction, discharge, and want of consideration are affirmative defenses that are to be established by the holder.

The Act also specifically prohibits the charging of "escheat fees" by financial organizations or business associations against property being transferred to the State. Any other charges are limited to what would not be considered "unconscionable."

The Act also clarifies the issue concerning State records of escheated property. Only the name and address of the apparent owner is considered public information.

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Other information, such as account balances and numbers, is to be considered confidential and not subject to public release. This allows for the continuation of the confidentiality of personal financial information by the administrator as successor "trustee." □

Estate Tax Changes

On July 1, 2002, Governor McGreevey signed into law legislation amending certain provisions of the New Jersey estate tax imposed under N.J.S.A. 54:38-1 et seq. The amendment applies to the estates of resident decedents dying on or after January 1, 2002.

Prior to enactment of the amendment, the New Jersey estate tax was based upon the credit allowable in the Federal estate tax proceeding for inheritance and other legacy taxes imposed by any state, territory, or the District of Columbia. Under changes made to the Federal estate tax law in 2001, New Jersey's estate tax would have been phased out over a three-year period beginning in 2002. The amendment signed by the Governor preserves the tax as it existed prior to 2002.

The amended statute provides for a New Jersey estate tax payable by the estate of resident decedents who die after December 31, 2001. At the election of the person or corporation liable for the payment of the tax, the tax is either:

1. The maximum credit for state death taxes that would have been allowable had the decedent died on December 31, 2001, or
2. An amount determined pursuant to a simplified tax system as may be prescribed by the

Director of the Division of Taxation.

The tax liability is reduced by estate, inheritance, succession, or legacy taxes actually paid to any state or territory of the United States or the District of Columbia.

The revised statute provides that the tax shall remain a lien on all property of a decedent until paid and that no property owned by a decedent on his date of death may be transferred without the written consent of the Director.

The Division is in the process of developing the necessary rules, regulations, policies, procedures, and forms. Information pertaining to the estate tax may be obtained by contacting the Inheritance and Estate Tax Section at 609-292-5033/5035 during normal business hours or by mail at NJ Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, NJ 08695-0249. Additional information, forms, and returns will be posted to the Division's Web site as they become available. □

Depreciation Allowance

The new Federal Special Depreciation Allowance that was created under the Federal Job Creation and Worker Assistance Act provides an additional first-year depreciation deduction equal to 30% of the adjusted basis of "qualified property" placed into service after September 10, 2001, and before September 11, 2004. Taxpayers may "elect out" and not claim the Special Depreciation Allowance.

The Gross Income Tax Act at 54A:8-3(c) states in part that "a taxpayer's accounting method un-

der this act shall be the same as his accounting method for Federal income tax purposes." A taxpayer's method of accounting for Federal income tax purposes not only determines when income is recognized and reported but also the method used to compute taxable income.

Property that qualifies for the Federal Special Depreciation Allowance for Federal tax purposes also qualifies for New Jersey gross income tax purposes. However, taxpayers must make the same election for New Jersey gross income tax purposes as for Federal tax purposes. Taxpayers who take the Special Depreciation Allowance for Federal tax purposes must also take it for New Jersey gross income tax purposes. If they "elect out" of the Special Depreciation Allowance for Federal tax purposes, they cannot take it for New Jersey gross income tax purposes.

For purposes of the corporation business tax, N.J.S.A. 54:10A-4(k) provides that "the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report...to the United States Treasury Department for the purpose of computing its federal income tax...." This provision requires that taxpayers that are subject to the corporation business tax must also make the same election for corporation business tax purposes as for Federal tax purposes.

The Business Tax Reform Act, P.L. 2002, c.40 (signed into law on July 2, 2002) makes numerous amendments to the New Jersey

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corporation business tax. In particular, the new law disallows the use of Federal bonus depreciation for privilege periods starting on or after January 1, 2002. As a result, a taxpayer is required to uncouple the Federal and State depreciation claimed as a deduction in arriving at entire net income for such privilege periods. If a taxpayer claims the 30% bonus depreciation Federally in an earlier privilege period when the property is placed in service, the taxpayer shall continue to do so and remains "coupled" to the Federal method.

Information regarding the uncoupling required of bonus depreciation claimed on the Federal Form 1120 will be provided in the corporation business tax return instruction booklets, Forms CBT-100-P and CBT-100S-P. □

Tax Amnesty in Connecticut

From September 1 through November 30, 2002, Connecticut Tax Commissioner Gene Gavin and the Connecticut Department of Revenue Services (DRS) will conduct a Tax Amnesty Program, an extremely beneficial opportunity for businesses and individuals — residents and nonresidents — to pay back taxes and reduced interest owed to the State of Connecticut. During the three-month Amnesty program, taxpayers with state tax delinquencies for any period ending on or before March 31, 2002, will be able to pay their tax debt without fear of penalty or criminal prosecution. Taxpayers may also be eligible for a 25 percent reduction in the interest they owe.

"Even in these tough economic times, individuals and businesses are still responsible for paying their fair share of taxes to the State of Connecticut," Commissioner Gavin said. "We don't want to penalize or prosecute people, who — for whatever reason — have not met their state tax obligations. We hope that delinquent taxpayers will take advantage of this amnesty to pay their debt to the state before we take action."

The 2002 Connecticut Tax Amnesty Program applies to virtually all state taxes administered by DRS, including income tax, corporation business tax, and sales and use taxes. It is available to anyone who owes back taxes, whether they intentionally or unintentionally failed to pay their taxes. For those who were unaware of their tax liabilities, Amnesty will provide information to correct past delinquencies and avoid future filing problems. For those who intentionally avoided taxes, Amnesty offers a last chance to come forward and clean the slate.

"If everyone paid the taxes they owe, the state would be in a better position to fund the programs that improve the quality of life in Connecticut, and prevent in these difficult times, the need to possibly increase taxes on everyone," Commissioner Gavin said.

Once Amnesty is complete, DRS will undertake a very aggressive

enforcement of the tax laws to collect the money owed to Connecticut. Commissioner Gavin will mobilize his experienced and extensive team of auditors who are now armed with the latest computer technologies and techniques to locate tax delinquents and determine how much they owe.

"I urge anyone who owes Connecticut taxes for taxable periods ending on or before March 31, 2002, to apply for the Connecticut Tax Amnesty Program between September 1 and November 30, 2002," Commissioner Gavin said. "Our Amnesty slogan sums up the seriousness of our commitment to collecting back taxes owed to the state: **Either Way, You Will Pay!** After Amnesty, you will definitely pay more!"

For further information on 2002 Connecticut Tax Amnesty, call 860-297-5962 or visit the DRS web site at:

www.ct.gov/taxamnesty □

Massachusetts Amnesty

As this issue went to press, the Commonwealth of Massachusetts had just announced plans to conduct a 60-day tax amnesty beginning October 1, 2002, and ending December 2, 2002. Under the amnesty program, individuals and businesses would be able to pay

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June Marks 30th Year In Print

The *New Jersey State Tax News* is celebrating its 30th anniversary. The first copy of the newsletter appeared in June 1972, and the newsletter has been providing tax-related information to the public ever since. Thank you to everyone who has made the *New Jersey State Tax News* what it is today.

ma amnesty - from page 10

their back taxes without penalties, but would still be required to pay interest. For more information, visit the Massachusetts Department of Revenue Web site at: www.dor.state.ma.us/ □

Tax Amnesty in Missouri, Kentucky

The state of Missouri instituted a three-month Tax Amnesty Program which began August 1, 2002. The program offers qualified taxpayers the opportunity to pay delinquent taxes without having to pay interest or penalties. Amnesty is limited to taxes administered by the Missouri Department of Revenue that were due on or before December 31, 2001. Full payment of amounts due must be received on or before October 31, 2002. To find out more about eligibility requirements and to obtain an amnesty application, visit the Missouri Department of Revenue's Web site at: www.dor.state.mo.us/tax/ or call 573-751-7200

Kentucky's Tax Amnesty Program also began August 1, 2002, but ends on September 30, 2002. The two-month amnesty includes all state taxes directly administered by the Kentucky Revenue Cabinet. Property taxes levied against real estate, motor vehicles, and motor boats and payable to local officials are not included. The program applies to back taxes incurred on or after December 1, 1987, and prior to December 1, 2001. Amnesty not only waives all penalties and fees but all interest charges as well. Virtually all taxpayers are eligible to participate in the program.

More information is available on Kentucky's amnesty Web site at: www.amnesty.ky.gov

or by calling 1-877-665-9829 □

GROSS INCOME TAX Credit for S Corp Shareholders

The Division has recently received several inquiries regarding whether shareholders in an S corporation can claim a credit on their New Jersey gross income tax return for the taxes paid to another state or city by the S corporation.

An article published in the Spring 2000 issue of the *State Tax News* entitled "New York City UBT/Philadelphia BPT" stated that a credit for taxes paid under the New York City Unincorporated Business Tax law would be allowed and that a credit would also be extended to unincorporated businesses subject to the net income portion of the Philadelphia Business Privilege Tax. The article does not extend a credit to incorporated businesses that are subject to these taxes.

The Gross Income Tax Act at 54A:4-1. Resident credit for tax of another state, provides that:

"A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section."

Subsection (c) limits the credit a taxpayer/shareholder can claim by

disallowing a credit against any S corporation income allocated to this State, while subsection (d) disallows a credit for the amount of any tax paid or accrued for the taxable year that is paid by a person other than the taxpayer, whether or not the taxpayer may be liable. The term person as used in subsection (d) encompasses the S corporation as the entity subject to and paying the tax.

Based on the foregoing, the Division has determined that N.J.S.A. 54A:4-1(c) and (d) preclude shareholders of an S corporation from claiming a credit for taxes paid to other jurisdictions, such as the net profits tax paid to the City of Philadelphia, on their personal gross income tax return for taxes paid to other states and/or their municipalities by the S corporation. □

GROSS INCOME TAX Treatment of 457 Plan Distributions

Currently, distributions of deferred payments from a 457 plan are treated as wages in the same way as for Federal income tax purposes. As opposed to the Federal treatment that defers tax on contributions to these plans, New Jersey taxes amounts in excess of contributions when received for income tax purposes that are reported in the "State wages" figure on Form W-2. Since New Jersey has previously taxed the wage compensation, the only amount received by the taxpayer subject to tax as a distribution is the earnings and gain.

However, under the Economic Growth and Tax Relief Recon-

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457 plans - from page 11

ciliation Act of 2001 (EGTRRA) the Federal reporting document for 457 plan distributions has recently changed from an IRS Form W-2 to an IRS Form 1099-R in 2002. Whereas Form W-2 is for reporting wage income, Form 1099-R is used for distributions from pensions, annuities, and retirement plans. The modification to the 457 plan for reporting distributions would now reclassify the income from the 457 plan as pensions and annuities in the same manner as that of an IRA, 401(k), 414(h), and 403(b) plan for Federal purposes.

Under the Gross Income Tax Act, New Jersey has a separate category of income for compensation and wages under N.J.S.A. 54A:5-1(a) as distinguished from pension payments under N.J.S.A. 54A:5-1(j). Compensation and wages are usually determined to be taxable under the Gross Income Tax Act using the Federal definition as verified on the W-2.

For that reason, taxpayers should report only the amounts provided on their W-2 as wages and compensation, and the income from the 457 plan as pensions and annuities on their New Jersey income tax return. □

INHERITANCE/ESTATE TAX ***Filing Extension***

The Division of Taxation has instituted a new, formalized procedure for requesting an extension of time to file a New Jersey inheritance tax return and/or a New Jersey estate tax return. A form has been developed and the regulations have been amended to reflect the new procedure. N.J.A.C. 18:26-3.7 and 9.1.

In the past, taxpayers or their legal representatives would submit a letter to the Division requesting an extension of time to file a return. Although the procedure worked fairly well, there were no guidelines in place setting forth the information required by the Division or the extension periods which would be considered. The newly implemented procedure overcomes these deficiencies. It facilitates both the request for and the approval of extension requests.

Requests for an extension of time to file an inheritance tax return and/or an estate tax return are made by submitting Form IT-EXT (Application for Extension of Time to File a Return). A single form may be used to request an extension of time to file both the inheritance and the estate tax returns. The completed form, along with any required attachments, should be mailed to:

STATE OF NEW JERSEY
DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
INHERITANCE AND ESTATE TAX
PO BOX 249
TRENTON NJ 08695-0249

Inheritance tax returns are required to be filed within eight months following the death of a decedent. An extension of time to file the tax return may be requested for a period up to four months beyond the original due date. If it is not possible to file the tax return within the four-month extension period, the estate representative may request an additional two-month extension, for a total of six months. Extensions beyond six months are granted only in cases where exceptional circumstances exist.

Estate tax returns are required to be filed within nine months

following the death of a decedent. An extension of time to file the tax return may be requested for a period up to that allowed by the Internal Revenue Service for the filing of the Federal estate tax return. A copy of the request made to the Internal Revenue Service must be attached to the Form IT-EXT application. Additionally, if the Federal extension is not automatic, a copy of the Federal approval must be attached. Any extension granted for the filing of the New Jersey estate tax return expires upon the filing of the Federal estate tax return.

The newly implemented procedure applies only to the time within which an inheritance and/or estate tax return may be filed. An extension of time to file in no way extends the time to pay. Both the inheritance tax and the estate tax are due on a decedent's date of death. The inheritance tax must be paid within the eight-month period and the estate tax within the nine-month period following the date of death. Interest accrues at 10% per annum on any inheritance tax not paid within the eight-month period and on any estate tax not paid within the nine-month period. □

SALES AND USE TAX

Charges for Storing Advertising Material

In general, sales tax is due on the purchase of tangible personal property such as advertising and promotional material. However, the law provides an exemption for the purchase of advertising and promotional material that is ultimately delivered to recipients outside of New Jersey. The exemption is available even if the advertiser

storage charges - from page 12

takes delivery of the material and stores it in New Jersey prior to shipment out of State.

The direct-mail processing services that relate to such material are also exempt from sales tax. Processing services include addressing, separating, folding, inserting, sorting, and packaging the advertising and promotional material. However, processing services do not include separate charges for the storage of the material prior to either processing or delivery. The Division takes the position that since storage of goods, other than inventory, is a service that is specifically taxed under the law, storage charges are not included in the exemption for direct-mail processing services performed on material that will be delivered out of State. Therefore, a New Jersey company must pay sales tax on charges for storing advertising or promotional material, regardless of where the material will be subsequently delivered. □

No Property Taxes Due — No Rebate

In 1992, the New Jersey Tax Court held that in order to be eligible for the homestead rebate, the applicant's property must be subject to local property taxes, and that property taxes must be paid, either directly, or indirectly through rent. See *RULAC v. Director*, 12 NJ Tax 642 (1992). As part of that decision, the Tax Court noted that "...payments in lieu of taxes are made to 'compensate municipalities for the impact upon local government costs of local services to State property...' N.J.S.A. 54:4-2.2b." The Court concluded that

payments in lieu of taxes are different from local property taxes, and therefore, the payment of the former was not enough to satisfy the eligibility requirements for the homestead rebate.

The NJ SAVER and Homestead Rebate Act defines a homestead, in part, as "a dwelling house and the land on which that dwelling house is located which constitutes the place of the claimant's domicile and is owned and used by the claimant as the claimant's principal residence." N.J.S.A. 54:4-8.58. The Act also codified the Tax Court's decision in *RULAC*, by defining property tax as "payments to a municipality based upon an assessment made by the municipality upon real property on an ad valorem basis on land, improvements or both, *but shall not include payments made in lieu of taxes.*" (Emphasis added).

Each year the Division of Taxation receives numerous inquiries from homeowners and tenants who believe that they pay property taxes, but whose NJ SAVER and homestead rebates have been denied because the amounts paid are not considered property taxes as defined by the Act.

Ineligible Homeowners

Some condominium and townhouse owners make Payment-in-Lieu-of-Tax (P.I.L.O.T) payments to their local municipalities rather than property tax payments. Under abatement agreements entered into by their municipalities and which affect their properties, the homeowners pay land taxes and service charges but no taxes are assessed on the buildings for a specified period. Consequently, P.I.L.O.T. payments are not considered prop-

erty taxes for NJ SAVER or homestead rebate purposes.

Homeowners making P.I.L.O.T. payments may receive tax bills for the land tax portion of the payment and a second bill clearly marked "PILOT Service Charge" or simply "P.I.L.O.T." In addition, their notices of property tax assessment indicate an assessment was made for the land but no assessment was made for the building.

In addition, homeowners who are completely exempt from paying property taxes on their principal residence are not eligible for the NJ SAVER or homestead rebates. This can include certain disabled veterans and their unmarried, surviving spouses who may claim a 100% exemption from local property taxes under certain conditions. However, if any portion of the dwelling is rented to a tenant and property taxes are paid by the disabled veteran owner on the rented portion, the tenant may be eligible for a homestead rebate, but the property owner is not eligible.

Ineligible Tenants

Tenants living in dwellings which are not subject to local property taxes are not eligible for the homestead rebate. This includes tenants living in tax-exempt housing or other dwellings owned by State, County, Municipal, or Federal government; students living in on-campus apartments at State colleges and universities; and tenants living in dwellings owned by religious, charitable, or other nonprofit organizations (including on-campus apartments at private nonprofit colleges and universities) if the property is exempt from local

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property taxes. These tenants are not eligible even if payments in lieu of taxes are made by the buildings' owners.

Tenants living in privately owned apartment complexes where the owners make payments in lieu of taxes are also not eligible for the rebate.

Some tenants live in buildings that are subject to property taxes but part of their rent is subsidized. Those tenants *are* eligible for rebates if they meet the other qualifications. For rebate purposes, their rent is the actual amount paid out-of-pocket.

Questions regarding abatement agreements, in lieu of property tax payments, or exemptions from property taxes should be directed to the local tax collector or, for tenants, to their landlord.

For more information on qualifying for a homestead rebate, request Tax Topic Bulletin HR-2, *Homestead Rebate Guidelines*. Publications are available on the Division of Taxation's Web site at www.state.nj.us/treasury/taxation/ or by calling the Forms Request System at 1-800-323-4400 (Touch-tone phones within New Jersey, New York, Pennsylvania, Maryland, and Delaware) or 609-826-4400 (anywhere). □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the New Jersey Association of Public Accountants (NJAPA), and coop-

erating colleges. The one-day institutes, which begin November 8 and end December 18 are geared toward the intermediate and advanced tax preparer.

The topics presented by the New Jersey Division of Taxation are:

- 2002 New Jersey Gross Income Tax Update
- Sales and Use Tax Update
- Doing Business with New Jersey (including online registration, filing, and payment of taxes for individuals and businesses)
- 2002 Business Tax Update (including general information on new corporation tax rates)

The topics presented by Internal Revenue Service are:

- 2002 Tax Law Changes
- Key Messages for Practitioners (E-File/EFTPS, Exam & Collection Re-engineering)
- Retirement Plans (including IRAs, SIMPLE Plans, etc.)
- Sale of Personal Residence/ Capital Gains
- Taxpayer Advocate's Office Update

Most sessions begin at 8:30 a.m., conclude at 3:30 p.m., and include lunch. The session at Montclair University begins at 9:00 a.m. and concludes at 4:00 p.m. Registration desks will open 30 minutes before the beginning of the session, and coffee will be served. Six (6) CPE credits will be issued in taxation to those who complete the session.

The preregistration fee for commercial tax preparers is \$90 (\$15 for full-time students, ID re-

quired). Those who register at the door will be required to pay a \$100 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds, however, you can reschedule for another location. The locations, dates, and registration form appear on the next page. □

Small Business Workshops

The format of the Small Business Workshops for the fall 2002 season has been modified. These seminars will now be half-day sessions conducted by Division of Taxation personnel and will cover only topics related to State taxes.

The workshops will concentrate on business registration, the tax consequences of differing forms of business, sales and use tax, employer responsibilities, and estimating State personal income taxes for the self-employed. Several shorter "update" seminars have also been scheduled to keep more experienced business owners and their representatives current on changing tax laws and procedures.

The majority of sponsoring agencies for the seminars continue to be the Small Business Development Centers. Strategically located throughout New Jersey, most often within State and county colleges, these centers play host to a plethora of free and low-cost group seminars. They also provide one-on-one support to small businesses, helping them meet the many challenges they face.

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2002 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Nov. 8	Mays Landing	ATLANTIC COUNTY COLLEGE Room M-129	David Matagiese (609) 522-6012
Nov. 14	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov. 18	Piscataway	RUTGERS UNIVERSITY Busch Campus – Student Center	Stuart Simon (732) 679-6363
Nov. 20	Sewell	GLOUCESTER COUNTY COLLEGE Instructional Building – Room 430	Nancy Ritchie (609) 387-2127
Nov. 23	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Dec. 12	Union	KEAN UNIVERSITY University Center – Room 228	Alice Weinstein (973) 379-3275
Dec. 13	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355
Dec. 18	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990

2002 Practitioner Institutes Registration

6 CPE Credits

Fee \$90 – Preregistration

Detach and Mail to:

(Make check payable to NJAPA)

**New Jersey Association of Public Accountants
Attn: Niles Breslau
101 N. Washington Place, Suite 1B
Margate, NJ 08402 TEL: (609) 823-9103**

Name of Attendee	Firm or Company Name
Business Phone	Student (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No
Firm or Company Address	

City	State
Zip Code	
E-mail Address: _____	
College Location	Amount Remitted
_____	_____

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The Division remains confident that these seminars will continue to increase taxpayer education and enhance compliance.

For further information on upcoming seminars, or if your organization wants a speaker on a New Jersey tax related issue, please call the Division at 609-984-4101 or visit our Web site at:

www.state.nj.us/treasury/taxation/

LOCAL PROPERTY TAX***PAMS Update***

The Division of Taxation is currently working on the RFP (Request for Proposal) for the new Property Assessment and Management System (PAMS). The new system will replace the State's current MOD IV batch system and individual vendor municipal applications with a fully integrated Web transaction system, which will perform the same tasks, but provide additional functionality and incorporate new technologies.

An RFI (Request for Information) was issued in September of 2000, to acquire a comprehensive system for local property assessment and tax administration. Subsequently, the Division worked with the Assessors' Association, County Boards of Taxation, Department of Community Affairs, and the New Jersey State League of Municipalities to formulate the requirements of the new system. There were 17 committees, which were comprised of representatives from the groups listed above. There were three types of committees:

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Small Business Workshop Schedule Fall 2002

Participants must register for these sessions with the contact person indicated. Inquire about parking and directions when registering. The times may not be the same for each session/location.

Date	Location	Contact for Registration
October 1	Warren/Washington Warren CCC	Jan Rega sbdc@warren.edu 908-689-9620
October 4	Camden Rutgers, Camden	Harry Charles rsbdc@camden.rutgers.edu 856-225-6221
October 11	Cape May Cape May County Administration Bldg.	Leslie L. Gimeno lgimeno@co.cape-may.nj.us 609-465-6875
October 17	Morris/Randolph Morris CCC	Jan Rega sbdc@warren.edu 908-689-9620
November 1	Union/Union Kean University	Mira Kostak mkostak@kean.edu 908-527-2946
November 7	Sussex/Newton Sussex CCC	Jan Rega sbdc@warren.edu 908-689-9620
November 12	Somerset/No. Branch Raritan Valley CC	Sue Johnson aoneil@raritanval.edu 908-526-1200 ext. 8516
November 13	Somerset/No. Branch Raritan Valley CC	Sue Johnson aoneil@raritanval.edu 908-526-1200 ext. 8516
November 22	Monmouth/Lincroft Brookdale CC	Jacquelin Hoehn jhoehn@brookdale.cc.nj.us 732-842-8685
December 5	Camden Rutgers, Camden	Harry Charles rsbdc@camden.rutgers.edu 856-225-6221
February 4, 2003	Gloucester Mullica Hill	Nancy Polhamus npolhamus@gcls.org 856-223-6025

Package NJX for 2002

See the order blank on page 39 to order your copy of *Package NJX*. The publication is available in print and on CD ROM. The CD ROM version, *NJX PLUS*, contains many useful tax information publications in addition to reproducible tax forms. Three-ring binders capable of holding several volumes of the printed version can be purchased separately.

NJ TaxTalk Service Updated

The Division of Taxation recently updated the TaxTalk portion of its Automated Tax Information System (ATIS) by assigning each TaxTalk topic a unique 3-digit identification code. The Division hopes that this enhancement will make TaxTalk easier and more convenient than ever to use. TaxTalk is the portion of ATIS that provides prerecorded information to callers on a variety of New Jersey tax topics and affords them the opportunity to request written information on certain topics.

TaxTalk is available 24 hours a day, 7 days a week. Select the 3-digit topic number you want to hear. Then call our Automated Tax Information System from a Touch-tone phone at 1-800-323-4400 within New Jersey, New York, Pennsylvania, Delaware and Maryland or 1-609-826-4400 anywhere. We recommend that you have paper and pencil available to take notes.

TaxTalk — Topic Codes

Topic No.	Subject	Topic No.	Subject
NJ INCOME TAX INFORMATION FOR INDIVIDUALS			
Helpful Information on Filing Your New Jersey Income Tax return		224	General Information on the Property Tax Deduction or Credit
100	Who Must File	226	Property Tax Deduction and Credit Frequently Asked Questions
102	How and When to File an Extension	Pension and IRA Information	
104	How and When to Amend	154	Pension Income
106	Penalties and Interest on Filing	156	Pension Exclusion
108	Who is Required to Make Estimated Tax Payments	158	IRA Distributions
110	Penalties and Interest on Underpayment of Estimated Tax Payments	160	Establishing your Roth IRA
112	Pennsylvania Residents Working in New Jersey/New Jersey Residents Working in Pennsylvania	162	Qualified Distributions from a Roth IRA
114	Nonresidents	164	Nonqualified Distributions from a Roth IRA
116	Mailing Your Return With No Balance Due	NJ PROPERTY TAX RELIEF PROGRAMS	
118	Mailing Your Return With Tax Due	New Jersey SAVER	
120	How To Pay	200	General Information on New Jersey SAVER Rebate
Completing Your New Jersey Income Tax Return		202	New Jersey SAVER Frequently Asked Questions
122	Filing Status	204	2001 New Jersey SAVER Paper Application
124	Part-Year Residents	Homestead Rebate	
126	Military Personnel	206	General Information on the Homestead Rebate
128	Deceased Taxpayers	208	Eligibility Requirements
130	Personal Exemptions	210	Determining the Homestead Rebate Amount
132	Dependent Exemptions	212	Amending the Homestead Rebate Application
134	New Jersey Earned Income Tax Credit	214	Available Homestead Rebate Publications
136	Deductions	Property Tax Reimbursement Program	
138	Reporting Wages	216	General Information on the Property Tax Reimbursement Program
140	Nontaxable Income	218	Eligibility Requirements
142	Reporting Capital Gain Income	220	How to Claim a Property Tax Reimbursement
144	Reporting a Gain from the Sale of a Principal Residence	222	Property Tax Reimbursement Frequently Asked Questions
146	Reporting Business Income	Property Tax Deduction or Credit	
148	Withholdings and Payments	224	General Information on the Property Tax Deduction or Credit
150	Claiming Credit for Income or Wage Tax Paid to Other Jurisdictions	226	Property Tax Deduction and Credit Frequently Asked Questions
152	Claiming Excess Unemployment and Disability		

Topic No.	Subject	Topic No.	Subject
PAPERLESS FILING PROGRAMS			
	New Jersey WebFile	504	Tax Rates and Accounting Periods
300	NJ WebFile	506	S Corporation Status
	New Jersey TeleFile Program		Partnerships
302	NJ TeleFile Program	508	Partnership Information
	New Jersey PC File		SALES & USE TAX INFORMATION FOR INDIVIDUALS
304	NJ PC File		General Information on Sales and Use Tax for Individuals
	(ELF) Electronic Filing	600	General Information on Sales and Use Tax for Individuals
306	(ELF) Electronic Filing		Out-of-State Purchases
	NJ TAX INFORMATION FOR BUSINESSES	602	Out-of-State Purchases
	Business Registration		Mail Orders and Internet Purchases
400	Registering a Business in New Jersey	604	Mail Orders and Internet Purchases
402	Small Business Workshop		Home Improvements
404	Electing S Corporation Status	606	Home Improvements
406	New York and New Jersey Sales Tax Agreement		Taxability of Leases and Rentals
408	Alcoholic Beverage Retail Licenses	608	Taxability of Leases and Rentals
410	Ending Your New Jersey Business		OTHER NJ TAX INFORMATION
	Income Tax Withholding Information for Businesses		New Jersey Division of Taxation Regional Offices
412	Remitting Tax Withheld	700	Asbury Park Office
414	Reconciling Tax Withheld	702	Camden Office
416	Forms W-4 and NJ-W-4	704	Fair Lawn Office
418	Who is an Employer	706	Newark Office
420	Withholding New Jersey Income Taxes	708	Northfield Office
422	Filing Informal Employer Returns of Income Tax Withheld	710	Somerville Office
	Sales and Use Tax Information for Businesses	712	Trenton Office
424	General Information for Sales and Use Tax for Businesses		Other Ways to Contact the Division
426	Use Tax	714	Other Ways to Contact the Division
428	Annual Use Tax		Order Forms through New Jersey TaxFax
430	Filing Sales and Use Tax Returns	716	Order Forms through New Jersey TaxFax
432	Filing Informal Sales and Use Tax Returns		Taxpayers' Bill of Rights
434	Penalties and Interest	718	Taxpayers' Bill of Rights
436	Contractors		CATCH Program
438	Mail Order and Internet Business	720	CATCH Program
440	Taxability of Medicines and Medical Items		Inheritance and Estate Tax
442	Urban Enterprise Zone	722	Inheritance and Estate Tax
	Lease and Rental Information for Businesses		Information for Senior Citizens
444	Lease Transactions in New Jersey	724	information for Senior Citizens
446	Rental Transactions in New Jersey		
448	Domestic Security Fee		
	CORPORATIONS & PARTNERSHIPS		
	Corporations		
500	Starting a Corporation		
502	Filing Responsibilities		

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Application Development – Parcel Management, Farmland, Appeals, Sales, Interfaces, Web Access.

Application Standards – CAMA, GIS, Deed Recording, Building Permits.

Policy Issues – Contracts, Costs/Funding, Communications, Public Information, Implementation, Training.

The recommendations of these committees became the basis for the requirements that will be specified in the RFP. The RFP for the PAMS is scheduled for release prior to the end of fiscal year 2002. □

LOCAL PROPERTY TAX

Informal Appeal Form SR-6

Just as the SR-1A Form communicates assessment-sales data for possible inclusion in the sales ratio program, the SR-6 Form is designed as a communication tool to aid the assessor in requesting changes to the sales data which appear on various grantor listings. It also serves to provide a means for the Local Property Branch to respond to those requests. Because changes requested can range from simple corrections of minor errors to changes in a sale's usability, it is considered an informal appeal.

For a sale to be correctly identified, the information regarding it must be entered in the top portion of the SR-6 Form in the appropriate spaces, *as it appears on the grantor listing*, along with the changes requested. All existing data elements must be shown on the form as well as the changes

requested. Thorough and concise explanations of the requested changes and the reasons for the changes are mandatory. Accurate completion of Form SR-6 is vital.

In cases where a sale's usability is to be changed to nonusable, merely citing a nonusable code number is not sufficient basis for a change. Assessors can ensure that sales they believe to be nonusable under category 7 are correctly verified by setting forth proper and thorough data 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. When requesting nonusable category 6, "sales of property conveying only a portion of the assessed unit, usually referred to as apportionments," a copy of the deed and subdivision approval should accompany the SR-6 request.

When a sale is not deemed to be a transaction between a willing buyer and a willing seller and is not specified in the enumerated categories on the list as set forth in nonusable category 26 (commonly referred to as the "catchall" category), the assessor should indicate with a detailed explanation the reason for the exclusion of the sale. One such instance would be the sale of real property whose assessed value is considered to be under "The Freeze Act." Accompanying the SR-6 request should be a copy of the appropriate county tax board or tax court judgment.

Supporting information for each of the nonusable categories must conform to that cited in Exhibit X-9 in the *Handbook for New Jersey*

Assessors. Supporting documentation, including (but not limited to) the names and phone numbers of individuals able to independently verify the relevant facts of the sale, will enhance the likelihood of expeditious processing of the SR-6. Either an assessor or his representative must sign each submitted SR-6.

It should also be noted that an SR-6 submitted with little or no substantiating information will be automatically rejected. An accurate Table of Equalized Valuations requires correct data at every step of the process. Assessors are requested to submit Form SR-6 when a sale first appears on a listing rather than waiting for the end of the sampling period. By following these few simple steps, the assessor can achieve maximum benefit from the SR-6 informal appeal process and avoid the great expenditure of time and effort and the legal costs of a more formal appeal. □

LOCAL PROPERTY TAX ***Tax Assessor Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Six persons passed the Tax Assessor Certification examination held on March 23, 2002, and received Tax Assessor Certificates dated July 1, 2002. They are as follows:

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assessor certificates - from pg. 19

Camden County: Jacqueline Ann Mullin, Audubon Borough; Melissa Marie Wittkamp, Waterford Township.

Mercer County: Christina E. Jordan, East Windsor Township.

Ocean County: Jeff J. Horn, Seaside Park Borough.

Union County: Peter Bruno Lijoi, Summit City.

Bucks County, PA: Carol Ann Hartigan, Lower Makefield Township.

The next examination is scheduled for March 29, 2003. The deadline to file applications for this exam is February 27, 2003. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. Filing fee is \$10.00. Please contact Mary Ann Miller at 609-292-7813 if you have any questions regarding this exam. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger systems companies, with respect to tax year 2003 and thereafter, to be filed with the assessor for the taxing district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2003, for machinery, apparatus, or equipment directly used to manufacture petroleum products.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation.

September 15–

- Assessor to file statement of taxable value of State-owned real property with Taxation Director.

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- Veteran's property tax deduction eligibility established, pretax year (\$250 for tax year 2003).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.

- Omitted Assessment List and duplicate filed with County Tax Board.

November 1 –

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court if Table is timely promulgated.

December 1 –

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 31 –

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2003 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On January 31, 2002, a State Grand Jury handed down an indictment of Buddy Motors, Inc. and Donna L. Burke as President of the corporation on charges arising from the operation of a now-defunct used car business in Burlington, New Jersey. The six-count indictment charges the defendants with failing to file sales tax returns and the failure to turn over sales tax collected. Two of the counts, theft by failure to make required disposition of property received and misapplication of entrusted property, are 2nd degree offenses based on the collection of \$227,242.86 in sales tax and the failure to remit the monies to the Division of Taxation. Donna L. Burke, of Toms River, faces a presumptive seven-year period of incarceration if convicted of a 2nd degree offense.
- On February 4, 2002, Christopher Grungo, Burlington, New Jersey, was remanded to the custody of the New Jersey Department of Corrections. Mr. Grungo previously pled guilty to a 2nd degree count of racketeering based on count 3 of the indictment, misapplication of entrusted property - \$798,184.88 (Federal Motor Fuels Excise Tax) and count 4, misapplication of entrusted property - \$158,842.76 (New Jersey Petroleum Products Gross Receipts Tax). Mr. Grungo was also ordered to make restitution to the State of New Jersey and the Federal Government. Mr. Grungo, owner and President of the defunct Noble Oil Co., Vincentown, New Jersey, arranged for the purchase of tax-free #2 home heating oil from two Pennsylvania companies. A third company transported the oil directly to gas stations and truck stops throughout the State of New Jersey as #2 diesel fuel oil. Mr. Grungo utilized the "Daisy Chain" tax evasion scheme to evade almost \$1,000,000 in State and Federal motor fuels taxes on approximately 3.9 million gallons of diesel fuel in approximately six months. This prosecution was the result of a joint investigation by the Division of Criminal Justice-Environmental Crimes Unit and the Office of Criminal Investigation.
- On February 20, 2002, Asif Hafeez was found guilty in Canadian Provincial Court for violation of their Export/Import Act relative to the exportation of pseudoephedrine from Canada to the U.S.A. After his conviction, Mr. Hafeez was then arrested by Immigration Canada and is still in custody in Thunder Bay, Ontario, Canada. Mr. Hafeez is awaiting extradition to New Jersey based on cigarette tax related indictments.
- On March 5, 2002, U.S. Customs seized 100 cartons of unstamped Winston cigarettes (U.S. manufacture) at Newark International Airport. The cigarettes were inbound from Panama and consigned to a Pennsylvania resident. U.S. Customs contacted the subject who declined to take possession. The Office of Criminal Investigation took possession of the contraband, and the Pennsylvania Department of Revenue liaison was notified for their investigation.
- On March 13, 2002, the Monmouth County Grand Jury indicted Larry Barasch, owner of Great Feeling Spas, Inc. of Marlboro, New Jersey, for tax evasion. Mr. Barasch was charged with two 2nd degree crimes for failure to turn over taxes collected and theft by failure to make required disposition. It is alleged that over \$600,000 was stolen from customers by accepting deposits and not fulfilling orders and that \$255,401 in sales tax was collected over the period of January 1998 through December 2001 and not turned over to the Division of Taxation.
- On March 15, 2002, Mr. Pushpinder Singh Cheema, Sayreville, New Jersey, entered guilty pleas on behalf of his corporation, Saddle River Dot Com, Inc., for failure to obtain a New Jersey gasoline license and failure to obtain a New Jersey retail dealer's cigarette license and was fined. On March 26, 2002, Mr. Cheema entered guilty pleas on behalf of another of his corporations, Speedway, Inc., for failure to obtain a New Jersey gasoline license, failure to obtain a New Jersey retail dealer's cigarette license, and failure to withhold New Jersey gross income tax from the wages of employees. This corporation, too, was fined.
- On March 18, 2002, Antonio J. Couso of Wayne, New Jersey,

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was arrested by the Office of Criminal Investigation, with the assistance of the Maywood Police Department, while in the process of delivering thirty-two (32) cartons of cigarettes bearing counterfeit New Jersey revenue stamps to a gas station in Maywood, Bergen County. Mr. Couso was charged with a 3rd degree possession of counterfeit stamped cigarettes, 4th degree sale of untaxed cigarettes, disorderly persons charge of transporting untaxed cigarettes, and related 3rd degree and disorderly persons offenses. The counterfeit stamped cigarettes, Mr. Couso's 1997 Plymouth minivan, and \$6,765.27 in U.S. currency were seized. To date, 384.2 cartons of counterfeit stamped cigarettes have been seized from retailers identified as customers of Mr. Couso. The continuing investigation was initiated based on information developed by the Maywood Police Department.

- On March 18, 2002, a Federal Grand Jury in the Eastern District of Virginia indicted Abdelnase A. Saramah of North Bergen, New Jersey, on one (1) count of conspiracy and one (1) count of trafficking in contraband cigarettes. As a result of a joint investigation with the New Jersey State Police, the Office of Criminal Investigation arrested Mr. Saramah in Secaucus, New Jersey, in possession of 304 cartons of Virginia and New York stamped cigarettes. Interview of the subject at the time of the arrest disclosed a long-term activity in cigarette trafficking. This investigation was referred to the U.S. Attor-

ney's Office for the Eastern District of Virginia under the Federal Contraband Cigarette Trafficking Act. This Federal indictment is the result of Taxation's participation in a Joint Federal and State Task Force to combat the smuggling of cigarettes from lower taxed southern states to higher taxed northern states.

- On March 19, 2002, Keith Edwards, trading as Omacee's of Passaic, New Jersey, was found guilty of possession of untaxed goods, no invoices, and no consumer license after his arrest by the Office of Criminal Investigation for receiving a shipment of unstamped/untaxed cigarettes from a New York-based Indian reservation cigarette supplier. The Court imposed a total of \$3,465 in fines, fees, and costs.
- On March 27, 2002, An Zhong Jiang of Camden, New Jersey, was found in possession of 289.5 cartons of Virginia stamped cigarettes. The Office of Criminal Investigation has charged Mr. Jiang with possession of untaxed goods, no invoices, no consumer license, and transportation of contraband cigarettes.
- On April 3, 2002, in Trenton, New Jersey, the State Grand Jury returned a six-count indictment against Marcus and Jennifer Solomon, charging one (1) count of filing a fraudulent 1999 New Jersey gross income tax return in which payroll expenses were knowingly overstated for their medical transportation business. In addition, the indictment charged health care claims fraud, Medicaid

fraud, misconduct by a corporate official, and theft by deception of unemployment benefits. On June 25, 2002, the Solomons pled guilty to charges that they defrauded the Medicaid Program, the State Division of Taxation, and the New Jersey Department of Labor out of over \$60,000 in Medicaid monies as part of a scheme designed to overcharge the Medicaid Program by submitting fraudulent claims for transporting Medicaid patients. The scheme included inflating the amount of mileage charges and billing Medicaid for services not rendered. This case was a joint investigation between the Office of Criminal Investigation and the New Jersey Office of Insurance Fraud Prosecutor.

- On April 5, 2002, in Superior Court, Union County, Elizabeth, New Jersey, Naum Raichel of Brooklyn, New York, was sentenced to two years probation and ordered to make restitution of \$85,085.49 pursuant to his guilty plea of December 7, 2001, to a charge of failing to turn over motor fuels tax which he had collected between January 1997 and September 1998 in the operation of Gas R Us, Inc., a retail truckstop he owned in Elizabeth. This case is part of a joint investigation by OCI and the New Jersey State Police Organized Crime Unit, and was prosecuted by the State Attorney General's Office.
- On April 15, 2002, an officer of a wholesale motor fuels distributor entered a plea of guilty to failing to turn over petroleum products gross receipts tax

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- (PGRT) collected, part of a total tax liability of \$168,402.44. This is another case that is part of a joint investigation between OCI and the New Jersey State Police Organized Crime Unit. Substantial assistance was also received from the Audit Services Branch, Excise Tax Group. This case was prosecuted by the State Attorney General's Office.
- On April 26, 2002, Carol P. Nesbitt of Pennsauken, New Jersey, pled guilty to one (1) count of failure to file tax returns and failure to pay or turn over taxes. In addition, she pled guilty to counts involving theft by deception, forgery, and contempt. The guilty plea arose from a joint investigation with the Camden County Prosecutor's Office wherein it was determined that Ms. Nesbitt committed Medicare fraud, failed to file tax returns for a small business she owned, and failed to turn over sales tax collected from customers of the business. On June 14, 2002, Ms. Nesbitt was sentenced in Camden County to a total of 15 years incarceration. She will serve the sentences concurrently and be incarcerated for a period of four (4) years.
 - On April 29, 2002, Paula D. Jones of Bridgeton, New Jersey, pled guilty to one (1) count of theft by deception and one (1) count of falsifying records. The guilty plea arose from a joint investigation with the Cumberland County Prosecutor's Office wherein it was determined that Ms. Jones had filed fifty-six (56) fraudulent New Jersey homestead rebate applications and had received \$15,318.40 in fraudulent rebates. On June 21, 2002, Ms. Jones was sentenced in Cumberland County to a five-year term of probation and restitution in the amount \$15,318.40.
 - On May 16, 2002, the indictment by a State Grand Jury of Elvin Castillo, Elizabeth, New Jersey, was unsealed. Tax charges in the indictment are: one (1) count of filing a fraudulent 1997 New Jersey gross income tax return; three (3) counts of failure to file New Jersey gross income tax returns for the years 1998, 1999, and 2000; and four (4) counts of failure to pay over income taxes for the years 1997, 1998, 1999, and 2000. The investigation had determined that Mr. Castillo received funds totaling \$488,892 through an insurance fraud scam over the years identified above. It was determined that these funds were never reported for New Jersey personal income tax purposes. Mr. Castillo was also indicted on various theft charges. This case was a joint investigation between the Office of Criminal Investigation and the State Division of Criminal Justice.
 - On May 16, 2002, Shravan Baile, the president of Best Liquors of Lakewood Inc., and Best Liquors of Lakehurst, Inc., together with the corporate entities, were indicted by a State Grand Jury on charges relating to the operation of two liquor stores. Mr. Baile and the corporations were indicted on a total of eight (8) counts involving theft by failure to make required disposition of property (two counts), misapplication of entrusted property (two counts) and failure to turn over sales tax (four counts). The charges arose from the failure of Mr. Baile and the corporations to turn over sales tax collected from the customers of the two liquor stores during the years 1997, 1998, and 1999. This case was referred to the Office of Criminal Investigation from the Division's Audit Activity liquor audit project regarding cash businesses. This case was presented to the Grand Jury by the State Division of Criminal Justice.
 - On May 20, 2002, Robert Berry, the owner of Transworld Transmission of New Providence, New Jersey, pled guilty to accusations of one (1) count of failure to file sales tax returns for the period of July 1997 through March 2000, and one (1) count of failure to pay over sales taxes that were collected but not remitted over the same period. Sentencing is scheduled for the fall of 2002.
 - On June 7, 2002, Thanh C. "Tom" Voung was arrested and charged with numerous violations of the Cigarette Tax Act. Mr. Voung was in possession of 486 cartons of contraband cigarettes. Of the 486 total cartons, 100 unstamped cartons had been shipped by UPS from a California address. The remaining 386 cartons were Virginia stamped. The Office of Criminal Investigation has coordinated facets of this case with the California Board of Equalization Enforcement.

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- On June 17, 2002, members of the Office of Criminal Investigation visited various locations relative to ongoing investigations concerning counterfeit stamped cigarettes. As a result of those inspections, five (5) different seizures were made. One, a cigarette wholesaler, was found in possession of 39.2 cartons of counterfeit stamped cigarettes. A total of 151.2 cartons of counterfeit stamped cigarettes were seized.
- One hundred twenty-one (121) complaints alleging tax evasion were evaluated from April through June 2002 in the Office of Criminal Investigation.
- During the same time period, one hundred and one (101) charges were filed in court on twenty-six (26) cases for viola-

tions of the Cigarette Tax Act. A total of forty-five (45) contraband investigations were conducted of which (28) were counterfeiting investigations. Further, a total of twenty-five (25) arrests were made and one (1) vehicle was seized. □

Tax Briefs

Corporation Business Tax

Certification of Inactivity with Form CBT-100 — The following advice was given in response to an inquiry concerning which corporations are eligible to file Schedule I, Certification of Inactivity, with Form CBT-100 corporation business tax return.

If a corporation is active for any part of the period covered by the return, all schedules and questions must be answered, unless permis-

sion to omit or substitute is indicated on the return form. Inactive corporations that during the period covered by the return did not conduct any business and did not have any income, receipts, or expenses, and did not own any assets, need only complete and submit the first page of the return, along with Schedule I, Certification of Inactivity. This certification applies to all business activities of the corporation, not just the corporation's activities in New Jersey. Therefore, a corporation authorized to do business in this State which has not operated in New Jersey during the taxable year is still required to file a New Jersey corporation business tax return if it had business activities in other states during the year in question.

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Enforcement Summary Statistics

First Quarter 2002

Following is a summary of enforcement actions for the quarter ending March 31, 2002.

<ul style="list-style-type: none"> • Certificates of Debt: <table style="margin-left: 20px; border: none;"> <tr> <td style="padding-right: 20px;">Total Number</td> <td style="text-align: right;">2,306</td> </tr> <tr> <td>Total Amount</td> <td style="text-align: right;">\$38,449,407.25</td> </tr> </table> • Jeopardy Assessments 217 	Total Number	2,306	Total Amount	\$38,449,407.25	<ul style="list-style-type: none"> • Jeopardy Seizures 1 • Seizures 34 • Auctions 1 • Referrals to the Attorney General's Office 666
Total Number	2,306				
Total Amount	\$38,449,407.25				

Second Quarter 2002

Following is a summary of enforcement actions for the quarter ending June 30, 2002.

<ul style="list-style-type: none"> • Certificates of Debt: <table style="margin-left: 20px; border: none;"> <tr> <td style="padding-right: 20px;">Total Number</td> <td style="text-align: right;">173</td> </tr> <tr> <td>Total Amount</td> <td style="text-align: right;">\$1,900,053</td> </tr> </table> • Jeopardy Assessments 242 	Total Number	173	Total Amount	\$1,900,053	<ul style="list-style-type: none"> • Jeopardy Seizures 3 • Seizures 5 • Auctions 5 • Referrals to the Attorney General's Office 384
Total Number	173				
Total Amount	\$1,900,053				

For more detailed enforcement information, visit our Web site at: www.state.nj.us/treasury/taxation/

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LLC Electing Disregarded Entity Status — New Jersey filing requirements for a limited liability company (LLC) electing “disregarded entity status” depend on Federal tax treatment. The organization is treated the same for State purposes as it is for Federal purposes. N.J.S.A. 42:2B-69(b). If the single member of the LLC is considered a corporation for Federal purposes, the member corporation will be subject to New Jersey corporation business tax. Corporations are required to file a Form CBT-100 return. If the member is not recognized as a corporation for Federal purposes, income from the LLC will be reported as gross income on Form NJ-1040.

Taxability of BEIP Grants — A corporate taxpayer inquired as to the taxability of grants made under the Business Employment Incentive Program Act, N.J.S.A. 34:1B-124 et seq. The grant is calculated pursuant to N.J.S.A. 34:1B-129. The Division responded as follows:

First, if a grant is made to a C corporation, the grant is deemed a contribution to capital under provisions of the IRC 118 and IRC 362(c) which taken together are tantamount to a tax deferral. Under IRC 362(c) a corporation must reduce to zero the basis of property acquired as a contribution to capital. If a grant is in money, then property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The governmental grant is intended to produce indirect benefits to the general population.

Second, if the grant is received by a conduit-type entity like a partnership or Subchapter S corporation, the grant is to be “apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.” See definition of “business” in N.J.S.A. 34:1B-125. Under the Gross Income Tax Act, prizes and awards are taxable. N.J.S.A. 54A:5-1.1 except as provided in N.J.S.A. 54A:6-8 (scholarship and fellowship grants) and N.J.S.A. 54A:6-11 (winnings from the NJ lottery).

Gross Income Tax “Catch-up” Contributions to Retirement Plans — The Division responded to a question as to whether the New Jersey Gross Income Tax Act will include “catch-up” provisions enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The Federal legislation contains provisions to increase the limits on amounts that employees can contribute to 401(k), 403(b), SEP, SIMPLE, and 457 plans.

In regard to 401(k) “catch-up” contributions, any “catch-up” contributions are exempt from New Jersey income tax in the same amount as for Federal purposes. N.J.S.A. 54A: 6-21.

However, in regard to 403(b), SEP, SIMPLE, and 457 plans, the “catch-up” contributions are taxable because the New Jersey Gross Income Tax Act taxes contributions to these plans. The Economic Growth and Tax Relief Reconciliation Act of 2001, thus, will

have no effect on these taxable contributions and these contributions will remain taxable.

Foreign Sponsored 529 Plans — The Division responded to a question regarding whether withdrawals from a New Hampshire sponsored 529 plan will be subject to New Jersey tax. For New Jersey gross income tax purposes, a qualified state tuition program is defined as one established under section 529 of the Internal Revenue Code. Presently, N.J.S.A. 54A:6-25 allows the earnings accumulating in a qualified state tuition program account to be deferred from New Jersey gross income. Upon distribution, any amounts that are used for higher education expenses (as defined under section 529 of the Internal Revenue Code) are then excluded from the taxpayer’s income. Therefore, if the other state’s plan is a qualified state tuition program as established under section 529 of the Internal Revenue Code, the earnings and any earnings withdrawn that are used for higher education expenses can be excluded from the taxpayer’s income.

IRA Yearly Maximum Contribution — The New Jersey Gross Income Tax Act does not contain any provisions similar to those in the Internal Revenue Code which permit an individual to deduct contributions to an IRA. Contributions to an IRA are subject to New Jersey income tax in the year they are made. When a withdrawal is made from an IRA account, the amount contributed is not taxable since the contributions were taxed at the time they were made.

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Under the New Jersey Gross Income Tax Act, the only individual retirement plan to which contributions may be excluded from gross income is the 401(k) plan. N.J.S.A. 54A:6-21. Therefore, contributions to an IRA remain taxable and the new Federal law that raises the contribution limit to \$3,000 does not apply.

Military Withholding, Forms DD-2058-1 and 2058-2 — Service personnel who meet the conditions for nonresident status in New Jersey must file Form DD-2058-1, State Income Tax Exemption Test Certificate, with their payroll or finance officer to stop New Jersey income tax from being withheld from military pay. Form DD-2058-1 is a U.S. Government form that is used as a basis for not withholding New Jersey income tax from military pay. This certificate should not be filed with the New Jersey Division of Taxation.

Form DD-2058-2 may be used by Native American servicemen and women claiming exemption from state income tax withholding on their service pay. The form requires an identification of the tribe to which the individual belongs and the name of the reservation or location in Indian Country claimed as the primary residence of the individual.

Litter Control Tax

Subjectivity of Photocopy Businesses — A taxpayer in the business of selling paper photocopies at retail to various businesses, primarily law firms, inquired about their subjectivity to the litter control tax for the years prior to 2001. The litter control tax terminated on December 31, 2000.

The Division replied that the Clean Communities and Recycling Act levied a litter control tax on all manufacturers, wholesalers, distributors, and retailers engaged in business in New Jersey. The tax is imposed on the gross receipts from sales of litter-generating products within the State. N.J.S.A. 13:1E-99.1a. Litter-generating products are defined in the Act at N.J.S.A. 13:1E-94e to include the following fifteen categories of products: (1) beer and other malt beverages, (2) cigarettes and tobacco products, (3) cleaning agents and toiletries, (4) distilled spirits, (5) food for human or pet consumption, (6) glass containers sold as such, (7) groceries, (8) metal containers sold as such, (9) motor vehicle tires, (10) newsprint and magazine paper stock, (11) nondrug drugstore sundry products, (12) paper products and household paper, (13) plastic or fiber containers made of synthetic material and sold as such, (14) soft drinks and carbonated waters, and (15) wine.

The “paper products” category is very broad and includes all items of tangible personal property made or substantially derived from paper. This category of litter-generating products would include all types of paper office supplies, stationery, business forms and photocopy paper. N.J.A.C. 18:38-3.1(b)12.

For years prior to 2001, all retail sellers of photocopy paper in New Jersey would be subject to the litter control tax if they meet any of the three conditions stated in N.J.A.C. 18:38-3.1(a). The first condition is that the litter-generating product is “produced, distributed or purchased in disposable containers, packages or wrap-

ping...” It is the Division’s position that the taxpayer is distributing (selling) litter-generating products (paper photocopies) in disposable containers or packages.

Division of Taxation auditors verified by inspection that the taxpayer distributes the paper photocopies in cardboard boxes with lids, smaller cardboard boxes with folding flaps taped shut, and occasionally in boxes provided by the customer. No returnable, reusable containers are used. This constitutes a distribution of paper products “in disposable containers, packages or wrappings” thereby meeting the first condition of a sale of litter-generating products.

Based on the above, the taxpayer was subject to the New Jersey litter control tax for years prior to 2001.

Sales and Use Tax

Cable Television Programming Tapes or Discs — N.J.S.A. 54:32B-8.18 exempts sales of tangible “visual or sound transcriptions” produced for use in “theaters and radio and television broadcasting stations or networks,” but not for advertising purposes. Although technically, cable transmission is not a “broadcast,” the Division construes this provision so as to exempt the sale of films, tapes, and CDs for use in cable television programming for subscriber viewing as well. To support the claimed exemption, the customer who is purchasing the tapes for use in cable television programming must execute a properly completed Form ST-4 (Exempt Use Certificate), citing N.J.S.A. 54:32B-8.18 as the statutory basis for the exemption.

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Nexus — Whether a person is required to collect sales and use tax in New Jersey depends on whether there is nexus with the State. “Nexus” is defined as some definite link, some minimum connection, between the state and the corporation it seeks to tax. Physical presence, beyond some de minimis level, triggers an obligation to collect sales and use tax. A business may also “volunteer” to collect tax if it has no contact with New Jersey or the existence of nexus is in doubt.

If a person has a place of business in New Jersey, has employees working in this State, or owns any business property here, such as a warehouse or showroom, there is a physical presence in New Jersey and the business must register and collect New Jersey sales tax on all taxable transactions. The term “employee” includes all salespersons, consultants, customer representatives, service or repair technicians, instructors, and delivery persons as well as independent representatives or solicitors.

The proper procedure to register with the State of New Jersey is to file a Business Registration application (Form NJ-REG) with the State. The application and filing instructions are available from the Division of Revenue’s Web site at: www.state.nj.us/njbgs/

Recalibration Services for Manufacturing Equipment — A recalibration service is a service for maintaining or servicing tangible personal property and is therefore taxable. N.J.S.A. 54:32B-3(b)(2). The New Jersey Sales and Use Tax Act provides an exemption for sales of machinery, apparatus, or

equipment for use directly and primarily in the production of tangible personal property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). However, this exemption does not apply to services to such production equipment. The recalibration service is subject to New Jersey sales or use tax even if the equipment being calibrated was exempt at the time of purchase pursuant to the manufacturing exemption. □

In Our Courts

Administration

Calculation of 90-Day Time Period to File Complaint – *Heico Corporation v. Director, Division of Taxation*, decided April 24, 2002; Tax Court No. 002638-2001.

The Division’s final determination regarding sales and use tax and corporate business tax assessments was dated and sent by certified mail on April 2, 2001, to the plaintiff and plaintiff’s representative. Return receipts indicate that the final determinations were received on April 9 and April 4, 2001, respectively. The final determination stated that taxpayer had 90 days from the date of the letter to appeal the Division’s decision to the Tax Court.

Certified mail receipts indicate that plaintiff mailed items to the Tax Court on June 30, 2001. Plaintiff’s complaint was stamped received by the Tax Court on July 3, 2001 at 2:39 p.m.

The Court found that the 90th day from the April 2, 2001, date of the final determination was July 1, 2001. However, July 1, 2001, was a Sunday. Therefore, the filing date was extended to July 2, 2001.

As filing occurs upon the Tax Court’s receipt of the complaint, the complaint was considered filed on July 3, 2001, one day late.

In its historical review of the legislation, *rules of court*, and case law concerning the calculation of the 90-day period to appeal final determinations, the Court acknowledged that in previous cases the *rules of court* were applied to determine whether the complaint was filed timely. More specifically, R. 8:42-2(a) and R. 1:5-4(b) essentially started calculating the 90-day period from receipt of registered or certified mail. Pursuant to these rules, this complaint would be considered timely filed. Furthermore, R. 1:3-3 granted plaintiff three extra days to file a complaint, which would extend the filing date to July 5, 2001, and therefore, plaintiff’s complaint would also be considered to be timely filed under this rule.

The Court found that R. 1:3-3 was revised. Previously this rule applied to service by mail, whether ordinary or certified. Effective September 1, 1996, this rule only applies where service is effectuated by ordinary mail. Consequently, this rule was found to be inapplicable here regardless of whether the *rules of court* apply because the April 2, 2001, final determination was delivered by certified mail.

Due to revisions to the *rules of court* and the statutes, the Court held that the *rules of court* no longer apply to the calculation of the 90-day period to appeal from the Division’s final determination. The Court opined that the specific

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repeal of N.J.S.A. 2A-3A-4.1 with its reference to the 90-day appeal period and reference to the *rules of court* and its replacement by N.J.S.A. 2B:13-1 to -15, which has no reference to the *rules of court*, was evidence that the *rules of court* no longer apply to the calculation of the 90-day period to appeal the Division's determinations. Furthermore, the amendment of N.J.S.A. 54:49-18(a) to state that the appeal period commences from the date of the Division's final determination letter without any reference to the *rules of court* was also found to be indicia that the *rules of court* do not apply to the calculation of the 90-day appeal period. The Court noted that when a complaint may be filed is a matter of jurisdiction as opposed to a matter of practice and procedure. Finding that the date of the final determination is the date the notice was mailed to the taxpayer, the Court ruled that the 90-day period commences on the date of the mailing and that the Division has the burden of establishing that date.

Motion For Reconsideration – *Heico Corporation v. Director, Division of Taxation*, decided April 24, 2002; Tax Court No. 002638-2001.

On the motion date, plaintiff was not represented by legal counsel due to its failure to secure one after three notices. Plaintiff did not file any papers in opposition to the Division's motion. The motion was treated as uncontested and the Court dismissed the complaint as untimely filed.

Returning with legal counsel, plaintiff filed a motion for recon-

sideration. The Court granted the motion in the interest of justice because it did not consider plaintiff's legal arguments when rendering its determination.

Responsible Person – *Shellscape Decorating, LLC v. Director, Division of Taxation*, decided September 7, 2001; Tax Court No. 004109-2000.

The Division issued responsible person notices for sales tax liabilities to the husband and wife who each controlled 50% of the company. These liabilities were initially estimated due to the company's failure to file tax returns. Plaintiff claims that the returns were not filed through no fault of their own because they hired a management company to run the business and prepare and file the sales tax returns.

The Court found that the testimony indicated that the wife was knowledgeable in the area of accounting and related matters; had previously worked as an accountant; was the designated tax partner; and that she ran the shop, making most of the day-to-day operating decisions. The husband was found to be a sophisticated, knowledgeable businessman and a passive investor who was actively employed at another business. Both husband and wife signed or cosigned loans for the company. Although both had the authority to sign checks, the husband never exercised his authority.

The Court ruled that for sales tax purposes the wife was a responsible person of the business but that the husband was not. Although the husband had the authority to act, the Court ruled that authority alone

was insufficient to classify him as a responsible person. The Court emphasized that there must be a duty to act.

Plaintiff also argued for abatements of interest and penalty claiming that the wife was a resident of a state that did not have a sales tax system and that a management company was engaged to prepare and file the sales tax returns. The Court ruled that interest would not be abated because it is a statutory definition of the time value of money to compensate for late payment. Penalties were not abated because penalties serve the purpose of acting as a deterrent to those who do not file their tax returns. Furthermore, the contractual relationship formed with the management company does not absolve the company and the responsible persons from their sales tax obligations.

Responsible Person – *David Lee v. Director, Division of Taxation*, decided January 11, 2002; Tax Court No. 001156-2001.

Plaintiff was the sole officer of the corporation Exterior Power Sweeping (EPS). EPS ceased business operations in September 1989. In 1991, the Division assessed sales and use tax against the corporation for the period October 1, 1983, to June 30, 1989. Sales and use tax returns were not timely filed with the Division for that period nor were they filed thereafter. EPS protested the assessment and the Division issued a Final Determination in 1993. EPS filed a complaint with Tax Court that vacated the assessment in 1997. The Division appealed

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and the Appellate Division reinstated the assessment on April 30, 1999. On May 21, 1999, the Division issued a Notice of Finding of Responsible Person Status to Mr. Lee for the sales and use tax liabilities of EPS.

Plaintiff did not really dispute that he is a responsible person of EPS; however, plaintiff claimed that the responsible person notice was inequitable and barred by either laches or estoppel, or both. The Court would not set aside the assessment on the basis of laches or estoppel. The Court found that plaintiff is chargeable with knowledge of the statutes and his admitted actual knowledge renders less forceful his equitable arguments. Plaintiff did not demonstrate detrimental reliance on any action or inaction of the Division and failed to demonstrate that the Division deferred sending the responsible person notice to plaintiff so that interest would accrue. Furthermore, there is a general reluctance of the courts to grant estoppel against a public official entity.

Plaintiff also claimed that the May 21, 1999, responsible person notice was untimely due to the three-year statute of limitation period. Although no returns were ever filed, plaintiff alleges that the providing of information to the Division during the audit was a de facto filing of those returns. The Court rejected the theory of de facto filing. However, the Court stated that even if it accepted de facto filing, the statute did not limit the time period to collect taxes from the responsible person that were determined to be due

within three years of the alleged de facto filing date.

Plaintiff filed a motion for reconsideration that was denied on February 22, 2002. Thereafter, plaintiff appealed the Tax Court's decision to the Appellate Division.

Time Period to File Complaint – *James Liapakis v. Director, Division of Taxation*, decided April 27, 2001; Tax Court No. 004298-2000.

The Division's final determination upholding the Division's gross income tax assessment was dated August 18, 2000, and mailed by certified mail on the same date. Therefore, the statutory 90-day period to file the complaint would end on November 16, 2000. Plaintiff's appeal with the Tax Court was filed on November 17, 2000. Plaintiff stated that Rule 1:3-3 of the Rules of Court, which grants

three additional days to file the complaint, was inapplicable because the final determination was not sent by ordinary mail. However, plaintiff argued that the complaint is timely because the starting date for the running of the 90-day period is the date of service, August 21, 2000, per Rules 1:5-4 and 8:4-2.

The Court ruled that the Rules of Court could not be incorporated to determine or extend the statutory time period to file the complaint as the Rules relied upon applied when the parties were already in court. Therefore, the Court dismissed the complaint as untimely. The Court reasoned that the 1992 changes in the Uniform Procedure Law were the basis to distinguish the pre-1992 cases of *Harris*, *Pennoyer*, and *Holmdel* from the current case, that was filed after 1992.

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Plaintiff appealed the Tax Court's decision. However, the appeal was dismissed because plaintiff failed to file a timely brief. (See *James Liapakis v. Director, Division of Taxation*, decided March 18, 2002; Appellate Division No. 005341-00TS.)

Time Period to File Complaint – *Richard and Charlotte Bingham v. Director, Division of Taxation*, decided October 12, 2001; Tax Court No. 002303-2001.

Plaintiff received the Division's Final Determination concerning the Division's gross income tax assessment. On June 19, 2000, plaintiff mailed a complaint to the Tax Court. The Tax Court received the complaint on June 21, 2000. Both parties agreed that the complaint must be filed by June 20; however, plaintiff argued that the date of mailing should be considered the date the complaint was filed.

Plaintiff's complaint was dismissed as untimely because the Legislature imposed a 90-day limit for filing the complaint with the Tax Court. The Court stated that the filing date of the complaint is the date the complaint is received by the Tax Court. The Court also relied on *Liapakis*.

Time Period to File Complaint – *Martin Meyers v. Director, Division of Taxation*, decided October 29, 2001; Tax Court No. 002022-2001.

The Division's January 26, 2001, Final Determination finding that plaintiff was a responsible person for gross income tax purposes was sent by certified mail on the same date. Plaintiff's appeal was filed on April 30, 2001. Both parties

agreed that the statutory 90-day period to file the complaint ended on April 26, 2001. However, plaintiff claims the complaint is timely because he is entitled to three additional days to file the complaint pursuant to Rules of Court 8:4-2 and 1:3-3, which would include April 30 as April 29 fell on a Sunday.

In holding that the complaint was filed timely under Rules of Court 1:3-3, the Court respectfully disagreed with the *Liapakis* decision. The Court reasoned that the 1992 change in the Uniform Procedure Law would not affect the pre-1992 cases of *Harris*, *Pennoyer*, and *Holmdel* because N.J.S.A. 54:51A-18 is the same and refers to the use of the Rules of Court.

Time Period to File Complaint – *Portuguese Spanish Palace Corp., Maria Freitas, Anthony Freitas, Fernando Brito, and Elizabeth Brito v. Director, Division of Taxation*, decided April 17, 2002; Tax Court No. 002060-2001.

The Division issued Portuguese Spanish Palace Corp. (PSP) a Notice of Assessment Related to Final Audit Determination (Notice of Assessment) on June 19, 2000. On November 28, 2000, the Division issued PSP a Notice and Demand for Payment (Demand) and issued the individual plaintiffs a Notice of Finding of Responsible Person Status. Plaintiffs' accountant sent a letter dated February 12, 2001, requesting a hearing with respect to audits of the taxpayer with no reference to the individual plaintiffs. By letter dated February 22, 2001, the Division denied the request for a hearing and stated that the taxpayer had 90 days to appeal this determination to Tax

Court. Ninety-two days later, on May 25, 2001, PSP and the individual plaintiffs filed a complaint in Tax Court.

As to PSP, the Court dismissed the complaint holding that the February 12, 2001, request for a hearing was beyond the statutory 90-day period to protest the June 19, 2000, Notice of Assessment. Furthermore, the Demand notice neither granted new appeal rights nor extended PSP's time period to file a protest or request for hearing from the Notice of Assessment.

As to the individual plaintiffs, the Court found that plaintiffs' February 12, 2001, request for a hearing did not incorporate or even refer to the individual plaintiffs as the letter stated it was requesting a hearing concerning the audits of the taxpayer. Consequently, the Court dismissed the complaint as untimely as it was beyond the 90-day time period to file a complaint of the Notice of Finding of Responsible Person Status.

Time Period to File Complaint – *Raymond Zola v. Director, Division of Taxation*, decided February 8, 2002; Tax Court No. 002233-2001.

The Division issued and mailed a final determination on March 2, 2001. Plaintiff received the final determination on March 7, 2001. About 9:30 p.m. on May 31, 2001, plaintiff e-mailed the Division a request for information. On June 1, 2001, plaintiff sent a letter to the Tax Court Clerk essentially requesting forms and information. The Tax Court Clerk recognized the filing date as June 18, 2001.

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The Tax Court dismissed plaintiff's complaint as untimely, ruling that the 90-day statutory period began on March 2, 2001, and ended on May 31, 2001. Plaintiff claimed that Court Rule 1:5-4(b) stated that delivery is upon acceptance for certified mail and therefore the June 1, 2001, filing was within time. The Court opined that the court rules no longer apply due to the repeal of N.J.S.A. 2A:3A-4.1, which tied the 90-day jurisdiction period to appeal to the court rules. (See *Heico Corporation v. Director, Division of Taxation*, above).

Corporation Business Tax

Nonprofit Corporations – *Sussex Rural Electric Cooperative v. Director, Division of Taxation*, decided March 27, 2002; Tax Court No. 001790-2000.

Plaintiff claims it is a not-for-profit corporation and therefore is exempt from corporation business tax (CBT) even though it was organized as a for-profit, Title 14A corporation. Under its certificate of incorporation, there was language indicating that it was a not-for-profit corporation. The Court held that the corporation was not eligible for exemption from CBT under N.J.S.A. 54:10A-3(e) because it was organized as a for-profit, Title 14A corporation. The Court stated that tax consequences flow from the form in which the taxpayer elects to do business.

Pre-Merger Net Operating Losses – *A.H. Robins Company, Inc. v. Director, Division of Taxation*, decided February 21, 2002; Tax Court No. 005682-95.

A.H. Robbins (Old Robins) was incorporated in Virginia and filed

New Jersey corporation business tax (CBT) returns. After facing liability claims on its Dalkon Shield product, it filed for Chapter 11 bankruptcy. In December 1989, American Home Products Corporation (AHP) acquired Old Robins by structuring a merger of Old Robins into "New Robins" pursuant to the approved plan of reorganization. AHP paid approximately \$2 million to New Robins and became the sole shareholder. The business address of New Robins remained the same as that of Old Robins; however, New Robins was incorporated in Delaware. In the subsequent years following the merger, New Robins sought to deduct pre-merger net operating losses (NOL) incurred by Old Robins.

The Tax Court held that New Robins could not utilize the NOL incurred by Old Robins prior to the merger. The Court dismissed all of plaintiff's arguments. First, the Court ruled that there was nothing in the Bankruptcy Code that preempted the CBT statutes regarding post-reorganizational income tax liabilities of a nondebtor entity noting that New Robins was not the debtor entitled to Bankruptcy Code protections. Secondly, the Court found that N.J.A.C. 18:7-5.13 makes clear that an NOL may not be carried over by a taxpayer that changes its state of incorporation. The Court relied on *Richards Auto City* where the New Jersey Supreme Court rejected the theory that continuing the same business is a persuasive factor justifying the recognition of the tax status of the merged corporation. Although Federal tax law permits the survivor of a merger to utilize the NOL, the CBT Act deals with

single corporations and not two or more successive corporations.

A.H. Robins has appealed the Tax Court's decision to the Appellate Division.

Regular Place of Business – *River Systems, Inc. v. Director, Division of Taxation*, decided December 21, 2001; Tax Court No. 5627-1999; *Rubachem International, LTD. v. Director, Division of Taxation*, decided December 21, 2001; Tax Court, No. 5628-1999; and *Rubachem, Inc. v. Director, Division of Taxation*, decided December 21, 2001; Tax Court No. 5629-1999.

The three plaintiffs are organized as New Jersey C corporations and share an office in New Jersey where all their administrative activities are performed. They are all separate companies and therefore each files a separate corporation business tax (CBT) return. River Systems and Rubachem, Inc. market and sell computer-related products and light bulbs while Rubachem International markets and sells industrial and commercial cleaning products and light bulbs.

General Litesearch, Inc. (Litesearch), a related but separate company, employees solicit sales on behalf of the three plaintiffs from a leased New York office building. When Litesearch solicits a sale, the Litesearch employee enters the information into a computer. The relevant plaintiff receives the information in New Jersey and arranges for the shipping of the item. Some products are shipped from the New Jersey

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location; however, most products are primarily drop-shipped by unrelated, third-party manufacturers. No products are shipped from the New York location. Customer payments are remitted directly to the relevant plaintiff at the New Jersey office. The revenues as well as losses, if payment is not remitted, from the sale of products made by Litesearch employees are the income or accounts receivable of the plaintiff whose products are sold.

Although Litesearch pays the payroll expenses of the employees at the New York location, Litesearch is reimbursed by the plaintiff for each employee who sells its product. Litesearch also has employees on its payroll that work out of plaintiffs' New Jersey location. Litesearch's supervision and management personnel oversee all employees at the New York location and their payroll costs are charged to the individual plaintiffs based upon sales volume. There is no written contract describing the payroll reimbursement arrangement.

The New York office building that Litesearch operates from is owned by Lemar Investment Company (Lemar), also a related but separate company. The plaintiffs pay a fixed amount for rent and one plaintiff pays for the other building costs, such as utilities, to Lemar. Both amounts are allocated to plaintiffs at the end of the year based upon each plaintiff's sales volume. Each plaintiff is charged for telephone usage per the specific calls made on behalf of each plaintiff. However, there is no written contract describing this arrangement nor is there a lease providing for rent.

Plaintiffs claim that they are entitled to allocate their income between New Jersey and New York. New York accepted plaintiffs' amended returns allocating income between New York and New Jersey.

The Court held that plaintiffs were not entitled to allocate income to New York in the computation of the CBT under N.J.S.A. 54:10A-6 because they did not maintain a regular place of business outside of New Jersey. In order for an office to qualify as a "regular place of business," the taxpayer must own or rent the facility in its own name, maintain it and be directly responsible for the expenses incurred, and occupy and use the premises by employing at least one regular employee who is in attendance during normal working hours. Although plaintiffs paid rent at the New York location, there was no written lease that provided for the rent payments and therefore it was not certain whether the payments were made on behalf of Litesearch or plaintiffs. The Court determined that none of the Litesearch employees at the New York location were regular employees of any of the plaintiffs. A regular employee is defined as one who is under the control and direction of the employer. The fact that plaintiffs reimbursed Litesearch for the actual cost of each telemarketer who made sales on its behalf did not qualify the telemarketer as an employee of the plaintiff. Moreover, there was no written contract concerning this reimbursement arrangement. Citing *Shelter Development Corp.*, the Court ruled the activities of a related corporation cannot be attributed to the New Jersey corporation at issue.

The Court also held that plaintiffs were not entitled to allocate income under N.J.S.A. 54:10A-6 through N.J.S.A. 54:10A-8 because the allocation factor properly reflects income attributable to New Jersey. Section Eight grants the Division discretion to make adjustments to properly reflect net income attributable to New Jersey where the allocation factor does not. The Court found that plaintiffs had no employees and no property anywhere other than New Jersey.

Plaintiffs have appealed the Tax Court's decision to the Appellate Division.

Insurance Premiums Tax

Retaliatory Tax – *Aetna v. Director, Division of Taxation*, decided March 18, 2002; Tax Court No. 002371-2001.

Pursuant to N.J.S.A. 17B:23-5, New Jersey imposes a retaliatory tax on foreign life and health insurance companies. In general, paragraph a of this statute provides that the retaliatory tax is calculated by comparing the taxes and other financial obligations imposed in New Jersey on a foreign insurance company doing business in New Jersey with the taxes and other financial obligations that would be imposed on the foreign insurance company in its home state. Therefore, if the taxes and other financial obligations imposed by New Jersey are lower than the taxes and other financial obligations that would be imposed by the foreign insurance company's home state, then New Jersey would collect the difference as retaliatory tax. However, paragraph b of this statute provides that the special purpose obligations or assessments

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imposed by the foreign insurance company's home state shall not be considered in the calculation.

In calculating the amount of the retaliatory tax, the issue was whether the statute requires that the New Jersey side of the equation include both taxes and special purpose assessments or obligations whereas the insurance company's home state's side of the equation only include taxes, or whether the purpose of the retaliatory tax requires that both sides be symmetrical.

The Court held that the statute was clear on its face and that by its express language only the insurance company's home state's side of the equation would not include special purpose assessments or obligations imposed by the home state. In support of its decision, the Court relied on the legislative history of another insurance-based retaliatory tax statute N.J.S.A. 17:32-15, that there was no agency regulation, ruling, publication, or public notice indicating the agency's position, and a Florida case with a similar statute. Furthermore, the Court reasoned that the Legislature could have rationally and reasonably determined this result because it might encourage other states to perform a similar computation as to New Jersey life and health insurance companies engaged in business in their state and thus reduce the New Jersey company's retaliatory tax liability in those states.

No appeal was filed by the State.

Local Property Tax

NJ SAVER Rebate: Eligible Resident – *Joel Cooper v. Director, Division of Taxation*, decided

November 14, 2001; Tax Court No. 004436-2001.

The Division denied plaintiff's application for the NJ SAVER rebate for the tax year 2000 because plaintiff's home is titled in the name of a corporation. Plaintiff is the 100% shareholder, resides in the home at issue with his six-year-old son, and neither owns nor pays rent on any other real estate. Plaintiff testified that the house was titled in corporate name so that a lien could not be placed on the house due to judgments against him for outstanding liabilities.

The Court found that although N.J.S.A. 54:4-8.58b.e allowed an NJ SAVER rebate for eligible residents where the properties were titled in the name of a partnership, guardian, trustee, committee, conservator, or other fiduciary for any individual, the statutes neither specifically included nor excluded properties titled in the corporate name.

Finding that the purpose of the NJ SAVER rebate is to provide relief to residents from local property taxes on their principal residence, the Court held that plaintiff was entitled to the rebate reasoning that the spirit and intent of the NJ SAVER program justified the rebate in this case. However, the Court made clear that its holding

should not be construed to mean that every individual who holds property through a corporation is entitled to the NJ SAVER rebate.

The Division appealed this decision.

Sales & Use Tax

Scope of the Agreement –

Boardwalk Regency Corp. and Adamar of New Jersey v. Director, Division of Taxation, decided November 9, 2001; Tax Court Nos. 006294-96 and 007935-96.

Pursuant to a closing agreement entered into between plaintiff and the Director, Division of Taxation: "No sales or use tax will be imposed in the provision of complimentary meals or complimentary liquor effective January 1, 1986. For purposes of this amended agreement, 'complimentary meals' shall mean any transaction where the patron is not required to pay any cash consideration or any portion of a price (including any possible sales tax) of food or (non-alcoholic) beverage."

This case is on remand from the Appellate Division where it questioned whether the agreement and specifically the term "provision of complimentary meals" excludes the imposition of sales and use tax on

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either both plaintiffs' purchase of nonalcoholic beverages and subsequent complimentary transfer to its patrons or only the complimentary transfer to its patrons.

The Court referred to another Appellate Division decision involving this same closing agreement that concerned the taxability of alcoholic rather than non-alcoholic complimentary drinks. (See *GNOC Corp. v. Director, Division of Taxation*, 328 N.J. Super. 467 (App. Div. 2000)). There the definition of the word "provision" was not at issue to the holding because alcohol was subject only to a wholesale tax at that time and the issue concerned whether the imposition of the retail tax on alcohol superseded the agreement. However, the Court found that the Appellate Division resolved the issue of the meaning of the word "provision" by stating that the term "provision" of complimentary alcoholic beverages precludes a tax on the purchase of the alcoholic beverages that are complimentary provided to its patrons. Furthermore, the Court found that the Appellate Division specifically disagreed with the Tax Court's reasoning that to preclude both the tax on purchase and complimentary transfer would result in a transaction unfavorable to the State and therefore an improper closing agreement because the Director has broad discretion to enter into such agreements. Therefore, the Court held that plaintiff was not subject to sales or use tax on either its purchase or complimentary transfer of nonalcoholic beverages.

The Division filed an interlocutory appeal that was accepted by the Appellate Division. □

In Our Legislature

Cape May Tourism Sales Tax Tourism Development District Levies — P.L. 2002, c.72 (signed into law on August 14, 2002) authorizes new, and broadens existing, tourism development district levies; revises the uses to which current tourism levies may be put; and allows the Greater Wildwood Tourism Improvement and Development Authority (Authority) to engage in broader tourism marketing efforts.

Under the Act, municipalities in the tourism development district are authorized to impose, in addition to the existing retail receipts tax, a 1.85% tourism assessment on hotel room rentals (including motels, boarding houses, and other transient accommodations). The tourism assessment will be administered by the Division of Taxation and will be collected concurrently with the existing tax on predominantly tourism-related retail receipts.

Proceeds from the assessment will be deposited into a separate fund within the State Department of the Treasury for use by the Authority to pay for certain services provided by a municipality in which a tourism project is located, fund tourism development activities related to the operation and maintenance of public beaches, and support tourism advertisement and promotion.

Additionally, the law removes the current \$1,000-per-business limit on tourism development fees and extends these fees to renters of lodgings that are not currently subject to the State sales and use tax; removes bars and restaurants from the category of businesses

allowed to offset their tourism development fees by the amount of any tax collected on predominantly tourism-related retail receipts; and exempts businesses that pay the tourism development fee or the tourism assessment from any future State or county room tax, tourism tax, beach fee, or similar tax on tourism-related business.

Finally, the law allows businesses outside of the tourism district to enter into marketing partnerships with the tourism authority. If the businesses agree to make the same payments to the tourism authority that are made by businesses in the tourism district, they can participate in the same marketing services and programs that the Authority provides to businesses in the district.

This law took effect immediately.

Cigarette Tax

Rate Increases — P.L. 2002, c.33 (signed into law on July 1, 2002) increases the cigarette tax from \$0.04 to \$0.075 per cigarette (from \$.80 to \$1.50 per pack of 20) effective July 1, 2002.

Corporation Business Tax

Business Tax Reform Act — P.L. 2002, c.40 (signed into law on July 2, 2002) reforms the Corporation Business Tax Act and other relevant sections of law to ensure that corporations and other business entities bear a fair share of the tax burden. The legislation closes numerous loopholes that had allowed profitable companies to reduce their taxable New Jersey income by shifting income to affiliated corporations outside the State and developing expenses to reduce income within the State.

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Chapter 40 creates an Alternative Minimum Assessment (AMA) (i.e., tax on either gross profits or gross receipts, at the taxpayer's election) designed to ensure that companies are taxed on the true level of economic activity in New Jersey in situations where the traditional "taxable income" measure is not an accurate gauge of such activity.

The statute also provides several new tax advantages to small businesses, eliminates the savings institution and corporation income taxes, and incorporates the features of these taxes into the corporation business tax. It also facilitates tracking of the income of entities such as partnerships, which do not pay taxes but, instead, distribute income to their members, the eventual taxpayers.

Other provisions of Chapter 40 decrease tax benefits for investment companies; suspend the use of certain net operating losses for two years; disallow the deduction of interest payments made to related parties; and accelerate fourth quarter estimated payments for large taxpayers. More complex changes regarding calculations have been introduced to decrease the impact of the reform act on groups of related corporations. These include a cap on the amount of receipts "thrown back" to New Jersey and a cap on the total Alternative Minimum Assessment.

This act took effect immediately and applies to privilege periods and taxable years beginning on or after January 1, 2002, provided however, that section 26 shall apply to privilege periods ending after June 30, 1984.

Estate Tax

Tax Computation Changed — P.L. 2002, c.31 (signed into law on July 1, 2002) provides that the New Jersey estate tax is to be computed either according to the terms of the Federal estate tax in effect on December 31, 2001, or, at the election of the person responsible for filing the estate tax return, by using a simplified system to be developed by the Director of the Division of Taxation. This preserves the New Jersey estate tax as the Federal credit on which it is based is phased out. The law makes the property of New Jersey estates subject to State tax liens. It also repeals sections of the existing law which provided for (1) the voiding of New Jersey's estate tax in the event of the repeal of the Federal estate tax or the Federal credit for state legacy taxes and (2) the revision of New Jersey's estate tax in response to any substantial revision of the Federal credit. Chapter 31 took effect immediately and applies to the estate of any resident decedent dying after December 31, 2001.

Local Property Tax

County Tax Board Membership — P.L. 2002, c.51 (signed into law on August 3, 2002) requires that counties having a population of more than 510,000 shall have county tax boards with five members, no more than three of whom shall belong to the same political party. "Population" means the State population according to the most recent Federal decennial census.

The statute allows the Union County Board of Taxation to increase its membership from three members to five members. Increasing the membership of the tax

board to five members is intended to result in increased efficiency in the handling of tax appeals. Chapter 51 took effect immediately.

Miscellaneous

Camden Revitalization — P.L. 2002, c.43 establishes the "Municipal Rehabilitation and Economic Recovery Act" which attempts to rehabilitate a qualified municipality, namely the City of Camden, and restore its economic vitality, which is necessary for long-term recovery. It provides a pilot program for a limited period of time during which considerable sums of State money will be invested in the qualified municipality with appropriate State supervision by a chief operating officer who is accountable to both city elected officials and the State. The legislation contains a number of tax-related benefits for residents of a qualified municipality and businesses located there.

Casinos — P.L. 2002, c.65, (signed into law on August 14, 2002) makes several changes to the Casino Control Act and the Casino Reinvestment Act. The law took effect immediately.

Fees and Penalties — P.L. 2002, c.34 (signed into law on July 1, 2002) establishes, increases, and modifies fees and penalties imposed by and on behalf of the State. The legislation, among other things, increases certain commercial recording filing fees for corporations and other business entities to be paid to the State Treasurer; institutes a \$50 fee to be charged by the Division of Taxation for each check issued for payment of any State tax or penalty that is re-

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turned due to insufficient funds or stop payment order; and imposes a new \$2 per day fee to be called the "Domestic Security Fee" for each motor vehicle (passenger automobile, truck, or semitrailer) that is rented from a location in this State. The law took effect July 1, 2002.

Unclaimed Property — P.L. 2002, c.35 (signed into law on July 1, 2002) reduces the amount of time ("dormancy period") private financial organizations and business associations may hold property before transferring it to the State as unclaimed or abandoned property. It also clarifies and expands the types of properties that are to be transferred to the State after the dormancy period has expired. This act took effect immediately.

Sales and Use Tax

Mobile Telecommunications Services — P.L. 2002, c.45 (signed

into law on July 30, 2002) amends relevant sections of the New Jersey Sales and Use Tax Act to comply with the provisions of the Federal "Mobile Telecommunications Sourcing Act," that requires a uniform method of sourcing mobile telecommunications services for sales tax purposes.

The sourcing method prescribed by the Federal legislation assumes that all wireless calls are made at the telecommunication service subscriber's residential or business street address, whichever is the "place of primary use," and permits all calls charged to such place of primary use (whether or not actually placed at, or made to, that location) to be taxed only by the taxing jurisdiction in which said place of primary use is located.

The Federal law forbids the State taxation of mobile telecommunications by any other system or

method after August 1, 2002. The New Jersey legislation applies to customer bills issued after August 1, 2002.

Urban Enterprise Zones

Population Requirements for New Joint Zone — P.L. 2002, c.68 (signed into law on August 14, 2002) modifies the population parameters governing eligibility for the establishment of a joint urban enterprise zone which was authorized in a county of the sixth class (Cape May County) pursuant to P.L. 2001, c.347. Amendment of the population requirements was necessary to clarify that North Wildwood qualifies for inclusion in the zone.

Chapter 68 took effect immediately and will be applicable to zones designated on or after January 6, 2002. □

2002 tax calendar

	SUN	MON.	TUE.	WED.	THU.	FRI.	SAT.
<i>september</i>	1	2	3	4	5	6	7
	8	9	10 ☐	11	12	13	14
	15	16 ☐	17	18	19	20 ☐	21
	22	23	24	25 ☐	26	27	28
	29 ☐	30					

CDIS-1,2 Cigarette Tax—Distributor's informational and sales report

NJ-500 Gross Income Tax—Employer's monthly remittance

CR-1 & CNR-1 Cigarette Tax—Wholesaler's monthly report of non-New Jersey stamped cigarettes

September 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors and manufacturers

September 16

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

September 10

CWIP-1,2 Cigarette Tax—Wholesaler's informational report

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

September 20 - continued

- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage terminal information return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly remittance
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

September 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

September 30

- GCC-1 Motor Fuels Tax**—Carrier's monthly report

	SUN	MON	TUE	WED	THU	FRI	SAT
<i>october</i>			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

October 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

October 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending June 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

October 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used

- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported

- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used

- MFT-14 Motor Fuels Tax**—Monthly export report

- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report

- SCC-5 Spill Compensation and Control Tax**—Monthly return

- SCC-6 Spill Compensation and Control Tax**—Public storage terminal information return

- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

- ST-50 Sales and Use Tax**—Quarterly return

- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return

- ST-350 Cape May County Tourism Sales Tax**—Monthly return

- ST-450 Sales and Use Tax—Salem County**—Quarterly return

- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return

- UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

October 25

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

October 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report

- GCC-1 Motor Fuels Tax**—Carrier's monthly report

november

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

November 12

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

November 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending July 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

November 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D

Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J

Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X

Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10

Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14

Motor Fuels Tax—Monthly export report

MFT-60

Motor Fuels Tax—Monthly storage facility operator report

SCC-5

Spill Compensation and Control Tax—Monthly return

SCC-6

Spill Compensation and Control Tax—Public storage terminal information return

ST-21

New Jersey/New York Combined State Sales and Use Tax—Monthly remittance

ST-51

Sales and Use Tax—Monthly remittance

ST-250

Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350

Cape May County Tourism Sales Tax—Monthly return

ST-451

Sales and Use Tax—Salem County—Monthly remittance

TP-20

Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50

Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

december

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

December 2

- GCC-1 Motor Fuels Tax**—Carrier's monthly report

December 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

December 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending August 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

December 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers

December 20 - continued

- | | | |
|---|--|--|
| <p>MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey</p> <p>GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used</p> <p>GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used</p> <p>GA-1X Motor Fuels Tax—Importer's monthly report of gallons of fuel imported</p> <p>MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used</p> <p>MFT-14 Motor Fuels Tax—Monthly export report</p> | <p>MFT-60 Motor Fuels Tax—Monthly storage facility operator report</p> <p>SCC-5 Spill Compensation and Control Tax—Monthly return</p> <p>SCC-6 Spill Compensation and Control Tax—Public storage terminal information return</p> <p>ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly remittance</p> <p>ST-51 Sales and Use Tax—Monthly remittance</p> <p>ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return</p> <p>ST-350 Cape May County Tourism Sales Tax—Monthly return</p> | <p>ST-451 Sales and Use Tax—Salem County—Monthly remittance</p> <p>TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return</p> <p>UZ-50 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return</p> |
|---|--|--|

December 26

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

December 30

- GCC-1 Motor Fuels Tax**—Carrier's monthly report

2002 Package NJX

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To insure timely delivery (in January 2003), we must receive your request by November 1, 2002.

from the director's desk

Property Tax Relief Goes to Residents

In an eight-week period between mid-July and mid-September, over \$1.1 billion in direct property tax relief was paid to New Jersey homeowners and tenants. The benefits were paid through the Property Tax Reimbursement, Homestead Rebate, and NJ SAVER Rebate Programs.

Property tax reimbursement checks averaging \$208 were sent to almost 84,000 senior and disabled homeowners on July 15 to reimburse them for increases in their 2001 property taxes.

Next, on August 19, homestead rebates for the 2001 tax year were mailed to over 1.5 million eligible applicants. The rebates for homeowners ranged from \$90 to \$775, and those for tenants from \$100 to \$775.

Finally, in early September NJ SAVER rebates were distributed to 1.2 million eligible homeowners. NJ SAVER rebate amounts vary by municipality, and the rebates for 2001 averaged \$500. As part of the State Budget for fiscal year 2003, the Legislature mandated that no NJ SAVER rebate be paid to any individual or married couple with gross income in excess of \$200,000 for the 2001 tax year.

Residents can check on the status of their property tax relief checks by calling:

Property Tax Reimbursement Hotline: 1-800-882-6597

Automated Homestead Rebate InfoLine: 1-800-323-4400 or 609-826-4400

NJ SAVER Rebate Hotline: 609-826-4282

TTY Equipment users can get information or assistance at: 1-800-286-6613 or 609-984-7300



New Jersey State Tax News

Vol. 31, No. 1 – Spring 2002

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- List of 2001 Tax Legislation
- Division Organization Chart

State Treasurer Named



John E. McCormac was named as the new State Treasurer by Governor James E. McGreevey, replacing Acting Treasurer Peter Lawrance in this position. Mr. McCormac will utilize years of experience balancing budgets and acting with fiscal responsibility in his new role.

For the past year, Mr. McCormac has been the Acting Business Administrator for Woodbridge Township, where he was responsible for the day-to-day operations of the Township including the supervision of seven departments and over 700 employees. He was also the Chief Financial Officer for the Township since 1992 and was responsible for over \$93 million in budget appropriations and over \$250 million in cash receipts and disbursements. For the past 13 years, Mr.

McCormac has also been the owner and manager of a small CPA firm, McCormac & Co., CPAs. Prior to this, he worked for Arthur Young & Co., CPAs, where he was Manager of Governmental Auditing and Consulting.

He is a Certified Public Accountant, Certified Municipal Finance Officer, Certified Management Accountant, Registered Municipal Accountant, Certified Financial Planner, Licensed Public School Accountant, and a Certified Government Financial Manager.

continued on page 2

Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info ..	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

state treasurer - from page 1

Mr. McCormac received his B.A. in accounting from the Newark College of Arts and Sciences of Rutgers University and his M.B.A. in finance from St. John's University. In addition, Mr. McCormac was also a part of Rutgers University's Accounting and Auditing adjunct faculty and taught Certified Government Finance Officer courses.

He resides in the Colonia section of Woodbridge Township. □

Tax Amnesty 2002

Governor James E. McGreevey recently signed a law (P.L. 2002, c.6) allowing the Division of Taxation to implement a limited Tax Amnesty Program this spring.

The 2002 Tax Amnesty Program will run from April 15 until midnight, June 10. During that time, taxpayers will be offered the chance to pay back taxes with no penalties, no interest, no cost of collection, and without the imposition of any civil or criminal penalties.

State tax liabilities for tax returns due on and after January 1, 1996, and prior to January 1, 2002, are eligible for Amnesty. After the Amnesty period ends on June 10, 2002, an unabatable 5% penalty will be imposed and an additional collection service fee may also be imposed. This will be in addition to all other penalties, interest, and other costs authorized by law.

Amnesty covers all State taxes payable to the New Jersey Division of Taxation including the corporation business tax, sales and use tax, and gross income tax. Taxes not administered and

collected by the Division of Taxation – such as local property taxes, realty transfer fees, payroll taxes owed to the Department of Labor, and Federal liabilities – are not eligible for Amnesty.

The State will mail notices to approximately 545,000 individuals and businesses who currently owe the State back taxes for the eligible years. The State also plans to undertake a full-scale public awareness campaign that includes radio and print advertising as well as some television advertisements.

Information, forms, and/or materials will be available from:

- A toll-free Amnesty Hotline at: 1-800-781-8407
- NJ TaxFax at: 609-826-4500 from your fax machine's phone
- Our Web site at: www.njtaxamnesty.com
- One of our Regional Offices

Or you can e-mail us at: njtaxamnesty@tax.state.nj.us

You may also write to:
NEW JERSEY DIVISION OF TAXATION
AMNESTY FORMS REQUEST
PO BOX 445
TRENTON NJ 08646-0445

Organizations and individuals who would like to distribute pamphlets or other informational materials to their clients, or who would like to arrange to have a Division representative speak to their group about the 2002 Amnesty Program should call The Marcus Group at 201-902-2000.

The following is taken from the *New Jersey 2002 Tax Amnesty Program Questions and Answers*.

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Trenton, NJ 08695-0281**

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nj.taxation@treas.state.nj.us

The *State Tax News* is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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continued on page 3

tax amnesty - from page 2

What taxes are eligible for Amnesty?

The following New Jersey taxes are eligible for Tax Amnesty:

Tax	N.J.S.A. Citation	Tax	N.J.S.A. Citation
Alcoholic Beverage Tax	54:41-1 <i>et seq.</i>	Public Utility Excise Tax	54:30A-16 <i>et seq.</i> and 49 <i>et seq.</i>
Atlantic City Luxury Tax.....	54:32B-24.1 <i>et seq.</i>	Public Utility Franchise Tax	54:30A-16 <i>et seq.</i> 54:30A-49 <i>et seq.</i>
Cigarette Tax.....	54:40A-1 <i>et seq.</i>	Public Utility Gross Receipts Tax..	54:30A-49 <i>et seq.</i>
Corporation Business Tax.....	54:10A-1 <i>et seq.</i>	Railroad Franchise Tax	54:29A-1 <i>et seq.</i>
Corporation Business Tax for Banking and Financial Corporations.....	54:10A-1 <i>et seq.</i>	Railroad Property Tax.....	54:29A-1 <i>et seq.</i>
Corporation Income Tax	54:10E-1 <i>et seq.</i>	Resource Recovery Investment Tax [Expired 12/31/95].....	13:1E-138(b)
Estate Tax.....	54:38-1 <i>et seq.</i>	Sales and Use Taxes.....	54:32B-1 <i>et seq.</i>
Gross Income Tax (New Jersey).....	54A:1-1 <i>et seq.</i>	Savings Institution Tax	54:10D-1 <i>et seq.</i>
Insurance Premiums Tax.....	54:16-1 <i>et seq.</i> 54:18A-1 <i>et seq.</i> 54:17-4 <i>et seq.</i> 17:33B-49 <i>et seq.</i> 17:47A-5 <i>et seq.</i>	Solid Waste Importation Tax [Expired 12/31/95].....	13:1E-138(c)
Landfill Closure And Contingency Tax	13:1E-100 <i>et seq.</i>	Solid Waste Recycling Tax [Expired 12/31/96].....	13:1E-92 <i>et seq.</i>
Litter Control Tax [Expired 12/31/00].....	13:1E-92 <i>et seq.</i>	Solid Waste Services Tax.....	13:1E-138(a)
Motor Fuels Tax.....	54:39-1 <i>et seq.</i>	Spill Compensation And Control Tax.....	58:10-23.11 <i>et seq.</i>
Petroleum Products Gross Receipts Tax	54:15B-1 <i>et seq.</i>	Tobacco Products Wholesale Sales and Use Tax.....	54:40B-1 <i>et seq.</i>
Public Community Water Systems Tax.....	58:12A-1 <i>et seq.</i>	Transfer Inheritance Tax	54:33-1 <i>et seq.</i>
Public Utility Energy Unit Tax	54:30A-49 <i>et seq.</i>	Transitional Energy Facility Assessment [Effective 1/1/98].....	54:30A-100 <i>et seq.</i>
		Uniform Transitional Utility Assessment [Effective 1/1/98].....	54:30A-114 <i>et seq.</i> <input type="checkbox"/>

----- May Be Reproduced and Filed With Amnesty Headquarters -----

<p style="text-align: center;">New Jersey PAYMENT/WAIVER STATEMENT</p> <div style="text-align: center;">  </div> <hr/> <p>IDENTIFICATION NUMBER _____</p> <hr/> <p>NAME _____</p> <hr/> <p>TRADE NAME (IF APPLICABLE) _____</p> <hr/> <p>ADDRESS _____</p> <hr/> <p>CITY _____ STATE _____ ZIP CODE _____</p> <hr/> <p>TA-6 (4-02)</p>	<p>TO THE DIRECTOR DIVISION OF TAXATION:</p> <p>I certify that I am making this payment and filing any return(s) under the conditions outlined by this AMNESTY law and that the information contained in any attached return(s) is to the best of my knowledge true, correct and complete. As required by law I acknowledge that I waive my rights to any administrative and/or judicial appeal to the extent my payment(s) and any attached return(s) are accepted under the provisions of AMNESTY.</p> <hr/> <p>Signature _____ Date _____</p> <hr/> <p>Telephone (____) _____</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;">Make Checks Payable To: STATE OF NEW JERSEY Mail To: AMNESTY HEADQUARTERS P.O. Box 445 Trenton, NJ 08646-0445 TAX AMOUNT DUE: \$ _____</p> </div>
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CORPORATION TAX Payments to be Made by Certain Partnerships

Effective for tax years beginning on or after January 1, 2001, limited liability companies (LLCs) and limited partnerships (LPs) that are classified as partnerships for tax purposes may be required to remit corporation business tax payments. Public Law 2001, Chapter 136, requires that these entities that have *corporate* members or partners obtain and retain in their records the consent of each of these corporate members or partners, that New Jersey shall have the right and jurisdiction to tax and collect the tax on their income allocated to New Jersey. Form NJ-1065E has been designed to provide the required consent.

If the corporate member or partner does not consent by the filing due date of the required Partnership Return, Form NJ-1065, the LLC or LP is then obligated to remit a payment of corporation business tax on behalf of all the nonconsenting members' or partners' shares of New Jersey income

allocated to New Jersey. The tax rate is 9%. In addition, an installment payment equal to 100% of the current year's tax due is required. For tax year 2001 the tax liability will be only 45% of what would otherwise be due. However, the prepayment also due is based upon 100% of the liability (not reduced to the 45% level).

The 2001 Partnership Return, Form NJ-1065, has been updated to provide the new forms, schedules, vouchers, consents, and instructions for LLCs and LPs required to comply with the new law.

Form PART-100, Corporation Business Tax—Partnership Return Voucher, is the document LLCs and LPs will use to remit payment. If an extension of time to file is required, an LLC or LP with a corporate nonconsenter must file Form PART-200-T, Corporation Business Tax—Partnership Tentative Return and Application for Extension of Time to File.

LLCs and LPs that are listed on a United States national stock exchange are exempt from this new law. Moreover, an LLC or LP which is a "qualified investment partnership" is not required to make any tax payments.

A "Qualified Investment Partnership" means an LLC or LP which is treated as a partnership for tax purposes; has more than 10 members or partners with no member or partner owning more than 50% interest; and that derives at least 90% of its gross income from dividends, interest, payments with respect to securities, loans, and gains from the sale or disposition of stocks, securities, foreign currencies, commodities, or similar income. An investment partnership shall not include a dealer in securities.

The corporation business tax payment made by an LLC or LP on behalf of its nonconsenting members or partners will be credited to the nonconsenters' accounts on the same day as it is received. This payment is then available as a credit should a nonconsenter have an obligation to file and pay tax on its own. □

GROSS INCOME TAX Retirement Plan Contributions

The Federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 made a number of technical and substantive changes to the pension and retirement provisions of the Internal Revenue Code. The substantive provisions are generally designed to increase, over time, the amounts that individuals can voluntarily contribute to various retirement vehicles such as IRAs, 401(k) plans, and other deferred arrangements. In other words, employees are able to contribute a greater pre-tax amount to their 401(k), 457, 403(b), SIMPLE, and SEP deferred savings plans.

For New Jersey income tax purposes, a taxpayer does not include in gross income amounts contributed by an employer on behalf of and at his election to a trust which is part of a qualified cash or deferred arrangement which meets the requirements of section 401(k) of the Internal Revenue Code. N.J.S.A. 54A:6-21. Therefore, a taxpayer may have an increased amount of income that can be deferred from taxation in New Jersey as a result of the increase in the amount individuals can contribute to their 401(k) plans under the new provisions of the Economic

2001 CBT-100S Correction

There is a print error on page 1 of the 2001 CBT-100S. Line 4 is incorrect, and it should read:

4. Tax – If the income on Line 41, Schedule A, is greater than \$100,000, multiply by .0133. If Line 41, Schedule A, is less than or equal to \$100,000, enter zero. (See instructions 10(a).)

A corrected version of the form is available on our Web site at:

www.state.nj.us/treasury/taxation/

retirement contributions - from page 4
 Growth and Tax Relief Reconciliation Act of 2001.

The New Jersey Gross Income Tax Act does not provide an exclusion from gross income for contributions to any deferred compensation plans other than 401(k) plans. Consequently, the EGTRRA provisions regarding other qualified deferred compensation plans have no effect. □

GROSS INCOME TAX
Deemed Sale
Election on Capital Gains

A tax practitioner recently inquired about the proper reporting for New Jersey gross income tax purposes of a Federal election for deemed sale of capital assets acquired in the tax years beginning before January 1, 2001. Section 311 of the Internal Revenue Code was amended under the Taxpayer Relief Act of 1997 to allow taxpayers to make an election to report a gain on their 2001 tax return as if an actual sale of assets had been made and then reacquired on the same date.

The Gross Income Tax Act at 54A:8-3(c) states in part that “a taxpayer’s accounting method under this act shall be the same as his accounting method for Federal income tax purposes.” Accordingly, if a taxpayer makes the election for a deemed sale of capital assets for Federal purposes, the taxpayer must follow the same method of accounting for New Jersey tax purposes, reporting income from the deemed sale in the same period. The taxpayer’s basis in the asset for New Jersey tax purposes

will then remain the same as for Federal tax purposes.

This position is consistent with the Division’s longstanding policy regarding the timing and reporting of income as previously reported in the *New Jersey State Tax News*: May/June 1982 (Vol. 11, No. 3, page 73), Winter 1998 (Vol. 27, No. 4, page 11), and Winter 2000 (Vol. 29, No. 4, page 4). □

SALES AND USE TAX
Cape May County
Businesses

New legislation (P.L. 2001, c.347) effective April 1, 2002, provides for the designation of a joint municipal Urban Enterprise Zone (UEZ) consisting of North Wildwood City, Wildwood City, Wildwood Crest Borough, and West Wildwood Borough. This designation allows certified vendors in the joint zone to collect sales tax on certain sales of tangible personal property at the reduced sales tax rate of 3%. This law may change the way businesses located in these areas file their New Jersey sales and use tax returns.

Businesses Filing Cape May County Tourism Sales Tax Returns (Form ST-350)

In addition to the 6% New Jersey sales tax a 2% tourism sales tax is collected on tourism-related sales, which are sales of meals and prepared foods, admissions, and hotel occupancies. Under the Urban Enterprise Zones Act, sales of meals and prepared foods, admissions, and hotel occupancies are *not* eligible for the reduced sales tax rate of 3%. Therefore, vendors of goods and services that are subject to the tourism sales tax will continue to collect the 6% sales tax and the 2% tourism sales

tax on those sales. Businesses will continue to report their *tourism-related sales* on the Cape May County Tourism Sales Tax Return (Form ST-350).

However, if a business *also* makes retail sales of tangible personal property from a location within the Urban Enterprise Zone, it may apply to the local zone coordinator for certification as a reduced-rate vendor under the UEZ program. If the business receives certification, a UZ-2 Certificate will be issued and monthly returns, Form UZ-50, will be sent to the business. Then, in addition to Form ST-350, the business will file Form UZ-50, and report non-tourism-related sales at the regular 6% rate and at the 3% rate for qualified reduced-rate sales. Vendors that file Form ST-350 will not receive new returns for the remainder of 2002. However, the instructions for lines 4 and 8 are amended to read as follows:

Line 4 —

continued on page 6

Interest 8%

The interest rate assessed on amounts due for the period January 1, 2002 – December 31, 2002 will be 8%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%

cape may county - from page 5

Gross receipts from all other sales not subject to the Tourism Tax. If certified for Urban Enterprise Zone reduced-rate collections, report these receipts on Form UZ-50 only.

Line 8 —

Allowable deductions for sales not detailed above. If certified for Urban Enterprise Zone reduced-rate collections, report these deductions on Form UZ-50 only.

Businesses Filing Sales and Use Tax Returns (Forms ST-50 and ST-51)

Businesses that do not make any tourism-related sales file the Sales and Use Tax Quarterly Return (Form ST-50), and Sales and Use Tax Monthly Remittance (Form ST-51). If a business *does not* obtain certification from the UEZ Authority as a reduced-rate vendor under the Urban Enterprise Zone Program, it should continue to report and remit sales tax in the same manner on Forms ST-50/51. However, if the business obtains certification as a qualified UEZ business, it will receive monthly returns, Form UZ-50, on which all sales will be reported, whether at the reduced rate (3%) or at the full 6% rate. The business will stop filing the ST-50/51 forms, and file only the UZ-50 returns.

All inquiries concerning certification as a reduced-rate UEZ vendor should be directed to:

NEW JERSEY DEPARTMENT OF
COMMERCE AND ECONOMIC GROWTH
20 WEST STATE STREET
PO BOX 820
TRENTON, NJ 08625-0820

or by phone at 609-292-1912. □

Safe Deposit Box Release

R.S. 54:35-19 provides that the contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise may not be released without at least a 10-day notice to the Director of the Division of Taxation of the intended delivery and the retention of sufficient assets to pay any tax and interest which may be assessed on the assets delivered. The statute provides that the Director may examine a decedent's assets contained in a safe deposit box.

In 1992 the Division determined that it would no longer inventory safe deposit boxes held by a decedent at the time of his or her death. On September 30, 1992, the Director issued a blanket waiver for the period October 19, 1992, to January 1, 1997, authorizing the immediate release of the contents of a safe deposit box. On October 11, 1996, the period was extended by the Director to January 1, 2002.

On January 4, 2002, the Director reissued the blanket waiver author-

izing the immediate release of the contents of a safe deposit box for the period from January 1, 2002, to January 1, 2007. See below. □

Cost of Collection

It is common knowledge in the business and accounting community that failure to file and pay taxes timely can result in penalty and interest charges. Less widespread may be the knowledge that an additional expense may be incurred by failing to pay all taxes, penalties, and interest due prior to the Division of Taxation entering a certificate of debt (judgment) with the New Jersey Superior Court. This expense is the cost of collection.

Cost of collection is intended to cover the expenses incurred by the State with respect to the issuance of a certificate of debt for, and the collection of, any State tax not paid within the time prescribed by law.

The Director may impose the actual cost of collection or, in lieu

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To: All Banks, Trust Companies, Savings Institutions, Safe Deposit Companies, Savings and Loan Associations, or Other Institutions:

The Director, Division of Taxation, Department of the Treasury of the State of New Jersey, hereby waives the requirements of Revised Statutes 54:35-19 with respect to the issuance of the ten days notice and retention of assets for the opening of safe deposit boxes standing in the name of decedents either individually, jointly, or otherwise, or to which they had access and consents to release of the contents thereof.

This waiver is effective January 1, 2002 and shall expire January 1, 2007 unless cancelled by prior notice.

The institution releasing the contents of safe deposit boxes should keep the original of this letter for its own records.

Robert K. Thompson
Director, Division of Taxation

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of ascertaining and imposing the actual cost of collection, may impose a fee as follows:

- Five percent (5%) of the tax or \$100, whichever is greater, in the event that any tax is not paid within the time prescribed by law and a certificate of debt must be issued.
- Ten percent (10%) of the tax or \$200, whichever is greater, for collection action after the issuance of the certificate of debt. This includes levy and seizure action as well as referral of the tax matter to the Attorney General.
- Twenty percent (20%) of the tax or \$500, whichever is greater, in the event that the tax remains unpaid and it becomes necessary for the Attorney General to institute a legal suit against the taxpayer for the collection of the tax.

Interest or penalties shall not be assessed against any fees imposed as cost of collection; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date they are paid.

For the purposes of calculating the cost of collection based on the percentage of the tax, the tax shall mean unpaid tax, penalties, and interest.

Any fees imposed as cost of collection shall be in addition to any interest or penalties, as otherwise provided by law, and shall be payable to and recoverable by the Director, along with all penalties and interest as if they were all part of the tax imposed.

Tax Amnesty: From April 15 to June 10, 2002, taxpayers will be able to pay eligible back taxes *without* cost of collection charges. For more information, see the article on page 2. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court, as appropriate.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000, sent by collector.
- County budgets certified to County Tax Boards.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property. The tax credit rate calculated by dividing the total REAP aid by total taxable value of residential property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days by County Tax Board to Taxation and Local Government Services Directors, State Auditor, municipal clerks, and the clerk of board of freeholders.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.
- Collectors' Property Tax De-

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duction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension, sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description, and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15–

- County Tax Board to certify to Director, Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Five persons passed the Tax Assessor Certification examination held on September 22, 2001, and received Tax Assessor Certificates dated January 1, 2002. They are as follows:

Correction

2001 FORM NJ-2210

An incorrect version of the 2001 Form NJ-2210, Underpayment of Estimated Tax by Individuals, Estates or Trusts, appears on the NJX Plus CD ROM. The form instructs taxpayers to take information from incorrect lines on Form NJ-1040 and Form NJ-1040EZ. Some printed copies of the form with these incorrect line number references were also distributed to the public.

A corrected version of Form NJ-2210 is available from the following sources:

Division of Taxation Web site:
www.state.nj.us/treasury/taxation/

Automated Tax Information System – Forms Request
1-800-323-4400

NJ TaxFax 609-826-4500 (from your fax machine's phone)

Write to:
NJ Division of Taxation
Taxpayer Forms Services
PO Box 269
Trenton, NJ 08695-0269

Gloucester County: Brian Paul Rosenberger, Monroe Township.

Mercer County: Patricia Mello-Douglas, Hamilton Township.

Monmouth County: Elizabeth Ann Cusumano, Hazlet Township.

Somerset County: Jeffrey S. Ward, Manville Borough.

Warren County: William T. Watras, Oxford Township.

The next examination is scheduled for September 28, 2002. The deadline to file applications for this exam is August 29, 2002. The filing fee is \$10. For applications

or if you have any questions regarding this exam, call Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On July 18, 2001, a summons complaint for a disorderly persons offense was signed against Glen Helfrich for failing to file eleven (11) motor fuels tax returns and failing to remit the appropriate motor fuels tax due. On September 28, 2001, in Hazlet Municipal Court, Mr. Helfrich, responsible person of R. Helfrich & Son Corp., a school and tour bus operator, plead guilty to the charge. The outstanding tax was paid prior to the court hearing. In addition, Mr. Helfrich was fined by the court. This case was the result of a referral from the Division of Taxation's Audit Services Branch-Motor Fuels Group.
- On September 28, 2001, in Hudson County Superior Court, George J. Halpern, Short Hills, New Jersey, was sentenced to 364 days in the Hudson County Jail after being found guilty of a violation of probation in a case involving his failure to file a 1997 personal income tax return. He was ordered not to prepare tax returns. A subsequent investigation established that both he and his son, Todd Halpern, had continued to prepare tax returns. The son, Todd Halpern, was sentenced to ninety (90) days in the Hudson County Jail in regard to the

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same matter. These matters were investigated by the Office of Criminal Investigation and prosecuted by the State Attorney General's Office.

- On October 11, 2001, in Trenton, New Jersey, a State Grand Jury returned an indictment against Mark Stahl of Point Pleasant Beach, New Jersey, charging that between February and December 1996, Mr. Stahl and a corporation he owned, Markal Columbia, Inc., committed a theft of more than \$75,000 in motor fuels (diesel) tax that he collected from consumers at a truck stop they owned in Knowlton Township, New Jersey, and failed to file motor fuels tax returns during that period. The Grand Jury also charged that Mr. Stahl and a second corporation, Markal, Inc., committed a theft of more than \$500 in motor fuels (diesel) tax collected at a truck stop in Englewood, New Jersey, between May and October 1996, and failed to file motor fuels tax returns for that period. The amount of tax that the two related corporations collected, but failed to turn over, totals

\$110,833.40. This matter was investigated by the Office of Criminal Investigation and presented to the Grand Jury by the Division of Criminal Justice. On October 12, 2001, Mr. Stahl was arrested and lodged in the Mercer County Correctional Center in lieu of \$25,000 cash bail.

- On November 2, 2001, Teofelo Zarzuela of Union Township, New Jersey, was sentenced as a result of his guilty plea on one (1) count of possession of counterfeit stamped cigarettes in the Union County Superior Court. Judge Moynahan imposed a total of \$3,055 in fines, fees, and costs, 18 months supervised probation, and the forfeiture of 2917.7 cartons of counterfeit stamped cigarettes valued at \$116,708, as well as two handguns seized during execution of the search warrants. Charges on the handguns and hollow-point ammunition seized from the defendant's retail store are pending in Essex County. Additional subjects await sentencing in this matter.
- On November 7, 2001, Roger Toth of Carteret, New Jersey, entered a plea of guilty in

Carteret Municipal Court to charges of failing to file petroleum products gross receipts tax (PGRT) returns, motor fuels tax (MFT) returns, and an application for corporate reinstatement, and failing to pay PGRT and MFT, in connection with his retail fuel oil business, Rolyn Enterprises, Inc. He was also fined by the court and is subject to civil collection of the tax, penalty, and interest. This case was referred to the Office of Criminal Investigation by the Division of Taxation's Investigations Branch-Shore Regional Office, and also coordinated with Audit Services in the revocation of the subject's license to purchase diesel fuel tax-free, thereby preventing future violations.

- On November 9, 2001, Annie M. McCoy, a resident of Millville, New Jersey, was sentenced to five (5) years of probation, 480 hours of community service and restitution of \$36,316.61. Ms. McCoy was sentenced in Cumberland County based on her earlier guilty plea to a charge of theft by deception that arose

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Enforcement Summary Statistics **Fourth Quarter 2001**

Following is a summary of enforcement actions for the quarter ending December 31, 2001.

• Certificates of Debt:		• Jeopardy Seizures	4
Total Number	2,334	• Seizures	18
Total Amount	\$42,304,824	• Auctions	2
• Jeopardy Assessments	307	• Referrals to the Attorney General's Office	754

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/

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from her preparation of fraudulent New Jersey homestead rebate applications and the subsequent receipt of fraudulent homestead rebates. This investigation and prosecution was a joint endeavor with members of the Cumberland County Prosecutor's Office.

- On November 16, 2001, Michael Rosenstein, Ocean, New Jersey, trading as Autoland Wholesale, Neptune, New Jersey, was sentenced to three (3) years of probation, ordered to pay restitution of \$18,964, and fined a total of \$655. Monmouth County Superior Court Judge Paul Chaiet ordered Mr. Rosenstein to make full restitution of the sales tax within six (6) months. The sentencing was based on Mr. Rosenstein's guilty plea of failure to pay over sales taxes and filing fraudulent sales tax returns during the period of April 1, 1996, through March 31, 2000. This investigation was a joint endeavor with members of the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.
- On November 16, 2001, Jamie Rodriguez, Vineland, New Jersey, was sentenced in United States District Court in Laredo, Texas, relative to his November 2000 arrest involving counterfeit New Jersey cigarette tax stamps. Mr. Rodriguez was sentenced to 33 months in a Federal correction facility after being found guilty of smuggling counterfeit financial documents (495,000 New Jersey tax stamps) from Mexico into the United States, as well as giving false statements to FBI Agents. The Office of Criminal Investigation

provided expert testimony at the trial in Laredo, Texas.

- On November 30, 2001, an employee of a wholesale motor fuel distributor entered a plea of guilty to aiding and abetting in collecting and failing to remit \$168,402.44 of petroleum products gross receipts tax. This was a joint investigation between the Office of Criminal Investigation and the New Jersey State Police-Organized Crime Unit, with substantial assistance from the Audit Services Branch-Excise Tax Group, and was prosecuted by the State Attorney General's Office.
- On November 30 and December 6, 2001, two employees of a wholesale motor fuel distributor each entered a plea of guilty to aiding and abetting in the evasion of more than \$75,000 in motor fuels tax. This was a joint investigation between the Office

of Criminal Investigation and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Attorney General's Office.

- On December 7, 2001, in Superior Court, Union County, Naum Raichel of Brooklyn, New York, the former owner of a truck stop named Gas R Us Inc., in Elizabeth, New Jersey, entered a plea of guilty to collecting and failing to remit \$85,085.49 in motor fuels tax between January 1, 1997, and September 30, 1998. This was a joint investigation between the Office of Criminal Investigation and the New Jersey State Police-Organized Crime Unit, with assistance from the IRS Excise Tax Unit, Elizabeth Police Department and U.S. Customs. This case was prosecuted by the State Attorney General's office.

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New Jersey

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- On December 11, 2001, Raymond Berry, trading as Transworld Transmission, New Providence, New Jersey, was indicted by a State Grand Jury for failing to report and remit collected sales tax in the amount of \$32,272. The indictment, which covers the period July 1, 1997, through March 31, 2000, charges Mr. Berry with theft to make required disposition of property received, misapplication of entrusted funds, failure to turn over sales taxes, failure to file sales tax returns, and failure to register with the New Jersey Division of Taxation.
- On December 17, 2001, in Mt. Olive Municipal Court, Tarmeet Singh Sethi of Roxbury Township entered a plea of guilty on behalf of his corporation, Quick Flow, Inc., a gasoline and diesel retailer in Mt. Olive, for failing to file a motor fuels tax return for November 2000, and was fined. As a result of this investigation, the subject has paid delinquent sales tax of \$21,294.07 and delinquent motor fuels tax in the amount of \$54,587.15.
- On December 17, 2001, Al McGregor, corporate officer of Kramco Flooring Inc., Bridgewater, New Jersey, plead guilty to accusations of failure to file sales tax returns covering the period of January 1, 1996, through June 30, 1999, failure to turn over collected sales taxes in the amount of \$182,370, purposely failing to turn over sales taxes, and misapplication of entrusted funds. In a related matter, on December 17, 2001, Kenneth Kroll, corporate officer of Royal K Flooring, Aberdeen, New Jersey, plead guilty to accusations

of failure to file sales tax returns for the period of January 1, 1996, through June 30, 1999, failure to turn over collected sales taxes in the amount of \$42,617, purposely failing to turn over sales taxes, and misapplication of entrusted funds. The total amount due for these two cases is \$407,306. Sentencing was scheduled for February 15, 2002.

- On December 18, 2001, the Monmouth County Grand Jury returned a ten (10) count indictment against Mitesh Shah and Asif Hafeez for forging and selling New Jersey counterfeit stamps, as well as possession of 8,718 counterfeit Oregon State stamps, 6,060 counterfeit New York State stamps, and 9,799 counterfeit New York City stamps. At the time of their arrest, both subjects were released on \$20,000 bail pending Grand Jury action.
- One hundred and eighty-one (181) complaints alleging tax evasion were evaluated from October through December 2001 in the Office of Criminal Investigation.
- During the same time period, seventy-three (73) charges were filed in court on twenty-two (22) cases for violation of the Cigarette Tax Act. Of the twenty-two (22) court cases initiated, twelve (12) involved contraband cigarettes. □

Tax Briefs

Gross Income Tax

Combat Military Pay — New Jersey tax law states that New Jersey residents are subject to tax on all their income in accordance with N.J.S.A. 54A:2-1, regardless of where the income is earned.

N.J.S.A. 54A:5-1(a) states that New Jersey gross income shall consist of salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property. There is no provision under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1, et seq., exempting hazardous duty or combat military pay from gross income tax. Thus, a New Jersey resident serviceperson must file a return and pay tax on all his or her income, including all military pay and the cost-of-living allowances, since it is compensation for services rendered.

N.J.S.A. 54A:8-1 allows special extensions of time to file an income tax return for members of the armed forces serving in an area declared as a combat zone by executive order of the President of the United States or a qualified hazardous duty area as defined by Federal statute. These qualified taxpayers are permitted 180 days to file a New Jersey income tax return after leaving the combat zone or qualified hazardous duty area. In addition, if a New Jersey resident serviceperson is hospitalized outside of New Jersey as a result of injuries received while serving in a combat zone or a qualified hazardous duty area, she/he may extend the filing time by the period of continuous hospitalization plus 180 days. Qualified taxpayers requesting an extension under N.J.S.A. 54A:8-1 must enclose a statement with the return explaining the reason for extension.

NJ SAVER Rebate

Partnership Property — In order to be entitled to the NJ SAVER rebate for the year 2000, the applicant must have owned and occupied the home as his/her

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principal residence as of 12:01 a.m., October 1, 2000, and have paid property taxes in full on the property for that year. N.J.S.A. 54:4-8.58b a.b.

With regard to partnership ownership situations, the law provides that "An application for an NJ SAVER rebate shall be allowed for a homestead the title to which is held by a partnership, to the extent of the applicant's interest as a partner therein, and by a guardian, trustee, committee, conservator, or other fiduciary for any individual who would otherwise be eligible for an NJ SAVER rebate." N.J.S.A. 54:4-8.58b e.

Accordingly, if the general partner has resided in the home as of 12:01 a.m., October 1, 2000, and is domiciled in this State, and uses the home as his/her principal residence, and the property taxes due on the property for the year 2000 have been paid, he/she is entitled to the rebate. Of course, documentation, including any and all writings pertaining to the partnership agreement, proof of the applicant's principal residence, etc., should be provided to the Division of Taxation to document the applicant's eligibility for the NJ SAVER rebate application.

Sales and Use Tax

Casino Contractor Registration — The Casino Control Commission has the authority to determine whether a particular seller of items to the casino industry must be registered and licensed with the State under P.L. 2001, c.134 (N.J.S.A. 5:12-92). N.J.S.A. 5:12-63(a) states that the Casino Control

Commission shall have the responsibility "to hear and decide promptly...all license, registration, certificate, and permit applications and causes affecting the granting, suspension, revocation, or renewal thereof." Accordingly, questions pertaining to the licensing of "casino service industries" under P.L. 2001, c.134, should be referred to the Commission for determination. Registration for State taxes then follows as a matter of course if a license is required. For further information, inquiries may be directed to the Casino Control Commission, Arcade Building, Tennessee Avenue and Boardwalk, Atlantic City, NJ 08401 or 609-441-3422.

Miscellaneous Hotel Fees — Early Departure Fees are not subject to sales tax if they are similar to cancellation fees. If a sale is cancelled (e.g., the guest checks out early) there is no taxable transaction and the early departure fee is not subject to sales tax. However, if the hotel charges the agreed room rate for the remaining time even though the customer checked out early and never actually used the room, this charge constitutes rent for the "occupancy" (i.e., the right to use or possess) of a hotel room which is taxable under N.J.S.A. 54:32B-3(d).

Late Checkout Fees are subject to sales and use tax. This fee constitutes an additional rent charge for the "occupancy" (i.e., the right to use or possess) of a hotel room that is taxable under N.J.S.A. 54:32B-3(d).

Cancellation Fees are not subject to sales tax. If a sale is cancelled there is no taxable transaction and

the cancellation fee is not subject to sales tax.

Forfeited Deposits would not be subject to sales tax because a deposit is considered to be a payment against a future sale; thus sales tax is not due on a deposit until actual delivery of the merchandise occurs to which the deposit applies. If a sale is cancelled there is no taxable transaction and the deposit is not subject to sales tax.

"Reward Points" are considered consumer incentives/promotions and are treated in the same fashion as coupons and other discounts. Sales tax is calculated differently depending on how the discount is given. Generally, if a room rate is offered at a discounted price and a third party will reimburse the hotel, the sales tax is based on the full room rate. If the hotel offers a discount on the room rate but will not be reimbursed, then the tax on the room rate is based on the discounted price. If the hotel offers a free night stay, sales tax should not be charged on the free night. If a hotel offers two nights for the price of one, sales tax is based on the cost of one night.

Use of Resale Certificates — Generally, out-of-State businesses wishing to make exempt purchases in this State must register with New Jersey. However, exceptions exist for drop shipments and "qualified out-of-State vendors" making purchases in this State for resale. A drop shipment occurs when an out-of-State purchaser who is not registered with New Jersey instructs the New Jersey

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Flag Exemption	4	15	Shop Supplies	1	13
Golf Course Sales	1	12	Spring Cleaning	1	3
Horse Boarding	3	12	Teleconferencing Service	1	13
Interior Decorator Services	4	16	Wrapping Supplies, Interoffice	4	16
Interoffice Wrapping Supplies	4	16			
Lease Fees	4	16			

2001 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
5	1/16/01	Revises New Jersey's Administrative Procedures Act to enhance access to the rule-making process.	ALL	A-1484(1R)
18	1/29/01	Permits religious or charitable organizations to lease property to other exempt entities without losing property tax exemption.	LPT	A-3038
23	2/2/01	Provides for a phase-out of the corporation business tax on the regular income of S corporations.	CBT	A-1846(1R)
24	2/2/01	Provides for the appropriation of sales tax revenues to increase benefits under various energy assistance programs.	MIS	ACS for A-2920
84	5/7/01	Allows all taxpayers, regardless of age or disability status, to exclude their U.S. military pension or military survivor's benefit payments from gross income taxation.	GIT	A-1256 (1R)
85	5/8/01	Permits exempt firefighters' organizations to conduct certain income-producing activities and retain their tax exemption.	LPT	S-90 (2R)
90	5/10/01	Exempts sales of limousines to operators licensed in New Jersey, and repairs and replacement parts, regardless of where the limousine service operator is licensed.	S&U	S-1261 (1R)
93	5/10/01	Establishes the "New Jersey Individual Development Account Program."	MIS	ACS (2R) for A-2143
101	6/14/01	Directs assessors to reassess or revalue complete taxing district in certain circumstances.	LPT	S-1334 (4R)
106	6/18/01	Accelerates phase-in of the NJ SAVER rebate.	LPT	S-2
109	6/21/01	Modifies probate code in the settlement of intestate estates when heirs are missing or unknown.	TIT/ET	A-2105 (1R)
127	6/28/01	Extends certain veterans' benefits to certain participants in the Lebanon Crisis of 1958.	MIS	A-1330 (1R)
131	6/29/01	Provides for the conversion of a nonprofit health service corporation to a for-profit health insurer.	IPT	SCS (1R) for S-1581
134	6/29/01	Requires providers of goods and services to the State and casinos and certain subcontractors to register their businesses with the Division of Revenue.	MIS	S-2465 (1R)
136	6/29/01	Requires certain partnerships to remit corporation business tax payments on behalf of certain corporate members or partners.	CBT	ACS for A-3045

2001 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
140	7/2/01	Permits municipalities to distribute certain municipal revenues to real property taxpayers.	LPT	A-2442 (2R)
155	7/13/01	Revises determination of "area in need of redevelopment" in "Local Redevelopment and Housing Law."	MIS	A-759 (1R)
159	7/16/01	Increases homestead rebate benefit amounts and provides a cost-of-living adjustment for the maximum amount.	LPT	SCS for S-1 and S-4
162	7/17/01	Permits a State employees' commuter transportation benefits salary reduction program and excludes certain qualified transportation fringe benefits from New Jersey gross income tax.	GIT	A-190 (1R)
193	7/31/01	Permits certain corporate mergers without shareholder approval or right of dissent.	CBT	A-1980 (1R)
217	8/24/01	Provides for voluntary contributions by taxpayers on gross income tax returns for AIDS services activities.	GIT	S-340 (1R)
221	8/24/01	Establishes the Casino Redevelopment Authority urban revitalization incentive program to facilitate development in Atlantic City and other urban areas.	MIS	S-2173 (1R)
248	10/4/01	Concerns certain public benefits available to persons affected by September 11, 2001, terrorist attacks.	MIS	A-22
251	10/30/01	Increases income eligibility limits for the property tax reimbursement program. The change affects reimbursement applications for tax year 2001 and thereafter.	LPT	ACS (1R) for A-3082 and A-1338
273	12/26/01	Provides for voluntary contributions by taxpayers on gross income tax returns for Literacy Volunteers of America - New Jersey.	GIT	A-2545
305	1/2/02	Provides for voluntary contributions by taxpayers on gross income tax returns to New Jersey Prostate Cancer Research Fund.	GIT	A-2633
310	1/3/02	Authorizes the use of revenue allocation financing by certain municipalities and the use of additional financing mechanisms by municipalities in certain areas.	LPT	S-2727
311	1/3/02	Amends the Municipal Landfill Site Closure, Remediation, and Redevelopment Act to include certain Pinelands municipal landfills.	LPT	A-659
312	1/3/02	Exempts Palisades Interstate Park Commission land dedicated to recreation and conservation purposes from "roll-back" taxes.	LPT	A-856

2001 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
321	1/4/02	Provides a corporation business tax credit for the purchase of certain equipment used in treatment of effluent for reuse in an industrial process.	CBT	A-2380 (2R)
322	1/4/02	Exempts sales of certain effluent treatment or conveyance equipment from sales and use tax.	S&U	A-2381 (2R)
323	1/4/02	Increases the amount of wine tax dedicated to promotion account.	ABT	A-2518 (1R)
347	1/6/02	Establishes extended enterprise zones and designates three additional zones.	MIS	SCS (2R) for S-322
354	1/6/02	Expands property tax exemption of firefighters' organizations which use property for income-producing activities.	LPT	S-2652
358	1/6/02	Permits inspection of certain tax records by the Attorney General to facilitate the administration of the Tobacco Master Settlement Agreement.	ALL	A-3263 (1R)
396	1/8/02	Delineates cigarette packages to which cigarette tax stamps may not be affixed.	CIG	S-2741
399	1/8/02	Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for certain electric and thermal energy production.	CBT	S-2761 (1R)
404	1/8/02	Provides for public access to government records, protects certain government records from public disclosure, and establishes Privacy Study Commission.	ALL	A-1309 (5R)
411	1/8/02	Provides a six-month extension of the recovery and refund periods for the sales and use tax refunds for flood victims of Hurricane Floyd.	S&U	A-2398
415	1/8/02	The "Neighborhood Revitalization State Tax Credit Act," grants tax credits to certain businesses that contribute to State-approved nonprofit organizations which engage in activities that promote preservation and revitalization of low and moderate income neighborhoods.	MIS	ACS for A-2592 and A-2452
424	1/8/02	Alters certain taxes and caps on tax due pursuant to the Spill Compensation and Control Act.	SCC	A-3731 (2R)
431	1/8/02	Authorizes New Jersey participation in multistate discussions of the Streamlined Sales Tax Project.	S&U	A-4024

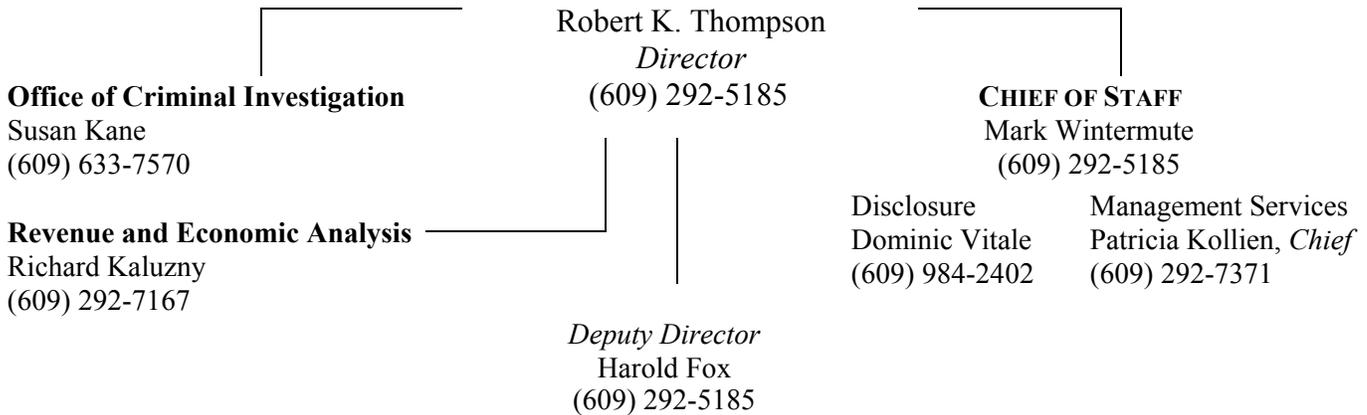
2001 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
433	1/8/02	Changes the phase-out schedule of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales.	PUT	ACS for A-4045 and S-2773
438	1/10/02	Clarifies that steel outdoor advertising signs and their steel supporting structures are not real property for local property tax purposes.	LPT	S-2506 (1R)
448	1/11/02	Adjusts the tobacco products wholesale sales and use tax rate.	TPT	A-2998 (1R)

*Legend for 2001 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PUT = Public Utility Taxes
CIG = Cigarette Tax	SCC = Spill Compensation & Control Tax
CMC = Cape May County Tourism Sales Tax	S&U = Sales and Use Tax
FBT = Financial Business Tax	TPT = Tobacco Products Tax
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	PPT = Petroleum Products Gross Receipts Tax
LIT = Litter Control Tax	

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vendor to deliver the merchandise to the purchaser's customer in New Jersey. The acceptable resale certificates for a qualified out-of-State vendor to use for a drop shipment are:

- (1) Purchaser's out-of-State resale certificate; or
- (2) Multijurisdiction Uniform Sales & Use Tax Certificate published by the Multi-State Tax Commission; or
- (3) New Jersey Form ST-3NR

Form ST-3NR is used by qualified out-of-State vendors to make tax-exempt purchases in New Jersey of goods or services purchased for resale. "Qualified out-of-State vendors" are vendors that: (1) are not registered with New Jersey, (2) are not required to be registered with New Jersey, and (3) are registered with another state.

In general, every vendor who sells taxable items or services must collect and remit New Jersey sales tax whenever such sales are completed by delivery of the item(s) to a New Jersey location or performance of the service within this State. However, certain out-of-State vendors may not be required to collect New Jersey sales tax if their only contact with New Jersey is limited to mailing catalogs, flyers or other advertisements to potential customers in this State and/or shipping merchandise to a New Jersey destination by means of commercial common carrier, parcel post, or the United States mail.

If a vendor maintains any place of business in New Jersey, has employees working in this State, or owns any business property here, such as a warehouse or showroom,

the vendor has a physical presence in New Jersey and must register and collect New Jersey sales tax on all taxable transactions. The term "employee" includes all salespersons, consultants, customer representatives, service or repair technicians, instructors, and delivery persons, as well as independent representatives or solicitors acting as agents on the vendor's behalf.

To register, a Business Registration Application (Form NJ-REG) must be filed with the State. The vendor will receive a New Jersey Certificate of Authority, Form CA-1, which authorizes it to collect sales tax and issue or accept exemption certificates. Information on registering your business is available both in the New Jersey Complete Business Registration Package and on the Division of Revenue's New Jersey Business Gateway Services Web site at: www.state.nj.us/njbgs/

Spill Tax

Substances on the List of Hazardous Substances with Asterisks — The Division recently responded to a question regarding the New Jersey spill compensation and control tax. The taxpayer asked whether flammable and inert gases marked with an asterisk, such as propane, on the List of Hazardous Substances, promulgated by the New Jersey Department of Environmental Protection (DEP) at N.J.A.C. 7:1E Appendix A, are exempt from the spill compensation and control tax.

The Division replied that Department of Environmental Protection regulations at N.J.A.C. 7:1E-1.7(b)2 indicate that any flammable or inert gases listed in Appendix A and which are designated by an asterisk "shall not be considered

hazardous substances."

Since tax is levied on the transfer of "hazardous substances," as defined in the Act and further interpreted by DEP regulations, the Division of Taxation will not impose the tax on any substances not considered hazardous substances in Department of Environmental Protection regulations. This would include propane, which is listed with an asterisk.

The taxpayer further inquired whether the exemption from tax applies when the propane is transported and stored under pressure in liquid form. Department of Environmental Protection regulations are currently addressing this problem. The Department of Environmental Protection proposed readoption of N.J.A.C. 7:1E at 33 N.J.R. 1262 changes the language of N.J.A.C. 7:1E-1.7(b)2 from "any flammable or inert gas listed in Appendix A and which is designated by an asterisk" to "any flammable *substance* or inert gas listed in Appendix A and which is designated by an asterisk." *Emphasis added.* This change clarifies that flammable substances, such as propane, are not hazardous substances regardless of their form — solid, liquid, or gaseous — and were not intended to be included as covered substances under the Spill Act (see Department of Environmental Protection explanation in its summary to the above rule at 33 N.J.R. 1256). Due to the above the Division of Taxation will not impose the spill tax on such substances, which would include transported propane under pressure in liquid form. □

In Our Courts

Administration

Timeliness of the Complaint and Summary Judgment – *Harry and Susan Dashoff v. Director, Division of Taxation*, decided November 26, 2001; Appellate Division No. A-3966-99T3.

The Appellate Division reversed the Tax Court's summary judgment dismissal of taxpayer's complaint due to taxpayer's failure to timely protest the notice of assessment, which notice was returned to the Division as unclaimed. The Appellate Division ruled that the Division of Taxation's mailing of the notice is presumptive evidence of receipt that may be rebutted. Taxpayer alleges that he never received any notice of certified mail. Accordingly, the Appellate Division remanded the case to the Tax Court for an evidentiary hearing regarding a full factual picture of service of the notice.

Gross Income Tax

Employee or Independent Contractor – *Ersel G. Seiler v. Director, Division of Taxation*, decided January 16, 2002; Tax Court No. 004237-2000.

The Tax Court granted the Division's motion for Summary Judgment ruling that plaintiff was an employee of Allstate Insurance Company and not an independent contractor. The Division relied on information contained in plaintiff's divorce proceedings in the New Jersey Superior and Appellate Courts where plaintiff successfully argued that he was an employee of Allstate.

In his divorce proceedings, plaintiff asserted the following: (1) Compensation was governed by an

agent compensation agreement with Allstate. (2) All premiums collected were treated in trust for Allstate. (3) Premiums were remitted to Allstate without any deduction for commission or expenses. (4) Plaintiff did not have a "book of business" that could be sold. (5) Another company, with Allstate's approval, hires and fires plaintiff's employees. (6) Plaintiff may hire employees with approval and Allstate may direct plaintiff to terminate employees. (7) Plaintiff establishes the compensation of some employees. (8) Plaintiff is paid by Allstate and receives a W-2 from Allstate. (9) Plaintiff's agency is part of Allstate's Neighborhood Office Program. (10) Plaintiff receives an expense allowance from Allstate that is tied to sales and can be used in any way but plaintiff is responsible for any expenses over the allowance. (11) Allstate owns most of the computers and all of the other office equipment. (12) Allstate assigns the phone number and pays for and maintains the sign for plaintiff's agency. (13) Allstate designs and pays for all advertisements.

Interest Deduction: Acquisition Indebtedness to Purchase S Corporation Stock – *Sidman v. Director, Division of Taxation*, decided November 14, 2001; New Jersey Supreme Court No. C-354 Spring Term 2001 51,806.

The New Jersey Supreme Court denied plaintiff's petition for certification. In upholding the Tax Court, the Appellate Division previously held that a shareholder's interest payments to other shareholders for their S corporation stock were not deductible from the purchaser's pro rata share.

Untimely Filing of Petition – *Joyce H. Eiszner v. Director, Division of Taxation*, decided October 16, 2001; New Jersey Supreme Court No. M-314 September Term 2001 51,892.

The New Jersey Supreme Court dismissed plaintiff's petition for certification due to lack of prosecution.

Keogh Plan Contributions – *John and Barbara Reck v. Director, Division of Taxation*, decided December 7, 2001; Appellate Division No. A-5379-99T3.

Plaintiff husband is a partner in an accounting firm. The firm established a qualified Internal Revenue Code (IRC) section 401(a) Keogh Plan. Contributions on each partner's behalf were made by the partnership to the Keogh Plan. In calculating his distributive share of partnership income for the 1992 and 1993 tax years, plaintiff deducted these contributions. The Division denied the deductions on the basis that only 401(k) plan contributions were deductible.

The Tax Court held that the accounting firm's contributions on behalf of partners to the Keogh Plan were deductible in calculating the partner's distributive share of partnership income. In its determination, the Court ruled that the firm's Keogh Plan contributions for partners were ordinary and necessary deductible business expenses pursuant to N.J.S.A. 54A:5-1b, which defines net profits from business.

The Appellate Division reversed finding that the controlling statute was N.J.S.A. 54A:6-21 which stated that gross income does not include employer contributions on

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behalf of its employees to a 401(k) plan. Hence, the Court ruled that other contributions are not deductible even though not expressly prohibited. The Court relied on the legislative history of N.J.S.A. 54A:6-21, the regulations, and case law including *Dantzler*, *Mutch*, and *Sidman*. The Court also noted that *Koch v. Director* did not apply as it dealt with accounting principles and does not apply to cases involving the deductibility of retirement and pension plan contributions.

The New Jersey Supreme Court has granted the taxpayers' petition for certification.

Partnership's Discharge of Indebtedness Income – *Michael and Patricia Scully and James Scully v. Director, Division of Taxation*, decided September 21, 2001; Tax Court No. 004076-1997.

Plaintiffs Michael Scully and James Scully each own a 48.5% limited partnership interest and a 1% general partnership interest in Port-O-Call Associates, a New Jersey limited partnership (the "Partnership"). Additionally, each owns 50% of the corporate stock of a Pennsylvania corporation that owns a 1% general partnership interest in the Partnership.

The Partnership purchased a hotel with a \$7 million mortgage. Subsequently, the mortgagee became insolvent and the mortgage was assigned to a corporation that acted as the receiver. Thereafter, the receiver sold the mortgage loan to Optimum Mortgage Investment Company for approximately \$2 million less than the note's principal balance. Optimum's mortgage purchase was financed by the

plaintiffs pursuant to an agreement that paid Optimum a fee and obligated Optimum to assign the mortgage to plaintiffs. Thereafter, plaintiffs assigned the mortgage to the Partnership.

The Partnership's Federal income tax return reported the current principal balance of the note as a capital contribution and the \$2 million difference between the previous and current principal balance of the mortgage as debt-forgiveness income. The Partnership's Pennsylvania information return reported the same capital contribution but reported the \$2 million difference as "Net profits from business...apportioned to Pennsylvania."

The Director determined that the Partnership realized discharge of indebtedness income in the amount of approximately \$2 million, the difference between the prior mortgage principal balance and the amount of the mortgage principal when the plaintiffs contributed the loan to the Partnership which thereby discharged the mortgage debt. The Director contended that this amount is attributable to plaintiffs as discharge of indebtedness income that occurred "within a business entity" under N.J.S.A. 54A:5-1(k) and (b).

The issue before the Court was whether partners are subject to gross income tax on discharge of indebtedness income realized by the Partnership. Relying on *Smith v. Director* the Court determined that a partnership's discharge of indebtedness income must arise in the ordinary course of partnership business operations to be includable in the partner's gross income. Otherwise the discharge of indebtedness income would retain its character, and as such,

discharge of indebtedness, is not a category of income subject to gross income tax.

The Director, Division of Taxation, has filed an appeal with the Superior Court, Appellate Division.

Partnership's Discharge of Indebtedness Income – *Richard and Sharon Miller v. Director, Division of Taxation*, decided November 27, 2001; Tax Court No. 000054-2001.

Plaintiff Richard Miller is a partner of a New Jersey general partnership (the "Partnership"). The Partnership's only asset is one piece of real estate encumbered by a mortgage that is owned as real estate investment. This real estate is leased to a law firm some of whose partners are partners in the Partnership. When the real estate's value dropped significantly below the principal balance of the mortgage loan, the mortgagee reduced the principal balance upon the Partnership's request for a reduction.

The Partnership reported the reduction in the principal balance as other income on its Federal income tax return but did not report it on the Partnership's New Jersey tax return. Plaintiff's Federal Schedule K-1 reported his proportionate share of the mortgage reduction as other income but did not report it on either plaintiff's Schedule NJK-1 or New Jersey gross income tax return. The Director determined that the mortgage reduction resulted in forgiveness of indebtedness income to the Partnership and thereby was includable in the partner's distributive share of partnership income.

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The Court applied its legal analysis in *Scully*, above, to the facts of this case. The Court noted that there were three differences between the cases most notably that in the instant case there was no question that the Partnership received discharge of indebtedness income and that here the real estate is owned as an investment as opposed to as a hotel and restaurant. As in *Scully*, the Court stated that discharge of indebtedness income "is taxable to a partner only if attributable to a partnership's ordinary business operations."

The Court ruled that the plaintiff was not subject to the gross income tax on the Partnership's discharge of indebtedness income because the income relating to the mortgage loan is not includable in the Partnership's net profits from business. The transaction involving the mortgage loan is in the nature of a capital transaction, not

an ordinary business operation. Moreover, the Court added that even if the loan transaction constituted part of the partnership's ordinary business operations, the income-generating event is the reduction in principal balance, which is not part of the partnership's ordinary business operations.

The Director, Division of Taxation, has filed an appeal with the Superior Court, Appellate Division. □

In Our Legislature **Cigarette Tax**

Application of Cigarette Tax Stamp — P.L. 2001, c.396 (signed into law on January 8, 2002) amends the Cigarette Tax Act to revise the prohibition against affixing tax stamps to packages that do not comply with the law.

Under the legislation, distributors cannot stamp packages that:

- Do not comply with Federal cigarette labeling law, including warning label requirements and Federal trademark and copyright laws.
- Have been altered by placement of a sticker over certain required Federal labels.
- Contain cigarettes not in compliance with the cigarette ingredients disclosure requirement of the Federal Cigarette Labeling and Advertising Act.
- Were imported into the United States in violation of the Federal Imported Cigarette Compliance Act of 2000.

The law also eliminates the discretion of the Director of the Division of Taxation to resell, rather than destroy, any cigarettes confiscated as a result of having been stamped in violation of the statutory prohibition. This act took effect immediately.

Corporation Business Tax

Tax Credit for Wastewater Treatment Equipment — P.L. 2001, c.321 (signed into law on January 4, 2002) provides a corporation business tax credit for taxpayers purchasing certain wastewater treatment and conveyance equipment, within a privilege period, used in the treatment and transport of effluent for reuse in an industrial process exclusively within New Jersey.

The amount of the credit is equal to 50% of the cost of the treatment or conveyance equipment less any loan amount received under N.J.S.A.13:1E-96 (State Recycling Fund) and excluding any sales and use tax. The amount of credit claimed for the privilege period in

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which the purchase is made and in each period thereafter may not exceed 20% of the total allowable credit. Additionally, the credit, when combined with other allowable credits, may not exceed 50% of the tax liability that would otherwise be due; nor may it reduce the tax liability to less than the statutory minimum. The credit can be passed through a partnership to the partners and an unused credit can be carried forward.

To qualify for the credit the taxpayer must submit a copy of a determination from the Department of Environmental Protection that the operation of the equipment and reuse of wastewater effluent will be beneficial to the environment, and an affidavit affirming that the equipment will be used only in New Jersey when filing the tax return.

This act took effect immediately and applies to purchases made in privilege periods beginning on or after July 1, 2002.

Manufacturing Equipment and Employment Investment Tax Credit — P.L. 2001, c.399 (signed into law on January 8, 2002) provides this tax credit under the corporation business tax for certain electric and thermal energy production. The act is retroactive to January 1, 2002, and applies to tax years beginning on and after that date.

Gross Income Tax

Checkoff for Literacy Volunteers of America – New Jersey — P.L. 2001, c.273 (signed into law on December 26, 2001) allows taxpayers to make voluntary contributions on their gross income tax returns for literacy training, technical assistance, and program development. This act took effect immediately and applies to taxable years beginning on or after January 1, 2002.

Checkoff for New Jersey Prostate Cancer Research Fund — P.L. 2001, c.305 (signed into law on January 2, 2002) allows taxpayers to make voluntary contributions on their gross income tax returns to the New Jersey Prostate Cancer Research Fund for prostate cancer research. This act took effect immediately and applies to taxable years beginning on or after January 1, 2003.

Local Property Tax

Financing for Local Development Projects

— P.L. 2001, c.310 (signed into law on January 3, 2002) broadens the mechanisms available to municipalities to finance local development projects. Certain provisions of the bill are designated as the “Redevelopment Area Bond Financing Law.” These provisions allow a municipality that has designated a redevelopment area pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) to issue bonds that would be secured by payments in lieu of taxes under a tax abatement agreement and/or special assessments on property benefiting from the improvements provided.

Other provisions of the bill are designated as the “Revenue Allocation District Financing Act.” These provisions authorize a municipality to establish one or more areas as a revenue allocation district and to designate a district agent to implement a development plan for the district. The ordinance creating the district would be submitted to the Local Finance Board, and must be approved by the board. After the creation of the district, the district agent could issue bonds or notes to finance the development of specific projects or to finance the infrastructure necessary to facilitate development within the district. This law took effect on March 4, 2002.

Palisades Interstate Park Commission Land Exempt From Roll-back Taxes — P.L. 2001, c.312 (signed into law on January 3, 2002) exempts land acquired by the Palisades Interstate Park Commission for conservation and

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recreation purposes from the imposition of roll-back taxes pursuant to the Farmland Assessment Act of 1964. When land receiving farmland assessment is converted to a use other than agricultural or horticultural, the land is subject to additional taxes, known as "roll-back taxes," equal to the benefit for the current year and the two preceding years. This act took effect immediately.

Exemption for Property of Firefighters' Organizations — P.L. 2001, c.354 (signed into law on January 6, 2002) provides that when the property of an exempt New Jersey firefighter's association, firefighter's relief association, or volunteer fire company is used for an income-producing activity

unrelated to the organization's primary purpose, the property remains exempt from property tax even if this activity exceeds 120 days annually provided the net proceeds are used in furtherance of the organization's primary purpose or for other charitable purposes. This change is effective retroactively to January 1, 1998.

Steel Outdoor Advertising Signs — P.L. 2001, c.438 (signed into law on January 10, 2002) clarifies that steel outdoor advertising signs and their steel supporting structures are not considered real property. However, the cement foundation, all underground piping, and electrical wiring up to the point of connection with the supporting structure is considered real property. This act took effect immediately and applies to assessments made after enactment.

Miscellaneous

Municipal Landfill Site Closure, Remediation, and Redevelopment Act Amended — P.L. 2001, c.311 (signed into law on January 3, 2002) amends P.L. 1996, c.124, to allow Pinelands municipalities to be eligible for redevelopment projects, and special tax benefits provided therein, on land where a municipal landfill is or has been located. Under the bill, a redevelopment project of this nature must be consistent with the recommendations of the pilot program for rural economic development developed by the Pinelands Commission pursuant to section 2 of P.L. 1997, c.233. This law took effect immediately.

New Jersey Wine Promotion Account — P.L. 2001, c.323 (signed into law on January 4, 2002) increases the amount dedicated to the New Jersey Wine Promotion Account in the Department of Agriculture from \$0.20 to \$0.47 per gallon on the sale of wines, vermouth, and sparkling wines produced by New Jersey wineries. This law took effect immediately.

Open Public Records Act — P.L. 2001, c.404 (signed into law on January 8, 2002) expands access to public records to include all government records and protects certain government records from public disclosure.

The bill also establishes a Government Records Council to facilitate the resolution of disputes regarding access to government records and a temporary Privacy Study Commission to study privacy issues raised by the collection, processing, use, and dis-

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semination of information by public agencies.

The provisions establishing the Privacy Study Commission took effect immediately, and expire on the date the Commission submits its report to the Governor and the legislature. The remainder of the act takes effect on July 7, 2002.

Neighborhood Revitalization State Tax Credit Act — P.L. 2001, c.415 (signed into law on January 8, 2002) establishes a tax credit as an incentive to businesses to invest in neighborhood revitalization and preservation projects sponsored by nonprofit corporations. Business entities which contribute financial assistance to a nonprofit sponsor may be granted a certificate authorizing a credit to be applied against taxes on certain business income.

The tax credit may be granted in an amount up to 50% of the approved assistance provided to a nonprofit organization to implement a qualified project. The credit allowed may not exceed \$500,000 or the total amount of tax otherwise payable by the business for any taxable year, whichever is less, and may not exceed statutory limits on the tax for which a credit is claimed. The bill authorizes no more than \$10 million in tax credits in any one year. Chapter 415 takes effect on July 1, 2002.

Tax Amnesty — P.L. 2002, c.6 (signed into law on March 18, 2002) establishes a 60-day amnesty period to end no later than June 10, 2002, for the payment of any outstanding State tax liabilities due on or after January 1, 1996, and prior to January 1, 2002. During the amnesty period, a tax-

payer who has failed to pay any State tax can pay the tax without being liable for interest, cost of collection, or civil or criminal penalties normally imposed under State law.

Amnesty will not be available to any taxpayers under criminal investigation or charge for any State tax matter. Eligible taxpayers who fail to pay the tax owed during the established amnesty period will be subject to a 5% penalty which cannot be waived or abated, in addition to all other penalties, interest, or costs of collection.

This act took effect immediately.

Public Utility Taxes Transitional Energy Facility Assessment Phase-out Changed — P.L. 2001, c.433 (signed into law on January 8, 2002) freezes transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2001 rates for 2002 through 2004 and reduces that surcharge ratably for 2005 through 2006. The act took effect immediately and is retroactive to January 1, 2002.

Sales and Use Tax Exemption for Wastewater Treatment Equipment — P.L. 2001, c.322 (signed into law on January 4, 2002) exempts from sales and use tax sales of wastewater treatment and conveyance equipment provided the Department of Environmental Protection determines that the operation of the equipment and the reuse of wastewater effluent that results will be beneficial to the environment.

The bill requires the equipment purchaser to pay any applicable tax and apply for a refund after

showing the equipment has been put to an exempt use. The law took effect immediately and applies to sales made after enactment.

Urban Enterprise Zone Benefits Extended — P.L. 2001, c.347 (signed into law on January 6, 2002) amends P.L. 1983, c.303 (C.52:27H-61 et seq.) and extends the life of an urban enterprise zone after the expiration of its third five-year period of designation if the municipality has an annual average of 2,000 or more unemployed persons or an average annual unemployment rate higher than the State average annual unemployment rate. This extension allows for the replacement of the final five-year period with a sixteen-year period during which the municipality receives a percentage of the sales tax revenues, according to a formula provided in the law, until the final year.

In addition, the law allows for the designation of an urban enterprise zone-impacted business district in an economically distressed business district adjacent to two or more urban enterprise zones. Certain businesses in these qualified districts are permitted to collect sales tax at the same reduced rate as qualified businesses in the adjacent urban enterprise zone.

Finally, the law provides for the designation of three additional urban enterprise zones, including a joint municipal zone. This law took effect immediately, with the exception of certain sections which took effect on April 1, 2002.

Refund Program for Hurricane Floyd Victims Extended — P.L. 2001, c.411 (signed into law on January 8, 2002) provides a six-

in our legislature - from page 19

month extension of the sales and use tax refund program for flood victims of Hurricane Floyd.

The law extends the period in which purchases of household goods, home repair materials, and replacement motor vehicles must have been made to March 31, 2001, and extends the period for claiming the sales and use tax refunds on those purchases to September 30, 2001. This act took effect immediately.

Streamlined Sales Tax Project — P.L. 2001, c.431 (signed into law on January 8, 2002) authorizes New Jersey participation in discussions of the Streamlined Sales Tax Project in an effort to simplify and modernize sales and use tax collection and administration. The project's proposals will incorporate uniform definitions within tax bases, simplified audit and administrative procedures, and emerging technologies to reduce the burden of tax collection. Chapter 431 took effect immediately.

Spill Compensation Tax

Cap Limitations Altered — P.L. 2001, c.424 (signed into law on January 8, 2002) alters certain taxes and caps on tax due pursuant to the Spill Compensation and Control Act.

This law provides that for major facilities established by the subdi-

vision of a major facility which existed in 1986, including subsequent owners and operators, the total aggregated tax due shall not exceed 100% of the tax paid in 1999. It also allows a successor in certain corporate sales to be eligible for the same capped liability as the predecessor corporation.

The law sets the tax for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant at \$0.015 per barrel and changes the cap on tax due for such transfers. The law also provides that hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to taxation under the Spill Compensation and Control Act. Chapter 424 took effect on April 1, 2002.

Tobacco Products Tax

Tax Computation — P.L. 2001, c.448 (signed into law on January 11, 2002) lowers the tax rate from 48% to 30% and changes the basis for the calculation of the tax. The tax will be imposed on the amount paid by the distributor to buy the products from the manufacturer rather than the amount received on sales from the distributor to vendors or consumers.

The law also provides that liability for the tax accrues when the distributor resells the tobacco products. In addition, the liability for

installments of tax and the reporting and record keeping responsibilities of taxpayers is clarified.

This act took effect on March 1, 2002 and applies to tobacco products sold or disposed of on and after that date, except for those tobacco products for which the tax was paid prior to the effective date.

Uniform Procedure Law

Inspection of Certain Tax Records

— P.L. 2001, c.358 (signed into law on January 6, 2002) adds an exemption to the taxpayer information confidentiality provisions of the State Tax Uniform Procedure law. The exemption allows the Attorney General or other legal representative of this State to inspect the reports or files of any tobacco product manufacturer for any period in which the manufacturer was not or is not in compliance with the law governing the administration of the Tobacco Master Settlement Agreement. This law took effect immediately.

□

tax calendar

April

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2		1 	2	3	4	5	6
0	7	8	9	10 	11	12	13
0	14	15 	16	17	18	19	20
2	21	22 	23	24	25 	26	27
	28	29	30 				

April 1

GCC-1 Motor Fuels Tax—
Carrier's monthly report

April 10

- CWIP-1,2 Cigarette Tax—**
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**
Wholesaler's monthly report of non-New Jersey stamped cigarettes

April 15

- CBT-100/ CBT-100S Corporation Business Tax—**Annual return for accounting period ending December 31
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- HR-1040 Homestead Rebate—**
Application

April 15 - continued

- NJ-1040/ NJ-1040EZ Gross Income Tax—**
Resident return for calendar year filers
- NJ-1040NR Gross Income Tax—**
Nonresident return for calendar year filers
- NJ-1041 Gross Income Tax—**
Fiduciary return for calendar year filers
- NJ-1065 Gross Income Tax—**
Partnership return for calendar year filers
- NJ-1040ES Gross Income Tax—**
Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 22

- CR-1 & CNR-1 Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

continued

April 22 - continued

- GA-1D Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—**Monthly export report
- MFT-60 Motor Fuels Tax—**Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—**Monthly return
- SCC-6 Spill Compensation and Control Tax—**Public storage facility operator return
- ST-20 New Jersey/New York Combined State Sales and Use Tax—**Quarterly return
- ST-50 Sales and Use Tax—**Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
- ST-350 Cape May County Tourism Sales Tax—**Monthly return
- ST-450 Sales and Use Tax—Salem County—**Quarterly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—**Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return
- April 25 PPT-40 Petroleum Products Gross Receipts Tax—**Quarterly return
- April 30 NJ-927 & NJ-927-W Gross Income Tax—**
Employer's quarterly report
- GCC-1 Motor Fuels Tax—**
Carrier's monthly report

continued

May

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2 0 0 2				1 ☐	2	3	4
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	12	13	14	15 ☐	16	17	18
	19	20 ☐	21	22	23	24	25
	26	27	28 ☐	29	30 ☐	31	

May 1

ST-18B Sales and Use Tax—
Annual use tax return for qualified businesses

May 10

CWIP-1,2 Cigarette Tax—
Wholesaler's informational report

CDIS-1,2 Cigarette Tax—
Distributor's informational and sales report

CR-1 & CNR-1 Cigarette Tax—
Wholesaler's monthly report of non-New Jersey stamped cigarettes

May 15

CBT-100 Corporation Business Tax—
Annual return for accounting period ending January 31

CBT-150 Corporation Business Tax—
Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

NJ-500 Gross Income Tax—
Employer's monthly remittance

May 20

CR-1 & CNR-1 Cigarette Tax—
Monthly report of cigarettes sold or used by distributors and manufacturers

MSS-1 Cigarette Tax—
Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D Motor Fuels Tax—
Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—
Jobber's monthly report of gallons of fuel sold or used

GA-1X Motor Fuels Tax—
Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—
Monthly report by seller-user of special fuels for sales and/or use

MFT-14 Motor Fuels Tax—
Monthly export report

continued

May 20 - continued

MFT-60 Motor Fuels Tax—
Monthly storage facility operator report

SCC-5 Spill Compensation and Control Tax—
Monthly return

SCC-6 Spill Compensation and Control Tax—
Public storage facility operator return

ST-21 New Jersey/New York Combined State Sales and Use Tax—
Monthly return

ST-51 Sales and Use Tax—
Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—
Monthly return

ST-350 Cape May County Tourism Sales Tax—
Monthly return

ST-451 Sales and Use Tax—Salem County—
Monthly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—
Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—
Monthly return

May 28

PPT-41 Petroleum Products Gross Receipts Tax—
Monthly return

May 30

GCC-1 Motor Fuels Tax—
Carrier's monthly report

June

2
0
0
2

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
						1
2	3	4	5	6	7	8
9	10 ☐	11	12	13	14	15
16	17 ☐	18	19	20 ☐	21	22
23 30	24	25 ☐	26	27	28	29

June 10

- CWIP-1,2 Cigarette Tax—** Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—** Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—** Wholesaler's monthly report of non-New Jersey stamped cigarettes

June 17

- CBT-100 Corporation Business Tax—** Annual return for accounting period ending February 28
- CBT-150 Corporation Business Tax—** Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—** Employer's monthly remittance

June 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—** Monthly export report

June 20 - continued

- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—** Monthly return
- ST-51 Sales and Use Tax—** Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
- ST-350 Cape May County Tourism Sales Tax—** Monthly return
- ST-451 Sales and Use Tax—Salem County—** Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

June 25

- PPT-41 Petroleum Products Gross Receipts Tax—** Monthly return

continued

from the director's desk

New Jersey's 2002 Tax Amnesty Program offers taxpayers a chance to clear their consciences and clear their names. It's a way for individuals and businesses that have made an honest mistake to start fresh without fear of penalties or interest. Just pay the taxes you owe before the deadline, and you're free and clear.

And if you decide to ignore Amnesty? Well, this is amnesty, not charity. If you don't take advantage of this great opportunity you'll be charged an additional, unabatable 5% penalty. And, an additional collection service fee may also be imposed.

Amnesty is available for tax liabilities resulting from tax returns due on or after January 1, 1996, and on or before December 31, 2001. Amnesty covers all taxes administered by the Division, including corporation business tax, sales and use tax, and gross income tax. A complete list can be found on page 3. Most taxpayers will be eligible for Amnesty, except for those currently under criminal investigation or charge for any State tax matter.

Remember, this is a limited-time opportunity. Tax Amnesty is only available until midnight on June 10, 2002. So, if there's a State tax return you haven't filed, a tax bill you haven't paid, or maybe you forgot to pay use tax on that computer you bought from a catalog back in 2000, here's your chance to wipe the slate clean.

For more information, call our toll-free Tax Amnesty Hotline at 1-800-781-8407, or visit our Web site at: www.njtaxamnesty.com

A handwritten signature in black ink that reads "Robert F. Thompson". The signature is written in a cursive, flowing style.

New Jersey State Tax News

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What's New for Tax Year 2001

The Division of Taxation has added another member to the NJ FastFile family of paperless filing options with the introduction of NJ WebFile, and there have been a number of other legislative and administrative changes affecting the preparation of returns for the 2001 tax year.

- **NJ WebFile** — This new, paperless filing option allows qualified, full-year residents to file their gross income tax returns free of charge directly from the Division's secure Internet site. See page 24 for more on NJ WebFile.
- **Filing Thresholds** — For tax years 2001 and thereafter, taxpayers whose filing status is married, filing joint return, head of household or qualifying widow(er) and have New Jersey gross income of \$20,000 or less (\$10,000 or less for those whose filing status is single or married, filing separately and for estates and trusts) are not subject to New Jersey gross income tax and are not required to file a New Jersey income tax return.
- **New Jersey Earned Income Tax Credit** — For tax year 2001, the New Jersey Earned Income Tax Credit (NJEITC) has increased to 15% of the applicant's Federal earned income credit, up from 10% of the Federal credit in tax year 2000.

The New Jersey credit will increase to 17.5% of the Federal credit amount for 2002 and to 20% of the Federal amount for tax year 2003 and thereafter.

- **Retirement Income Exclusions Increased** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased. The new exclusion amounts are being phased in over a four-year period that began in 2000. For tax year 2001, the maximum exclusion is \$15,000 (filing status married, filing joint return), \$7,500 (filing status married, filing separate return) and \$11,250 (filing status single,

continued on page 2

Important Phone Numbers

Customer Service Ctr	....609-292-6400
Automated Tax Info	.. 1-800-323-4400
	.....609-826-4400
NJ SAVER Hotline	.....609-826-4282
Property Tax Reimbursement Hotline	..... 1-800-882-6597
Speaker Programs	.....609-984-4101
NJ TaxFax	.....609-826-4500
Alcoholic Bev. Tax	.....609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	.....609-292-5323
Director's Office	.....609-292-5185
Inheritance Tax	.....609-292-5033
Local Property Tax	.....609-292-7221
Motor Fuels Tax Refunds	.....609-292-7018
Public Utility Tax	.....609-633-2576

what's new for 2001 - from pg. 1

head of household, or qualifying widow(er)).

- **Credit for Taxes Paid to Other Jurisdictions** — Effective for tax year 2001, the amount of income subject to tax by New Jersey to be used as the denominator of the credit calculation (Line 2, Schedule A) is the total of all taxable income reported on the return before personal exemptions and other deductions have been subtracted but *after* any pension exclusion and/or other retirement income exclusion has been deducted. This is the amount reported on the New Jersey gross income tax resident return (Form NJ-1040) at Line 29, "New Jersey Gross Income."
- **Military Pensions** — For tax years beginning on or after January 1, 2001, all U.S. military pensions and military survivor's benefits are exempt from New Jersey gross income tax. For tax years 1998 – 2000, only persons 62 years of age or older or disabled were eligible to exclude such payments from reportable income.
- **Social Security Number(s) Must Now be Entered** — Social security number(s) will no longer be printed on any peel-off label provided with a tax return instruction booklet or preprinted postcard. The social security number(s) must be entered in the spaces provided at the top of the return. If the taxpayers' filing status is married, filing joint return, the social security numbers of the spouses should be entered in the same order as the names.

Social security number(s) must be entered on all forms submitted to the Division of Taxation, including those with a pre-printed name and address (e.g., income tax payment voucher, extension application, or declaration of estimated tax voucher).

- **Incorrect Name and Address Labels** — Do not use a mailing label if any of the preprinted information is incorrect. Instead, print or type all the information in the spaces provided at the top of the return.
- **Designated Contribution** — The Organ and Tissue Donor Awareness Education Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new fund, taxpayers must specify the donation amount and enter code 03 on the line entitled "Other Designated Contribution."
- **Direct Deposit for 2D Bar Code Returns** — Individual taxpayers who prepare their returns with Division approved software that uses 2D Bar Coding will be given the option of having their refunds and/or homestead rebates deposited directly into a specified bank account. Previously, only returns filed with one of the NJ FastFile options were eligible to use direct deposit.
- **Property Tax Relief Programs**
Homestead Rebate: The *maximum* homestead rebate for tax year 2001 for qualified homeowners and tenants aged 65 and over or disabled is \$775. The maximum rebate amount was increased from \$500 to \$750 for tax year 2000 (paid in July 2001). The maximum rebate is

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taxation@tax.state.nj.us

The *State Tax News* is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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continued on page 3

what's new for 2001 - from page 2

adjusted annually to reflect changes in the cost of living.

NJ SAVER Rebate: Accelerated phase-in of this program from five years to four will result in payment of the full benefit for tax year 2001, one year sooner than scheduled. The 2001 NJ SAVER Rebate will be paid in September 2002 and will average \$600.

Property Tax Reimbursement (PTR): Income limits for the PTR program have increased beginning with applications filed for tax year 2001. The new limits apply to income received for tax years 2000, 2001, and thereafter. Residents applying for a reimbursement for tax year 2001 must have total income *less than:*

- 2000: \$37,174 if single, or \$45,582 (combined income) if married, and
- 2001: \$38,475 if single, or \$47,177 (combined income) if married

The new income limits do not apply to reimbursement applications filed for tax year 2000. That year, single applicants had to have income of less than \$18,151 in 1999 and less than \$18,587 in 2000 to qualify for a reimbursement. Married applicants that year had to have combined income of less than \$22,256 in 1999 and less than \$22,791 in 2000 to qualify. Applicants whose income was above the limits in effect for 2000 cannot amend their applications for that year.

- **Payment by Electronic Check (E-Check)** — Payments of New

Jersey gross income tax (including estimated tax payments) and sales and use tax can be made by e-check from the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/

Taxpayers who do not have access to the Internet can make e-check payments by calling the Division's Customer Service Center at 609-292-6400.

Employers can pay their withholding liabilities by e-check from the Division of Revenue's Business Gateway Services Web site at: www.state.nj.us/njbgs/

- **Partnership Returns** — Beginning with tax year 2001, all business entities required to file a New Jersey partnership return (Form NJ-1065) and which consist of ten or more partners or members must file the return electronically. For more information on electronic filing or to obtain electronic payment and filing formats, visit the Division of Revenue's Web site at:

www.state.nj.us/treasury/revenue/ or call the Alternate Filing Branch at: 609-984-7989.

- **CBT Payments Required by Certain Partnerships** — For tax years beginning on or after January 1, 2001, limited liability companies (LLCs) and limited partnerships (LPs) that are classified as partnerships for Federal income tax purposes are obligated to remit New Jersey corporation business tax payments on behalf of any member or partner that is a nonconsenting corporation not exempt from the tax.

A nonconsenting corporation is one that has not provided the

LLC or LP of which it is a member with a statement of consent acknowledging this State's right and jurisdiction to tax and collect the tax on the corporate partner's income allocated to New Jersey. Form NJ-1065 has been updated to accommodate the new requirements.

- **Phase-out of CBT on S corporation income** — The tax on the "regular" income of New Jersey S corporations will be gradually eliminated as follows:

1. For S corporations with annual income in excess of \$100,000 the tax rate is reduced to 1.33% for privilege periods ending on or after July 1, 2001, but on or before June 30, 2002, and to 0.67% for privilege periods ending on or after July 1, 2002, but on or before June 30, 2003. For privilege periods ending on or after July 1, 2003, no tax is imposed.
2. For S corporations with annual income of \$100,000 or less, no tax is imposed for privilege periods ending on or after July 1, 2001.

"Regular" income means entire net income allocable to New Jersey that is not subject to Federal income taxation.

- **Minimum Corporation Tax** — For tax periods beginning on and after January 1, 2002, the minimum tax for both domestic and foreign corporations is \$210. For tax periods that begin before January 1, 2002, the minimum tax remains \$200. □

GROSS INCOME TAX **Claim of Right Refunds**

For Federal purposes, if any taxpayer must return income paid and already included in income, a deduction for this amount in the year of repayment is allowed under the "claim of right doctrine." This doctrine states that if a taxpayer is required to restore amounts which previously have been included in income, the taxpayer is permitted a deduction in the year of repayment. The administration of this deduction in the year of repayment is governed by section 1341 of the Internal Revenue Code. This section provides a taxpayer with two alternate methods of calculating a claim of right adjustment. Under section 1341, the taxpayer may either take the deduction in the year of repayment or treat the amount as if the repayment had been excluded in the year the claim of right income was first reported.

The New Jersey Gross Income Tax Act, however, does not contain provisions similar to IRC section

1341. *Wigton v. Director*, 12 NJ Tax 373 (1992). In *Wigton*, the Tax Court stated, "Federal and state case law interpreting §1341 holds that this section does not result in a reopening of the earlier taxable year. See, e.g., *Skelly Oil, supra*; *North American Oil, supra*; *Kreiss v. New York State Tax Comm'n*, 463 N.E.2d 33 (N.Y. 1984). The prior year is simply used as a means of determining the least amount of tax due under the §1341 recalculation." As such, New Jersey does not permit taxpayers to file an amended return to recover repaid amounts taxed in prior years since the income was received and used under the "claim of right" doctrine. Also, the New Jersey Legislature did not adopt the IRC section 1341 alternative calculation method allowing a taxpayer to compute tax due in the year of repayment using the original payment year as the basis for calculation instead of the repayment year.

For New Jersey purposes, any repayment or deduction may be applied against other income earned in the same category and in the same tax year as the repayment. N.J.S.A. 54A:5-2. If the offset results in a net loss, the taxpayer must report zero income in that category since the New Jersey income tax law in accordance with N.J.S.A. 54A:5-2 provides that taxpayers may offset their losses only against other income earned in the same category and in the same year. In other words, the taxpayer may use the amount of losses incurred during the year to offset other income in the same category on the New Jersey resident income tax return to the extent it gives no taxable income to report to New Jersey. □

GROSS INCOME TAX **Qualified Conservation Contribution**

The Division recently received inquiries as to the implementation and limits of the *Deduction for qualified conservation contribution*, under new section 54A:3-6 of the Gross Income Tax Act, signed into law as Chapter 372, P.L. 1999 on January 14, 2000.

This amendment to the Gross Income Tax Act allows a deduction against gross income for a qualified conservation contribution, as defined under subsection (h) of section 170 of the Federal Internal Revenue Code of 1986, 26 U.S.C. §170, made by the taxpayer of a qualified interest in property located in this State.

The following inquiries were recently received:

Q. When does this new amendment take effect?

A. The deduction is allowed for contributions made in tax years beginning on or after January 1, 2000.

Q. Can I file amended returns to claim this deduction?

A. Amended returns for the tax periods beginning on or after January 1, 2000, can still be filed.

Q. Is there a limitation on how much I can deduct in any one year?

A. Taxpayers are limited in any one year to the amount they can deduct for Federal tax purposes pursuant to I.R.C. §170.

Q. If I don't use the full amount of the contribution, can I carry the unused amount forward?

Interest 8%

The interest rate assessed on amounts due for the period January 1, 2002 – December 31, 2002 will be 8%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%

continued on page 5

conservation contribution - from pg. 4

A. Yes. You can carry the unused amount forward in accordance with the provisions of I.R.C. §170.

Q. *Can I take this deduction if I sell the property at a discounted or below market value price?*

A. No. This deduction only applies to property that is contributed, not sold. See July 27, 2005, Notice for additional information.

Q. *Can an S corporation or a partnership take a deduction for property contributed?*

A. No. Partnerships and S corporations are not recognized as “taxpayers” under the Gross Income Tax Act. Only “taxpayers” can claim this deduction.

Q. *Can an S corporation or partnership contribute the property and flow the deduction out to its shareholders and partners?*

A. No. The Legislature made no provisions in the amendment for S corporations or partnerships to flow this deduction out to their shareholders or partners.

Q. *Can nonresidents take this deduction?*

A. Yes. Nonresidents are entitled to take this deduction to the extent they contribute property located in this State.

Should you have other questions regarding the *Deduction for qualified conservation contribution*, please write to the Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, New Jersey 08695-0269. □

Small Business Workshops

The New Jersey Division of Taxation and the IRS conduct free workshops designed to help small businesses understand their tax obligations. The seminars are held from 9:00 a.m. to 4:00 p.m. at locations throughout the State. The New Jersey portion of each workshop is presented in the afternoon and covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Employer responsibilities
- Reporting business income
- What is taxable and what is exempt for New Jersey sales tax purposes
- Filing sales and use tax returns

If you are interested in attending one of the sessions listed below, contact the IRS to register: by e-mail (Mittie.B.Grayson@irs.gov), by fax (908-301-2109), or by telephone (908-301-2114).

February 7 Randolph – County College of Morris

March 7 Washington – Warren County Community College

For additional information on these and other specialized workshops, call the Division of Taxation’s Technical Education Unit at: 609-984-4101. □

NJFastFile

For Information: 1-800-323-4400 or www.njfastfile.com

LOCAL PROPERTY TAX

State Retains Exempt Status

Recently, several municipal assessors have revoked the exemption from local property tax on State-owned property. Please note that State-owned property remains property tax exempt under N.J.S.A. 54:4-3.3, regardless of how the State may use it. Accordingly, assessors should not remove the exempt status of State-owned/State-used property.

If, however, property owned by the State is leased for private purposes, the tenant's leasehold estate may be assessable pursuant to the Leasehold Taxing Act. See N.J.S.A. 54:4-2.3, et seq. Even in the absence of a lease, where a private entity uses State-owned property for a private purpose, the private entity may be subject to local property tax pursuant to N.J.S.A. 54:4-1.10.

It should also be remembered that if State government acquires property after January 1 from a non-exempt owner, the State is required to pay the property taxes for the remainder of the year. Such property would become exempt January 1 of the year following the date it is acquired, provided the municipal assessor was given notice via certified mail by January 10 of the year following acquisition. An exception is made if property is acquired between January 1 and January 10 of the tax year, and notice is given by January 10 of that same year, then exemption would begin on the date acquired.

A further exception is provided to land valued under the Farmland Assessment Act. Actively farmed agricultural/horticultural land acquired by the State for recreation and conservation use should not be subject to rollback taxes under N.J.S.A. 54:4-23.8 as amended by the Garden State Preservation Trust Act, Chapter 152, P.L. 1999. □

LOCAL PROPERTY TAX

Farmland Acreage

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that the total acreage devoted to agricultural or horticultural use in 2001 was 1,149,973 acres for the entire State.

The data for tax year 2001 reflect an increase of 3,473 acres from tax year 2000. Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 9.6% or a total of 121,909 acres.

23.9% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use and Bergen County has less than 1,000 acres. Conversely, Salem with 57.2% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Warren 50.1%; Hunterdon 50%; Gloucester 38.7%; Sussex 33.6%; and Mercer 28.9%.

Copies of the 2001 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX

F.E.A.C. Adopts Values for 2002

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 27, 2001, at the Phillip Alampi Laboratory in West Trenton to adopt a range of values for each of the several classifications of land in agricultural or horticultural use by county. In addition, the F.E.A.C. establishes values for income imputed to land used for grazing.

The thirty-eighth Report of the Committee, showing the value ranges adopted, is mailed to municipal assessors and county boards of taxation in early October of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its productivity and its agricultural or horticultural use rather than its market value.

The farmland values adopted by the committee for 2002 increased in 15 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20.00 to \$60.00 per acre when compared to 2001 values. □

LOCAL PROPERTY TAX

Assessor Continuing Education

This is just a reminder that the Assessor Recertification Law, Chapter 278, P.L. 1999, now requires that to remain certified, tax assessors and all CTA holders must complete fifty (50) continuing education credit hours over the initial five-year renewal period which began July 2000 for all certifications in place on or before that date. Assessors who fail to meet continuing education requirements will be removed from office.

After the initial five-year period, renewal will be required every three years, by obtaining thirty (30) continuing education credit hours over three years. On average, this means assessors will be required to complete 10 hours of training each year. Again, one continuing education credit hour means 50 minutes of classroom or lecture time.

To report a new address so you can receive all mailings on this subject, call Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX

Update on PAMS

At this point most of the PAMS (Property Assessment and Management System) committees have completed their work. At the time this article was written, the State was in the process of creating a Request for Proposal (RFP) to solicit bids from software vendors in the local property assessment business. For more information about

the PAMS project, see page 6 of the Winter 2000 issue of the *New Jersey State Tax News*.

LOCAL PROPERTY TAX

Deductions Certified

The 2001 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses, and veterans was delivered to the State Treasurer on September 17, 2001.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2001.

The total amount of property tax deductions for senior and disabled persons and surviving spouses for

2001 was \$27,228,655. That amount represents a decrease of 5.6% from 2000.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2001 was 104,147. When compared to tax year 2000, the number of deductions decreased 7.2%.

The amount of veterans' deductions for tax year 2000 was \$33,275,446. The amount of veterans' deductions for 2001 was \$50,040,770. That amount represents an increase of 50%. The large increase is due to the fact that for tax year 2001 the veterans' deduction increased from \$100 to \$150 per deduction. The veterans' deduction will increase in \$50 increments in each of the next 2 years until it reaches \$250.

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Pay NJ Taxes By Credit Card*



- **Personal and Fiduciary Income Tax and Estimated Payments**
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 * **Fee of 2.5% of tax payment applies.**

deductions certified - from page 7

The total number of veterans' deductions for 2001 was 330,528. When compared to tax year 2000, the number of deductions decreased 2%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

New Employees

During the spring of 2001, the Division of Taxation conducted a comprehensive recruiting drive to fill Auditor-Accountant Trainee, Investigator Trainee, and Tax Representative Trainee positions across the Division. The result? The Division hired more than one hundred and fifty new employees in what was the most successful recruiting effort in the history of New Jersey State Government.

All of the men and women hired are college graduates and most were from the graduating class of 2001. With the average age of a Division employee inching towards 50, these young professionals will be the future of the Division of Taxation. These new employees have been assigned among 5 of the Division's Activities, with 75 going to Audit, 34 to Compliance, 13 to Technical Services, 25 to Property Administration, and 4 to Technical Support.

Each Activity will train and develop their new employees over the course of the next year. For example, all of the trainees assigned to Local Property Branch of the Property Administration Activity are currently being given in-

house training in property tax administration. Several have been enrolled in training courses for tax assessors at Rutgers University. □

LOCAL PROPERTY TAX *Tax Assessors'* *Calendar*

January 1–

- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure

occurring after Oct. 1 and before Jan. 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms JDC-1 and JDC-2, assessed value of new construction im-

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Workforce New Jersey Public Information Network

www.WNJPIN.net

Did you know that the Workforce New Jersey Public Information Network (WNJPIN) Web site (www.wnjp.net) allows New Jersey employers to post their job openings as well as search for prospective employees? This service is free of charge and provides a way for job seekers and employers to come together in a mutually beneficial environment. There are currently over 3 million job seekers registered nationwide, and it is likely that this database of resumes will help employers fill whatever job openings they have, whether they're looking for clerical help or a nuclear engineer.

The WNJPIN Web site also has a wealth of information about various programs and services that are available to employers. Some of the programs that employers can access information about are: Wage and Hour Compliance, Labor Market Information, a listing of Business Associations, and Workers' Compensation, among many others. The WNJPIN is an excellent starting point for all your questions about the labor market.

assessors' calendar - from page 8

provements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.

- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25-

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior)-

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1-

- Whenever an assessor fails, for any reason, to mail or otherwise deliver a notification of assessment on or before this date, taxpayer or taxing district will have 45 days from the date of the bulk mailing of notification of assessment to file appeal.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10-

- Certification, by assessor, filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, of the date the

bulk mailing of notifications of assessment completed.

February 15 (on or before)-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, Director, Local Government Services, and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- In response to the New Jersey Department of Health & Senior Services, Division of Addiction Services, a draft on the issue of "loosies" (loose cigarettes sold outside of a normal pack) was prepared. This document, which explains the current law on "loosies," was forwarded to

Addiction Services for eventual distribution to local health officials.

- On June 26, 2001, Spyridon H. Gizas of Dover, New Jersey, pled guilty to maintaining an illegal gambling resort and possession of over 100 cartons of untaxed cigarettes. Mr. Gizas was the target of a joint investigation between the Office of Criminal Investigation (OCI) and the New Jersey State Police Organized Crime Unit investigation in Morris County. The Court imposed 18 months probation, 100 days of community service, forfeiture of \$282 in cash and the 141.5 cartons of cigarettes to the State, as well as court costs and fines.
- On June 27, 2001, an ongoing investigation culminated in the arrest of Asif Hafeez. He was arrested in Matawan, New Jersey, as he was making a delivery of 280 cartons of counterfeit New Jersey stamped cigarettes to a local Krauszer's store. The manager, Mitesh J. Shah, was also arrested for possession and sale of counterfeit cigarettes and was able to post bail of \$16,000. Mr. Hafeez failed to post bail of \$20,000 and was remanded to the Monmouth County jail. Shortly thereafter, a search warrant was executed on Mr. Hafeez's residence in Millstone, New Jersey. Evidence was found alleging that he was involved in the import of unstamped cigarettes to the State of New Jersey and that he was involved in the manufacture and affixing of counterfeit tax stamps for New Jersey as well as for the states of Minne-

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sota, Oregon, New York State, and New York City. A total of 39.4 cartons of contraband cigarettes and 29,793 counterfeit stamps (NYC/S, OR, MN, NJ) were seized along with various computer equipment and other documentary evidence.

- A notice to all New Jersey cigarette distributors and wholesalers was disseminated by the Director advising them of the method used by operatives relative to laundering counterfeit stamped cigarettes for refund through legitimate distributors. Suggestions for detecting future scams, such as more detailed examination of returned stock and matching serial numbers, were provided in the notice. The Office of Criminal Investigation has received several inquiries regarding the notice.
 - On July 6, 2001, Vincent Stewart of Camden was sentenced to a five-year term of probation and ordered to complete 500 hours of community service as a result of his guilty plea to an accusation involving conspiracy to commit theft by deception and false swearing. An investigation had revealed that Mr. Stewart was engaged in the practice of preparing fraudulent New Jersey homestead rebate applications for residents of Camden County for a ten-dollar fee. The investigation identified approximately 1,500 fraudulent homestead rebate applications that were attributed to Mr. Stewart. A joint investigation with the New Jersey State Police and the Division of Criminal Justice was initiated to address Mr. Stewart's activities.
- The investigation, including the use of New Jersey State Police personnel in an undercover capacity, resulted in the arrest of Mr. Stewart and his subsequent prosecution.
- On July 11, 2001, a Monmouth County grand jury returned a sixteen (16) count indictment against Michael Rosenstein, t/a Autoland Wholesale, of Neptune, New Jersey, for violations of New Jersey tax statutes. The indictment charges failure to file a sales tax return, filing false and fraudulent quarterly sales tax returns, and failure to turn over collected sales taxes. This investigation determined that the subject business had charged and collected, but failed to report and turn over, sales tax monies to the State of New Jersey for the period between April 1, 1996, and March 31, 2000.
 - On July 12, 2001, in Carteret Municipal Court, summons complaints for disorderly persons offenses were signed against Roger Toth, responsible person of diesel wholesaler Rolyn Enterprises Corporation, who failed to file three (3) Petroleum Products Gross Receipts Tax (PPGRT) Returns and ten (10) Motor Fuels Tax-Seller/User (MFT-SU) Returns, failed to remit monies due, failed to keep records required by motor fuels tax law, and failed to file an application for reinstatement of corporate charter when directed to do so by a Division of Taxation representative. This case was the result of a referral from Investigations Branch-Shore Regional Office.
 - On July 13, 2001, David B. Cohen, an accountant from Cherry Hill, New Jersey, was sentenced to a twelve (12) year term of incarceration in State prison as a result of his guilty plea to misapplication of entrusted property and failure to turn over taxes withheld. He was sentenced to concurrent prison terms of eight (8) years and four (4) years respectively, on the aforementioned charges, and an additional four (4) year consecutive sentence for failure to file his New Jersey gross income tax returns for two (2) years. In addition, he was ordered to make restitution of \$632,000 to his victims. Mr. Cohen was the President of Payroll Masters, Inc., a payroll service company that failed to turn over State and Federal employee withholdings and payroll taxes. During the course of the investigation, Mr. Cohen continued to frequent expensive restaurants and Atlantic City casinos where he lost \$127,000. The Camden County Prosecutor's Office was the lead investigative agency and presented the case for prosecution.
 - On July 18, 2001, in Hazlet Municipal Court, a summons complaint for a disorderly persons offense was signed against Glen Helfrich, responsible person of school bus operator R. Helfrich & Sons Corporation, who failed to file eleven (11) motor fuels tax returns and remit the appropriate motor fuels tax due. This case was the result of a referral from Taxation's Audit Services Branch-Motor Fuels Group.

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- On August 6, 2001, Keith A. Edwards, trading as Omacees of Passaic, New Jersey, was arrested by the Office of Criminal Investigation when he took possession of 117 cartons of unstamped cigarettes shipped via UPS from Lou Ann's Smoke Shop (which is located on an Indian Reservation in New York State) to his grocery store. OCI also seized an additional 21.7 cartons of unstamped cigarettes already available for sale in the store's cigarette rack or found in and about the premises. Additional evidence of previous purchases from Lou Ann's Smoke Shop by Mr. Edwards was also found. This case is the result of a cooperative effort between the United Parcel Service as well as Commerce Bank security personnel who recognized unusual activity related to Mr. Edwards' personal checking account.
- On August 8, 2001, in Hudson County Superior Court, George J. Halpern of Short Hills, New Jersey, stipulated that he was in violation of the terms of the three-year probation which he had entered into in July 2000 as a result of his plea of guilty to one count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer for numerous individuals and small businesses. Mr. Halpern stipulated that between July 2000 and August 2001, he had violated the provision of his probation which prohibited him from acting as a tax preparer except under the supervision of another person responsible for his work. Mr. Halpern has two prior convictions for Federal tax evasion in addition to this conviction. In a related proceeding on the same date, Halpern's son, Todd P. Halpern, of Livingston, New Jersey, stipulated that he was in violation of the terms of a program of Pre-Trial Intervention (PTI) into which he had been admitted on July 21, 2000, as a result of his guilty plea to one count of filing a fraudulent 1997 New Jersey personal income tax return. Todd Halpern also stipulated that he was in violation of a provision which prohibited him from acting as a tax preparer except under the supervision of another person responsible for the accuracy of his work. Both Halperns are scheduled to be sentenced on the underlying guilty pleas in the fall of 2001.
- An investigator from the Office of Criminal Investigation was subpoenaed by the U.S. Attorney in Laredo, Texas, to testify as an expert witness in the case of the *U.S. v. Jamie Rodriguez*. Mr. Rodriguez had been arrested at the Laredo, Texas, border crossing into the U.S. in possession of 494,460 counterfeit New Jersey cigarette tax

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stamps. The Court found Rodriguez guilty of smuggling the counterfeit New Jersey stamps (government financial documents) into the U.S. and giving false statement to the FBI. He was remanded to the custody of the U.S. Marshall for the District to await sentencing.

- On August 8, 2001, Leonard Brooks, the President of Holiday Excursions Incorporated, pled guilty to charges of theft by deception and failure to turn over taxes withheld. Mr. Brooks, formerly known as Leonard Valdez, operated a travel agency from several locations in Camden County during the years 1995 through 1999. During this time, Mr. Brooks failed to remit New Jersey gross income tax withheld from employee wages. Mr. Brooks made full restitution prior to the plea. On September 21, 2001, Mr. Brooks was sentenced in Camden County to a term of three (3) years probation. This investigation and prosecution was a joint endeavor with members of the Camden County Prosecutor’s Office.

- On August 13, 2001, Annie M. McCoy and Christine M. Stubbs, both of Bridgeton, New Jersey, pled guilty to charges of falsifying records and theft by deception. Both individuals were involved in the preparation of fraudulent New Jersey homestead rebate applications and the subsequent receipt of fraudulent homestead rebates. On September 20, 2001, Christine M. Stubbs was sentenced in Cumberland County to a term of 18 months probation and ordered to make restitution of \$700. Prior to sentencing, Ms. Stubbs had made restitution of \$2,300. An additional condition of her sentencing was that she testifies truthfully against others who are the subject of an ongoing investigation with the Prosecutor’s Office. This investigation and prosecution was a joint endeavor with members of the Cumberland County Prosecutor’s Office.
- On September 21, 2001, in Superior Court, Monmouth County, Sergei Tsesarenko of Freehold, New Jersey, completed payment of \$139,836.19 in restitution and was sentenced

to three (3) years probation as a result of his guilty plea of October 7, 1999, to the charge of misapplication of entrusted funds (tax on diesel fuel) at his gas station in Freehold during the period July 1995 through September 1997. This case was a joint investigation with the Monmouth County Prosecutor’s Office, who represented the State in judicial proceedings.

- One hundred twenty-eight (128) complaints alleging tax evasion were evaluated in the Office of Criminal Investigation from July through September 2001.
- During the same period, sixty-five (65) charges were filed in court on sixteen (16) cases for violation of the Cigarette Tax Act, including possession of 1,813.4 cartons of contraband cigarettes valued at \$70,030.45, and resulting in fifteen (15) arrests. Of the 1,813.4 cartons of contraband cigarettes seized, 358.2 cartons (20%) had counterfeit New Jersey tax stamps affixed to the packs. □

Enforcement Summary Statistics

Third Quarter 2001

Following is a summary of enforcement actions for the quarter ending September 30, 2001.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	1,911	• Seizures	39
Total Amount	\$33,731,925.75	• Auctions	2
• Jeopardy Assessments	311	• Referrals to the Attorney General’s Office	703

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/

Tax Briefs

Corporation Business Tax

Entity Classification — A taxpayer inquired whether a Delaware general partnership can make an election to be taxed as a New Jersey S corporation.

The New Jersey Corporation Business Tax Act is a nondiscriminating franchise tax. *Garfield Trust Co. v. Director, Div. of Taxation*, 102 N.J. 420, 508 A. 2d 1104 (1986), app. dismissed 479 U.S. 925 (1986). The definition of “corporation” as contained in that Act provides:

“Corporation” shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument. N.J.S.A. 54:10A-4(c).

This definition is independent from the definition under IRC 7701 and regulations thereunder, which deals with entity classification for Federal purposes.

The applicable non-tax corporate, administrative provisions are to be found in the New Jersey Business Corporation Act. The public records filing requirement for corporations is derived from N.J.S.A. 14A:13-3 which prohibits a foreign corporation from doing business in New Jersey until it has procured a certificate of authority to do so, and N.J.S.A. 14A:13-4 which details the requisites for obtaining such a certificate of authority. The effect of obtaining a certificate of authority is set forth in N.J.S.A. 14A:13-5. Large, bold print on page 20 of the *New Jersey Complete Business Registration*

Package (Form NJ REG – Rev. 3/01) specifically states that the public records filing does not pertain to partnerships.

Under the New Jersey Gross Income Tax Act a Delaware general partnership is subject to the New Jersey gross income tax as a partnership. Such an entity selection by the organizers would fit the statutory definition of partnership in N.J.S.A. 54A:1-2h.

Section N.J.S.A. 54A:2-3, at the time of enactment in 1976, was intended as an aid in entity classification for certain associations having corporate characteristics and taxable under the New Jersey Corporation Business Tax Act. At that time corporate characteristics included: limited liability for corporate debt; free transferability of corporate ownership interests; centralized management; and continuity of life. Entities that had at least three of these four characteristics were considered corporations for Federal purposes prior to 1997. At that time, due to the enactment of Federal “check the box” regulations, certain organizations were automatically classified as corporations. In that sense, 54A:2-3 is obsolescent with regard to partnerships that make a “check in the box” selection for tax treatment as a corporation. The context of this statute was intended to apply to entities which fit the corporate entity classification under the old four-prong test. Again, the universe that N.J.A.C. 18:35-1.3(a) was intended to apply to did not include entities that would have been classified as corporations under the pre-1997 four-prong test and which would constitute corporations under the CBT definition

of corporations at N.J.S.A. 54:10A-4(c).

Accordingly, in a situation where a general partnership organized in Delaware has partners that are revocable grantor trusts whose owners are individuals domiciled outside of New Jersey, such entity must file the NJ-1065 partnership return. The ultimate partners would be subject to New Jersey gross income tax as nonresident individuals. Accordingly, a New Jersey S election would be unnecessary for the entity to receive “pass through” status in New Jersey.

Motor Fuels Tax

Retail Sales of Motor Fuel (Licensing) — For the purposes of the New Jersey Motor Fuels Tax Act, N.J.S.A. 54:39-1 et seq. and the Act to Regulate the Retail Sale of Motor Fuels, N.J.S.A. 56:6-1 et seq., a car rental agency that fuels its rental cars from a fixed location prior to renting them to its customers is not considered to be a motor fuel retail sales establishment subject to applicable licensing requirements.

If, however, the rental agency provides fuel to employees or others in addition to fueling its rental vehicles, it is considered to be a motor fuels retail dealer subject to licensing and applicable fair trade laws.

Sales and Use Tax

Admission to Swimming Pools and Parking — The Division responded to an inquiry regarding whether sales tax is due on admission to swimming pool facilities and fees for parking.

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“There is imposed and there shall be paid a tax of 6% upon: ...Any admission charge, where such admission charge is in excess of \$0.75 to or for the use of any place of amusement in the State, ...*except* charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools.” N.J.S.A. 54:32B-3 and N.J.S.A. 54:32B-3(e).

Admission to or use of a swimming pool is not taxed under the Sales and Use Tax Act.

Under the Sales and Use Tax Act, parking could only be taxed under N.J.S.A. 54:32B-3(b)(3) as a storage charge. However, a parking space is not storage because storage implies that the service provider is actually performing the service of safekeeping the goods with respect to a period of non-use. This is different than the expectation of immediate use, where the property is kept in a state of

readiness and is available and accessible by the owner. Therefore, since a parked car is not considered to be in storage under the statute, parking fees are not subject to tax.

Sales of Advertising Material in New Jersey — The purpose of N.J.S.A. 54:32B-8.39 is to provide the purchaser of advertising or promotional material in New Jersey (whether or not the tangible personal property was purchased outside New Jersey and then delivered to the purchaser in New Jersey) with an exemption from sales and/or use tax in this State for any portion of such property ultimately delivered to other persons free of charge for use or consumption outside New Jersey through either the services of a direct mail house located in New Jersey or by other means.

However, the exemption from sales tax provided by N.J.S.A. 54:32B-8.10 of the Sales and Use Tax Act is unaffected. Thus, a purchaser of advertising material

or other tangible personal property in New Jersey who specifies delivery of such property in bulk by its vendor to a location outside New Jersey is also not liable for sales tax in New Jersey. Delivery in this case must be made by the vendor to the purchaser outside the State by means of a common carrier, parcel post, or the United States mail.

Where the purchaser of advertising or promotional material takes delivery of such property in this State, he may issue the vendor an Exempt Use Certificate (Form ST-4) in lieu of sales tax on the receipts from the sale in this State. The purchaser is then liable for use tax on that portion of the advertising material delivered to recipients in New Jersey or otherwise used or consumed by him in New Jersey.

Where the purchaser of advertising or promotional material takes delivery of such property in this State from a vendor who is also providing a direct mail service for the purchaser in this State, the purchaser may issue an Exempt Use Certificate (Form ST-4) to the vendor in lieu of sales tax on that portion of the property which the vendor will deliver to recipients outside New Jersey. The vendor in this case must impose the sales tax on that portion of the advertising material delivered to recipients in New Jersey and also impose sales tax on the direct mail service charge.

Aircraft Repair Charges — As amended by P.L. 1999, c.246, effective January 1, 2000, the sales tax exemption for sales of aircraft

TAXATION REGIONAL OFFICES

New Jersey Division of Taxation Regional Offices provide individual assistance at locations throughout the State. Normal hours of operation* are 8:30 a.m. to 4:30 p.m., Monday through Friday. Offices are closed weekends and holidays.

Asbury Park	630 Bangs Avenue
Camden	Suite 200, One Port Center, 2 Riverside Drive
Fair Lawn	2208 Route 208 South
Newark	124 Halsey Street, 2nd floor
Northfield	1915-A New Road (Route 9)
Somerville	75 Veterans Memorial Drive East, Suite 103
Trenton	Taxation Building, 50 Barrack Street, 1st floor lobby

*Offices will be open for extended hours during the week prior to the April 15, 2002 deadline for filing 2001 income tax returns.

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and repairs thereto provided in N.J.S.A. 54:32B-8.35 now extends to: "repairs on aircraft having a maximum certified takeoff weight, as contained in the certificate type issued by the Federal Aviation Administration, of 6,000 pounds or more, including machinery or equipment to be installed on such aircraft and replacement parts therefor."

The "maximum gross takeoff weight" is made up of the weight of the aircraft plus what it carries. (It is heavier than the maximum gross landing weight, because by the time a plane lands, it has burned fuel and therefore weighs less.) This weight will be shown in the flight manual that every aircraft must carry. The FAA issues "type certificates" to the manufacturer specifying what gross takeoff weight is allowed for the particular type certificate. This allowable weight is the original certified weight. The weight referred to in the statute is the original gross takeoff weight in the specifications that the FAA gave to the aircraft manufacturer.

If a customer's aircraft meets the statutory criteria for exemption under N.J.S.A. 54:32B-8.35(b), the customer should present the repair shop with a properly completed Exempt Use Certificate (ST-4).

Federal Telecommunications Taxes — Receipts from the sale of intrastate or interstate telecommunications charged to an address within New Jersey are subject to New Jersey sales tax. N.J.S.A. 54:32B-3(f). Interstate telecommunications include international telecommunications. N.J.S.A. 54:32B-2(dd). The definition of "receipt"

does not allow for a deduction of expenses in an otherwise taxable transaction. The Federal Universal Service Assessment is imposed on telecommunications carriers to subsidize telecommunications services to low income and rural areas. Although the assessment is imposed on the carrier, it can be passed on to the customer in connection with a telecommunications service charge. The Presubscribed Interexchange Carrier Charge (PICC) is a fee that the local telephone company charges the long distance carrier for the right to use the lines. Since the Universal Service Assessment and the PICC are expenses incurred by the carrier in connection with providing telecommunications services, when passed along to the customer, they are part of the taxable receipt which is subject to sales tax. In contrast, the Federal excise tax on telecommunications is imposed directly on the customer, and is merely collected by the carrier. 26 U.S.C.A. 4251. Accordingly, since the Federal excise tax is directly imposed on the customer, it is not subject to New Jersey sales tax.

Flag Exemption — Sales of flags of the United States of America or of the State of New Jersey are exempt from New Jersey sales and use tax.

This exemption is limited to sales of actual *flags*. It does not apply to representations of flags or to merchandise with a flag theme. The following are all examples of taxable items: framed prints of the United States flag; windsocks with a flag theme; flag stickers; flag pins, tie tacks, and other jewelry; tote bags imprinted with an image of the flag; dolls, teddy bears, Santa Claus figurines carrying a miniature flag; red, white, and blue ribbons; and wooden flag plaques. However, because there is a separate statutory exemption for clothing, sales of T-shirts, hats, neck scarves, socks, and other clothing items decorated with flag prints or flag embroideries are, of course, not subject to New Jersey sales tax.

If a vendor sells the actual flag banners, the pole, and the finial separately, the exemption applies only to the sale of the flag banner itself. Sales of the various pieces of hardware sold separately are subject to tax. However, if a complete flag is sold as part of a ready-to-assemble kit, including, for example, the banner, post, finial and cord, the lump sum charged for the kit will be viewed as a charge for an exempt flag and will therefore be exempt from sales and use tax.

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If a flag is being sold as an antique or collectible, however, and the price charged reflects its historic and collectible value, the transaction will not be deemed a sale of an exempt "flag." For example, a battle flag flown during the War of 1812, which is sold for several thousand dollars, is deemed to be a taxable item.

Sales of flags of other nations, of the United Nations, or of other states are not exempt from New Jersey tax. The statutory exemption from New Jersey sales and use tax is limited to sales of the official flags of the United States of America and the State of New Jersey only.

Interior Decorator Services — The Division views separately stated interior design or decorator services as professional or personal service transactions which are exempt from sales tax under N.J.S.A. 54:32B-2(e)(4)(A). If the service provider also sells tangible property to the customer, such charges are subject to tax under N.J.S.A. 54:32B-3(a).

The definition of "receipt" does not allow a deduction for expenses of the seller. N.J.S.A. 54:32B-2(d). Thus, expenses incurred in connection with the taxable sale of property (e.g., procurement fees) are also subject to tax. Expenses that directly relate to separately stated and nontaxable design/consulting services are not subject to tax. Separately stated charges for the storage and installation of tangible property are subject to tax under N.J.S.A. 54:32B-3(b)(3) and 3(b)(2), respectively.

Interoffice Wrapping Supplies —

The Division received an inquiry concerning the sales and use tax treatment of wrapping materials used to package patient specimens for transport by the taxpayer from medical service providers to the taxpayer's testing laboratory.

The Division pointed out that the Tax Court of New Jersey provided guidance on the wrapping supplies exemption in *Global Terminal v. Taxation Division Director*, 9 N.J. Tax 152 (1987). See N.J.S.A. 54:32B-8.15. The issue in that case was whether Global's purchase of chocking materials used for packing cargo containers while in transit was entitled to the exemption. Global packed and loaded the ships, but did not provide the actual transportation service.

The Court held that Global was entitled to purchase wrapping supplies (the first transaction) tax free because such supplies were used in a second and separate transaction, the stevedoring services it provided to the customer. The Court stated that N.J.S.A. 54:32B-8.15 complements N.J.S.A. 54:32B-8.11, which exempts transportation services, and expresses a legislative intent to exempt both the wrapping supplies used incidentally to the delivery of personal property and the charges for the transportation service in which the supplies were used.

In view of the Court's decision in *Global Terminal*, the Division no longer requires that the purchaser of exempt wrapping supplies use them in a "sale" transaction. That is, the N.J.S.A. 54:32B-8.15 ex-

emption may be claimed even if the purchaser of the supplies is not selling the property that is being delivered, as long as the items are used in an identifiable transaction with another party, e.g. boxes purchased by a moving company for use in moving its customer, and plastic garment bags purchased by a dry cleaner for use in wrapping its customer's cleaned garments. Wrapping supplies purchased for internal use by a business to move property from one location to another are not considered eligible for this exemption because there is no separate delivery transaction with another party.

Lease Fees — In New Jersey, the tax is imposed on the lessor at the inception of the lease and is based on either the purchase price of the property acquired for lease or the total of the lease payments attributed to the lease of such property. N.J.S.A. 54:32B-2(bb). If the lease payment method is elected by the lessor, tax is due on any charges made by the lessor that relate to the lease or the use of the vehicle by the lessee.

The following fees are subject to tax as charges directly attributed to the lease or the use of the property which are disclosed to the lessee in the lease contract:

- Early termination fee
- Excess mileage fee
- Excess wear and tear fee
- Vehicle disposition fee
- Reconditioning/repair fee. □

In Our Courts

Administration

Standard for Court to Hear Motion for Reconsideration – *Stephen Little Trucking and Stephen Little v. Director, Division of Taxation*, decided July 9, 2001; Tax Court No. 005828-1999.

Plaintiffs sought reconsideration of the Court's previous written opinion by essentially reiterating the arguments that were raised, considered, and rejected.

The Court denied the motion by ruling that plaintiffs failed to demonstrate either that the Court erred or that the opinion was arbitrary, capricious, or unreasonable. Consequently, the Court declined to readdress plaintiff's contentions.

Gross Income Tax

Interest Deduction - Acquisition Indebtedness to Purchase S Corporation Stock – *Sidman v. Director, Division of Taxation*, decided June 28, 2001; Appellate Division No. A-5591-99T5.

Plaintiff-shareholder purchased additional interests in an S corporation from other shareholders so that he controlled a majority of the corporate shares. Plaintiff's acquisition was financed with a personal note that provided for equal payments that included interest at eight percent. The Division disallowed plaintiff's reporting the interest as a deduction from his S corporation pro rata share of income.

The Court held that a shareholder's interest payments to other shareholders for their S corporation stock was not deductible from his pro rata share because there was no authority to permit such a deduction. The statute's plain language did not specifically provide for an interest deduction on personal loans in this situation. Turning to Federal tax law, the Court distinguished an Internal Revenue Service notice that permitted S corporation shareholders to deduct interest in debt-financed acquisitions by stating that neither the statute nor the legislative his-

tory reference the application of Federal principles to this issue. Furthermore, the legislative history revealed that the Legislature purposely placed a tax on gross income to limit deductions in order to avoid a perceived unfairness in the Federal system. In discussing *Dantzler*, where the Tax Court ruled that a partner could deduct interest connected to the acquisition of a partnership interest, the Court stated that the Gross Income Tax Act need not treat partnerships and S corporations alike as they are not identical entities. Moreover, unlike partnerships, S corporations have a separate and distinct legal identity apart from their shareholders.

Reporting of S Corporation's Sale – *Miller v. Director, Division of Taxation*, decided August 20, 2001; Tax Court No. 004040-2000.

In 1996, plaintiff was the principal shareholder of a subchapter S corporation that sold virtually all of its assets. This significant asset sale was not in the ordinary course of

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the S corporation's trade or business. Thereafter, the S corporation was liquidated and paid plaintiff a liquidating dividend that included the proceeds of the asset sale.

New Jersey's NJ-K-1 provides only one line for reporting S corporation income titled the pro rata share of subchapter S income. Therefore, on plaintiff's Schedule NJ-K-1, the S corporation reported that plaintiff's distributive share was the total of the net gain on the asset sale and the income from operations. On plaintiff's New Jersey gross income tax return, plaintiff bifurcated that figure reporting the income from operations of the S corporation as plaintiff's pro rata share of S corporation income and the asset sale as a capital gain from which plaintiff deducted his stock basis in the S corporation as well as his losses from other investments. Pursuant to an audit of plaintiff, the Division combined the S corporation's gain from the asset sale with its income from operations to report it solely in the category of pro rata share of S corporation income. As a result of the audit reclassification, the Division did not allow a deduction for his basis in the S corporation stock and his losses from other investments.

The Court held that the S corporation's sale of corporate assets was reportable by plaintiff as a gain on the disposition of property because income earned outside of the ordinary course of trade or business retains its character when passed through to the S corporation shareholders. Moreover, the Court ruled that the pro rata share of S corporation income is income from the ordinary trade or business of the

corporation. In support of its holding, the Court first looked to the legislative history and found that it was not the Legislature's intent to aggregate all categories of S corporation income under the pro rata share category. The Court noted that the Federal Schedule K-1 provides lines for separate items of income that are reported on separate lines of the Federal income tax return such that plaintiff's Federal Schedule K-1 properly reported the S corporation income from operations as a separate and distinct category from the net gain on the sale of the S corporation assets. The Court added that the fact that the corporation liquidated and paid a liquidating dividend was further support for the characterization of this transaction as a gain on the sale of property.

In addition, the Court held that the plaintiff was entitled to deduct his basis in the S corporation stock from the passed through proceeds of the S corporation's sale of assets. The Court reasoned that this result was warranted because taxing the gross proceeds would be inconsistent with the New Jersey gross income tax's taxation of net gains and would be illogical with the *Koch* holding that forbid taxation on the return of capital. An appeal has been filed by the New Jersey Division of Taxation.

Six-Year Statute of Limitations/ Death Benefits – *Joyce H. Eiszner v. Director, Division of Taxation*, decided July 19, 2001; Appellate Division No. A-3339-99T2.

Death Benefits

At the time of plaintiff's husband's death, husband was a New Jersey (NJ) resident who was employed in NJ by CPC International, Inc.

(CPC). CPC provided performance plans to its current employees that consisted of stock and stock options that were contingently granted. However, if an ex-employee died, retired, became disabled, or left by reason of voluntary separation, the board of directors had discretion as to whether a payment would be made. Immediately after plaintiff's husband's death in September 1990, the board of directors authorized payment to her husband's estate. The payment was not distributed until 1992 and transferred to the husband's revocable trust, an NJ resident trust. The trust distributed these monies to plaintiff.

The Tax Court held that the payment was not a death benefit because death did not trigger the payment. The Tax Court found that the CPC Plan made payments as a result of participation in the Plan and not necessarily because of death as other employment-terminating factors, disability, retirement, and voluntary separation, might also result in a payment. Therefore, the Tax Court ruled that the payment was a performance award attributable to the deceased employee's former services. It thus constituted deferred compensation under an incentive compensation plan and it is includable in the plaintiff's gross income. On appeal, the Appellate Division agreed with the Tax Court. The Appellate Division added that to accept plaintiff's argument that the payment was a death benefit would allow business individuals to time discretionary payments at death to avoid taxation.

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Six-Year Statute of Limitations

Both the husband's estate and trust each filed a 1992 gross income tax fiduciary return in 1993. The estate return included the CPC payment received under the performance plan and described it as shares and performance award. The return for the estate identified that the total amount was distributed to the beneficiary trust and listed plaintiff's address, social security number, and her status as an NJ nonresident. The trust return reported the entire income from the estate and noted the distribution of that amount to the plaintiff as beneficiary.

As plaintiff relocated her residence to Illinois in July 1991, she filed a 1992 NJ gross income tax nonresident return seeking a refund of first quarter estimated tax payments inadvertently paid to NJ. Attached to the NJ return was her 1992 Illinois individual tax return with the "Supplement to Illinois" 1992 Federal Form 1040, U.S. individual income tax return. Although the NJ return reported the net amount of CPC's payment to her husband under "Amount of Gross Income Everywhere," it did not explain the nature and source of the income, it reported no income from NJ sources as well as no NJ tax due, and the NJ estate and trust fiduciary returns were not attached. Approximately four years after plaintiff's filing of her 1992 NJ nonresident return, the Director sent a Notice of Deficiency for the amount of tax owing on the CPC Performance Plan payment.

Utilizing a common sense approach to determine whether

plaintiff's NJ return's disclosure provided a 'clue' as to the nature of the income omission, the Tax Court held that the Director's assessment was not time-barred by the three-year statute of limitations because plaintiff's NJ nonresident and the attached Illinois and Federal returns' disclosure of the source or nature of the income was inadequate to apprise the Director that the income was NJ sourced. The Division had six years in which to assess additional tax under N.J.S.A. 54A:9-4(d). The Tax Court noted that the required Schedule E was not submitted to the Division along with the Federal return and that the Schedule E would have identified the source of the funds. Furthermore, the Court ruled that the Director has no duty to cross reference different returns filed by different entities not attached to plaintiff's individual return. The Appellate Division agreed finding it significant that plaintiff's NJ return did not identify the income as from an NJ source.

Sales and Use Tax
Sales of Materials and Supplies to Contractors – *Stephen Little Trucking and Stephen Little v. Director, Division of Taxation*, decided May 29, 2001; Tax Court No. 005828-1999.

Plaintiff was engaged in the business of selling sand, gravel, mulch, and similar materials to contractors. Although plaintiff concedes that these sales were taxable, plaintiff neither collected sales tax nor obtained direct payment certificates because he claims he is not a person required to collect tax from contractors.

The Court found that there are two statutory provisions that address this issue. First, the relevant section of N.J.S.A. 54:32B-2(w) defines a person required to collect tax as every vendor of tangible personalty. One exception to the definition is that vendors selling supplies and materials to contractors are not deemed to be a person required to collect tax and the contractor is required to pay the tax directly to the Director. The pertinent part of the second section, N.J.S.A. 54:32B-12(b), provides that in order to prevent the evasion of tax there is a presumption that all receipts from retail sales of tangible personalty are subject to tax until the contrary is established by the person required to collect the tax or the customer. Additionally, this section allows the Director to authorize contractors to pay the tax directly to the Director and thereby waive the vendor's obligation to collect tax where the contractor has been issued a direct payment permit.

The Court held that plaintiff had an obligation to collect sales tax because plaintiff did not collect direct payment certificates from the contractors. Furthermore, the Court ruled that a contractor's difficulty in obtaining a direct payment permit would not be a basis for not collecting sales tax. The Court cited the simultaneous amendments to both sections, legislative intent, the Director's regulations, and the object and policy concerns of the Sales and Use Tax Act, such as effectively collecting and preventing evasion of taxes, in support of its ruling.

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Over plaintiff's objections that sections 2(w) and 12(b) are independent of each other, the Court ruled that those sections were, in fact, complementary. The legislative history revealed that 1968 legislation amended both sections so that vendors were relieved from the responsibility of collecting sales tax on sales to contractors in section 2(w) and at the same time legislation added to section 12(b) permitted the authorization of direct tax payments to contractors. If the sections were read independently, the Court determined that the vendor would have no obligation to collect tax on a sale to an unidentified contractor and the Division would be handicapped in identifying the contractor and collecting the tax. The Court also found that the Director's regulations provide that a contractor must pay sales tax at the time of the materials' and supplies' purchase except where the contractor issues a direct payment certificate and then the vendor is not required to collect sales tax. (See N.J.A.C. 18:24-5). □

In Our Legislature

Local Property Tax

Property Tax Reimbursement — P.L. 2001, c.251 (signed into law on October 30, 2001) increases the income eligibility requirements for base year 2000 to \$37,174 for single applicants and to \$45,582 (combined income) for married couples. The new income limits will be subject to a cost-of-living

adjustment based on the corresponding adjustment in the annual maximum social security benefit. Chapter 251 took effect immediately and applies retroactively to base year determinations for tax year 2000 and thereafter. The new income limits will affect only property tax reimbursement applications for tax year 2001 and thereafter.

Miscellaneous

September 11 Terrorist Attacks — P.L. 2001, c.248 (signed into law on October 4, 2001) establishes the "New Jersey Terrorism Victims' Assistance Act of 2001" which authorizes the Governor to expedite, by waiving certain administrative requirements, the payment of State benefits or the provision of assistance under State programs to victims and families of victims of the September 11, 2001, terrorist attacks on the United States; and to extend, without interest or penalty, deadlines for certain filings with, and payments to, State agencies. The legislation also allows governing bodies of municipalities to waive interest on delinquent obligations for those who suffered personal or business losses as a result of the attacks. This legislation took effect upon enactment and expired on December 31, 2001.

Individual Development Accounts — P.L. 2001, c.93 (signed into law on May 10, 2001) establishes the New Jersey Individual Development Account Program within the Department of Community Affairs and appropriates \$2 million to cre-

ate an Individual Development Account Fund. The fund will be used to provide grants to community based organizations to implement the program and to provide a State match of \$1 for every \$1 of earned income deposited into an individual development account by a participant, up to a maximum of \$1,500 per calendar year. Persons eligible to participate in the program must be adults with an annual household gross income that does not exceed 200% of the official poverty level. Funds accumulated in an individual development account may be withdrawn by the account holder, with the approval of the community based organization, for three purposes only: qualified post-secondary educational expenses, qualified acquisition costs of a primary residence, or qualified business capitalization expenses.

Monies deposited into or withdrawn from an individual development account, including interest from the account, are exempt from New Jersey gross income tax. In addition, the monies deposited in an individual development account and the interest income shall not be taken into account in determining eligibility for, or the amount of, assistance under State and Federal means-tested programs. The legislation took effect November 6, 2001, except for the section pertaining to the development of necessary regulations, which took effect immediately. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2			1	2	3	4	5
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2	20	21	22	23	24	25	26
	27	28	29	30	31		

January 10

- CWIP-1,2 Cigarette Tax—** Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—** Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—** Wholesaler's monthly report of non-New Jersey stamped cigarettes

January 15

- CBT-100 Corporation Business Tax—** Annual return for accounting period ending September 30
- CBT-150 Corporation Business Tax—** Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

January 22

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—** Monthly export report

January 22 - continued

- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
- ST-20 New Jersey/New York Combined State Sales and Use Tax—** Quarterly return
- ST-50 Sales and Use Tax—** Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
- ST-350 Cape May County Tourism Sales Tax—** Monthly return
- ST-450 Sales and Use Tax—** Salem County—Quarterly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

January 25

- PPT-40 Petroleum Products Gross Receipts Tax—** Quarterly return

January 30

- NJ-927 & NJ-927-W Gross Income Tax—** Employer's quarterly report
- NJ-927-H Gross Income Tax—** Domestic employer's annual report
- GCC-1 Motor Fuels Tax—** Carrier's monthly report

continued

february

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2

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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10	11 ☐	12	13	14	15 ☐	16
17	18	19	20 ☐	21	22	23
24	25 ☐	26	27	28 ☐		

February 11

- CWIP-1,2 Cigarette Tax—**
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**
Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**
Wholesaler's monthly report of non-New Jersey stamped cigarettes

February 15

- CBT-100 Corporation Business Tax—**Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—**Employer's monthly remittance

February 20

- CR-1 & CNR-1 Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—**Monthly export report

February 20 - continued

- MFT-60 Motor Fuels Tax—**Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—**Monthly return
- SCC-6 Spill Compensation and Control Tax—**Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—**Monthly return
- ST-51 Sales and Use Tax—**Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
- ST-350 Cape May County Tourism Sales Tax—**Monthly return
- ST-451 Sales and Use Tax—**Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—**Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return

February 25

- PPT-41 Petroleum Products Gross Receipts Tax—**Monthly return

February 28

- NJ-W-3 Gross Income Tax—**Annual reconciliation of tax withheld
- GCC-1 Motor Fuels Tax—**Carrier's monthly report

continued

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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0	10	11 ☐	12	13	14	15 ☐	16
2	17	18	19	20 ☐	21	22	23
	24 31	25 ☐	26	27	28	29	30

March 11

- CWIP-1,2 Cigarette Tax—**
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**
Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**
Wholesaler's monthly report of non-New Jersey stamped cigarettes

March 15

- CBT-100 Corporation Business Tax—**Annual return for accounting period ending November 30
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—**Employer's monthly remittance

March 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller- user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—** Monthly export report

March 20 - continued

- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—** Monthly return
- ST-51 Sales and Use Tax—** Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
- ST-350 Cape May County Tourism Sales Tax—** Monthly return
- ST-451 Sales and Use Tax—** Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

March 25

- PPT-41 Petroleum Products Gross Receipts Tax—** Monthly return

continued

from the director's desk

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A handwritten signature in cursive script that reads "Robert F. Thompson". The signature is written in black ink and is positioned in the lower right quadrant of the page.

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Vol. 30, No. 3 – Fall 2001

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Check, Please?!*

It happens every July, and continues into September. Many New Jersey residents who receive a check under one or more of the State's property tax relief programs are uncertain as to what that check is for. Beginning on July 15 with the mailing of the Property Tax Reimbursement checks, continuing into August with the distribution of more than one million Homestead Rebate checks on July 31, and stretching into September, when the NJ SAVER rebates are mailed, the Division of Taxation is inundated with inquiries.

This year, the rebate season was impacted by a number of factors which added to the uncertainty:

- Legislation which increased the amounts of both the NJ SAVER rebates and the maximum Homestead Rebates.
- An extensive newspaper and radio advertising campaign for the NJ SAVER Rebate Program.
- The mailing of notices from the Internal Revenue Service heralding the arrival of "Immediate Tax Relief."
- The mailing of the Federal Advance Payment checks.

The result? An increase in phone calls and correspondence unlike anything the Division has ever seen before.

During the 2000 rebate season the Division received 40,472 phone calls between July 1, 2000, and August 31, 2000, regarding the Homestead and NJ SAVER Rebate Programs. During that same period in 2001, we received 115,083 phone calls regarding these two programs, representing an increase of 184%. Total e-mails increased from 3,132 during July and August 2000, to 16,040 during the same period in 2001. These numbers represent an increase in total e-mails received of 412%.

The Division recognizes the complexity of the property tax relief programs and knows that that complexity is compounded by the fact

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Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info ..	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

check, please?! - from page 1*

that each program has a different set of eligibility requirements, and the fact that the checks for all three programs are mailed within a 6-week period. Every effort is made to provide information about these programs that is clear and understandable, but we know that there will always be questions and problems. When you or your clients find it necessary to contact us about these programs by phone, please be sure that you have all the relevant information on hand. If contact is being made via e-mail or snail mail, the correspondence should, at the very least, include name, address, social security number, and a description of the problem. And finally, please be patient. We will respond, but response times vary, depending upon the time of year and the volume of correspondence we receive. □

Federal Income Tax Rebates

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), approved by Congress and signed by President Bush, directs the Treasury to send checks to most taxpayers this year, giving them an advance payment of a 2001 tax credit.

The Federal advance payment gives taxpayers immediate benefit of the retroactive tax rate reduction enacted by the EGTRRA for tax year 2001. The amount a taxpayer receives is based on their tax liability for tax year 2000. The IRS has stated that the advance payment is "a reduction of tax and is not taxable on the federal tax return."

For New Jersey gross income tax purposes the Federal advance payment will be treated as a Federal tax refund. As such, it is not considered taxable income and should not be reported on the taxpayer's 2001 gross income tax return. Taxpayers can find this information specifically stated in the instructions to the New Jersey gross income tax return, which enumerate "Federal advance payments" as exempt income. □

Qualified Tuition Plans

HR-1836, otherwise known as the Economic Growth and Tax Relief Reconciliation Act of 2001, which was signed by President Bush on June 7, 2001, changed the income tax treatment of Qualified Tuition Plans established under section 529 of the Internal Revenue Code.

For Federal income tax purposes, prior to the Economic Growth and Tax Relief Reconciliation Act of 2001, earnings in Qualified Tuition Plans were tax-deferred and then taxable (usually to the student) when distributions were used to pay higher education expenses. The 2001 Tax Act, however, provides that, beginning in tax year 2002, the earnings from a Qualified Tuition Plan will be tax-free if used to pay qualified education expenses. The exclusion from gross income is also extended to distributions from qualified tuition programs established and maintained by an educational entity other than a State (such as a private institution) for distributions made in taxable years after December 31, 2003. Also, in 2002, taxpayers are allowed to roll over

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www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Robert K. Thompson

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credits or other amounts for a designated beneficiary from one Qualified Tuition Plan to another. Taxpayers are only allowed one rollover per 12-month period, and there is a lifetime limit of three rollovers.

For New Jersey income tax purposes, a qualified state tuition program is defined as one established under section 529 of the Internal Revenue Code. Presently, N.J.S.A. 54A:6-25 allows the earnings accumulating in a qualified state tuition program account to be excluded from New Jersey gross income. Upon distribution, any amounts that are used for higher education expenses (as defined under section 529 of the Internal Revenue Code) are then excluded from the taxpayer's income. A rollover from one account to another is considered a qualified distribution within the meaning of N.J.S.A. 54A:6-25 if it meets the requirement in section 529(c)(3)(C)(i) of the Internal Revenue Code. The amendments to Federal law

regarding income tax treatment of distributions and earnings from a Qualified Tuition Plan correspond to the current treatment for New Jersey gross income tax purposes under N.J.S.A. 54A:6-25. The Economic Growth and Tax Relief Reconciliation Act of 2001, therefore, has no effect on the New Jersey income tax treatment of distributions and earnings from a Qualified Tuition Plan. □

Refund Claims for Paid Assessments

On September 14, 1998, former Governor Whitman signed Assembly Bill A-1730 into law. One of the provisions of this Bill extends the time a taxpayer can file a refund claim for payment of an additional tax assessment levied by the Division of Taxation for nine specified taxes. This provision is applicable to tax periods beginning on or after January 1, 1999. To qualify and file for a refund under the provisions of this legislation, a taxpayer must meet the following requirements:

2. The additional tax assessment must be for tax periods beginning on or after January 1, 1999.
3. No protest or appeal was filed with the Division of Taxation or the Tax Court against the additional tax assessed.
4. The additional tax assessment, including any penalty and interest charges associated with the tax, must have been paid within one year after the date of the statute of limitations for protesting the assessment expires.
5. The refund claim must be filed on Form A-1730 within 450 days after the date the protest limitations period expires.
6. All information required on refund claim Form A-1730 must be attached when the claim is submitted. Incomplete claim forms will be returned. A statement listing the facts or law for disputing the additional tax assessment with all supporting documentation must be attached.

Refund Claim Requirements

1. The additional tax assessment must be for one of the following taxes:
 - Corporation Business Tax
 - Corporation Income Tax
 - Estate Tax
 - Gross Income Tax
 - Petroleum Products Gross Receipts Tax
 - Sales and Use Tax
 - Savings Institution Tax
 - Tobacco Products Wholesale Sales and Use Tax
 - Transfer Inheritance Tax

Important Note

The following assessments are not additional tax assessments and therefore are not eligible for a refund under the provisions of N.J.S.A.54:49-14.b.

- Jeopardy Assessments
- Delinquency Assessments
- Estimated or Arbitrary Assessments
- Penalty and Interest Assessments
- Self-Assessed Tax
- Costs of Collection

Refund claim Form A-1730 and

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Interest 9%

The interest rate assessed on amounts due for the period October 1, 2001 – December 31, 2001 will be 9%.

The assessed interest rate history for the last three years is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%

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instructions can be requested in writing from the Division of Taxation, Audit Claims Processing, PO Box 275, Trenton, New Jersey 08695-0275, or by telephoning 609-292-7578. □

Tax Amnesty in Louisiana, Maryland

Louisiana's Tax Amnesty Program began September 1, 2001, and will continue through October 30, 2001. The program gives qualified taxpayers the opportunity to pay delinquent taxes without having to pay interest or penalty. Amnesty applies to all taxes administered by the Louisiana Department of Revenue, and will be granted for any taxable period prior to July 1, 2001, provided the taxpayer satisfies all the amnesty conditions. Taxpayers must apply for amnesty in writing by submitting a Louisiana Tax Amnesty Application, Form R-20083. For more information, or to obtain Form R-20083, visit the Louisiana Department of Revenue Web site (www.rev.state.la.us), call the Tax Amnesty Hotline (1-800-662-0546 or 225-925-7456) 8:00 a.m. – 4:30 p.m., Monday through Friday. Taxpayers can also write to the Louisiana Department of Revenue, PO Box 144, Baton Rouge, LA 70821-0144.

Maryland's Tax Amnesty Program also began September 1, 2001, but ends October 31, 2001. Taxpayers who have failed to file returns or pay eligible tax liabilities due on or before December 31, 2000, can pay their back taxes and interest, and avoid civil or criminal penalties. The following taxes are eligible for Maryland Tax Amnesty:

- Employer Withholding Tax
- Corporate Income Tax
- Sales and Use Tax
- Admission and Amusement Tax

To obtain a Tax Amnesty application and tax forms online, visit Maryland's Web site at (www.marylandtaxes.com), or call 1-800-MD-TAXES or 410-260-7980. Requests for applications and forms can be sent by e-mail (amnesty@comp.state.md.us) or mailed to: Amnesty – Forms Request, Comptroller of Maryland, PO Box 1829, Annapolis, MD 21404-1829. □

Limousine Dealers and Repairers

The New Jersey Sales and Use Tax Act was recently amended to include an exemption for the sale of a limousine to a person licensed by the New Jersey Division of Motor Vehicles. A licensee must obtain a certificate of compliance from the municipality where the licensee resides. (N.J.S.A.48:16-17).

The sales and use tax exemption also applies to charges for repair services to limousines, including replacement parts. A "limousine" is defined as (1) a motor vehicle registered under the provisions of N.J.S.A. 39:3-19.5, or registered as a limousine under the laws of another state; and (2) used exclusively in the business of carrying passengers for hire to provide pre-arranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis, that is not conducted on a regular route and with a seating capacity of no more than 14 passengers, excluding the driver. See N.J.S.A. 54:32B-8.52.

For purposes of the exemption, a limousine does not include any taxicab, hotel or airport shuttle or bus, or bus used solely to transport children or teachers to and from school. It also does not include any vehicle owned and operated without charge by a business entity for its own purposes. In order to document the applicability of the exemption for the purchase of the limousine, the customer must provide a copy of the license to operate a limousine service and the vehicle must be registered as a limousine at the time of closing the sale transaction. An Exempt Use Certificate (ST-4) must also be provided to the motor vehicle dealer.

In order to document the applicability of the exemption for parts and repair service, the purchaser must complete an Exempt Use Certificate (ST-4), citing the limousine exemption. N.J.S.A. 54:32B-8.52. In addition, the motor vehicle must be registered as a limousine in New Jersey or another state. The service provider should confirm that the vehicle has "Limousine" license plates. □

LOCAL PROPERTY TAX Veteran Status

P.L. 2000, c.127 (approved September 21, 2000) provides that the New Jersey Department of Military and Veterans' Affairs shall determine the status of veterans in certain non-property tax related cases.

This Act provides that the Adjutant General of the Department of Military and Veterans' Affairs shall determine whether any person is to be considered a "veteran" or a "dis-

- Personal Income Tax

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veteran status - from page 4

abled veteran” under N.J.S.A. 11A:5-1 (for civil service preference), N.J.S.A. 18A:66-2.2 (for retirement allowance), N.J.S.A. 43:15A-6.1 (for retirement allowance), and N.J.S.A. 43:16A-11.7a (for military service credit). It also extends adjudication authority to the Adjutant General concerning the statutes listed above.

As introduced, this bill had also directed the Adjutant General of the Department of Military and Veterans’ Affairs to adjudicate appeals concerning whether a person is to be considered a “veteran” for the purpose of receiving a property tax deduction, or as having a “service-connected disability” for the purposes of receiving a property tax exemption. However, this provision was removed before the bill became law. Therefore, the appeal process for property tax deductions and exemptions re-

mains with the municipal assessor, county tax board, and various courts.

P.L. 2001, c.127 (approved June 28, 2001) extends certain veterans’ benefits, including the veterans’ property tax deduction, to certain participants in the Lebanon Crisis of 1958. See *Service Periods for Veterans’ Benefits*, below. □

Service Periods for Veterans’ Benefits

The Lebanon Crisis of 1958 has been added as a qualified war period for property tax benefits. On June 28, 2001, P.L. 2001, c.127 was approved, expanding certain veterans’ benefits to certain participants of the Lebanon Crisis of 1958. The start date for this period is July 1, 1958, and the end date is November 1, 1958. This mission carries with it the 14 days in the actual combat zone requirement as

described in the box below.

Haiti is not a qualified war period for veteran’s property tax deduction and exemption. In a recent *Veterans Guide* published by the New Jersey Department of Military and Veterans Affairs, Haiti was included in a listing of New Jersey War Dates. While recent legislation has been passed designating Haiti as a wartime service period for certain civil service matters, this legislation does not extend to or affect property tax benefits. The current wartime periods for property tax purposes, as specified in New Jersey statutes, are listed in the box below. □

Qualified War Periods for Property Tax Benefits	Start Date	End Date
Operation “Joint Guard” – Bosnia & Herzegovina*	December 20, 1996	Ongoing
Operation “Joint Endeavor” – Bosnia & Herzegovina*	November 20, 1995	December 20, 1996
Operation “Restore Hope” – Somalia*	December 5, 1992	March 31, 1994
Operation “Desert Shield/Desert Storm”*	August 2, 1990	Ongoing
Panama Peacekeeping Mission*	December 20, 1989	January 31, 1990
Grenada Peacekeeping Mission*	October 23, 1983	November 21, 1983
Lebanon Peacekeeping Mission*	September 26, 1982	December 1, 1987
Vietnam Conflict	December 31, 1960	May 7, 1975
Lebanon Crisis of 1958*	July 1, 1958	November 1, 1958
Korean Conflict	June 23, 1950	January 31, 1955
World War II	September 16, 1940	December 31, 1946
World War I	April 6, 1917	November 11, 1918

* Peacekeeping missions require a minimum of 14 days service in the actual combat zone except where service-incurred injury or disability occurs in the combat zone, then actual time served, though less than 14 days, is sufficient for purposes of property tax exemption or deduction. The 14-day requirement for Bosnia and Herzegovina may be met by service in one or both operations for 14 days continuously or in aggregate. For Bosnia and Herzegovina the combat zone also includes the airspace above those nations.

Tax Compliance of Bus Companies

The Division's Special Projects Unit recently joined forces with the New Jersey Motor Vehicle Services Bus Safety Inspection Unit. The results benefited both agencies and the public.

While buses were undergoing safety inspections by Motor Vehicle Services personnel, Taxation investigators were accessing the Division's mainframe computer system via remote hookup to determine if the bus company was registered with the Division of Taxation. Upon completion of the safety checks Motor Vehicle inspectors directed the bus drivers to a safe area to allow Taxation investigators time to complete their research.

For those bus companies that were either unregistered or noncompliant with New Jersey's Corporation Business Tax, calls were made to the bus company headquarters to determine the extent of the corporation's tax liability. Warrants of Execution-Jeopardy Assessment were then served upon those businesses found to have liability with New Jersey. Payment of the assessment was required before the bus was permitted to continue on its route.

As a result of the impact of this joint initiative, busing industry trade associations have asked the Division of Taxation to give members of the associations time to voluntarily comply with New Jersey tax laws.

The Division is always receptive to voluntary disclosure. The Division's voluntary disclosure program allows any taxpayer to initiate contact with the Division

of Taxation in order to register, file delinquent returns, and make full payment of liabilities plus interest. In return, the taxpayer would not be subject to civil or criminal penalties.

In those instances where the taxpayer voluntarily discloses their tax liability, the Division generally agrees to a look-back period of four years (three prior years and the current year) which coincides with the Taxpayers' Bill of Rights. In those instances where trust fund taxes were collected, such as sales tax, the look-back period is not limited to four years but extends to the original date the taxes were collected.

The Special Projects Unit of the Division of Taxation will continue its compliance initiatives that focus on areas of noncompliance in order to "level the playing field" for the law-abiding citizens of New Jersey. □

INHERITANCE TAX New Waiver Form

The Division has developed a new Inheritance Tax Waiver Form (Form 0-1) which will replace the form currently in use. The use of the new form is scheduled to be phased in over the next several months.

Waivers are currently issued using preprinted, custom-sized forms (8½" × 8") printed on plain, white paper. The appearance of the new waiver form will be far different. The new form will be printed using a laser printer and letter-sized (8½" × 11"), bonded, cream-colored paper on which the Great Seal of the State of New Jersey will be watermarked.

The stamped signature of the Director, Division of Taxation will continue to be required to validate a waiver. Only originally-printed and stamped waivers may be accepted by banking institutions, county clerks, and transfer agents. As in the past, copies may not be accepted.

Waivers issued on the old forms will continue to be valid and may be filed with and accepted by banking institutions, county clerks, and transfer agents. Waivers do not have an expiration date.

It is expected that the use of the new inheritance tax waiver form will facilitate the waiver process and minimize the processing time required for the issuance of waivers. This should prove to be beneficial to both the Division and to the taxpayer.

Any questions related to the new waiver form or the validity of a particular waiver may be directed to the Transfer Inheritance Tax Information Section at 609-292-5033. □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the New Jersey Association of Public Accountants (NJAPA), and cooperating colleges. The one-day institutes, which begin in November and end in mid-December, are geared toward the intermediate and advanced tax preparer.

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2001 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Nov. 7	Mays Landing	ATLANTIC COUNTY COLLEGE Room J-206	David Matagiese (609) 522-6012
Nov. 15	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov. 17	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov. 26	Piscataway	RUTGERS UNIVERSITY Busch Campus – Student Center	Stuart Simon (732) 679-6363
Nov. 28	Sewell	GLOUCESTER COUNTY COLLEGE Auditorium – Student Center	Nancy Ritchie (609) 387-2127
Dec. 13	Union	KEAN UNIVERSITY	Alice Weinstein (973) 379-3275
Dec. 14	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355
Dec. 17	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990

2001 Practitioner Institutes Registration

Fee \$75 – Preregistration

Detach and Mail to:

(Make check payable to NJAPA)

**New Jersey Association of Public Accountants
Attn: Niles Breslau
101 N. Washington Place, Suite 1B
Margate, NJ 08402 TEL: (609) 823-9103**

Name of Attendee	Firm or Company Name
Business Phone	Student (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No
Firm or Company Address	
<hr/>	
City	State
Zip Code	
College Location	Amount Remitted

institutes - from page 6

The topics presented by the New Jersey Division of Taxation are:

- Estates and Inheritance Tax
- Credit for Taxes Paid to Other Jurisdictions (income tax update and follow-up from last year)
- Use Tax Update
- Doing Business with New Jersey (including online registration, filing, and payment of taxes for individuals and businesses)
- 2001 Tax Update (including new S corporation tax rates)

The topics presented by Internal Revenue Service are:

- Trusts and the 1041 Return
- Offer and Compromise
- Release of Liens
- Doing Business with the IRS
- 2001 Tax Update

Most sessions begin at 8:30 a.m., conclude at 3:30 p.m., and include lunch. The session at Montclair University begins at 9:00 a.m. and concludes at 4:00 p.m. Registration desks will open 30 minutes before the beginning of the session, and coffee will be served. Six CPE credits will be issued in taxation to those who complete the session.

The preregistration fee for commercial tax preparers is \$75 (\$15 for full time students, ID required). Those who register at the door will be required to pay a \$90 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds, however, you can reschedule for another location. The locations, dates, and registration form appear on page 7.

□

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- Veteran's tax deduction eligibility established, pretax year (\$150 for tax year 2001).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1 –

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1 –

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax

bills for added assessments, whichever is later.

- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 31 –

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2002 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

LOCAL PROPERTY TAX ***Tax Assessor*** ***Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Sixteen persons passed the recent examination for the tax assessor certificate held on March 31, 2001. They are as follows:

Atlantic County: Christopher B. Hackett, Linwood City.

Bergen County: Edward T. Addison, Washington Township; Rouslan Boundine, Westwood Borough.

Cumberland County: Kevin P. Maloney, Fairfield Township.

Essex County: Patricia Sychala, Bloomfield Township.

Gloucester County: John Joseph Caruso, East Greenwich Township; Bonnie Lynn Longo, Monroe Township.

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assessor certificates- from page 8

Hunterdon County: Loretta B. Smith, East Amwell Township.

Mercer County: Derek W. Bridger, Hopewell Borough.

Middlesex County: James V. LeBlon, North Brunswick Township.

Monmouth County: Michael James Dolce, Belmar Borough; Maria G. Gagliano, Rumson Borough.

Ocean County: Thomas Joseph DePetro Jr., Brick Township.

Somerset County: Brett J. Trout, Bedminster Township.

Warren County: Michael G. Snyder, Mansfield Township.

State of Pennsylvania: Paul Charles Miller, Haverford Township, Delaware County.

The next examination is scheduled for March 23, 2002. The deadline to file applications is February 21, 2002. To obtain an application call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. A filing fee of \$10 must accompany the completed application. For further information regarding this exam, please contact Mary Ann Miller at 609- 292-7813. □

Criminal Enforcement

Criminal Enforcement over the past months included:

- In March of 2001 the Office of Criminal Investigation (OCI) arrested Abdelnasa A. Sarameh for transporting 304 cartons of contraband cigarettes. Mr. Sarameh was under Federal indictment in Ohio for money laundering and trafficking in fraudulent food stamps. His New

Jersey arrest was a violation of his pretrial agreement set by the U.S. Court. At the request of the U.S. Attorney, a member of OCI testified in the U.S. District Court in Cleveland, Ohio, in regard to the New Jersey arrest. As a result, the subject was remanded to the custody of the U.S. Marshals to remain in Federal custody pending trial. He then plead guilty to the above charges and is serving a twenty-three (23) month sentence in Federal custody.

- On March 26, 2001, David B. Cohen, a Certified Public Accountant from Cherry Hill, New Jersey, entered a guilty plea to misusing more than \$632,000 of his clients' funds. Mr. Cohen, the President of Payroll Masters, a payroll service company, misused the escrowed monies from clients that were designated as Federal and state payroll taxes, as well as Social Security contributions. He also entered guilty pleas to Failing to Turn Over Taxes Withheld and Failing to File New Jersey Gross Income Tax Returns.
- On April 4, 2001, OCI executed search warrants for a Union Township, New Jersey, residence with an unattached garage, and two South Carolina (SC) registered vehicles. In addition, a search warrant was executed on a grocery store in Irvington, New Jersey. As a result, five subjects were arrested by OCI for their involvement with possession and transportation of counterfeit stamped cigarettes. OCI seized two conversion vans, two handguns, \$37,984 in cash, 1,897.7 cartons of New Jersey counterfeit stamped cigarettes and 1,020

cartons of New York State/City counterfeit stamped cigarettes. These arrests and seizures are the result of a joint investigation by New Jersey's Office of Criminal Investigation and the New York State Department of Taxation and Finance Office of Tax Enforcement, and the New York City Finance Department Office of Tax Enforcement with the assistance of the Union County Prosecutor's Office and the Union Township and Irvington Police Departments.

- Working with United States Customs at Newark International Airport, a new cigarette smuggling scam has been uncovered by the Office of Criminal Investigation. Passengers from Pakistan are traveling with large amounts of English-made unstamped cigarettes such as Benson & Hedges. The bags are left at the Air Cargo Terminal and the passengers immediately make a return trip to Pakistan. The bags are left for unidentified parties to pick up with no United States address. This has occurred on four occasions. OCI seized 190.9 cartons on the first occasion, 245 cartons on the second, 160 cartons on the third, and 284.5 cartons on the fourth.
- On April 7, 2001, a State Grand Jury returned indictments against George S. Scott, of Edison, New Jersey, on numerous charges, including Theft by Deception, Money Laundering, and the Failure to File New Jersey Personal Gross Income Tax Returns for the years 1998 and 1999. The joint investigation between the Division of

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Criminal Justice and the Office of Criminal Investigation established that the subject had failed to report \$2.3 million that was generated by a real estate scam operated by Mr. Scott during the years 1998 and 1999. It was also determined that Mr. Scott failed to remit the combined income tax liability due in the amount of \$147,681.

- On April 20, 2001, Thomas B. Ellis Jr. was sentenced in U.S. District Court for the Eastern District of Virginia to twelve (12) months incarceration in a Federal Correctional Institution, twenty-four (24) months of supervised probation, and restitution of \$173,692.24 as a result of his guilty plea to Federal Mail Fraud charges. Mr. Ellis was the subject of a joint investigation with the Federal Bureau of Investigation relating to the filing of fictitious New Jersey income tax returns and the receipt of fraudulent refunds. The investigation revealed that Mr. Ellis, using fictitious or assumed identities, victimized forty (40) States, the District of Columbia, and the Federal Government. This case emphasizes that with State and Federal cooperation, tax-related crimes with multijurisdictional aspects can be successfully prosecuted.
- On May 16, 2001, the Cumberland County Grand Jury indicted four county residents on charges of Theft by Deception and Falsifying Records. Christine Marie Stubbs, Tonya Darnell Redding, and Paula Denise Jones, all of Bridgeton, together with Annie M. McCoy of Millville, filed multiple fictitious or fraudulent

New Jersey Homestead Rebate Applications and received fraudulent rebates. The individuals, collectively, have been charged with filing 154 New Jersey Homestead Rebate Applications and receiving \$58,785.01 in Homestead Rebates.

- On May 21, 2001, Steven J. Lawlor, a Certified Public Accountant from Demarest, New Jersey, plead guilty to one count of Misapplication of Entrusted Property. Mr. Lawlor prepared fraudulent sales tax returns for a used car business and filed these returns during the Division's Tax Amnesty Program in 1996.
- On May 21, 2001, Vincent Stewart, of Camden, New Jersey, plead guilty to one count of Conspiracy to Commit Theft By Deception based on his preparation of approximately 1,500 fraudulent New Jersey Homestead Rebate Applications for

residents of Camden County. This joint investigation with the New Jersey State Police and the Division of Criminal Justice resulted in Mr. Stewart's arrest in January. The investigation was a major factor in reducing Homestead Rebate fraud in the area.

- The Office of Criminal Investigation has begun a joint enforcement project with the Audit Services Motor Fuels section to cite, in municipal court, sellers and users of special fuel (diesel and kerosene) who have failed to comply with Division requirements to obtain a bond as part of the licensing procedure, and who are subsequently operating without a license or a bond.
- On May 25, 2001, the Office of Criminal Investigation conducted an enforcement sweep in

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Pay NJ Taxes By Credit Card*



Cards



- Personal and Fiduciary Income Tax and Estimated Payments
- Sales and Use Tax
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the City of Newark relative to contraband cigarette activity, as well as related offenses and licensure. A total of forty-four (44) locations were visited. At twelve (12) of those locations, contraband cigarettes were seized. One arrest was made as a subject was making a delivery to a retail store of Delaware stamped cigarettes and untaxed tobacco products.

- On June 7 and 8, 2001, the Division of Taxation sponsored the FTA Tobacco Tax Section Northeast Regional Meeting in Lambertville, New Jersey. The day-and-a-half meeting was well attended with 50 representatives of State, Local, and Federal agencies concerned with tobacco tax issues. The Office of Criminal Investigation received positive feedback on all aspects of the conference.
- On June 18, 2001, a State grand jury returned a true bill on an indictment naming the Office of Criminal Investigation case subject A-AAACE Mechanical Contractors and its corporate officer Jeffrey Biggiani of Parsippany, New Jersey, in the following four (4) counts: Theft by Failure to Make Required Disposition of Property Received (2nd Degree), Misapplication of Entrusted Property (2nd Degree), Failure to Turn Over Sales Taxes (3rd degree), and Misconduct by a Corporate Official (2nd degree). This investigation determined that the subject business had charged and collected, but failed to report and remit sales tax monies in the amount of \$81,344.00 over the period of

January 1, 1993, through September 30, 1996.

- One hundred and forty-one (141) complaints alleging tax evasion were evaluated from April through June 2001 in the Office of Criminal Investigation.
- During the same period, April through June 2001, one hundred and nine (109) charges were filed in court on twenty-seven (27) cases for violation of the Cigarette Tax Act including possession of 4,047.3 cartons of contraband cigarettes, valued at \$141,655.50 and resulting in twenty-seven (27) arrests. □

Tax Briefs

Corporation Business Tax

Bank Subjectivity — The Division responded to questions about the subjectivity to New Jersey Corporation Business Tax of a New York bank, qualified to do business in New Jersey, that wishes to provide mortgages to New Jersey customers. The questions and answers follow.

If it qualifies to do business in New Jersey and does not close a particular loan in New Jersey (e.g. it closes the loan in New York), then: (1) Is nexus created? (2) Is the income from the loan New Jersey source income?

- (1) Nexus is created due to activity in New Jersey related to the loan, such as inspection of property, etc. The loan closing itself is not the only factor considered. However, becoming qualified to do business in New Jersey subjects the bank to filing and remitting at least the minimum tax.

- (2) Yes, income is sourced to New Jersey.

If it qualified and does close a particular loan in New Jersey (but does not maintain any office in New Jersey) then: (1) Is nexus created? (2) Is the income from the loan New Jersey source income?

- (1) There is no nexus for a tax based on income if the corporation does not meet the criteria of N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.6. But it may be required to file a minimum return and pay the minimum tax. See *Pomco Graphics v. Director*, 13 N.J. Tax 578 (1993).

- (2) The income from the loan is New Jersey source income.

If it does not qualify to do business in New Jersey and closes the loan in New York, then: (1) Does the mere fact that the mortgage loan is secured by a property in New Jersey create nexus? (2) If it assigns the loan (i.e., sells it) upon closing, is the income from sale considered New Jersey source income? The income from the assignment (which is a common industry practice) is called "yield spread premium."

- (1) If the foreign corporation is not qualified to do business in New Jersey, and there are no other facts creating nexus, then the foreign bank *may* not be subject to New Jersey corporation income tax (i.e., the second tier tax N.J.S.A. 54:10E-1). See *Chemical Realty Corp. v. Taxation Div. Director*, 5 N.J. Tax 581 (1983) affirmed 6 N.J. Tax 448 (App. Div. 1984) (holding

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New Jersey had no nexus under due process claims to tax interest and other income from loans secured by New Jersey realty (six financing transactions)). However, this is a facts and circumstances determination.

- (2) The income may be sourced to New Jersey if the corporation is considered subject to tax.

The administrative rule relating to subjectivity of foreign banks is found at N.J.A.C. 18:7-1.14.

Gross Income Tax

Stock Option Treatment — The Division has been getting many inquiries from taxpayers receiving stock options and has compiled the following explanation of New Jersey gross income tax treatment:

- **Nonqualified stock options** — Nonqualified stock options are taxable as compensation in the same manner as prescribed for Federal purposes. Taxpayers will not realize a taxable gain until the options are exercised. The gain is then measured by the difference between the fair market value of the options at the time of exercise and the taxpayer's exercise price.
- **Incentive stock options** — The taxability of incentive stock options is also based on the Federal treatment. Thus, incentive stock options may be received and exercised by an employee without recognizing any gain. If the requisite holding period is met, the taxable event is the sale of the stock and gain or loss will be realized to the extent of the difference between the option price and the sale price of the stock. Such gain or

loss is reportable in full under N.J.S.A. 54A:5-1(c). The adjusted basis to be used when determining the gain or loss for New Jersey purposes is the same as the adjusted basis for Federal income tax purposes.

- **Qualified stock options** — For New Jersey gross income tax purposes the taxable event with respect to an employee's qualified stock option plan that meets all the standards required under Federal law is not deemed to occur at the time the option is granted or exercised. Instead, the taxable event occurs at the time of the sale of the stock. Accordingly, where all the requirements of Federal law have been met which would make the sale of the stock a capital gain, similar treatment will be accorded for New Jersey gross income tax purposes and such gain is reportable in full under N.J.S.A. 54A:5-1(c).

Sales and Use Tax

Horse Boarding — The service of boarding horses is deemed to be "storing all tangible personal property not held for sale in the regular course of business," and is therefore taxable pursuant to N.J.S.A. 54:32B-3(b)(3). The horse-boarding business must be registered as a vendor and collect New Jersey sales tax on its charges. It may claim a resale exemption when purchasing feed for the horses that it boards. Separately itemizing the charges for feeding a customer's horse will have no practical effect. If the business charges customers for the feed, the charge is taxable under N.J.S.A. 54:32B-3(a). If the feeding is simply included in the boarding charge, the entire charge is taxable as a service under N.J.S.A. 54:32B-3(b)(3).

If a customer rents a horse stall and does not receive any service or tangible personal property in connection with the rental (e.g., food and hay, grooming service, routine care), then the transaction is treated as a rental of real property, rather than as storage service, and is not subject to sales tax.

Drugs and Cosmetic Treatments

— Creams and ointments sold to physicians which a physician applies to patients' skin as part of their medical treatment may be purchased without paying sales tax.

The taxability of creams and ointments sold to physicians which the physician then gives to patients for their own use as part of the services the physician provides for compensation depends upon whether the cream or ointment is a "medicine or drug." If the product is *generally* recommended and used to cure, treat, or alleviate "pain, ailments, distresses, or disorders of the human body," it is treated as an exempt drug. N.J.S.A. 54:32B-8.1. However, if it is *generally* sold as a sunscreen, skin softener, moisturizer, "wrinkle cream," etc., it is treated as a cosmetic and is taxable whether sold to the physician or directly to the user.

Sales of Parts for Corrective Eyeglasses

— The sale of "corrective eyeglasses" is exempt from New Jersey sales and use tax. The medical exemption provision, N.J.S.A. 54:32B-8.1, explicitly exempts sales of corrective eyeglasses and other artificial devices to correct or alleviate physical incapacity. The provision also explicitly exempts "replacement parts" for these exempt medical items.

Based on this statutory language, the sale of a complete pair of cor-

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rective eyeglasses, including both the lenses and the frames, is of course exempt. In addition, if the frames are sold separately, the exemption will also apply, assuming that the frames will become part of a new pair of corrective eyeglasses, or will replace the old frames on an existing pair of corrective eyeglasses.

Medical Illustrations — The Division responded to an inquiry regarding the taxability of case-specific medical drawings. The illustrator explained that these illustrations are custom-made to the specifications of the lawyer handling the matter and of the physician or other expert witness who might be testifying. They are not reusable for other purposes, and may not be resold.

The sale of these case-specific drawings is deemed to be the sale of tangible personal property pursuant to N.J.S.A. 54:32B-3(a), rather than the sale of a professional “service” as that term is used in N.J.S.A. 54:32B-2(e)(4)(A). Receipts from this sale in New Jersey are, therefore, subject to sales tax. The attorneys are selling a nontaxable professional service, N.J.S.A. 54:32B-2(e)(4)(A); they are not deemed to be “reselling” the medical illustrations to clients. Therefore, the attorneys are considered to be the retail purchasers of the illustrations which they use in rendering their nontaxable services. Therefore, the attorney may not claim a resale exemption when purchasing the illustrations.

Purchases Taken (or Delivered) to and from New Jersey — Sales of taxable goods and services in New Jersey are subject to 6% New Jersey sales tax, unless a specific

statutory exemption applies (e.g., resale, exempt organization, or various specific exempt uses). Sales tax liability will arise if the goods are picked up or delivered in New Jersey and no specific exemption applies. There is no exemption based on the purchaser’s status as a nonresident of the United States, and nonresidents are therefore not entitled to any refunds of New Jersey sales tax upon leaving the country.

If, however, the customer does not take possession of the goods in New Jersey, but instead requests shipment by the seller to his address abroad, the transaction is not treated as a New Jersey sale, and no New Jersey sales tax will be due. The same is true if the goods are shipped directly to a freight forwarder for shipment outside the United States.

A New Jersey resident will be required to pay 6% use tax when he returns to New Jersey with taxable goods that were purchased outside of this State, including in a foreign country. If the returning New Jersey resident has new merchandise delivered to a New Jersey address from abroad, or if he brings back newly-purchased merchandise (i.e., property purchased no more than six months earlier), the use tax will be due on the original purchase price. N.J.S.A. 54:32b-7(b). However, if the returning resident used the property elsewhere for more than six months, the 6% use tax is calculated instead on the current fair market value of the property, rather than on its original purchase price. N.J.S.A. 54:32B-7(b)(1). New Jersey’s credit for sales and use tax paid in another jurisdiction does not extend to taxes paid to foreign nations. N.J.S.A. 54:32B-11.

If a nonresident of New Jersey comes to New Jersey with taxable property that he has already owned and used elsewhere, no tax is due. N.J.S.A. 54:32B-11. However, if he purchased goods abroad and has the new purchase shipped directly to New Jersey, his new home, then the purchase is treated as a New Jersey transaction for sales and use tax purposes. In that case, he will owe 6% New Jersey use tax on the merchandise, as would any New Jersey resident. □

In Our Courts

Administration

Interest Waiver Due to Reliance on Written Advice of Division — *L&L Oil Service, Inc. v. Director, Division of Taxation*, 18 N.J. Tax 514 (Tax Court 2000), aff’d as modified, June 26, 2001; Appellate Division No. A-3386-99T5.

Plaintiff claims that interest on its tax liability should be waived because it reasonably relied upon several Division advisory letters, some of which are to other companies in the industry, and an article in the *New Jersey State Tax News*. Plaintiff sent a subpoena to a Tax Counselor, a Division employee, to testify about advisory letters she and her colleagues sent.

The Appellate Division upheld the Tax Court’s quashing of the subpoena stating that plaintiff improperly sought to use the Division employee’s testimony to advance alleged contrary legal conclusions citing authority that “expert witnesses may not render opinions on issues of law.” Furthermore, the Court found that the testimony would have been of minimal relevance to the waiver

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issue because the inquiry and advisory letters were in the record.

The Appellate Division affirmed the Tax Court's holding that plaintiff could not rely upon advisory letters to other companies because differences in business operations may lead to different tax consequences.

The Tax Court found that none of plaintiff's inquiry letters fully and accurately described the nature of plaintiff's operations and neither the Division's correspondence nor the *New Jersey State Tax News* even suggested that plaintiff's actual maintenance and service operations were exempt from sales tax. The Appellate Division affirmed.

Untimely Complaint – *Corri-gan's, Inc. v. Director, Division of Taxation*, decided June 15, 2001; Tax Court No. 000121-1999.

On January 14, 1999, plaintiff filed a complaint in the Tax Court appealing the Division's October 13, 1998, Final Determination concerning a Sales and Use Tax and Corporation Business Tax assessment. The Division moved to dismiss the complaint due to its untimeliness.

After looking at various statutes concerning the aforementioned assessments, the Court ruled that plaintiff's complaint must be filed

within ninety days after the date of the October 13, 1998, Final Determination. As the date of the Final Determination was October 13, 1998, the ninety-day period for appeal expired on January 11, 1999. Consequently, the Court granted the Division's motion.

Failure to State a Claim – *Mayer & Schweitzer, Inc. v. Director, Division of Taxation*, decided June 25, 2001; Tax Court No. 001800-2000.

Plaintiff, domiciled in New Jersey, is a market maker and licensed broker dealer of securities in twenty-two states.

Initially, plaintiff filed 1992 – 1995 Corporation Business Tax (CBT) returns that allocated sales to New Jersey based upon the trader's location. Thereafter, plaintiff filed amended returns that allocated sales to New Jersey based upon the purchaser's location.

The Division moved under R. 4:6-2(e) to dismiss the complaint due to plaintiff's failure to state a claim upon which relief may be granted. The Court denied the Division's motion opining that plaintiff was entitled to an opportunity to present facts before the Court to show that the securities at issue were integrated with its business carried on in another state.

Corporation Business Tax Amount Includable in the

Numerator of Receipts Fraction – *Stryker Corporation v. Director, Division of Taxation*, 18 N.J. Tax 270 (Tax Court 1999); aff'd, Appellate Division No. A-736-99T5 (July 21, 2000); aff'd, Supreme Court of New Jersey, A-27 September Term 2000 (June 14, 2001).

Osteonics, a New Jersey corporation, is the wholly owned subsidiary of plaintiff Stryker, a Michigan corporation. Both corporations are located in the same building in Allendale, New Jersey. Stryker manufactures orthopedic hip and knee replacements and sells its products to Osteonics, whose function is to market, sell, and process customer orders for Stryker's products. After the order is placed, Stryker packs and ships the products to Osteonics' customers throughout the United States, via common carrier F.O.B. Allendale.

In calculating the numerator of the receipts fraction, Stryker allocated sales to Osteonics by the ship-

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ment's destination state. Accordingly, Stryker included sales of only New Jersey customer destination shipments in the numerator of the receipts fraction. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of

Enforcement Summary Statistics *Second Quarter 2001*

Following is a summary of enforcement actions for the quarter ending June 30, 2001.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	2,230	• Seizures	34
Total Amount	\$33,493,434	• Auctions	10
• Jeopardy Assessments	223	• Referrals to the Attorney General's Office	632

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customer destination.

The Tax Court held that Stryker's sales receipts from its direct shipments to Osteonics' out-of-State customers are includable in the numerator under N.J.S.A. 54:10A-6(B)(6) because the receipts are earned in New Jersey but not includable under N.J.S.A. 54:10A-6(B)(1) because there were no physical shipments to Osteonics. On appeal, the Appellate Division upheld the Tax Court.

The New Jersey Supreme Court reviewed the legislative history of the Corporation Business Tax Act and addressed Stryker's three arguments: (1) the allocation formula violates the Commerce Clause, more specifically the doctrine of internal consistency; (2) these receipts are not other business receipts under N.J.S.A. 54:10A-6(B)(6); and (3) the Legislature's repeal of N.J.S.A. 54:10A-6(B)(3) implies their intent to exclude these receipts from the numerator.

The Court first addressed whether the application of the Division's methodology would cause manufacturers to be taxed twice in violation of the Commerce Clause; once on their transactions with the dealers and then a second time on their product shipments to the destination state. The Court rejected that argument noting that the doctrine of internal consistency requires that a tax is structured so that it would not result in multiple taxation if applied by every state. Because the manufacturer and dealer transaction is treated separately from the dealer and customer transaction, no state would require the manufacturer to allocate the receipts from the whole-

saler's sale of the product. Hence, the Court held that there is no threat of multiple taxation and no Commerce Clause violation.

Addressing the issue of whether Stryker's sales to Osteonics were other business receipts under the general catch-all provision of N.J.S.A. 54:10A-6(B)(6), the Court rejected Stryker's claim that (B)(6) was inapplicable because (B)(1) and (B)(2) dealt specifically with the shipments destination to determine whether or not the receipts are included in the numerator. It was noted that neither N.J.S.A. 54:10A-6 nor the regulations thereunder contemplated drop-shipment scenarios. The Court found that (B)(6) was not limited by (B)(1) or (B)(2) because the legislative history did not indicate that the product's ultimate destination should trump the determination of whether or not the receipt was attributable to the State. Under the substance over form doctrine, Stryker's drop-shipment transactions result in the realization of intrastate sales to Osteonics which fall into the (B)(6) catch-all net that permits the Division to plug loopholes in the Corporation Business Tax Act to effect a fair apportionment of receipts to the State.

Finally, the Court found that the deletion of N.J.S.A. 54:10A-6(B)(3) in 1967 was not done with the intention of restricting inclusion in the receipts fraction to only sales of product shipments to destinations in the State. Essentially, deleted section (B)(3) included sales where the orders were received or accepted in New Jersey and the property was located in New Jersey at the time of the order. Although the sales in the instant case would have been treated as New Jersey sales under

this provision, the section did not encompass or even relate to out-of-State drop-shipment type sales.

Based upon the aforementioned, the Court held that the receipts at issue were included in the numerator of the receipts fraction. In a concurring opinion, Justice Stein addressed the concern of *amici curiae* that upholding the lower courts would unduly burden New Jersey manufacturers. Justice Stein stated that there was no incompatibility between legislation benefiting New Jersey manufacturers and the lower courts' rulings, and that the sales at issue would not have been includable had Osteonics been formed as a division rather than as a subsidiary.

Sales and Use Tax

Complimentary Alcoholic Beverages – *GNOC, Corp. t/a The Grand v. Director, Division of Taxation*, decided April 3, 2001; Supreme Court of New Jersey No. A-35 September Term 2000.

Plaintiff purchased alcoholic beverages from its wholesaler free of sales tax pursuant to a resale certificate. Upon audit, the Division assessed use tax on the purchase price of alcoholic beverages that were provided to patrons on a complimentary basis.

Addressing the issue of whether the purchase of alcoholic beverages constituted a nontaxable sale for resale, the New Jersey Supreme Court affirmed the Appellate Division's and Tax Court's determination that there was no resale of the alcohol because there was either no consideration or legally insufficient consideration for the complimentary drinks. Therefore, the transaction

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between plaintiff and the wholesaler constituted a taxable retail sale and not a nontaxable sale for resale.

The New Jersey Supreme Court next addressed the issue of whether the wholesaler's sales to plaintiff are exempt from sales tax because they are beverage sales for human consumption off the premises where sold under N.J.S.A. 54:32B-8.2. After reviewing the legislative history, the Court found that when the Legislature exempted the sales tax on retail sales of alcoholic beverages by enacting the exemption under N.J.S.A. 54:32B-8.34, it simultaneously deleted the exclusion for alcoholic beverages from the N.J.S.A. 54:32B-8.2 exemption. However, when the Legislature re-enacted legislation that effectively subjected alcoholic beverages to the retail sales tax by repealing the exemption under N.J.S.A. 54:32B-8.34, it inadvertently failed to re-enact the exclusion for alcoholic beverages from the N.J.S.A. 54:32B-8.2 exemption. Regardless, the Court found that alcoholic beverages (on and off premises) were made subject to taxation under the Assembly Appropriations Committee Statement to Assembly Bill No. 3610, P.L. 1990, c.40. Furthermore, the Court found the fact that alcoholic beverages were not included as products entitled to the fifty percent sales and use tax exemption provided to retailers located in urban enterprise zones to be further evidence of its taxability. Based upon the aforementioned, the Court held that the Legislature clearly intended to subject all alcoholic beverages to sales and use tax regardless of whether they were for consumption on or off the premises.

Complimentary Alcoholic and Nonalcoholic Beverages – Adamar

of New Jersey t/a Tropicana Casino and Resort v. Director, Division of Taxation, decided April 3, 2001; Supreme Court of New Jersey No. A-36 September Term 2000.

As to the issue of taxability of complimentary alcoholic beverages, the facts are identical to the companion case of *GNOC v. Director, Division of Taxation*. The Court affirmed the decision of the Appellate Division as supplemented by the Supreme Court's opinion in *GNOC*.

As to the issue of taxability of non-alcoholic beverages provided as complimentary beverages, the Court also affirmed the Appellate Division's decision to remand to the Tax Court the issue of the scope of the closing agreements between the plaintiff and the Division.

Maintaining or Servicing Real or Personal Property – *L&L Oil Service, Inc. v. Director, Division of Taxation*, 18 N.J. Tax 514 (Tax Court 2000), aff'd as modified, June 26, 2001; Appellate Division No. A-3386-99T5.

Plaintiff is in the business of pumping waste oil, sludge, and anti-freeze from storage tanks located on both commercial and residential properties into its trucks. After removal, the waste materials were transported to plaintiff's facility where the waste was either refined or processed for sale.

Customers paid plaintiff to remove the materials and sometimes clean the tank. Plaintiff's invoices usually charged a lump sum price for pumping and removal without charging sales tax. However, a few invoices included a separate transportation fee and a few charged sales tax.

Pursuant to an audit the Division assessed sales tax on sales for the

removal of waste materials where sales tax was not previously charged. The Tax Court upheld the Division's assessment and the Appellate Division affirmed.

The Tax Court held that plaintiff's waste removal services were subject to sales and use tax because they constituted maintenance or servicing, and the removal allowed the tanks to be used again for their intended purpose of collecting waste. The Appellate Division modified the holding stating that plaintiff's services did not maintain property because the word maintain "...connotes more the concept of repair or preventive maintenance as opposed to emptying a tank so that it can be refilled." The Appellate Division held that the removal of waste fluids from a tank that remains in use for the benefit of the user falls under the term servicing.

The Appellate Division upheld the Tax Court's rejection of plaintiff's alternative theories of non-taxability on the basis that the charges to its customers were exempt (1) as acquisition of raw materials because L&L was not the purchaser; (2) as transportation charges after granting an allocation of the lump sum charge between removal and transportation; and (3) because plaintiff did not have a license from the Department of Environmental Protection (DEP) to perform maintenance or repair involving hazardous waste contained in storage tanks, even if such license was required. The Appellate Division noted that nothing in the DEP statutes or regulations indicated that plaintiff's removal business did not constitute providing a service. Furthermore, the DEP statutes and Sales and Use Tax Act could not be read in *pari materia* because they

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don't have the same purpose or object; DEP statutes were enacted to prevent groundwater pollution whereas the Sales and Use Tax Act was enacted to raise revenue.

Admission Charges Imposed by Government Entities – *Meadowlands Basketball Associates v. Director, Division of Taxation*, 19 N.J. Tax 85 (Tax Court 2000), aff'd April 26, 2001; Appellate Division No. A-187-00T1.

Plaintiff is the owner of the Nets of the National Basketball Association. Pursuant to a license agreement, the New Jersey Sports and Exposition Authority (NJSEA) leased the Continental Airlines Arena to plaintiff for the Nets to play their home basketball games. The license agreement included the requirement that on behalf of the NJSEA plaintiff charge, collect, and transfer to the NJSEA a 10% "admission impost" on the price of admission of each ticket sold to home games. The impost fee was included and separately stated on the face of each ticket. Plaintiff did not charge or collect sales tax on the impost charge; however, it did collect and remit sales tax on the price of admission. Pursuant to an audit, the Division assessed plaintiff sales tax on the 10% admission impost fee.

The Tax Court held that the impost fees to the Nets games were subject to sales tax as admission charges to athletic events under N.J.S.A. 54:32B-9(f)(2) because the proceeds did not inure exclusively to the benefit of elementary or secondary schools. The Court found a New York Tax Appeal Tribunal case with similar facts to be unpersuasive. Plaintiff appealed on the basis that the impost fee is

exempt under N.J.S.A. 54:32B-9(a)(1), which generally exempts from sales tax a governmental agency's amusement charges and sales of goods and services.

The Appellate Division affirmed. The Court ruled that the impost fee was an admission charge, not an amusement charge or a sale of goods or services, and therefore did not qualify for the subsection 9(a)(1) exemption. Regardless, even if the impost fee was found to be exempt under 9(a)(1), the Court ruled that the impost fee would be subject to the subsection 9(f)(2) provisions concerning admission charges to athletic events. To be exempt under this subsection, the proceeds of admission charges to the Nets basketball games must inure exclusively to the benefit of elementary or secondary schools. Per statute, these proceeds were used only for the purposes of NJSEA. Therefore, the impost fee was held to be subject to sales tax. Finally, the Court found the unpublished New York Tax Appeal Tribunal holding that admission charges qualify as services to be unpersuasive because the decision did not consider New York's counterpart to subsection 9(f). □

In Our Legislature

Corporation Business Tax

Payment Obligations of Certain Partnerships and Limited Liability Companies — P.L. 2001, c.136 (signed into law on June 29, 2001) provides a mechanism that assures the fair taxation of the owners of limited liability companies and limited partnerships. A limited liability company, foreign limited liability company, limited partnership, or foreign limited partnership that is classified as a partnership for

Federal tax purposes may obtain the consent of each of its owners that are not individuals, trusts, or estates subject to the New Jersey Gross Income Tax Act, N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business's New Jersey income.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current year's taxes. These payments will be based, where appropriate, on the prior year's income of the company or partnership.

Chapter 136 is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45% of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

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Corporate Mergers —

P.L. 2001, c.193 (signed into law on July 31, 2001) permits a corporation organized in New Jersey to change from an operating corporation to a holding corporation with one or more wholly owned subsidiaries by use of a merger without shareholder approval or a transfer of assets. The bill allows a corporation (parent) to form a direct subsidiary and an indirect subsidiary (a subsidiary owned by the direct subsidiary), and to merge the resulting parent corporation into the direct subsidiary. The direct subsidiary would then become the new parent corporation, and the original parent corporation would become a subsidiary. This merger method does not require shareholder approval if the new parent corporation is structurally identical to, with the same shareholder rights and directors as, the old parent corporation.

Also, the act provides that the Secretary of State, upon filing of the certificate of merger, forward a copy of the certificate to the Director of the Division of Taxation. Chapter 193 took effect immediately.

Gross Income Tax

Commuter Transportation Benefits

— P.L. 2001, c.162 (signed into law on July 17, 2001) allows State

and local government employers to offer qualified transportation fringe benefits to their own employees as an employee set-aside program. As a result, this act provides the full advantage under the Federal Internal Revenue Code of the tax incentives for qualified transportation fringe benefits recently extended under Federal tax law in the Federal Transportation Equity Act for the 21st Century (TEA-21), Title IX of Pub. L.105-178. The legislation allows State and local employees to choose to have the benefit deducted from their salary, receive any combination of the transportation benefits, or continue to receive the amount as salary, and allows the State and local governments and employees to take advantage of the Federal tax benefits.

For New Jersey gross income tax purposes, the exclusion provided for employer provided commuter transportation benefits shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee.

The act also amends the Travel Demand Management Program in the Department of Transportation (DOT) to make the DOT program similar to (but not the same as) the Federal program and makes some technical updates to that program. The act makes the DOT trip

reduction tax benefits (which, unlike the Federal benefits, allow an employee to exclude the benefits from income only when the benefits are offered in addition to, rather than instead of, cash salary) comply with the same annual levels as the Federal benefits, effective for 2002. So as not to take away any current State benefits, but also allow the State and Federal benefits at the same levels, the State benefits are increased to \$1,200 annually beginning in 2002, when the Federal transit benefits are also scheduled to increase to \$1,200 annually.

Additionally, Chapter 162 clarifies an important part of the New Jersey gross income tax effects of the 1998 TEA-21 tax changes, which allow the “flip-side” of salary reductions: employers can save money by paying their employees to not take employer-provided parking. Usually the election of this option by one employee would have the tax effect of making every other employee’s parking taxable, but the same provision that allows the salary reductions also permits the non-taxation of employees who don’t cash out of their parking. Chapter 162 took effect immediately.

NJ-AIDS Services Fund — P.L. 2001, c.217 (signed into law on August 24, 2001) allows taxpayers to make a voluntary contribution to the “NJ-AIDS Services Fund.” This act took effect immediately and applies to taxable years beginning on or after January 1, 2002.

Inheritance Tax

Settlement of Intestate Estates — P.L. 2001, c.109 (signed into law on June 21, 2001) modifies the probate code with regard to set-

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in our legislature - from page 18

tlement of intestate estates when heirs are missing or unknown. In such cases, the share of property to which the missing or unknown heirs are entitled would be held for a period of two years. After that period, if the heirs remain missing, the property would be divided among the known heirs. In cases where there are no known heirs, the bill provides that the property would be presumed abandoned and handled in accordance with the "Uniformed Unclaimed Property Act." Chapter 109 took effect immediately.

Insurance Premiums Tax

Nonprofit Health Service Corporations May Convert to For-profit Health Insurers — P.L. 2001, c.131 (signed into law on June 29, 2001) provides that a nonprofit health service corporation may convert to a for-profit (domestic stock) health insurer. After conversion, all insurance premiums collected by the domestic stock health insurer will be subject to the insurance premiums tax. The legislation also establishes a Health Service Corporation Conversion Temporary Advisory Commission consisting of 15 members within, but not of, the Department of the Treasury. This act took effect immediately.

Local Property Tax

Reassessments Required in Certain Circumstances — P.L. 2001, c.101 (signed into law on June 14, 2001) provides that when an assessor has reason to believe that property comprising all or part of a taxing district has been assessed at a value lower or higher than is consistent with the purpose of securing uniform taxable valuation of property, or that the assessment of property is not in substantial compliance with the law and that the interests of the public would be promoted by reassessment, then the assessor must make a reassessment of the property in the taxing district that is not in substantial compliance. Chapter 101 took effect immediately.

Distribution of Miscellaneous Revenue — P.L. 2001, c.140 (signed into law on July 2, 2001) permits municipalities to distribute certain municipal revenues to real property taxpayers as a credit against property taxes owed for that local budget year. The credit must be more than one tenth of a penny. Landlords of multifamily dwellings are required to "pass through" to their tenants any savings in property taxes realized. Chapter 140 took effect immediately.

Homestead Rebate — P.L. 2001, c.159 (signed into law on July 16, 2001) increases the maximum benefit under the Homestead Rebate Program for homeowners and tenants who are age 65 or older or disabled from \$500 to \$750 beginning with Homestead Rebates paid in calendar year 2001. For Homestead Rebates paid beginning in 2002, the maximum amount will be indexed annually to the cost of living.

For purposes of this legislation, "cost-of-living adjustment" is

defined as the factor calculated by dividing the consumer price index for all urban consumers for the nation, as prepared by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of the tax year, by that index as of the close of the 12-month period ending on August 31 of the calendar year preceding the tax year in which the recomputation of the maximum Homestead Rebate is made.

This legislation increased the tenant Homestead Rebate paid in 2001 and thereafter to tenants who are not 65 or disabled to \$100, eliminating the three-year phase-in which, under prior legislation, was scheduled to end in 2003. The legislation also increased the minimum rebate for tenants who are 65 or disabled to \$100 this year.

Miscellaneous

Veterans' Benefits — P.L. 2001, c.127 (signed into law on June 28, 2001) expands certain veterans' benefits to those who served in Lebanon, or on board any ship actively engaged in patrolling the territorial waters of that nation, on or after July 1, 1958, for a period of at least 14 days commencing on or before November 1, 1958. Any person otherwise qualifying for veteran status under the bill who received an actual service-incurred injury or disability is to be classed as a veteran whether or not that person completed the 14 days' service requirement. This legislation took effect immediately.

Business Registration — P.L. 2001, c.134 (signed into law June 29, 2001) requires providers of goods and services to the State and its agencies, to casinos, and to subcontractors under those State and casino contracts to register

in our legislature - from page 19

their businesses with the Division of Revenue. This act took effect on September 1, 2001.

Delineated Municipal Areas — P.L. 2001, c.155 (signed into law on July 13, 2001) revises the Local Redevelopment and Housing Law to provide that a delineated area in a municipality may be determined to be in need of rehabilitation if more than half of the housing stock in that area is at least 50 years old, or a majority of the water and sewer infrastructure in that area is at least 50 years old and is in need of repair or substantial maintenance. This legislation also expands the definition of a delineated area to include current exemptions and abatements allow-

able. Chapter 155 took effect immediately.

Casino Reinvestment Development Authority Urban Revitalization Act — P.L. 2001, c.221 (signed into law August 24, 2001) establishes the Casino Reinvestment Development Authority urban revitalization incentive program to be administered by the Casino Reinvestment Development Authority (CRDA). The program aims to facilitate the next phase of Atlantic City's development into a destination resort and to assist urban areas throughout the State with development and revitalization projects.

To be eligible for project grants, a casino licensee is required to submit a project proposal to, and receive approval from, the CRDA

and the Department of Community Affairs, to invest a minimum of \$20 million of its investment alternative tax obligations to develop an entertainment-retail project or community and housing development project, in \$10 million increments for one or more such projects, in an urban area outside of Atlantic City. A casino licensee approved for participation in the incentive program is further required to extend its investment alternative tax obligations with the CRDA to 35 years from the current 30-year requirement. The bill requires the licensee's investment alternative tax obligations during the additional five years to be divided in such a way that Atlantic City receives 25%, South Jersey receives 25%, and North Jersey receives 50%. The bill takes effect on October 23, 2001.

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tax calendar

october

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October 1

GCC-1 Motor Fuels Tax—Carrier's monthly report

October 10

CWIP-1,2 Cigarette Tax—Wholesaler's informational report

CDIS-1,2 Cigarette Tax—Distributor's informational and sales report

CR-1 & CNR-1 Cigarette Tax—Wholesaler's monthly report of non-New Jersey stamped cigarettes

October 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending June 30

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

October 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors and manufacturers

MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use

MFT-14 Motor Fuels Tax—Monthly export report

October 22 - continued

MFT-60 Motor Fuels Tax—Monthly storage facility operator report

SCC-5 Spill Compensation and Control Tax—Monthly return

SCC-6 Spill Compensation and Control Tax—Public storage facility operator return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

October 30

NJ-927 & NJ-927-W Gross Income Tax—Employer's quarterly report

GCC-1 Motor Fuels Tax—Carrier's monthly report

continued

november

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November 13

- CWIP-1,2 Cigarette Tax—** Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—** Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—** Wholesaler's monthly report of non-New Jersey stamped cigarettes

November 15

- CBT-100 Corporation Business Tax—** Annual return for accounting period ending July 31
- CBT-150 Corporation Business Tax—** Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—** Employer's monthly remittance

November 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—** Monthly export report

November 20 - continued

- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—** Monthly return
- ST-51 Sales and Use Tax—** Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
- ST-350 Cape May County Tourism Sales Tax—** Monthly return
- ST-451 Sales and Use Tax—** Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

November 26

- PPT-41 Petroleum Products Gross Receipts Tax—** Monthly return

November 30

- GCC-1 Motor Fuels Tax—** Carrier's monthly report

continued

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30	31 ☐					

December 10

- CWIP-1,2 Cigarette Tax—**
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**
Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**
Wholesaler's monthly report of non-New Jersey stamped cigarettes

December 17

- CBT-100 Corporation Business Tax—**Annual return for accounting period ending August 31
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—**Employer's monthly remittance

December 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller-user of special fuels for sales and/or use

December 20 - continued

- MFT-14 Motor Fuels Tax—** Monthly export report
- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
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- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
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- ST-451 Sales and Use Tax—** Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

December 26

- PPT-41 Petroleum Products Gross Receipts Tax—** Monthly return

December 31

- GCC-1 Motor Fuels Tax—** Carrier's monthly report

continued

from the director's desk

The Division of Taxation understands that the cataclysmic events of September 11, 2001 have created special problems not previously contemplated and wants to assure the victims of the tragedies in New York and at the Pentagon that it stands ready to assist them in any way it can to provide administrative remedies. In many private ways our employees are doing their part in aiding the victims and now they will work publicly to minimize the distraction of tax issues.

For those businesses and individuals directly affected by the attack, the Division of Taxation will extend the due date of returns and payments due between September 11 and November 30, including returns on extension, until December 15, 2001. Examples of those directly affected include victims whose place of employment was damaged or destroyed during these attacks, relief workers, taxpayers with records destroyed in the attacks, businesses destroyed or damaged, businesses whose accountants or payroll services were directly affected, and victims on the airlines.

For those individuals that were indirectly affected due to being stranded away from home or unable to access their funds, the Division will extend the due date for filing and payment of returns due during September to 10 business days after their due date.

Taxpayers who are entitled to the relief described above should write "September 11, 2001 – Terrorist Attack" in red ink at the top of the return they file. If they receive a notice from the Division of Taxation they should contact the Division as instructed on the notice and explain why they are entitled to relief.

In addition, the Division of Taxation will suspend compliance activities such as levies and seizures for directly affected taxpayers for 6 months.

This unprecedented tragedy may have effects not anticipated or considered in the above policy. The Division will closely monitor the situation and issue additional direction if warranted. For additional guidance, please continue to monitor the Division's Web site or write to State of New Jersey, Division of Taxation, Attn: Emergency Management Project, PO Box 269, Trenton, NJ 08695-0269.

The employees of the New Jersey Division of Taxation offer their prayers and condolences to all those affected by this attack.

A handwritten signature in black ink that reads "Robert K. Thompson". The signature is written in a cursive style with a large, prominent initial "R".

New Jersey State Tax News

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Jersey Shore Office Moves to Asbury Park

The Division of Taxation's Jersey Shore Regional Office has moved to Asbury Park from Sea Girt. The new office is located at:

630 Bangs Avenue
Asbury Park, NJ 07712

Payment of NJ SAVER Rebates Accelerated

Legislation signed by Acting Governor DiFrancesco on June 18, 2001 (P.L. 2001, c.106) means larger NJ SAVER Rebate checks than originally expected for New Jersey homeowners in September.

The legislation accelerates the phase-in of the NJ SAVER Rebate by increasing the amount to be paid this year to an average of \$500, rather than an average of \$360. NJ SAVER Rebates were supposed to reach the full benefit amount of an average \$600 in 2003, but instead will reach that amount next year, one year ahead of schedule.

The amount of the NJ SAVER Rebate varies from town to town because it is based on 1997 effective school tax rates which are different for each municipality. The 2000 NJ SAVER Rebate checks will be mailed on or before September 15.

New Jersey residents who owned, occupied, and paid property taxes on a home in New Jersey that was their principal residence on October 1, 2000, are eligible to receive the NJ SAVER Rebate for that year.

Homeowners who qualified and applied for both the Homestead Rebate and the NJ SAVER Rebate will receive whichever rebate provides a greater benefit.

Although the amount of the NJ SAVER Rebate will increase to an average of \$500 for tax year 2000, many senior citizens and disabled homeowners will still receive a larger Homestead Rebate and therefore will not receive the NJ SAVER Rebate.

For further information about the NJ SAVER Rebate Program call the NJ SAVER Rebate Hotline at 609-826-4282. Division representatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

Important Phone Numbers

Customer Service Ctr...	609-292-6400
Automated Tax Info 1-800-323-4400	
.....	609-826-4400
NJ SAVER Hotline.....	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-257

Inheritance & Estate Tax Returns

The Inheritance Tax Section of the Individual Tax Audit Branch is frequently called upon to advise estate representatives as to their responsibilities related to the filing of inheritance and estate tax returns and the payment of the tax.

An inheritance tax return must be filed within eight months following a decedent's death unless the Director grants an extension of time to file. The return must generally be prepared, executed, and filed by the executor or administrator of an estate. In cases where an executor or administrator is not appointed, any beneficiary entitled to share in the estate may file the return. A surviving joint tenant is permitted to file the return in cases where a decedent dies intestate and the entire estate passes to the surviving joint tenant or tenants.

The inheritance tax is due on a decedent's date of death. It may be paid at any time within the following eight-month period without penalty. An executor or administrator is personally liable for payment of any and all inheritance taxes to the extent of the estate funds in his possession. Beneficiaries and surviving joint tenants are likewise personally liable for payment of the tax.

The personal representative of an estate must first deduct the inheritance tax from estate assets before making distribution to a beneficiary. In the case of real estate, the personal representative must collect the tax from the beneficiary before transferring it to him. In situations where tax is payable on assets which have not come into the possession or control of the personal representative, the tax

should be paid to him by the beneficiary who received the property. If the beneficiary does not pay the tax, the personal representative must pay the tax from estate funds in his possession.

An estate tax return must be filed within nine months following a decedent's death unless the Director grants an extension of time to file. Generally the executor or administrator of an estate must file the tax return. In cases where an executor or administrator is not appointed, an heir at law may file the return.

The estate tax is due on a decedent's date of death. It may be paid at any time within the following nine-month period without penalty. The tax is payable out of the same funds from which the Federal estate tax is payable. Executors, administrators, trustees, grantees, donees, and vendees are personally liable for the payment of the tax.

Arbitrary tax assessments may be issued in situations where required inheritance tax and estate tax returns are not filed. An action at law may be brought in the name of the State against any person liable for the payment of inheritance taxes and estate taxes. Certificates of Debt may be filed in Superior Court against the executor, administrator, or the beneficiaries of an estate.

Questions related to the filing of inheritance and estate tax returns and payment of the taxes should be directed to the Individual Tax Audit Branch - Inheritance and Estate Tax, PO Box 249, Trenton New Jersey 08695-0249. The Inheritance and Estate Tax Section may be reached at 609-292-5033, 609-292-5035, or 609-292-7147.

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New Jersey State Tax **news**

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Trenton, NJ 08695-0281**

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taxation@tax.state.nj.us

The *State Tax News* is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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<i>Criminal Investigation</i>	Rosemary Tuthill
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□

Koch Benefits Extended

In the summer 1999 issue of the *New Jersey State Tax News*, page 5, an article titled “Koch Decision” discussed the New Jersey Supreme Court’s ruling in *Sidney and Dorothy Koch v. Director*. The Court overturned a long-standing judicial doctrine requiring taxpayers to use their Federal adjusted basis when determining gain or loss on the disposition of property.

In its finding the Supreme Court stated that the intent of the Gross Income Tax Act was to tax “economic gain” not a return of capital. The Court did not define “economic gain” but did focus on a taxpayer’s method of accounting, basis, what item(s) impact basis, and how they may be treated/accounted for differently for Federal and State tax purposes,

thus creating inequities.

Although the *Koch* case dealt solely with the disposition of a partnership interest, the Division believes that the principle of the *Koch* Court’s opinion can be extended to the sale of a sole proprietorship or rental property not held by a business entity. The Division also takes the position that the *Koch* case does not apply to transactions in the day-to-day operations of the business.

With this in mind the Division established a policy that keeps a taxpayer’s method of accounting the same for both Federal and State purposes, thus requiring taxpayers to annually use the same depreciation expense allowed or allowable for Federal purposes in determining net income for New Jersey income tax purposes.

Next the Division looked at how to determine whether a taxpayer was able to utilize the depreciation claimed, i.e., basis adjustment.

Since depreciation expense directly impacts basis when calculating the gain on the disposition of a sole proprietorship or rental property not held by a business entity, the Division now permits an adjustment to basis for the depreciation expense not utilized for New Jersey tax purposes. The unutilized depreciation expense represents the amount by which the depreciation allowed or allowable exceeds gross receipts in any given tax year. In adopting this approach the Division is in parity with the principle of the *Koch* decision.

Therefore, a taxpayer that is a sole proprietor or that owns rental property not held by a business entity is entitled to a *Koch* type basis adjustment, but only in those instances where gross income before any expenses or deductions (gross receipts) does not exceed the depreciation expense allowed or allowable in the same year. □

Example: A taxpayer purchases a rental property for \$200,000 and is claiming a \$10,000 depreciation expense annually. The taxpayer sells the property at the end of Year Four for \$190,000. The taxpayer has the following entries:

Gross Receipts	Depreciation	Depreciation Not Utilized for NJ Tax Purposes	
Year One	\$ 8,000	\$10,000	\$2,000
Year Two	10,000	10,000	0
Year Three	12,000	10,000	0
Year Four	9,000	10,000	1,000
		Koch Adjustment Allowed	\$3,000
Cost	\$200,000		
Depreciation Expense	(40,000)		
Federal Adjusted Basis	\$160,000		
Koch Type Adjustment	3,000		
NJ Adjusted Basis	\$163,000		
Sale Price	\$190,000	Sale Price	\$190,000
Federal Adjusted Basis	160,000	NJ Adjusted Basis	163,000
Federal Gain	\$ 30,000	NJ Gain	\$ 27,000

LOCAL PROPERTY TAX

Continuing Education for Assessors

The Tax Assessor Recertification Bill (c.278, P.L. 1999), which was signed into law on December 8, 1999, and became effective on July 1, 2000, has changed licensing requirements for all holders of New Jersey Tax Assessor Certificates. As a result, Tax Assessor Certificate Holders must be recertified through a Continuing Education Program if they want to keep their licenses in force. The intent of recertification is to help assessors keep abreast of changing property tax statutes and regulatory requirements that can impact local

property tax revenues.

Chapter 278, P.L. 1999, provides that all tax assessor certificates issued prior to July 2000 will expire in five years. Therefore, for a tax assessor to remain certified, he or she must complete continuing education requirements of fifty (50) continuing education credit hours over a five-year period. One continuing education credit hour means 50 minutes of classroom or lecture time.

Beyond the initial five-year renewal period, renewal will be required every three years, provided that continuing education requirements of thirty (30) credit hours are obtained over three years.

Assessors who fail to meet continuing education requirements will be removed from office.

Any questions concerning assessor recertification should be directed to Richard Stier of the Property

Administration Branch at 609-292-7974. A list of approved Continuing Education Recertification Programs can be found on the Internet at:

www.state.nj.us/treasury/taxation/lpt/ceeorg.shtml □

LOCAL PROPERTY TAX ***Tax Maps***

The Director of the Division of Taxation has oversight of the preparation, maintenance, and revision of tax maps in the State. The New Jersey Administrative Code pertaining to tax maps is administered through Property Administration's Local Assessment Compliance Unit (formerly the Engineering Section). The purpose of this article is to stress to tax assessors and land surveyors the importance of proper tax map maintenance.

A tax map is an essential tool of the assessor. A tax map gives an entire picture of all real property within a taxing district. It shows the location, size, shape, and area of each parcel for determining value. An assessor working without an up-to-date tax map seldom makes an accurate inventory of all taxable real property within his/her district. In many instances, entire parcels are omitted or listed on tax rolls with incorrect dimensions. Ideally, tax assessors should furnish deeds to their New Jersey licensed land surveyors whenever land transfers occur that require changes to property lines. In addition to deeds, maps of major and minor subdivisions should be provided to the surveyor for plotting. This can be accomplished on a weekly, monthly, or yearly basis so the assessor has a current workable map. Each tax map should be brought up to date prior

to the assessing date of October 1 in each year.

Maintenance should include periodic review of all sheets for line weight (heaviness) and lettering integrity to ensure legibility and symbol (type of lines) compliance. When an assessor is notified of changes in railroad use or sale of railroad property by Local Assessment Compliance, those changes must also be reflected on the tax map. Some municipalities have not assessed former railroad use properties for over 30 years. Today, many maps are in electronic format, which makes this task easier. However, sheets that are maintained manually should be reviewed as well for compliance. This will reduce inspection and approval time for revaluation and certification in the future.

The cost of maintaining a tax map is nominal in comparison to the benefits a municipality receives through identifying new ratables. After spending thousands of dollars to make a tax map, it would be wasteful and costly if updates were not made.

Any tax assessor or land surveyor requesting assistance in regard to tax map matters can contact Bill Black at 609-292-9459. □

Interest 10.50%

The interest rate assessed on amounts due for the period July 1 – December 31, 2001* will be 10.50%.

The assessed interest rate history for the last three years is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%

*This interest rate will remain in effect until December 31, 2001, unless, prior to October 1, 2001, the Director determines that the prime rate in effect on May 1, 2001, (7.50%) has varied by more than one percentage point.

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1–

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail form to claim a continuance under the Farmland Assessment Act for the tax year 2002 together with a notice that the completed form must be filed with the assessor by August 1, 2001, to each taxpayer whose land was assessed for tax year 2001 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 2001 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

Summer 2001

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger systems companies, with respect to tax year 2002 and thereafter, to be filed with the assessor for the taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2002, for machinery, apparatus, or equipment directly used to manufacture petroleum products.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation.

September 15–

- Assessor to file statement of taxable value of State-owned real property with Taxation Director. □

Criminal Enforcement

Criminal Enforcement over the past months included:

- On December 22, 2000, the Office of Criminal Investigation participated in the execution of search warrants with the Salem County Narcotics Task Force, which resulted in the arrest of the target, Anthony Saxton. The warrants authorized the search of the subject's personal residence, several rental properties, and his clothing business, "Just For Kids." This tax case is pending action before the Salem County Grand Jury.
- On January 19, 2001, Vincent Stewart of Camden, New Jersey, was arrested by members of the New Jersey State Police on charges of Conspiracy to Commit Theft based on his preparation of fraudulent New Jersey Homestead Rebate applications for residents of Camden County. This joint investigation with the New Jersey State Police, the Division of Criminal Justice, the Camden County Prosecutor's Office, and the Office of Criminal Investigation (OCI) was initiated by OCI after Mr. Stewart was identified as the preparer of approximately 1,500 New Jersey Homestead Rebate applications that were filed indicating that the applicant was either blind, disabled, or over 65 years old. Mr. Stewart is currently incarcerated in lieu of \$7,500 bail.
- On January 25, 2001, Samuel H. Brangan entered a guilty plea to Failure to Turn Over Taxes Collected (3rd Degree), in the amount of \$86,576.25 for sales

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tax collected and not remitted. Mr. Brangan of Pineville, Pennsylvania, was the President of the now defunct industrial cleaning corporation KEI Industrial Services, Inc., of Levittown, Pennsylvania. As a condition of his plea, he will make full restitution of the \$86,576.25 within a three (3) year period.

- The Office of Criminal Investigation has just successfully completed a joint multi-state and Federal criminal tax investigation involving the fictitious filing of 139 personal income tax returns with 38 states, the District of Columbia, and the Federal Government. Refunds were claimed totaling \$173,692. The perpetrator filed fictitious refund claims averaging \$1,200 in each of the affected jurisdictions thinking the claim for refund would not be large enough to cause suspicion in any single agency.

New Jersey was one of the lead states in this high-profile investigation. Our case was initiated when information was received that two fictitious New Jersey gross income tax returns had been filed resulting in fraudulent refunds totaling \$2,064. Our investigation revealed that a credit union in Virginia, the depository account for the refunds, was also the depository account for \$48,873 in refunds from 28 different states. A joint investigation with the Federal Bureau of Investigation was entered into which resulted in the identification of additional depository accounts totaling \$173,692 of fraudulent refunds from 38 different states, the

District of Columbia, and the Federal Government.

The target, Thomas B. Ellis Jr., pled guilty in February 2001 in the U. S. District Court for the Eastern District of Virginia to violating Title 18, United States Code, Section 1341, Mail Fraud. He surrendered to U. S. Marshals and was incarcerated in a Federal facility in Alexandria, Virginia, pending his sentencing scheduled for the spring of 2001.

- On February 5, 2001, subject James D'Alessandro entered a guilty plea to a two (2) count accusation of Failure to Pay Over Taxes (3rd Degree) and Failure to Turn Over Taxes Collected (3rd Degree). Mr. D'Alessandro of Berlin, New Jersey, is the owner of a specialty automobile repair business in Atco, New Jersey, that failed to remit sales tax collected from customers during the time period targeted. In addition, Mr. D'Alessandro also failed to pay his New Jersey gross income tax liability for the same years. On March 9, 2001, Mr. D'Alessandro was sentenced in Camden County to a five-year term of probation and ordered to make full restitution of all taxes, penalties, and interest owed for his New Jersey gross income tax liability, and the New Jersey sales tax owed by his business, Quarter Mile Performance, in Atco. This case was a joint investigation between the Camden County Prosecutor's Office and the Office of Criminal Investigation.
- On February 6, 2001, Anish Shah of Freehold, New Jersey, a self-employed tax preparer and accountant, was arrested by the

Bayshore Narcotics Task Force in Hazlet, New Jersey, for Possession of a Controlled Dangerous Substance with Intent to Distribute (both powder and rock cocaine) which he delivered with completed tax returns to his clients. Also found in his possession were eight (8) cartons of unstamped domestic cigarettes. OCI determined that the cigarettes were purchased from a New York State Indian Reservation and shipped by UPS to the subject's New Jersey home. OCI has filed additional charges of Possession of Untaxed Goods, Transportation of Contraband Cigarettes, No Consumer License and No Invoices.

- On February 7, 2001, a joint investigation with U.S. Customs Air Cargo Team at Newark International Airport resulted in the seizure of 152.1 cartons of unstamped foreign cigarettes. Kaleem Muhammed of Highland Park, New Jersey, attempted to import the contraband cigarettes into New Jersey. Mr. Muhammed has been charged with Possession of Untaxed Goods, No Consumer License, and No Invoices.
- On February 9, 2001, Harinder Singh of Saylorsburg, Pennsylvania, and Kmal Singh of Tannersville, Pennsylvania, corporate officers of Natasha, Inc., were each sentenced to five (5) years probation and ordered to make restitution of \$126,008.62 in New Jersey State motor fuels tax, plus civil penalties and interest of \$126,786.88, and a fine of \$25,000 over the period of the probation. As a condition of the plea, a check representing

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the total motor fuels tax due in the amount of \$126,008.62 was received by OCI on February 20, 2001.

- On March 8, 2001, Kuo I. Chang of Toronto, Canada, was arrested by Delaware River and Bay Authority Police in Pennsville, New Jersey, for transporting 490.8 cartons of Virginia stamped cigarettes. Mr. Chang was wanted on an outstanding warrant from Toronto. OCI coordinated with the different agencies including U.S. Immigration and Naturalization Service (USINS), FBI, and the Salem County Prosecutor's Office. The subject was remanded to the Salem County Jail. OCI filed additional charges including an indictable possession of contraband cigarette charge. Subject has been detained on the basis of the USINS investigation along with OCI charges.
- On March 12, 2001, in Mt. Olive Municipal Court, retailer Town & Country Gulf, Inc. pled guilty to a charge of selling diesel fuel without a license and was fined.
- On March 18, 2001, OCI, along with members of the New Jersey State Police Cargo Theft & Robbery Unit, arrested Abdelnasa A. Sarameh of North Bergen, New Jersey. Based upon information from the New Jersey State Police, a joint surveillance was set up at a storage facility in Secaucus, New Jersey. Subsequently, the subject arrived and was arrested as he unloaded his rental vehicle of 233 cartons of Virginia stamped cigarettes into the open storage unit. Seventy-one (71) cartons

of cigarettes were found in his storage facility, which had affixed NY State and/or City indicia or no indicia. Also found was documentary evidence that indicates the subject has been involved in a long-term smuggling operation. He later admitted to smuggling for over five (5) years. The subject was convicted in Maryland in 1994 for transportation and possession of contraband cigarettes. He is currently under Federal indictment in the Northern District of Ohio for money laundering and trafficking in fraudulent food stamps. OCI has forwarded a copy of the arrest information for the U.S. Attorney to issue a warrant on the subject, as he violated pretrial travel restrictions. Mr. Sarameh's bail was set at \$75,000 and he was remanded to the Hudson County Jail in lieu of bail. The subject was brought before the U.S. Magistrate in New Jersey pending a bond revocation

hearing and placed on electronic monitoring. OCI will testify in Ohio concerning the subject's violation of pretrial restrictions.

- Ninety-eight (98) complaints alleging tax evasion were evaluated from January through March 2001 in the Office of Criminal Investigation.
- During the same period, January through March 2001, fifty-six (56) charges were filed in court on fifty (50) cases for violations of the Cigarette Tax Act including possession of 1,521 cartons of contraband cigarettes valued at \$53,235.00, and resulting in fourteen (14) arrests. □

Tax Briefs

Sales and Use Tax

Prepaid Calling Card Sales Over the Internet — The Division replied to an inquiry concerning the sale of prepaid calling card ar-

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*** Fee of 2.5% of tax payment applies.**

rangements where the PIN number and instructions for use are sent to the customer over the Internet. A prepaid calling card arrangement is defined as the right to purchase telecommunications services that must be paid for in advance, that enables the origination of calls using an access number or authorization code, provided that the service provider knows the number of minutes remaining on an ongoing basis. N.J.S.A. 54:32B-2(II).

As of January 1, 2000, tax is imposed on such retail sales under N.J.S.A. 54:32B-3(g), which states that if the sale does not take place at the vendor's place of business, it shall be deemed to take place at the customer's shipping address, or if there is no item shipped, at the customer's billing address.

Thus, a registered vendor must collect New Jersey sales tax on sales of prepaid calling card arrangements made over the Internet to customers located in New Jersey. The credit card billing address may be used to determine the location of the customer for tax purposes. If the seller is not registered to collect New Jersey sales tax, or is registered but fails to collect the tax, the customer is liable for use tax on the amount paid under N.J.S.A. 54:32B-6(H).

Clarification: Advertising Space in a Publication Distributed Free of Charge — An article in the *New Jersey State Tax News*, spring 2001 issue, p. 14, explained that a charge for advertising space (e.g. half page, back cover) in an advertising publication which is distributed free of charge is not subject to sales tax. The article further stated that the publisher should pay sales tax on the purchase of the publication (paper,

printing, etc.) directly to the seller of such property and services.

The Division was questioned on the applicability of this treatment to businesses engaged in direct-mail advertising, where individual coupons or a bound booklet are regularly mailed to recipients in a specific geographic area. The Division responded that the Sales and Use Tax Act imposes tax on charges for direct-mail advertising processing services in connection with distribution to New Jersey recipients. N.J.S.A. 54:32B-3(b)(5). Therefore, charges made to local advertisers, which may include the design of the advertisement, advertising space, and the direct-mailing service, are subject to sales tax to the extent that the publication is mailed to recipients in New Jersey. These charges are not merely for advertising space, but rather, are deemed to be for the direct-mail advertising processing service.

The tax treatment described in the spring 2001 article is applicable to the situation where an advertiser is selling space in a publication that is distributed free of charge by means *other than* direct mail, e.g. an auto shopper or apartment rental guide available at a supermarket. This distinction is based on the fact that the law specifically imposes sales tax on *direct-mail* advertising services. □

In Our Courts Administration

Regulations – *Lenox Incorporated v. Director, Division of Taxation*, decided February 2, 2001; Tax Court No. 007049-98 & 007050-98.

The Court requested that the Division address the “function and significance” of N.J.A.C. 18:7-13.8(d) that required a taxpayer to file notice of Internal Revenue Service (IRS) changes to plaintiff's corporate taxable income within 90 days of the IRS changes in order to qualify for an extended two-year period to file for a refund. The Division submitted the Certification of William J. Bryan, III and a Supplemental Brief to the Court. Rather than respond to the brief, plaintiff served on the Division interrogatories concerning the explanations contained in the Supplemental Brief and the Bryan Certification. The Division objected to answering the interrogatories.

After analyzing well-settled case law, the Court found that the reasonableness of a regulation could not be a function of its factual foundation because factual findings are not required in order to promulgate a regulation. The Court stated: “In order to overturn a regulation as unreasonable and beyond the scope of the administrative agency's power, a party must demonstrate that no conceivable state of facts would sustain the regulation.” Therefore, the Court ruled that the Division need not answer the interrogatories because any possible elicited factual information would not be relevant to the issue of the regulation's reasonableness nor would the answers lead to discovery of admissible evidence.

Timely and Conforming Complaint – *Harold Weingold v. Director, Division of Taxation*, decided February 7, 2001; Tax Court No. 1818-00.

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The Division sent plaintiff and plaintiff's lawyer the final determination concerning his protest by certified mail on January 25, 2000. Plaintiff's lawyer signed for his letter but plaintiff did not pick up his letter. On March 29, 2000, pro se plaintiff wrote a letter to the Tax Court Clerk stating: "Please accept this letter as a petition to accomplish the following: to inform your office I plan to represent myself before the Tax Court pro se, and to appeal the final determination by the Division of Taxation pursuant to New Jersey S.A. 54A:9-10." Several communications occurred between the Tax Court Management Office and plaintiff that resulted in plaintiff submitting additional information. Plaintiff was advised that his papers had been filed as of May 12, 2000.

The Court held that the March 29, 2000, letter indicated an intention to make a complaint, but was not in fact a complaint because it "does not comply in any respects with any way, shape, or form being a complaint which would be compatible with the rules." There was no named plaintiff, defendant, no claim, no fee submitted, and nothing that the Division could be charged with answering. The Court noted that pro se litigants are chargeable with the rules governing the content required to be in a complaint.

The Court also ruled that the letter sent and received by the lawyer attributes notice of the final determination to plaintiff as well as does the letter sent to plaintiff that he did not collect. Therefore, the Court dismissed the May 12, 2000, complaint as untimely.

Corporation Business Tax Time Period to File Refund Claim – *Godwin Pumps of America v. Director, Division of Taxation*, decided January 22, 2001; Tax Court No. 001789-2000.

Plaintiff's 1993 corporation business tax (CBT) return was originally due on January 15, 1994, and with the approved extension the deadline was July 15, 1994. Plaintiff paid the full CBT on June 30, 1994. On July 13, 1998, plaintiff filed an amended 1993 CBT return seeking a refund. The Division denied the refund claim because it was not timely filed pursuant to the N.J.S.A. 54:49-14 four-year statute of limitations as calculated per N.J.A.C. 18:7-13.8.

N.J.A.C. 18:7-13.8 states that generally the four-year statute of limitations for filing a CBT refund claim begins to run on the later of the date of payment or the filing of the CBT return. However, where filing and payment are made before the due date (the original due date of the return and not an extended due date), the return's due date is deemed to be the payment date and the statute of limitations runs from the date of payment. Applying that language to the instant case, the Court held that plaintiff's 1993 refund claim was untimely because it was filed (July 13, 1998) four years and 13 days after the 1993 CBT payment (June 30, 1994).

The Court dismissed plaintiff's argument that the CBT refund statute of limitations should be governed by N.J.S.A. 54:2-39 because that section applies to property taxes. Likewise, the Court also found that N.J.S.A. 54:49-6(b) was inapplicable because it applies to situations where a deficiency assessment is protested. Moreover,

the Court reasoned that the Legislature could have adopted the language of N.J.S.A. 54:49-6(b) for governing the statute of limitations on CBT refund claims but that it did not.

Gross Income Tax Calculation of Resident Tax Credit – *Mark and Donna Regante v. Director, Division of Taxation*, decided January 24, 2001; Appellate Division No. A-2105-99T5.

On appeal from the Tax Court's holding in favor of the Division was the issue regarding whether the methodology for determining income in the numerator of the resident tax credit should exclude deductions not recognized by New Jersey even though the deductions are permitted in a foreign jurisdiction.

Affirming the Tax Court, the Appellate Division held that income not subject to tax in a foreign jurisdiction is excluded from the numerator in the calculation of the resident tax credit. The Court noted that the reasoning behind the legislation enacting the resident credit is to at least minimize, if not eliminate, double taxation. The Court also upheld the Tax Court's holding that there was no equal protection violation even though two New Jersey residents earning the same income in two different states may pay different income taxes to New Jersey. The Court reasoned, as did the Tax Court, that both residents are treated identically in terms of calculating the income subject to taxation in the foreign jurisdiction.

Time Period to File Complaint After Untimely Protest – *Lunin v.*

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Director, Division of Taxation, decided February 8, 2001; Tax Court No. 004219-2000.

On April 13, 2000, the Division sent a notice of deficiency to plaintiff concerning gross income tax (GIT). Plaintiff sent a July 12, 2000, written protest to the Division via mail that was postmarked July 24, 2000. By letter dated August 8, 2000, the Division denied plaintiff's protest because it was filed after 90 days of the issuance of the notice of deficiency. On October 7 or 8, 2000, plaintiff mailed a complaint to the Tax Court that was received on October 12, 2000. The issue is whether the complaint was timely filed with the Tax Court.

N.J.S.A. 54A:9-2(b) provides that a GIT deficiency becomes an assessment after 90 days of the mailing of a notice of deficiency where taxpayer did not protest the deficiency pursuant to N.J.S.A. 54A:9-9. According to N.J.S.A. 54A:9-10(a), an appeal to the Tax Court must be filed within 90 days after the GIT assessment. Furthermore, N.J.S.A. 54:49-18(a) provides that the time to appeal to the Tax Court begins from the date of the Director's final determination.

The Court ruled that R. 1:3-3, which adds three days to the 90-day filing period in Tax Court, was not applicable to the statutes concerning the sending of a notice of deficiency, the filing of a protest, and transformation of the deficiency into an assessment by operation of law because these statutes are not proceedings in the Tax Court governed by N.J.S.A. 54:51A-18.

The Court found that the April 13, 2000, notice of deficiency became an assessment by operation of law on July 12, 2000, (equivalent to the date of the Director's final determination) because a protest was not timely filed with the Division; therefore, the date to file a timely complaint with the Tax Court expired 90 days thereafter on October 10, 2000. As filing with the Tax Court occurs upon receipt of the complaint, the October 12, 2000, receipt was held to be untimely.

Local Property Tax Property Exempt Under Continued Character Exception – *Job Haines Home for the Aged, Plaintiff, v. Bloomfield Twp., Defendant*, New Jersey Tax Court, decided February 16, 2001, Docket No. 001135-2000.

Plaintiff was an established prop-

erty tax-exempt Title 15A nonprofit corporation operating both a skilled nursing and a residential health care facility situated on five acres. Plaintiff appealed when it was partially assessed at \$1,250,000 for tax year 2000 for an under-construction (80% completed and unoccupied) assisted living facility. When complete, all three facilities were interconnected.

At issue before this Tax Court was whether as of the pretax year October 1, 1999, valuation date the partially-erected structure could be assessed for taxes if it was an addition to an existing tax-exempt structure. In order to obtain property tax exemption under N.J.S.A. 54:4-3.6, plaintiff had to show, in part, "actual use" for a specified exempt purpose. Intended or projected future use is not qualifying.

As concerns "actual use" prior courts had determined, "Even where the character of a building under construction and its adoption to exempt use are evident, a property tax exemption does not attach until actual use commences." See *Hillcrest Health Service System, Inc. v. Hackensack City*, 18 N.J. Tax 38 (1998), and *Holy Cross Precious Zion Glorious Church of God v. Trenton City*, 2

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Enforcement Summary Statistics First Quarter 2001

Following is a summary of enforcement actions for the quarter ending March 31, 2001.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	1,454	• Seizures	25
Total Amount	\$28,387,081	• Auctions	2
• Jeopardy Assessments	168	• Referrals to the Attorney General's Office	670

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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N.J. Tax 352 (1981). “The single thread that runs through the cases...is that there must be actual use made of the buildings in accordance with the exemption statute. Actual public use or being ready to provide such public use is the required quid pro quo.” See *Grace & Peace Fellowship Church, Inc. v. Cranford Twp.*, 4 N.J. Tax 391 (1982).

However, this decision holds that Tax Court had previously carved out an exception to the “actual use” rule for property exhibiting a “continued exempt character.” See *Paper Mill Playhouse v. Millburn Twp.*, 7 N.J. Tax 78 (1984). In *Paper Mill Playhouse*, exempt property which discontinued “actual use” for a two-year reconstruction period after it was destroyed by fire was allowed to retain exemption, reasoning that having been nontaxable it would not impact the municipal budget. The Court distinguished the *Paper Mill Playhouse* exception by explaining that it only applies where there is a preexisting exempt building, not on a vacant parcel.

Present plaintiff merely erected an addition to an already tax-exempt structure, was not an historic ratable, would not be an added assessment upon the construction’s completion and exempt use, and was granted exemption under the “continued character exception.”

Denial of Refund of Taxes Paid by Mistake – *J.C. Trapper, LLC, Plaintiff, v. City of Jersey City, Defendant*, decided February 22, 2001; Tax Court of New Jersey; Docket No. 001816-2000.

In this action, plaintiff, J.C. Trapper, LLC, sought to recover prop-
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erty taxes and interest paid to defendant Jersey City on property owned by the City. The subject two lots were vacated in 1976, in favor of adjacent landowner. In 1987, title to those lots reverted to Jersey City. However, plaintiff and its predecessor continued to pay property tax and interest totaling \$492,741.06 on those lots from 1988 through part of 1999. Plaintiff sought refund of the amount paid based on N.J.S.A. 54:4-54 referred to as the “Taxpayer Mistake Provisions” which provides for the refund of taxes “...Where one person has by mistake paid the tax on the property of another supposing it to be his own...”

The Court cited *McShain v. Evesham Twp.*, 163 N.J. Super. 522, and *Farmingdale Realty Co., v. Farmingdale*, 55 N.J. 103, which both dealt with the provisions of N.J.S.A. 54:4-54. In *McShain*, plaintiff paid taxes on lots which, without their knowledge, were assessed to them but owned by others. A refund was ordered. In *Farmingdale*, the subject property was assessed twice. Judge Kuskin concluded that, if the payments in question were made “by mistake,” refund is mandatory, not discretionary even though the statute provides that “the governing body...may return the money paid in error....” While the phrase “may return” might invest the governing body with discretion when a taxpayer has mistakenly paid taxes on property owned by another, such discretion is not applicable where a taxpayer has mistakenly paid taxes on property owned by the taxing municipality. The Court made the point that, in the former situation, the municipality is entitled to collect the taxes, and the refund of a mistaken payment could have

been made discretionary in the event no procedure is available to the municipality to obtain payment of taxes from the correct taxpayer. In the latter, no taxes were due the municipality, and the municipality may not retain taxes mistakenly paid.

The Tax Court defines “mistake” as used in N.J.S.A. 54:4-54 as a mistake of fact not a mistake of law. A mistake of fact can be illustrated by a misunderstanding of ownership and might be refundable. Taxes paid under a statute later declared to be unconstitutional are paid under a mistake of law and are not subject to refund.

Relief is available under N.J.S.A. 54:4-54 only when taxes are paid by a taxpayer who, when making payment, believes they are due because: (1) the taxpayer is unaware that an assessment on another’s property is included in the assessment on the taxpayer’s property; or (2) the taxpayer doesn’t know the facts to enable him to dispute ownership of the property. The mistake (as per N.J.S.A. 54:4-54) cannot be simply an incorrect interpretation of, or erroneous action taken on the basis of, facts known to the taxpayer which provided a sensible basis for disputing ownership. If taxpayer is unsure of the ownership of a property, then taxpayer should file an appeal or a declaratory judgment action. The taxpayer may not seek relief under statute after paying the taxes for years and seeking no resolution of the ownership issue.

Because the Taxpayer Mistake Provisions broaden taxpayers’ remedies beyond the statutory right to appeal, such an expansion is to

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be construed narrowly, especially when the additional remedy has no limitations period.

Court held that none of the payments made by plaintiff and its predecessors were made “by mistake” under N.J.S.A. 54:4-54. Plaintiff and its predecessors had knowledge of the facts relating to ownership of the property. This knowledge provided a plausible basis for contesting the obligation to pay. Neither sought a judicial determination to clear this up until approximately 11 years later.

In settling appeals for 1988, 1989, 1990, and 1993, plaintiff’s predecessor not only failed to contest ownership, but also willingly accepted the property tax obligations on the subject property. As demonstrated by the settlement agreements and site plan application, predecessor did not pay taxes “by mistake.” As its predecessor’s assignee, plaintiff is chargeable with, and bound by, the significance of predecessor’s acceptance of the tax obligations of the subject property.

In 1961, the New Jersey Supreme Court, in *Rosa Systems v. Linden Dari-Delite, Inc.*, 35 N.J. 329, 334, held that when a payment is made voluntarily, it “cannot be recovered on the ground that there was no liability in the first instance.” A payment is not voluntary only if “induced by the wrongful pressure of the payee and the payor has no immediate and adequate remedy in the courts to resist (the payment).” Plaintiff and its predecessor had such an available remedy.

Although the assessor mistakenly assessed the subject property to plaintiff and its predecessor, plaintiff’s knowledge of the own-

ership issue was not diminished. The mistake to which the Taxpayer Mistake Provisions of N.J.S.A. 54:4-54 refer is the mistake of the taxpayer, not that of the tax assessor or municipality.

The Court, based on four analyses, concluded that defendant did not realize a windfall by retaining the taxes it collected from third parties on property it owned. (1) Predecessor made prior settlements by allocating settlement of lots under appeal and aggregating assessable value as single economic unit. (2) As per *Liva Group, LLC v. Paramus Borough*, 17 N.J. Tax 609, “Barring proof of fraud or other compelling circumstances a settlement will be enforced in accordance with its essential terms.” Predecessor agreed to the assessments. Predecessor and plaintiff (as successor-in-title and assignee) could not now attack the settlement. (3) Attempting to undo the settlement is a violation of the doctrine of judicial estoppel. “Judicial estoppel is an equitable doctrine precluding a party from asserting a position in a case that contradicts or is inconsistent with previous position or a related proceeding.” *Tamburelli Properties Ass’n. v. Cresskill Bor.*, 308 N.J. Super. 326. For purposes of judicial estoppel, this litigation and the earlier tax appeals are related legal proceedings and the plaintiff may not now contradict what was earlier agreed upon. (4) Denying plaintiff relief is consistent with decisions in other contexts which permit municipalities to retain taxes and other monies which should not have been collected, such as a taxpayer who fails to appeal overassessments.

Sales and Use Tax

Prototypes – *Urso & Brown, Inc. v. Director, Division of Taxation*, decided January 4, 2001; Tax Court No. 000051-99.

Plaintiff is in the business of designing and producing point-of-purchase displays for merchandise sold in retail stores. Initially, plaintiff completed a design sketch of a display for a customer. If the customer approved the sketch, plaintiff engaged a fabricator to prepare a prototype with materials selected by plaintiff. The fabricator prepared the prototype along with drawings or blueprints for the display. Plaintiff inspected, paid for, and presented the prototype to the customer for review but did not charge its customers for the creation of the prototypes at issue. If the customer decided to place an order, plaintiff commenced to manufacture the displays. The prototype generally has no further utility and was not alleged to be for resale. At issue is whether the prototypes are subject to sales and use tax and, if so, whether they qualify for either the production or research and development exemption.

In deciding which entity purchased the materials, the Court found that plaintiff provided the materials to make the prototypes to the fabricators. Therefore, the Court ruled that the prototype purchases constituted tangible personal property upon which fabrication services were performed and, therefore, subject to either sales tax under N.J.S.A. 54:32B-3(b)(1) or use tax via N.J.S.A. 54:32B-6(C). Furthermore, the Court ruled that the transactions between plaintiff and the fabricators did not qualify for a N.J.S.A. 54:32B-2(e)(4)(A) exclusion as professional or personal

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service transactions where the prototypes were an inconsequential element of the transaction because the real object of the transaction was to acquire the prototypes for use as a sales generating device. Finally, the Court noted that even if the fabricators had provided the materials to make the prototypes, the transaction would be a taxable sale of tangible personalty under N.J.S.A. 54:32B-3(a) or B-6(A).

Turning to whether or not the prototypes qualified for exemption from the Sales and Use Tax Act, the Court ruled that the prototypes did not qualify for the N.J.S.A. 54:32B-8.13(a) production exemption because the prototypes were neither necessary for nor directly and primarily used in the manufacturing process. The Court also held that the transaction did not qualify for the N.J.S.A. 54:32B-8.14 research and development exemption because the prototypes were used as a sales generating device and were not used directly and exclusively in research or development. Furthermore, the Court found the prototypes were not purchased for or used in "research and development in the experimental or laboratory sense" because the use of the prototypes to satisfy specific customer requirements is not in the "nature of a study which seeks new

knowledge in, or a new understanding of, a scientific or technical field or subject." □

In Our Legislature

Gross Income Tax

Exclusion of U. S. Military Pension and Survivor's Benefit Payments Expanded — P.L. 2001, c.84 (signed into law on May 7, 2001) amends the Gross Income Tax Act to allow all taxpayers, regardless of age, to exclude their U.S. military pension or military survivor's benefit payments from gross income taxation. This act took effect immediately and applies retroactively to taxable years beginning on or after January 1, 2001.

Local Property Tax

Religious or Charitable Organizations May Lease Property to Other Exempt Entities Without Losing Property Tax Exemption — P.L. 2001, c.18 (signed into law on January 29, 2001) amends R.S.54:4-3.6 to permit a religious or charitable organization to lease property to another exempt entity for a different exempt use without the loss of its property tax exemption. The bill took effect immediately and is retroactive to September 30, 1999.

Exemption of Property of Fire-

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fighters' Organizations — P.L. 2001, c.85 (signed into law on May 8, 2001) amends R.S.54:4-3.10 to permit exempt firefighter's associations, firefighter's relief associations, and volunteer fire companies to conduct certain income-producing activities and retain their tax exemption. The income-producing activity that is not the organization's primary purpose must not exceed 120 days annually, and all net proceeds from that activity must be utilized in furtherance of the primary purpose of the organization or for other charitable purposes. The act took effect immediately and is retroactive to January 1, 1998.

NJ SAVER Rebate — P.L. 2001, c.106 (signed into law on June 18, 2001) amends P.L. 1999, c. 63, to accelerate the phase-in period of the NJ SAVER Rebate Program from five years to four years. The legislation increases the amount to be paid in 2001 from 60% (an average of \$360) to 83⅓% of the full amount (an average of \$500). Under this legislation, NJ SAVER Rebates will reach the full benefit amount (an average of \$600) in 2002, one year ahead of schedule.

Sales and Use Tax

Sales and Repairs of Limousines Exempt — P.L. 2001, c.90 (signed into law on May 10, 2001) exempts sales of motor vehicles registered as limousines to limousine operators licensed in New Jersey. The legislation also provides an exemption for repairs of limousines, including replacement parts (but not the cost of labor), regardless of where the limousine service operator is licensed. The act took effect on July 1, 2001. □

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tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2	1	2	3	4	5	6	7
0	8	9	10	11	12	13	14
0	15	16	17	18	19	20	21
1	22	23	24	25	26	27	28
	29	30	31				

July 2

GCC-1 Motor Fuels Tax—Carrier's monthly report

July 10

CWIP-1,2 Cigarette Tax—Wholesaler's informational report

CDIS-1,2 Cigarette Tax—Distributor's informational and sales report

CR-1 & CNR-1 Cigarette Tax—Wholesaler's monthly report of non-New Jersey stamped cigarettes

July 16

CBT-100 Corporation Business Tax—Annual return for accounting period ending March 31

continued

July 16 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

July 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors and manufacturers

MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use

MFT-14 Motor Fuels Tax—Monthly export report

MFT-60 Motor Fuels Tax—Monthly storage facility operator report

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

July 20 - continued

SCC-6 Spill Compensation and Control Tax—Public storage facility operator return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

July 25

GCC-1 Motor Fuels Tax—Carrier's monthly report

NJ-927 & NJ-927-W Gross Income Tax—Employer's quarterly report

NJ-927-W Gross Income Tax—Employer's quarterly report

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2				1	2	3	4
0	5	6	7	8	9	10	11
0	12	13	14	15	16	17	18
1	19	20	21	22	23	24	25
	26	27	28	29	30	31	

August 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

August 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending April 30

continued

August 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

August 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax**—Monthly export report
- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report

continued

August 20 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

August 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

August 30

- GCC-1 Motor Fuels Tax**—Carrier's monthly report

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2							1
0	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
1	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30						

September 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

September 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending May 31

continued

September 17 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

September 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax**—Monthly export report

continued

September 20 - continued

- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
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- ST-451 Sales and Use Tax—Salem County**—Monthly return
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September 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

Division Congratulates Special Olympic Medalists



Barbara McGill and Mary Rohman have been good friends and constant companions since they met at St. Elizabeth's Home more than 45 years ago. Both have been Division employees since 1979.

The Special Olympics oath is: "Let me win. But if I cannot win, let me be brave in the attempt." Mary and Barbara proved this statement true on March 17, 2001, when they participated in the Special Olympics bowling competition at the Colonial Lanes in Lawrenceville. They both received medals: Barbara a gold, and Mary a bronze. This is not the first time they have received medals. They have both participated in the Special Olympics for many years and have won numerous medals.

It was not always easy for Barbara and Mary to participate in these games. Originally they were told they would never be able to bowl because of their handicaps. But with the help of Michael Goshorn, the Director of St. Elizabeth's Home, who built them a ramp on which to place their bowling balls, they beat the odds. The ramp allowed them to build the momentum required to knock over the pins. This opened doors not only for Mary and Barbara but for wheelchair-bound participants as well. Mary and Barbara are very proud to know that they helped set the trend for other Special Olympic athletes in wheelchairs.

They practice every Saturday at Colonial Lanes and you can see by the look on their faces that the ability to participate in sports has done something wonderful for them. With proud smiles they tell of both the "strikes" and "gutter balls" that they have made in their bowling careers. On March 31, 2001, Mary and Barbara advanced to the State Finals. Barbara took home another gold medal and Mary received a ribbon for fourth place.

Mary and Barbara have triumphed in so many areas in their lives. The Division of Taxation is fortunate to have two such overachievers within its ranks and extends congratulations and support to both of these admirable women.

Robert K. Thompson

New Jersey State Tax News

Spring 2001

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- Division Organization Chart

NJ SAVER Rebate Applications

Applications for the 2000 NJ SAVER rebate will be mailed to homeowners over a two-week period in early May. The Division of Taxation has found that staggering the mailing of the applications makes it easier for applicants with questions about the program to get through to the Division by phone. The deadline for filing NJ SAVER rebate applications is July 2, 2001, and rebate checks are scheduled to be mailed on or before September 15, 2001.

Most eligible homeowners will be able to file their NJ SAVER rebate applications by calling the automated NJ SAVER Rebate Filing System at 1-877-658-2972 or 609-826-4288. The system will be available 24 hours a day, 7 days a week beginning May 1, 2001. On average, automated telephone filing takes about a minute and a half for most homeowners who have previously applied for the NJ SAVER rebate and whose information remains unchanged, and about three and a half minutes for those who did not file last year. Applications can also be filed online from the Division's Web site at:

www.state.nj.us/treasury/taxation/

Applications will be sent to homeowners who applied for and received a 1999 NJ SAVER rebate (or who would have received one had their homestead rebate not provided a greater benefit), as well as to individuals who built or

purchased a home between October 2, 1999 and October 1, 2000. Other individuals who have been identified as potentially eligible for the rebate will also be sent applications.

The NJ SAVER rebate program, now in the third year of its scheduled five-year implementation period, provides direct property tax relief to New Jersey residents who own, occupy and pay property taxes on a home in New Jersey that was their principal residence on October 1 of the year for which the rebate is being claimed. NJ SAVER rebates will average \$360 for tax year 2000, \$480 for tax year 2001, and \$600 for tax year 2002, when

continued on page 2

Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info ..	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

nj saver rebate - from page 1

the program is fully phased-in.

Homeowners are entitled to receive either a NJ SAVER rebate or a homestead rebate, whichever provides a greater benefit. For many senior citizens, the homestead rebate will be greater. This may change as the NJ SAVER rebate amount increases to its maximum. Homeowners eligible for both the homestead and NJ SAVER rebates should continue to file separate applications for each rebate to ensure that they are receiving all the benefits they are eligible for.

NJ SAVER rebates are exempt from New Jersey gross income tax, and a homeowner does not have to report the amount of the rebate on the New Jersey resident income tax return. However, the IRS has advised that for Federal income tax purposes, a taxpayer who itemized deductions and claimed a deduction for property taxes on the 1999 Federal income tax return must report the amount of any property tax rebate received during 2000 as income on the 2000 Federal return. Taxpayers who used the standard deduction, or who itemized but did not claim a deduction for property taxes, do not have to report a property tax rebate as income.

New Jersey taxpayers who must include the amount of their property tax rebate as income on their Federal return should report the rebate on Form 1040 at Line 21, Other Income, and describe it as "property tax rebate."

For further information about the NJ SAVER rebate program call the NJ SAVER Rebate Hotline at 609-826-4282. Division repre-

sentatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

Protests of Reck v. Director Decision

The Division of Taxation has appealed the *Reck v. Director, Division of Taxation*, 18 N.J. Tax 598 (March 2000) Tax Court decision regarding the treatment of Keogh contributions and is adhering to its original position on this issue consistent with the Tax Court's ruling in *Dantzler v. Director, Division of Taxation*, 18 N.J. Tax 490.

Many taxpayers have filed amended income tax returns based upon the *Reck* Tax Court decision in order to request refunds for their Keogh contributions previously filed and paid. Other taxpayers have been assessed and billed by the Division for deficiencies created from deducting the Keogh from income or from refunds already processed to the taxpayer which must be repaid.

The Director is offering an alternate protest and appeal process for the benefit of those taxpayers filing protests with the Conference and Appeals Branch for denials of requested Keogh refunds or redeterminations of assessed deficiencies. If the *only* protested issue involved is whether or not Keogh plan contributions are deductible when computing individual or partner's distributive share of partnership income, the taxpayer may be able to take advantage of the alternate process of the choice of either a Closing Agreement or a regular Conference. If the original protest does not indicate a prefer-

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The *State Tax News* is also available on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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reck v. director - from page 2

ence for a Closing Agreement, the taxpayer will receive a letter from the Conference and Appeals Branch advising of the alternate process and requesting a response within 15 days. The protest will be routed through the normal conference procedures if a response is not received.

Taxpayers protesting issues in addition to Keogh contributions must follow the regular conference process and resolve and/or concede the other issues. Taxpayers protesting non-Keogh pension plan contributions must also follow the regular process. The protest will be acknowledged and moved to the unassigned backlog pending the scheduling of a conference. After the conference, a Final Determination will be issued which will provide further appeal rights to the Tax Court of New Jersey.

Taxpayers entering into a Closing Agreement will be bound by the court of last appeal's final decision of *Reck v. Director, Division of Taxation*, 18 N.J. Tax 598, which is currently pending before the Superior Court of New Jersey, Appellate Division, Docket Number A-005379-99T3. The Conference and Appeals Branch will maintain the Closing Agreement files until said final decision.

Additional information regarding the Closing Agreement is available on the Division of Taxation's home page at:

www.state.nj.us/treasury/taxation/



SALES AND USE TAX ***Spring Cleaning***

With the improved weather comes the annual ritual of spring cleaning. Window cleaning, clearing out the garage or basement, painting, and other household cleaning are just some of the work to be done.

With the busy schedules kept by New Jersey families, more and more service companies have sprung up to provide these services. Following is a list of some of the most common spring maintenance projects performed by these companies and an explanation of how sales tax is applied.

Examples of Maintenance Services:

Mowing Lawns Taxable

Trimming Trees Taxable

Painting:

Interior or Exterior Taxable

Pest Control Treatment Taxable

Pest Control Inspections ... Exempt

Cleaning Services

(except carpet cleaning).. Taxable

Power Washing Taxable

Trash Removal

(non-contractual)..... Taxable

Windows Taxable

Carpet Cleaning Exempt

When contractors perform maintenance services, their bills should separately state the charges for materials and for labor. The contractor charges sales tax on the labor portion of the bill. The contractor may not charge you sales tax on the cost of the materials and supplies used for the job. However, if the contractor charges you a lump sum for the maintenance service without separating the charge for materials from the charge for labor, you are required to pay the sales tax on the total amount of the bill.

Maintenance services preserve the existing condition of your real property, but do not rise to the level of a capital improvement. A capital improvement means an installation of tangible personal property which increases the capital value or useful life of the real property (land or building). The item(s) installed must be permanently attached to real property. If the work performed on your real property results in a capital improvement, the contractor may not collect sales tax from you on any charges (materials or labor), provided you give the contractor a properly completed Certificate of Capital Improvement (Form ST-8). This form is available by calling the Division's Customer Service Center (609-292-6400), from the Forms Request section of the Automated Tax Information System (1-800-323-4400), by stopping in at one of our field offices, or on the Division of Taxation Web site at:

www.state.nj.us/treasury/taxation



CORPORATION TAX

Notice of Business Activities Report

The Corporation Business Activities Reporting Act ("Act") requires the annual filing of a Notice of Business Activities Report by a foreign corporation (i.e., not incorporated in the State of New Jersey). Every foreign corporation not filing pursuant to the New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.) or the New Jersey Corporation Income Tax Act (N.J.S.A. 54:10E-1 et seq.) but that carries on various

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business activities - from pg. 3

activities in the State or that receives in excess of \$25,000 income from New Jersey sources is required to file such report.

Every foreign corporation subject to the Act (N.J.S.A. 14A:13-14, et seq.) must file an annual Notice of Business Activities Report (Form CBA-1). The reports are required for calendar or fiscal accounting years or parts thereof. The report must be filed on or before the fifteenth day of the fourth month after the close of such calendar or fiscal accounting year.

The failure of a foreign corporation to file a timely report may prevent the use of the courts in this State for all causes of action that may arise at any time prior to the end of the last accounting period for which the corporation failed to file a required timely report.

Pursuant to confidentiality provisions of the State Tax Uniform Procedure Law (N.J.S.A. 54:50-8), only the defendant against whom an action is instituted in any New Jersey Court by a foreign corporation is entitled to know whether the plaintiff foreign corporation has filed such report.

All requests to the Division of Taxation for information as to whether a corporation filed a report must be in writing and include:

- A copy of the complaint and/or summons served upon the defendant (including defendant's and plaintiff's business name and complete mailing addresses).
- If this request is made by anyone other than the defendant, then that party must be a party

to the court action, or either a Power of Attorney form or a letter (on corporate or business letterhead) signed by a corporate officer or principal of the business must be attached.

The Notice of Business Activities Report is also used to aid the Division of Taxation in determining whether or not a foreign corporation has "nexus" in New Jersey. The Notice of Business Activities Report asks questions seeking "yes" or "no" responses regarding specific corporate activities in New Jersey. If a question is answered in the affirmative, the taxpayer is requested to supply the date the activity began. Although the report has proved to be a successful tool in the discovery of new taxpayers "doing business" in New Jersey, it also prevents corporations from being caught unaware that they have a tax filing responsibility. □

Cable Television Service Providers

The New Jersey Sales and Use Tax Act provides an exemption for the purchase of machinery, apparatus or equipment with a useful life of greater than one year, and for use directly and primarily in the production or transmission of radio or television information, by:

- Commercial broadcasters operating under a broadcasting license issued by the FCC (effective 1/5/96); or
- Providers of cable/satellite television program services (effective 6/1/96).

The statutory exemption for providers of "cable/satellite television program services" is applicable to equipment used in *producing cable*

television programming or in transmitting or distributing cable television programming to cable television service providers. It does not apply to equipment purchased or used by cable television service providers that receive programming from other sources, which is then redistributed to cable television subscribers and customers. Cable television service providers are those companies that are subject to the provisions of N.J.S.A. 48:5A-1 et seq.

An Exempt Use Certificate (Form ST-4) must be provided to the vendor as evidence of the exempt nature of the sale of qualified equipment. The statutory provision to be referenced on the ST-4 is N.J.S.A. 54:32B-8.13(e). □

NJ Estate Tax

In addition to the transfer inheritance tax, the State of New Jersey imposes an estate tax on the estates of resident decedents. The tax is triggered when there is a Federal estate tax liability. The New Jersey estate tax is designed to absorb any portion of the tax credit allowable for state death taxes under the Federal estate tax law that is not fully taken up by the aggregate amount of all death taxes paid to any state, U.S. territory or the District of Columbia. The New Jersey estate tax does not increase the estate's overall tax liability. Estates that are partially or fully exempt from the New Jersey transfer inheritance tax may be subject to the New Jersey estate tax.

The estate tax is determined by subtracting the amount of inheritance, legacy, and succession taxes paid to this State and elsewhere

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Spring 2001

nj estate tax - from page 4

from the allowable Federal credit. The tax liability is reported by the filing of the New Jersey Estate Tax Return (Form IT-Estate) which may be obtained by writing to the Inheritance and Estate Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08695-0249 or calling 609-292-5033 or 609-292-5035.

The New Jersey estate tax obligation is in no way discretionary on the part of the taxpayer. It may not be satisfied by payment of additional Federal estate taxes in lieu of claiming the allowable state death tax credit on the Federal estate tax return.

For estates of decedents dying on or after March 1, 1992, interest accrues at the rate of 10% per annum

on any New Jersey estate tax not paid within nine months of a decedent's date of death unless an extension of time in which to file the Federal estate tax return is granted by the Federal government. The Director of the Division of Taxation may then reduce the interest chargeable to 6% per annum for the period until the expiration of the Federal extension.

New Jersey law requires that a copy of the Federal estate tax return be filed with the Individual Tax Audit Branch within 30 days after the filing of the original return with the Federal government. Also, a copy of any communication from the Federal government making any final change in the return, or confirming, increasing, or reducing the tax shown to be due must be filed with the Branch within 30 days of receipt. □

Interest 12.50% for Second Quarter

The interest rate assessed on amounts due for the second quarter of 2001 is 12.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%
7/1/00	11.50%
10/1/00	11.50%
1/1/01	12.50%
4/1/01	12.50%

Web Site Redesign to Debut in Spring

The New Jersey Division of Taxation's Web site will soon have a new look, and much more. The long anticipated redesign of our site will be debuting shortly after tax season in the spring of 2001. In addition to our new design, we have incorporated enhanced features and better Web site accessibility. These new features include:

Ease of Navigation. Taxpayers may reach any page in the Division's site from anywhere in the site via the arched navigation bar.

Content Sensitive Menus. The arched navigation bar also provides "drop-down" menus to related links within that particular area of interest.

Improved Graphics. As a part of our new look, the Division has moved away from over-the-counter graphics and has incorporated custom photos of various places and scenes from New Jersey.

Scrolling "Hot News." The Hot News of the day will appear on a scrolling menu on the home page and will be updated daily. Come and take a look at what's hot!

Fill-in Forms. Last year, taxpayers and practitioners were able to complete their corporation business tax forms online. Completed forms could then be printed and sent to the Division. The response to these new "fill-in" forms was outstanding. In response to this, our fill-in forms have been expanded to include all reproducible forms in every tax.

Minimal Scrolling. Taxpayers will no longer need to use their browser scroll bar to view the pages. Through improved design and use of Dynamic HTML, each page will have an internal content scroll area when necessary.

Improved Site Search Results. Although our search engine has not changed, we have enhanced our search ability. Through the use of keywords and metatags, taxpayers and practitioners will be able to receive more documents and pages appropriate to their search.

Standard Navigational Links. Each page includes the same standard navigational links found on the State's Web site.

Compliance with the Americans with Disabilities Act. The Division's goal is to successfully

continued on page 6

web site redesign - from page 5

service all taxpayers and practitioners. In keeping with this philosophy, we have incorporated several enhanced features into our redesign:

- *Alternate tags for images.* All images will have text "tags" which will explain what the image is. In the event the user is having the page read to them, they will hear an explanation of the image.
- *Text version of all pages.* Each page will have a text only version to accommodate taxpayers and practitioners with Web browsers incapable of handling dynamic HTML or those individuals with slower processors.

We are looking forward to the unveiling of our new site. Please take a look and then complete our new online survey and tell us what you think. □

Landfill Developer Reimbursed

The Advance Group was the first developer to execute a Redevelopment Agreement under the Municipal Landfill Site Closure, Remediation and Redevelopment Act. The agreement was executed on May 18, 1998, and the project encompassed the construction of a mall on a former municipal landfill. The mall houses numerous retail stores and restaurants.

Pursuant to the Act the developer was entitled to recover 75% of its closure costs. These costs amounted to \$1,076,449. The developer was therefore entitled to receive the sum of \$807,336.75.

The vendors at the mall commenced business during the period from August 1998 through May 1999. Since commencement of business, the total amount of new sales taxes generated from the site have amounted to \$1,497,445.17. A reimbursement check in the amount of \$807,336.75 was forwarded to the developer in February 2001. □

Small Business Workshops

The New Jersey Division of Taxation and the IRS periodically conduct free workshops designed to help small businesses better understand their tax obligations. These seminars are held from 9 a.m. to 4 p.m. at various locations throughout the State. The New Jersey portion of each workshop is presented in the afternoon and covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Employer responsibilities
- Reporting business income
- What's taxable and what's exempt from New Jersey sales tax
- Filing sales and use tax returns

Seating is limited so if you plan to attend one of the spring sessions listed below, please contact the IRS by fax at 973-645-6691 to register.

For additional information on these and other specialized workshops, call The Division of Taxation's Technical Education Unit at 609-984-4101.

Spring 2001 Schedule

April 26	Forked River
April 27	Camden
May 3	Randolph
May 4	West Windsor
May 11	Westfield
June 1	Egg Harbor
June 15	Camden
June 20	Jersey City
June 21	Paramus
July 12	Union □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971, must hold a tax assessor certificate.

Six individuals passed the examination for the tax assessor certificate held on September 23, 2000, and were issued certificates on January 1, 2001. They are:

Bergen County: Samuel A. Heller, Fair Lawn Borough; Joseph P. Leto, III, Lodi Borough.

Burlington County: Kwabena Owusu-Banahene, Ph.D., Mount Laurel Township.

Essex County: Edward Marashlian, North Caldwell Borough.

Mercer County: Jeffrey D. Gordon, Ewing Township.

Monmouth County: Donald M. Moliver, Rumson Borough.

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Spring 2001

The next examination is scheduled for September 22, 2001, at the Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey. The filing deadline is August 23, 2001. A fee of \$10.00 must accompany the completed applications. For applications or additional information, please contact Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- If appeal or complaint is filed

April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court, as appropriate.

- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County budgets certified to County Tax Boards.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

assessors' calendar - from pg. 7

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property. A tax credit rate to be calculated by dividing the total REAP aid by total taxable value of residential property.

- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days by County Tax Board to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Repayment of disallowed prop-

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* Fee of 2.5% of tax payment applies.

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erty tax deductions previously granted required. Nonpayments become liens.

- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description, and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15–

- County Tax Board to certify to Director, Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed and disallowed by each district. □

Criminal Enforcement

Criminal Enforcement over the past months included:

- On September 27, 2000, Anthony Foti of Brick, New Jersey, was sentenced to five (5) years probation and ordered to pay restitution of \$76,184, plus penalties and interest in the amount of \$23,816, to the State

of New Jersey. The sentencing is in response to Mr. Foti's guilty plea to an accusation of collecting but not remitting the sales tax from his business, An-Jo Car Company, Inc., of Toms River. The investigation of Mr. Foti's used car business covered the period of April 1, 1996 through March 31, 1999. Mr. Foti paid \$10,000 at the time of sentencing with the balance of restitution to be paid over the course of the probation period.

- On October 4, 2000, at Newark International Airport, U.S. Customs Inspectors alerted the Office of Criminal Investigation about a shipment of cigarettes from the United Arab Emirates. An examination of the cigarettes found them to be unstamped imports manufactured in England. A total of 399 cartons were seized by Customs, in cooperation with the New Jersey Division of Taxation, as they did not bear the Federal Trade Commission and U.S. Food and Drug Administration required markings for importation into the United States.
- On October 18, 2000, David B. Cohen of Cherry Hill, New Jersey, was the subject of a sixty-eight (68) count indictment in Camden County. Mr. Cohen, a corporate officer of Payroll Masters, Inc., was charged with failing to turn over Federal and State tax withholdings in excess of \$600,000 that were entrusted to his payroll service. In addition, Mr. Cohen was charged with failing to file New Jersey gross income tax returns for the years 1998 and 1999. This case was presented by the Camden County Prosecutor's Office.

- On January 5, 2001, U.S. District Judge Robert Payne sentenced Ahmed O. Mohammed in the Eastern District of Virginia for interstate contraband cigarette trafficking and other related charges. The prosecution is based on Mr. Mohammed's arrest by the New Jersey Office of Criminal Investigation with substantial assistance from the New York City Department of Finance, Office of Tax Enforcement, and from criminal information filed as a result of a Maryland arrest. The New Jersey arrest took place in June 2000 in Fairview, New Jersey, at a storage facility where Mr. Mohammed kept the 1,166 cartons of contraband cigarettes. The defendant was sentenced to eighteen (18) months incarceration, three (3) years of supervised release thereafter, with a specific condition of supervised release that the defendant be turned over to the U.S. Immigration and Naturalization Service for deportation to Sudan. The defendant was also ordered to pay a special assessment of \$200, restitution to the State of New Jersey in the amount of \$202,546, and restitution to the State of Maryland in the amount of \$8,514. In addition, 1,166 cartons of cigarettes and \$4,744 in cash were forfeited by the defendant to the State of New Jersey.
- On October 25, 2000, Paul Lo-Papa of Watchung, New Jersey, was indicted by a State Grand Jury for failure to file New Jersey gross income tax returns for the years 1996, 1997, and 1998. The joint investigative efforts of the Division of Criminal Justice

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and the Division of Taxation's Office of Criminal Investigation determined that Mr. LoPapa failed to report total taxable income of \$155,185 for the three years indicated. He was also indicted for failure to pay gross income tax in the amount of \$5,299, which was due on the above-referenced taxable income. The investigation determined that Mr. LoPapa had generated the above-mentioned unreported income through his real estate company known as Castle Rock Real Estate.

- On October 25, 2000, James D. Joyce entered a guilty plea to two (2) counts of a State Grand Jury indictment that had been handed down on July 23, 1991. Mr. Joyce became a fugitive prior to the indictment for securities fraud, in which investors were bilked out of nearly two million dollars (\$2,000,000), and failure to file New Jersey gross income tax returns for the years 1987 and 1988. He was arrested in Phoenix, Arizona, last year, where he was working as a cook in an airport cafeteria. Mr. Joyce had lived in the Cayman Islands and Texas prior to his arrest. Sentencing in this matter is scheduled for January 2001.
- On November 13, 2000, two Pennsylvania corporations and their corporate officers entered guilty pleas in Mercer County Superior Court, waived presentence reports, and were sentenced under the terms of a plea agreement. The two corporations, Pratt Temporaries, Inc. and Employer's Management Group, Inc., both of Fort Washington, Pennsylvania, operated a temporary employment

service business in New Jersey known as London Personnel Service. The corporations each plead guilty to a one (1) count accusation of failure to turn over taxes withheld (second degree) in excess of \$75,000 for New Jersey gross income tax withheld from employees pay during the years 1993 through 1999. Prior to the plea, the corporations made full restitution of almost one million dollars (\$1,000,000) in withholding taxes. William D. Black, Jr., the Vice President of the corporations, also entered a guilty plea to one (1) count of failure to turn over taxes withheld (third degree) in excess of \$32,000 for the year 1995. He was sentenced to a four-year term of probation. Robert S. Brown, the President of the corporations, entered a guilty plea to a one (1) count accusation of failure to file New Jersey gross income tax returns for the years 1995 through 1998, and was sentenced to a four-year term of probation. The New Jersey gross income tax returns were filed prior to the plea. Both corporations and the responsible corporate officers executed a consent judgment for interest that is due in excess of \$318,000, which will be paid within three years.

- On November 17, 2000, a resident of the State of New Jersey was stopped at the U.S. Immigration Station at Laredo, Texas/Mexico Border. U.S. Border Patrol Narcotics K-9 "hit" on a spare tire mounted under the bed of the rented pickup truck the subject was driving. Border Patrol Agents lowered the tire and found 494,460 counterfeit New Jersey

cigarette tax stamps concealed inside. The subject was arrested by the U.S. Border Patrol Agents and turned over to the FBI in cooperation with the New Jersey Division of Taxation's Office of Criminal Investigation, and was charged by the U.S. Attorney's Office with violating Title 18 U.S.C., Forgery.

- On December 12, 2000, a State Grand Jury handed up a thirty-five (35) count indictment against seven people on charges that they defrauded about ten million dollars (\$10,000,000) from twenty-five (25) victims in a bogus investment scheme. A State Grand Jury indicted the following targets of tax evasion: Jeffrey Burd, Edison, New Jersey, was charged with failure to file New Jersey gross income tax returns for the years 1998 and 1999 (2 counts); Kevin Bradley of Edison, New Jersey, was charged with failure to file New Jersey gross income tax returns for the years 1998 and 1999, and failure to file corporation business tax returns for Corporate Management Services for the years 1998 and 1999 (4 counts); Byron Jackman of Irvington, New Jersey, was charged with failure to file a New Jersey gross income tax return for the year 1998, and failure to file corporation business tax returns for Metropolitan Institute of Network Technology for the years 1998 and 1999 (3 counts); John Vitale, Jr. of Gladstone, New Jersey, was charged with failure to file corporation business tax returns for Access Entertainment for the years 1998 and 1999, and failure to register a

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business (3 counts). The thirty-five (35) count indictment also charged the above targets with theft by deception, money laundering, and misconduct by a corporate officer. The investigation determined that the above-referenced tax evasion counts represent a total of \$598,000 of tax due on total unreported income of \$9,364,000 for the combined years 1998 and 1999. The New Jersey Division of Taxation Office of Criminal Investigation, the New Jersey Division of Criminal Justice, and the Hudson County Prosecutor's Office investigated the case.

- Eighty-three (83) complaints alleging tax evasion were evaluated from October to December 2000 in the Office of Criminal Investigation.
- From October to December 2000, fifty-one (51) charges were filed in court on thirteen (13) cases for violation of the Cigarette Tax Act including possession of 637.5 cartons of contraband cigarettes, valued at \$22,312.50, resulting in eleven (11) arrests. □

Tax Briefs

Corporation Business Tax

Receipts Fraction and Over-the-Road Haulers — The Division responded to a question about the calculation of the New Jersey receipts fraction in the case of long-distance hauling. The rule is found at N.J.A.C. 18:7-8.10(c) 4.iii, and includes an example. Conceptually it has two parts that must be calculated in order to arrive at the numerator of the receipts fraction. First, the fraction of revenue miles in New Jersey over revenue miles

everywhere is multiplied by the total freight revenues; and that result is multiplied by a fraction which is the long-distance hauling costs over the sum of local pick up and delivery costs and terminal operation costs plus long-distance hauling costs. This result is then added to a second amount.

The second amount is calculated as follows: The total freight revenues are multiplied by a fraction which is the consignments (i.e. revenue from deliveries) to points in New Jersey over total freight revenues. That result is multiplied by local pick up and delivery costs and terminal operating costs over local pick up and delivery costs and terminal operating costs plus long-distance hauling costs.

The sum of the products of paragraph one and paragraph two are considered to be the receipts from services performed in New Jersey. That amount is divided by the receipts from everywhere to produce the receipts fraction for use in the allocation factor.

Sales of Assets — The Division responded to a question asking whether or not income from the sale of a business is to be included in the apportionment factor for the company's New Jersey corporation business tax return. The largest portion of the sale of assets is the sale of good will.

In general, income generated as the result of sale of assets that are located in New Jersey would be included in calculating the apportionment factor, and would specifically be included in the numerator of the receipts fraction. In this case the good will was integrally related to the business conducted in New Jersey (the com-

pany had a 97 percent allocation factor for its prior year) and, therefore, would be included.

In this case, however, this taxpayer may not be eligible to apportion income. As described in the inquiry, the office in Delaware may not be considered a bona fide office for purposes of allocation unless it meets the requirements of being a "regular place of business" N.J.A.C. 18:7-7.2. This includes having an employee in attendance during regular business hours performing significant duties related to the business of the taxpayer.

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2000 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
9	3/30/00	Increases the annual property tax deduction from \$50 to \$250 for certain veterans and their surviving spouses. The increase will be phased-in over four years to \$100 in calendar year 2000, \$150 in calendar year 2001, \$200 in calendar year 2002, and \$250 in calendar year 2003 and thereafter.	LPT	S-215
12	4/6/00	Establishes the "New Jersey Insolvent Health Maintenance Organization Assistance Fund Act of 2000" providing for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.	CBT	ACS for A-1890 and A-1605
29	6/16/00	Clarifies law with regard to commissions of executors of estates.	TIT/ET	S-952
48	6/30/00	Eliminates possible price-driven rate increases in petroleum products gross receipts tax and sets tax rate at the current minimum rate floor of 4 cents per gallon.	PPT	A-2522
80	8/14/00	Establishes a New Jersey Earned Income Tax Credit.	GIT	A-40
132	9/21/00	Provides for funding to an existing statewide, nonprofit, energy assistance organization that helps needy families pay energy bills. Also creates the Unclaimed Utility Deposits Trust Fund to hold unclaimed utility deposits.	MIS	1814 (1R)
156	11/16/00	Phases out the petroleum products gross receipts tax for fuel used to generate certain electricity.	PPT	A-857
161	12/7/00	Enacts the "Uniform Partnership Act (1996)."	MIS	A-1140 (1R)

*Legend for 2000 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PUT = Public Utility Taxes
CIG = Cigarette Tax	SCC = Spill Compensation & Control Tax
CMC = Cape May County Tourism Sales Tax	S&U = Sales and Use Tax
FBT = Financial Business Tax	TPT = Tobacco Products Tax
GIT = Gross Income Tax	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	PPT = Petroleum Products Gross Receipts Tax
LIT = Litter Control Tax	

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Gross Income Tax

No Surcharge on a Deemed Distribution of Federally Qualified Employee Retirement Plan Loan in Default

— A taxpayer who borrowed from his Federally qualified employee retirement plan, and then defaulted on that loan asked about the taxability of the deemed distribution and if the Division would impose a surcharge on him.

For New Jersey purposes, pursuant to N.J.S.A. 54A:5-1(j), amounts distributed or withdrawn from an employee trust that were attributable to contributions to the trust (which were previously excluded from gross income) are taxable for New Jersey gross income tax purposes. This means that deemed distributions from a Federally qualified employee retirement plan are given the same treatment as individual retirement accounts in that New Jersey income tax liability is calculated only on amounts distributed in excess of actual contributions.

The New Jersey tax rate is determined in accordance with N.J.S.A. 54A:2-1 and contains no additional tax surcharge for a deemed distribution. Also, the fact that a taxpayer paid a surcharge on the deemed distribution for Federal purposes does not reduce taxable income for New Jersey purposes.

State Income Taxation of Waterway Workers

— Recently, P.L. 106-489 was signed into law preempting the state taxation of wages earned by interstate waterway workers. This Bill provides that a licensed pilot or other worker “on a vessel operating on the navigable waters of more than one State” shall be subject to the

income tax laws only in the state in which he/she resides.

New Jersey’s current policy, as stated in the *New Jersey State Tax News*, April 1993 issue, is that income attributable to a nonresident seaman’s employment on ships operating exclusively between New Jersey ports and foreign ports, or ports of other states, is not considered to be New Jersey source income. Also, a seaman who is in New Jersey simply because his ship has entered a New Jersey port for the purpose of foreign or interstate trade is not subject to the gross income tax for income earned during that period. Residents are taxed on their full income no matter where earned.

Thus, P.L. 106-489 does not change the New Jersey gross income taxation of an interstate waterway worker.

Sales and Use Tax

Golf Course Sales — The Division received an inquiry concerning the application of sales tax to various charges made by a golf course in New Jersey and responded as follows:

1. Membership Dues — Exempt from tax.
2. Greens Fees — Exempt as admission to a facility where the person will be a participant in a sporting activity. N.J.S.A. 54:32B-3(e)(1).
3. Golf Cart Fees — Taxable as a rental of tangible property. N.J.S.A. 54:32B-3(a).
4. Lessons — Exempt from tax as personal service transactions.
5. Pro Shop Merchandise — Articles of clothing that are

adaptable for everyday use such as golf shirts, pants and hats are exempt; however, articles of clothing that are designed for use during a sporting activity, such as golf shoes, are subject to tax. N.J.A.C. 18:24-6.1 et seq. Most other items sold in a pro shop are taxable as the sale of tangible property.

6. Golf Club Rental — Taxable as a rental of tangible property. N.J.S.A. 54:32B-3(a).
7. Driving Range Golf Ball Fee — Since the charge includes entrance to the range, it is treated as an exempt admission to a sporting facility where the customer is to be a participant. N.J.S.A. 54:32B-3(e)(1).
8. Food and Beverages — Taxable if sold for on-site consumption. N.J.S.A. 54:32B-3(c).
9. Entertainment — Any admission charge or cover charge to a place of amusement is subject to tax. N.J.S.A. 54:32B-3(e)(1).

Aerial Spraying on Farms — N.J.S.A. 54:32B-8.16, the statutory provision governing the farming use exemption from sales and use tax, was amended effective January 6, 2000. P.L. 1999, c.314. Prior to the amendment, the exemption did not apply to any services. However, the amendment extended the exemption to “production and conservation services” sold to a farmer if they are used “directly and primarily in the production, handling, and preservation for sale of agricultural or horticultural commodities at the

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farming enterprise of that farmer.”

The aerial spraying of fertilizers, pesticides, or cover crop seeds on a farmer’s crops is an exempt service, assuming that it is used directly and primarily for one of the exempt purposes identified in the statute. N.J.A.C. 18:24-19.2; N.J.A.C. 18:24-19.4(c)4. The farmer should present the service provider with a properly completed Farmer’s Exemption Certificate (Form ST-7) to support the claimed exemption.

Fireworks Display — The service of producing a fireworks show is not subject to sales and use tax. The fireworks service provider is not deemed to be selling the fireworks materials themselves. Instead, the materials are used in order to perform a nontaxable service. Therefore, the fireworks service provider is liable for sales tax if the materials are purchased in New Jersey, or compensating use tax if materials purchased without payment of sales tax are used in New Jersey.

Paint Your Own Ceramics — The Division responded to an inquiry regarding the sales and use tax collection and payment obligations of a paint-your-own ceramics and pottery studio, thus:

1. Retail sales to a customer of pre-made ceramic items or of the supplies needed to decorate them are taxable. N.J.S.A. 54:32B-3(a).
2. When the studio charges the customer an hourly fee for use of the studio, including the right to use necessary supplies, the fee charged is not taxable to the customer. In this situation, the

studio is liable for the sales or use tax on the ceramic pieces, tools and supplies provided to customers who use the studio.

3. Charges for classes are not subject to sales tax. If ceramics pieces and supplies are provided as part of the class, they are taxable to the studio, not to the student. If they are sold to the students, for prices separate from and in addition to the class fee, then they are taxable instead to the student.
4. Charges for parties are nontaxable. The studio (not the customer) is liable for sales or use tax on the supplies.
5. Discount coupons are treated as “vendor discounts.” Customers should be charged sales tax on the reduced price for a taxable item, after the discount is subtracted from the price. N.J.A.C. 18:24-1.4. The studio is liable for sales or use tax on any taxable items given away free.

Shop Supplies — Automobile dealers, car repair mechanics and auto body shops are required to pay sales tax on the various tools and shop supplies which they use or consume in their business but which, unlike paint or new filters, do not become part of their customers’ vehicles. N.J.S.A. 54:32B-3(a); 54:32B-2(e). They are deemed to be the retail purchasers of these items. Generally, their expenses in purchasing these items are treated as part of their overhead (like real estate rental, employee salaries, office supplies, phone lines, etc.) and are only indirectly reflected in the fees for their services or the markups that they charge for parts or items sold as is. However, if instead they choose to

itemize an explicit “shop supply” fee on a customer’s bill, doing so will not make this portion of the bill nontaxable. The shop supply fee will be viewed as simply part of their charges for taxable services or for taxable parts, paints or fluids resold to the customer. The full charge will therefore still be subject to sales tax.

Federal Subscriber Wire Charges

— Although telecommunications service providers may choose to separately itemize the Federal subscriber wire charges, these amounts billed to customers simply reimburse the service providers for a Federal tax expense incurred by the provider in order to provide the service to the subscriber. The subscriber line charges itemized on a customer’s bill are treated as part of the price charged for the taxable service. Thus, they are part of the taxable “receipt” within the meaning of N.J.S.A. 54:32B-2(d). Specifically, excise taxes imposed on vendors, which the vendors in turn choose to separately state to their purchasers, are included in the “receipt” on which sales tax is computed. N.J.A.C. 18:24-1.4(b).

Teleconferencing Service — The New Jersey Sales and Use Tax Act imposes tax on receipts from telecommunications services charged to a service address in this State N.J.S.A. 54:32B-3(f). Telecommunications means the act of originating or receiving messages or information through any kind of one-way or two-way communications. N.J.S.A. 54:32B-2(cc). The tax does not apply to calls that pass over or through New Jersey without originating or terminating here. The New Jersey Tax Court

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has held that services provided in connection with or by means of telecommunications are included within the meaning of the statute. See *Aetna Burglar & Fire Alarm Co. v. Director*, 16 N.J. Tax 584 (1997). For purposes of teleconferencing services, the Division treats the location of the person who has arranged for the teleconference call as the service address. When a New Jersey customer arranges for a teleconference, such charges are subject to tax under N.J.S.A. 54:32B-3(f).

The statute includes within the definition of "telecommunications" all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-2(cc). Thus, additional services such as call confirmation, call registration, call participation, call reminder, etc. are taxable as services performed in connection with the teleconferencing service when billed to a service address in New Jersey. For a more detailed discussion of teleconferencing, see *New Jersey State Tax News*, Winter 1992.

Advertising Space in a Publication Distributed Free of Charge

— The charge for the advertising space (e.g., half page, back cover) in an advertising publication that is distributed free of charge is not subject to tax. The charges for the materials and services that go into printing the publication are subject to tax. The publisher may simply pay tax on the purchase price of the publication (e.g. paper, printing, etc.) directly to the seller of the property and printing service. If the seller or printer of the publication is located outside of New Jersey and does not collect New

Jersey tax, the publisher is responsible for paying the 6% compensating use tax directly to the State with regard to the advertising material that is distributed in New Jersey. The tax is based on the amount paid for the printed material by the publisher. □

In Our Courts

Administration

Adequate Notice – *Harry and Susan Dashoff v. Director, Division of Taxation*, decided December 3, 1999; Tax Court No. 004747-98.

The Division mailed to plaintiff's home address a notification of a pending audit examination of their records that was returned to the Division on December 5, 1995, due to it being unclaimed after three notices. On December 10, 1996, the Division sent plaintiff a notice regarding the basis of an estimated assessment that was also returned to the Division after being unclaimed pursuant to two notices. Thereafter, the Division sent a February 10, 1997, notice of assessment related to final audit determination to plaintiff's home address that was also returned to the Division as unclaimed from three delivery attempts. The notice of assessment determined that the plaintiff owed gross income taxes for tax years 1976 through 1995, excluding 1980 and 1994, for failure to file returns. After sending a June 30, 1997, notice of demand for payment of tax that also went unclaimed, the Division entered a certificate of debt (COD) against plaintiff on August 11, 1997, which the plaintiff acknowledged receiving.

On August 21, 1998, plaintiff filed a complaint with the Tax Court

in our courts - from page 14

seeking relief from the COD. On April 30, 1999, the Division moved to dismiss plaintiff's Tax Court complaint as being filed untimely. Plaintiff filed an opposition to the motion to dismiss and a cross motion to suppress the Division's defenses because: (1) the Division's motion to dismiss the complaint should have been filed within 90 days after service of the answer, (2) the Division's failure to answer interrogatories and produce documents on October 16, 1999, (3) the requirement of certified mail without also regular mailing is a constitutional violation and (4) the plaintiff did not receive the notices, and it would be inappropriate under the law and constitution to hold the plaintiff to the Division's estimated assessment.

As to the plaintiff's claim that the Division's motion to dismiss for untimely filing must be filed within 90 days of service of the answer, the Court ruled that the Division's motion was timely because Rule 4:6-2 permits a motion to dismiss for lack of subject matter jurisdiction to be made at any time in the pleadings.

Addressing the issue of whether the Division's motion should be suppressed because of the Division's failure to respond to interrogatories and produce documents, the Court dismissed plaintiff's claim because when a motion is made to dismiss for untimely filing the parties cease exchanging discovery during the pendency of the motion.

After examining the envelopes, the Court stated that they all showed the mailings were to plaintiff's last

continued on page 15

known address, there was adequate postage, and that there were several delivery attempts that were unclaimed and therefore returned to the Division. The Court ruled that the Division had complied with all statutes regarding mailing that required that notices of assessment be sent by certified mail to the plaintiff's last known address which is presumptive evidence of the plaintiff's receipt. Furthermore, the Court could not determine that either the statutory form of service was insufficient or that the statutory notice requirements violated the constitutional principles of procedural due process because the notice requirements are reasonably calculated to apprise the taxpayer of the pendency of an action and that there was an official mailing from the Division.

The Court held that the plaintiff's August 21, 1998, complaint was untimely as to the February 10, 1997, notice of assessment. The Court held that the Division complied with the statute by sending the notice of assessment by certified mail to plaintiff's home address, that failure to send the notice by regular mail does not invalidate the notice of assessment, and that the plaintiff failed to file a

timely appeal within 90 days of the notice of assessment. Furthermore, the Court noted that the date of the assessment, not the date of the COD, fixes the time for challenging the underlying tax liability.

Responsible Person Status – *Frank J. Miles v. Director, Division of Taxation*, decided April 24, 2000; Tax Court No. 6310-98.

At issue is whether plaintiff is a responsible person for employees' gross income tax (GIT) payroll withholdings that were not paid over to the Director and whether he is relieved of any liability by following his superior's directions not to make those payments.

Plaintiff was hired as the Chief Financial Officer, vice president and treasurer, of Accurate Information Systems, Inc. (AIS) reporting to the president, Mr. Stephen Yelity. Under plaintiff's employment contract, he was paid between \$90,000 and \$100,000 annually and initially granted 5% of the company's stock. Plaintiff had check signing authority and the Court found that he signed all company checks. Plaintiff had limited authority to hire and fire employees, signed, prepared and/or supervised the preparation of AIS

tax returns, and was involved in the financial aspects of the company. When plaintiff was hired, one of his responsibilities was to solve AIS's financial problems including tax liabilities owed to various states and the IRS. Plaintiff negotiated the IRS debt and either plaintiff or his corporation, MJ Financial Answers, lent AIS money, without any prospect of repayment, to make the final installment payment to the IRS.

The evidence showed that AIS payroll tax returns were filed but that tax checks were not remitted to the Division. The Court further found that vouchers authorizing payment of payroll taxes were prepared and that sometimes payroll tax checks were prepared and signed but not forwarded to the Division. Testimony indicated that Mr. Yelity directed plaintiff regarding which checks should be and should not be released over plaintiff's protests. Despite Mr. Yelity's testimony that the decision not to pay taxes was a joint decision, the Court found that it was specifically Mr. Yelity's decision not to pay the payroll taxes and that he decided who would be paid when there was not sufficient

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Enforcement Summary Statistics

Fourth Quarter 2000

Following is a summary of enforcement actions for the quarter ending December 31, 2000.

<ul style="list-style-type: none"> • Certificates of Debt: <li style="padding-left: 20px;">Total Number 1,517 <li style="padding-left: 20px;">Total Amount \$20,532,577 • Jeopardy Assessments 274 	<ul style="list-style-type: none"> • Jeopardy Seizures 6 • Seizures 34 • Auctions 6 • Referrals to the Attorney General's Office 852
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For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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funds to pay all creditors.

The Court held that plaintiff was a responsible person and personally liable for AIS's nonpayment of payroll taxes. In making its determination, the Court applied the nine-factor test first articulated in *Cooperstein v. Director, Division of Taxation*, 13 N.J. Tax 68 (Tax 1993), *aff'd*, 14 N.J. Tax 192 (Appellate Division 1994) *certif. denied*, 140 N.J. 329 (1995). Then the Court compared the facts of this case with prior cases where individuals were found to be personally liable and opined that plaintiff had as great as or greater responsibility as they did.

Although the Court found that Mr. Yelity decided alone that payroll taxes would not be paid, the Court quoted Federal Circuit Court opinions that essentially stated that a superior's instructions not to pay taxes do not relieve an otherwise responsible person from his duty to ensure that taxes were paid. Furthermore, the Court noted that the issue of whether Mr. Yelity was a responsible person was not before the Court.

Gross Income Tax

Calculation of Resident Tax Credit – *Mark and Donna Regante v. Director, Division of Taxation*, decided October 15, 1999; Tax Court No. 000496-1996.

Plaintiff claims that in calculating the resident tax credit that both as a matter of statutory interpretation and constitutionality the fraction must be calculated so that deductions allowable in the numerator are limited to those allowable in the denominator. In other words, plaintiff claims that the methodol-

ogy for determining income in the numerator should be identical with the methodology for determining income in the denominator.

Citing *Ambrose v. Director, Division of Taxation*, 198 N.J. Super. 546 (Appellate Division 1985), the Court held that the Division properly interpreted the statutory phrase "subject to tax" to refer to income actually taxed in the other state. Furthermore, the Court noted that the Division's regulations correctly interpret the statute.

Plaintiff's claim that the Director's interpretation of the statute results in a denial of equal protection was also rejected as the Court held the statute is constitutional. The Court noted that a taxpayer residing in New Jersey and working in Pennsylvania would pay a different amount of tax to New Jersey than if the taxpayer earned the same income by working in New York. However, the Court concurred with the holding in *Jenkins v. Director, Division of Taxation*, 4 N.J. Tax 127 (Tax 1982) that there was no equal protection violation because the credit is applicable equally to all New Jersey residents. Furthermore, the Court ruled that plaintiff had failed to show that the legislative classification pertaining to the resident tax credit was

irrational or arbitrary.

Sales and Use Tax

Calculation of the Average Annual Volume – *Continental Gypsum Co. v. Director, Division of Taxation*, decided November 1, 2000; Tax Court No. 002150-99.

The sole issue revolved around the proper calculation of the base level of volume (BLV) to determine the use tax exemption attributable to purchases of natural gas. In general, an eligible person's exemption is based on their BLV, which is equal to their average annual volume (AAV) of non-utility natural gas units purchased and delivered between January 1, 1992, and December 31, 1995. The Director explained via Public Notice, 29 N.J. Reg. 5029(b), that the calculation of the AAV was based upon actual purchases between 1992 and 1995 divided by the number of years the eligible person was in operation between 1992 and 1995. Therefore, if no purchases were made in any calendar year between 1992 and 1995, then that year would not count in the computation. Similarly, if non-utility gas was purchased only in 1995, then the total 1995 purchases would

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in our courts - from page 16

equal the BLV.

In July 1995, plaintiff Continental Gypsum Co. (CGC) commenced purchasing and accepting deliveries of non-utility gas. CGC purchased 473,070 therms in 1995, 3,399,160 therms in 1996, and 4,820,116 therms in 1997. The Director determined that CGC's BLV was 473,070, the total 1995 purchases. First, CGC argued that average annual volume should be based upon its 461,411 therm full monthly production capacity, which was reached in October 1997, multiplied by twelve, or 5,536,932 therms. Alternatively, CGC claimed that its BLV should be 1,474,440 therms, its December 1995 purchases of 122,870 therms multiplied by twelve.

In upholding the Director's Final Determination, the Court reasoned that the Director's interpretation of calculating BLV was not unreasonable. The Court dismissed CGC's first claim by ruling that the statute was clear that any year subsequent to 1995 could not be used in calculating the BLV. Addressing CGC's second claim, the Court ruled that "CGC had failed to demonstrate that the Director's interpretation was unreasonable and furthermore that the Director's interpretation was more reasonable than either of CGC's alternative proposals." The Court stated that the "Director's construction is reasonable, as it is surely not 'plainly unreasonable.'" Although the Court noted that there were several other reasonable alternatives that could be employed to calculate the BLV, it lacked authority to implement a method of calculation more reasonable than the Director's method.

CGC also claimed that the Director's Public Notice was *de facto* rulemaking that is prohibited under the Administrative Procedures Act. The Court found that this Notice was essential because the statute could be interpreted several different ways. The Court noted that although an assemblyman had contested the Director's method of calculation, the legislation was not amended. In distinguishing *Metromedia v. Director, Division of Taxation*, 97 N.J. 313 (1984), the Court held that there was no requirement that the Director's pre-audit determination be adopted by a formal regulation. □

In Our Legislature

Corporation Business Tax

Phase-out of Tax on S Corporation Income — P.L. 2001, c.23 (signed into law on February 2, 2001) provides for a three-year phase-out of the corporation business tax on the regular income of S corporations with an annual income in excess of \$100,000.

The first year of the phase-out begins with privilege periods ending on or after July 1, 1998 but on or before June 30, 2001. For privilege periods ending on or after July 1, 2003, no tax is imposed.

For S corporations with income of \$100,000 or less, tax is imposed at .5% for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001. For periods ending on or after July 1, 2001, no tax is imposed.

The law also provides that the adjusted minimum tax amount shall be rounded to the next highest multiple of \$10. This Act became effective immediately.

in our legislature - from page 17

Miscellaneous

Energy Assistance Programs — P.L. 2001, c.24 (signed into law on February 2, 2001) provides for the appropriation of sales tax revenues to increase benefits under various energy assistance programs. This legislation became effective immediately.

Administrative Procedures Act — P.L. 2001, c.5 (signed into law on January 16, 2001) revises New Jersey's Administrative Procedures Act to enhance access to the rule-making process. The legislation requires regulatory agencies to publish a calendar of their rule-making plans, provides for an extension in the time allowed for comment on proposed rules, and ensures official response to members of the public petitioning an agency to adopt or change a rule.

The law also provides that, in reviewing an administrative law judge's decision, an agency head shall apply an elevated standard in deciding whether to reject or modify findings of fact as to the credibility of lay witness testimony, requires each rule-making agency to publish a table of specified matters that are of interest to regulated parties, and requires that administrative rules expire after five years.

This legislation takes effect on July 1, 2001, but does not apply to any rule proposed in the New Jersey Register, or to any contested case filed prior to the effective date.

Uniform Partnership Act — P.L. 2000, c.161 (signed into law on December 7, 2000) enacts the

continued on page 18

“Uniform Partnership Act (1996)” as developed by the National Conference of Commissioners of Uniform State Laws and approved

by the American Bar Association House of Delegates.

The law also makes certain changes to the Uniform Act which

were recommended by the review committee of the New Jersey Bar Association. This legislation became effective on December 8, 2000. □

tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2	1	2	3	4	5	6	7
0	8	9	10	11	12	13	14
0	15	16	17	18	19	20	21
1	22	23	24	25	26	27	28
	29	30					

April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

April 16

- CBT-100/** Corporation Business Tax—Annual return for accounting period ending December 31
CBT-100S
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
HR-1040 Homestead Rebate—Application

continued

April 16 - continued

- NJ-1040/** Gross Income Tax—Resident
NJ-1040EZ return for calendar year filers
NJ-1040NR Gross Income Tax—Nonresident return for calendar year filers
NJ-1041 Gross Income Tax—Fiduciary return for calendar year filers
NJ-1065 Gross Income Tax—Partnership return for calendar year filers
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors and manufacturers
MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used
GA-1X Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

continued

April 20 - continued

- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return
ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return
ST-50 Sales and Use Tax—Quarterly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly Return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

April 30

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly report

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2			1	2	3	4	5
0	6	7	8	9	10	11	12
0	13	14	15	16	17	18	19
1	20	21	22	23	24	25	26

27	28	29	30	31		
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May 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

May 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending January 31
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

May 15 - continued

NJ-500 **Gross Income Tax—**
Employer's monthly remittance

May 21

CR-1 & CNR-1 **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers

MSS-1 **Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D **Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used

GA-1J **Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used

GA-1X **Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported

MFT-10 **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 **Spill Compensation and Control Tax—**Monthly return

continued

May 21 - continued

ST-21 **New Jersey/New York Combined State Sales and Use Tax—**Monthly return

ST-51 **Sales and Use Tax—**Monthly remittance

ST-250 **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return

ST-350 **Cape May County Tourism Sales Tax—**Monthly return

ST-451 **Sales and Use Tax—Salem County—**Monthly Return

TP-20 **Tobacco Products Wholesale Sales and Use Tax—** Monthly return

UZ-50 **Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—**Monthly return

May 25

PPT-41 **Petroleum Products Gross Receipts Tax—**Monthly return

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11 ☞	12	13	14	15 ☞	16
1	17	18	19	20 ☞	21	22	23
	24	25 ☞	26	27	28	29	30

June 11

CWIP-1 **Cigarette Tax—**Informational report by wholesalers

CWIP-2 **Cigarette Tax—**Informational report by wholesalers

June 15

CBT-100 **Corporation Business Tax—** Annual return for accounting period ending February 28

continued

June 15 - continued

CBT-150 **Corporation Business Tax—** Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 **Gross Income Tax—**
Employer's monthly remittance

June 20

CR-1 & CNR-1 **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers

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GA-1X **Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported

continued

June 20 - continued

MFT-10 **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 **Spill Compensation and Control Tax—**Monthly return

ST-21 **New Jersey/New York Combined State Sales and Use Tax—**Monthly return

ST-51 **Sales and Use Tax—**Monthly remittance

ST-250 **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return

ST-350 **Cape May County Tourism Sales Tax—**Monthly return

ST-451 **Sales and Use Tax—Salem County—**Monthly Return

TP-20 **Tobacco Products Wholesale Sales and Use Tax—** Monthly return

UZ-50 **Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—**Monthly return

June 25

PPT-41 **Petroleum Products Gross Receipts Tax—**Monthly return

from the director's desk

As this issue of the *State Tax News* went to press, legislation was pending which would affect both the NJ SAVER and Homestead Rebate Programs. The legislation, referred to as “Property Tax Relief Now!” by Acting Governor Donald DiFrancesco, has already passed the Senate. It accelerates the phase-in of the NJ SAVER rebate and doubles the amount to be paid this year to an average of \$500. The legislation would also increase the maximum homestead rebate amount for senior and disabled citizens from \$500 to \$750, and index the maximum rebate amount to inflation. In addition, the legislation accelerates the homestead rebate amount for tenants who are not 65 or older or disabled to \$100, and also indexes that amount to inflation.

Additional information regarding the legislation will be available on the Division's Web site (www.state.nj.us/treasury/taxation/) once it is signed into law.

New Jersey State Tax News

Winter 2000

inside

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Form NJ-1040EZ Introduced

The Division of Taxation has developed a simpler, one-page income tax return/homestead rebate application for residents, Form NJ-1040EZ. Created with New Jersey earned income tax credit filers in mind, the new form is designed to make filing easier and less time-consuming, particularly for those who wish to apply for the new credit, but who are not required to file a State return because their income is below the minimum filing threshold. To qualify to use Form NJ-1040EZ, a taxpayer must have been a full year New Jersey resident during 2000, and have income limited to wages, interest or dividends. Other limitations apply. For example, individuals whose filing status is married, filing separate return, or those who wish to use the Pension Exclusion or Other Retirement Income Exclusion cannot use Form NJ-1040EZ. □

What's New for Tax Year 2000

In addition to a new tax form, this year brings a new earned income tax credit, and several other legislative and administrative changes.

- **New Jersey Earned Income Tax Credit** — New Jersey households that file for and receive a Federal earned income credit which is based on having

at least one “qualifying child,” and whose New Jersey gross income is \$20,000 or less, and whose filing status for both Federal and New Jersey purposes is either married, filing joint return, head of household or qualifying widow(er) are eligible for a refundable New Jersey credit. To apply, eligible residents must file a New Jersey income tax return and complete the New Jersey Earned Income Tax Credit Schedule portion of the form they file. Benefits are being phased in over a four-year period. The amount of the New Jersey credit for 2000 will be equal to 10% of the applicant’s Federal earned income credit.

continued on page 2

Important Phone Numbers

Customer Service Ctr ...	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax.....	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax.....	609-633-2576
http://www.state.nj.us/treasury/taxation	

what's new for 2000 - from pg. 1

- **Higher Filing Threshold** — The thresholds at which taxpayers become subject to the New Jersey gross income tax and are required to file a New Jersey income tax return are being increased over a three-year period which began with tax year 1999. For tax year 2000, the minimum threshold is \$15,000 or less (married, filing joint return, head of household, or qualifying widow(er)), \$7,500 or less (married, filing separate return) and \$10,000 or less (single filers and estates and trusts).
- **Retirement Income Exclusions Increased** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased. The new exclusion amounts are being phased in over a four-year period. For tax year 2000, the maximum exclusion is \$12,500 (filing status married, filing joint return), \$6,250 (filing status married, filing separate return) and \$9,375 (filing status single, head of household, or qualifying widow(er)).
- **Health Insurance Deduction for Self-Employed** — Effective for tax year 2000, self-employed individuals and holders of more than 2% of the shares of an S corporation may deduct the amount paid for health insurance for themselves, their spouses and their dependents.
- **Qualified Conservation Contributions** — A gross income tax deduction is allowed for qualified contributions made for conservation purposes of certain interests in real property located

in New Jersey. The amount of the deduction is the amount of the contribution allowed as a deduction for Federal income tax purposes.

- **Online Extensions** — During the tax filing season, a four-month extension of time to file the New Jersey income tax return may be requested online by using the interactive version of extension request Form NJ-630 located on the Division of Taxation's home page at: www.state.nj.us/treasury/taxation/ Requests for extensions of time to file 2000 New Jersey income tax returns may be filed online until 12 midnight, April 16, 2001. If a payment is required with the online extension application, *the payment must be made by credit card.*
- **Direct Deposit of Refund** — A taxpayer who files a return using NJ TeleFile, NJ PC File, or other electronic method may request that either their New Jersey income tax refund check, or homestead rebate check, or both, be directly deposited into their account at a bank or other financial institution.
- **NJ TeleFile Program** — The NJ TeleFile Program has been expanded so that even more New Jersey residents will be able to use this "paperless" filing method. The changes this year include:
—**No income limit:** You can TeleFile your New Jersey return regardless of your total income, if you had income only from wages, interest (\$2,500 or less) or dividends (\$2,500 or less).

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New Jersey State Tax NEWS

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taxation@tax.state.nj.us

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Robert K. Thompson

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what's new for 2000 - from page 2

- More W-2 forms:** You can TeleFile with as many as five W-2 forms for yourself and five for your spouse.
- Excess UI/HC/WD and DI Contributions:** You can claim a credit for excess contributions withheld by two or more employers.
- Direct Deposit:** You can have your refund and/or homestead rebate check(s) deposited directly into your checking or savings account.

Tax Year 2000 Corrections

MEDICAL EXPENSES DEDUCTION

As a result of a late change to Federal Form 8853, the instructions for completing Line 4 of the New Jersey medical expenses deduction worksheet now contain an error. The worksheet is used for calculating the amount of medical expenses taxpayers can deduct on their New Jersey resident (Form NJ-1040 and NJ-1040EZ) and nonresident (Form NJ-1040NR) returns.

The instructions for completing Line 4 of the New Jersey medical expenses deduction worksheet direct taxpayers to enter the amount of qualified medical savings account contributions from "Line 7, Federal Form 8853." The reference to Line 7 is incorrect.

Taxpayers who are reporting medical savings account contributions should use the amount from Line 5 of the 2000 version of Federal Form 8853.

PACKAGE NJX CD ROM

The CD ROM version of *Package NJX* for tax year 2000 contains an incorrect version of the 2000 Form NJ-1040X, Amended Resident Income Tax Return. The printed version of *Package NJX* contains the correct 2000 Form NJ-1040X.

A correct version of Form NJ-1040X is also available from the following sources:

Division of Taxation Web site:
www.state.nj.us/treasury/taxation/

Automated Tax Information System – Forms Request Service
1-800-323-4400

NJ TaxFax
609-826-4500 from your fax machine's phone

Write to:
NJ DIVISION OF TAXATION
TAXPAYER FORMS SERVICES
PO BOX 269
TRENTON, NJ 08695-0269

CORPORATION TAX **Gain/Loss on Sale of Subsidiary**

Many taxpayers that sell a subsidiary which has been part of its consolidated Federal tax return are not reporting the correct amount of capital gain or loss for New Jersey purposes.

In general there are two methods to account for an investment in subsidiary stock. The first is the Cost method. The original amount of the investment is recorded and remains constant for as long as it is owned. There are no adjustments made to the investment account for the subsidiary's earnings or for dividends received. The second method is the Equity method. Under this method the investment

account is adjusted each period for dividends received and subsidiary earnings, and deferred taxes are recognized. The use of these methods can result in vastly different investment basis.

When an invested subsidiary is part of the same combined group, the investment account is eliminated in consolidation. The consolidation results in a similar investment basis as if the equity method had been used.

Pursuant to N.J.A.C. 18:7-11.15(b) New Jersey corporation business tax returns must be filed on an unconsolidated basis. If for New Jersey tax purposes the Cost method of subsidiary investment was utilized, the basis used for determining the gain/loss from a subsidiary sale will be different from the basis used for Federal

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Interest Rates

Fourth Qtr. '00 — 11.50%
First Qtr. '01 — 12.50%

The interest rate assessed on amounts due for the fourth quarter of 2000 is 11.50%, and the interest rate for the first quarter of 2001 is 12.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%
7/1/00	11.50%
10/1/00	11.50%
1/1/00	12.50%

sale of subsidiary - from page 3

purposes which has recognized the effect of consolidation.

Taxpayers are advised to determine the method used to report subsidiary investments on New Jersey's separate entity returns and, if necessary, adjust the gain/loss reported. This change may also have to be taken into consideration in the compilation of the receipts fraction of the allocation factor. □

GROSS INCOME TAX ***Reporting and Recognition of Income***

A tax practitioner recently inquired as to the taxability of distributions and deemed distributions from Regulated Investment Companies and Passive Foreign Investment Companies for gross income tax purposes. The practitioner also asked if a taxpayer who elects to defer the reporting of the income or to defer payment of the

tax for Federal purposes would be accorded the same elections for gross income tax purposes.

The Division published its position on the reporting of income from such entities in an article entitled "Accounting Methods" in the Winter 1998 issue of the *New Jersey State Tax News*, Volume 27, Number 4, page 11.

The Gross Income Tax Act at 54A:8-3(c) Accounting Methods, states in part that "A taxpayer's accounting method under this act shall be the same as his accounting method for Federal income tax purposes." A taxpayer's method of accounting for Federal income tax purposes determines not only the method used to compute income but also determines when income is to be recognized and reported.

Taxpayers that receive distributions and/or deemed distributions from Regulated Investment Companies or Passive Foreign Investment Companies must recognize and report the income in the same period as they do for Federal tax

purposes. If a taxpayer makes a Federal election that allows them to defer recognition and reporting of the income until some future time or event, they may do so for gross income tax purposes.

A shareholder of a Passive Foreign Investment Company (PFIC) that elects to be treated as a Qualified Electing Fund (QEF) and files Federal Form 8621 to make an election to extend the time for payment of the tax, with interest, on their share of the undistributed earnings of the QEF, cannot make such an election for gross income tax purposes.

There is no provision in the Gross Income Tax Act like those contained in IRC sections 1291 and 1294 that allow taxpayers to elect a deferral of payment of the tax owing, with interest, on undistributed income from a QEF. For gross income tax purposes taxpayers must pay the tax in the same period that the income is recognized and reported. □

NJFast File

For information: **1-800-323-4400** or www.state.nj.us/treasury/taxation

INHERITANCE TAX ***Waivers for Nonresident Decedents***

The nonresident inheritance tax is a privilege levy on the transfer, by a nonresident decedent, of real and tangible personal property located in this State. Accordingly, the transfer of intangible personal property is not subject to the tax in the estate of a nonresident. Intangible personal property includes such items as bank accounts, stocks, bonds, patents and partnership interests. The situs of intangible personal property is deemed to be at the domicile of the decedent. Therefore, any state death taxes would be levied by the decedent's domicile state.

Waivers are needed for the transfer of New Jersey real estate only. A nonresident inheritance tax return is required in all estates containing New Jersey real estate and tangible personal property.

If the nonresident's estate includes any items of intangible personal property which would have required a waiver had the decedent been a resident, the personal representative must submit an affidavit of domicile directly to the bank, transfer agent, etc., to obtain the release of those assets. The bank, transfer agent, etc., has the authority to transfer those assets if convinced, by the proofs submitted, that the decedent was domiciled outside of New Jersey.

The content of the affidavit of domicile utilized to effect the transfer of such New Jersey intangible personal property, is described in N.J.A.C. 18:26-11.1(b)2. The affidavit should

include the following information concerning the decedent:

1. Place of residence and voting;
2. Social and business affiliations;
3. Where the last five income tax returns were filed prior to death;
4. Date of commencement and length of actual residence in place claimed as legal domicile;
5. Whether decedent formerly resided in New Jersey and, if so, what facts are relied upon to establish abandonment of New Jersey and intention not to return.

Nonresident estates having only intangible personal property need only follow this procedure. There is no need to file a nonresident inheritance tax return. □

E-Mail Responses to Bills

In an effort to make it easier for taxpayers to resolve notices they receive, the Division has begun to include e-mail addresses on many of the Statements of Account and Billing Notices being sent out. Taxpayers who have access to e-mail may reply to these addresses to notify the Division of discrepancies between their records and the Division's, and can be sure that the correspondence is being sent to the appropriate area of the Division.

E-mail addresses are now included on Statements of Account and Billing Notices for the following taxes:

- NJ Gross Income Tax (individual)
- NJ Gross Income Tax (employer withholding)
- Alcoholic Beverage Tax

- Atlantic City Luxury Sales Tax
- Business Personal Property Tax
- Cape May County Tourism Sales Tax
- Public Community Water System Tax
- Motor Fuels Tax
- Petroleum Products Gross Receipts Tax
- Sales and Use Tax (including Sales and Use-Energy and Urban Enterprise Zone)
- Spill Compensation and Control Tax
- Tobacco Products Wholesale Sales and Use Tax

The e-mail address printed on a Statement of Account or Billing Notice should be used for resolution of that notice only and should not be used for requests for information or general tax inquiries. General e-mail should be sent to the Division at:

taxation@tax.state.nj.us

or, through the Division's Web site at:

www.state.nj.us/treasury/taxation/ □

LOCAL PROPERTY TAX ***Farmland Acreage***

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that the total acreage devoted to agricultural or horticultural use in 2000 was 1,146,500 acres for the entire state.

The data for tax year 2000 reflects a continued decline in the amount of qualified farmland since the enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres,

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farmland acreage – from page 5

qualified for farmland assessment, the amount of qualified acreage has declined 9.9% or a total of 125,382 acres.

23.9% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem with 54.4% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 50%; Warren, 49.8%; Gloucester, 37.8%; Sussex, 33.7% and Mercer, 29.5%.

Copies of the 2000 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX F.E.A.C. Adopts Values for 2001

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 24, 2000, at the Phillip Alampi Laboratory in West Trenton to adopt a range of values for each of the several classifications of land in agricultural or horticultural use by county. In addition, the F.E.A.C. establishes values for income imputed to land used for grazing.

The thirty-seventh Report of the Committee, showing the value ranges adopted, is mailed to municipal assessors and county

boards of taxation in early October of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its productivity and its agricultural or horticultural use rather than its market value.

The farmland values adopted by the committee for 2001 increased in all 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20.00 to \$40.00 per acre when compared to 2000 values. □

LOCAL PROPERTY TAX New System to Replace MOD IV

The Division of Taxation has published an RFI (Request for Information) to acquire a comprehensive system for local property assessment and tax administration. This new comprehensive system

will be known as the Property Assessment and Management System (PAMS).

The new system will replace the State's current MOD IV batch system and individual vendor municipal applications with a fully integrated online transaction system, which will perform the same tasks, but provide additional functionality, seamless integration, uniform processing, improved performance, and streamlined maintenance functions.

PAMS will achieve the following:

- Internet access to local property tax data for citizens, businesses and governmental agencies, and electronic submission of data to and from taxation systems;
- Accurate and uniform data collection, utilization and reporting of real property assessment information and the billing

continued on page 7

Pay NJ Taxes By Credit Card*



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- Sales and Use Tax
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For more information:

<http://www.state.nj.us/treasury/revenue/> or

<http://www.state.nj.us/treasury/taxation/>

* Fee of 2.5% of tax payment applies.

new PAMS system - from page 6

process for local taxes;

- Enhanced functionality from that currently provided by the State's Property Tax Assessment System (MOD IV), and separate vendors' systems such as Sales Recording, Farmland Tracking, Assessment Appeal Scheduling and Disposition, Building Permit Interface, Computer Assisted Mass Appraisal, Commercial/Industrial Property Assessment, and a Tax Collection component/interface;
- Incorporation of new technologies necessary to accomplish the above including GIS, Public Access, Electronic Mail and Ad Hoc Reporting;
- A multi-tiered, web-based environment which will ease the administration of this statewide system and improve the communication and data sharing among all levels of government. □

LOCAL PROPERTY TAX ***Deductions*** ***Certified***

The 2000 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses and veterans was delivered to the State Treasurer on September 15, 2000.

As required by the provisions of N.J.S.A. 54A: 10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2000.

The total amount of property tax deductions for senior and disabled persons and surviving spouses for

2000 was \$28,835,474. That amount represents a decrease of 8.9% from 1999.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2000 was 112,176. When compared to tax year 1999 the number of deductions decreased 7.4%.

The amount of veterans' deductions for tax year 2000 was \$33,275,446. For tax year 1999 the amount of veterans' deductions was \$17,043,098. The large increase is due to the fact that for tax year 2000 the veterans' deduction increased from \$50 to \$100 per deduction. The veterans' deduction will increase in \$50 increments in each of the next 3 years until it reaches \$250 for tax year 2003.

The total number of veterans' deductions for 2000 was 337,344. When compared to tax year 1999 the number of deductions increased .9%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

January 1-

- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to

County Tax Administrator by assessor.

January 10 (before)-

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10-

- Copies of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms JDC-1 and JDC-2, assessed value of new construction/improvements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25-

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior)-

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

February 1-

- Whenever an assessor fails, for any reason, to mail or otherwise

assessors' calendar - from pg. 7

deliver a notification of assessment or change in assessment, the County Tax Board may extend the time for appeal with the approval of the Director of the Division of Taxation.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10-

- Certification, by assessor to County Tax Board or by County Tax Board to County Tax Administrator, of the date the bulk mailing of notification of assessment completed.

February 15-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county,

to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On June 22, 2000, Ahmed O. Mohammed of Brooklyn, New York, was arrested by the Office of Criminal Investigation (OCI) when he was observed loading his vehicle with contraband cigarettes (1,166 cartons) from a storage unit in Fairview, New Jersey. As a result of the investigation, we determined that Mr. Mohammed was involved in an ongoing multi-state cigarette smuggling enterprise. The evidence shows that the contraband cigarettes were purchased in the State of Virginia. Thus, the case was referred to the U.S. Attorney's Office for the Eastern District of Virginia for Federal prosecution. On August 1, 2000, Ahmed O. Mohammed was indicted by the Federal Grand Jury sitting in Richmond, Virginia. This case is part of OCI's involvement in a multi-state task force involving the U.S. Attorney General's Office to prosecute the multi-state traffickers. OCI received substantial assistance in this case from the New York City Department of Finance, Office of Tax Enforcement.
- On July 10, 2000, Anthony J. Billings, a real estate appraiser based in New Brunswick, New Jersey, was sentenced to five (5) years probation. The sentence was a result of his guilty plea for tampering with time sheets

he submitted to North Brunswick Township and failing to file New Jersey gross income tax returns for the years 1995, 1997, and 1998. Mr. Billings was ordered to make full restitution in the amount of \$12,439.22 to the State of New Jersey. This investigation was a joint effort with the Middlesex County Prosecutor's Office and the Office of Criminal Investigation.

- On July 18, 2000, in Old Bridge Township Municipal Court, KRSM, Inc., trading as Madison Exxon, a gasoline retailer/convenience store/auto repair facility, pled guilty to recklessly or negligently filing false tax returns for the period January 1, 1997 through December 31, 1999. The false returns resulted in the underreporting and underpayment of \$16,141.52 in sales and use tax.
- On July 21, 2000, in Hudson County Superior Court, George J. Halpern, of Short Hills, New Jersey, was sentenced on a guilty plea he had entered on May 1, 2000, to one count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer. Mr. Halpern was sentenced to three (3) years probation, ordered to perform 300 hours of community service, fined \$5,000, and is precluded from acting as an accountant or tax preparer, except under the supervision of another person who will be responsible for the accuracy of his work, for three years. Prior to sentencing, Mr. Halpern had made restitution to the State of New Jersey of \$26,492. In the same proceed-

ings, Mr. Halpern's son, Todd Halpern, of West Orange, New Jersey, was accepted into a Pre-Trial Intervention Program (PTI) pursuant to a plea of guilty he had entered on May 1, 2000, to a charge of filing a fraudulent 1997 New Jersey personal income tax return (phony W-2s). The term of Todd Halpern's supervision under PTI is one year, during which time he must complete 100 hours of community service, pay \$125.00 in court fees, and is precluded from acting as an accountant or tax preparer except under the supervision of another person who will be responsible for the accuracy of his work. Prior to acceptance into PTI, Todd Halpern had made restitution to the State of New Jersey in the amount of \$3,392. The Office of Criminal Investigation investigated this case with the substantial assistance of the Division of Taxation's Audit Activity and Investigations Branch, and the case was prosecuted by the Attorney General's Office.

- On August 11, 2000, Superior Court Judge Irvin J. Snyder sentenced Dok Yu Ryu, of Browns Mills, New Jersey, to four (4) years imprisonment for attempting to bribe a State Division of Taxation Special Agent. Mr. Ryu, owner of Tri-State Wholesale Distributors, Inc., (a New Jersey cigarette distributor) pled guilty to bribery in State Superior Court in March. He was also fined \$10,000 personally, and his company was fined \$75,000.
- On August 28, 2000, in Trenton, New Jersey, a State Grand

Jury indicted Truyen T. Vo on separate counts of filing fraudulent New Jersey State income tax returns and failure to pay tax for the years 1995 to 1998. It is alleged that Mr. Vo failed to report \$281,409 in illegal gambling income resulting in the failure to pay \$26,099 in personal income tax, penalty and interest. Mr. Vo and four associates were also indicted for promoting gambling in a sports betting operation. This case was investigated jointly by the New Jersey State Police, the Division of Criminal Justice, and the Office of Criminal Investigation and was presented to the Grand Jury by the Attorney General's Office.

- On August 29, 2000, a joint investigation was entered into with the Cumberland County Prosecutor's Office based on information that several individuals in Cumberland County may have filed multiple fraudulent New Jersey Homestead Rebate Applications and may have received multiple rebates. As a result of the investigation, three Bridgeton, New Jersey, residents have been charged with Theft by Deception. The investigation is continuing.
- On September 12, 2000, Misa Corp t/a Metro Liquors of East Rutherford, New Jersey, was found to be operating without a current retail cigarette license. Office of Criminal Investigation (OCI) personnel visited the location at the request of Newark Field Audit personnel, who indicated that the company had failed to cooperate by supplying requested cigarette invoices. Those documents were obtained

from the distributor and turned over to Newark Field Audit for examination. One count of Operating without a Current Retail Cigarette License and one charge of No Invoices have been filed in the Newark Municipal Court.

- On September 20, 2000, members of the Office of Criminal Investigation participated in the execution of a search warrant in Philadelphia, Pennsylvania, with agents from the United States Postal Inspection Service. The location was the residence of an individual suspected of filing over 380 fictitious New Jersey Homestead Rebate Applications and the fraudulent receipt of \$113,000 in rebates. The suspect used a sophisticated scheme involving banks in Pennsylvania, New York, Virginia and California to launder the proceeds and avoid detection. Evidence relating to homestead rebate fraud in New Jersey was seized at the residence together with \$4,900 in cash and \$17,000 in United States Savings Bonds. The resident was arrested on Federal charges of Mail Fraud, Forgery, Identity Fraud and Fraudulent Use of a Financial Access Device.
- The Office of Criminal Investigation assisted the Office Audit Motor Fuels Group in the prevention of the retail sale of gasoline at less than cost by three (3) New Jersey shore area gas stations.
- One hundred (100) complaints alleging tax evasion were evaluated from July to September 2000 in the Office of Criminal

criminal enforcement - from pg. 9

Investigation.

- From July to September 2000, fifty-four (54) charges were filed in court on seventeen (17) cases for violating the Cigarette Tax Act including possession of 1,452.4 cartons of contraband cigarettes, valued at \$50,834.00 and resulting in seventeen (17) arrests. □

Tax Briefs

Sales and Use Tax

Farming Use Exemption — Legislation expanding the scope of the farming use exemption from sales and use tax was signed into law as P.L. 1999, c. 314, on January 6, 2000. The exemption applies to sales made on or after January 1, 2000. The legislation amends the farming use exemption by substantially expanding the scope of the exemption and reducing the scope of certain exclusions from the exemption.

The exemption provided by N.J.S.A. 54:32B-8.16 now applies to purchases of tangible personal property, production services and conservation services. However, it applies *only* when the property or service is purchased for use or consumption directly and primarily in the production for sale, or handling for sale, or preservation for sale of agricultural or horticultural commodities. In addition, the exemption applies only to purchases by a farmer of property or services used in his own farm, i.e. it does not apply to purchases by contractors or other service providers doing work for the farmer.

Three categories of tangible personal property are not eligible for the farm exemption: purchases of automobiles, energy, or materials used to construct a building or structure. However, the law has carved out an exception to this exclusion. Thus, a farmer's purchases of materials to construct a silo, greenhouse, grain bin or manure handling facility might be eligible for the farming use exemption if the facility will be used directly and primarily in production, handling or preservation for sale of the farmer's agricultural or horticultural commodities.

Farmers making exempt purchases of goods or services under N.J.S.A. 54:32B-8.16 must present their vendor with a properly completed Farmer's Exemption Certificate (ST-7). The Form ST-7 was amended in February 2000 to reflect the recent changes in the law, and copies of the updated form are now available.

P.L. 1999, c. 314, also amends the container and wrapping supply exemption provided by N.J.S.A. 54:32B-8.15. The amendment allows an exemption for the sale of containers used in a farming enterprise. Farmers claiming an exemption under this provision must use an Exempt Use Certificate (ST-4) to support their exemption.

The policies implementing the amended farming use exemption have been codified in the Division's new sales tax regulations at N.J.A.C. 18:24-19.1 et seq.

In Ground Pools — The Division responded to an inquiry concerning the installation of a safety cover for an in ground pool. The installation of the pool itself, with associated plumbing and decking, is a capital improvement to real

property. As such, the contractor pays tax on the materials and supplies and the labor is exempt from tax. The property owner is not charged any tax on the improvement and may issue a Certificate of Capital Improvement (Form ST-8).

A safety cover is not permanently affixed to the realty. Rather, it remains tangible personal property that may only be utilized during periods of extended non-use. Therefore, the cover is subject to tax when sold to the property owner. N.J.S.A. 54:32B-3(a). A charge for installing the cover is also subject to tax. N.J.S.A. 54:32B-3(b)(2).

Manufacturer Rebates — For the purposes of the New Jersey Sales and Use Tax Act, sales tax must be charged on the total "receipt" from a retail sale; i.e., the actual amount of the sales price payable to the retailer. See N.J.A.C. 54:32B-2(d). This is so regardless of whether that sales price will be paid entirely by the customer, or by moneys paid by the customer's friends and family, or by a combination of the customer and the manufacturer.

If the retailer chooses to sell an item at a discounted price, the customer should be charged tax on the discounted price payable to the retailer, not on the original price before reductions. The reduced price is the "receipt" on which the 6% sales tax is calculated.

When a customer pays full price, but is reimbursed by the manufacturer for part of that price in the form of a manufacturer's rebate, the tax is due on the full price originally payable to the retailer. This is because the retailer is receiving the full price and sales tax

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sence of some physical injury, disability or pain involving the hand and may therefore qualify for exemption. A specific determination letter is required in such a case.

Moist heat packs are not generally useful in the absence of some injury or illness, and they are customarily and primarily used to serve a medical purpose. Therefore, moist heat packs can qualify for exemption under N.J.S.A. 54:32B-8.1. The exemption does not apply if the heat packs are sold to a medical services provider (e.g., doctor, physical therapist, nursing home, hospital) which uses it in providing services for compensation and does not transfer it to the patient for home use. N.J.S.A. 54:32B-8.1 (last paragraph). However, if it is sold to the patient for home use, the exemption applies even if an insurer, rather than the patient, is actually paying for the item.

Recalibration Services — The Division replied to an inquiry regarding the taxability of “recalibration” services. The inquirer sells precision weights, balances and laboratory apparatus to vendors of this equipment and also provides recalibration services to the end users of this equipment. It performs the service at its New Jersey location and then ships worldwide. It charges a fee for this service.

The recalibration service is deemed to be a service of maintaining or servicing tangible personal property, which is taxable pursuant to N.J.S.A. 54:32B-3(b)(2). The service is subject to New Jersey sales or use tax under the provision even if the equipment itself was exempt at the time

of purchase pursuant to the manufacturing of research and development exemptions, N.J.S.A. 54:32B-8.13a or N.J.S.A. 54:32B-8.14, respectively. However, the New Jersey tax applies only if the recalibrated items are then shipped to a New Jersey address, or picked up in New Jersey. The service will not be subject to New Jersey tax if the recalibrated items are shipped to customers outside of the state. □

In Our Courts

Administration

Adequate Notice – *Leonard Santos v. Director, Division of Taxation*, decided January 21, 2000; Tax Court No. 002138-1999.

By letter dated January 10, 1995, the Division notified plaintiff’s corporation that it intended to conduct an audit of plaintiff’s business. The letter was addressed to the business at their P.O. Box in Trenton. After plaintiff alleged that there was a complete loss of its accounting records, the Division mailed an arbitrary assessment to the corporation at its North Broad Street, Trenton site address on December 5, 1995. The postal service could not deliver the letter and returned it to the Division. On December 8, 1995, the arbitrary assessment was mailed to the Trenton P.O. Box. This letter was also returned to the Division by the postal service with a “Box Closed” notation on the envelope.

On July 15, 1996, the Division sent a notice and demand for payment of tax to the corporation at the Trenton P.O. Box address. Plaintiff’s wife signed the mailing receipt. This notice advised the corporation that it had 90 days to appeal the Division’s determina-

tion of tax liability. The corporation neither protested the notice with the Division nor did it file a complaint with the Tax Court.

On July 15, 1996, the Division also sent a notice to plaintiff stating that he was personally liable for unpaid corporate taxes. This notice was sent to plaintiff’s address at Monmouth Junction, New Jersey, but was returned by the postal service with a notation “Attempted, Not Known.” Thereafter, the Division secured a Pennsylvania address for plaintiff through a credit-reporting agency. On October 3, 1996, the Division sent a notice to the PA address concerning plaintiff’s personal liability for corporate taxes and stated that he had a right to an administrative hearing provided he complied with N.J.A.C. 18:1-1.8 by filing a proper protest. This mailing was signed as received by plaintiff’s wife. On November 5, 1996, plaintiff’s accountant filed a nonconforming N.J.A.C. 18:1-1.8 protest. The Division’s Conference & Appeals Branch denied the protest as untimely and advised that an appeal to the New Jersey Tax Court must be made within a 90 day period. Plaintiff neither inquired as to why the protest was untimely nor did it file a complaint with the Tax Court.

On December 17, 1996, the Division’s Judgment Section advised plaintiff that his protest was received and that the corporate tax liability was fixed because there was no timely challenge to the corporate determination. Plaintiff was simultaneously advised that the issue of his personal liability for taxes could be challenged if he filed a proper protest. Further-

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more, plaintiff was notified that a Certificate of Debt would be filed against the plaintiff if the information were not supplied by January 10, 1997. Neither the plaintiff nor plaintiff's representative responded to the Division's December 17, 1996, letter. On January 17, 1997, the Division sent a notice to plaintiff advising him that on January 16, 1997, the Division entered a Certificate of Debt against him as a responsible person of his corporation.

There was no communication from plaintiff or his representatives until March 25, 1999, when plaintiff filed a motion in Superior Court seeking an order to vacate the judgment. The Superior Court judge denied the motion because the Tax Court had jurisdiction and allowed plaintiff 30 days to file the application with the Tax Court. Plaintiff then filed a motion similar to the one filed in Superior Court.

The Court granted the Division's motion to dismiss the complaint for

untimely filing. The Court ruled that plaintiff had adequate notice of the nature and extent of the tax liability imposed both on the corporation and him personally because (1) plaintiff's wife had signed for notices of both the corporate assessment and the responsible person assessment, (2) the certification of plaintiff's accountant indicated that plaintiff was aware of the notices at least by November 1996, (3) although plaintiff requested a hearing in November 1996, plaintiff did not file a conforming protest in accordance with N.J.A.C. 18:1-1.8 or respond to or comply with Division communications thereafter, and (4) plaintiff did nothing more until over two years later when it filed a motion in Superior Court. The Court also ruled that the Division's notices provided plaintiff with an opportunity to be heard but plaintiff did not avail himself of that opportunity in a statutorily timely manner.

Division's Duty to Provide Notice of Changes to Tax Statutes – *Schirmer-National Co. v. Director, Division of Taxation,*

17 N.J. Tax 495 (Tax Court 1998); Motion for Reconsideration, *denied* January 4, 1999; No. M00348-96, *aff'd*, Appellate Division, No. A-3877-98T2 (March 31, 2000).

The Tax Court followed its decision in *Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation*, 16 N.J. Tax 584 (Tax Court 1997) that alarm monitoring services carried through telephone telecommunications are subject to sales tax pursuant to P.L. 1990 c.40.

Plaintiff also argued that the provisions of P.L. 1990 c.40 were so broad in taxing telecommunications that the sale of burglar alarm monitoring services should not be subject to tax until the time the Division provided proper notice of the tax law change. The Tax Court ruled that taxpayers are "put on notice of legislative enactments on the date the legislation becomes effective." Consequently, the Division of Taxation was not obligated to provide taxpayers with notice of changes in the tax law. The Appellate Division affirmed.

Bankruptcy Discharge – *Lloyd M. Cohen v. Director, Division of Taxation*, decided June 13, 2000; Tax Court No. 008458-96.

Plaintiff confessed to embezzling approximately two million dollars from his clients/creditors. The Chancery Division of the Superior Court appointed a custodial receiver to marshal assets and collect embezzled monies to satisfy the claims of the victims. In the process, the receiver entered into a closing agreement with the Internal Revenue Service and the Division where New Jersey Gross Income Tax returns (NJ-1040s) were filed for the periods 1986

TAXATION REGIONAL OFFICES

New Jersey Division of Taxation Regional Offices provide individual assistance at locations throughout the State. Normal hours of operation* are 8:30 a.m. to 4:30 p.m., Monday through Friday. Offices are closed weekends and holidays.

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Newark	124 Halsey Street, 2nd floor
Northfield	1915-A New Road (Route 9)
Sea Girt	2100 Highway 35, Old Mill Plaza
Somerville	75 Veterans Memorial Drive East, Suite 103
Trenton	Taxation Building, 50 Barrack Street, 1st floor lobby

*Offices will be open for extended hours during the week prior to the April 16, 2001 deadline for filing 2000 income tax returns.

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through 1994 and taxpayer, not the receiver, would be responsible for payment of any tax, penalty, and interest. Pursuant to a court order, plaintiff and other interested parties were notified of the proceeding that approved of the terms and conditions of the closing agreement including the understanding that plaintiff was the sole and primary person responsible for payments of tax, penalty, and interest.

On July 24, 1996, the Division issued an assessment against plaintiff for the above mentioned tax liability. Plaintiff filed a timely complaint in Tax Court challenging the Division's assessment primarily on the grounds that the assessment was not valid against him personally because the NJ-1040s were filed by his custodial receiver. Plaintiff also filed for Chapter 7 with the United States Bankruptcy Court and the petition included the tax liabilities pertaining to the July 24, 1996, assessment. On or about February 14, 2000, the Bankruptcy Court granted plaintiff a Chapter 7 discharge.

On January 6, 2000, the Division filed a motion for summary judgment to dismiss plaintiff's complaint. After numerous adjournments to allow plaintiff time to respond, plaintiff's only submission was a copy of the order granting his Chapter 7 discharge.

The Court validated the Division's July 24, 1996, assessment by granting summary judgment in favor of the Division because plaintiff failed to present facts in opposition to the Division's motion. Failure to do so deemed the facts, as set forth by the Division, undisputed. The Court ruled that

the receipt of a bankruptcy discharge does not invalidate Tax Court proceedings and that the issue of the discharge should be litigated in Bankruptcy Court because of its significant expertise.

Statute of Limitations and Record Retention – *Alpha I, Inc., v. Director, Division of Taxation*, decided June 13, 2000; Tax Court No. 00373-1999.

Plaintiff did not provide the Division with purchase records to support the expenses pertaining to the first quarter of 1994. Therefore, the Division determined the use tax liability for the first quarter of 1994 by extrapolating the results of their examination of records pertaining to subsequent periods two to three years thereafter.

Plaintiff claims that the use tax assessment should be set aside because there was no requirement to retain purchase records for longer than three years pursuant to N.J.S.A. 54:32B-16. However, under N.J.S.A. 54:32B-27(b), the Director is permitted to issue assessments of sales and use tax for up to four years from the date of the filing date of the return.

In upholding the Division's assessment as timely in conformity with the statute of limitations on assessments, the Court rationalized that to quash the assessment "would in effect reward taxpayer for destroying records that are still subject to an audit and additional assessment." The Court ruled that the three-year retention period set a minimum time period to retain records and that "[a]lthough the taxpayer was not required to keep records beyond this three-year period, destruction of the records would put the taxpayer in jeopardy

because additional assessments may be levied until the expiration of the four-year statute of limitations." Therefore, the Court opined that taxpayer placed itself in peril by disposing of their records prior to the expiration of the statute of limitations period.

Corporation Business Tax Income Includable in the Numerator of Receipts Fraction – *Stryker Corporation, v. Director, Division of Taxation*, 18 N.J. Tax 270 (Tax Court 1999); *aff'd*, Appellate Division, No. A-736-99T5 (July 21, 2000).

At issue is whether the Division properly included in the numerator of Stryker's receipts fraction all receipts generated by drop-shipment transactions that occurred in New Jersey but which were destined for out-of-State customers.

Osteonics Corporation, a New Jersey corporation, is the wholly owned subsidiary of plaintiff Stryker Corporation, a Michigan corporation. Although Stryker and Osteonics are located in the same building in Allendale, New Jersey, Stryker paid all the real estate related costs.

Stryker manufactured hip and knee replacements. Stryker sold its products to its customers through its corporation Osteonics, whose sole function was to receive and process orders for Stryker's products. Osteonics' computers transmitted customers' orders to Stryker's computers. Then, Stryker packed and shipped the products to Osteonics' customers throughout the United States, via common carrier F.O.B. Allendale, without any intervention by Osteonics. Thereafter, Osteonics would bill its customers.

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Upon the receipt of customers' payments, Osteonics would retain a portion of the receipts and remit the balance to Stryker. Although Stryker did not invoice Osteonics for each order, company representatives reviewed Osteonics' sales receipts in order to determine price and profit allocations. Essentially, Osteonics retained an approximate twenty-percent gross margin and the payments from Osteonics to Stryker include a profit to Stryker.

In calculating the numerator of the receipts fraction, Stryker allocated sales to Osteonics by the shipment's destination state. Accordingly, for tax purposes, Stryker included sales of only New Jersey customer destination shipments in the numerator of the receipts fraction. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of the ultimate destination state of the customer.

The Tax Court held that plaintiff's sales receipts from its direct shipments to Osteonics' out-of-State customers are includable in the numerator under N.J.S.A. 54:10A-6(B)(6). The Tax Court found that this statute required inclusion in the numerator of all receipts earned by the taxpayer in New Jersey including the intrastate transactions between plaintiff and Osteonics. The Tax Court also noted that the sales at issue were not includable under N.J.S.A. 54:10A-6(B)(1) because there were no physical shipments to Osteonics.

On appeal, the Tax Court was upheld. The Appellate Division found throughout all Stryker's arguments there existed a constant, single theme that for tax purposes

the two transactions, the sale of the product to Osteonics and the sale by Osteonics to its customers, should be treated as one transaction. However, the Appellate Division disagreed, opining that these sales were includable in the receipts numerator under N.J.S.A. 54:10A-6(B)(6) because Stryker realized income from sales of manufactured products located in New Jersey to New Jersey based Osteonics.

**Gross Income Tax
Period to File Refund Claim –**
Clifford D. Wenrick v. Director, Division of Taxation, decided May 12, 2000; Tax Court No. 003571-99.

Plaintiff filed his 1994 New Jersey Gross Income Tax return (NJ-1040) on May 28, 1998, claiming a \$699 refund due to excess employer income tax withholding. Although plaintiff alleges that he filed for and was granted an extension for the 1994 Federal tax return, an extension was not requested in New Jersey.

The Court found that N.J.S.A. 54A:9-8(a) was the operative statute relating to limitations on refund claims concerning New Jersey Gross Income Tax. This statute states that the amount of the refund "shall not exceed the portion of tax paid within the three years immediately preceding the

filing of the claim plus the period of any extension of time for filing the return."

The Court ruled that obtaining a Federal extension in and of itself does not automatically trigger a New Jersey extension. N.J.A.C. 18:35-6.1(a) permits a four-month extension to file the NJ-1040 where by the original due date of the NJ-1040 the taxpayer at the time of application for Extension To File (1) paid 80% of the tax liability computed on the NJ-1040 when filed and (2) attached a copy of the application for automatic Federal extension. As plaintiff never filed a request for extension with New Jersey, the Court ruled that plaintiff was not entitled to the four-month extension.

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Due to the May 28, 1998, filing of the NJ-1040, the Court ruled that plaintiff was entitled to a refund of 1994 taxes to the extent they were overpaid three years preceding the date the return was filed, between May 28, 1998, and May 25, 1995. As the employer-withheld taxes were deemed paid on April 15, 1995, per N.J.S.A. 54A:9-8(h), the original 1994 NJ-1040 due date, the taxes at issue are more than three years after the date of payment. Therefore, the Court denied plaintiff's refund request.

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Partner's Distributive Share – *Ronald J. Gumbaz v. Director, Division of Taxation*, decided March 30, 2000; Tax Court No. 3494-97.

Since 1981, plaintiff retained a 25% partnership interest in MTSG. Plaintiff's capital contributions to the MTSG partnership had a balance of \$20,883 as of 1993. However, plaintiff's balance in his MTSG capital account was negative \$28,403 as of December 31, 1993 due to partnership losses over the years.

In 1993, MTSG's amount of net income earned from its only investment in One Arkansas Associates was \$60,528 and it received \$868 in cash. MTSG reported plaintiff's distributive share of partnership income as \$15,132 and distributed \$217 to plaintiff. Plaintiff's Federal tax return also reported a \$47,010 loss from an S corporation. Plaintiff did not own interests in any other partnership in 1993.

Plaintiff's 1993 NJ-1040 reported zero income for plaintiff's distributive share of partnership income. The Division adjusted plaintiff's 1993 NJ-1040 return Line 20, Distributive Share of Partnership Income, from \$0 to \$15,132. Plaintiff claims that this income is not taxable because either (1) the income should be considered as a return of capital, (2) that the partnership income should be netted against the Subchapter S corporation loss or (3) that only the distribution received by him should be subject to tax. As discussed below, the Court rejected plaintiff's theories and held that plaintiff's

\$15,132 distributive income share of partnership income is taxable under N.J.S.A. 54A:5-1k.

Distribution: N.J.S.A. 54A:5-4 states that a partner's distributive share of partnership income or gain received by the partnership shall be subject to tax whether or not distributed. Plaintiff claims that the partnership actually received \$868 and therefore that, not the \$15,132, should be the basis for his New Jersey income tax as he is a cash basis taxpayer. The Court responded that the \$60,528 of net income MTSG earned from One Arkansas Associates indicates the amount of income that MTSG has the power to demand distribution of from One Arkansas Associates. The fact that MTSG chose not to withdraw the full amount does not mean it was not earned or available to the partnership. Furthermore, the Court stated that "received" does not mean that the income must be physically or actually put in your hand. Therefore, the Court ruled that regardless of MTSG's actual withdrawals, MTSG received \$60,528 of income from One Arkansas Associates of which \$15,132 is plaintiff's 25% taxable portion regardless of whether the partnership actually received the money.

Return of Capital: Plaintiff claims that he is being taxed on the return of capital because he has a negative MTSG capital account balance and he has not yet realized his investment in the partnership. The Court ruled that plaintiff's distributive share of partnership income could not be considered a return of capital because in order for the income to be characterized as a return of capital the partnership interest must be sold.

in our courts - from page 16

Netting of Income and Losses: Plaintiff contends that he should be permitted to offset the 1993 partnership income against prior year partnership losses because he received no New Jersey tax benefit for partnership losses prior to 1993. The Court ruled that the Gross Income Tax Act does not specifically provide for a loss carryforward and therefore a taxpayer forfeits the loss if it cannot be offset by income in the same tax year.

Alternatively, plaintiff claims that he should be able to offset his 1993 \$15,132 partnership gain against the 1993 \$47,010 loss of the S corporation. The Court found that N.J.S.A. 54A:5-2 prohibits an inter-category offset by not permitting a taxpayer to apply losses within one category of gross income against gross income of another category. In 1993, New Jersey did not recognize S corporations and therefore there was no category of gross income to offset. In 1994, N.J.S.A. 54A:5-1p was added to tax the net pro rata share of S corporation income; however, the Court found that these are two separate categories of gross income and an inter-category offset is prohibited.

Sales and Use Tax Admission Charges Imposed by Government Entities – *Meadowlands Basketball Associates, v. Director, Division of Taxation*, decided July 24, 2000; Tax Court No. 000665-98.

Plaintiff is the owner of the Nets of the National Basketball Association. Pursuant to a license agreement, the New Jersey Sports

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and Exposition Authority (NJSEA) leased the Continental Airlines Arena to plaintiff for the Nets to play their home basketball games. The license agreement included the requirement that plaintiff charge, collect, and transfer to the NJSEA a 10% “admission impost” on the price of admission of each ticket sold to home games. The impost fee was included and separately stated on the face of each ticket.

Plaintiff did not charge or collect sales tax on the impost charge; however, it did collect and remit sales tax on the price of admission. Pursuant to an audit, the Division assessed plaintiff sales tax due on the 10% admission impost fee.

Plaintiff argued that the impost fee is exempt under N.J.S.A. 54:32B-9(a)(1), which exempts from sales tax the purchase and sale of certain goods and services by specified governmental agencies. It was clear that NJSEA was a specified governmental agency as it was created pursuant to the New Jersey Sports and Exposition Authority Law, P.L. 1971 c.137, N.J.S.A. 5:10-1 to -38. However, the Court ruled this particular exemption only applies to situations where NJSEA is the vendor, purchaser, user or consumer, not where it imposes an admission charge.

The Court found that N.J.S.A. 54:32B-9(a) does not apply to admission charges imposed by government entities to athletic events because it is addressed in N.J.S.A. 54:32B-9(f). Paragraph (f) states

that admission charges collected by State agencies are exempt from sales and use tax except in the case of collection of admission charges to athletic games. In the case of athletic games, the statute states that admission charges are exempt only if they inure exclusively to the benefit of elementary or secondary schools. As NJSEA used the impost charge to fund its statutory mandate of constructing and operating professional sports facilities in New Jersey, the admission charges were held to be subject to sales tax.

Finally, the Court reviewed a New York Tax Appeal Tribunal decision concerning nearly identical facts that granted an exemption in this situation after finding that admission charges are a service. The Court found three reasons as to why the New York decision was not persuasive. (1) Decisions of New York courts are not binding on New Jersey courts or controlling in interpreting New Jersey statutes. (2) The New York determination was decided by an administrative tribunal, not a court, and was not subject to judicial review. In New York, the taxing authority cannot seek review of an adverse administrative tribunal decision. (3) A comparison of the New York and New Jersey statutes concerning admission charges reveals a significant difference in that New York does not include political subdivisions or state agencies in the admission charge discussion. On the other hand,

N.J.S.A. 54:32B-9(f) is dispositive of the issue of taxability. □

In Our Legislature **Petroleum Products Gross Receipts Tax**

Phase-Out — P.L. 2000, c.156 (signed into law on November 16, 2000) phases out, over a three-year period, the Petroleum Products Gross Receipts Tax for fuel used to generate certain electricity. The legislation eliminates the application of this tax to the sale of fuel used by a utility, co-generation facility or wholesale generation facility to generate electricity sold at wholesale or through certain retail sales channels. This law took effect January 1, 2001.

Unclaimed Property

Energy Assistance Funding — P.L. 2000, c.132 (signed into law on September 21, 2000) provides funding to an existing statewide non-profit energy assistance organization that helps needy families pay their energy bills with temporary financial assistance. The supplemental funding would be derived from the unclaimed property held by the State’s electric and gas utilities that is transferred to the State under the “Uniform Unclaimed Property Act (1981).” The law also creates the Unclaimed Utility Deposits Trust Fund to hold unclaimed utility deposits. This legislation took effect immediately. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
		1	2	3	4	5	6
2	7	8	9	10	11	12	13
0	14	15	16	17	18	19	20
0	21	22	23	24	25	26	27
1	28	29	30	31			

January 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

January 16

- CBT-100** Corporation Business Tax—Annual return for accounting period ending September 30

continued

January 16 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 22

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

January 22 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

January 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

January 30

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly return

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
					1	2	3
2	4	5	6	7	8	9	10
0	11	12	13	14	15	16	17
0	18	19	20	21	22	23	24
1	25	26	27	28			

February 13

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

February 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending October 31

continued

February 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

February 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

February 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

February 26

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2 0 0 1					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

March 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

March 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending November 30

continued

March 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

March 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

March 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

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Be sure to take a look at the articles on the front page of this issue to learn about all the changes that affect this year's returns.

New Jersey State Tax News

Fall 2000

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NJ Earned Income Tax Credit Program

Legislation approved by Governor Whitman August 14, 2000 (P.L. 2000, c.80) created the New Jersey Earned Income Tax Credit Program (NJEITC).

Under this new program, New Jersey households that receive a Federal earned income credit which is based on having at least one "qualifying child," and whose New Jersey gross income is \$20,000 or less, and whose filing status for New Jersey purposes is either married, filing joint return or head of household or qualifying widow(er), are eligible for a refundable New Jersey tax credit.

Benefits under the New Jersey Earned Income Tax Credit Program are being phased in over a four-year period. The amount of the New Jersey credit for tax year 2000 will be equal to 10% of the applicant's Federal earned income credit. The NJEITC amount will increase to 15% of the Federal earned income credit for tax year 2001, 17.5% for tax year 2002 and will total 20% of the Federal credit for tax year 2003 and thereafter.

To apply for the NJEITC, eligible residents must file a New Jersey resident income tax return and complete the New Jersey Earned Income Tax Credit Schedule portion of the tax return form. Those who wish to receive the credit must file a tax return even if they do not owe any tax to New

Jersey and are not required to file a return because their income is below the minimum filing threshold. The New Jersey earned income tax credit reduces the amount of New Jersey tax owed, if any, or may give the taxpayer a refund. The Division plans to introduce Form NJ-1040EZ for tax year 2000 to simplify the filing process for those whose income is below the filing threshold. See the winter issue for more details.

For tax year 2000, taxpayers are not required to file a New Jersey return if their income for the entire year is \$10,000 or less (filing status single), \$15,000 or less (filing status married, filing joint

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Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

<http://www.state.nj.us/treasury/taxation>

return, head of household or qualifying widow(er), or \$7,500 or less (filing status married, filing separate return). For tax year 2001 and thereafter, these income levels will increase to \$20,000 or less (filing status married, filing joint return, head of household or qualifying widow(er)) and \$10,000 or less (filing status single or married, filing separate return). □

Sales and Use Tax Initiatives

Tax policy and procedures for collecting and remitting sales and use tax have been the focus of intense activity both in New Jersey and nationally.

Sales and Use Tax Review Commission. Effective March 1, 2000, the New Jersey Legislature created a Sales and Use Tax Review Commission to evaluate and report on proposed legislation that would either expand or contract the base of the New Jersey Sales and Use Tax law. Thus, for example, if legislation is proposed that would create a new exemption from sales tax, the Commission would be required to review it and report its conclusions to the Legislature.

The Commission consists of 10 members — the State Treasurer, three persons from the Executive Branch appointed by the Governor, two persons appointed by the President of the Senate, two persons appointed by the Speaker of the General Assembly and two persons appointed from the general public by the Governor. John Baldwin, former Director of the New Jersey Division of Taxation, has been appointed by Governor

Christine Whitman to be the Chairman of the Commission. Division of Taxation personnel will assist the Commission in the performance of its duties.

The Commission's duties involve obtaining a fiscal impact determination and providing a brief policy analysis concerning proposed legislation that would affect the base to which the New Jersey Sales and Use Tax law would apply. Within 90 days after the introduction of such legislation, the Commission is required to provide its recommendation to the New Jersey Legislature on the proposed legislation.

Members of the Sales and Use Tax Review Commission as of June 1, 2000 are: John R. Baldwin, Chairman; Deborah R. Bierbaum, AT&T; Jessica Furey, Department of Law & Public Safety; John T. Hanson, New Jersey Commerce Commission; Bernard B. Kornmehl, Assistant State Treasurer, Tax Policy; and Robert K. Thompson, Director, Division of Taxation.

All inquiries should be directed to Nicholas K. Catalano, Executive Secretary for the Commission at:

NJ DIVISION OF TAXATION
PO BOX 269
TRENTON, NJ 08695-0269

Phone: 609-292-5995

Streamlined Sales Tax Project.

The Streamlined Sales Tax Project, also called the Zero Burden System, is a joint effort among several states and the National Governors' Association (NGA), the Federation of Tax Administrators (FTA), and the Multistate Tax Commission (MTC) to design, test, and implement a new sales and use tax system for the 21st

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Contact Us

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Rosemary Tuthill
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century. The State of New Jersey supports the goals of the Project and is involved as a Participating state. Representatives from the New Jersey Division of Taxation attend monthly meetings and participate in the Work Group discussions.

The goal of the project is to reduce the burdens and costs that are currently imposed on local and remote sellers of property and services under the current systems for collecting, reporting and remitting taxes. The new system will increase uniformity, retain state flexibility, and maintain the highest level of security and privacy. It will ease consumer concerns regarding tax collection in online commerce transactions and streamline compliance for e-commerce companies as well as bricks and mortar businesses.

The Project plans to have a pilot launched in the fall of 2000. The pilot is intended to test the capabilities and limits of the current tax collection software, and will include several participating states, many software vendors and numerous retailers. It is anticipated that the information gathered in the pilot will assist the Work Groups in designing the new system. Additional information on the Project can be found at:

www.streamlinedsalestax.org □

Sales Tax Holidays in Other States

If you buy an item outside New Jersey that would *not* be tax-exempt in New Jersey, and you do not have to pay sales or use tax to the state where you bought it, you are still required to pay New Jersey “use tax” when you bring that item into New Jersey for use in this State. New Jersey’s use tax rate is 6%, just like the sales tax rate.

For example, if you purchased a computer during Pennsylvania’s “Tax-Free PC” week, and brought it into New Jersey to use here (or had it delivered to New Jersey), you must pay *use tax* to New Jersey if you did not have to pay sales or use tax to Pennsylvania. On the other hand, if you bought a shirt tax-free during a tax holiday in New York, you do not owe use tax to New Jersey, because the shirt would have been tax-exempt if you had purchased it here.

If you owe New Jersey use tax, send your payment to the State along with a completed Form ST-18, Individual Use Tax Return, within twenty (20) days after the property is brought into New Jersey. You can order use tax return forms from the Division’s Automated Tax Information System (1-800-323-4400 or 609-826-4400) or from the NJ TaxFax Service at 609-826-4500. Form ST-18 can also be downloaded from the Division’s Web site:

www.state.nj.us/treasury/taxation/

If you have questions about sales and use tax, call our Customer Service Center at 609-292-6400, from 8:30 a.m. to 4:30 p.m., Monday through Friday to speak to a Division representative. □

CORPORATION TAX Schedule I for Inactive Businesses

In order to minimize the administrative burden placed on inactive corporations, in lieu of completing the entire CBT-100 or CBT-100S tax return for tax year 2000, such corporations need only complete Schedule I and attach it to page 1 of the return. Taxpayers must report the minimum tax liability, the installment payment (if applicable), and the annual report and/or registered agent change fees on page 1 of the Corporation Business Tax Return. Remittance for the entire balance due must be submitted with the return and Form CAR-100, the Corporation Business Tax Payment and Annual Report. Form CAR-100 is required to satisfy the annual report filing requirements.

An inactive corporation is a corporation that, during the entire period covered by the tax return, did not conduct any business, did not have any income, receipts, did not own any assets, and additionally for New Jersey S corporations, did not make any distributions and did not have any change in ownership.

To obtain a copy of Schedule I, call the Division of Taxation’s Forms Request message system from a Touch-tone phone at 1-800-323-4400 (within NJ, NY, PA, DE or MD) or 609-826-4400 (anywhere) or write to Taxpayer Forms Services, PO Box 269, Trenton, NJ 08695-0269. Schedule I is available through NJ TaxFax at 609-826-4500 and can be downloaded from the Division of Taxation Web site at:

www.state.nj.us/treasury/taxation/

In lieu of Schedule I, a statement

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signed by a corporate officer attesting that the corporation was inactive may be submitted. □

GROSS INCOME TAX **Invalidation of NYC** **Tax on NJ Residents**

New Jersey residents working in New York City have had to pay the New York City Nonresident Earnings Tax for all of 1999 although New York residents working in New York City have not had to pay that tax since July 1, 1999. On April 4, 2000, the highest court in New York invalidated the New York City Nonresident Earnings Tax back to July 1, 1999, thus equalizing the New York City Nonresident Earnings Tax on New Jersey residents and New York residents. New Jersey residents will be able to claim a refund of the New York City Nonresident Earnings Tax paid after July 1, 1999.

A taxpayer affected by the invalidation of the New York City Nonresident Earnings Tax — and many taxpayers will not be affected — must adjust the credit claimed for taxes paid to other jurisdictions on a New Jersey Amended Income Tax Resident Return (1999 Form NJ-1040X). The change in the amount of the credit is to be shown on Line 38 of the 1999 amended return. The taxpayer must state in the “Explanation of Changes to Income, Deductions and Credits” box on the same page as Line 38 that “This is an amended return reporting refund of New York City Nonresident Earnings Tax.”

To determine if an amended 1999 New Jersey gross income tax return has to be filed, a taxpayer

must use the total tax paid to New York less the amount of refund of New York City Nonresident Earnings Tax he expects to receive. If this amount is less than the amount found on Line 8 of the New Jersey Schedule A, the taxpayer needs to file an amended New Jersey gross income tax return with a corrected credit for taxes paid to other jurisdictions. If this amount is greater than the amount on Line 8 of the New Jersey Schedule A, a taxpayer is not required to file an amended New Jersey gross income tax return. If the taxpayer filed claiming a separate credit for taxes paid to New York City, he must file an amended New Jersey gross income tax return including a corrected tax credit for New York City.

Any resulting liability for New Jersey gross income tax must be paid with the filing of the amended 1999 New Jersey gross income tax return (Form NJ-1040X). The New Jersey Division of Taxation will waive both penalty and interest on that liability *if* the taxpayer files the amended 1999 New Jersey return and pays the gross income tax shown due on that return by December 15, 2000.

Information on the procedures New Jersey residents are to use to obtain a refund of the New York City Nonresident Earnings Tax is published on the Web site of the New York State Department of Taxation and Finance at:

www.tax.state.ny.us □

GROSS INCOME TAX **Investment Clubs**

The Division has received several telephone inquiries from investment clubs inquiring where to

deduct their expenses related to portfolio income on their Partnership Return, Form NJ-1065.

N.J.A.C. 18:35-1.3 defines a partnership as “a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the New Jersey Gross Income Tax Act. Only entities that qualify for and elect to be treated as partnerships for Federal tax purposes (for example, Limited Liability Companies and Limited Liability Partnerships) and are in business shall be treated as partnerships under the Gross Income Tax Act.”

An investment club is generally not considered to be in business if its main source of income is interest, dividends, and gains on disposition of its stock and securities. The activities of an investment club are treated essentially in the same manner as the activities of an individual investor. Individual investors must report their investment income in the respective categories of income on their New Jersey Gross Income Tax returns and are not allowed deductions against their portfolio income, unless specifically allowed.

Accordingly, an investment club is not required to file a New Jersey Partnership Return, Form NJ-1065, unless it constitutes a business. Instead its members are required to report their share of the club's income, per their Federal Schedule K-1, in the appropriate category of income on their New Jersey Gross Income Tax returns.

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Fall 2000

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If an investment club constitutes a business, the club must file Partnership Return, Form NJ-1065, and can deduct its expenses that meet the criteria of an ordinary business cost or expense as outlined in N.J.A.C. 18:35-1.1(d)1. □

INHERITANCE TAX

Executor Commissions

The Governor recently signed legislation (P.L. 2000, c.29) which amended N.J.S.A. 3B:18-14 and affects the manner in which the Division determines the executor's commissions allowable as a deduction for Transfer Inheritance Tax purposes. The New Jersey Administrative Code (N.J.A.C. 18:26-7.10) will be amended to reflect these changes.

The statute as amended now provides that commissions on all corpus received by the fiduciary may be taken as follows:

- 5% on the first \$200,000 of all corpus received by the fiduciary;
- 3.5% on the excess over \$200,000 up to \$1,000,000;
- 2% on the excess over \$1,000,000; and
- 1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

The Internal Revenue Service has taken the position that it is not bound by the provisions of N.J.S.A. 3B:18-14 unless a court has approved the allowance of executor commissions. Current

practice in New Jersey is to refrain, except in extraordinary circumstances, from incurring the additional costs and delay of submitting an executor's accounting for judicial approval. A court determination as to the allowance of executor's commissions is rare. In order to allow practitioners the ability to administer estates with greater certainty, the statute has been amended to clarify that a fee calculated pursuant to the provisions of N.J.S.A. 3B:18-14 is the normally appropriate commission and that a court determination is necessary only if a beneficiary objects to the statutory fee calculation.

The calculated commissions may be reduced by the court having jurisdiction over the estate only upon application by a beneficiary adversely affected upon an affirmative showing that the services rendered were materially deficient or that the actual pains, trouble and risk of the fiduciary in settling the estate were substantially less than generally required for estates of comparable size.

The act was signed by the Governor on June 16, 2000 and took effect immediately. For Transfer Inheritance Tax purposes, it will apply to the estates of decedents passing away on or after its effective date. □

Discovery Contract Expires

The Delinquent Tax Discovery Services contract, which the Division of Taxation entered into in March 1995, officially expired on July 28, 2000. Under the contract, MBIA Muniservices (formerly Municipal Tax Bureau (MTB) and the

Law Offices of Nicholas Panarella) was authorized to "discover" businesses and individuals delinquent in filing returns for Corporation Business, Sales and Use and/or Gross Income Tax, and to collect the associated tax due.

The 5-year contract resulted in the "discovery" of 5,600 delinquent taxpayers and the collection of more than \$20 million in delinquent taxes, interest and penalties. Collections were predominantly for the individual gross income tax (62%) followed by the corporation business tax (26%) and the remainder (12%) for sales and use and employer gross income tax. □

SALES AND USE TAX

Hazardous Waste Pickup Service

During the course of an audit of a taxpayer's records it was noted that there was a general misunderstanding regarding the taxability of hazardous waste pickup service.

N.J.S.A. 54:32B-3(b)(4) of the Sales and Use Tax Act imposes sales tax on the receipts from the services of maintaining, repairing or servicing real property. Garbage and trash removal services fall within the meaning of this section of the law. However, the law does provide an exemption from tax for receipts related to garbage and trash removal whenever these services are performed on a "regular contractual basis for a term of not less than 30 days."

Under N.J.A.C. 18:24-13.2, trash includes garbage or rubbish. "Removal" includes only the operation of picking up and physically removing contained

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waste from the premises and does not include activities related to maintaining or servicing property or any processing of the waste. Examples of trash removal services include a private company picking up garbage at a house or picking up industrial sawdust at a plant. N.J.A.C. 18:24-13.2 does not distinguish between hazardous and nonhazardous contained waste.

Accordingly, the service of *picking up and removing* hazardous or nonhazardous waste, (i.e. chemical drums, contaminated dirt, fluorescent bulbs, sludge, etc.) is subject to tax unless the service is performed for the same customer on a regular contractual basis for a term of not less than 30 days. This service must be performed at least once a month for consecutive months in order for the exemption to apply.

For sales tax purposes, a distinction is made between trash removal services as described above, and services performed on real property which constitute a capital improvement to the property; for example, removing asbestos from a building or excavating contaminated soil or removing an underground tank. □

Weigh Stations

When you see truckers pulling into a weigh station, an area utilized by the State Police to check the weight and safety conditions of trucks on our major highways, did you know that New Jersey Division of Taxation personnel are hard at work too?

Investigators from the Investigations Special Projects Unit have been working with the State Police for several years at these stations

to identify unregistered, out-of-State vendors with New Jersey “nexus.” Nexus occurs when business activities create tax consequences. Investigators interview the operators of these vehicles and review invoices to determine if nexus exists.

In many cases Taxation personnel determine that a Jeopardy Assessment is appropriate. This determination can be made when the taxpayer may quickly depart the State and make collection of the tax doubtful. Investigators issue Warrants of Execution – Jeopardy Assessment and make demand for immediate payment. Failure to make payment can result in the seizure of the vehicle and its contents. Payment of these assessments is often done by bank-to-bank wire transfers.

To date Taxation has collected approximately \$11 million from the weigh station and other Nexus Compliance projects. □

Federal Offset Program

The Financial Management Service (FMS), the branch of the Fed-

2000 Package NJX

See the order blank on page 23 to order your copy of *Package NJX*. The publication is available in print and on CD ROM. The CD ROM version, *NJX PLUS*, contains many useful tax information publications in addition to reproducible tax forms. Three-ring binders capable of holding several volumes of the printed version can be purchased separately.

eral Treasury Department that administers the Federal Offset Program, recently conducted a seminar in Washington, D.C. for all states that intend to or are already participating in this program. Almost every state sent representatives to the seminar — New Jersey sent five — representing enforcement and collection areas and internal system units within the Division of Taxation.

The Federal Offset Program allows states that have taxpayers who owe personal income tax to send information to the Federal government and receive any Federal income tax refund to apply against the state debt. This program has been very successful in a small, controlled pilot project conducted during the spring of 2000 by New Jersey. This State collected over \$1,162,000 on 10,000 submitted accounts. New Jersey expects to expand this program next year to submit all outstanding gross income tax debts to the program. Federal refunds offset for the seven states participating in the pilot program amount to over \$21,000,000. □

Taxpayer Accounting Branch

In its most simple terms, the Mission Statement of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and correct any errors in their accounts.

Most bills and refunds issued by the Division of Taxation are automatically computer-generated. Some may be flagged for review, based on certain predetermined criteria, which are in place to pre-

vent erroneous bills and refunds from being sent to taxpayers. These flagged bills and refunds are reviewed and corrected by the Taxpayer Accounting Branch.

When taxpayers dispute a bill or discover a discrepancy with the amount of refund received, their correspondence should be sent to the Taxpayer Accounting Branch. All letters received from taxpayers in response to any notices are reviewed. When the information necessary to correct an account is received, Taxpayer Accounting staff will adjust the account and notify the taxpayer that the problem has been resolved.

When a taxpayer responds to a notice or corresponds with the Division for any other reason, it is very important to provide as much information as possible both as to the identity of the taxpayer and the nature of the problem. In order for the Taxpayer Accounting Branch to respond to a taxpayer, all correspondence should include:

1. Full name and identification number of the taxpayer as it appears on the Division notice;
2. Tax type and period in question;
3. Nature of the problem;
4. Taxpayer's phone number; and
5. Taxpayer's current address.

When a taxpayer or his representative responds to a notice, the correspondence should be sent to the Post Office Box shown on the notice. This insures that it gets to the office that initiated the notice and is best suited to resolve the problem.

In Fiscal Year 2000, Taxpayer Accounting personnel:

- Responded to nearly 120,000 pieces of correspondence;
- Reviewed more than 68,000 bills and almost 47,000 refunds;
- Collected more than \$4 million; and
- Made almost 290,000 adjustments or corrections to accounts.

Additionally, Taxpayer Accounting is, and will continue to be, very heavily involved in the Property Tax Reimbursement, NJ SAVER Rebate, and Homestead Rebate programs, and staffs Tax Practitioner Hotlines for tax practitioners who are unable to resolve client problems through normal channels. □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the New Jersey Association of Public Accountants (NJAPA), and cooperating colleges. The one-day institutes begin November 8 and end in mid-December and are geared toward the intermediate and advanced tax preparer.

The topics presented by the New Jersey Division of Taxation are:

- Property Tax Relief – Homestead Rebate and NJ SAVER Programs
- Sales Tax
- Passive loss treatment (income tax)

- Options - tax treatment (income tax)
- Credit for taxes paid to other jurisdictions (income tax)
- 2000 Tax Updates
- Doing Business with the State of New Jersey

The topics presented by Internal Revenue Service are:

- Tax treatment of debt cancellation – 1099A and 1099C
- Divorce – tax treatment (overview)
- Options – tax treatment
- Tax consequence of early retirement benefits
- 2000 Tax Update
- Doing Business with the IRS

Each session begins promptly at 8:30 a.m., includes lunch, and concludes at 3:30 p.m. Registration desks will open and coffee will be served at 8:00 a.m. Six CPE credits will be issued in taxation to those who complete the session.

The pre-registration fee for commercial tax preparers is \$75 (\$15 for full time students, ID required). Those who register at the door will be required to pay a \$90 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds, however, you can reschedule for another location. The locations, dates and registration form appear on page 8.

□

2000 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Nov 8	Mays Landing	ATLANTIC COUNTY COLLEGE Room J-206	David Matagiese (609) 522-6012
Nov 13	Piscataway	RUTGERS UNIVERSITY Busch Campus – Student Center	Stuart Simon (732) 679-6363
Nov 16	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov 18	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov 29	Sewell	GLOUCESTER COUNTY COLLEGE Auditorium – Student Center	Nancy Ritchie (609) 387-2127
Dec 14	Union	KEAN UNIVERSITY	Alice Weinstein (973) 379-3275
Dec 15	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355
Dec 18	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990

2000 Practitioner Institutes Registration

Fee \$75 – Pre-Registration

Detach and Mail to:

(Make check payable to NJAPA)

**New Jersey Association of Public Accountants
Attn: Niles Breslau
101 N. Washington Place, Suite 1B
Margate, NJ 08402 TEL: (609) 823-9103**

Name of Attendee	Firm or Company Name
Business Phone	Student (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No

Firm or Company Address

City

State

Zip Code

College Location	Amount Remitted
------------------	-----------------

LOCAL PROPERTY TAX ***Excluded Sales & Equalized Values***

The following is a review and clarification of the Division's practices concerning the exclusion of certain sales from the Table of Equalized Valuations based upon the nonusable 06 category. The nonusable category 06 refers specifically to transactions that convey only a portion of the assessed unit. This conveyance is usually referred to as an apportionment, split-off, cut-off, or subdivision; for example, a parcel sold out of a larger tract where the assessment is for the larger tract. In order to support a nonusable claim of this nature the Division of Taxation's Assessors Handbook (Exhibit X-9F) states that an assessor must show in Section Two on the SR-1A the following:

1. Date of the split-off (approved subdivision);
2. Number of the new lots created by the split-off;
3. Size of the new lot conveyed from the deed;
4. Source of the information.

Frequently, however, the proper information regarding these sales is not set forth in Section Two of the SR-1A. Often an assessor will insert the block and lot numbers which will be given in the future to that portion of the original property being conveyed. The assessor should always insert the current 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. Additionally, the assessor should use the original assessment for the entire parcel assessed and not substitute the new assess-

ment which will be given to the particular property that is conveyed.

At times questions arise concerning sales which were reclassified or have not been given a nonusable 06 status by the Division. One example where a nonusable 06 designation is sometimes misapplied is in the classification of roadway acquisitions by State, County or Municipal agencies. When land is dedicated for road expansion, sidewalks, and other roadway purposes, the portion of the original lot that is split off should be classified as a nonusable 15, sales to a governmental entity.

Another way that the nonusable 06 category is erroneously applied concerns the transfer of property that was previously split off for roadway improvements. If the sale of minor portions of a property for roadway or easement purposes does not significantly affect the assessed value of the remaining parcel, then a subsequent sale of that parcel cannot be excluded under the nonusable 06 designation. For example, a town is increasing the width of a street by ten feet and the average depth of a lot is 200 feet. The assessor deducts five (5) feet of depth from the properties on both sides of the street to reflect that modification. After a review of the market data, the assessor determines that no changes to the current assessed value are justified. Because the changes to the property did not significantly affect its value, a sale after this split-off would not qualify for the nonusable 06 designation. If an assessor claims this exclusion on the basis of a split-off, evidence of a substantial change in the assessed value needs to be documented.

Specific concerns arising from this policy statement on the nonusable 06 category that require further clarification should be directed to the Local Property Section within Property Administration at 609-984-3466. □

LOCAL PROPERTY TAX ***Co-op/Continuing Care Properties***

As the result of cooperation of 215 co-operative housing corporations and continuing care facilities throughout New Jersey, the Property Administration Branch of the Division of Taxation was able to effectuate a complete update of all existing co-op/continuing care files for the NJ SAVER Rebate Program.

Some 7,400 changes were made to the co-op/continuing care database, which entails 32,000 housing units. These updates enable eligible property owners to file their NJ SAVER Rebate applications by telephone or online through the Division of Taxation Web site, as can most other New Jersey homeowners.

Co-operative housing corporations and continuing care facilities, although responsible for property taxes, are transferred and ultimately assessed in a different manner than other residential dwelling units. Rather than recording a deed at the County Clerk's office indicating a real estate transfer, these properties are bought and sold via privately held stock plans. The assessment of these types of structures is done in the aggregate rather than by individual block and lot. The names, addresses, etc. of new

continued on page 10

co-ops - from page 9

owners are controlled internally, usually by a Property Management Company. □

LOCAL PROPERTY TAX

Tax Maps

Tax maps submitted to Property Administration, Local Assessment Compliance for revaluation purposes are required to be current. A current tax map is one that has every deed, major and minor subdivision, and condominium unit plotted by the New Jersey Licensed Land Surveyor responsible for making revisions. The municipal tax assessor is responsible for providing the surveyor with the necessary deeds and subdivision maps. Each sheet must comply with the latest regulation in the New Jersey Administrative Code 18:23A-1 et seq., as far as lot and block numbering system and all lot

and block required details. No tax map will be approved without an up-to-date revision block indicating the date of latest revision, name of the responsible land surveyor and New Jersey license number. In addition to the revision block an up-to-date "To show conditions as (date)" statement must be shown on the Key Map. Other items checked are legibility; properly marked block limits indicated with heavy solid lines; details of condominiums; details of riparian lands; proper railroad names, limits, and classification of railroad property as assessed by the State; sufficient dimensions for each lot and acreage for lots over one acre. This office is not limited to the above items.

Prior to revaluation the tax assessor should review the tax map with his surveyor based on the guidelines stated above. This will provide for an orderly and expeditious

approval of the tax map.

Local Assessment Compliance will reject any tax map from the examination process which, in its opinion, has not been adequately checked for compliance with the regulations by the surveyor. Such rejection will delay inspection and approval for revaluation.

Regular communication between the tax assessor, the surveyor, and Local Assessment Compliance is imperative when tax map matters are not clear for proper compliance with the requirements.

The tax assessor may request the latest edition of the administrative code entitled, "Tax Maps, Regulations and Standards, February 1996" by contacting our office at 609-292-5327. □

LOCAL PROPERTY TAX

Assessor and County Tax Board Compliance Units

The Local Assessment and County Tax Board Compliance Units were created in Property Administration in 1997 and charged with reviewing the statutory, administrative, and procedural responsibilities of tax administrators, tax board commissioners, and assessors.

In the past three years the Local Assessment Compliance Unit, under the direction of Jim Coll, has conducted periodic inspections of assessors' offices for compliance with statutory responsibilities. It has conducted reviews of assessors' offices to determine if municipal assessors have adequate staffs and equipment to carry out the administrative functions of

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their positions. This group has worked with the Department of Treasury to perform Local Government Budget Reviews of municipal tax assessment offices to determine if assessment offices are managed in a fiscally responsible manner.

Local Assessment Compliance contains two additional units. The Railroad Property Unit classifies, assesses and taxes railroad properties and assesses and computes railroad franchise tax. The Tax Maps Unit reviews and approves municipal tax maps for conformity to current specifications and as required for municipal revaluations.

Under the direction of Patty Wright, the County Tax Board Unit reviews county procedures for adherence to the statutes, administrative code, and official State policies; gives written directives, revises official forms, and provides tax boards with current information on State programs such as the Regional Efficiency Aid Program (REAP). Its personnel attend tax board meetings and appeal hearings to see that all taxpayers are treated with uniformity. A biannual newsletter, established this year, keeps county officials informed of pertinent legislation such as the Recertification law, as well as judicial decisions and current policies.

In 1997, the Director of the Division of Taxation instituted the use of the Certificate of Outside Employment (Form OE-1) to review the job-related activities of local tax officials. The County Tax Board Compliance Unit issued OE-1 forms to local taxing officials that year. Assessors forwarded completed forms to the county board of taxation offices that maintain them as a public record. County tax administrators, tax board commissioners and tax board staff members have filed their OE-1s with the Division of Taxation. This group completed its initial review of the OE-1 forms in all county tax boards in 1998 to ascertain any potential conflicts of interest that appear. As commissioners are State employees, their OE-1 filings are forwarded to the New Jersey Executive Commission on Ethical Standards.

The Local Assessment Compliance group investigates potential conflicts of interest proactively. Conflicts of interest that hinder the uniform application of the law are serious matters. The Division's objective is to ensure that all taxing officials remain fair, unbiased and objective in the discharge of their statutory duties. Upon discovery of a potential conflict of interest, this Unit arranges a meeting with the official in question to determine if an actual conflict exists. Often, the official is found not to have a conflict of interest and the issue is concluded. Subsequent interviews may determine, however, that an assessor's conflict of interest must be settled. If this cannot be accomplished

administratively, either the assistance of the Attorney General's Office is requested or the issue is resolved judicially. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$100 veteran's tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15-

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assessors' calendar - from pg. 11

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for omitted assessments, whichever is later.

December 31-

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veteran's deductions and property tax deductions for 2001 must be filed with assessor, thereafter with collector during the tax year. □

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Nineteen persons passed the examination for the tax assessor

certificate held on March 25, 2000. Sixteen persons became certified tax assessors on June 1, 2000. They are as follows:

Atlantic County: Barbara Y. Saccoccia, Brigantine City.

Bergen County: Kathleen Winston, East Rutherford Borough.

Burlington County: Jay A. Garnier, Moorestown Township; Patricia F. Sporer, Eastampton Township; Joan M. Wiest, Maple Shade Township.

Camden County: Annabelle D. Naidas, Collingswood Borough; Michael T. Raio, Gloucester Township.

Cumberland County: Patricia A. Belmont, Vineland City; Mitsuko Key, Millville City.

Gloucester County: Anthony J. Colavecchio, Monroe Township.

Hunterdon County: Laura Whitaker, Milford Borough.

Monmouth County: James P. Casey, Spring Lake Heights Borough; Holly Reycraft, Freehold Township.

Morris County: Konstantin Belenky, Montville Township.

Somerset County: Catherine A. Gantner, Raritan Borough.

Sussex County: John B. Gisler, Fredon Township. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 7, 2000, Stanley W. Hudson of Monmouth Beach, New Jersey, was sentenced to three (3) years probation and made a restitution payment of \$24,928 in connection with his guilty plea of tax evasion. Mr. Hudson had plead guilty to one (1) count of Failure to Pay Over Personal Gross Income Tax in the amount of \$24,928 for the years 1993 through 1996. This case was jointly investigated by the Office of Criminal Investigation and the Monmouth County Prosecutor's Office.
- On April 12, 2000, Arcadio Aneliz of Vineland, New Jersey was named in a thirteen (13) count indictment by a Cumberland County Grand Jury. The indictment involved charges relating to selling cigarettes not bearing the required revenue stamp, for which the defendant was immediately fined \$14,885: Failure to File Payroll Returns for 1996 and 1998, Failure to Pay Over Gross Income Tax in the amount of \$11,887, and Filing Fraudulent Gross Income Tax Returns for the year 1997. This indictment resulted from a joint investigation that was conducted by the Cumberland County Prosecutor's Office and the Office of Criminal Investigation.
- On April 12, 2000, during the course of an investigation in Hudson County, New Jersey, a new type of counterfeit cigarette tax stamp was found. A total of

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criminal enforcement - from page 12

17.8 cartons of export cigarettes were seized with counterfeit New Jersey tax stamp affixed to the packs. This is the first incidence of a "stick-on" adhesive type stamp. This investigation is continuing.

- On May 1, 2000 in Hudson County Superior Court, George J. Halpern of Short Hills, New Jersey, entered a plea of guilty to one (1) count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer for numerous small businesses and individuals. Mr. Halpern has already made restitution of \$24,843 in tax, with penalty and interest outstanding. In the same proceeding Mr. Halpern's son, Todd P. Halpern, of West Orange, New Jersey, entered a plea of guilty to filing a fraudulent 1997 New Jersey personal income tax return (phony W-2s) on his share of income from his father's business. Todd P. Halpern has made full restitution of \$2,682 in tax, penalty and interest. This case was referred to the Office of Criminal Investigation (OCI) by the Division's Audit Activity Branch. The case was investigated by OCI with the substantial assistance by Taxation's Audit Activity and Investigations Branch, and was prosecuted by the Attorney General's Office.
- On May 17, 2000, Operation "Boilermaker" targets Christopher Grungo of Burlington, New Jersey, and Brenda Grungo of Shamong, New Jersey, were sentenced in response to their guilty pleas regarding a scheme

to evade the payment of \$158,000 in Petroleum Products Gross Receipts Tax from the period of December 1992 through May 1993. Christopher Grungo was sentenced to five (5) years incarceration in State prison and ordered to make restitution of the \$158,000 of Petroleum Products Gross Receipts Tax. Mr. Grungo was sentenced in response to his guilty plea of Racketeering involving Misapplication of Entrusted Property. Brenda Grungo was sentenced to five (5) years probation and ordered to make restitution in the amount of \$50,000 of Petroleum Products Gross Receipts Tax. Ms. Grungo was sentenced in response to her guilty plea of Theft by Failure to Make Required Disposition.

- Norberto Espinal and Antonia Oviedo both of New York City were convicted of Possession of more than 2,000 Contraband Cigarettes, a crime of the 4th degree, and Possession of Counterfeit Stamps, and Forgery Devices, crimes of the 3rd degree. Judge Frederick DeVesa JSC, Middlesex County, sentenced both subjects to five (5) years of Intensive Supervision Probation. Both subjects served five (5) days in the Middlesex County Jail. A third subject, Carlos Lopez, was permitted to enter the Pre-Trial Intervention Program. All three were arrested in March 1999 by the Office of Criminal Investigation during the execution of a search warrant at a contraband cigarette/counterfeit stamp operation in Perth Amboy, New Jersey.
- Eyad Mohammed Bader and Osama Mohamad Jamhour were

recently indicted by a Hudson County Grand Jury. Both defendants were arrested for Possession of Stolen Property, a 2nd degree crime, Possession of more than 2,000 Unstamped Cigarettes, a 4th degree crime, Transportation of Contraband Cigarettes, No Licenses and No Invoices, which are Disorderly Persons Offenses. The 5,400 cartons of unstamped cigarettes which were seized from the subjects by the Office of Criminal Investigation (OCI) were the proceeds of a hijacking in Illinois. OCI has cooperated with the FBI, ATF, and the U.S. Attorney's Office (Illinois) in this case.

- On June 8, 2000, a saturation enforcement sweep in the Township of Cherry Hill, New Jersey was conducted for the purpose of determining compliance with the Cigarette Tax Act and other taxes and licenses administered by the New Jersey Division of Taxation. Thirty-five (35) investigations were conducted resulting in a total of eighteen (18) violations, including four (4) seizures of contraband cigarettes.
- On June 12, 2000, Anthony Foti, owner of An-Jo Car Company, Inc., plead guilty in Ocean County Superior Court to an accusation of Failure to Turn Over Taxes in the amount of \$76,184. Mr. Foti acknowledged that he had collected and failed to remit Sales Tax totaling the above amount while operating his used car dealer-

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ship located in Toms River, New Jersey. This case was jointly investigated by the Office of Criminal Investigation and the New Jersey Division of Criminal Justice with assistance from the New Jersey Division of Motor Vehicles.

- On June 16, 2000, the Attorney General's Office obtained a Superior Court order that Bernard Mondry be confined at Trenton State Psychiatric Hospital for up to thirty (30) days to determine whether he is competent to stand trial with co-defendant Naum Raichel for conspiracy to evade/commit theft of \$85,000 in motor fuel tax.
- On June 22, 2000, Ahmed O. Mohammed of Brooklyn, New York was arrested by the Office of Criminal Investigation (OCI) when he was observed loading his vehicle with contraband cigarettes from a storage unit in Fairview, New Jersey. OCI and members of the New York City Department of Finance Office of Tax Enforcement had Mohammed under surveillance. OCI rented a storage unit at the same location that Mohammed

was storing his contraband cigarettes. A total of 1,166 cartons of Virginia stamped cigarettes were seized as well as \$4,743 in cash. The subject has been charged with Possession of more than 2,000 Contraband Cigarettes, a 4th degree crime, and Transportation of Contraband Cigarettes, No Invoices and No Consumer License, all Disorderly Persons Offenses. The subject was remanded to the Bergen County Jail in lieu of \$15,000 cash bail, no 10%.

- Eight-five (85) complaints alleging tax evasion were evaluated from April to June 2000.

From April to June 2000, one hundred and one (101) charges were filed in court on twenty-seven (27) cases for violating the Cigarette Tax Act including possession of 1,665.2 cartons of contraband cigarettes, valued at \$56,617 and resulting in twenty-four (24) arrests. □

Tax Briefs

Corporation Business Tax

Federal Disabled Access Credit —

The Division replied to an inquiry about the Federal disabled access

credit under IRC 44. Under that credit, an eligible small business is entitled to a nonrefundable disabled access income tax credit for expenditures incurred to make a business accessible to disabled individuals. The amount of the credit is 50% of the amount of eligible access expenditures for a year that exceed \$250 but do not exceed \$10,250.

For New Jersey purposes if an election is made to take a Federal credit rather than to take a deduction for an otherwise deductible expense, the deduction may not be taken for New Jersey purposes. *AT&T v. Director*, 13 N.J. Tax 534 (1993).

Where, for example, a Federal election is made to take a credit for an amount paid to acquire or modify equipment or devices for disabled individuals, the same basis should be used for depreciation for New Jersey as for Federal purposes. N.J.S.A. 54:10A-4(k)(2)(F)(i). New Jersey depreciation is not uncoupled from Federal depreciation for property placed into service during accounting periods beginning on or

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Enforcement Summary Statistics

Second Quarter 2000

Following is a summary of enforcement actions for the quarter ending June 30, 2000.

• Certificates of Debt:		• Jeopardy Seizures	5
Total Number	1,379	• Seizures	36
Total Amount	\$26,412,240	• Auctions	7
• Jeopardy Assessments	241	• Referrals to the Attorney General's Office	761

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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after July 7, 1993. This principle should be applied consistently as well as at the time of the sale of property.

NYC Commercial Rent or Occupancy Tax — The New York City Commercial Rent or Occupancy tax is an annual levy imposed on tenants of premises occupied, used, or intended to be occupied or used for the purposes of carrying on or exercising any trade, business, profession, vocation, or commercial activity. Rentals exclusively for residential or nonbusiness purposes are exempt. Tax is measured by a tenant's base rent and is imposed for tax years running June 1 through May 31.

The New Jersey tax add back statute which was amended by P.L. 1993, c.173, now refers to taxes "measured by profits or income, or business presence or business activity." The New York City Commercial Rent or Occupancy tax is deemed measured by business presence and is therefore to be added back. The CBT-100 instruction 16(f) was updated to reflect the statutory revision.

Nexus Independent Contractors — For sales tax purposes the in-State activities of an independent contractor (agent) would make the out-of-State seller subject to registration with the Division of Taxation. See definition of "vendor" N.J.S.A. 54:32B-2(i) and "person required to collect the tax" N.J.S.A. 54:32B-2(w).

For corporation business tax purposes independent contractors may solicit or make sales or maintain an office in New Jersey without subjecting the out-of-State principal company to liability for tax

based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A foreign corporation would be subject to income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation. N.J.A.C. 18:7-1.9(e).

Patronage Dividends from a Cooperative (New Jersey) — Corporation A is a member patron of a cooperative and does business with the cooperative during the year. The cooperative distributes patronage dividends to Corporation A at the end of the year under IRC 1388. Under IRC 1385 Corporation A would include the dividend in gross income but not deduct it under IRC 316.

For New Jersey purposes, the patronage dividend would be considered business income to Corporation A. This is implicit in the notice in *New Jersey State Tax News*, May/June 1991, p. 57, which discussed aspects of this issue, as did the Nov/Dec 1983 issue at p. 164.

Second, as noted in the Nov/Dec 1983 *New Jersey State Tax News*, p. 164, the patronage dividend is not a dividend within the meaning of the dividend deduction.

Third, the Division would consider that the patronage dividend is in the nature of "return or allowance" and should be shown as such as a reduction in the cost of goods sold. This would be reflected on Line 5, Schedule A-2, Form CBT-100, and noted on Line 2, Schedule A, of Form CBT-100. In this fashion the patronage dividend would not be sourced independently of the gross receipts to which it relates.

Gross Income Tax

Taxability of Employer

Contributions to a SEP Plan —

The question of the excludability from gross income of employer contributions in a Simplified Employee Pension (SEP) was decided by the New Jersey Tax Court in the case of *Richard and Janet Mutch v. Division of Taxation*, 9 N.J. Tax 612 (1988). In this case, the Tax Court found that once the contributions were deposited into the taxpayer's SEP account, ownership of the funds was effectively transferred to the employee. The employer had no control or claim over the SEP account and the taxpayer could withdraw the funds at any time. In addition, the limitations on such a withdrawal (i.e. possible 10% early withdrawal penalty tax for those under age 59½ and funds can only be taken at one-year intervals) was not sufficient to overcome the fact that there was receipt of the contribution when it was made. Thus, the employee has constructive receipt of employer contributions made to the SEP account. For this reason it must be included in the employee's gross income in the year the contributions are made.

Credit Card Unemployment

Insurance — Under the New Jersey Gross Income Tax Act, New Jersey gross income includes only amounts from specifically enumerated sources as set forth in the sixteen categories of gross income pursuant to N.J.S.A. 54A:5-1. Under N.J.S.A. 54A:5-1, payments received pursuant to an unemployment insurance agreement with a credit card company do not fall into any of the enumer-

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ated categories of income.

Therefore, the unemployment insurance benefits a person receives from a credit card company for making credit card purchases is not considered taxable income for New Jersey purposes.

Sales & Use Tax

Horse-Keeping Businesses — The Division has received several inquiries from businesses that are primarily engaged in the business of boarding or training customers' horses, renting horses for recreational trail riding, and leasing horses to customers for longer periods. The businesses have asked whether they might be eligible to claim the farming use exemption from sales tax.

The farming use exemption from sales and use tax applies to the purchase of qualified tangible personal property (*not* including automobiles, energy, or materials used to construct a building or structure, with a few exceptions) and services that are used directly and primarily in the production, handling, or preservation for sale of agricultural commodities on farms. The scope of this exemption is based on the language of N.J.S.A. 54:32B-8.16, which is part of the Sales and Use Tax Act. The business of boarding and training horses and renting horses to customers is *not* an agricultural *production* business for the purposes of this statute. Therefore, it is not eligible to claim exemption under N.J.S.A. 54:32B-8.16.

It is quite possible that the activities of a business might be statutorily deemed "agricultural use" for purposes of local property tax law, and thus qualify the land for farm

land assessment, and the business not qualify as a "farming enterprise" within the meaning of the Sales and Use Tax Act by reason of the wording of N.J.S.A. 54:32B-8.16. If a business is primarily engaged in boarding or training customers' horses and in renting horses to customers for trail riding, it is not primarily engaged in *producing* an agricultural product. Therefore, although it may be viewed as a farm for property tax assessment purposes, it does not qualify for the farming use exemption from sales tax.

A business that is primarily engaged in breeding and raising horses for sale is, however, treated as a "farming enterprise" for sales tax purposes; the horses that it breeds and raises for sale are deemed to be an agricultural "commodity." Thus, a horse breeding farm is eligible for the farming use exemption when it purchases qualified tangible personal property (e.g., feed) or services (e.g., shoeing) used in raising its horses for sale.

While a business that boards horses or rents horses to customers may be ineligible to claim the farming use exemption from sales tax, it does need to register as a vendor. Many of its transactions will be taxable and the business will be required to collect sales tax. Charges for boarding horses are taxable unless a statutory exemption applies under the specific factual circumstances. For example, if the business boards horses for a horse dealer who is in the business of selling these horses, the dealer may use a Resale Certificate (ST-3) and claim a resale exemption from sales tax. If it boards horses for a horse breeder, i.e., a farmer who is in the

business of raising and breeding horses for sale, or if it boards a plow horse for a farmer who uses the horse for farm work, these farmers may use a Farmer's Exemption Certificate (ST-7) and claim the farming use exemption from sales tax. (However, it appears unlikely that horse dealers or farmers would board their horses off their own premises.)

If, instead of charging a lump sum for boarding, the business itemizes the sales and services provided as part of boarding, the following general rules will apply. Separately stated charges for stall rental are exempt from sales tax for any customer. Stall rental is treated as the rental of space, which is essentially a real estate transaction and therefore not subject to sales tax. Charges for feeding the horses are viewed as taxable charges for the sale of tangible personal property, N.J.S.A. 54:32B-3(a), and are subject to tax unless the customer is entitled to claim a specific statutory exemption as explained above (e.g., farm use for a breeder, resale for a dealer). Separately stated charges for grooming or shoeing horses are taxable as charges for maintaining tangible personal property, N.J.S.A. 54:32B-3(b)(2), unless the customer is entitled to a specific statutory exemption as explained above.

Charges for training horses are treated as nontaxable charges for professional services. They remain nontaxable even if some grooming is provided as an inconsequential element of the training service. N.J.S.A. 54:32B-2(e)(4)(A).

When a business that provides

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riding horses to customers charges customers who borrow horses by the hour or by the day for trail riding, it is deemed to be renting horses to them. Since these rentals are treated as retail sales, N.J.S.A. 54:32B-3(f), the amounts charged for use of the horses are subject to tax. If a business provides horses to customers for much longer periods – contract periods of longer than 28 days – the business, as the lessor, is subject to the lessor's use tax which is calculated on either its purchase price for the horse or the total value of the lease. N.J.S.A. 54:32B-2(bb).

Although a horse boarding, training, and rental business is not eligible for the farming use exemption, it is eligible to claim a resale exemption when it purchases horses that it uses for rental to customers. N.J.S.A. 54:32B-2(e)(1)(A). However, if it ever uses some of those horses to give riding lessons or for any other purpose that does not constitute "resale," it will then be liable for compensating use tax on the fair rental value of those horses which it purchased tax-free and used for a purpose inconsistent with resale. N.J.S.A. 54:32B-6.

The business is also entitled to a resale exemption when it purchases feed for the horses that it boards. N.J.S.A. 54:32B-2(e)(i)(B). However, it may not claim the resale exemption when it buys feed for the horses that it trains (unless it charges the customer separately for the feed). This is because training is a nontaxable service and when the feeding is just incidental to the training service and no separate charges are made for the feed, the

trainer is deemed to be the retail purchaser of the feed. See N.J.S.A. 54:32B-2(e)(4)(A).

Motor Vehicle Sales to Farmers — A farmer may use the Farmer's Exemption Certificate (ST-7) when purchasing equipment, for example, a farm tractor, that is used *directly* and *primarily* in the process of growing, producing, or raising farm products on a farm for the purpose of sale. N.J.S.A. 54:32B-8.16. A "farm tractor" is not designed primarily for road use and not required to be registered with Motor Vehicle Services.

If instead the farmer is purchasing a truck tractor or other commercial truck with a manufacturer's gross vehicle weight rating of more than 18,000 pounds, which is being registered with Motor Vehicle Services pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 as a farm vehicle, then the appropriate certificate to use is the Exempt Use Certificate (ST-4). See N.J.S.A. 54:32B-8.43. The ST-7 may not, under any circumstances, be used when purchasing a passenger automobile or similar vehicle.

Sale of Depositions or Hearing Videotape to Law Firm — A most difficult transaction in sales and use tax administration is the "mixed" transaction where the vendor provides services accompanied by the transfer of property. The Division must look to the consequentiality of the property to determine the tax consequences. In the case of photographers and videotape producers, the Division takes the position that the overriding purpose of the customer is to obtain the photo, videotape etc. Such transactions are taxable as the

sale of tangible personal property under N.J.S.A. 54:32B-3(a).

For sales tax purposes, a law firm is not treated as the reseller of certain goods and services, although a law firm often charges its clients for goods and services that would be taxable if purchased at retail. For example, a law firm is not required to collect tax on the often substantial charges for copying documents, (taxable under N.J.S.A. 54:32B-3(a)) or for faxing services (taxable under N.J.S.A. 54:32B-3(f)), because they are provided to the client in conjunction with the professional legal services as the object of the agreement. Thus, the law firm is treated as the retail purchaser of copying and faxing services and must *pay* tax on such services, rather than collect tax from their client. The same analysis applies when a law firm is purchasing a videotaped deposition. The video production company may purchase blank tapes with a Resale Certificate and must charge sales tax on the sale of the videotape, regardless of how billed. Separately stated charges for a video playback service at hearings, depositions, etc. are not subject to sales tax.

Car Wash Business — A car wash business in New Jersey must collect and remit sales tax on the amounts that it charges customers for all services and all merchandise. These receipts will be taxable as either the sale of the service of maintaining and servicing tangible personal property, N.J.S.A. 54:32B-3(b)(2), or the sale of tangible personal property, N.J.S.A. 54:32B-3(a), respectively.

A car wash is generally treated as the retail purchaser of the various substances that it purchases for use in cleaning, washing, drying, polishing, deodorizing and otherwise maintaining its customers' vehicles. Therefore, as the retail purchaser, it must pay sales tax on these shop supplies. N.J.S.A. 54:32B-3(a).

The car wash may claim a resale exemption when it purchases items that it simply resells to customers as is. N.J.S.A. 54:32B-2(e)(1)(A). Examples would include cans of deodorizer spray, chamois cloths, jars of wax, etc., sold over the counter to customers for their own use.

In some limited circumstances, certain purchases of tangible personal property by the car wash for use in servicing customers' cars may be treated as purchases for resale. If the product purchased by the car wash is meant to become a "physical component part" of the vehicles on which the car wash performs its services, the product is deemed to be purchased for resale. N.J.S.A. 54:32B-2(e)(1)(B). In that case, the car wash may present a resale certificate (ST-3) when purchasing these items from a vendor who is registered to collect New Jersey tax. An example might be purchases of waxes that the business uses to wax a customer's car, and which are intended to leave a hard wax finish that remains on the customer's vehicle.

Sales of Energy to Exempt Organizations — The Energy Tax Reform legislation, effective January 1, 1998, imposed New Jersey Sales and Use Tax on natural gas, electricity, and utility service. P.L.

1997, c.162. The sales tax replaced the gross receipts and franchise tax which was imposed on utilities and passed along to all customers, including religious organizations, as part of the rate charged by an energy vendor. The Energy Tax Reform legislation was enacted with the same broad taxpayer base as the gross receipts tax that it replaced in order to maintain sufficient revenue for distribution to municipalities. Thus, the exempt organization provision in the New Jersey Sales and Use Tax Act was amended to make it clear there is no exemption for gas, electricity, or utility service purchased by otherwise exempt organizations, such as schools, churches, and nursing homes under N.J.S.A. 54:32B-9(c)(3).

Prepaid Gas Cards — The Division responded to correspondence concerning the taxability of prepaid gasoline cards.

Gasoline is exempt from New Jersey sales tax as a motor fuel. Thus, a prepaid gasoline card is not subject to tax.

A prepaid gasoline card should not be confused with a prepaid telephone calling card. Prepaid phone cards became subject to the retail sales tax as of January 1, 2000. P.L. 1999, c.248. Prior to that date, the tax was imposed at the time of use rather than at the time of sale. Prepaid phone cards are subject to tax as telecommunications services under N.J.S.A. 54:32B-3(f).

Universal Service Assessment/ Presubscribed Interexchange Carrier Charges — Effective January 1, 1998, the Federal Communications Commission imposed the Universal Service Assessment on telecommunica-

tions carriers in order to fund the government's Universal Service Program. The Universal Service Program subsidizes telecommunication services to low income and rural communities as well as schools, libraries and health care facilities. The telecommunications company passes the cost of the Universal Service Assessment to its customers as part of the monthly bill for service.

The Presubscribed Interexchange Carrier Charges (PICC) are fees that the local phone company charges the long distance company for the right to use the telephone lines. The phone company also passes along this cost to its customers.

The New Jersey Sales and Use Tax regulations provide that excise taxes which are imposed on vendors, such as the Universal Service Assessment, are included in the receipt on which sales tax is computed. N.J.A.C. 18:24-1.4(b). Since telecommunications services, including cellular, are subject to New Jersey sales tax, the Universal Service Assessment is also subject to sales tax.

The definition of receipt does not allow a deduction for expenses of the seller, which become part of the taxable amount. Since the PICC is an expense incurred by the service provider which is passed along to customers, it is includible in the taxable receipt. □

In Our Courts

Gross Income Tax Claim for Refund Following Paid Assessment — *Pamela Cater and Thomas P Rowe. v. Director, Division of Taxation*, decided

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Fall 2000

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April 28, 2000; Tax Court No. 002224-1999.

In April 1993, the Division issued a deficiency assessment for the amount plaintiffs claimed as a credit for taxes paid to other jurisdictions on their timely filed 1989 New Jersey gross income tax return. Plaintiffs filed a petition for a redetermination of the deficiency under N.J.S.A. 54A:9-9(b). After an administrative conference was held, the Director's July 1994 final determination disallowed the claimed credit. In August 1994, plaintiffs paid the deficiency and did not exercise their right to file a complaint with the Tax Court.

In January 1999, plaintiffs requested a refund by filing an amended 1989 New Jersey gross income tax return that claimed the same credit for taxes paid to other jurisdictions as the original 1989 return. The Division denied the refund request in January 1999 and noted as it did in its March 1999 final determination that this same matter was previously heard and decided in the prior July 1994 final determination. Thereafter, plaintiffs filed a complaint with the Tax Court.

As a general rule, N.J.S.A. 54A:9-8(a) provides that generally a taxpayer must file a refund claim within the later of three years from the time the return was filed or two years from the time the tax was paid. Although plaintiffs concede that the refund claim is untimely under 54A:9-8(a), plaintiffs claim that this general rule is inapplicable because they filed a timely petition for redetermination of the deficiency under N.J.S.A. 54A:9-9(b) and therefore their refund claim lies within the exception of

N.J.S.A. 54A:9-8(e). First, the Court ruled that section N.J.S.A. 54A:9-8(e) does not extend the time a taxpayer has to file a refund claim. Secondly, the Court ruled that although N.J.S.A. 54A:9-8(e) permits the Director to determine whether or not a taxpayer made a tax "overpayment" that can be credited to the taxpayer after the expiration of the applicable period of limitations, the payment of a deficiency assessment does not constitute an "overpayment." Therefore, the Court found that 8(e) was inapplicable to the instant case.

The Court found that the Director could consider a refund claim involving a paid gross income tax additional assessment under N.J.S.A. 54A:9-10(b). That section permits a taxpayer to file a refund claim provided that taxpayer did not protest or appeal from the additional assessment of tax. As plaintiffs previously protested the additional 1989 assessment, the Court found that this section was inapplicable.

The Court dismissed plaintiffs' complaint for untimely filing. Furthermore, the Court noted that the application of the *res judicata* doctrine was also appropriate in this case. The Court stated that the Division's denial of plaintiffs' 1993 petition for redetermination of the 1989 tax deficiency involving the claim for credit for taxes paid to other jurisdictions was exactly the same issue plaintiffs presented in their 1999 refund claim. "The doctrine of *res judicata* is designed to bar relitigation of a cause that has been finally determined between the parties on the merits by a tribunal with appropriate jurisdiction. See *Roberts v. Goldner*, 79 N.J. 82, 85

(1979). Our Supreme Court has observed that, as a general rule, an adjudicative decision of an administrative agency should be accorded the same finality that is accorded the judgment of a court. See *Bressman v. Gash*, 131 N.J. 517, 526. I have concluded that an application of the doctrine is appropriate in this case." Opinion, page 6.

Interest Deduction – Acquisition Indebtedness to Purchase Shares in S Corporation – *Carol and David Sidman v. Director, Division of Taxation*, decided April 24, 2000; Tax Court No. 1031-99.

Plaintiff David Sidman was a 4.32% shareholder in a corporation that qualified as a New Jersey subchapter S since January 1, 1994. In 1993, plaintiff purchased an additional interest in the corporation from two other shareholders so that he controlled 91.4% of the corporation. Terms of the purchase were a downpayment of approximately 7% and equal monthly payments over 15 years with interest at 8%.

At issue is whether a subchapter S shareholder may deduct interest paid on a loan used to purchase shares in the corporation to determine net pro rata share of S corporation income. The Court found that N.J.S.A. 54A:5-1p was the applicable provision associated with this issue and simply stated that gross income includes the taxpayer's net pro rata share of the S corporation's income. The Court stated that neither was there a New Jersey statute that permitted shareholders to deduct interest pertaining to their acquisition indebtedness concerning an S corpora-

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tion nor did N.J.S.A. 54A:5-1p or its legislative history reference the application of Federal principles to this issue. Therefore, the Court held that there was no authority to permit plaintiff to deduct interest pertaining to the S corporation acquisition in determining the net pro rata share of his S corporation income.

Motor Fuels Tax

Assessment - Inadequate Records – *Harvey Nobel & Beaverbrook Motors, Inc. v. Director, New Jersey Division of Motor Vehicles*, decided June 19, 2000; Tax Court No. 323-1999.

Harvey Noble is the shareholder of Beaverbrook Motors, Inc. (hereinafter BMI), a corporation that operates tow trucks and small tractor-trailers, as well as the sole proprietor of Beaverbrook Motors, a Gulf service station (hereinafter service station).

BMI vehicles obtained the majority of their fuel from the service station on an as-needed basis. At the time of each BMI fuel purchase, the service station processed a “house account” slip at the full-posted price. The house account slips were totaled and then debited to BMI’s account on a daily basis through an inter-company accounting. Periodically, a settlement was made for the purchased fuel.

Pursuant to a Division of Motor Vehicle (DMV) audit, BMI was assessed tax due to DMV’s denial of BMI’s claimed fuel tax credit for motor fuel tax paid to New Jersey where fuel was used out-of-State because BMI’s records were insufficient to establish fuel purchases in New Jersey. In accor-

dance with the regulations, DMV used a 4 mpg factor to estimate fuel use because BMI did not maintain adequate records. After a conference, DMV’s Final Determination upheld the audit assessment providing that “bartering is not an acceptable means of proving that fuel was purchased and the tax was paid.”

The Court first addressed whether DMV was precluded from claiming insufficiency of records as the basis for the assessment and limited to defending the assessment on the language contained in the Final Determination. The Court observed that case law did not require that an administrative agency state all possible grounds and theories to support their assessment nor did it preclude it from developing defensive theories to justify the assessment as long as it acts within the statutory period and meets due process requirements. The Court found that BMI was aware that DMV considered its records insufficient, that there was no claim of surprise or prejudice, and that case law indicated that alternative arguments would not prejudice the taxpayer because the Tax Court reviews proceedings *de novo*.

Addressing the issue of whether or not the house account slips constituted sufficient proof of New Jersey fuel purchases, the Court found that BMI’s records were not in accordance with the Regulation’s requirements because the records did not state all the required information. The Court refused to tailor an equitable remedy by relaxing the requirements of the Regulation. Furthermore, the Court stated that “[w]hether or not the taxpayer followed acceptable accounting procedures is also

irrelevant since its use of acceptable accounting procedures is not the standard for compliance with the New Jersey Motor Fuels Use Tax Act.”

Finally, the Court upheld DMV’s estimated fuel use of 4 mpg based on the standard announced in the International Fuel Tax Agreement Audit Manual to calculate the use tax liability in the absence of adequate or complete records. Therefore, the Court upheld DMV’s Final Determination.

Sales and Use Tax

Assessment - Inadequate Books & Records – *TAS Lakewood, Inc. v. Director, Division of Taxation*, decided April 18, 2000; Tax Court No. 003058-98.

The Division’s audit of plaintiff’s 1993 and 1994 New Jersey sales tax returns revealed discrepancies between gross receipts reported on plaintiff’s filed tax returns. Plaintiff’s 1993 New Jersey sales tax return reported gross sales of \$47,115 whereas its 1993 Federal corporation income tax return reported gross sales of \$1,040,157. Plaintiff’s 1993 New York general business corporate franchise tax return reported gross sales of \$1,040,157; and that \$207,491, or 19.95%, of these sales were attributable to New York. As to 1994, plaintiff’s New Jersey sales tax return reported gross sales of \$62,533 whereas its Federal corporation income tax return reported gross sales of \$882,748.

The Division was unable to audit plaintiff’s books and records because plaintiff disposed of them when it ceased business operations. In determining the

continued on page 21

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\$76,061.76 plus interest sales tax assessment, the Division recalculated the amount of New Jersey gross taxable sales for 1993 and 1994 by accepting US gross sales as reported on the corporation income tax returns as total sales and reducing that amount by the approximate 19.95 percentage of 1993 sales attributable to New York.

Plaintiff challenged the Division's assessment claiming that (1) sales were not subject to sales tax, (2) sales attributable to New Jersey are lower than the Division determined, (3) it is entitled to sales tax credit for tax it paid to suppliers on goods and services subsequently resold, and (4) sales consummated with exempt entities amounted to approximately 5% of its sales. Substantiation for plaintiff's allegations rested on the testimony of its vice president and 50% shareholder who acknowledged that there was no documentary proof to support his testimony.

The Court ruled that where the plaintiff fails to maintain records the Division is permitted to determine the amount of tax from available information, including external indices, and that this determination carries a presumption of correctness. The Court held

that not only did plaintiff fail to rebut the presumption but that it had reviewed the audit figures based upon plaintiff's tax returns and found it to be reasonable and justified by law. □

In Our Legislature

Inheritance Tax

Executor Commissions — P.L. 2000, c.29 (signed into law on June 16, 2000) amends N.J.S.A. 3B:18-14 to clarify the calculation of the commissions to which executors of estates are entitled for Transfer Inheritance Tax purposes. This legislation became effective upon enactment. (See article on page 5.)

Miscellaneous

Earned Income Tax Credit — P.L. 2000, c.80 (signed into law on August 14, 2000) establishes a New Jersey Earned Income Tax Credit (EITC) program which will provide a refundable tax credit for eligible New Jersey residents with gross income of \$20,000 or less who receive a Federal earned income credit that is based on having at least one "qualifying child." The amount of the New Jersey EITC will be equal to a percentage of the recipient's Federal earned income credit, with benefits to be phased in over four

years. The New Jersey credit will amount to 10% of the Federal earned income credit for tax year 2000, 15% for tax year 2001, 17.5% for tax year 2002, and 20% for tax year 2003 and thereafter.

Petroleum Products Gross Receipts Tax

Rate Set at Statutory Minimum — P.L. 2000, c.48 (signed into law on June 30, 2000) sets the Petroleum Products Gross Receipts Tax rate on fuel oils, motor fuels and aviation fuel at the current 4 cents per gallon rate, the minimum statutory rate allowed. This prevents a possible administrative determination to increase the cents-per-gallon rate triggered by higher Statewide average gasoline prices. This law took effect immediately.

Constitutional Amendment

Senate Concurrent Resolution No. 1 (filed with the Secretary of State on June 30, 2000) proposes a Constitutional amendment providing for the dedication of revenues from the petroleum products gross receipts tax, and certain amounts from sales tax on revenues from the sale of new motor vehicles, for transportation purposes. The proposed amendment to the Constitution will be on the ballot for the general election on November 7, 2000. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
	1	2	3	4	5	6	7
2	8	9	10	11	12	13	14
0	15	16	17	18	19	20	21
0	22	24	24	25	26	27	28
0	29	30	31				

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

October 16

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 16 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
2	5	6	7	8	9	10	11
0	12	13	14	15	16	17	18
0	19	20	21	22	23	24	25
0	26	27	28	29	30		

November 13

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

November 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending July 31

continued

November 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

November 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

November 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 27

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11	12	13	14	15	16
0	17	18	19	20	21	22	23
0	24	25	26	27	28	29	30
	31						

December 11

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

December 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

December 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

December 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

December 26

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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To insure timely delivery, we must receive your request by October 20, 2000.

from the director's desk

NJ “Participating State” in Streamlined Sales Tax Project

By her letter of intent, dated August 10, 2000, Governor Whitman has committed the State of New Jersey to being a “Participating State” in the interstate discussions of the Streamlined Sales Tax Project. The purpose of this Project is to develop a simplified system of state sales and use taxation.

As a Participating State, New Jersey is now entitled to vote at all Project meetings, and can more directly impact the direction of Project recommendations. Prior to becoming a “Participating State,” New Jersey had attended the Project’s monthly meetings and participated in Work Group discussions as an “Observer State” without voting rights. More information on the Streamlined Sales Tax Project appears in the *Sales Tax Initiatives* article on page 2 of this issue.

New Jersey State Tax News

Summer 2000

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NYC Commuter Tax

In April 2000, the New York State Court of Appeals, the Empire State's highest court, ruled that New York City's income tax on the residents of New Jersey, Connecticut, and other commuting states is unconstitutional. Governor Whitman praised the New York Court's decision and sent a letter to New York Governor George Pataki urging him to take immediate steps to rebate to New Jersey commuters the estimated \$80 million that has been unfairly collected since New Jersey took the matter to court.

Governor Whitman called the decision "a clear-cut victory for the 240,000 New Jerseyans who cross into New York City to work each day. This will provide a \$110 million tax break for New Jerseyans who work in New York City," said the Governor.

New Jersey filed a class action lawsuit in June of 1999 challenging the constitutionality of the New York law that repealed the New York City commuter tax for New York State residents who live outside the City, but required other commuters who work in the City to continue paying the tax. A provision in the New York law states that if a court finds the law unconstitutional, the repeal of the commuter tax would apply to anyone commuting into New York City, regardless of where they live. □

GROSS INCOME TAX NJ-500s Mailed Quarterly

As part of New Jersey's "One Stop Shopping" initiative, starting in June 2000 Monthly Remittance of Gross Income Tax Withheld forms (NJ-500) will be mailed to employers on a quarterly basis. The NJ-927/WR-30 packets issued to employers that file the single sheet WR-30 forms included the July and August NJ-500 forms with instructions and return envelopes. The September 2000 mailing will include the October and November NJ-500 forms in the NJ-927/WR-30 packet. The December 2000 NJ-927/WR-30 packet mail-

continued on page 2

Important phone numbers

Call Center	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

nj 500s - from page 1

ing will also include the annual Gross Income Tax Reconciliation of Tax Withheld, Form NJ-W-3, as well as the January and February NJ-500 forms, instructions and return envelopes.

Employers receiving the NJ-927/WR-30 packages requiring the multi-sheet WR-30 will receive a separate quarterly mailing of the NJ-500 forms with instructions and return envelopes. The December 2000 mailing (January and February NJ-500 forms with instructions and return envelopes) will include the annual Gross Income Tax Reconciliation of Tax Withheld, Form NJ-W-3.

Employers who make their monthly payments via EFT are not to file Form NJ-500.

Information regarding the preparation of Forms NJ-927 and NJ-500 can be obtained by calling the Taxation Call Center at 609-292-6400 or by visiting our Web site at: www.state.nj.us/treasury/taxation/ □

Online Business Registration

State Treasurer Roland M. Machold recently announced that new business registrations can now be completed online. Machold said, "Thanks to Governor Whitman's commitment to streamlining State services, we are able to offer this online business registration service as an alternative to filing in person or through the mail. This Internet-based filing option will help to both speed and ease the process of starting a new business."

"Governor Whitman has done a great deal to attract new businesses

to the State. This new online filing alternative is another step in her commitment to make New Jersey not only a great place to operate a business, but an easier place to start one as well," added Machold.

The Online Business Registration service, which is administered by the Division of Revenue's Bureau of Business Services, will provide businesses with temporary sales tax certificates and will enable businesses to register for business taxes and employer contributions for unemployment and disability.

Patricia Chiacchio, Director of the Division of Revenue said, "In Fiscal Year 1999, the Bureau of Business Services processed 50,000 new business registrations. Now new businesses can fulfill their State filing obligations anytime, 24 hours a day, without having to visit a State office or wait for paperwork to arrive in the mail."

The Online Business Registration service can be found online at the NJ Business Gateway Services site at: www.state.nj.us/njbgs □

Robert Woodford Retires

Robert A. Woodford retired effective May 31, 2000 after 37 years at the New Jersey Business & Industry Association. Mr. Woodford joined NJBIA (formerly the New Jersey Manufacturers Association) in 1963 to pursue his lifelong interest in public policy. An attorney who worked in private practice for several years before joining NJBIA, Woodford graduated from the University of Connecticut and the University of Chicago Law School.

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

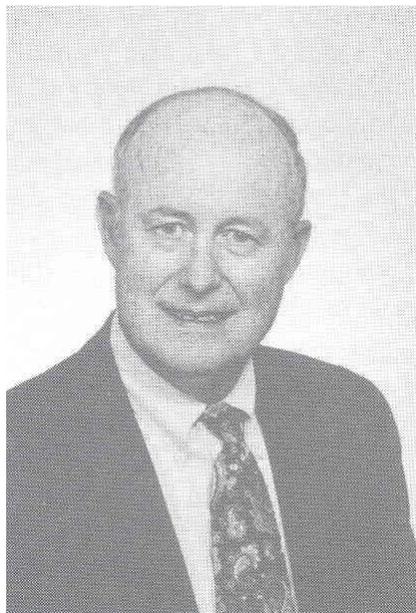
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continued on page 3



The New Jersey Business & Industry Association, founded in 1910, is a statewide employer association of over 16,000 members representing every industry in the State. NJBIA keeps its members informed about changes in laws and regulations affecting New Jersey businesses, and NJBIA lobbying staff testify frequently before the Legislature and State agencies to advocate for the interests of business.

Mr. Woodford has long worked, as a member of NJBIA's Tax Committee, to support New Jersey businesses and to make them more competitive by developing and advocating for legislation that promotes tax equity. Over the years he has been involved in many important tax issues affecting New Jersey businesses, including the taxation of business personal property and the development of the sales and use tax.

During the Whitman Administration, Mr. Woodford supported the legislation which provided business incentives for New Jersey

businesses in the form of tax credits for research and development expenditures, and new jobs investments, among others, as well as the legislation which provided tax benefits for small, New Jersey-based high technology companies.

Mr. Woodford served as NJBIA's corporate secretary for 14 years. In addition, he has both served on and testified before a number of State tax policy commissions.

Commenting on Mr. Woodford's retirement, Robert K. Thompson, Director of the Division of Taxation said, "Bob was a good friend to the Division of Taxation and worked hard to keep the relationship between our two organizations mutually beneficial. I will miss him as a colleague and a friend, but will continue to look forward to working with NJBIA with the same enthusiasm that we have had all along." □

GROSS INCOME TAX **Working in NJ Home** **for NY Employer**

The State of New York will impose New York income tax on earnings derived by a New Jersey resident with respect to work performed at home for a New York employer. As the New Jersey activities are undertaken in connection with the New York employer, the New York Department of Taxation and Finance deems that those earnings are properly subject to New York income tax. The following discussion deals with some of the reasons for this treatment.

Often, in matters involving multistate taxation, the states adopt balancing tests to determine which state has the more compelling interest in the income or

transaction at issue, and so, may be treated as the taxing state. Thus, for example, an employer's home state is treated as the taxing state for corporate income tax purposes unless the employer has a "regular place of business" in another state. In that case, the employer may allocate its income away from the home state and to the other state for those purposes. N.J.S.A. 54:10A-6. The "regular place of business" must be actually "maintained, operated and used" by the employer. N.J.A.C. 18:7-7.2(a). Thus, the employer must have a substantial presence at that place; in that regard, an employee's home office simply reflects the employee's location, not the employer's. An area selected by the employee in the employee's home for use as an office remains merely a room within the employee's home regardless that it is being used by the employee on the employer's behalf. The only connection between the employee's home office and the employer is that the employee works at home. That connection is simply too ephemeral to treat the employee's home office as a "regular place of business" of the employer. *Hoeganaes Corp. v. Director, Division of Taxation*, 145 N.J. Super. 352, 359 (App. Div. 1976). Accordingly, an employer is not allowed to allocate income away from its home state and to another state based solely on its employee's use of a home office in the latter state.

Determining whether the employer's home state may tax the earnings of an out-of-state employee paid with respect to work performed at home also involves that balancing test. In this situa-

continued on page 4

tion, the focus of the employee's work is to continue the job that had been performed at the employer's home state location. It is also done with a view to returning to that location. *Carpenter v. Chapman*, 97 N.Y.S. 2d 311, 313 (App. Div. 1950). Furthermore, it is immaterial to the employer where the employee performs the services, as long as the task is accomplished. As a factual matter, the employee's services are only complete when the results are delivered to the employer's office. *Colleary v. Tully*, 415 N.Y.S. 2d 266, 268 (App. Div. 1979). Accordingly, the out-of-state employee's home office is too slight a break with the employer's business location to relieve the employee from tax liability to the employer's home state. Cf. *Speno v. Gollman*, 45 N.Y. 2d 256, 360 N.Y.S. 2d 855, 858-859, 319 N.E. 2d 180 (Ct. App. 1974).

That analysis, and consequent result, promotes administrability of the income tax, which benefits both employers and state governments. Employers would encounter costly and difficult compliance problems should they be required to withhold tax for every jurisdiction in which an employee performed services on a de minimis basis. Should the employer have multiple employees working at home in various states for health reasons and for varying periods of time, the employer, and each state's taxing agency, would be required to track and verify all the various withholding returns and tax payments. This is not a burden that should be readily imposed on employers. Allocating the income to the employer's home state thus "serves to protect the integrity of the apportionment scheme by in-

cluding income as taxable where it results from services substantially connected with" the taxing state. *Colleary v. Tully*, supra, at 268. Accordingly, in these circumstances, income is taxed by the state that has the primary connection with the services that are being rendered. □

SALES AND USE TAX ***Casual Sales***

The warmer months are times when people clean out their attics, closets, and garages. Some decide to sell their old or used items in a yard sale while others decide to see how they can do in a more mercantile atmosphere. Since New Jersey has many flea markets throughout the State, a person may hope their venture at a public venue would prove to be more lucrative than setting up a table in front of their home.

Most people know that making isolated or occasional sales of personal property that was purchased by the individual for their own use is considered to be a casual sale and is not subject to sales tax. However, some individuals making these types of sales are presumed to be in the business of making retail sales and, therefore, are required to be registered with New Jersey and to charge, collect, and remit New Jersey sales tax.

The following are important points in determining if a sale is deemed to be a "casual sale" or not:

- The owner of the property to be sold in a casual sale must be a person who is not engaged in the business of selling that kind of property at retail (e.g., a computer salesperson selling old display racks).

- The property to be sold in a casual sale must be the property purchased by the owner for his/her own use, not property purchased tax-free with the intention of resale (e.g., a carpet dealer who purchases a new desk and chair for use in his showroom and sells the old furniture).

The owner of the property sold in a casual sale may commission a sales agent to act on his/her behalf during the casual sale, whether or not such sale will be held by auction. A sales agent is required to impose and collect sales tax:

- When the property is removed from the premises of the owner for sale at another location in New Jersey (i.e., a flea market, auction house, shop, etc.).
- Whenever such property was purchased by the owner for resale (whether or not the property is removed to another location in New Jersey for sale).

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Interest 11.50% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 2000 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%
7/1/00	11.50%

casual sales - from page 4

Keep in mind that sales of boats and motor vehicles, whether or not an individual is selling one that was purchased for his/her own use, are always taxable. The sales tax is paid at the time of registration. □

GROSS INCOME TAX **S Corporation** **Distributions**

A practitioner recently posed this question to the Division: How does a New Jersey resident report a distribution from an S corporation?

For New Jersey gross income tax purposes, the taxability of a distribution from a Federal S corporation that has made a New Jersey S corporation election is governed by the priority system established in IRC Sections 1368 and 1371 and must be calculated after the close of the S corporation's tax year. The taxpayer must, however, use their New Jersey adjusted basis and their New Jersey AAA and E&P when determining the taxability of a distribution.

A distribution from a "hybrid" corporation must be allocated based on the corporation's New Jersey allocation factor, to both the income earned inside New Jersey and the income earned outside New Jersey. A "hybrid" corporation is a Federal S corporation that has not made a New Jersey S corporation election and the corporation conducts business both inside and outside of New Jersey. Distributions applicable to income earned inside New Jersey are considered taxable distributions from a C corporation (provided there is sufficient accumulated earnings and/or current period earnings) and are reportable by a resident

shareholder as dividends. IRC Sections 1368 and 1371 govern the taxability of distributions applicable to the income earned outside New Jersey.

A distribution from a Federal S corporation that has not made a New Jersey S corporation election and allocates 100% inside New Jersey is taxable as a dividend to the New Jersey resident provided the S corporation has sufficient accumulated earnings and/or current period earnings.

A distribution made to a nonresident shareholder is not taxable for New Jersey gross income tax purposes. However, if the nonresident shareholder has income from other New Jersey sources, the taxpayer will have to report any taxable portion of their distribution in Column A, Form NJ-1040NR, as if they were a resident.

Further information can be found concerning S corporation distributions by contacting the Division at 609-292-6400 and requesting a copy of Tax Topic Bulletin GIT-9S, *Income from S Corporations*. This publication can also be viewed or downloaded from the Internet by accessing the Division's home page at:

www.state.nj.us/treasury/taxation/ □

CORPORATION TAX **Investment** **Companies**

Pursuant to N.J.S.A. 54:10A-5(d) corporations meeting the definition of an investment company receive preferential tax treatment. Their tax liability is based only upon 25% of their income with a \$250.00 minimum tax.

Investment Company means any corporation:

1. Whose business consists of at least 90% of "qualified business activities."
2. Who had 90% or more of its average gross assets in New Jersey, measured at cost, invested in "qualified investment assets."
3. Which meets the numerical three part business test as defined in Regulation 18:7-1.15(f).
4. Which is not a banking corporation.
5. Which is not a financial business corporation.
6. Which is not a merchant or dealer in stocks, bonds or other securities and which regularly engages in buying and selling such securities to customers.

"Qualified business activities" are measured by gross receipts and expenses as reported for Federal income purposes on a separate entity basis and include investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting for its own account.

"Qualified business assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes and consist of stocks, bonds, notes, mortgages, debentures, patents, patent rights, other securities and cash on deposit.

The following activities are not considered "qualified investment activities":

- Making and/or negotiating loans
- Renting or leasing real or tangible personal property

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investment companies - from pg. 5

- Investment in partnerships or limited liability companies
- Direct day-to-day management of operations of affiliated corporations or the actual provision of services directly or as an intermediary, for benefit of an affiliate
- Buying and/or selling of stocks, bonds, notes, or other securities for customers
- Buying and/or selling of real or tangible personal property whether it is classified as inventory, operating assets or capital assets
- Direct investment in collectibles, including but not limited to stamps, pottery, cars or gold coins
- Direct investment in trademarks or similar assets. □

Copying Returns Causes Errors

It has come to the Division of Taxation's attention that a number of tax practitioners are photocopying business tax returns and remittance forms for those clients who, for various reasons, do not have a return or remittance form of their own for an applicable tax period. The majority of the photocopying that we have found is for sales and use tax and gross income tax withholdings.

The practitioners are photocopying a form that belongs to another client, making changes to the copied return to reflect the remitting taxpayer's name and identification number. *However, the altered returns still reflect the identification number of the original taxpayer in the "scan line" of the form.*

Since the majority of sales tax and employer's gross income tax forms are scanned, the returns and remittances are processed to the wrong taxpayer's account. If the original taxpayer has a return already posted to the account, the altered return does not complete processing and is rejected for review by the Division of Revenue's Transaction Audit section. In the case of an employer's gross income tax consolidated quarterly reconciliation, Form NJ-927 or NJ-927-W, the wrong UI/DI rates may be reflected if an altered return is used.

The time and effort required to straighten out these accounts is a burden not only to the Division of Taxation and the practitioners, but is frustrating to the taxpayers as well, who think that they have properly filed and paid.

If a taxpayer does not receive a remittance form or return, the needed form may be obtained by contacting the *Tax Registration Section of the Division of Revenue at 609-292-1730.*

If, because of time constraints, the taxpayer will not receive the needed form in order to file by the due date, an informal filing can be made by cover letter. This letter should indicate the *taxpayer's identification number, the tax type, tax period, tax calculation, and include a check for any tax due.* This cover letter should also include a request for the proper forms and returns. □

Small Business Workshops

The New Jersey Division of Taxation and the IRS periodically conduct free workshops designed to

help small businesses better understand their tax obligations. These seminars are held from 9 a.m. to 4 p.m. at various locations throughout the State. The New Jersey portion of each workshop is presented in the afternoon and covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Employer responsibilities
- Reporting business income
- What's taxable and what's exempt from New Jersey sales tax
- Filing sales and use tax returns

Seating is limited so if you plan to attend one of the fall sessions listed below, please contact the IRS to register: via fax at 973-645-6691 or via e-mail at **Valerie.C.Carter@irs.gov**

For additional information on these and other specialized workshops call our Technical Education Unit at 609-984-4101 or John Kelly at 609-292-7203.

Fall 2000 Schedule

September 15	Union
September 22	Paramus
September 29	Newark
October 5	Trenton
October 6	New Brunswick
October 12	Washington
October 18	Jersey City
October 20	Lincroft
October 27	Camden
November 3	Cape May
November 17	Camden
December 8	Union
December 15	Camden

□

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Compliance Award Program

On March 15, 2000, Director Robert K. Thompson, Deputy Director Harold E. Fox, and Assistant Director David M. Gavin distributed 27 awards recognizing employees that made outstanding contributions to the Compliance Activity and the Division of Taxation. Twenty Compliance employees and six employees from areas outside of the Compliance Activity were honored with Compliance Achievement Awards. One Compliance employee received the Exemplary Employee Award.

Compliance Achievement Awards were given to employees in recognition of specific contributions to the Division such as serving on special projects or committees, accomplishments, suggestions, dedication/loyalty, leadership, or general work ethics. The Achievement Award recipients were:

Freddie Baez, Amber Billak, Erudina Colon, Nick DiGrazio, Kevin Dolan, Michael Giacobbe, Jane Andrea Hazard, Debbie Janowski, Lorraine Larsen, Fred Limone, Sandra Maciel, Gerald Mangine, Brian O'Connell, Joan Petrino, George Sipars, Sherry Scheingold, Janice Eckstein, Laurel Stokes, Anne Wysocki, Marcia Rosen, Ronald Stubbs, Robert Morton, Maryanne Cortina, Steve Itell, Marita R. Sciarrotta, and M. Thomas Hope.

The Compliance Exemplary Employee Award was given to Investigation Branch Regional Manager Michael Nolan to recognize his individual initiative, excellence, and his overall contribution to the In-

vestigation Branch, and the Division of Taxation.

The annual Awards program is another avenue for senior Division management to recognize positive accomplishments of employees within the Compliance Activity. Nominations for either of these awards are submitted on a Compliance Award Program Nomination Sheet to the Assistant Director, Compliance. Peers as well as supervisors can make nominations, and an informal award ceremony is held on an annual basis. □

LOCAL PROPERTY TAX Harris Adams Retires

Harris J. Adams, Chief of the Policy and Planning Section of Property Administration, has retired from State service effective July 1, 2000.

Harris James Adams, Jr. began his career at the Division of Taxation in April 1968 as a field representative with the Local Property Branch. He became Chief of the Appraisal Section in 1975. In 1997 he became Chief of the Policy and Planning Section of the newly restructured Property Administration Activity. The Section's duties include the C.T.A. Examination, Property Administration Work Calendar, Farmland Assessment, County Tax Board compliance, revaluation contract approval and project review, Division comment on proposed legislation, realty transfer fee, veteran and senior citizen property tax deduction certifications, and taxpayer correspondence.

Best wishes to "Butch" and his entire family for a wonderful and fulfilling retirement. □

LOCAL PROPERTY

TAX

Exclusion of Sales from Table

It is long-standing policy of the Division of Taxation to exclude sales of real property from the Table of Equalized Valuations ("Director's Table"), the assessed values of which are not representative of the assessing practices of the municipality.

Nonusable category 26 refers specifically to transactions not between a willing buyer or a willing seller. However, as has been long recognized by the courts and in the Division of Taxation's Assessors Handbook (Exhibit X-9r), category 26 is very broad in scope, and serves as a "catch-all" category. The courts have recognized that, as a catch-all, category 26 provides the basis under certain circumstances for excluding sales that fail to establish a comparative relationship between the assessed value and selling price, and which are not representative of the assessing practices of the municipality, even where the sale may be between a willing buyer and willing seller.

In both *Cranbury Township v. Middlesex County Board of Taxation*, 6 N.J. Tax 501 (Tax 1984), *aff'd*, 7 N.J. Tax 667 (App. Div. 1985), and *Northvale Borough v. Director, Division of Taxation*, 17 N.J. Tax 204 (Tax 1998), *aff'd*, 324 N.J. Super. 518 (App. Div. 1999), *certif. den.* 161 N.J. 147 (1999), the courts upheld the exclusion of a sale under nonusable category 26 even where the sale was recognized to be between a willing buyer and willing seller. In *Cranbury*, a sale was excluded because the property was receiving

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exclusion of sales – from page 7

preferential farmland assessment, and was therefore not representative of the assessing practices of the municipality. In *Northvale*, a sale was excluded because the assessment resulted from application of the Freeze Act rather than from the unfettered discretion of the assessor, and was therefore not representative of the assessing practices of the municipality.

It is similarly the Division of Taxation's policy to exclude an otherwise usable sale under non-usable category 26 in those circumstances where the sale's ratio of assessed value to selling price is grossly distorted as compared to the ratios of the other sales in the municipality. In such cases, the sale is excluded even where there is no reason to question the willingness of the buyer or seller. Such a sale is excluded because the assessed value is deemed not representative of the assessing practices of the municipality. This long-standing practice was recognized and upheld by the Court in *Borough of Sayreville v. Middlesex County Board of Taxation*, unpublished, Appellate Division Docket No. A-1314-71, decided December 6, 1972, and by the former Division of Tax Appeals in *Borough of Roosevelt v. Director of Division of Taxation*, unpublished, Division of Tax Appeals Docket No. S.A. 1-77, decided January 30, 1978. More recently, the Tax Court upheld the practice in a bench opinion in the *Borough of Englewood Cliffs v. Director, Division of Taxation*, Tax Court Docket No. 007053-1998, judgment entered February 1, 1999, appeal pending. Copies of these opinions are available on request from the Division of Taxation.

Municipal assessors play an essential role in assisting the Division of Taxation in determining which sales to exclude from the school aid table, in accordance with their responsibilities under N.J.A.C. 18:12A-1.17. In order to ensure an accurate and meaningful average ratio and equalized value as reflected in the school aid table, it is critical that municipal assessors make every effort to assist the Division of Taxation in excluding those sales with grossly distorted ratios which are not representative of the assessing practices of the municipality. The mistaken inclusion of such sales can result in dramatic and unwarranted increases or decreases in average ratios and equalized valuations from year to year, which can impede the prosecution or defense of tax appeals and skew the apportionment of county taxes. The following are guidelines to assist in determining whether a sale's ratio of assessed value to selling price is so grossly distorted that it warrants exclusion under non-usable category 26.

It is difficult to delineate any specific formula that is applicable in all instances. The procedure utilized by the Division of Taxation consists of a review of sales within a taxing district. A good example of a sales transaction that would be excluded from the Table is one that the Division finds, through its analysis, to have a grossly distorted sale ratio, widely disparate from the cluster of all other transactions within the municipality. Just one sale on the fringes of a cluster would not warrant exclusion. Absent strong evidence to exclude a sale, that transaction should be included in the Table. The Division of Taxation typically completes this analysis at the end

of the sampling period each year when the complete listings of sales, called "grantor listings," become available.

The first step in the sales analysis involves the viewing of the subject sale in the context of all other sales transactions within the same property class. Still further comparison with nonusable sales within the same class is the next phase of analysis. Finally, comparisons are then made with usable and nonusable sales in other property classes. If further analysis is warranted, the same procedure is used for sales transactions in prior years but should not extend beyond the last revaluation. This practice is followed equally in all cases of nonrepresentative sales, whether the assessment-to-sales ratios are either very high or very low. Sales from five years ago carry less import than sales occurring in current years. Similarly, usable sales have greater weight than nonusable sales.

The exclusion of transactions with grossly distorted ratios from the Sales Ratio Study as not representative of the Assessment Practice is based upon a comparison of the range of sales in the municipality with the sale considered in this capacity. If there are sales with assessment-to-sales ratios near or above or below the sale being considered for exclusion, the ratio will be considered as a reasonable reflection of the assessment practices in the taxing district. Where there are few or no sales in the property class being reviewed, an analysis of all classes of property for multiple tax years will become necessary. A limited review of

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nonusable sales can provide additional insight into whether a particular sales ratio is grossly distorted as compared to the norm within the taxing district. Of course, not all nonusable sales are helpful. Nonusable categories 6, 7, 10, and 26 are most likely to provide useful data. Whenever there are multiple transactions in the current year as well as the prior years, a review of the high/low ranges will identify a pattern of ratios. If the subject sale is in the range, whether it is at the low end or high end for the purposes of determination under this category, it is a usable sale. If all other sales cluster around the common level in the municipality, but one transaction has a grossly distorted assessment-to-sales ratio, and sales from prior years have reflected only clustered sales, the Division has made a credible case for excluding that sale from the Table

as not reflective of the assessing practices of the taxing district. □

**LOCAL PROPERTY TAX
County Tax Board
Members Confirmed**

In 1999, the Senate confirmed 18 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Atlantic County	
Marvin E. Embry	6/21/99
Burlington County	
John L. Aloï	5/24/99
Margaret M. Nuzzo	5/24/99
Hunterdon County	
Joann R. Boehm	6/21/99
Harrie E. Copeland, III	7/01/99
Michael G. Morris	11/15/99
Middlesex County	
Michael E. Lachs	6/21/99
Arthur M. Haney	6/21/99

Victor P. DiLeo

Monmouth County

James P. Casey	1/12/99
Annie W. Grant	2/25/99

Morris County

Michael D. DiFazio, DC	7/01/99
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Ocean County

Richard E. Hall	6/21/99
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Salem County

Robert J. Buechler, III	6/21/99
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Somerset County

William L. Linville	6/21/99
Albert R. Palfy	6/21/99

Union County

Peter B. LiJoi	9/30/99
Christine M. Nugent, Esq.	11/15/99

□

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

July 1-

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.

- MOD IV Master file sent to Property Administration via magnetic tape.

- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 2001 together with a notice that the completed form must be filed with the assessor by August 1, 2000 to each taxpayer whose land was assessed for tax year 2000 under the Act.

2nd Tuesday in July-

- State Equalization Table prepared.

Pay NJ Taxes By Credit Card*



- Personal and Fiduciary Income Tax and Estimated Payments
- Sales and Use Tax
- Deficiency payments for Corporation Business Tax Sales and Use Tax Gross Income Tax Withholding Personal Income Tax

By Phone — 1-888-2PAYTAX

Through the Internet — www.officialpayments.com

For more information:

<http://www.state.nj.us/treasury/revenue/> or <http://www.state.nj.us/treasury/taxation/>

* Fee applies based on amount of tax payment

August 1–

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 2000 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph and messenger systems companies, with respect to

tax year 2001 and thereafter, to be filed with the assessor for the taxing district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2001, for machinery, apparatus, or equipment directly used to manufacture petroleum products.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15–

- Assessor to file statement of taxable value of State-owned real property with Taxation Director. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On January 6, 2000, Governor Whitman signed the Grey Market Legislation into law. This law forbids the stamping, possession, sale and transportation of "export" cigarettes brought into

the United States after January 1, 2000. As a result of enforcement actions and the impact of this legislation, Stogies Distributors, Inc. of Ridgefield, New Jersey has surrendered its distributor license and returned all unused stamps for a refund. Stogies had plead guilty in Ridgefield Municipal Court for violations related to shipping New Jersey tax indicia to an out-of-State location to stamp Grey Market cigarettes. This action is the final chapter in the Office of Criminal Investigation's efforts to control the Grey Market cigarette activity by Stogies.

- Sixty-five (65) complaints alleging tax evasion were evaluated from January to March 2000.
- From January to March 2000, 52 charges were filed in municipal court on 16 cases for violating the cigarette tax law including possession of 133.3 cartons of contraband cigarettes, valued at \$4,700 and resulting in 12 arrests. Also during this period, 9 cases were heard in various courts throughout the State resulting in a 100% conviction rate and in the award of 3,623.1 cartons of cigarettes valued at \$129,000 to the State of New Jersey. □

Tax Briefs

Corporation Business Tax

IRC 1031 — N.J.A.C. 18:7-5.4(a)1 provides that “No adjustment to Federal taxable income is permitted under this rule for: [g]ains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code...” Line 28 of the CBT-100, Schedule A, is prima facie equal to Line 28 of Federal Form 1120. In general, the State of New Jersey will follow the Federal principle of deferral contained in IRC 1031. However, it should be noted that the Director does have authority to modify a taxpayer’s accounting method in a particular case to determine the year or period in which any item of income or deduction shall be included. N.J.S.A. 54:10A-4(k)(3).

Corporation Business Tax/

Gross Income Tax

Nonrecognition of Conversion of Common Trust Fund; CBT, TGI; IRC 584(h) — The Division responded to an inquiry about the New Jersey tax treatment of common trust fund conversions under the New Jersey Gross Income Tax Act and the New Jersey Corpora-

tion Business Tax Act in the following circumstances:

Taxpayer is a bank that manages trust assets through fiduciary account assets. For business reasons, taxpayer intends to convert its common trust fund assets (as defined in Internal Revenue Code Section 584(a)) into new or currently existing regulated investment companies (mutual funds) as defined in Internal Revenue Code Section 851(a). Each transaction, which will be structured to qualify as a tax-free conversion for Federal income tax purposes under section 584(h), will encompass the following steps:

- 1. Transfer of substantially all common trust fund assets into one or more regulated investment companies solely in exchange for shares of the regulated investment company(s);*
- 2. Distribution of regulated investment company shares to common trust fund participants solely in exchange for their interests in such common trust fund.*

The inquirer was advised that for calculating entire net income for

New Jersey corporation business tax purposes, subsection N.J.S.A. 54:10A-4(k) provides that “entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax.” N.J.A.C. 18:7-5.2. Thus, if taxpayer has no Federal income as the result of this conversion, it would also have no income for State purposes attributable to the conversion. Schedule A, Line 28 of the New Jersey CBT-100 should, in general, conform to Line 28 of the Federal 1120.

Similarly, for New Jersey gross income tax purposes N.J.S.A. 54A:5-1c provides that “the term ‘net gains or income’ shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes.” Thus, where no gain or loss is recognized for Federal purposes with respect to such transactions, no gain or

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Enforcement Summary Statistics

First Quarter 2000

Following is a summary of enforcement actions for the quarter ending March 31, 2000.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	1,658	• Seizures	31
Total Amount	\$35,285,681	• Auctions	5
• Jeopardy Assessments	54	• Referrals to the Attorney General’s Office	683

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

loss would be recognized for New Jersey gross income tax purposes relative to the transactions.

Accordingly, in conclusion, where a conversion of a common trust fund follows the nonrecognition provisions of IRC 584(h) for Federal purposes, no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange under either the New Jersey Corporation Business Tax Act or the New Jersey Gross Income Tax Act.

Gross Income Tax

Withholding — Under the New Jersey Gross Income Tax Act, the taxpayer may request the payor of pension and annuity income to withhold State income tax from disability or retirement benefits. N.J.S.A. 54A:7-1.1. This provision applies to all payers of pensions and annuities, both private and public, and to all payments, including lump-sum distributions.

The recipient of a pension or annuity must make a request in writing to the payor for the amount to be withheld on Form NJ-W-4P, Certificate of Voluntary Withholding of New Jersey Gross Income Tax from Pension and Annuity Payments. Form NJ-W-4P is contained in the employers' instruction booklet, Form NJ-WT.

The amount of State income tax withheld from pension or annuity payments must be a minimum of \$10.00 per payment period or an even dollar amount greater than the minimum as specified by the recipient of the pension or annuity. The amount withheld may be

changed or terminated upon request by the recipient. The withheld amount must be reported on and remitted with Forms NJ-500, NJ-927 or NJ-927-W. The total annual amount of tax withheld from pension and annuity payments (as reported on Form 1099-R) should be included on Form NJ-W-3, Reconciliation of New Jersey Gross Income Tax Withheld. Copies of all pertinent 1099-R forms must be included with the reconciliation package.

NJ Form 1099 Reporting Questions

— N.J.S.A. 54A:8-6 states that all persons paying interest, dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, etc. must file a copy of the Federal information return Form 1099 with New Jersey. The New Jersey requirements for filing Form 1099 information returns are stated pursuant to N.J.A.C. 18:35-8.1(c). This regulation requires that copies of *all* Forms 1099 submitted to the Internal Revenue Service for the full calendar year must be provided to New Jersey for amounts credited to recipients of \$1,000 or more. These information returns, in the order of preference, may be filed by submitting a copy of the magnetic tape provided to the IRS edited to delete any recipients earning less than \$1,000, a copy of the magnetic tape provided to the IRS without deleting recipients earning less than \$1,000, all copies of Forms 1099 of recipients earning \$1,000 or more as either additional carbons or photocopies, or copies of all Forms 1099 submitted to the IRS.

For New Jersey purposes, employers and other withholders of New Jersey income tax must also file a

Gross Income Tax Reconciliation of Tax Withheld, Form NJ-W-3. However, payers of pensions and annuities should only enclose copies of Form 1099-R with Form NJ-W-3 if New Jersey income tax was withheld from such payments.

Taxpayers, as clarified in the *New Jersey State Tax News*, Winter 1998 issue, only need to furnish 1099s along with their NJ-1040 return if New Jersey gross income tax withholdings are reported to ensure proper credit of those withholdings. Other 1099s should be retained with the copy of their return and provided to the Division if and when questions arise about the information reported on the return. It should be noted, however, that when backup material is furnished with the NJ-1040 return, especially when Federal and State income amounts differ, a review of information supplied with the return is often enough to explain the variance without requiring an audit of the return. Thus, it is also recommended that taxpayers submit copies of all Forms 1099 submitted to the IRS.

Sales & Use Tax

Barter Transactions — The Division responded to an inquiry regarding the sales and use tax treatment of barter transactions conducted by members of a barter club or association.

The facts indicated that the club management acts as a broker for member businesses by matching up members who have goods or services to barter. It charges a 10% fee to the party that it deems to be the "buyer." This fee is for the club's administrative service and is

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not subject to sales or use tax. The goods and services bought and sold in the barter transactions include both nontaxable items, e.g., airline tickets, professional dental services, carpet cleaning services, and taxable items, e.g., flowers, copy machines, automobile repair services, restaurant meals.

A transaction in which one party provides its goods or services in exchange for the goods or services that it wants to receive clearly constitutes a “purchase” and a “sale” within the meaning of the Sales and Use Tax Act. These terms are defined in the act as:

Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this act, for a consideration or any agreement therefor. N.J.S.A. 54:32B-2(f).

“Sale” or “purchase” as defined in this provision explicitly includes “barter,” and the goods or services given in exchange for the goods or services received constitute the requisite “consideration.” The two parties to a barter transaction function as both “buyer” and “seller”; the goods and services exchanged serve, in turn, as both the items sold and the consideration paid.

When the “seller” of taxable goods or services sold in a barter transaction is a New Jersey vendor (i.e. a vendor who has sales tax nexus with New Jersey, or a vendor

without nexus who has voluntarily chosen to register as a vendor in this State), then the seller should collect and remit sales tax calculated on the normal retail value of the item sold, assuming that the purchaser cannot claim a valid statutory exemption (e.g., resale, exempt organization, production equipment, farm production use). The normal retail value is the price, in dollars, at which merchandise or services of the same kind are offered for sale by him to retail customers paying by traditional means (money). For example, a lighting store and a plumber may enter into a barter transaction in which the store provides the plumber with a lighting fixture in exchange for the plumber’s repair services. The plumber, who normally charges \$50 per hour for this work, provides an hour and a half of labor in exchange for the lighting fixture, which is retail priced at \$75. Both the plumber and the lighting store will owe \$4.50 tax on their respective purchases. The plumber must report the \$75 sale of services in his gross receipts on the ST-50 and remit \$4.50 on the sale; the lighting store must report the sale of the \$75 fixture in its gross receipts on the ST-50 and remit the \$4.50 collected from its customer (the plumber). The same lighting store may decide to barter with a barber. In exchange for a lamp sold for a retail price of \$30, the three co-owners of the lighting store are given haircuts, which the barber normally gives for \$10 each. The barber should be charged \$1.80 tax for the lamp. However, the lighting store will not be liable for sales or use tax, because the haircuts are a nontaxable service.

If the seller is an out-of-State vendor, not registered in New Jersey, who delivers taxable merchandise to a New Jersey customer in a barter transaction, then the New Jersey customer will be liable for compensating use tax. The New Jersey customer will owe the tax on the value of the consideration that it paid. This consideration will consist of the goods or services that it gave to the seller, in lieu of money. For example, an accountant in New Jersey may want a Pennsylvania carpenter to make him a bookcase. The accountant prepares the carpenter’s income tax return, while the carpenter delivers a bookcase to the accountant, as payment for the accounting services. The accountant would normally charge \$300 for the tax return. He is deemed to have paid \$300 for the bookcase, and will therefore owe \$18 use tax on this piece of furniture, payable with his ST-18B after the close of the year.

New Version of ST-5 Certificate

— When a nonprofit organization applies and qualifies for exemption from New Jersey Sales and Use Tax, the qualified exempt organization is sent an ST-5 Exempt Organization Certificate that has the organization’s name, address and exempt organization number preprinted on it. In early March, the Division of Taxation instituted an ST-5 certificate that is a one-sided form with the instructions printed on the bottom half of the front of the certificate. (The back is blank.)

The new ST-5 Exempt Organization Certificate also has wording in a box at the bottom that states:

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“ST-5A PERMIT – This Exempt Organization Certificate (ST-5) also serves as an Exempt Organization Permit (ST-5A) for the organization to which the certificate is issued.” That language was added to the certificate because the Division has stopped issuing the ST-5A permit to exempt organizations. Organizations approved for exempt organization status will now receive only the ST-5 Exempt Organization Certificate as proof of exemption, instead of both a certificate and a permit.

These ST-5 changes were necessitated because of a project to enable computer printing of the ST-5 certificate, which will allow the Division to send organizations their certificates much more quickly than previously.

The former two-sided version of the ST-5 is still valid for those organizations that were issued an ST-5 certificate by the Division of Taxation prior to April 2000. Exempt organizations having a valid prior version of the ST-5 do *not* need to obtain a new one as long as the ST-5 has the signature of a Director of the Division of Taxation.

Pretzel Sales — A taxpayer recently inquired concerning the taxability of freshly baked pretzels sold “hot” for either on or off-premises consumption.

N.J.S.A. 54:32B-3(c) of the Sales and Use Tax Act states that sales of food in an unheated state of a type commonly sold in the same form and condition in food stores, other than those principally engaged in selling prepared foods,

are granted the sales tax exemption in this State.

This exemption is limited to food sold in an unheated state and it is the vendor’s method of merchandising that determines whether food and drink is sold either in a heated or unheated state. Food that is served to the customer or maintained at a temperature which is warmer than the surrounding air temperature by using heat lamps, warming trays, ovens or similar devices, or is cooked to order, is deemed heated and sales are taxable for both on and off-premises consumption. See N.J.A.C. 18:24-12.1 et seq.

Sales of Lip Coatings — Chap Stick and similar lip coatings, with or without coloring, are deemed to be “cosmetics,” and are therefore taxable tangible personal property under N.J.S.A. 54:32B-3(a). These products are commonly used by healthy persons who have no ailments affecting their lips. It is our understanding that they are used to maintain the softness of healthy lips, similar to the way hand and face lotions are used to soften and protect the skin.

However, lip care preparations containing a significant quantity of medication, which are generally used primarily to heal or relieve the symptoms of infections, burns, cuts, or other pathological conditions of the lips, are treated as “drugs.” N.J.S.A. 54:32B-8.1 provides an exemption from sales tax for prescription drugs for human use and for over-the-counter drugs and medicines “recommended and generally sold for the relief of pain, ailments, distresses or disorders of the human body.” Therefore, lip preparations that are

generally sold for medicinal use are exempt from sales tax.

Travel Agency Purchases — Travel agency sales fall into the tax-exempt professional or personal service category insofar as their travel services are concerned. N.J.S.A. 54:32B-2(e)(4)(A). Thus, the amount charged by a travel agent for a trip or vacation is neither subject to sales nor luxury tax in New Jersey, whether or not the customer is separately charged for all the various items that comprise the invoice such as hotels, meals, transportation, amusements, etc.

However, each vendor of taxable services or property in this State who sells such services or property to the travel agent is required to impose and collect sales tax and/or luxury tax on the receipts from that sale. In effect, the travel agent is considered the retail purchaser of such services or property. *Metpath, Inc. v. Taxation Division Director*, 4 N.J. Tax 277 (1982). Thus, a travel agent is not considered a reseller in New Jersey and a New Jersey vendor must collect and remit sales and/or luxury tax on the sale of hotel rooms, meals, and other taxable goods and services to a travel agent.

Debris Removal Incidental to Towing — The State of New Jersey requires that “any towing service under contract to a public or private entity to tow disabled motor vehicles which, after being called upon to remove a disabled motor vehicle, fails to remove from public roads or highways *debris* or material in the area surrounding that vehicle shall be subject to a fine if the debris or material is likely to cause injury to

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a person operating a motor vehicle.” N.J.S.A. 39:4-56.8.

The invoices that many tow companies issue are itemized for every charge related to a particular tow job. Insurance companies and most municipalities that incur towing charges require the invoices for towing and recovery services to be fully itemized. This means that a tow company must separately list charges for towing and recovery services from storage fees, sales tax, tolls, administrative charges, and the cleanup of debris at the accident scene.

Separately stated towing charges are exempt from sales tax. N.J.A.C. 18:24-7.12(f). Since the debris removal is an expense incurred directly in connection with the towing service, it can properly be treated as part of the towing receipt, which is exempt from tax. □

In Our Courts

Administration

Refund Claims – *Amplicon, Inc. v. Director, Division of Taxation*, decided September 18, 1998; Tax Court No. 000413-98; Motion for Reconsideration denied March 11, 1999, No. M3031-98, aff’d; Appellate Division, No. A-1295-98T5 (March 10, 2000).

The Appellate Division affirmed the Tax Court’s ruling that the statutory provision permitting the filing of a refund claim within four years of payment does not apply to the situation where the payment was made pursuant to an assessment and the taxpayer either had an administrative hearing or failed

to timely file for a hearing or appeal. (See N.J.S.A. 54:32B-20(b)). The Tax Court noted that audits would never close if extended statute of limitations were permitted as there could be repeated and endless attempts to seek refunds.

Subject Matter Jurisdiction – *Frank Scallo v. Director, Division of Taxation*, decided July 10, 1998, clarified August 26, 1998; Tax Court No. 000387-1998; aff’d; Appellate Division, No. A-7216-97T1 (March 20, 2000).

On June 28, 1996, the Division sent plaintiff a Notice of Finding of Responsible Person Status which granted the right to an administrative hearing if the plaintiff applied for a hearing within 90 days of the notice. On January 16, 1997, the Division filed a certificate of debt against plaintiff. On April 23, 1997, plaintiff requested an administrative hearing challenging his status as a responsible person. Plaintiff’s request was denied due to its untimeliness. Thereafter, plaintiff filed a complaint with the Tax Court.

The Tax Court dismissed the complaint for failure to state a claim upon which it could grant relief as plaintiff did not file a timely appeal to Tax Court. Essentially, plaintiff’s request for an administrative hearing was untimely as the April 23, 1997, request for a hearing was more than 90 days after the Division’s June 28, 1996, mailing of the Notice of Responsible Person Status. Therefore, the Tax Court complaint was also untimely. The Appellate Division affirmed and noted the following:

1. Taxpayers must comply with all statutory requirements to appeal a tax assessment, including time limits for appealing to the Division of Taxation or the Tax Court;
2. If the time limit for an appeal is not met, there is “no inequity in ignoring the substantive claims” of a taxpayer and the complaint must be dismissed;
3. Certificate of Debt instruments are not judgments subject to review;
4. Taxpayers have a duty to know the law because the governing tax statutes “lay out the rights and duties of taxpayers” and their rights and duties can easily be discovered;
5. The 90-day appeal period is a reasonable time to “attack the validity of any assessments” and “it is the responsibility of taxpayers to determine whether the tax assessment is correct” or incorrect, within that time; and
6. The Division of Taxation is encouraged to file dispositive Motions to Dismiss in lieu of answers, where appropriate, which preserves judicial resources and economy.

Gross Income Tax

Statute of Limitations and Death Benefits – *Joyce H. Eiszner v. Director, Division of Taxation*, decided January 21, 2000; Tax Court No. 005058-98.

Plaintiff relocated her residence to Illinois in July 1991, approxi-

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mately ten months after the death of her husband. At the time of his death, the husband was a New Jersey resident who was employed in New Jersey by CPC International, Inc. ("CPC"). CPC provided performance plans consisting of stock and stock options that are contingently granted to current employees. However, if an ex-employee died, retired, became disabled, or left by reason of voluntary separation, the board of directors had discretion as to whether a payment would be made. Immediately after plaintiff's husband's death, the board of directors authorized payment to her husband's estate. The payment was distributed in 1992 and transferred to the husband's revocable trust, a New Jersey Resident Trust. The trust distributed these monies to plaintiff.

Both the husband's estate and trust each filed a 1992 Gross Income Tax Fiduciary Return in 1993. The estate return included the CPC amount received under the performance plan and described it as shares and performance award. The return for the estate identified that the total amount was distributed to the beneficiary trust and listed plaintiff's address, social security number, and her status as a New Jersey nonresident. The trust return reported the entire income from the estate and noted the distribution of that amount to the plaintiff as beneficiary.

The plaintiff filed a 1992 New Jersey Gross Income Tax Nonresident Return on August 10, 1993 seeking a refund of first quarter estimated tax payments inadvertently paid to New Jersey. Attached to the New Jersey return was her 1992 Illinois Individual

Tax Return with the "Supplement to Illinois" 1992 Federal Form 1040 U.S. Individual Income Tax Return. Although the New Jersey return reported the net amount of CPC's payment to her husband under "Amount of Gross Income Everywhere," it did not explain the nature and source of the income, it reported no income from New Jersey sources as well as no New Jersey tax due, and the New Jersey Estate and Trust Fiduciary Returns were not attached.

Approximately four years after plaintiff's filing of her 1992 New Jersey nonresident return, the Director sent a Notice of Deficiency for the amount of tax owing on the CPC performance plan payment from which plaintiff timely protested. Thereafter, plaintiff timely appealed the Director's Final Determination upholding the tax assessment on grounds that the Final Determination was issued beyond the three-year statute of limitations and, alternatively, that the CPC payment constituted a death benefit which is excluded from New Jersey gross income.

The Director conceded that the assessment was made beyond the three-year statute of limitations, however, it claimed that the assessment was subject to the six-year statute of limitations under N.J.S.A. 54A:9-4(d). This statute essentially provides that tax assessments may be made within six years after the return was filed where an individual omits more than 25% of the amount of New Jersey income stated in the return without disclosing the nature and amount of the income either "in the return, or in a statement attached to the return, in a manner adequate to apprise the Director of the nature and amount of such item." As there was no doubt that more than 25% of

New Jersey income was omitted, the Court focused on whether the statutory disclosure requirement as stated on the return was met.

There was no previous authority interpreting N.J.S.A. 54A:9-4(d). Therefore, plaintiff urged the Court to interpret the disclosure requirement in accordance with rulings concerning the virtually identical section 6501 of the Internal Revenue Code ("Code"). Although the Code and New Jersey statute both require adequate disclosure of both the nature and amount, the Court found that the cited Federal cases focused on the amount component because the state source of the income, the nature component, is irrelevant in the Federal taxing model. Therefore, the Court adopted a common sense approach to determine whether the return's disclosure provided a 'clue' as to the nature of the income omission.

The Court held that the Director's assessment was not time-barred by the three-year statute of limitations because plaintiff's nonresident New Jersey and the attached Illinois and Federal returns disclosure of the source or nature of the income was inadequate to apprise the Director that the income was New Jersey sourced. The Court noted that the required Schedule E was not submitted to the Division along with the Federal return and that the Schedule E would have identified the source of the funds. Furthermore, the Court ruled that the Director has no duty to cross reference different returns filed by different entities not attached to plaintiff's individual return.

Turning to the issue of whether the plan payment constituted an em-

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ployee death benefit paid by or on behalf of CPC by reason of the plaintiff's husband's death, which is excludable from gross income under N.J.S.A. 54A:6-4b, the Court held that it was not a death benefit because death did not trigger the payment. The Court found that the CPC plan made payments as a result of participation in the plan and not necessarily because of death as other employment-terminating factors, disability, retirement, and voluntary separation, also might result in a plan payment. Therefore, the Court ruled that the plan payment constituted deferred compensation under an incentive compensation plan that is includable in plaintiff's gross income.

Employee Status – *Charles & Kathleen Santilli v. Director, Division of Taxation*, decided July 26, 1999; Tax Court No. 5532-98.

The Division determined that plaintiff was an employee based upon the following facts. Plaintiff received two 1994 W-2 statements from Prudential Insurance Company. Both showed Federal wages and FIT withholding, social security wages and withholding, medicare wages and withholding, excess group life insurance costs, employee's 401(k) retirement plan, pension plan, and deferred compensation. The other also showed withholding for NJ HCF and NJ WDF. However, neither W-2 checked the box for statutory employee. On plaintiff's 1994 income tax returns, plaintiff deducted \$100 for a Keogh retirement plan and self-employment (SEP) deduction and nothing under the half of self-employment tax, line 25, of the return. Furthermore, plaintiff did not report anything on the

self-employment schedule under self-employment tax on the 1994 Federal return except for an entry of zero on line 12 where a handwritten note states refer to the W-2.

Plaintiff claimed that the W-2 was issued because plaintiff was a full-time insurance salesman who was subject to FICA and an employee as defined by Internal Revenue Code section 312(d), but otherwise not considered an employee and was labeled self-employed pursuant to Revenue Ruling 90-93.

The Court ruled that although a W-2 customarily indicates an employer/employee relationship where taxes are withheld, it is not definitive. In making its determination, the Court applied the fourteen-factor test of N.J.A.C. 18:35-7.1(b) and compared the case of *Pope v. Director, Division of Taxation*, 4 N.J. Tax 268 (Tax Ct. 1982). After weighing all the relevant factors, the Court held that during the 1994 tax year plaintiff was not an employee of Prudential. The Court based its decision upon its finding that (1) the contract classified plaintiff as an independent contractor, (2) plaintiff sold insurance for approximately 26 other companies, (3) Prudential did not restrict plaintiff's geographical territory or control who he could hire, (4) plaintiff did not report to a Prudential employee, (5) there was no advertising that indicated plaintiff was a Prudential agent, (6) plaintiff incurred all expenses for his office, supplies, advertising, and entertainment expenses related to selling insurance, (7) Prudential paid plaintiff only a commission for new policies and renewals, (8) Prudential did not cover plaintiff under workmen's compensation insurance, and (9) although Prudential provided plaintiff with benefits,

family medical, prescription, and dental, a pension, covered him under a disability plan and a 401(k) where Prudential matched his contribution, that these benefits were an entitlement based upon the amount of sales an agent produced for Prudential.

Local Property Tax

Assessment Affirmed – *Hillcrest Health Service System, Inc. v. Hackensack City*, N.J. Tax Court, November 20, 1998, 18 N.J. Tax 38 (1998).

Hillcrest Health Service System, Inc. is the Title 15A nonprofit parent corporation of a nonprofit subsidiary which operates Hackensack Medical Center, a property tax exempt hospital under N.J.S.A. 54:4-3.6. At issue before the New Jersey Tax Court was the taxable/ exempt status for 1992-1993 of an aggregated lot and four-story, 60,000 sq. ft. building being constructed on it, owned by Hillcrest but leased to the Medical Center. For tax year 1992 the assessor calculated a partial assessed value of \$2,442,700 and upon completion of the structure applied a six month prorated added assessment of \$1,310,400; for 1993 (a revaluation year) the assessed value imposed was \$4,557,100.

With respect to the 1992 partial assessment, Hillcrest contended that because the aggregated lot had, as separate lots, been used as parking space for the Medical Center, those lots and by extension the remaining land and incomplete structures should be property tax exempt based on their use for hospital purposes. As concerned

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the 1992 added assessment, Hillcrest maintained that hospital use existed as of completion of the improvements thereby voiding the added assessment. Finally regarding the 1993 regular assessment, Hillcrest asserted that the completed improvements were in actual use for hospital purposes on the assessment date and therefore qualified for tax exemption.

The City's main argument against exemption was that Hillcrest, the property owner, as distinguished from the Medical Center, the property user, was not organized exclusively for hospital purposes but rather a wide-ranging variety of health care activities and that certain activities, such as home care services, were distinct from hospital operations.

Per Hillcrest's Certificate of Incorporation, Hillcrest was "...at all times exclusively operated for the benefit of, to perform the functions of, or to carry out the purpose of, Hackensack Medical Center, Hackensack Health and Hospital Foundation, and other affiliated or related organizations, all of which are publicly supported health care organizations organized for the purpose of establishing, maintaining, sponsoring and promoting activities relating to the improvement of continuous human health

and well-being...." Besides the Medical Center, Hillcrest's subsidiaries included Hackensack Medical Center Foundation, Inc., fundraising coordinator; Essex Parking Co., hospital parking garage operator; Bergen Home Health Services, personal in-home care provider; Bergen Health Management System, Inc., day-care center operator for hospital employees' children; Hillcrest Properties, Inc., real estate holding company; and Bergen Health Systems, hospital energy consumption efficiency analyst.

Except for that portion of the building utilized as an open-to-the-public fitness center, Hackensack City did not dispute that the building was used for hospital purposes once occupied, nor did it dispute that use on the completion date was a determinant of a valid added assessment. However, in addition to exclusive organization, the City argued that the previous exempt hospital parking use was independent from the later use and did not continue during the construction period.

Paraphrasing the Tax Court's reasoning, when the previously separate parking lots ceased to support the main medical facility its exempt use was interrupted. Even if the new building were exempt, it

was a different building on a different site from which parking was formerly provided and as land can be nontaxable only in connection with an exempt building, the lot in question could be exempt only upon completion of the new building. Since a continuing exempt use for the former parking area could not be established, an exempt claim by extension for other property being constructed failed. Further, even where the character of a building in progress and its adaptation to exempt use are evident, it is only actual use which permits exemption. (*Holy Cross Precious Zion Glorious Church of God v. Trenton City*, 2 N.J. Tax 352 (1981)). The Court decided as well that the fitness center, available to the general public for a fee, was used more than incidentally for other than hospital purposes and was not eligible for exemption.

Also contested was qualifying ownership. The building of the new facility was financed by Hillcrest and leased to the Medical Center to save the hospital from incurring debt so that ownership and use were clearly divided between the parent corporation and its subsidiary.

Guided by *Claremont Health Systems, Inc. v. Point Pleasant Bor.*, 16 N.J. Tax 604 (1997), this Tax Court held "Where the user of the property has only a leasehold interest, a hospital purposes exemption is unavailable." And the Tax Court in *Mega Care, Inc. v. Union Twp.*, 15 N.J. Tax 566 (1996) concluded that the requirement the property owner be organized for hospital purposes and the requirement the exemption

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claimant be the property owner could not be satisfied unless the affiliate owning the property was restricted by its own incorporation certificate to activities supporting and integrated with those of the hospital. In this case, Hillcrest's operations were not, by its own certificate of incorporation, restricted to support Hackensack Medical Center. Therefore, property owned by Hillcrest was not exempt although it was used by the hospital. Both the 1992 partial and added assessment and the 1993 full year assessment were affirmed.

Sales and Use Tax

Adequacy of Books and Records

– *Seventeen Thirty Corp. v. Director, Division of Taxation*, decided October 4, 1999; Tax Court No. 3648-97.

In a prior hearing, April 16, 1999, the Court held that the three-dollar minimum purchase requirement to enter plaintiff's video booth area constituted an admission charge subject to sales tax. This opinion concerns the total amount of plaintiff's sales tax liability. Previously, the Court ruled that the burden of proving that the total token sales were not subject to sales tax was upon plaintiff, the person required to collect tax.

The Division assessed sales tax on all of plaintiff's token sales. Plaintiff argued that the Division's methodology was incorrect because (1) tokens were used to purchase merchandise where sales tax was collected, (2) the \$3 minimum token purchase requirement was only in effect for ten months of 1993, and (3) only three or four people paid the minimum purchase requirement

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as good customers or regular patrons were not required to buy a minimum token purchase. Plaintiff produced only verbal testimony regarding the aforementioned allegations. The Court found that the testimony was nothing more than "bare assertions" and cited the *Ridolfi v. Director, Division of Taxation*, 1 N.J. Tax 198, 202-203 (Tax Ct. 1980) ruling that naked assertions are insufficient to rebut the Director's presumption of correctness. The Court quoted N.J.S.A. 54:32B-19, which sets forth the consequences of failing to maintain adequate books and records. Essentially, the statute permits the Director to determine the amount of tax due from any available information. Therefore, the Court upheld the Director's sales and use tax assessment on all plaintiff's token sales.

Sale for Resale/Closing Agreements

– *Adamar of New Jersey t/a Tropicana Casino and Resort v. Director, Division of Taxation*, 17 N.J. Tax 327 (Tax 1998), aff'd in part and rev'd in part; Appellate Division; No. A-3974-97T3 (February 25, 2000).

Plaintiff is a casino that applied for and was judicially denied a sales tax refund concerning tax paid on purchases of both alcoholic and nonalcoholic beverages provided to patrons on a complimentary basis. As to the complimentary alcoholic beverages, the Appellate Division cited its decision in *GNOC Corp.* (see below) as controlling. With respect to the complimentary non-alcoholic carbonated beverages, this Court cited its opinion in *Boardwalk Regency* (see below) as controlling.

Sale for Resale/Closing Agreements

– *Boardwalk Regency Corporation t/a Caesars Atlantic City Hotel & Casino v. Director, Division of Taxation*, 17 N.J. Tax 331 (Tax 1998), rev'd 18 N.J. Tax 328 (App. Div. 1999).

The Division assessed use tax on plaintiff's purchases of nonalcoholic carbonated beverages purchased with an ST-3 sales tax resale certificate that were provided as complimentary drinks to its patrons and provided to its own employees during working hours for the period January 1, 1991 to September 30, 1994.

During the periods at issue, non-alcoholic beverages were subject to sales and use tax. In 1981, the Director entered into a closing agreement in accordance with N.J.S.A. 54:53-1 with the casino industry that was subsequently amended in 1986 and 1988. The 1981 agreement provided, *inter alia*, as follows:

No sales tax will be imposed in the provision of complimentary meals. However, a use tax pursuant to N.J.S.A. 54:32B-6 will be imposed upon the "cost" of a meal. For these purposes, the cost of the meal would be deemed to be 25% of the amount these meals are sold to the public by the casino. However, no sales and/or use tax will be imposed upon the provision of complimentary liquor.

The 1986 agreement provided, *inter alia*, that there would be no imposition of sales or use tax on complimentary meals and defined complimentary meal to mean non-

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cash payments for food or beverage. The Appellate Division found that “[t]he 1986 and 1988 agreements abandoned an effort to collect taxes for fully complimentary meals in exchange for an agreement by the plaintiff to collect and pay the sales tax for partially ‘comped’ meals and beverages.”

Addressing the issue of whether the purchase of nonalcoholic beverages constituted a nontaxable sale for resale, the Appellate Division upheld the Tax Court’s ruling that there was no resale of nonalcoholic beverages that were furnished to casino patrons and employees on a complimentary basis because there was “legally insufficient consideration.”

On the issue of whether the agreement bars the Director from taxing the purchase of the nonalcoholic carbonated beverages at issue, the Tax Court held that the provision was invalid as the Director cannot compromise tax liabilities under N.J.S.A. 54:53-1 where they are not limited in time and are disadvantageous to the State. On appeal, the Appellate Division reversed and ruled that the Director’s agreements must be deemed presumptively valid as he has broad discretion to settle tax disputes. The Court remanded the case for a factual finding of the scope of the settlement agreements as to whether the agreements addressed and included nonalcoholic beverages served complimentary with a meal and/or without a meal to plaintiff’s customers and served complimentary to plaintiff’s employees.

Sale for Resale/Closing Agreements – GNOG Corp. t/a The

Grand v. Director, Division of Taxation, 17 N.J. Tax 327 (Tax 1998), aff’d. (App. Div. 2000); No. A-4045-97T3.

In 1980, alcoholic beverages were statutorily exempted from sales and use tax under N.J.S.A. 54:32B-8.34. In 1981, the Director entered into a closing agreement, in accordance with N.J.S.A. 54:53-1, with the casino industry that was subsequently amended in 1986 and 1988. The 1981 agreement provided, *inter alia*, as follows:

No sales tax will be imposed in the provision of complimentary meals. However, a use tax pursuant to N.J.S.A. 54:32B-6 will be imposed upon the “cost” of a meal. For these purposes, the cost of the meal would be deemed to be 25% of the amount these meals are sold to the public by the casino. However, no sales and/or use tax will be imposed upon the provision of complimentary liquor.

The Court quoted the Appellate Division’s interpretation of the amendments to the original agreement as follows: “[T]he 1986 and 1988 agreements abandoned an effort to collect taxes for fully complimentary meals in exchange for an agreement by the plaintiff to collect and pay the sales tax for partially ‘comped’ meals and [nonalcoholic] beverages.” *Boardwalk Regency Corporation t/a Caesars Atlantic City Hotel & Casino v. Director, Division of Taxation*, 17 N.J. Tax 331 (Tax 1998), rev’d 18 N.J. Tax 328, 333 (App. Div. 1999). All the agreements contained a statutorily required clause stating that specific subsequent legislation would supersede the agreement and that the

Division and the casinos would no longer be bound.

Effective July 1, 1990, the legislature repealed the N.J.S.A. 54:32B-8.34 sales and use tax exemption for retail sales of alcoholic beverages. Thereafter, the Division assessed use tax on plaintiff’s tax-exempt, sale for resale purchases of alcoholic beverages that were provided as complimentary drinks to its patrons for the period January 1, 1991 to September 30, 1994.

Addressing the issue of whether the purchase of alcoholic beverages constituted a nontaxable sale for resale, the Appellate Division upheld the Tax Court’s ruling that there was no resale of alcoholic beverages furnished to casino patrons on a complimentary basis because there was “legally insufficient consideration.”

Concerning the issue of whether the agreement bars the Director from taxing the complimentary alcoholic beverages, the Tax Court ruled that purchases of alcoholic beverages provided as complimentary drinks were subject to sales and use tax because the agreement only reiterated the then current law that alcoholic beverages were exempt from sales and use tax. The Appellate Division affirmed but disagreed with the Tax Court’s reasoning. The Appellate Division held that subsequent legislation repealing the alcohol exemption superseded the agreement.

Plaintiff’s claim that specific legislation taxing “complimentary alcoholic beverages” was required to supersede the agreement was rejected by the Court. The Appellate Division ruled that the provi-

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sion “[h]owever, no sales or use tax will be imposed upon the provision of complimentary liquor,” was only inserted into the 1981 agreement to clarify the preceding sentence that alcoholic beverages would not be included in computing the 25% cost of a meal that was subject to sales/use tax. The Appellate Division reasoned that a meal could be interpreted to include a beverage and as alcoholic beverages were not then subject to sales/use tax they should be excluded from the tax computation on complimentary meals. Therefore, the Appellate Division ruled that specific legislation relating to “complimentary alcoholic beverages” was not required.

Maintenance and Servicing – *L&L Oil Service, Inc. v. Director, Division of Taxation*, decided January 21, 2000; Tax Court No. 6341-97.

Plaintiff was in the business of pumping waste oil, sludge, and anti-freeze from storage tanks, ranging in size from 276 to 1,000,000 gallons, located on both commercial and residential properties into its trucks. The waste materials were then transported to its facility where the waste was either purified or processed for resale. Plaintiff’s invoices usually charged a lump sum price for pumping and removal without charging sales tax. It should be noted that a few invoices included a separate transportation fee and a few charged sales tax. At issue in this case was whether or not plaintiff’s services constituted maintenance or servicing which is subject to sales tax.

The Court held that plaintiff’s waste removal services constituted maintenance or servicing because Summer 2000

the removal allowed the tanks to be used again for their intended purpose of collecting waste. Therefore, the Court ruled that its customer’s payments were taxable under the Sales and Use Tax Act.

The Court rejected plaintiff’s alternative theories of nontaxability. First, the Court ruled that fees charged for removal did not constitute the acquisition of raw materials for an integrated waste removal, processing and resale operation because customers paid plaintiff only for the services of pumping and removal. Second, the Court ruled that simply because plaintiff did not have a license from the Department of Environmental Protection to perform maintenance or repair involving hazardous waste contained in storage tanks, even if such license was required, that did not make the services nontaxable because the DEP Tank Statutes and the Sales and Use Tax Act are not *in pari materia*. Third, the Court rejected plaintiff’s argument that the services were exempt because they involved the removal and transportation of wastes and would be exempt under the transportation exemption. Fourth, the Court ruled that plaintiff’s services did not constitute a capital improvement because there was no evidence that the value of the real property increased as a result of its services and plaintiff’s own expert testified that the services did not improve the storage tank’s condition. Finally, the Court refused to waive interest on the basis that plaintiff relied on erroneous advice from the Division. The Court found that none of plaintiff’s inquiry letters fully and accurately described the nature of plaintiff’s operations and neither the Division’s correspondence nor the *New Jersey State Tax News* even

suggested that plaintiff’s actual maintenance and service operations were exempt from sales tax. □

continued on page 21

In Our Legislature

Corporation Business Tax Insolvent HMO Assistance — P.L. 2000, c.12 (signed into law on April 6, 2000) establishes the “New Jersey Insolvent Health Maintenance Organization Assistance Fund Act of 2000” which provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.

The law also provides that a member organization may offset against its corporation business tax liability an amount of not more than 10% of any assessment for

each of the five privilege periods beginning on or after the third calendar year commencing after the assessment was paid, except that no member organization may offset more than 20% of its corporation business tax liability in any one year. This legislation became effective upon enactment and applies only to the insolvency of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.

Local Property Tax

Annual Property Tax Deduction Increase — P.L. 2000, c.9 (signed into law on March 30, 2000) implements the State constitutional

amendment approved by New Jersey voters on November 2, 1999, that increases the annual property tax deduction from \$50 to \$250 for certain veterans and their unmarried surviving spouses.

The increase will be phased-in over four years to \$100 in calendar year 2000, \$150 in calendar year 2001, \$200 in calendar year 2002, and \$250 in calendar year 2003 and thereafter. This legislation became effective upon enactment. □

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
2	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
0	16	17	18	19	20	21	22
0	23	24	25	26	27	28	29
	30	31					

July 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

July 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending March 31

continued

July 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

July 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return New Jersey/New York
ST-20 Combined State Sales and Use Tax—Quarterly return

continued

July 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly Return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

July 31

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly return

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2			1	2	3	4	5
0	6	7	8	9	10	11	12
0	13	14	15	16	17	18	19
0	20	21	22	23	24	25	26
0	27	28	29	30	31		

August 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

August 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

August 21

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

August 21 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11	12	13	14	15	16
0	17	18	19	20	21	22	23
0	24	25	26	27	28	29	30

September 11

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

September 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

continued

September 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

September 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

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SCC-5 Spill Compensation and Control Tax—Monthly return

continued

September 20 - continued

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ST-51 Sales and Use Tax—Monthly remittance

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TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

Tax Season Assistance

As the statistics below show, the Division of Taxation provided assistance to hundreds of thousands of New Jersey taxpayers during the tax season from January 1, 2000 through April 17, 2000.

❖ **Call Center**

Calls answered—210,514

❖ **NJ TaxFax**

Calls received—44,500

❖ **ARIS (Automated Refund Inquiry System)**

Calls received—154,673

❖ **HR (Homestead Rebate) InfoLine**

Calls received—23,452

❖ **TaxTalk (Automated information)**

Calls received—22,501

❖ **Automated Forms Request System**

Calls received—77,104

❖ **Taxation Home Page**

Visits to Division's World Wide Web site—4,795,000

❖ **Taxation Building Lobby**

Taxpayers assisted—8,700

❖ **Regional Offices**

Taxpayers assisted—35,000

New Jersey State Tax News

Spring 2000

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- Division Organization Chart

New Taxation Kiosk



Taxpayer Services Branch Chief Edward Scheingold shows Taxation employee Kathy Dougherty how to print out tax forms from the Division's new kiosk. See article on page 3.

NJ SAVER Rebate Applications

Applications for the 1999 NJ SAVER rebate will be mailed to homeowners over a two week period in early May. This is the second year of a five-year phase-in of the program that provides direct property tax relief to qualified New Jersey homeowners. Applications must be filed by June 30, 2000, and NJ SAVER rebate checks are scheduled to be mailed on or before September 15, 2000.

Applications which contain information from last year's filing will be mailed to individuals who applied for and received a 1998 NJ

continued on page 2

important phone numbers

Call Center.....	609-292-6400
Automated Tax Info.....	800-323-4400
.....	609-826-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds...	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

SAVER rebate, or who would have received one had their homestead rebate not provided a greater benefit. Applications will also be mailed to individuals who constructed or purchased a home between October 2, 1998 and October 1, 1999 and other individuals who have been identified as possibly eligible homeowners. Homeowners may expect to receive their applications between May 1 and May 15.

Most homeowners will be able to file their NJ SAVER application by calling the automated NJ SAVER Rebate Filing System at 1-877-658-2972 or 609-826-4288. This system is available 24 hours a day, 7 days a week. The average call length will range from less than 1 minute for second-time filers whose information remains unchanged to 3½ minutes for first-time filers. Applications can also be filed on the Division's Web site at:

www.state.nj.us/treasury/taxation/

By staggering the mailing of the 1999 NJ SAVER rebate applications the Division expects to make it easier for homeowners who have questions about the program to get through to the Call Center. In addition, the NJ SAVER rebate filing system will be expanded this year to 720 lines.

New Jersey residents who own, occupy and pay property taxes on a home in New Jersey that was their principal residence on October 1, 1999 are eligible to receive a NJ SAVER rebate for that year. Rebates will average \$240 for tax year 1999. This amount will increase each year until the program is fully phased in with an average rebate of \$600 for tax year 2002.

Homeowners are entitled to receive either a NJ SAVER rebate or a homestead rebate, whichever provides a greater benefit. For many senior citizens, the homestead rebate will be greater. This may change as the NJ SAVER rebate program is phased in and the amount of the NJ SAVER rebate increases. Eligible applicants should continue to file for both the homestead and NJ SAVER rebates.

For further information about the NJ SAVER rebate program call the NJ SAVER Rebate Hotline at 609-826-4282. Division representatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

1998 NJ SAVER Update

The 1998 NJ SAVER filing season was extraordinarily successful with nearly 1.5 million applications filed by the initial June 15, 1999 deadline and a total of nearly 1.7 million applications filed to date.

New Jersey State Tax news

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Taxpayer Services Branch
PO Box 281
Trenton, NJ 08695-0281**

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<http://www.state.nj.us/treasury/taxation/>

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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New Taxation Kiosk

A kiosk employing computer touch-screen technology to dispense tax forms and information was recently installed in the lobby of the Taxation Building, the Division's Trenton regional office, at 50 Barrack Street in Trenton. The kiosk provides both New Jersey and Federal tax forms as well as information about a variety of taxes administered by the Division. Users are able to view or print information or forms simply by touching a screen.

The new kiosk is a prime example of the Division of Taxation's continued effort to make tax information and forms more accessible to the public. □

NJ Ranks 2nd in Survey

New Jersey tied for second place in a recent survey designed to measure how well states are using technology to streamline government operations and improve services. New Jersey's high ranking in the first installment of "The Digital State" survey came in the taxation/revenue category.

The survey looked at five factors in assessing states' progress in electronic taxation and revenue activities:

- Availability of downloadable tax forms;
- Ability of taxpayers to file tax returns online;

- Ability of taxpayers to contact staff through a general electronic mailbox;
- Ability of taxpayers to contact specific staff members via e-mail; and
- The percentage of tax records stored digitally.

The survey also rated participants' Web sites on their completeness and user-friendliness.

The results of the survey, which was conducted by The Center for Digital Government and the Progress & Freedom Foundation, appear in the January 2000 issue of *Government Technology* magazine in an article entitled "The Dawn of Electronic States." A copy of the article is also available on the Division's Web site at:

www.state.nj.us/treasury/taxation/
□

Donations to Charity Increase

The figures are in on the recently completed State Employees' Charitable Campaign. "Over 72% of all Division of Taxation employees participated in this most worthwhile program," reported Director Robert K. Thompson. A total of \$89,850 was given in cash, checks and pledges. This represents an increase of 16.7% over last year's contributions. Thanking Division employees for their continued generosity, Director Thompson noted that donations to the campaign benefit numerous charitable agencies and organizations. □

GROSS INCOME TAX Federal Offset Program

On October 11, 1999 the Division mailed Notices of Intended Federal Offset letters to 14,000 taxpayers who had either received 90 day letters or COD letters for TGI deficiencies.

This endeavor is part of a new program developed by the IRS. We are one of the States participating in this new project.

If the taxpayer's debt to New Jersey is not satisfied, the taxpayer's name will be submitted for the set-off program. The IRS will then reduce or withhold any eligible Federal tax refunds by the amount of the debt.

As a result of this program the Division has collected \$499,248.56. There have been 165 payment plans set up and 239 taxpayers have paid in full. Approximately 162 responses were forwarded to caseworkers in various Division locations such as field offices or the Attorney General's referral unit. A number of taxpayers have submitted documentation of bankruptcy, which may also eliminate them from the setoff list.

The deadline for submitting payment or documentation was December 10, 1999. It appears that this new program will be a very successful addition to our collection projects. Next year we hope to target all taxpayers with TGI deficiencies. □

**CORPORATION TAX
Tax Benefit**

Transfer Program

The New Jersey Economic Development Authority (NJEDA) and the Division of Taxation have completed their review of applications for sale of unused Corporation Business Tax Benefits for New Jersey Technology and Biotechnology companies.

Of the 88 applications received, 61 companies were approved to sell their unused Net Operating Losses and Research and Development Tax Credits. These companies had over \$169 million in unused tax value, of which \$116 million will be available for sale over the next few years. In fiscal year 2000 there is a \$50 million overall program

cap. In future years this cap will be \$40 million.

After the initial \$250,000 sale authorization approved sellers were allowed to sell approximately 35% of their remaining sellable benefits. The unused sellable benefits will be part of fiscal year 2001 pool.

New Technology and Biotechnology companies who wish to apply for the program for 2001 need to submit their applications to the NJEDA by June 30, 2000. □

**GROSS INCOME TAX
New York City UBT/
Philadelphia BPT**

Reversing its previous policy as stated in the *New Jersey State Tax News* July/August 1990 issue, the Division of Taxation has determined that tax paid to New York City as Unincorporated Business Tax (UBT) is a tax on an individual's income and can be included in New Jersey's calculation of credit for taxes paid to other jurisdictions.

From the provisions of the New York City Unincorporated Business Tax and the New Jersey Gross Income Tax Act, the Division has determined as follows:

1. The UBT is an income tax because it is imposed on, as well as based on and measured by the business income of the unincorporated business;
2. The UBT is imposed on income similar to the income taxed under the Gross Income Tax Act, in that they are both imposed on

the individual proprietor's business income or the individual partner's distributive share of the partnership's business income; and

3. The UBT, therefore, may be credited against the gross income tax of the New Jersey resident taxpayer, using a separate calculation from the New York State or New York City credit computation.

Similar to the New York City Unincorporated Business Tax is the net income portion of the Philadelphia Business Privilege Tax. This is a tax levied on the net income of an unincorporated business from activities conducted within the City of Philadelphia. As such, the net income portion of the Philadelphia Business Privilege Tax qualifies as an income tax and is therefore allowable in determining a taxpayer's credit for taxes paid to other jurisdictions under N.J.S.A. 54A:4-1.

This change in policy will be effective immediately and the credit for other jurisdictions will be granted to all New Jersey resident taxpayers who earn income subject to the New York City Unincorporated Business Tax or the net income portion of the Philadelphia Business Privilege Tax provided that the credit is calculated in the manner required by N.J.S.A. 54A:4-1 and the current regulations. The Division of Taxation will accept amended returns if they are received within the statutory period in accordance with N.J.S.A. 54A:9-8. The credit will also be allowed for all cases pending before the New Jersey

continued on page 5

**Interest 11.50% for
Second Quarter**

The interest rate assessed on amounts due for the second quarter of 2000 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%

Tax Court and the Conference and Appeals Branch, to the extent that the matter involved a final determination that denied plaintiffs a New Jersey gross income tax credit for New York City UBT or the Philadelphia Business Privilege Tax. □

SALES AND USE TAX **Accepting Exemption Certificates**

Exemption certificates are the primary method for a vendor to document the non-taxability of a sales transaction. Properly completed certificates are usually accepted in “good faith” (N.J.A.C. 18:24-10.1 et seq.). The auditor, however, has the right to question the reasonableness of the vendor’s judgment in accepting an exemption certificate. The vendor is presumed not only to be familiar with the tax laws and regulations that apply to the business, but also to the products sold, their common usage, and, to some extent, who their customers are and what they do with the product.

Auditors should question exemption certificates that appear to be contrary to the tax laws and regulations. Auditors should also question those exemption certificates where the common usage of the product seems unreasonable to the declared activity of the customer.

Whenever an exemption certificate is questioned, further investigations can be made to ascertain the validity of the exemption claim. The first step in this process should be for the auditor to explain the reason the certificate was ques-

tioned. If the certificate is not fully completed the vendor may be asked to contact the customer to obtain a completed certificate or a detailed explanation of the missing or incomplete parts. If the item requested for exemption appears to be in conflict with the exemption being claimed, the vendor may again be asked to contact the customer to obtain a more detailed explanation. The auditor may also independently research the circumstances of the customer. Before any audit result is finalized however, the auditor will always meet with the vendor and discuss the findings. At this point, the vendor may also present relevant information concerning the transaction or the customer. Only then should a final determination be made.

Exemption certificates are accepted in paper form and if the seller and customer are electronic trading partners an electronic certificate will be acceptable.

The following are examples of questioned exemption certificates and some possible results of the subsequent investigations:

A gas station issues an ST-3 to a concrete block distributor.

- Taxable: blocks were for use at the business.
- Exempt: gas station has an area where blocks are sold to the public.

An auto parts store issues an ST-3 to a firearm manufacturer.

- Taxable: guns were purchased for the owner’s use.
- Exempt: auto parts store also sells hunting and fishing equipment.

A carpenter issues an ST-3 to a lumberyard.

- Taxable: wood was used for a residential construction project.
- Exempt: wood was used for a repair at a church, properly completed ST-13 was issued by carpenter.

Other problem areas with exemption certificates:

- A manufacturing company issues an ST-4 to a hardware store for machine parts, but also purchases hand tools. The tools are a taxable purchase despite the certificate.
- A soft drink distributor accepts ST-3s from a coat manufacturer, a bank and a law office. The soft drinks are taxable if none of the entities sell soda at retail.

Examples of exemption certificates that should *not* be questioned:

- A pharmaceutical company issues an ST-4 to a shelving supplier claiming R&D usage.
- A manufacturing company issues an ST-3 to another manufacturer for heat-treating 350,000 cotter pins.

As a general guideline, if the vendor had no good reason to question a properly completed certificate, the auditor will also have no reason to question it. Vendors should never accept exemption certificates solely for the purpose of creating a tax advantage, or to avoid confrontations. Only fully completed exemption certificates should be accepted and vendors should feel free to question the merchandise’s use if good faith issuance by a customer is in doubt. □

Inheritance Tax Waivers

Upon the death of a resident of this State, R.S. 54:35-5 imposes a lien on his or her property to secure the payment of any Inheritance Tax which may be payable. The statute also provides that a bank may not release any funds held on deposit which belong to or stand in the name of a resident decedent or in the joint names of a resident decedent and one or more other persons without first notifying the Director of the Division of Taxation and withholding sufficient funds to pay the tax and interest which may be assessed on the funds released. The written consent issued by the Director permitting a banking institution to transfer a bank account and releasing the statutory lien is commonly known as a waiver. In the normal course, waivers are issued by the Division after an Inheritance Tax return has been filed and any tax and interest assessed has been paid. However, the statute and regulations provide procedures whereby a beneficiary or an estate representative may obtain funds from a banking institution without first filing an Inheritance Tax return and paying any tax and interest which may be assessed. There are two commonly used procedures which permit a beneficiary or an estate representative to obtain funds held on deposit in a banking institution without first contacting the Division.

Form L-8 (Affidavit and Self-Executing Waiver) may be used when a bank account passes to a parent, grandparent, child, stepchild, legally adopted child, issue of any child or legally adopted child (does not include a stepgrandchild or a great-stepgrandchild) or to a sur-

viving spouse. The bank account must pass to a qualified beneficiary by contract (e.g., survivorship), it must be specifically bequeathed to a qualified beneficiary, or if the bank account does not pass by contract and it was not specifically bequeathed, all heirs by intestacy or all beneficiaries under the will must be qualified beneficiaries. The Form L-8 is completed by the appropriate beneficiary or estate representative and presented directly to the banking institution. Most banking institutions have this form on hand. It may also be obtained by contacting the Division at 609-292-5033.

The regulation (N.J.A.C. 18:26-11.16), commonly known as the Blanket Waiver, provides that the proper estate representative may withdraw up to 50% of the funds on deposit in an account without first obtaining a waiver from the Division. The blanket waiver provisions apply to each institution and to each account within that institution. The amount which may be withdrawn is limited to no more than 50% of the funds in an account regardless of whether the account was held in the decedent's name alone or jointly in the name of the decedent and one or more other persons. In addition to the 50% which may be released to the proper estate representative, a banking institution may release any additional amount without a waiver provided the check is made payable to the New Jersey Inheritance Tax and is for the payment of Inheritance Tax and/or interest. □

SALES AND USE TAX Spring Planting

As the ground thaws, our attention turns to the landscaping needs of our lawns and gardens. Lawns may need to be reseeded, flowerbeds planted and trimmed, new mulch laid, and trees that did not weather the cold of winter may need to be removed or replaced.

Whether plants and materials are sold to either landscapers or homeowners, the transaction is a retail sale and sales tax must be collected. Landscapers are considered contractors. A contractor always pays sales tax on the materials and supplies purchased. Purchases of seeds, dirt, trees, plants, stakes, stones, shovels, rakes, etc. are all subject to sales tax.

If the contractor's bill to the property owner separately states the cost of materials and labor, sales tax may be charged on the *labor* portion of the bill only. If the landscaping work completed on a customer's property results in a capital improvement, the property owner is not charged sales tax on the labor portion of the bill provided that the owner gives a *Certificate of Capital Improvement* (Form ST-8) to the landscaper. Examples of capital improvements are:

- Laying new sod or seeding a new lawn
- Planting trees, shrubs, plants, etc.
- Filling, terracing or clearing land
- Building permanent structures such as fences, walls, trellises or patios

continued on page 7

spring planting – from page 6

Repairs and maintenance that a landscaper may perform are always subject to sales tax. Some examples of taxable services are:

- Pruning trees
- Aerating soil
- Reseeding, fertilizing and mowing lawns
- Treating with insecticides or herbicides

The homeowner will pay sales tax on the labor portion of the bill for landscape maintenance or repairs. □

Tax Practitioners' Hotline

609-633-6657 Personal Income Tax
609-633-6905 Business Taxes

The Tax Practitioners' Hotline is a special service provided by the Taxpayer Accounting Branch of the New Jersey Division of Taxation *for practitioners only*. The purpose of the Hotline is to assist practitioners by resolving specific tax problems over the telephone when the practitioner has not been able to resolve the problem *through normal channels*. Practitioner Hotline Technicians are authorized to perform updates to monetary account information as well as non-monetary taxpayer profile information. During Fiscal Year 1999, the Tax Practitioners Hotline handled about 5,300 business tax and 8,000 personal income tax calls. To be successful and to provide the best possible service, the Tax Practitioners' Hotline must operate within certain guidelines, and we ask that all practitioners wishing to take ad-

vantage of the service adhere to them.

GUIDELINES:

- **Types of calls handled by the Tax Practitioners' Hotline.** Account maintenance activities, adjustments, transfers, updates, and refunds.
- **Types of calls NOT handled by the Tax Practitioners' Hotline.** Tax information inquiries and form requests will not be handled by the Tax Practitioners' Hotline. These calls are handled by our Taxpayer Services Call Center at 609-292-6400. Cases being handled elsewhere in the Division or by a contracted vendor, will not be addressed by the Tax Practitioners' Hotline. Practitioners must contact the individual already handling the matter.

- **This service is for tax practitioners only.** The telephone numbers should not be given to clients under any circumstances.
- **Power of Attorney.** The Division has a statutory obligation to protect the confidentiality of taxpayer information. Division personnel staffing this Hotline will discuss a client's account in general terms, and verify information provided by practitioners who have a Power of Attorney for their clients. New Jersey Division of Taxation Power of Attorney, Form M-5008, must be completed and submitted by practitioners requesting an adjustment to a taxpayer's account. This form must accompany every document submitted unless the taxpayer has specifically authorized his representa-

tive with complete jurisdiction until further notice. If this is the case, the authorization Form M-5008 must clearly note the tax and periods covered. Form M-5008 is included in the New Jersey *Package NJX* for practitioners' convenience. Power of Attorney Forms M-5008 filed with the Tax Practitioners' Hotline are not valid for any other matters being handled by any other area of the Division, or by a contracted vendor. Likewise, Forms M-5008 filed with any other area will not apply to matters being handled by the Tax Practitioners' Hotline.

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Pay Your NJ Income Taxes By Credit Card



Call:

1-888-2PAYTAX

For more information:

<http://www.state.nj.us/treasury/taxation/>
or

<http://www.state.nj.us/treasury/revenue/>

practitioners' hotline – from pg. 7

- **Supporting Documentation.** All corrections and approvals performed at the request of a practitioner must be supported by documentation that has been signed and properly completed. Corrections and approvals will not be made until proper documentation has been received. All correspondence should be addressed to:

NJ DIVISION OF TAXATION
TAXPAYER ACCOUNTING BRANCH
TAX PRACTITIONERS' HOTLINE
PO BOX 266
TRENTON NJ 08695-0266

Correspondence should be marked to the attention of the agent who handled the practitioner's call. Correspondence and documentation may also be submitted by way of fax at 609-633-6444.

- **Waiting Time.** Practitioners should wait a reasonable amount of time from the date a return is filed to allow for processing before calling the Tax Practitioners' Hotline for assistance, and then only if the matter has not been able to be resolved through the Taxpayer Services Call Center. Practitioners should allow a minimum of 30 days from the date the supporting documentation has been sent before making a second call to the Tax Practitioners' Hotline on the same matter. □

LOCAL PROPERTY TAX **Tax Assessor** **Recertification**

Chapter 278, Laws of 1999 provides that all tax assessor certificates issued prior to its effective date of seven months after December 8, 1999 or July 2000, shall expire five years following that effective date. All tax assessor certificates issued on or after the effective date of July 2000 shall expire five years after each certificate's issuance. Both shall require application for renewal and payment of a renewal fee of not less than \$50 provided that continuing education requirements of fifty continuing education credit hours over five years are met. Beyond the initial five year renewal period, renewal shall be required every three years provided that continuing education requirements of thirty credit hours over three years are met. One continuing education credit hour means 50 minutes of classroom or lecture time. An additional late renewal fee of \$50 is required if application for renewal

is made within six months of the expiration of a certificate.

Chapter 278's enactment amends N.J.S.A. 54:1-35.31 adding as a prerequisite for tenure, "...compliance with requirements for continuing education pursuant to Section 1 of P.L. 1999, c.278..." As amended, removal for "good cause" shall include the failure of a tax assessor to meet continuing education requirements. N.J.S.A. 54:1-35.29 is also amended so that a tax assessor certificate can now be revoked or suspended for "Failure to comply with requirements for continuing education pursuant to Section 1 of P.L. 1999, c.278 (C.54:1-35.25b) and cause the automatic revocation, without a hearing, of the tax assessor certificate."

Chapter 278 also establishes within the Division of Taxation, Department of the Treasury, the Tax Assessor Continuing Education Eligibility Board consisting of six members: the Director of the Division of Taxation or his designee, the

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Ride the new wave...

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assessor recertification – from page 8

President of the Association of Municipal Assessors, and the President of the New Jersey Association of County Tax Board Commissioners and County Tax Administrators as permanent members; and two additional members serving a term of two years, appointed one each by the Director and the President of the Association of Municipal Assessors. The Director of Government Services at Rutgers University shall serve ex officio. The Board shall establish curriculum areas and number of hours in each curriculum area that an assessor shall complete to renew certification. The Board shall meet annually, with the first meeting of the Board held at the call of the Director of the Division of Taxation. The Director, by regulation, may grant an extension of time to complete the requirements for continuing education. □

LOCAL PROPERTY TAX Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Seven persons passed the examination for the tax assessor certificate held on September 18, 1999. Six persons became certified tax assessors on November 8, 1999.

Bergen County: Thomas J. Gawlik, Closter Borough; Janet K. Ridenhour, Westwood Borough.

Burlington County: William John Kennedy, Medford Township.

Mercer County: Judy P. Miller, Ewing Township; Kenneth A. Pacera, Lawrence Township.

Middlesex County: Tricia A. Mercado, Monroe Township.

The next exam will be held sometime in September 2000 and applications need to be filed thirty days prior to the examination date with the Division of Taxation, PO Box 251, Trenton NJ 08695-0251. If you have any questions on the date or location of this exam contact Mary Ann Miller at 609-292-7975. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level

mailed to assessors, municipal clerks, and Director, Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1–

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders by County Tax Board.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

assessors' calendar – from pg. 9

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15–

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On October 1, 1999, as a result of a joint investigation with the US Customs Service at Newark International Airport, the Office of Criminal Investigation's Special Agents arrested Awad Bashir for possession of 626.1 cartons of contraband cigarettes. Mr. Bashir was transported to Essex County Jail by Special Agents and bail was set at \$20,000. The subject had been previously arrested by OCI in 1997 and subsequently convicted of Possession of Contraband Cigarettes in the Elizabeth Municipal Court.
- On October 21, 1999, Ki Filip, of West Bloomfield, Michigan, was indicted by a Monmouth County Grand Jury on charges of conspiracy and promoting prostitution, failure to file personal gross income tax returns

on income earned in 1996, 1997 and 1998, and failure to pay personal gross income tax for 1996, 1997 and 1998, in connection with the operation of Tokyo Therapy, a purported massage parlor in Howell, New Jersey. This case was investigated jointly by the New Jersey State Police Organized Crime Unit and the Division of Taxation, Office of Criminal Investigation and was presented to the grand jury by the Monmouth County Prosecutor's Office. On December 6, 1999, Ki Filip failed to appear in Monmouth County Superior Court for arraignment on the indicted charges. A bench warrant was issued for the defendant's arrest.

- On November 23, 1999, the Monmouth County Prosecutor's Office announced that on November 15, 1999, Stanley W. Hudson of Monmouth Beach, New Jersey, entered a plea of guilty to one count of failure to pay taxes with intent to evade in

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Enforcement Summary Statistics

Fourth Quarter 1999

Following is a summary of enforcement actions for the quarter ending December 31, 1999.

• Certificates of Debt:	• Jeopardy Seizures	3
Total Number	2,041	• Seizures
Total Amount	\$41,523,897	18
• Jeopardy Assessments	212	• Auctions
		3
		• Referrals to the Attorney General's Office
		264

For more detailed enforcement information, see our Home Page at:

<http://www.state.nj.us/treasury/taxation/>

the amount of \$25,144.43 for the years 1993 through 1996 on income earned as a jewelry salesman and on illegal income in the form of proceeds from the theft of jewelry consigned to him for sale. This case was investigated jointly by the Monmouth County Prosecutor's Office and Taxation's Office of Criminal Investigation, and prosecuted by the Monmouth County Prosecutor's Office.

- On December 1, 1999, Stogies Distributors, Inc. of Ridgefield, New Jersey, was found guilty in Ridgefield Municipal Court for violations of the Administrative Code for Failure to Stamp unstamped cigarettes within 24 hours of receipt, and for stamping cigarettes in a manner that places only half of a tax stamp on each pack of cigarettes, thus underpaying the tax due by half. The defendant also plead guilty to failing to provide security of New Jersey tax stamps. Fines, costs and fees totaling \$1,620 were imposed by the Court.
- On December 8, 1999, both Tri-State Wholesale Distributors and Dok Ryu, the president and owner, were indicted by the State Grand Jury for one count of N.J.S.A. 2C:27-2, Bribery in Official and Political Matters. This is a crime of the second degree. This case involves the attempted bribery of a Special Agent of the Office of Criminal Investigation to ignore criminal violations uncovered during an investigation.
- On December 17, 1999, Meyer Shevrin, a resident of Manalapan, New Jersey, was sentenced to a 12 month term of probation based on his guilty

plea in August 1999 to one count of Failure to Make Required Disposition of Property Received. Mr. Shevrin had operated the now defunct computer sales business known as World Sales, Inc. in Freehold, New Jersey, and failed to remit sales tax monies that he had collected from customers. Prior to his sentencing, Mr. Shevrin made full restitution to the State of New Jersey in the amount of \$43,861.99.

- On December 18, 1999, Aldo's Wholesale Distributors of Camden, New Jersey, and HF Wholesale, a.k.a. FA Wholesale of Irvington, New Jersey, will begin a ten day suspension of their wholesale cigarette licenses. These suspensions are based upon violations of the Unfair Cigarette Sales Act. The violations were brought to the attention of the Division of Taxation as a result of civil suits brought by the New Jersey Wholesale Marketers Association (NJWMA).
- Sixty-five charges were filed in municipal court on 18 cases for violating the cigarette tax law including possession of 4,372.2 cartons of contraband cigarettes, valued at \$139,910.40. □

Tax Briefs

Corporation Business Tax

LLC Liability — Assume the following facts: Company A and Company D, one of its subsidiaries, are the two members of a Delaware LLC, which is taxed federally as a partnership. Company A has a principal office in New Jersey and is qualified to do

business in New Jersey.

All accounting and administrative functions are performed by an out-of-State affiliate for the LLC, but are managed from New Jersey, and D takes part in the management. LLC owns a discount buying club and is in the business of selling annual club memberships. LLC has no office or place of business anywhere.

Company B is a single member LLC whose sole purpose is to provide service to the club including membership cards, preparing membership fulfillment kits, and promotional packages and compliance services. It does this through its subcontractors Companies C and E. C makes available a toll-free number and E is responsible for taking membership cancellations and complaints.

Buying club members pay \$60 per annum membership fee to the LLC for the right to purchase products at discounts from Company C's participating vendors. Club members receive two free airline tickets as an incentive to join and may cancel their membership at any time for a full refund.

Based upon these facts, the LLC is a conduit with no independent economic substance. Compare *C.I.T. Financial Services v. Taxation Div. Dir.*, 4 N.J. Tax 568, 576 (1982) regarding "corporate *alter ego*." As such, the places of business of its members are the places of business of the LLC. (Under the New Jersey limited liability company law, a foreign limited liability company is required to maintain a registered office and agent in this State. N.J.S.A. 42:2B-6a).

Accordingly, since Company A, a member of LLC, has nexus in New

Jersey, its nexus is attributed to the LLC, and the LLC is deemed to have nexus in New Jersey. The LLC itself, which is treated as a partnership, is not subject to tax, though its corporate members are subject to tax in this State, in this particular instance.

Gross Income Tax

BIG GAME Lottery Winnings —

On May 26, 1999, the New Jersey State Lottery Commission, pursuant to the authorization contained in N.J.S.A. 5:9-7, adopted the powerball or BIG GAME lottery game with the first drawing taking place on May 28, 1999. The BIG GAME is a multistate lottery that offers a minimum jackpot of \$5 million, nine ways to win and overall odds of 1 in 31. The other member states include Georgia, Illinois, Maryland, Massachusetts and Virginia. All prize awards are subject to claim procedures, validation tests, and other applicable requirements of the New Jersey Lottery.

New Jersey Lottery is established in accordance with N.J.S.A. 5:9-1, et seq. The New Jersey State Lottery Commission has the authority under N.J.S.A. 5:9-7 to promulgate rules and regulations governing the establishment and operation of a State lottery as it deems necessary. These rules and regulations may include, but are not limited to, the types of lotteries to be conducted, the price of tickets, the manner of payment of prizes, the method to be used in selling tickets, etc.

The New Jersey Gross Income Tax Act in accordance with N.J.S.A. 54A:6-11 specifically provides for the exclusion of New Jersey lottery winnings from gross income. This applies to both residents and nonresidents. This exemption serves as an incentive to participate in the lottery by limiting the tax consequences of collecting lottery winnings. The term “lottery winnings” is not defined in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1, et seq., nor in the statutes governing the New Jersey Lottery. The commonly understood meaning of the term “lottery winnings” as used for New Jersey gross income tax purposes is prize money awarded on account of a winning New Jersey lottery ticket. In order to claim a prize in the New Jersey State lottery, the regulations of the State Lottery Commission covering procedures and safeguards must be followed. *Karafa v. N.J. State Lottery Commission*, 129 N.J. Super. 499 (1974).

Thus, since all winners, tickets and transactions of the BIG GAME are subject to New Jersey State Lottery rules, regulations and New Jersey State law, BIG GAME lottery winnings should be exempt from New Jersey gross income tax.

Investment Partnerships —

Effective for taxable years ending after September 14, 1998, a non-resident shall not be deemed as having New Jersey source income solely as a result of the purchase, holding and sale of intangible personal property by a trade, profession, occupation, business, enterprise or undertaking, to the extent that:

1. The activities related to the intangible personal property are for the account of the trade, profession, occupation, business, enterprise or undertaking; and
2. The trade, profession, occupation, business, enterprise or undertaking does not hold the intangible personal property for sale to customers. See P.L. 1998, c.106.

If the investment activities do not meet the criteria and generate New Jersey source income, the nonresident must file a New Jersey gross income tax return, regardless of losses that reduce the income. N.J.A.C. 18:35-1.3(f)3. Losses can only be used against income within the same category and within the same tax year. N.J.S.A. 54A:5-2.

Litter Control Tax

Sales of Cleaning Agents — The litter control tax only applies to sales of the products that are listed as litter-generating products in the Clean Communities and Recycling Act. N.J.S.A. 13:1E-92 et seq. Cleaning agents and toiletries are listed as litter-generating products. If chemicals are sold for the purpose of making them into litter-generating products like cleaning agents and toiletries, the sales of the chemicals are not subject to the litter control tax. Only sales of the end product, such as the cleaning agent or toiletry, are subject to the tax. However, if a supplier sells chemicals as a cleaning agent (and not as a component part of an end product), the sales of the cleaning agent are subject to the litter control tax.

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1999 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
12	1/25/99	Checkoff for Drug Abuse Education Fund — Establishes the Drug Abuse Education Fund to which taxpayers can designate contributions on their New Jersey gross income tax returns.	GIT	ACS for A-132
21	2/8/99	Coded Designations for Contribution Checkoffs — Provides a coding designation system for some of the charitable donation options on the gross income tax return.	GIT	A-1514(4R)
42	3/12/99	Nonofficial Examination of State Tax Records — Provides that any person violating the confidentiality provisions of the State Tax Uniform Procedure Law by examining records for any reason other than the performance of official duties shall be guilty of a disorderly persons offense. Unauthorized disclosure or use continues to be treated as a fourth degree crime. Whenever records and files are used in the prosecution of a person for such offenses, the defendant shall be given access to said records and files. Portions of the court record containing the confidential records shall be sealed by the court.	MIS	A-1631(2R)
63	4/15/99	NJ SAVER and Homestead Rebate Act — Establishes a New Jersey School Assessment Valuation Exemption Relief (NJ SAVER) program which allows homeowners to receive a direct rebate check representing a portion of the school taxes paid on their primary residence. This legislation also extends the homestead rebate income limit for tenants.	LPT	S-12
67	4/16/99	Extension of Time for Filing Property Tax Reimbursement Applications — Extends the deadline for filing 1998 property tax reimbursement applications to April 15, 1999.	LPT	A-2915
71	4/28/99	Shore Protection Fund — Increases the amount annually credited to the Shore Protection Fund to \$25 million.	MIS	A-1676(2R)
92	5/3/99	Checkoff for Korean Veterans' Memorial Fund — Adds the Korean Veterans' Memorial Fund to the list of funds to which gross income tax filers can designate charitable contributions on their return.	GIT	ACS for A-974
94	5/3/99	Simplified Wage Tax Reporting for Employers of Domestic Workers — Simplifies employer reporting and payment requirements for household workers and permits gross income tax withholding and wage taxes for such workers to be paid annually.	GIT	A-1635(3R)
102	5/6/99	Neighborhood and Business Child Care Tax Incentive Program — Provides new tax credits to certain corporations based on their expenditures for child care facilities and also allows certain unincorporated businesses to fully deduct such expenditures for gross income tax purposes.	CBT/ GIT	A-1669(3R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
116	5/21/99	State Tuition Program Accounts, Education IRAs — Allows earnings of qualified state tuition program accounts and educational IRAs to be deferred from New Jersey gross income until the earnings are distributed and excludes from income qualified distributions from qualified state tuition program accounts that are used for qualified higher education expenses.	GIT	A-2367(2R)
118	5/27/99	Aid for Challengers of the NYC Personal Income Tax — Authorizes the New Jersey Attorney General to assist New Jersey residents' legal challenge of the New York City personal income tax.	MIS	A-1040
140	6/28/99	Tax Benefit Certificate Transfer Program — Clarifies the Corporation Business Tax Surrendered Tax Benefit Certificate Transfer Program for new or expanding emerging technology and biotechnology companies.	CBT	S-1709(1R)
152	6/30/99	Garden State Preservation Trust Act — Establishes a statutory framework for the acquisition and preservation of open space, farmland and historic properties. Provides a property tax exemption for real property placed in a preservation trust. Provides funding for municipalities that would otherwise lose tax revenue as a result of such property tax exemption.	MIS	S-9(1R)
177	8/3/99	Pension Exclusion, Other Retirement Income Exclusion Increased — Increases, over a four-year period, the maximum amount of certain retirement income that may be excluded from taxable income under the New Jersey Gross Income Tax Act.	GIT	A-126(1R)
208	9/17/99	Tax Court Proceedings — Changes certain procedures governing county tax board appeals and appeals to the Tax Court.	LPT	S-673(1R)
216	9/21/99	Revaluation Relief Act of 1999 — Changes certain real property tax revaluation procedures which will affect the City of Newark.	LPT	S-192(1R)
221	9/22/99	Expanded Exemption for Film and Video Industry — Exempts the sale of tangible personal property for use directly and primarily in the production of film or video for sale, and the services of installing, maintaining, servicing or repairing such property.	S&U	S-1074(2R)
222	9/22/99	Health Insurance Costs for Self-employed Taxpayers — Allows self-employed individuals and 2% or more shareholders in an S corporation to deduct health insurance costs from gross income.	GIT	S-1133(1R)
246	10/15/99	Exemption for Certain Aircraft Repairs, Equipment — Exempts repairs and replacement parts on aircraft with a maximum takeoff weight of 6,000 pounds or more from sales tax.	S&U	A-1952, 977 (1R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
248	10/15/99	Prepaid Telephone Calling Arrangements — Shifts the incidence of sales tax on prepaid telephone calling arrangements by requiring retail vendors to collect tax at the time of the sale to the consumer.	S&U	A-2050(2R)
249	10/15/99	Exemption for Certain Vending Machine Sales — Increases from \$0.10 to \$0.25 the maximum price of merchandise that is exempt from sales tax when sold through coin-operated vending machines.	S&U	A-2139
253	10/15/99	Firearm Accident Prevention Act — Provides an exemption from sales and use tax for sales of firearm trigger locks.	S&U	A-2420
254	10/15/99	Secure Firearm Storage Act — Provides an exemption from sales and use tax for the sales of firearm vaults.	S&U	A-2421
259	10/15/99	Homestead Rebates — Clarifies the calculation of homestead rebate or NJ SAVER benefits payable to eligible elderly or disabled taxpayers.	LPT	A-3040
260	10/18/99	Higher Tax Filing Thresholds — Increases, over a three year period, the minimum income threshold for filing gross income tax returns.	GIT	ACS for A-2339
	11/2/99	Constitutional Amendment — On November 2, 1999 the electorate approved an amendment to Article VIII, Section I, paragraph 3 of the New Jersey Constitution increasing the property tax deduction for veterans.	LPT	
273	11/24/99	Commuter Ferryboat Exemption — Provides for an exemption from sales tax on the sales, repairs, alterations or conversion of commuter ferryboats.	S&U	S-761(2R)
278	12/8/99	Continuing Education Program for Tax Assessors — Sets continuing education requirements for tax assessor certificate renewals and establishes the Tax Assessor Continuing Education Eligibility Board.	LPT	A-2716(2R)
284	12/20/99	Taxability of Recreational Vehicles in a Campsite — Provides that a recreational vehicle installed in a campsite is not subject to tax as real property.	LPT	A-1126(1R)
314	1/6/00	Farmer's Exemption — Expands the sales tax exemption for certain purchases made for farm use.	S&U	SCS for S-1825(1R)
328	1/6/00	Sales of Reimported Cigarettes — Forbids the stamping and sale of reimported cigarettes originally produced for export.	CIG	A-3250
342	1/10/00	Extension of Cap Benefit — Provides an extension of the cap benefit under the Spill Compensation and Control Act.	SCC	A-2461(3R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
355	1/14/00	Checkoff for Vietnam Veterans' Memorial Fund — Makes the Vietnam Veterans' Memorial Fund one of the permanent checkoffs on the gross income tax return.	GIT	S-1869
357	1/14/00	Realty Transfer Fee — Clarifies that the conversion from a cooperative to a condominium is not subject to the realty transfer fee.	LPT	S-2217
365	1/14/00	Exemptions for Hurricane Floyd Victims — Provides an exemption from sales tax paid by victims of Hurricane Floyd to replace motor vehicles, household goods, and home repair materials, as well as services to install, replace or repair property that was damaged or lost in flooding attributable to Hurricane Floyd in counties federally designated as disaster areas.	S&U	A-3408(1R)
369	1/14/00	Certain Income of Alien Corporations Excluded — Excludes certain investment income of alien corporations from Corporation Business Tax.	CBT	A-3622
372	1/14/00	Qualified Conservation Contribution — Provides a gross income tax deduction for qualified contributions of certain interests in real property for conservation purposes.	GIT	A-1918(2R)
375	1/14/00	Expiration Dates Extended — Extends the municipal payroll and parking tax authorization for Jersey City, Elizabeth and Hudson County municipalities.	MIS	S-1241(3R)
386	1/14/00	Checkoff for Organ and Tissue Donor Awareness Education Fund — Allows taxpayers to make voluntary contributions on their gross income tax returns for organ donor education programs.	GIT	A-3544(1R)
416	1/18/00	Exempt Organization Status — Grants exempt organization status under the Sales and Use Tax Act to the National Guard, Marine Corps League and war veterans' posts or associations and creates a Sales and Use Tax Review Commission to review any bills that would expand or reduce the base of the sales and use tax.	S&U	A-6

*Legend for 1999 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Tax
ACC = Atlantic City Casino Control Commission	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PUT = Public Utility Taxes
CMC = Cape May County Tourism Sales Tax	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	S&U = Sales and Use Tax
GIT = Gross Income Tax	TPT = Tobacco Products Tax
IPT = Insurance Premiums Tax	

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Sales & Use Tax

Broadcasting and Film Production Exemptions

Exemptions — The recently enacted exemptions for the film and video industry contained in P.L. 1999, c.221, apply to purchases of certain tangible personal property and services used or consumed directly and primarily in the production of film or video *for sale*. When items of tangible personal property are used to produce programming to be broadcast by a television station, they are not deemed to be used primarily to produce film or video tape to be sold to others. Therefore P.L. 1999, c.221 does not apply.

If equipment such as tapes, cameras, filming equipment, video transmission equipment, and tape recording equipment is used directly and primarily in the process of producing or transmitting television programming, a broadcast station's purchases of these items may instead be exempt under N.J.S.A. 54:32B-8.13e, sometimes referred to as the broadcast exemption.

Motor vehicles used to carry broadcast and transmission equipment are not deemed to be used *directly* in production of the programming and therefore are not exempt under N.J.S.A. 54:32B-8.13e. In addition, 54:32B-8.13 expressly excludes motor vehicles from the exemption. However, note that trucks used to carry broadcast and transmission equipment may be exempt under N.J.S.A. 54:32B-8.43 if the statutory criteria for exemption are satisfied. Since these trucks are neither farm vehicles nor used exclusively for transporting interstate freight, they will be exempt only if they are registered for road use and

have a manufacturer's assigned gross vehicle weight rating of more than 26,000 pounds.

Sales of Headstones — Sales of vaults and headstones to family members and to funeral directors are subject to sales tax. Funeral directors are not exempt from sales tax on such purchases. N.J.S.A. 54:32B-8.17 provides that funeral directors may *not* claim a resale exemption when purchasing tangible personal property that they use in rendering funeral services. Thus if a funeral director purchases a headstone for a client, the *funeral director* must pay the sales tax on the purchase. The headstone, and other merchandise that the funeral director may transfer to a client, is deemed to be merely incidental to the nontaxable professional services sold by the funeral director. However, if a family member simply purchases the headstone directly from a business that produces headstones, instead of obtaining it from the funeral director as part of a funeral service, the family member, as the retail purchaser, is liable for the sales tax. See N.J.S.A. 54:32B-3(a).

A Form ST-8 cannot be used in order to make an exempt purchase of headstones sold as tangible personal property. The ST-8 is a Certificate of Capital Improvement. It applies only to *services* that are exempt under N.J.S.A. 54:32B-3(b)(2)(v): "services rendered in installing property which, when installed, will constitute an addition or capital improvement to real property or land." Customers who hire a business to dig graves or to install headstones and vaults are entitled to exemption from sales tax on the charge for this service. They should use a

completed ST-8 to support their exemption.

Imaging of Exemption Certificates — Electronic storage of the images of a customer's paper sales tax exemption certificates is acceptable, provided that *all* of the content of the certificate is stored and capable of being reproduced, including the customer's signature. These stored images are deemed "true copies" of the certificates within the meaning of N.J.S.A. 18:24-2.3(a), and certificates stored in electronic form and reproducible in paper form on demand are deemed to be in the vendor's "physical possession" and "available for appropriate inspection" within the meaning of N.J.S.A. 18:24-10.6(b).

Use of ST-3NR — A Form ST-3NR (Resale Certificate for Non-New Jersey Vendors) may be used by a business purchasing taxable items in New Jersey for resale if the purchase qualifies for the resale exemption under New Jersey law and if the purchaser satisfies the following requirements: (1) it is not registered with the New Jersey Division of Taxation, (2) it does not have tax nexus with the State of New Jersey and therefore is not required to be registered with the New Jersey Division of Taxation, and (3) it *is* registered as a vendor with some other state.

A non-United States company not registered in New Jersey may use the ST-3NR if it is registered as a vendor in some other state in the U.S.A. The state where it is registered does not have to be its "home" state or the jurisdiction where the business is based. Note that, even if it is not *required* to be registered with New Jersey be-

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cause it does not have sales tax nexus with this State, it *may* register voluntarily. In that case, it would become eligible to use the regular ST-3, the resale certificate used by vendors registered with New Jersey. However, if the purchaser is registered *only* in a foreign country, it may not use either the ST-3NR or the ST-3.

Exempt Organization Shop or Store Sales — If a nonprofit organization has applied for and received a permit to be exempt from sales and use tax under N.J.S.A. 54:32B-9 of the Sales and Use Tax Act, the organization is exempt from collecting sales tax on occasional fundraising sales. See N.J.A.C. 18:24-9.11. However, when a qualified exempt organization operates a store or a regular mail order business, the organization is required to collect sales tax unless the store meets the criteria in a newly-enacted exemption for “thrift” stores.

As provided in P.L. 1998, c. 118, effective February 1, 1999, a store operated by an exempt organization is not required to collect sales tax if “the tangible personal property was received by the organization as a gift or contribution and the shop or store is one in which substantially all the work in carrying on the business of the shop

or store is performed for the organization without compensation and substantially all of the shop’s or store’s merchandise has been received by the organization as gifts or contributions....”

The Division of Taxation interprets “substantially all” as meaning 75%. Thus, an exempt organization store is exempt from collecting sales tax on taxable *donated* items if the store meets the following criteria:

1. At least 75% of all the merchandise being sold is received as gifts or contributions; and
2. At least 75% of the work in carrying on the store business is performed without compensation, e.g., volunteers.

If an exempt organization store meets the standards of 1 and 2 above, and if all the merchandise is either donated or exempt from sales tax by law (such as clothing), the store qualifies to be put on a non-reporting basis. To be put on a non-reporting basis for sales tax collection purposes, the qualified exempt organization must complete and mail (to the address on the form), the Form C-6205-ST, Request To Be Placed On A Non-Reporting Basis. The form is available by calling the Division’s Automated Tax Information System at 1-800-323-4400 and select-

ing the Forms Request System.

Motor Vehicle Rental Charges — The Division replied to an inquiry concerning various charges that relate to motor vehicle rentals in New Jersey in view of the following regulation:

The charge to the customer which is subject to the sales tax is the total charge to the customer except where nontaxable charges such as registration fees, license fees, insurance and gasoline are separately stated then such charges are not subject to the tax. N.J.A.C. 18:24-7.15(b).

The taxability of separately stated charges is as follows:

1. **Collision Damage Waiver (CDW)** – When a CDW is purchased by a renter, the rental car company agrees not to pursue the renter for reimbursement of the costs of physical damage to the rental vehicle. There is no insurance carrier involved. *Taxable as a charge directly related to the rental.*
2. **Personal Accident Insurance (PAI)** – PAI provides the renter and any passengers with accidental death and accidental medical expense benefits. The renter is an insured under an insurance policy with a licensed insurance carrier. *Exempt because the coverage is provided by a licensed insurance carrier as evidenced by contract.*
3. **Personal Effect Coverage (PEC)** – When offered, it is sold in combination with PAI. It provides protection against risk of loss or damage to the personal effects of the renter and the renter’s immediate family traveling with the renter. The

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renter is an insured under an insurance policy with a licensed insurance carrier. *See #2.*

4. Supplemental Liability Protection – SLP provides the renter with up to \$1,000,000 of liability protection against claims by a third party as a result of bodily injury and property damage arising out of the use of the rental vehicle. The renter is an insured under an insurance policy with a licensed insurance carrier. *Exempt because the coverage is provided by a licensed insurance carrier as evidenced by contract.*

5. Fuel Charge – If the rental vehicle is returned with less gas than it had when it left, the renter is charged \$3.00 for each estimated χ of tank capacity which appears used, regardless of tank size. There is no fuel charge if the rental vehicle is returned with the same amount or more gas. *Exempt under N.J.A.C. 18:24-7.15(b) if it is a separately stated charge for the sale of gasoline (i.e., per gallon or per tank or part thereof) and does not include any additional services or costs related to the rental receipt. If this is a service charge for the vendor's expense of refueling the vehicle, the exemption for the sale of fuel does not apply.* □

In Our Courts

Administration

Time Period to File Appeal with Tax Court – *Alex M. Ponzi-Montalto v. Director, Division of Taxation*, decided November 16, 1999; Tax Court; No. 005577-1998.

In 1992, the Division sent plaintiff a “Notice and Demand for Payment of Tax” (hereinafter Notice) stating that plaintiff had ten days to show cause why the State should not file a Certificate of Debt against her in her capacity as a responsible officer of her corporation. The Notice also stated: “A personal visit to the Division of Taxation is not necessary to discuss this matter. However, if you desire a conference, you *must* call or write in advance to arrange an appointment.” Fourteen days later, plaintiff’s attorney corresponded with the Division concluding as follows: “Accordingly, I wish you would review the enclosed orders and contact me at your earliest convenience so that we may discuss this matter further. Thank you.” Thereafter, the Division filed a Certificate of Debt (hereinafter COD) against plaintiff. In the same year, plaintiff twice communicated with the Division via telephone and was advised that she would be held responsible.

In 1994, the Division issued a Warrant of Execution to satisfy the indebtedness set forth in the 1992 COD. In December 1994, the Division issued a second COD to plaintiff in her capacity as a responsible person of the same corporation for an additional amount of assessed taxes against her corporation. Notification of the docketing of the 1994 COD was sent to plaintiff in 1995.

In 1997, plaintiff’s attorney corresponded with the Department of Law and Public Safety requesting a conference to dispute plaintiff’s status as a responsible officer. On May 20, 1998, a representative of New Jersey’s Attorney General wrote plaintiff’s attorney advising that the Division

would not release the client from responsibility and that the only alternative was Tax Court. On September 9, 1998, plaintiff filed a valid complaint with the Tax Court alleging that she was not a responsible officer for certain time periods and that her May 20, 1998 letter constituted an act of the Director from which she could appeal. In its September 10, 1999 bench opinion, the Court rejected plaintiff’s argument concerning the May 20, 1998 letter without reiterating the analysis and reasoning in this opinion.

In its inquiry, the Court focused on the adequacy and validity of the Division’s notifications with respect to the determinations of liability stated in the two CODs. The Court ruled that the notifications were adequate as they were not assessments and complied with the statutes in effect at that time. The Court found that the plaintiff did not request a hearing or formally protest any Division notification until 1997 and that her failure to appeal for more than four years was unexcusable where as here she received notification of the liability being imposed. Therefore, the Court granted the Division’s motion to dismiss the complaint on grounds of untimely filing.

Bankruptcy Choateness – *In the Matter of Johns, Klear, and the State of New Jersey v. the USA*, decided October 7, 1999; District Court; No. 99-2521 and 99-1880.

The District Court reversed, in part, the Bankruptcy Court’s determination of when the State’s lien arising under the New Jersey Gross Income Tax Act became choate.

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The District Court ruled that a State lien becomes established and enforceable on the assessment date (Citing *Monica Fuel Inc.*, 56 F.3d 508, 512 (3rd Cir. 1995)).

Under the New Jersey Gross Income Tax Act, the amount of tax that a return states is due is deemed assessed on the filing date (See N.J.S.A. 54:9-3(a)). Therefore, the Court held that the liens to the extent of the tax shown on the return were choate on the date plaintiffs filed their returns.

On the other hand, the Court ruled that penalty and interest were not deemed assessed on the filing date because taxpayers did not include penalty and interest on their returns. The Court reasoned that the assessment of penalty and interest under the Gross Income Tax Act must be made through the deficiency assessment process, which process was not performed in either of the aforementioned cases. Therefore the Court held that the liens for interest and penalties were inchoate, were not perfected.

Division's Inherent Power of Recoupment – *Playmate Toys Inc.*, v. *Director, Division of Taxation*, decided December 21, 1999; New Jersey Supreme Court; No. A-70.

The Division granted a refund claim to plaintiff on time periods that were barred by the statute of limitations. Thereafter, the Division issued a final determination directing plaintiff to return the erroneous refund.

In a unanimous decision, the New Jersey Supreme Court affirmed the Appellate Division's holding that although the Division has no statutory power to recoup mistaken disbursements, it does have an inherent power to do so. However,

the Court added that this inherent power is not unlimited as the "powers of the Division are not boundless." The Court differentiated this case concerning the correction of a clerical error from a case concerning the correction of an error in judgment.

Corporation Business Tax Standing to Appeal – *Richard Pobuta v. Director, Division of Taxation*, decided October 8, 1999; Tax Court; No. 002054-99.

Plaintiff filed the complaint challenging the interest due on Corporation Business Tax and Sales and Use Tax owed by Campin Corporation as well as the Gross Income Tax owed by plaintiff and his wife.

The Court held that Richard Pobuta lacked standing to appeal the corporate tax liabilities even though he was the sole officer, shareholder, and director of the corporation. Citing *Rule 1:21-1* of the *New Jersey Court Rules*, the Court ruled that only an attorney may file an appeal concerning corporate tax liabilities.

The Court held that it lacked jurisdiction to reduce interest below statutory minimum absent plaintiff's reasonable reliance on the Division's written advice furnished to the plaintiff. After establishing that interest was imposed at statutory minimum and there was no allegation of reliance on erroneous advice, the Court dismissed plaintiff's complaint.

Gross Income Tax Interest Deduction for Loan for Capital Contribution – *John W. Dantzer, Jr. and Kathleen M. Dantzer. v. Director, Division of Taxation*, decided June 1, 1999; Tax Court; Motion for Reconsid-

eration, denied, October 22, 1999; No. 006040-96.

On defendant's motion for reconsideration, the Court declined to change its determination that interest on plaintiff's loan used to make his partnership capital contribution is a deductible business expense under the Gross Income Tax Act.

In essence, plaintiff borrowed money from the partnership for his capital contribution. Thereafter, plaintiff borrowed money from Citibank and repaid the loan to the partnership. At issue is the Citibank loan interest that was paid by the partnership to Citibank and withheld from amounts that would otherwise have been distributed to plaintiff.

Taxability of Foreign S Corporation's Income to NJ Resident – *Vincent Mancini v. Director, Division of Taxation*, decided March 19, 1999; Tax Court; No. 2892-98.

Plaintiff is a New Jersey resident that owns a 25% interest in a corporation located in Pennsylvania that elected S corporate status for both Federal and Pennsylvania income tax purposes. Plaintiff's New Jersey gross income tax return did not report his pro rata share of income from this foreign S corporation. However, plaintiff's pro rata share of S corporation income was reported on his personal Federal income tax and Pennsylvania non-resident income tax returns.

The Court noted case precedent holding that a state has nexus to tax its residents or domiciliaries on all their income regardless of the source of that income. (Citing *Cohen v. Graves*, 300 U.S. 308, 312-314 (1937); and *Hoe v. Division of Taxation*, 2 N.J. Tax 67, 72 (1980 Tax), *aff'd*, 4 N.J. Tax 528

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(1981 App. Div.), *cert. denied*, 87 N.J. 418 (1981)).

After examining the New Jersey Gross Income Tax Act, the Court found that the legislative intent was to tax a resident taxpayer's share of S corporation income as allocated to the resident pursuant to N.J.S.A. 54A:5-86 regardless of either the location of the S corporation or whether the corporation elected New Jersey S status. Therefore, the Court held that plaintiff was taxable on his pro rata share of the Pennsylvania S corporation income as calculated under the New Jersey Gross Income Tax Act.

**Local Property Tax
Failure to File Timely Complaint**
– *Regent Care Center, Inc. v. Hackensack City*, decided November 16, 1999; Tax Court of New Jersey, No. 005835-97.

Plaintiff (Regent Care) moved to compel defendant (Hackensack City) to produce certain documents in a local property tax appeal after which the municipality cross moved for dismissal of the taxpayer's complaint. Cross motion is based upon defendant/municipality's contention that taxpayer failed to timely file its complaint to the Tax Court by April 1, 1997 as required by N.J.S.A. 54:3-21.

The subject property in Hackensack is utilized as a nursing home. The assessor submitted a timely 1997 tax list to the County Board of Taxation that indicated a total assessment for the subject property of \$8,090,300. In 1996, the assessment was \$4,390,200. Taxpayer acknowledged receipt of a February 1 notification card that indicated the assessment to be

\$4,390,200. However, a second Chapter 75 notification card was mailed to the taxpayer correcting the previous erroneous notice and informing the taxpayer that the accurate assessment for 1997 would be \$8,090,300. The taxpayer denied that it ever received this second notification. There is evidence that the company engaged to prepare and forward the notices of assessment for the municipality had performed a special mailing of Chapter 75 notices on February 28, 1997. No specific proof was submitted to show that the plaintiff received the corrected notice. Thus, the Tax Court determined that the municipality failed to produce sufficient evidence that the corrective notice was mailed to or received by the taxpayer. The taxpayer claimed that it became aware of the assessment increase when the tax bill for the third and fourth quarter of 1997 was received. The municipality demonstrated the mailing of said tax bills on July 11, 1997. Upon receipt of the tax bill toward the end of July 1997, plaintiff contacted the assessor's office and inquired about the increased assessment. In response, the assessor's office confirmed the increase in writing by letter dated July 29, 1997. Thus, the Court stated irrefutably that the tax bill was received between July 11 and July 29.

On September 15, 1997 taxpayer filed a verified complaint seeking temporary restraints to prevent the municipality from collecting and imposing interest on unpaid taxes as well as a proposed order for expedited discovery. On September 16, 1997 the parties presented oral argument before another Tax Court judge on the issue of restraints, which request was denied on the record. Taxpayer was ad-

vised by that judge to resubmit its litigation by means of a standard complaint for relief to the Tax Court that was accomplished on September 19, 1997.

The Tax Court found that fairness requires that this taxpayer should receive a reasonable time within which to appeal. The Court thoroughly analyzed N.J.S.A. 54:3-21 in this matter, and deemed forty-five days from the taxpayer's receipt of the third and fourth quarter tax bill as appropriate. However, the taxpayer did not file its appeal within forty-five days of the receipt of the tax bill. Its first attempt at filing a complaint with the Tax Court was an in lieu of prerogative writ action seeking temporary restraints filed on September 15, 1997, after the forty-five day filing period. Neither N.J.S.A. 54:3-21 nor any other legislation or case law addresses the unusual circumstance where the purported notice fails to indicate a correct assessment. N.J.S.A. 54:3-21 addresses the issue of a change in assessment. There was no notification of a change in assessment in this case as defined by N.J.S.A. 54:3-21. The taxpayer herein failed to file a tax appeal within the extended forty-five day period. The Tax Court thus granted the municipality's cross motion dismissing the taxpayer's complaint and denied the taxpayer's motion for discovery.

Property Tax Assessment Reduced – *Theodore Cohn v. Livingston Township*, decided July 6, 1999; Tax Court of New Jersey, No. 004778-98.

Local property tax appeal involves the one-family ranch home in Livingston Township. Plaintiff

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(Cohn) appealed the property's 1998 assessment (\$103,000) to the Essex County Board of Taxation which reduced the assessed value to \$83,100. Plaintiff appealed from that determination.

Taxpayer appeared pro se. He was not an appraisal expert, and thus could not testify as an expert witness. He submitted four comparable sales in a timely manner ranging in price from \$210,000 to \$285,000, but he arrived at his estimate of value by averaging the four sales prices (\$260,000) without making adjustments between the comparable sales and the subject property. He provided no appraisal report.

His primary argument involved the subject's proximity to high tension wires in the rear of the property. Review of tax maps and photographs of the subject property showed that a child residing at the taxpayer's property would easily be able to have contact with the stanchion that holds the high tension wires. He also pointed to his rear yard slope and a drainage ditch on the rear edge of the property that causes flooding of his rear yard.

The municipality's real estate appraiser qualified to testify as an expert witness. He also used four comparable sales ranging in price from \$233,000 to \$310,000. Three of the four sales were located on different streets, distant from the subject property and, thus, clearly further from the high tension wires. He provided an adjustment grid demonstrating usual adjustments for size, age, location and amenities. The appraisal expert's opinion of value of the subject property based upon the market sales approach was \$320,000. This expert witness did not make adjustments for the existence of the

slope and drainage ditch on the subject property or for the proximity to the high tension wires, however.

The Tax Court is authorized by statute to consider reliable evidence from a pro se litigant, even if such evidence is not derived from expert opinion. It stated that the taxpayer's comparable sales provided reliable evidence from which the Court can glean value. The Court is not bound to accept any or all of the expert's testimony.

The Court examined the comparable sales provided and determined that the residential properties most approximate to high tension wires had a lower market value. The expert witness had not considered proximity to the wires an important factor. The plaintiff had thought that this negative factor was very relevant.

The Court found that, as of October 1, 1997, the relevant assessment date, the appraised value of the subject property was \$275,000. It then determined whether or not the taxpayer is entitled to discrimination relief on the basis of Chapter 123, or N.J.S.A. 54:51A-6. Livingston Township's average ratio, as promulgated by the Director of the Division of Taxation for 1998, was 26.80%, with an upper limit of the common level range of 30.82% and a lower limit of 22.78%. The Court calculated the ratio of the original assessment (\$103,900) to true value as found by the Tax Court (\$275,000) at 37.78%, clearly above the upper level (30.82%) of the common level range. This entitled the taxpayer to Chapter 123 relief. When the Chapter 123 ratio of 26.80% was applied to the Court's finding of true value (\$275,000), the resulting assessment for the subject

property is \$73,700. Judgment for 1998 was entered for an assessment as follows:

Land	\$28,900
<u>Improvement</u>	<u>44,800</u>
Total	\$73,700

Added Assessment on Improvements – *Michael Otelsberg v. Bloomfield Township*, decided June 25, 1999; Tax Court of New Jersey, No. 000128-97.

Decision addressed the validity of a 1997 added assessment imposed on taxpayer's property for alleged improvements after October 1, 1996. Plaintiff purchased the three bedroom, single family home on December 10, 1996 for \$135,000. He contended that the house contained several negative features: unpleasant odors, an outmoded kitchen, and other neglect and physical deterioration. Taxpayer himself completed renovations in January 1997 including replacement of the carpet in the living room, dining room, hallway, and three bedrooms; renovation of the kitchen with new cabinets, and new interior painting. He did not file permits for any of the work performed. After he had received his 1997 notice of assessment for \$162,300, he filed a petition of appeal to the Essex County Board of Taxation.

At the May 1, 1997 hearing, both the taxpayer (appearing pro se) and the assessor agreed that the 1997 assessment would be reduced to \$135,000 (the purchase price). Taxpayer testified that the assessor did not indicate during the settlement conference that the municipality would later impose an added assessment on the subject property. On May 16, 1997, the County Board entered judgment reducing

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the assessment in accordance with the agreement.

After the execution of this judgment, the municipality levied an added assessment of \$36,700 for the improvements to the property for 1997, and prorated it for six months at \$18,350. On appeal by taxpayer, the County Board upheld the added assessment, which determination was subsequently appealed to the Tax Court.

The Tax Court found that the added assessment on the taxpayer's property for the 1997 tax year is valid. N.J.S.A. 54:4-63.3 grants the authority to a municipality to impose an added assessment on a property, when the building or structure has been "erected, added to or improved after October 1, and completed between January 1 and October 1." The Tax Court referred to its decision in *Harrison Realty Corp. v. Town of Harrison*, 15 N.J. Tax at 385, defining the term "improved" as:

The mere retrofitting, up-grading or remediation of deferred maintenance does not constitute an addition to the property; nor does it constitute an improvement. The term "improved," as used in the statute must, under the doctrine of *ejusdem generis*, be read in the context of the word "added" as used in this statute. That is to say, an improvement is in the nature of an addition.

There is no other case law other than the *Harrison* decision to provide guidance to the meaning of "improved" as found in the statute. Black's Law Dictionary defines improved as "to meliorate, make better, to increase the value or good

qualities of, mend, repair..." It is a settled principle of statutory construction that "the language of a statute should be given its ordinary meaning and construed in a common sense manner to accomplish the legislative purpose."

The Tax Court also cited its decision rendered in *Snyder v. South Plainfield Borough*: "Without the added assessments, an improved property would escape taxation for a period of several months until the next regular assessment date." The taxpayer contends that the May 16, 1997 judgment reflects the true value of the subject property and binds the municipality to that assessment. The Tax Court found that, consistent with the *United States Postal Serv. v. Town of Kearney* decision, the executed stipulation of settlement in this litigation related only to the assessment under review at the time the settlement was made. The added assessment was not yet levied on May 1, 1997, nor was it before the County Board when they entered judgment based upon the stipulation of settlement.

Taxpayer has the burden of proof to establish by a preponderance of the evidence that the assessment appealed from is invalid. The Tax Court ruled that Otelsberg did not present any competent method of valuation. He did not present expert testimony or an appraisal report during trial. He relied solely upon his experience as the manager of a local real estate office to testify about his general knowledge of real estate values in the Township. He did not testify as to value nor did he produce sales of comparable properties from which to draw a conclusion of value.

The municipality presented its assessor as an expert witness. He had

an appraisal report, using comparable sales as an approach to valuation. He made adjustments to the subject property, concluding that the value of the subject property is \$171,700. Although he acknowledged his inability to gain access to the interior of some of his comparable sales, the evidence submitted by the municipality was more reliable than any evidence that the taxpayer submitted, the Tax Court concluded.

A municipality is empowered by the added assessment statute to levy additional taxes to a property where there has been an increase in the value to the property. The Court stated that all the improvements that the taxpayer made created a significant increase in the value to the property. The taxpayer cannot rely solely on the notion that the improvements made on the subject property were not additions; this was not a significant issue. The added assessment was valid, and a judgment was entered for 1997 for \$36,700 (prorated for six months).

Sales and Use Tax Fees for Exterminator's Reinspection – *Williams Termite & Pest Control, Inc. v. Director, Division of Taxation*, decided October 8, 1999; Tax Court; No. 003650-1997.

Plaintiff is in the business of exterminating termites and other pests. Plaintiff provided both inspection and treatment services during the period at issue. The initial contract provided for an inspection, treatment and a future annual reinspection and treatment fee. After performing the initial services, plaintiff sent annual re-

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newal notices to its customers offering reinspection and further treatment services, if necessary, for a \$109 fee. Sales tax was charged on the initial contract price but not on the \$109 renewal. At issue was whether the renewal was subject to tax where the initial service included treatment.

The Court cited articles published in the January/February 1976, March/April 1979, and July/August 1981 *New Jersey State Tax News* that made it clear that the Division had pronounced that “when there is an obligation to retreat, and there has been a previous contract requiring treatment, the new charge, the warranty charge, the reinspection charge, the annual charge, whatever it is called, is subject to tax.” The Court found the Director’s interpretation logical acknowledging that there was no question of taxability where all the annual reinspection fees were charged with the initial contract.

The Court ruled that a “reinspection fee, which includes the right to a treatment, if necessary, which follows a treatment under the contract terms in this case, is subject to sales tax.” The Court did not rule on the taxability of a reinspection fee following only an inspection as those facts were not before the Court. □

In Our Legislature

Cigarette Tax

Sales of Reimported Cigarettes — P.L. 1999, c.328 (signed into law on January 6, 2000) forbids the stamping and sale of reimported cigarettes originally produced for export.

Under the legislation, distributors cannot stamp packages that:

- Do not comply with the Federal Cigarette Labeling and Advertising Act.
- Are labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or other wording indicating that the manufacturer did not intend that the product be sold in the United States.
- Have been altered adding or deleting words, labels or warnings described above.
- Were imported into the United States after January 1, 2000.
- Violate Federal trademark or copyright laws.

The law also makes it illegal to possess and/or sell cigarettes that fall into any of the above categories, and such cigarettes are subject to confiscation. This legislation became effective upon enactment.

Corporation Business Tax *Certain Hedge Fund Income of Alien Corporations Excluded* —

P.L. 1999, c.369 (signed into law on January 14, 2000) excludes certain investment income generated in New Jersey by corporations from foreign nations involved in investing and trading for their own accounts. If a corporation has some activities that go beyond trading for its own accounts, the trading income may remain exempt in some cases. This act applies to privilege periods ending on or after July 1, 2000.

Gross Income Tax

Checkoff for Organ and Tissue Donor Awareness Education Fund — P.L. 1999, c.386 (signed into law on January 14, 2000) allows taxpayers to make voluntary contributions on their gross income tax returns for organ donor education programs. This act ap-

plies to tax years beginning on or after January 1, 2001.

Qualified Conservation Contribution — P.L. 1999, c.372 (signed into law on January 14, 2000) provides a gross income tax deduction for qualified contributions of certain interests in real property located in this State for conservation purposes as defined under the Federal IRC section 170(h). The amount of the deduction will be equal to the amount allowed as a deduction for Federal income tax purposes. This act applies to tax years beginning on or after January 1, 2000.

Checkoff for Vietnam Veterans’ Memorial Fund — P.L. 1999, c.355 (signed into law on January 14, 2000) makes the Vietnam Veterans’ Memorial Fund checkoff on the gross income tax return permanent. This act applies to tax years beginning on or after January 1, 2000.

Local Property Tax

Realty Transfer Fee — P.L. 1999, c.357 (signed into law on January 14, 2000) clarifies that the conversion from a cooperative to a condominium is not subject to the realty transfer fee. This legislation became effective upon enactment.

Recreational Vehicles — P.L. 1999, c.284 (signed into law on December 20, 1999) provides that a recreational vehicle installed in a campsite is not subject to tax as real property.

The legislation defines a recreational vehicle as a unit consisting of one or more transportable sections primarily constructed off-site, built on a permanent chassis, and designed to be used as a temporary dwelling. The unit is on a nonpermanent foundation and is not used as a dwelling on a perma-

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ment basis. This legislation became effective upon enactment.

Continuing Education Program for Tax Assessors — P.L. 1999, c.278 (signed into law on December 8, 1999) requires tax assessors to complete a specified number of continuing education credits for renewal of tax assessor certificates and establishes the Tax Assessor Continuing Education Eligibility Board to set curriculum requirements.

To renew a certificate, applicants must pay the required fee of at least \$50 and provide verification that the continuing education requirements were met. The requirement for the first renewal is 50 continuing education credit hours during the preceding 5-year period. The requirement for subsequent renewals is 30 continuing education credit hours during the preceding 3-year period. This act takes effect on July 1, 2000.

Miscellaneous

Authorization to Impose Municipal Taxes Extended — P.L. 1999, c.375 (signed into law on January 14, 2000) extends the municipal payroll and parking tax authorization for Jersey City, Elizabeth and Hudson County municipalities to December 31, 2004. The authorization for Newark is extended to September 30, 2000 and can be extended further under the terms of P.L. 1999, c.216.

The law also clarifies that instrumentalities of the State, such as New Jersey Transit Corporation, are not exempt from local parking taxes. This legislation became effective upon enactment.

Sales and Use Tax

Exempt Organization Status — P.L. 1999, c.416 (signed into law on January 18, 2000) grants exempt organization status under the Sales and Use Tax Act to a National Guard organization, the Marine Corps League, war veterans' posts or associations and the auxiliary units of these organizations.

The law clarifies an existing requirement that the exemption from sales tax of a sale to an exempt organization shall apply only if no part of the net earnings of the organization benefit any private shareholder or individual and the organization does not engage in lobbying or political campaign activity.

The law also creates a Sales and Use Tax Review Commission to review any bills that would expand or reduce the base of the sales and use tax. This legislation took effect March 1, 2000.

Exemptions for Hurricane Floyd Victims — P.L. 1999, c.365 (signed into law on January 14, 2000) provides an exemption from sales tax paid by victims of Hurricane Floyd to replace motor vehicles, household goods, home repair materials, heating and cooling systems and appliances, as well as services to install, replace or repair property that was damaged or lost in flooding attributable to Hurricane Floyd in counties federally designated as disaster areas.

Documentation of the flood loss and proof of sales tax paid must accompany any claim for a refund. This legislation became effective upon enactment and applies retroactively to purchases made during the recovery period, September 17, 1999 through September 30, 2000. Refunds must be requested on or before March 31, 2001.

Farmer's Exemption — P.L. 1999, c.314 (signed into law on January 6, 2000) expands the sales tax exemption for certain purchases made for farm use.

The law provides that the sales tax exemption for wrapping supplies will now include containers for use in a "farming enterprise."

The farm use exemption is expanded to include the sale to a farmer of production and conservation services, in addition to the sale of tangible personal property. These sales must be directly and primarily used in the production, handling and preservation for sale of an agricultural or horticultural commodity at the farming enterprise of the farmer. The exemption does not apply to sales of automobiles, energy or materials used to construct a building or structure other than a silo, greenhouse, grain bin, or manure handling equipment. This act applies to sales made on or after January 1, 2000.

Commuter Ferryboat Exemption — P.L. 1999, c.273 (signed into law on November 24, 1999) provides for an exemption from sales tax on the sales, repairs, alterations or conversion of ferryboats that are used primarily to transport passengers during peak commuting hours. This legislation became effective upon enactment.

Spill Compensation Tax

Extension of Cap Benefit — P.L. 1999, c.342 (signed into law on January 10, 2000), provides an extension of the cap benefit under the Spill Compensation and Control Tax.

This law amends the Spill Compensation and Control Act to allow

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a Spill tax capped corporation's successor in interest pursuant to an IRC §368(a)(1)(D) reorganization on or before October 1, 1997 to be eligible for such cap, which is an annual tax limit of no more than 125% of the tax liability in the

1986 base year of the predecessor corporation. It would also allow the successor corporation a refund of any Spill taxes paid in excess of the capped limitation since January 1, 1996.

The law also clarifies that for a capped corporation or its qualified

successor in interest, the taxes not included in the 1986 base would only be for those major facilities that prior to January 1, 1996 were entirely closed and decommissioned.

This legislation became effective upon enactment. □

tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
2	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
0	16	17	18	19	20	21	22
0	23	24	25	26	27	28	29
	30						

April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

April 17

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
continued

April 17 - continued

- HR-1040** Homestead Rebate—Application
NJ-1040 Gross Income Tax—Resident return for calendar year filers
NJ-1040NR Gross Income Tax—Nonresident return for calendar year filers
NJ-1041 Gross Income Tax—Fiduciary return for calendar year filers
NJ-1065 Gross Income Tax—Partnership return for calendar year filers
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
continued

April 20 - continued

- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return
ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return
ST-50 Sales and Use Tax—Quarterly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly Return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2		1	2	3	4	5	6
0	7	8	9	10	11	12	13
0	14	15	16	17	18	19	20
0	21	22	23	24	25	26	27
	28	29	30	31			

May 1

NJ-927 & NJ-927-W **Gross Income Tax—**
Employer's quarterly report

May 10

CWIP-1 **Cigarette Tax—**Informational report by wholesalers
CWIP-2 **Cigarette Tax—**Informational report by wholesalers

May 15

CBT-100 **Corporation Business Tax—**Annual return for accounting period ending January 31
CBT-150 **Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 **Gross Income Tax—**Employer's monthly remittance

May 22

CR-1 & CNR-1 **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D **Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used
GA-1J **Motor Fuels Tax—**Jobber's monthly report of gallons of fuel
MFT-10 **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

May 22 - continued

SCC-5 **Spill Compensation and Control Tax—**Monthly return
ST-21 **New Jersey/New York Combined State Sales and Use Tax—**Monthly return
ST-51 **Sales and Use Tax—**Monthly remittance
ST-250 **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
ST-350 **Cape May County Tourism Sales Tax—**Monthly return
ST-451 **Sales and Use Tax—Salem County—**Monthly Return
TP-20 **Tobacco Products Wholesale Sales and Use Tax—** Monthly return
UZ-50 **Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return

May 25

PPT-41 **Petroleum Products Gross Receipts Tax—**Monthly return

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2					1	2	3
0	4	5	6	7	8	9	10
0	11	12	13	14	15	16	17
0	18	19	20	21	22	23	24
	25	26	27	28	29	30	

June 12

CWIP-1 **Cigarette Tax—**Informational report by wholesalers
CWIP-2 **Cigarette Tax—**Informational report by wholesalers

June 15

CBT-100 **Corporation Business Tax—**Annual return for accounting period ending February 29

continued

June 15 - continued

CBT-150 **Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 **Gross Income Tax—**Employer's monthly remittance

June 20

CR-1 & CNR-1 **Cigarette Tax—**Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D **Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used
GA-1J **Motor Fuels Tax—**Jobber's monthly report of gallons of fuel
MFT-10 **Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 **Spill Compensation and Control Tax—**Monthly return

continued

June 20 - continued

ST-21 **New Jersey/New York Combined State Sales and Use Tax—**Monthly return
ST-51 **Sales and Use Tax—**Monthly remittance
ST-250 **Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
ST-350 **Cape May County Tourism Sales Tax—**Monthly return
ST-451 **Sales and Use Tax—Salem County—**Monthly Return
TP-20 **Tobacco Products Wholesale Sales and Use Tax—** Monthly return
UZ-50 **Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return

June 26

PPT-41 **Petroleum Products Gross Receipts Tax—**Monthly return

from the director's desk

Small Business Workshops

The New Jersey Division of Taxation, in conjunction with the IRS, periodically conducts free workshops to help small businesses learn about their tax obligations. These seminars, which run from 9:00 a.m. to 4:00 p.m., are held at various locations throughout the State and cover a variety of topics.

Spring 2000 Schedule

April 28	Rutgers Newark 81 New St., Room 104 (parking at 200 University Ave.)	May 19	Public Policy Bldg., New Brunswick 33 Livingston Ave., Room 369 (parking available)
May 5	Brookdale Community College Newman Springs Rd. Larrison Hall, Room 210 (parking in lot #2)	June 7	Hudson County College 25 Journal Square 4 th Floor Board Room

Seating is limited so please confirm your attendance with the IRS by faxing them at 973-645-6691.

For additional information on these and other specialized workshops call our Technical Education Unit at 609-984-4101 or John Kelly at 609-292-7203.

New Jersey State Tax News

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Higher Filing Threshold

Filing Category	Previous Threshold (1998)	New Threshold		
		1999	2000	2001
Married filing jointly, Head of household & Qualifying widow(er)	\$7,500	\$10,000	\$15,000	\$20,000
Married filing separately	\$3,750	\$5,000	\$7,500	\$10,000
Single; estates & trusts	\$7,500	\$10,000	\$10,000	\$10,000

For tax year 1999, the income level at which taxpayers become subject to New Jersey gross income tax and obligated to file a New Jersey gross income tax return has been increased from \$7,500 (\$3,750 if married, filing a separate return) to \$10,000 (\$5,000 if married, filing a separate return). Further increases will occur in tax years 2000 and 2001 as shown in the table above.

The higher filing threshold removes from the tax rolls many lower income people who formerly were subject to the State's income tax and required to file a New Jersey return. Taxpayers with incomes below the new threshold must still file a return to request a refund of any tax that was paid through withholding, estimated payments, etc. New Jersey residents whose income is below the threshold, and who are eligible for

a homestead rebate, must file a homestead rebate application (Form HR-1040). □

important phone numbers

Call Center	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Lien, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds ..	609-292-7018
Public Utility Tax	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

Nonresident Return Error

The 1999 New Jersey nonresident gross income tax return form (NJ-1040NR) contains an error on page two, Line 39 (Net Gambling Winnings). Column B of that line is incorrectly blacked out making it impossible to enter an amount in that space. The correct location for the blacked out area is Column B, Line 40 (Pensions, Annuities and IRA Withdrawals).

Nonresident taxpayers with gambling winnings from New Jersey sources to report for 1999 should enter the appropriate amount on Line 40, Column B and write GW in the margin next to this amount. If the taxpayer does not have gambling winnings from New Jersey sources, no amount should be entered on Line 40, Column B since pension, annuity and IRA withdrawal income from New Jersey sources is not taxable to nonresidents.

Taxpayers who were mailed a preprinted label inside their NJ-1040NR booklet were sent a postcard explaining the error. □

Treasurer Sworn In

On December 8, 1999, Roland M. Machold was sworn in as New Jersey's 48th Treasurer by Governor Christine Todd Whitman. Mr. Machold, who spent his early career as an investment banker with Morgan Stanley & Co., served as Director of the New Jersey Division of Investment for 22 years, where, at the time of his retirement in 1998, he was responsible for 152 State funds aggregating \$76 billion. □

"Paperless" Returns

New Jersey offers residents a variety of options for filing their individual State income tax without having to submit a paper return.

NJ PC FILE

Most New Jersey residents with access to a Windows 95/98 based personal computer equipped with a modem can prepare and file their New Jersey gross income tax returns electronically with the aid of NJ PC File, a free software package available from the Division's Web site. For tax year 1999, NJ PC File users who are not required to file a New Jersey income tax return can now file just their Homestead Rebate application.

Taxpayers using NJ PC File will receive their refunds within two weeks of filing. Up-to-date information on NJ PC File is available on the Division's home page:

<http://www.state.nj.us/treasury/taxation/>

NJ TELEFILE

New Jersey residents with gross income of \$150,000 or less may be eligible to TeleFile their State income tax returns/homestead rebate applications using a Touchtone telephone. The income must have been derived entirely from wages, interest and dividends and neither the interest nor the dividend portion of the income may exceed \$1,000. The taxpayer must use the same filing status used on the previous year's return and may not be claiming an exemption for age 65 or older, or for being blind or disabled. Additional restrictions may apply.

For tax year 1999, taxpayers and their spouses (in cases where a joint return is filed) must "sign"

New Jersey State Tax News

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<http://www.state.nj.us/treasury/taxation/>

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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Editor: Linda B. Hickey

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the return electronically by entering their 4-digit TeleFile PIN number to attest to the truthfulness of the information on the return. Previously, TeleFilers provided a “voice” signature as verification.

Refunds claimed on TeleFiled returns are mailed to taxpayers within two weeks of TeleFiling. To TeleFile, call 1-888-235-FILE (3453) from a Touch-tone telephone within New Jersey, or 609-826-4448 from a Touch-tone telephone anywhere.

ELECTRONIC FILING (ELF)

Taxpayers who have access to a personal computer equipped with an appropriate tax preparation software package can use ELF to prepare and file their own State income tax returns. Alternatively, taxpayers may have a tax professional prepare and/or transmit their return in electronic format for them. Taxpayers who file their State returns using ELF must also file their Federal returns via this method. Certain ELF filers may have to complete an Individual Income Tax Declaration for Electronic Filing (Form NJ-8453) when their return is accepted.

Transmitters and Electronic Return Originators (EROs) who wish to participate in the New Jersey ELF program must register with the Division of Revenue each year. Returns submitted by Transmitters or EROs who have failed to register with New Jersey will be rejected. Since this program includes both the Federal and State returns, practitioners participating for the first time should contact the electronic filing coordinator at the IRS Newark District Office. The phone number is 973-645-6690. Registering with the IRS does not

automatically allow transmitters and EROs to participate in New Jersey’s ELF program.

Find out more about New Jersey’s Electronic Filing Program on the Division of Revenue’s Web site:
<http://www.state.nj.us/treasury/revenue/>

or write to:

NJ DIVISION OF REVENUE
ELF
PO BOX 191
TRENTON NJ 08646-0191
□

Property Tax Reimbursement

Applications for the Property Tax Reimbursement program were mailed in early 2000. This is the second year of the program that reimburses senior citizens and disabled persons for property tax increases. Eligible applicants should be sure to file their applications on or before March 15, 2000. Reimbursement checks are scheduled to be mailed to qualified applicants on July 15, 2000.

Personalized applications were mailed to individuals who applied for and received a 1998 Property

Tax Reimbursement.

Each applicant’s form was pre-printed with information that was provided on their 1998 application. These individuals need only provide information for 1999 along with copies of property tax bills and proof of the amount of property taxes paid for 1999. Individuals who received a 1998 Property Tax Reimbursement but have not received a personalized application, Form PTR-2, should call the Property Tax Reimbursement Hotline at 1-800-882-6597 to have one mailed to them.

Form PTR-1 will again be available to the general public and must be used by applicants who did **not** receive a 1998 Property Tax Reimbursement. This form was automatically mailed to individuals who applied for but did not receive a 1998 Property Tax Reimbursement. Individuals filing Form PTR-1 will be required to provide information for both 1998 and 1999 along with copies of property tax bills and proof of the amount of property taxes paid for both years.

continued on page 4

<http://www.state.nj.us/treasury/taxation/>
NJ PC File

reimbursement – from page 3

Applicants who cannot locate property tax bills, or proof of the amount of taxes paid, may use a verification form provided in the Property Tax Reimbursement booklet. The form must be completed and certified by the local tax collector and submitted with the application. A verification form is also provided for mobile home owners and must be completed and certified by the owner or manager of the mobile home park in which the applicant resides.

Applicants must meet residency and income requirements to be eligible for the program. The income limits for 1998 and 1999 are:

1998 — less than \$17,918 if you are single, or \$21,970 (combined income) if married, and

1999 — less than \$18,151 if you are single, or \$22,256 (combined income) if married.

Applicants who are also entitled to homestead rebates must file a separate Homestead Rebate Application (Form HR-1040) to receive a homestead rebate.

To order forms or ask questions related to the program call the Property Tax Reimbursement Hotline at 1-800-882-6597. Division representatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

Tax Preparer ID Numbers

As a result of a 1998 amendment to the Federal Internal Revenue Code, the IRS now allows tax preparers to apply for a Federal “preparer tax identification number.” As a result of the recent changes, a tax preparer may use either his or her social security number or Federal preparer tax identification number on clients’ Federal returns and refund claims. For purposes of filing New Jersey State returns or refund claims, tax preparers may use either their social security or Federal preparer tax identification number, as long as the preparer uses the same number for the State filings as used for the Federal filings. □

GROSS INCOME TAX NJ-1040 Filing Tips

Where’s my refund? Why did you send me this bill? Where’s my Homestead Rebate? These are the questions most frequently asked by anxious taxpayers who call or write to the Division of Taxation.

The following are some important tips for taxpayers and practitioners for filing 1999 New Jersey gross income tax returns. Of course, the best way to ensure an accurate return and a quick refund is to use one of New Jersey’s “paperless” filing methods: NJ PC File, NJ TeleFile or NJ E-File.

Whichever filing method you choose, here are some reminders that will prevent delays in receiving refunds and homestead rebates, and eliminate the issuance of erroneous bills, all of which cause otherwise unnecessary calls and letters to the Division.

- Be sure to use a **1999** return; there are certain changes on the

form that apply specifically to the 1999 return year.

- Read the instruction booklet before completing the return.
- Be sure to use the **State Wages** figure from W-2s and not the Federal wages. In many cases they will be different.
- When calculating your **Property Tax Deduction**, be sure to use only 18% of the annual amount of rent you paid if you are a tenant. Property owners can claim the actual amount of property tax paid or \$10,000, whichever is less. If you claim the **Property Tax Credit**, the amount will be \$50 (\$25 if married filing a separate return).
- Check your math.
- Make sure all required lines are completed on the return.

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Interest Rates

Fourth Qtr. '99 — 10.75%

First Qtr. '00 — 11.50%

The interest rate assessed on amounts due for the fourth quarter of 1999 is 10.75%, and the interest rate for the first quarter of 2000 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%

nj-1040 filing tips – from page 4

- If you use the Tax Tables to compute your tax due, be sure to use the correct column based upon your filing status.
- If your taxable income is \$100,000 or more and you use the Tax Rate Schedules to compute the tax due, remember to complete Step 3 on either Table A or Table B in the schedule.
- Be sure to use the correct label on the return if there are multiple filers in the same household.
- Be sure to complete page 3 of the return if you are requesting a refund or credit forward.
- Check to see that your return is signed and dated.
- Be sure that W-2s are legible.
- Review all of your payment records before preparing your return, so that you may properly take credit for all estimated payments, payments made with requests for extension, and credits forward from the prior year.
- When taking credit for taxes paid to other jurisdictions, be sure to include a copy of the tax return that you filed with the other state or taxing jurisdiction.
- When reporting business income, be sure to include a copy of the Federal **Schedule C, C-EZ, or F**.
- Be sure to include **Schedule NJ-K-1, Form NJ-1065** (or a copy of Federal Schedule K-1, Form 1065) when reporting partnership income.
- When reporting S Corporation income, be sure to include **Schedule NJ-K-1, Form CBT-100S** (or a copy of Federal Schedule K-1, Form 1120S).

- Be sure to attach **Schedule NJ-2450** when claiming excess UI/HC/WD and disability contributions.
- When preparing your payment voucher, be sure to write your social security number on your check. On joint returns, write the primary social security number of the return on the check.
- Remember to complete the Homestead Rebate Application if you are eligible for a rebate.
- Since New Jersey estimated payments are due on the same dates as Federal estimated payments, be sure to mail your New Jersey payment and NJ-1040-ES to New Jersey, and your Federal payment and 1040-ES to the IRS.

Following these guidelines will help to ensure that your return is processed timely and accurately, your payments, withholdings and credits properly applied, your refund and/or rebate received timely, and the chances of you receiving an unexpected bill, significantly reduced. □

GROSS INCOME TAX ***NJ Information on Form W-2***

Employers must furnish a Wage and Tax Statement (Form W-2) to each employee showing the amount of wages paid, the amount of state income tax withheld, the name of the state where the tax was remitted and certain other information. New Jersey does not have a separate form for reporting these wage and tax figures. They are reported on Federal Form W-2 in the boxes provided for state tax information. Report information on

the W-2 for employees working in New Jersey as follows:

- ◆ **Box 14** — Report amounts withheld as employee contributions to New Jersey Unemployment Insurance/Health Care Subsidy Fund/Workforce Development Partnership Fund (UI/HC/WD) and Disability Insurance (DI). These amounts must be reported separately. Employers with approved private disability plans must also include their assigned private plan number in this box. New Jersey employers no longer have a separate identification number issued by the Department of Labor, except for those employers with private disability plans.
- ◆ **Box 16** — In most cases, New Jersey income tax is withheld from the salaries of employees working in this State. When taxes have been withheld and remitted to New Jersey, indicate “NJ” in the area of Box 16 designated as “State.” List your New Jersey Taxpayer Identification Number in the area of Box 16 designated as “Employer’s state ID no.” This number is based on your Federal Employer Identification Number (FEIN) and is located on your New Jersey Employer’s Quarterly Report (Form NJ-927 or NJ-927-W), above your pre-printed name and address. If you are unsure of your New Jersey registration number, contact the Division of Taxation Call Center at 609-292-6400 or the Division of Employer Accounts Hotline at 609-633-6400.

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information on w-2 – from pg. 5

◆ **Box 17** — Report all salaries, wages, tips, fees, commissions, bonuses, and other remuneration subject to New Jersey Gross Income Tax.

◆ **Box 18** — Report the amount of New Jersey income tax withheld.

For more information on completing Form W-2, request a New Jersey Gross Income Tax Instructions for Employers booklet (Form NJ-WT), or Tax Topic Bulletin MISC-1, *Employer Responsibilities*.



CORPORATION TAX

Child Care Credit

On May 6, 1999 Assembly Bill No. 1669 (3R) was signed into law as Chapter 102, P.L. 1999 by Governor Whitman. The law provides a new corporation business tax credit under the Neighborhood and Business Child Care Tax Incentive Program.

A corporation that is a member of a small/medium business child care consortium for the three year demonstration program would be allowed a credit equal to 15% of the corporation's expenditures for child care center physical plant or facilities owned or operated by the consortium or by a contracted sponsoring organization during the demonstration period.

A corporation is also allowed a credit equal to 10% of its contributions during a privilege period, whether in cash or in kind, to a sponsor of a neighborhood-based child care center that was awarded a program grant.

In order to take advantage of the credit, corporations must request Form 309 from the Division's Taxpayer Forms Services and file it with the corporation business tax return filed.

The allowable total Neighborhood and Business Child Care Tax Credit in addition to the amount of all other credits taken is limited to 50% of the taxpayer's total tax liability and can not reduce the total tax liability below the statutory minimum. The credit does not

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Sample W-2 (This form is for illustration only and is not reproducible.)

a Control number		22222		Void		For Official Use Only	
						OMB No. 1545-0008	
b Employer identification number		1 Wages, tips, other compensation		2 Federal income tax withheld			
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld			
		5 Medicare wages and tips		6 Medicare tax withheld			
		7 Allocated tips		8			
d Employee's social security number		9 Advance Earnings Payment		10 Health care benefits			
e Employee's name (first, middle initial, last)		11 Nonqualified plans		12 Benefits included in box 1			
		13 See instructions for box 13		14 Other			
				UI/HC/WD 85.85			
				DI 101.00			
				DI PP. #(Private Plan No.)			
f Employee's address and ZIP code		15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>	
				Legal rep. <input type="checkbox"/>		Deferred compensation <input type="checkbox"/>	
16 State	Employer's state I.D. no.	17 State wages, tips, etc.	18 State income tax	19 Locality name	20 Local wages, tips, etc.	21 Local income tax	
Form W-2 Wage and Tax Statement		1999		Department of the Treasury—Internal Revenue Service For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.			

child care credit – from page 6

contain any credit carryover provisions. Any credit in excess of the allowable amount is forfeited.

The credit applies to privilege periods ending on or after July 31, 1999 and before July 1, 2002. □

GROSS INCOME TAX ***Undistributed Trust Income***

The fiduciary of every resident trust is required to file a New Jersey Gross Income Tax Fiduciary Return (Form NJ-1041) if gross income is more than \$10,000 during the taxable year. For tax years 1994 through 1998 the filing threshold amount was \$7,500; for tax years 1993 and before, \$3,000.

The fiduciary of every nonresident trust which derives income from New Jersey sources must file an NJ-1041 if the gross income received from all sources (both inside and outside New Jersey) during the taxable year is more than \$10,000.

Recently, a trust administrator inquired about the filing requirements of a trust when the trust, created in New Jersey by the will of a New Jersey domiciliary, is not administered in New Jersey. The trustees, the trust assets and the beneficiaries are not located in New Jersey.

In two 1983 New Jersey Tax Court cases the facts are consistent with those in the inquiry and both times the Court decided that there was insufficient tax nexus for the trust to be taxed on its undistributed income.

In *Robert M. Pennoyer v. Director, Division of Taxation* it was held

that undistributed income of a testamentary trust created by the will of a New Jersey domiciliary did not have sufficient nexus for taxation in New Jersey where the trustee, beneficiaries and assets of the trust are all located outside New Jersey.

In *Robert S. Potter v. Director, Division of Taxation* it was held that undistributed income of an irrevocable inter vivos trust created by a New Jersey domiciliary was not subject to the New Jersey tax where the trustee, beneficiaries and assets were all located outside New Jersey.

The Tax Court in *Potter* did state that even though New Jersey resident beneficiaries were subject to tax on trust income distributed to them or on undistributed income over which they had control, that fact was not a sufficient reason to tax the trust on undistributed trust income.

The Division has interpreted the Tax Court decisions to mean that if all trust assets and all trustees are located outside New Jersey the trust is not subject to tax on its undistributed income.

Trustees unsure of their responsibilities for filing New Jersey gross income tax fiduciary returns should write to the Division of Taxation at the following address, giving detailed information about the trust:

NJ DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
PO BOX 288
TRENTON NEW JERSEY 08695-0288
□

Volunteers Provide Assistance

The Division of Taxation is proud to be continuing its long association with the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs. These programs train hundreds of volunteer tax preparers who fill out tax forms at no charge for tens of thousands of individuals at hundreds of sites throughout the State.

The Division familiarizes volunteers in both programs with the important aspects of the New Jersey Gross Income Tax/Homestead Rebate and the new Property Tax Reimbursement program so they may assist senior and low-income New Jersey taxpayers complete their returns. □

Domestic Employer Tax Reporting

Effective January 1, 2000, employers of household workers may report and remit gross income tax withholding and unemployment and disability insurance on an annual basis. Form NJ-927H (Employer Annual Report) will be mailed to all domestic employers the last week of December to be completed and returned by the due date of January 31, 2001.

This change in reporting pertains only to gross income tax withholding and unemployment and disability insurance. All employers are still required to file the Employer Report of Wages Paid (Form WR-30) on a quarterly basis.

Questions regarding unemployment and disability insurance

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employer reporting – from pg. 7

contributions or Form WR-30 should be directed to (609) 633-6400. Questions regarding gross income tax withholding should be directed to (609) 292-6400. □

One-Stop Business Registration Service

New Jersey Department of the Treasury is now offering a unique one-stop service for businesses that wish to form New Jersey corporations. The new service will streamline the business formation process and enable corporations to begin operations on a more timely basis without the need to contact and file papers with multiple State and Federal offices.

Administered by the Division of Revenue's Business Services Branch, the new service will enable businesses to obtain all of the following after a single visit to the service center located at 225 West State Street, Trenton, New Jersey:

- Certificate of Incorporation – This is the legal document needed to establish new corporations.
- Federal Employer Identification Number (FEIN) – This tax identification number will be assigned through an innovative pilot project offered under the auspices of the Internal Revenue Service and New Jersey Division of Revenue.
- New Jersey Tax/Employer Registration – In addition to obtaining FEINs directly from the State, service center customers will be able to register on-site for all applicable taxes and employer contributions (for unemployment and disability).

For more information about the one-stop service center and the Division of Revenue's commercial recording and business service programs, call 609-292-9292 or visit the Division's business gateway Web site at:

www.state.nj.us/njbgs □

Warrants Filed Electronically

As a result of the continued support of the Office of Information Technology and with the cooperation of the technical support group for the Clerk of the Superior Court, in October 1999, the Division of Taxation began processing its Warrants for Satisfaction of Judgments electronically with the Superior Court of New Jersey. This process involves the Division's passing certain electronic information to the Office of the Courts which will update the Court's records before returning electronic information to the Division confirming that this update took place. This process is being run on a weekly basis. This new process significantly decreases delays in the satisfaction of these judgments and allows the Division to provide better customer service to the affected taxpayers.

Previously, the Division of Taxation would timely produce hard copies of the Warrant for Satisfaction and forward same to the Clerk

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NJ TeleFile The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1999 income tax return/homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-826-4448 (from anywhere).

Full year New Jersey resident during 1999

Not 65 years of age or older as of December 31, 1999

Same filing status as on your 1998 NJ return

Not blind or disabled as of December 31, 1999

Total New Jersey income of \$150,000 or less

Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

warrants – from page 8

for recording. Once recorded, the Court would in turn furnish the Division with a confirmed copy for its files and/or for the dissemination to the taxpayer and/or his representatives. It was not unusual for a period of four to six weeks to go by before the confirmed copy was returned to the Division, resulting in delays for taxpayers who were awaiting the completion of certain financial transactions. These taxpayers would in turn contact Division personnel complaining about these long delays although the Division had no control over this process.

In the past, the Division as a courtesy to the taxpayer, would, upon request, provide them with a confirmed copy of the Satisfaction for their records. Since the Division of Taxation is no longer receiving confirmed copies of any Satisfactions, the taxpayer will have to contact the Office of the Clerk of the Superior Court of New Jersey, in Trenton, at 609-292-4804, for a true copy of the Satisfaction. The Division will continue to produce a *facsimile* of the Satisfaction for any taxpayer requesting one, however, those taxpayers requiring a *certified copy* must contact the Court. □

SALES AND USE TAX ***Motor Vehicle Leases***

Under New Jersey law, the lessor of tangible personal property is considered to be the end user of the property and is required to pay use tax directly to the Division of Taxation. In addition, a lessor having leased tangible personal property present in New Jersey is deemed to have a place of business in this State and is thereby required

to register with the State of New Jersey and remit any required taxes.

The New Jersey Sales and Use Tax Act makes a distinction between rentals and leases. Although both are agreements for the temporary possession and/or use of tangible personal property, a rental is a short-term transaction lasting 28 days or less. A lease has a term of more than 28 days.

Leases are treated differently than rentals for sales tax purposes. Under the law, the renting entity is required to collect the sales tax from the renter and remit it to the State. For leases, the lessor is required to pay the use tax but may recoup this tax from the lessee as a cost of the lease. These monies must be paid in their entirety with the next month's remittance after the lease is signed. The tax may be calculated in one of the following ways:

- 1) On the original purchase price — the purchase price of the vehicle less a separately stated charge for transportation to the dealer's place of business; or
- 2) On the total lease payments — the total of the lease payments attributable to the property, less the total interest service charge of the financial institution and/or the amount of the customer's trade deficit paid off through the lease.

The motor vehicle dealer is considered the lessor when he has the title to the motor vehicle and executes a lease agreement. The dealer is still the lessor required to remit the use tax if he executes the lease agreement and only the name of the finance company appears on the lease agreement and the

finance company has the right to approve or deny the lease.

The early cancellation of the lease or the transferring of the vehicle out of State prior to the expiration of the lease is not a basis for the refunding of any portion of the tax. As to the tax imposed on the balance of the lease, the laws of that state will apply. In addition, if a vehicle is brought into the State the lessor must be registered with the State as any other lessor and would owe use tax on the remainder of the lease.

Any leased vehicle requiring title work by the Department of Motor Vehicles, other than renewals, must have, among other things, the back of the title or Manufacturer's Certificate of Origin stamped with a NJ Sales Tax Satisfied stamp correctly completed. This stamp certifies to D.M.V. that the taxes are being remitted correctly. Leased vehicles without this stamp completed correctly will not be able to be registered or titled. □

SALES AND USE TAX ***Computer Systems***

Everyone has heard about the potential computer problems involving the year 2000 (Y2K). In addition, the beginning of any new year can be a trying time for many businesses and tax professionals since it is also the beginning of "tax season."

If a new computer system is purchased, it is taxable. Many people buy computers through catalogues from an out-of-State vendor who is not registered with the Division of Taxation in New Jersey. In such cases sales tax may

continued on page 10

not be charged on the purchase price. When this occurs, the purchaser *must* report and remit the amount of tax due as use tax using one of the following forms:

1. **Businesses** – If the purchaser is a business, the amount of use tax due must be included on Line 5 of the quarterly sales and use tax return, Form ST-50.
2. **Individuals** – Individual taxpayers report use tax due on either a Use Tax Return, Form ST-18, or on the use tax line of the New Jersey gross income tax return, Form NJ-1040.

Upgrading an existing computer system is also taxable. Purchasing hardware for additional memory, drivers or boards is considered purchasing tangible personal property. The fee for installing and repairing this hardware is also taxable since the technician is servicing or repairing personal property.

Software purchased for your computer is taxable. However, if the software has been specifically adapted to fulfill a customer's needs, it is exempt from sales tax. If a word processing program is purchased "off the shelf" it is taxable. If a software package is purchased that has been developed for one customer to meet specific needs, it is exempt from sales tax.

Computer-related services such as consulting services, technical instruction or programming are considered professional services and are not subject to sales tax. A taxable service is the sale of addressed labels or additional copies of records and reports which are prepared by rerunning the original program. □

LOCAL PROPERTY TAX ***F.E.A.C. Values***

The Farmland Assessment Act of 1964 (Chapter 48, Laws of 1964) created a State Farmland Evaluation Advisory Committee and designated as the members thereof the Director of the Division of Taxation, the Dean of Cook College and the Secretary of Agriculture. The Act prescribed the functions and responsibilities of the Committee as follows:

"...The Committee shall meet from time to time on the call of the Secretary of Agriculture and annually determine and publish a range of values for each of the several classifications of land in agricultural or horticultural use in the various areas of the State. The primary objective of the Committee shall be the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural or horticultural uses. In making these annual determinations of values, the Committee shall consider available evidence of agricultural or horticultural capability derived from the soil survey at Rutgers–The State University, the National Cooperative Soil Survey, and such other evidence of value of land devoted exclusively to agricultural or horticultural uses as it may in its judgment deem pertinent. On or before October 1 of each year, the Committee shall make these ranges of fair value available to the assessing authority in each of the taxing districts in which land in agricultural or horticultural use is located."

The methodology of capitalizing net farm income per acre in determining the ranges in fair value of the several classifications of qualified land has been continued in this

report. However, the Committee decided to readopt the ranges of value of the prior year after considering the drought of 1999. Net farm income for 1999 (an important component in estimating farmland values) is not available until a year following production and sales. Knowing the drought will negatively affect net farm income in 1999, but not the extent, the Committee was reluctant to change values in a year of one of the most severe droughts on record. Accordingly, the Committee decided that holding values stable in its adoption this year would be an appropriate policy until more complete information becomes available in the ensuing year. □

LOCAL PROPERTY TAX ***Farmland Acreage***

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that total acreage devoted to agricultural or horticultural use in 1999 was 1,164,951 acres for the entire state.

The data for tax year 1999 reflects a continued decline in the amount of qualified farmland since enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 8.4% or a total of 106,932 acres.

24.2% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted

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farmland acreage – from page 10

to agricultural or horticultural use. Conversely, Salem with 55.6% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Warren 50.5%; Hunterdon 50.2%; Gloucester 38%; Sussex 33.7% and Mercer 29%.

Copies of the 1999 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

**Pay Your
NJ Income
Taxes
By
Credit Card**

**Call:
1-888-2PAYTAX**

For more information:
<http://www.state.nj.us/treasury/taxation/>
or
<http://www.state.nj.us/treasury/revenue/>

LOCAL PROPERTY TAX Tax Deductions Certified

The 1999 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1999.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1999.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1999 was \$31,638,337. That amount represents a decrease of 6% from 1998.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1999 was 121,168. When compared to tax year 1998 the number of deductions decreased 6.8%.

The amount of veterans' deductions for 1999 was \$17,043,098. That amount represents a decrease of 2.8% from 1998.

The total number of veterans' deductions for 1999 was 334,193. When compared to tax year 1998 the number of deductions decreased 2.8%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

January 1–

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1–

- Notices of current assessment and preceding year's taxes mailed to taxpayer by assessor.

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assessors' calendar – from pg. 11

- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding year's taxes, or change in assessment, extended by County Tax Board.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.

February 15–

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1–

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On June 23, 1999, Richard A. Spair, a former investigator for the Mercer County Prosecutor's Office, plead guilty to stealing and selling computer equipment belonging to the county, defrauding customers by taking deposit monies and not delivering the ordered computer equipment and filing a false and fraudulent 1995 New Jersey gross income tax return. Under the terms of the plea agreement, Mr. Spair faces 180 days in jail, five years of probation, restitution of \$79,232.15, payment of \$6,600 of New Jersey gross income tax and forfeiture of all public employment in New Jersey for life. Sentencing was set for September 10, 1999.
- On July 9, 1999, the State grand jury returned an eight (8) count indictment against Natasha, Inc. for the nonpayment of collected motor fuels seller-user tax in the amount of \$126,413. Charges identified in the indictment included theft of entrusted funds; misconduct by corporate official(s); and failure to file State tax returns.
- On July 14, 1999, Jeffrey A. Tyson, a former resident of Plainsboro, New Jersey, was entered into a Pre-Trial Intervention (PTI) Program for first time offenders. Mr. Tyson had been indicted for failure to file New Jersey gross income tax returns for the years 1993 through 1996, and failure to pay in excess of \$4,000 in New Jersey gross income tax for those years. Mr. Tyson had cited con-

stitutional issues relating to his requirement to file tax returns. Mr. Tyson stated that the offenses arose because of his "gullibility" in believing the rhetoric espoused by others. He agreed to make restitution of an amount in excess of \$8,500 in taxes, penalties and interest on a monthly basis during his three year period of supervision.

- During the July 1999 session of the Middlesex County grand jury, all three subjects arrested by Special Agents of the Office of Criminal Investigation in March 1999, during the execution of a search warrant in Perth Amboy, New Jersey, were indicted. The subjects, Antonio Oviedo, Norberto Espinal from Brooklyn, New York, and Carlos Lopez from Perth Amboy, New Jersey, were indicted on possession of counterfeit tax stamps and possession of cigarettes bearing counterfeit stamps, both crimes of the 3rd degree. Both Espinal and Oviedo have prior arrests for the same activity in New York State.
- On August 2, 1999, Meyer Shevrin, a resident of Manalapan, New Jersey entered a guilty plea to one count of theft by failure to make required disposition of property received. Mr. Shevrin had operated the now defunct computer sales business known as World Sales, Inc. in Freehold, New Jersey, and failed to file sales tax returns and remit the sales tax monies that he had collected from customers on behalf of the State of New Jersey. As a term of the plea, Mr. Shevrin will make

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restitution of approximately \$44,000 before he is sentenced on October 29, 1999.

- On August 13, 1999, Peter Anagnostis of Philadelphia, Pennsylvania, was sentenced to four years in State prison for failing to remit collected sales tax in the amount of \$262,537. The sentence was handed down by Camden County Superior Court Judge John McNeill, who ordered full restitution. This joint investigation with the New Jersey State Police ABC Enforcement Unit and the Office of Criminal Investigation had determined that the theft of the entrusted sales tax monies had occurred between July 1, 1990 and June 30, 1994 from a liquor store in Cherry Hill, New Jersey, Anagnostis Inc., trading as Holiday Spirits. Mr. Anagnostis was originally indicted by a State grand jury on August 7, 1998. He was arrested on October 20, 1998 by members of the Philadelphia Police Department in response to an arrest warrant that was issued due to his failing to respond to official notices of his

indictment by the grand jury. Mr. Anagnostis was extradited to New Jersey on January 13, 1999 in response to a Governor's arrest warrant. Judge McNeill ordered that Mr. Anagnostis be given credit for time served while incarcerated in the Philadelphia and Camden County jails, which was October 20, 1998 through August 12, 1999.

- On August 24, 1999, Ahmad Chikha, trading as 7-11 Grocery Store, Paterson, New Jersey, was found guilty in Paterson Municipal Court for possession of contraband cigarettes and failure to obtain a current retail over-the-counter cigarette license. The Court imposed a total of \$810 in court costs, fees, and fines.
- On September 15, 1999, S&B Retailer Inc. of Hi-Nella, New Jersey, was charged with Possession of 55.4 cartons of contraband cigarettes both Pennsylvania and Delaware State stamped. Additional charges relative to no consumer license, no invoices, and failure to register for the wholesale tobacco products sales and use tax have

been filed as well. A number of cigars were also retained as evidence of possession of untaxed goods. This case is the result of a cooperative investigation between New Jersey State Police ABCEB-Bellmawr station and the Office of Criminal Investigation.

- On September 17, 1999, Jaroslaw Biegaj of Brick Township, New Jersey, was found guilty in the Lakewood Municipal Court of transportation of contraband cigarettes. The Judge imposed a total of \$1,155 in court costs, fees and fines.
- Sixty-seven charges were filed in municipal court on eight cases for violating the cigarette tax law including possession of 854.5 cartons of contraband cigarettes, valued at \$28,071.58. □

Enforcement Summary Statistics

Third Quarter 1999

Following is a summary of enforcement actions for the quarter ending September 30, 1998.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,017	• Seizures	34
Total Amount	\$51,678,810	• Auctions	5
• Jeopardy Assessments	160	• Referrals to the Attorney General's Office	310

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

Tax Briefs

**Corporation Business Tax
Manufacturing Equipment and
Employment Investment Credit -
Form 305** — The following
examples supply guidance about
the operation of this tax credit.

Example 1

A single corporation owns plants in several states. When equipment is needed in one location, for example, the company may transfer an item from an out-of-State facility for use in the New Jersey plant.

The definition of “Qualified Equipment” refers to placing the equipment in service in this State. N.J.S.A. 54:10A-5.17. The Administrative Code, N.J.A.C. 18:7-3.21, provides in part that equipment is placed in service when the property is “placed in a condition or state of readiness and availability for a specifically assigned function.”

Accordingly, if a corporation moves equipment that otherwise would qualify for the credit from a location outside the State to a location within the State, such equipment would be eligible for the credit. Depreciation, having started when the property was originally placed in service outside the State, would continue. The equipment is not disqualified from the credit by depreciation not starting in New Jersey.

Example 2

To distinguish between seasonal and more established part-time employees, the statute defines the term part-time employee to mean “an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.” N.J.S.A. 54:10A-5.17.

In determining the number of employees in an environment where there is a great deal of turnover, the following method should be used. A full-time employee works 140 hours per month and is on permanent status. Since a part-time employee is required to work six months, the Division audit staff is not able to give credit for full-time employment that is less than the part-time standard. Therefore, to be considered as a full-time employee, credit cannot be given if “full-time” employees are working for less than six months, the part-time requirement.

Thus, to determine the number of full-time employees, add the hours worked by full-time employees that have been employed for six months or more, then divide the total by 1680, the number of hours a full-time worker would work in a year. The intention of the law is to give a credit for increases in the number of employees that are brought on and are kept employed.

Gross Income Tax

Treatment of Theft of Trust Fund Taxes — New Jersey gross income includes “Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of...[New Jersey] or any other jurisdiction.” N.J.S.A. 54A:5-1.o. A vendor who collects sales tax but who keeps the tax, knowing that it should be paid over to the Division, may be in violation of N.J.S.A. 2C:21-15, which establishes sanctions for improperly disposing of entrusted property or property belonging to the State of New Jersey. Keeping the tax in those circumstances could constitute an “act []or omission [],” defined as a violation of law in New Jersey law. Accordingly, the amount of the

sales tax kept by the vendor can be considered income for purposes of the New Jersey Gross Income Tax Act.

Severance Payments — New Jersey gross income includes “Salaries, wages,...and other remuneration received for services...” N.J.S.A. 54A:5-1.a. However, “damages received, whether by suit or agreement, on account of personal injuries or sickness” are excluded from gross income. N.J.S.A. 54A:6-6.b. An employee, laid-off as part of downsizing of the employer, who receives payments based upon years of service and salary is deemed to have received a salary, wage or other remuneration. That principle applies, even if, in exchange for the payment, the employee signs a General Release and Covenant Not to Sue in favor of the employer that does not arise out of a specific injury suffered by the employee. The release, and generalized employer concern about potential litigation does not make the payment “damages received...on account of personal injuries or sickness.”

Petitions for Refund — No petition for refund is permitted after a petition for redetermination of a deficiency is made pursuant to N.J.S.A. 54A:9-9(b).

N.J.S.A. 54A:9-9(c) establishes that a petition for refund of Gross Income Tax can be made if:

1. The claim is timely;
2. The taxpayer has not previously filed a petition with the Director under subsection (b) for the same claim;

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3. Six months have expired since the claim was filed or a whole or partial denial was mailed to the taxpayer.

Recently, the Conference and Appeals Branch has been receiving refund claims relative to previously decided and paid protests for the same claim. The taxpayers did not appeal the previous redetermination to the Tax Court of New Jersey as provided for under N.J.S.A. 54A:9-10(a). Therefore, amended returns seeking refunds under these circumstances will be denied based on §9(c)(2) above.

Sale of Debtor's Residence by Bankruptcy Trustee —

The Division of Taxation will follow the decision of the United States Bankruptcy Court in *In re Didario*, 232 B.R. 311 (Bankr. N.J. 1999), which held that the gain from a sale of an individual Chapter 7 debtor's principal residence by the bankruptcy trustee may be excluded from the estate's Federal gross income pursuant to 26 U.S.C.A. Sec. 121. The Court noted that pursuant to 26 U.S.C.A. Sec. 1398(g), the estate succeeded to the debtor's tax attributes, and reasoned that the Sec. 121 exclusion was a tax attribute.

For New Jersey Gross Income Tax purposes a taxpayer may elect to exclude from gross income the gain realized on the sale of a qualifying principal residence. N.J.S.A. 54A:6-9.1. The Federal Bankruptcy Code provides that the bankruptcy estate of an individual Chapter 7 debtor succeeds to the debtor's state tax attributes. 11 U.S.C.A. Sec. 346(g)(2) and (i)(1). As the New Jersey statute was intended to correlate with the Federal law, the two provisions should be interpreted consistently. Accordingly, the trustee of the estate of an individual Chapter 7 debtor may utilize N.J.S.A. 54A:6-9, to the extent its requirements are met.

Sales & Use Tax

Internet Nexus — A corporation whose physical presence or economic activities are sufficient to give it nexus with New Jersey for sales and use tax purposes is required to collect New Jersey sales and use tax on sales of taxable items delivered to a New Jersey address unless the purchaser claims a valid statutory exemption.

The Internet Tax Freedom Act was intended to prevent states from imposing *new* taxes that are specifically *aimed* at Internet-related activities. The Federal government deemed the

moratorium necessary in order to minimize the possibility of multiple and inconsistent taxation by more than one state or local jurisdiction and to prevent the imposition of discriminatory taxes that would burden Internet-related transactions more than non-Internet transactions. The Act does not prevent states from enforcing existing taxes. It would, however, prevent the imposition of a new tax on charges for access to the Internet. The Act was clearly not intended to turn Internet commerce into a tax-free zone, where otherwise taxable transactions, e.g., the purchase of books, toys or cameras delivered to New Jersey, would become exempt simply because they were ordered and paid for over the Internet instead of by mail or phone or in-person shopping.

Parent-Teacher Association Purchases and Sales —

The Division of Taxation received an inquiry regarding the Division's position on the sales tax consequences of purchases and sales by parent-teacher associations in New Jersey.

Generally, an organization holding a valid New Jersey sales and use tax exempt organization permit may make tax exempt purchases in New Jersey by issuing to the vendor a copy of its ST-5 Exempt Organization Certificate and making payment from the funds of the organization.

A New Jersey public school PTA (or any other exempt organization) holding a valid exempt organization permit may issue an ST-5 to its vendor when making purchases for occasional fundraising sales, whether the articles are purchased for resale or taken on consignment.

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The purchase must be made with a PTA check.

When conducting occasional fundraiser sales, the PTA or any of its agents, whether they are members, students, parents, etc., may sell the items on behalf of the PTA or public school without collecting tax if payment is by cash or checks payable to the PTA.

If a PTA operates a school store on a daily, weekly or continuous basis, it must collect sales tax on taxable sales. In this case, the PTA must request that the Division of Revenue put them on a reporting basis so they can receive sales tax returns and properly remit sales tax. The PTA would issue an ST-3 Resale Certificate to its supplier to exempt store inventory purchases. There is no threshold amount of sales below which sales tax would not apply.

Scan Card Discount Program — The Division received an inquiry regarding the sales and use tax treatment of certain discounts offered to customers by a vendor who participates in various “vendor allowance” programs. In these situations, a vendor has contractual arrangements with some merchandise suppliers whereby the vendor agrees to provide the suppliers with

certain promotional and advertising services in exchange for various vendor allowances, e.g., reduced prices charged on a product for a limited time, partial refunds for products already delivered and billed, permanent price reductions on an item, payments to the vendor for featuring the supplier’s products in the vendor’s promotional material, and payments to the vendor based on the volume of the supplier’s merchandise sold. By the terms of these contracts, the vendor is not obligated to pass these monetary benefits on to its customers; it is free to retain the allowances as additional profit.

The vendor in this case decided to offer product discounts to customers who participate in a promotional program that involves the use of scan cards. Customers who present the card receive a discount on certain products chosen by the vendor. Some or all of the discounted products may be supplied by companies that have given the “vendor allowance” in exchange for its promotional services.

Based on the above facts, the discount connected with customer’s use of the scan card will be treated as a vendor discount from the regular sale price to a consumer. The vendor allowance will not be deemed to be part of the vendor’s “receipt” for the retail sale of a specific item to a specific customer. See N.J.S.A. 54:32B-2(d); N.J.A.C. 18:24-1.4(h). Sales tax should therefore be charged on the price charged *after* deducting the vendor’s discount provided through use of the scan card. □

In Our Courts

Administration

Subject Matter Jurisdiction – *Delta Data Net, Inc., v. Director Division of Taxation*, decided July 23, 1999; Tax Court; No. 00661-1999.

The Division sent the notice of assessment related to final audit determination for sales and use tax and corporation business tax (hereinafter “notice”) dated September 3, 1998 by certified mail and addressed to plaintiff’s address on September 2, 1998. The certified mail receipt indicates that plaintiff received the notice on September 4, 1998 as evidenced by the signature of plaintiff’s employee. By letter dated January 15, 1999, plaintiff protested and requested a conference that was denied by the Division’s February 5, 1999 letter for failure to file a protest within the 90-day period for the September 3, 1998 notice.

Pursuant to the Division’s motion to dismiss the complaint, plaintiff claimed that the complaint should be heard because (1) the letter was dated September 3 and mailed on September 2 which indicates it is not the same letter, (2) the certified receipt number was not put on the September 3 letter and that casts doubt as to whether it is the same letter, (3) the letter was not addressed to someone like the company’s CFO who had attended meetings with the Division concerning the audit at issue, (4) their June meeting with the Division was in the nature of a protest as they told the Division there were documents they needed to locate that would demonstrate that the tax was not owed, and (5) plaintiff is a zealous taxpayer that never would

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have ignored the notice.

The Court dismissed plaintiff's complaint due to lack of subject matter jurisdiction. The Court found that the September 3, 1998 notice of assessment was properly addressed, sent by certified mail to plaintiff, and received by plaintiff's employee. N.J.S.A. 54:49-19 provides that challenges to the notice of assessment must be filed within 90 days of the date of the notice. Therefore, the Court ruled that plaintiff did not timely file its protest with the Division because plaintiff did not file a written protest within this 90-day period. Furthermore, the Court stated that:

"It is not the problem of the director, and again, even putting the strongest responsibility on the director to turn square corners, it is not the problem or obligation of the director to hand deliver that letter, to have knocked on the door and said, Mr. Devito, here we are with something, it's really important and you need to look at it."

Subject Matter Jurisdiction – *Dundee Automotive, Inc., v. Director Division of Taxation*, decided July 30, 1999; Tax Court; No. 002143-99.

Plaintiff's complaint was timely received by the Tax Court Management Office (hereinafter "office") on the 89th day after the date of the Division's Final Determination; however, the filing fee was not included. The office stamped the complaint "Received but not Filed" and permitted plaintiff ten days to remit the filing fee in order for the complaint to be considered filed timely. On the 17th day, the office received plaintiff's filing fee.

The Court granted the Division's motion to dismiss the complaint. The Court held that it lacked jurisdiction to hear the case because plaintiff failed to perfect his appeal with the Tax Court within 90 days of the date of the Final Determination.

Subject Matter Jurisdiction – *James Construction Company, Inc., v. Director Division of Taxation and Commissioner, Department of Labor*, decided

June 22, 1999; Tax Court; No. 005268-98.

The Court ruled that the Tax Court does not have jurisdiction to hear unemployment compensation contribution cases. The Court found that neither the statutes, regulations, nor the Tax Court jurisdiction statutes grant judicial review by the Tax Court.

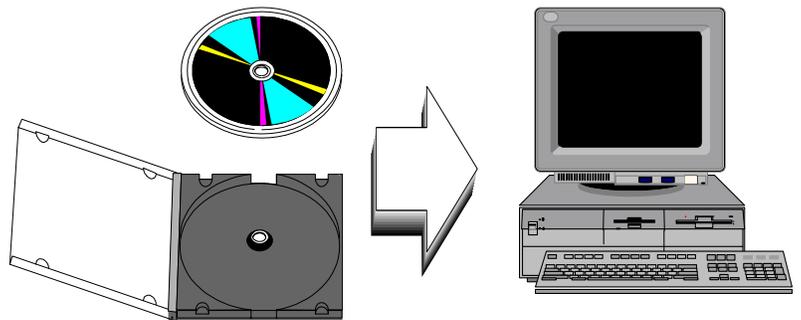
Corporation Business Tax Receipts Includable in Numerator of Allocation Factor – *Stryker Corporation, v. Director Division of Taxation*, decided August 16, 1999; Tax Court; No. 004852-96.

At issue is whether the Division properly included in the numerator of the receipts fraction all receipts generated by drop shipment transactions occurring in New Jersey destined for out-of-State customers.

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1999
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Osteonics Corporation, a New Jersey corporation, is the wholly-owned subsidiary of plaintiff, a Michigan corporation. Both plaintiff and Osteonics are located in the same building in Allendale, New Jersey. Plaintiff paid all the real estate related costs.

Osteonics sole function was to receive and process customer orders for plaintiff's products manufactured at the New Jersey plant. Osteonics then placed its order with plaintiff. Plaintiff packed and shipped the products to Osteonics' customers via common carrier, F.O.B. Allendale, throughout the United States. Thereafter, Osteonics would bill its customers.

Although plaintiff did not invoice Osteonics for each order, company representatives reviewed Osteonics' sales receipts in order to determine price and profit allocations. Essentially, Osteonics retained a gross margin of approximately twenty percent.

As regards to sales to Osteonics, plaintiff allocated sales by the shipment's destination state. Accordingly, for tax purposes, plaintiff included sales of only New Jersey destination shipments in the numerator of the receipts fraction on its New Jersey corporate business tax return. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of destination.

The Court held that plaintiff's sales receipts from its direct shipments to Osteonics' out-of-State customers

to Osteonics are includable in the numerator under N.J.S.A. 54:10A-6(B)(6). The Court found that this statute required inclusion in the numerator of all receipts earned by the taxpayer in New Jersey including the intrastate transactions between plaintiff and Osteonics.

Local Property Tax

Added Assessment Law – *Seventy Five P-B Corporation v. Town of Phillipsburg*, decided February 19, 1999; Tax Court; No. 000205-98.

Plaintiff appealed an added assessment imposed for nine months of 1997 on a commercial building located in Phillipsburg. Construction on the improvement was completed on March 21, 1997. The added assessment was in the full amount of \$488,800, and an allocated amount of \$366,600 for the nine-month period. Plaintiff did not dispute the amount of the assessment, but considered it improper because the improvement qualified for exemption, commencing April 1, 1997 under the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 to 21, and under the municipal ordinance adopted pursuant to the Five-Year Law. Defendant acknowledged that the improvement qualified for exemption under the Five-Year Law, but contended that such exemption could not commence until January 1, 1998. Defendant sought a summary judgment to dismiss the appeal; plaintiff cross-moved for summary judgment based on its interpretation of the commencement date of the five-year exemption.

On October 1, 1996, Phillipsburg adopted an ordinance declaring the Town an Urban Enterprise Zone,

an "area in need of rehabilitation" as defined in N.J.S.A. 40A:21-3(b). The ordinance declared that "improvements to existing structures shall be exempt from assessment for a period of five years following completion of the improvement."

Phillipsburg denied plaintiff's application for exemption for tax year 1997, granting the exemption effective January 1, 1998 for a five-year period beginning on that date. The Assessor imposed the added assessment in dispute. Plaintiff filed a timely appeal with the Warren County Board of Taxation, which affirmed the added assessment. This Tax Court appeal followed.

Defendant asserted that the Five-Year Law neither provides for nor contemplates the granting of an exemption other than for full tax years and, therefore, contended that imposition of an added assessment for nine months of 1997 was entirely consistent with, and permitted by, the Law. It asserted that the five full years to which the Five-Year Law expressly refers commenced on January 1, 1998 and that, in the absence of a statutory provision requiring or authorizing exemption or abatement between the date of completion of the improvement and the commencement of the first full year after the date of completion, the exemption or abatement is inapplicable during that time period, and the improvement is fully taxable.

Defendant's motion for summary judgment was granted and plaintiff's cross-motion for summary judgment was denied. Defendant's interpretation of the Five-Year

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Law was consistent with the principle that qualification for tax exemption or abatement during a tax year does not result in a change of assessment for that tax year. The Court cited *City of Asbury Park v. Castagno Tires*, 13 N.J. Tax 488 (Tax Court 1993) which states: “As a general rule, absent an appeal, the taxable status of property is fixed as of October 1 of the pre-tax year; subsequent conversion to an exempt use does not render the property exempt for that year.” The Court noted that interpreting the Five-Year Law to prohibit “interim” added assessments would be an “inappropriate expansion of the holding” in *City of Newark v. Essex County Bd. of Taxation*, 309 N.J. Super. 476 (App. Div. 1998). The Legislature did not authorize extension of the Five-Year Law exemption to the interval between completion of an improvement and the next January 1. The Court rejected plaintiff’s contention that the exemption period commences with the first day of the month next following completion of the improvement. It noted that N.J.S.A. 40A:21-11(a) provides that “All tax agreements entered into by municipalities pursuant to Sections 9 through 12 of P.L. 1991, c.441 shall be in effect for no more than the five full years next following the date of completion of the project.” The nine month added assessment was deemed proper. N.J.S.A. 1:1-2 defines the term “year” as used in any statute as “a calendar year.” The Five-Year Law defines that period as five full (calendar) years. The improvement was subject to taxation in accordance with the normal local property tax procedure otherwise applicable to prop-

erty. These procedures include the imposition of an added assessment, a conclusion mandated by the New Jersey stitution and the Five-Year Law.

Exemption for Greenhouse Affirmed – *Van Wingerden v. Lafayette Twp.*, decided April 16, 1999; N.J. Tax Court, on remand from N.J. Superior Court, Appellate Division.

The Farmland Assessment Act at N.J.S.A. 54:4-23.12(a) taxes structures on agricultural or horticultural land in the same way as taxable nonfarm structures, but exempts single-use agricultural or horticultural facilities, that is, property employed in farming operations, used for growing or storage which is readily disassembled and separately marketable from the farmland and buildings, such as readily dismantled silos, greenhouses, grain bins, manure handling equipment and impoundments, except structures enclosing space within their walls for housing, shelter, or working, office or sales space are not to be exempted.

The issue on remand was whether a greenhouse was disqualified from property tax exemption because it enclosed a space within its walls used for working, office or sales space.

The disputed building was divided into two sections — the main greenhouse and the shipping house; but the sections were structurally and functionally integrated. The main greenhouse was utilized for growing flowers with an area for storing equipment used in horticultural operations. The shipping house held the

boilers; heat pumps; water tanks; heat shield, ventilation, and watering controls servicing the main greenhouse. The shipping house also had a refrigerated cool box for flower storage, tables for grading and sorting flowers, a workbench, a tool storage area, a desk, chair, and phone. For purposes of deciding tax status, the Court treated the greenhouse and shipping house which shared a common wall and entryway as one structure which was to be either exempt or taxable in its entirety.

In that the meaning of the phrase “working, office or sales space” was unclear and had not been clarified by prior case law, the Tax Court sought to interpret it consistent with the Legislature’s intent by resorting to the legislative history of the statute. The Court reviewed the N.J. State Board of Agriculture’s Report on “Agricultural Economic Recovery & Development Initiative” and the resulting Senate Bill that led to the enacting of P.L.1993, c.251 which exempted single-use agricultural or horticultural facilities. The Court also reviewed the basic terminology of the amended Farmland Assessment Act and, although not specifically defined, equated “farming operations” with agricultural/horticultural use of land and buildings. It went on to note that agricultural/horticultural use included animals, plants, fruits, nursery, floral, greenhouse products, etc. “produced for sale” and “grown for market, either retail or wholesale” and encompassed within those meanings “making crops ready for sale, including storage pending sale.” However, making a crop ready for sale did not permit altering the crop’s raw state by

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processing it into an end product as, for example, turning cranberries into juice. From the Legislature's exempting of specific structures such as silos, used only for agricultural purposes, and its designation of disqualifying space, it was concluded that property tax relief was not meant for structures having purposes ancillary to agricultural or horticultural uses. The Court then determined that sales of agricultural/horticultural crops in or from an exempt structure did not prohibit exemption, but a structure having enclosed sales space would be prohibited.

As explained by the Court, an area in the greenhouse used for purposes not essential to the growing or storage of flowers, such as space used for the sale of flowers, floral displays, flower pots, vases or other merchandise or services would constitute disqualifying "sales space." Van Wingerden sold primarily to florists and florist distributors and did not encourage retail business. No sales staff was employed at the greenhouse. It was not visible from the road and there were no signs, advertising, or floral displays. Retail sales amounted to less than one percent of the total business. The Court found that the greenhouse contained no sales space. The Court also held that a single desk was not an office and the space it occupied was not "office space." Van Wingerden's business, tax and billing records, computer, copier etc. were maintained at his residence. Disqualifying "working space" again meant space used for purposes inessential for growing or storing crops such as preparing floral displays. The Court ruled that grading, sorting and treating flow-

ers with preservative were essential activities in making the flowers ready for sale. The work performed on the greenhouse walkways consisted of planting, maintaining and harvesting flowers. The storage area held equipment used in growing and harvesting flowers. The "single-use" of the structure, the growing of flowers, was not violated. Exemption was affirmed. □

In Our Legislature

Constitutional Amendment

Veterans' Property Tax Deduction — On November 2, 1999 the electorate approved an amendment to Article VIII, Section I, paragraph 3 of the New Jersey Constitution increasing the property tax deduction for veterans from the current \$50 level to \$100 in tax year 2000, \$150 in tax year 2001, \$200 in tax year 2002 and \$250 in each subsequent tax year.

Gross Income Tax

Higher Tax Filing Thresholds — P.L. 1999, c.260 (signed into law on October 18, 1999) increases the minimum income level at which taxpayers become subject to the New Jersey gross income tax and are obligated to file a New Jersey gross income tax return. The income filing threshold will increase over a three year period beginning with tax year 1999.

Health Insurance Costs for Self-employed Taxpayers — P.L. 1999, c.222 (signed into law on September 22, 1999) amends the Gross Income Tax Act to allow the self-employed and those who are 2% or more shareholders in an S corporation to deduct 100% of the cost of health insurance for themselves,

their spouses and their dependents. The act took effect immediately and applies to tax years beginning on or after January 1, 2000.

Simplified Wage Tax Reporting for Employers of Domestic Workers

— P.L. 1999, c.94 (signed into law on May 3, 1999) simplifies employer reporting and payment requirements for household workers and permits gross income tax withholding and wage taxes for household workers to be reported and paid over to the Division of Revenue on an annual basis rather than on a quarterly (or more frequent) basis as formerly required.

Withholding returns and tax payments are due from employers of domestic workers on or before January 31 following the close of the calendar year. The new annual filing provisions do not apply to employers with employees other than domestic service workers.

This act took effect immediately and applies to all wages paid on and after January 1, 2000.

Local Property Tax

Homestead Rebates — P.L. 1999, c.259 (signed into law on October 15, 1999) modifies one provision of the recently enacted New Jersey School Assessment Valuation Exemption Relief and Homestead Property Tax Rebate Act (NJ SAVER and Homestead Rebate Act) P.L. 1999, c.63. The technical change incorporated in this bill ensures that benefits provided to tenants who are 65 years of age or older, or who are eligible to claim a deduction as a blind or disabled taxpayer, shall not be less than the minimum benefit provided to other eligible tenants (i.e., \$40 for tax year 1999; \$60 for tax year 2000;

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\$80 for tax year 2001; and \$100 for tax years 2002 and thereafter). The act took effect immediately.

Revaluation Relief Act of 1999 — P.L. 1999, c.216 (signed into law on September 21, 1999) amends the Revaluation Relief Act of 1993 by adding a provision permitting municipalities the option to grant revaluation relief abatements to eligible properties through the use of a property tax rebate mechanism rather than through the current property tax credit mechanism. In addition, the bill allows the revaluation relief to be phased in over five years rather than the three years allowed under current law.

The act took effect immediately and affects real property revaluation in the City of Newark.

Miscellaneous

Tax Court Proceedings — P.L. 1999, c.208 (signed into law on September 17, 1999) implements a series of recommendations promulgated by the Supreme Court's Committee on the Tax Court and adopts amendments dealing with county tax board appeals and certain Tax Court proceedings. The act took effect immediately. However, certain provisions apply to tax assessments for years commencing on or after January 1, 2000.

Sales and Use Tax

Secure Firearm Storage Act — P.L. 1999, c.254 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for sales of vaults that provide safe and secure storage for

firearms. The act took effect December 1, 1999.

Firearm Accident Prevention Act — P.L. 1999, c.253 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for sales of firearm trigger locks and other devices which enable a firearm to be made inoperable by anyone other than an authorized person. The act took effect December 1, 1999.

Exemption for Certain Vending Machine Sales — P.L. 1999, c.249 (signed into law on October 15, 1999) increases the allowable exemption from sales and use tax from \$0.10 to \$0.25 on sales of tangible personal property made through coin-operated vending machines. The exemption applies to sales of merchandise other than food and drink products. The act took effect immediately.

Prepaid Telephone Calling Arrangements — P.L. 1999, c.248 (signed into law on October 15, 1999) clarifies the imposition of New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements. The statute shifts the incidence of the tax from the point of use to the point at which the arrangement is sold to the consumer. Requiring vendors to charge tax on the retail selling price simplifies the tax collection and payment process. The act took effect January 1, 2000.

Exemption for Certain Aircraft Repairs, Equipment — P.L. 1999, c.246 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for repairs on aircraft having a maximum takeoff weight of 6,000

pounds or more, as certified by the FAA.

The exemption also applies to machinery or equipment to be installed on such aircraft and to replacement parts therefor. However, the exemption does not apply to the *sale* of aircraft of this class. The act took effect January 1, 2000.

Expanded Exemption for Film and Video Industry — P.L. 1999, c.221 (signed into law on September 22, 1999) expands the sales and use tax exemption for the film and video industry to include purchases of tangible personal property for use directly and primarily in the production of film or video for sale, including parts, motor vehicles, tools and supplies. The act also exempts the services of installing, maintaining, servicing or repairing tangible personal property that is entitled to the exemption.

The act took effect December 1, 1999 and applies to property sold and services rendered after that date. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
2	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
0	16	17	18	19	20	21	22
0	23	24	25	26	27	28	29
	30	31					

January 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

January 18

- CBT-100** Corporation Business Tax—Annual return for accounting period ending September 30

continued

January 18 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

January 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

January 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

January 31

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly report

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
2	6	7	8	9	10	11	12
0	13	14	15	16	17	18	19
0	20	21	22	23	24	25	26
0	27	28	29				

February 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

February 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending October 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

February 22

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

February 22 - continued

- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

February 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

march

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

March 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

March 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending November 30
continued

March 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

March 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
continued

March 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 27

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

To order copies of the **1999 Package NJX**: Complete the form below (be sure to include your daytime telephone number), detach at the dotted line and mail the order, along with payment, to:

STATE OF NEW JERSEY
PACKAGE NJX
PO BOX 286
TRENTON NJ 08646-0286

✂-----

1999 Package NJX Order Form

(For office use only)

ITEM	QTY.	PRICE EACH	TOTAL
1999 Package NJX printed version (loose leaf pages)		\$7.00	
NJX 3-Ring Binder (empty binder - does not include loose leaf pages)		\$7.00	
CD-ROM NJX PLUS (1999 Package NJX plus tax information publications)		\$15.00	

Total Enclosed

Name _____

Address _____

City, State _____ Zip Code _____

Make check or money order payable to:
State of New Jersey - NJX.

Telephone (____) _____

from the director's desk

Message to Tax Practitioners

The income tax filing season for 1999 brings a number of changes, both administrative and legislative. Look for the “**New for '99**” symbols throughout the 1999 return instruction booklets. Here is a summary of those changes:

Administrative Changes

- Tax preparers may use either their social security or Federal preparer tax identification number for purposes of filing New Jersey returns or refund claims, provided they use the same number for both State and Federal filings.
- If a payment is due, the check or money order and payment voucher may be enclosed *in the same envelope* with the return.
- Extra supplies of the envelope for mailing Forms NJ-1040 and HR-1040, and payment vouchers for the resident income tax return (Form NJ-1040-V) may be ordered from the Division of Taxation. A large-size (9" x 12") envelope designed to permit return(s) to be mailed flat (not folded) is also available.

To request envelopes or vouchers, call the Automated Tax Information System from a Touch-tone phone at 1-800-323-4400 (within NJ) or 609-826-4400 (anywhere), or write to Taxpayer Forms Services, PO Box 269, Trenton NJ 08695-0269. Supplies are limited, so order early.

Legislative Changes

- **New Filing Threshold.** The income levels at which taxpayers are required to file a New Jersey income tax return and pay tax will increase over a three-year period. For 1999 the minimum amount is \$10,000 or less (\$5,000 or less for married persons filing separately).
- **Homestead Rebate.** Tenants who are under age 65 and not blind or disabled and whose income is between \$40,000 and \$100,000 are eligible for a Homestead Rebate of \$40 for 1999. This amount will increase to \$60 for tax year 2000, \$80 for tax year 2001 and \$100 for tax year 2002.

New Jersey State Tax News

Fall 1999

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New State Treasurer Named



Former Director of the New Jersey Division of Investment Roland M. Machold was named as the new State Treasurer by Governor Christine Todd Whitman effective August 16, 1999. Mr. Machold succeeds James DiEleuterio as top executive of this key State agency. He will serve in an acting capacity until confirmed by the State Senate.

A graduate of Yale and the Harvard Business School, Mr. Machold spent his early career as an investment banker with Morgan Stanley & Co. before beginning State service in 1975 as Deputy Director of the Division of Investment. In 1977 he was elevated to Director of that Division where he spent the next 22 years guiding the State's pension funds through a

period of remarkable growth. A 1997 recipient of the Stoddard award, presented by the National Association of State Investment Officers for outstanding public service, Mr. Machold retired in 1998 as head of a Division that was responsible for 152 State funds aggregating \$76 billion.

In addition to government service, Mr. Machold has served as trustee and on the boards of many community organizations and educational institutions, including Columbia University Teachers College, Bryn Mawr College, the Mercer Street Friends Center and

continued on page 2

Important phone numbers

Call Center.....	609-292-6400
Automated Tax Info.....	800-323-4400
.....	609-826-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

new treasurer named – from pg. 1

the Princeton Child Development Institute. He has also served in the capacity of Independent Director for a global cluster of mutual funds, as Founding Trustee of the National Association of State Investment Officers and the Council of Institutional Investors and as a consultant to the Alabama Retirement Systems.

Mr. Machold has made numerous appearances before the SEC and various congressional Committees, providing testimony on issues as diverse as corporate governance, taxation of pension funds, American competitiveness and the one-share-one-vote issue. He has often been interviewed on network television for his insights on markets, governance and divestment and has served as commentator on the 1997 public television series *Beyond Wall Street*.

Mr. Machold lives in Princeton with his wife Pamela. He is the father of three children. □

NJ SAVER Checks Mailed

As the Governor promised in January when she proposed the NJ SAVER Rebate program for homeowners, the first rebate checks were in the mail to homeowners over the Labor Day weekend. Beginning September 3, the State mailed out an average of 200,000 rebate checks each day over a 5-day period. In total, more than 1 million NJ SAVER rebate checks were mailed representing almost \$170 million in property tax relief.

The NJ SAVER rebate program refunds to homeowners the amount of local school tax paid on the first \$45,000 of their home's equalized value. Homeowners within each municipality receive the same amount, but variations in local tax rates mean that rebate amounts will differ from municipality to municipality.

Homeowners who qualified and
continued on page 3

New Jersey State Tax news

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**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
PO Box 281
Trenton, NJ 08695-0281**

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<http://www.state.nj.us/treasury/taxation/>

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

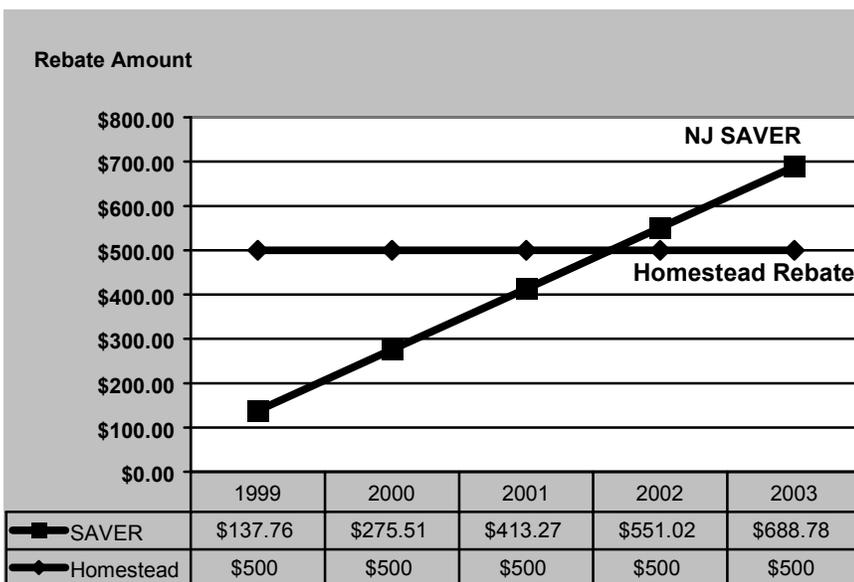
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The chart above illustrates how a typical homeowner who qualifies for the maximum homestead rebate (\$500) will receive a greater benefit from the NJ SAVER program by the fourth year of its phase-in (\$551). The home is in Hamilton township and has an equalized value in excess of \$45,000.

nj saver checks mailed - from page 2

applied for both a homestead rebate and a NJ SAVER rebate received whichever rebate provides the greater benefit. As NJ SAVER rebates grow to their maximum amount over the program's five year phase-in period, many homeowners, particularly those who are senior citizens or disabled, will find that they receive a greater benefit from the NJ SAVER program. (See chart on page 2)

Homeowners who received less than the maximum NJ SAVER rebate for their municipality or who did not receive a check for some reason, got detailed notices of explanation from the Division explaining how their rebate was calculated or why they had not received a check.

To prepare for the expected barrage of inquiries about the new NJ SAVER rebate checks, the Division of Taxation hired additional staff and kept phone lines at its Call Center open evenings and weekends for several weeks after the rebate checks were mailed to assist homeowners who had questions about notices or the amount of their rebates.

The Division has tried to make it as easy as possible for homeowners to check on the status of their rebate claims. Those calling the NJ SAVER Rebate Hotline (1-877-658-2972) — the same number used to file claims — can access an automated inquiry system to find out if their rebate checks have been issued without having to speak to a Taxation agent.

Homeowners can also visit the Division of Taxation's Web site (www.state.nj.us/treasury/taxation)

and inquire online about the status of their NJ SAVER rebates.

Eligible New Jersey residents can file for the 1998 NJ SAVER rebate until November 15, 1999. □

CORPORATION TAX ***Technology Benefit Transfer Program***

On June 28, 1999 Senate Bill No. 1709 was signed into law by Governor Whitman. This legislation clarifies provisions of the Corporation Business Tax Technology Benefit Transfer Program.

Summary

This program allows new or expanding emerging technology and biotechnology businesses to "sell" their unused net operating loss (NOL) carryover and unused research and development (R & D) tax credit carryover to any corporate taxpayer for at least 75% of the value of the tax benefits. The "selling" technology or biotechnology business surrenders those tax benefits in the form of a certificate which identifies the value of the tax benefits. The certificate is "sold" to the "buying" corporate taxpayer and the proceeds of the sale are used by the selling business for fixed assets, working capital and other expenses determined by the New Jersey Economic Development Authority (NJEDA) to be in conformance with the New Jersey Emerging Technology and Biotechnology Financial Assistance Act. The "selling" business must qualify as

a technology or biotechnology company and the "buying" business must do business or a portion of its business in New Jersey.

During State Fiscal Year 2000 (July 1, 1999 through June 30, 2000) this program will have a cap of \$50 million. Each State Fiscal Year thereafter, the cap will be \$40 million. The value of this cap is defined as the loss of tax revenues to the State of New Jersey resulting from the sale of tax benefits. Each applicant company additionally has a lifetime cap of \$10 million.

Eligibility

In order to qualify, a selling business must meet the threshold criteria listed below. In addition to these requirements, the NJEDA will determine eligibility of the selling businesses according to criteria reflected in questions asked in section 8.A through D of the Selling Business Application.

1. Meet the definition of a technology business or a biotechnology business located at the back of the Selling Business Application;
2. Employ fewer than 225 people of which 75% work in New Jersey;
3. Show negative or no operating net income in either of the two most recent, full-year financial statements for the individual company and consolidated affiliates;
4. Show an excess of revenues over expenses of less than 110% in either of the two most recent, full-year financial statements for the company.

continued on page 4

Fees

Each year that a selling company applies to the NJEDA for authorization to sell tax benefits, the company must pay a non-refundable \$500 fee. Applications must be received by the NJEDA by June 30 of each year.

Valuation

In addition to issuing the transfer certificate, the Division of Taxation is also responsible for valuing the unused benefit. R & D credits are valued at face value. NOLs, since they represent a deduction, must be multiplied by the anticipated allocation factor of the seller and the appropriate tax rate. Provided the nature of business remains comparable, the anticipated allocation factor will generally be computed using an average of past filings.

This valuation will be used both to ensure that the unused benefits are sold for at least 75% of their value as well as to determine how much benefit can be sold subject to the program caps.

Allocation of Benefits

Once all eligibility determinations are made and appropriate tax records confirmed, the NJEDA and the Division will determine the amount of tax benefit each taxpayer will be authorized to sell subject to the program limitation. In the event more benefits are requested to be sold than allowed by the annual \$50/\$40 million cap, the benefits will be apportioned. First, authorized benefits up to \$250,000 per company will be ap-

proved. The remaining unauthorized benefits will go into a pool and be apportioned based upon a percentage derived by subtracting the amounts already authorized from the annual cap (\$50/\$40 million) divided by the total remaining benefits being requested to be sold.

Benefit Transfer Certificate

The Division will issue a Benefit Transfer Certificate to the "selling" business and furnish a copy to the NJEDA. The certificate is then sold to the buying corporation. The buying business will attach a copy of the certificate to its next corporation business tax return filed. The certificate will enable the buying business to deduct the proper amount of NOL deduction and/or take credit for the proper R & D credit.

Miscellaneous Provisions

Buyers will be deemed to have accrued the purchase themselves. Therefore, unless the buyer qualifies in the future to be a seller under this program, the acquired benefits will not be transferable.

The NOLs and R & D credits will retain the same "vintage" in the hands of the purchaser as they had with the seller. A 1993 NOL carry-forward would expire after tax year 2000.

In the event a subsequent event or an audit discloses an additional liability owed by the seller, the Division will not take action to rescind the Transfer Certificate. Purchasers, upon receipt of the certificate, are guaranteed the validity of the benefits. □

Interactive CBT Returns on Web

Starting this fall, the Division of Taxation's Web site will offer corporation business tax forms and accompanying schedules that can be downloaded and completed on your computer. The finished returns will then be printed and mailed to the State for processing.

Currently, corporation business tax returns downloaded from the Division's Web site must be printed out blank and completed by hand. The new format allows users to complete forms CBT-100 and CBT-100S and related schedules on their computer, using the Adobe Acrobat Reader software available free over the Internet at: www.adobe.com.

After completing the forms by typing in the appropriate information, the taxpayer prints out hard copies of the return, one to be sent to the State, and another retained for the taxpayer's files. Unfortunately, the free Acrobat Reader does not allow the user to save an electronic version of the return. However, taxpayers that purchase the full version of Adobe Acrobat will be able to save an electronic copy of the return. Information about obtaining the full version of Acrobat is also found at the Adobe Web site.

The Division is researching the feasibility of filing corporate business tax returns online. However, in the meantime, several tax practitioners voiced their preference to complete corporate returns on the computer since that is where much of the information is stored. The Division is glad to respond to their request with this interim step.

continued on page 5

cbt returns on web - from page 4

Questions about the interactive corporation business tax forms should be sent to the Division by e-mail through our Web site at:

<http://www.state.nj.us/treasury/taxation/> or by writing to:

NJ DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
PO BOX 281
TRENTON NJ 08695-0281



GROSS INCOME TAX ***Federal Refunds for State Tax Debts***

Federal legislation was enacted in July 1998 which authorizes the Federal government to offset Federal tax refunds for state tax deficiencies. This program, known as the Federal Reciprocal Refund Offset Program, will be run by Financial Management Services (FMS), a branch of the U.S. Treasury.

It is anticipated that by participating in this program, over 13,000 New Jersey income tax debts which taxpayers are unable to satisfy, either through payments, DPC plans or New Jersey's SOIL program, may be able to be resolved through the set-off of Federal refunds. Taxpayers who have an income tax debt to New Jersey can contact the Division of Taxation and make arrangements to satisfy their debt before their information is submitted to the program.

New Jersey expects to be able to submit claims to FMS by the end of 1999 in order to claim eligible 1999 Federal refunds. Questions regarding this program should be directed to the Division of Taxation's Call Center at 609-292-6400. 

DIVISION OPERATIONS ***Sale of Certificates of Debt***

For the first time, and in accordance with the provisions of P.L. 1998, c.39, codified as N.J.S.A. 54:50-29 et seq., the State Treasurer, on June 28, 1999, entered into a purchase and sale agreement to sell certain Certificates of Debt which had been filed by the Division of Taxation.

The Certificates of Debt in Bound Lot #1999-1, which were identified for sale by the Director, had an original face value of \$25.4 million and a current face value of \$25.1 million. The Certificates of Debt, which have the same force and effect as a docketed judgment adjudicated in a court of law, represented 250 primary taxpayers and their respective officers or spouses. The taxes due on the said liens ranged from 1967 through 1993 and consisted primarily of sales and use tax, gross income tax (employer), corporation business tax, and gross income tax (individual). Prior to the sale of these liens, the taxpayers had more than ample opportunity to extinguish their indebtedness to the Division, but failed to do so.

These Certificates of Debt have been assigned to an entity known as Tax Enforcement Bureau, LLC. As the new owner of these liens, Tax Enforcement Bureau, LLC will have the same rights as to collection of this debt as would the Division of Taxation, had the sale not taken place. All payments associated with the liens which were sold, and any inquiries and/or requests for satisfaction of the said liens, should be directed to the new owner at the following address:

TAX ENFORCEMENT
BUREAU, LLC
DEPT. 771117
PO BOX 77000
DETROIT MI 48277-1117

Telephone: 1-800-501-2272
Web site: www.teb-nj.org



SALES AND USE TAX ***Taxability of Items for the Holidays***

The fall season includes several special holidays and special seasonal purchases. The following will clarify whether or not some of the major seasonal items are subject to New Jersey sales tax.

Halloween Purchases

Costumes - Children's costumes are exempt from sales tax. Adult costumes are always taxable, whether purchased or rented.

Makeup - Makeup for face painting is taxable.

continued on page 6

Interest 10.75% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1999 is 10.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%

holiday items – from page 5

Pumpkins - Pumpkins that are painted or carved are taxable. Plastic pumpkins or other Halloween decorations are also taxable. If a pumpkin is purchased for consumption it is exempt, i.e., to make a pie or bread, or to roast the seeds.

Thanksgiving Items

Decorative gourds, corn and hay are subject to sales tax.

To save time and effort, many families have their Thanksgiving dinner catered or prepared outside of the home. Just as in a restaurant, a catered meal is always taxable.

Prepared food, such as precooked turkey, ham, or side dishes that can be purchased heated at a supermarket deli counter or salad bar are taxable. Party platters such as cold cuts, vegetables or other arranged food are considered “ready to eat” and are taxable.

Food that is not heated and is intended to be eaten off-premises may be exempt from sales tax because of the way it is packaged or sold. These items are generally sold in a food or grocery store by bulk, weight, by the dozen or by volume (gallon, quart, etc.).

If three pounds of cold cuts are purchased at a supermarket and the purchaser brings it home to arrange on a platter, the cold cuts are exempt from sales tax. If that same supermarket sells the same three pounds of deli meats already arranged on a tray, it is “ready to eat” and is subject to sales tax.

Christmas Trees

The sale of any type of tree, whether it is cut or with its roots in a “ball” is taxable.

Fur Articles

Garments or articles such as coats, stoles, jackets, capes, collars, cuffs and hats made essentially of fur are subject to sales tax. Any article of clothing or footwear made from fur and other materials is subject to tax if more than one-half of the value of the article is attributable to the fur part. Fur does not include felt, woolens or other fabrics made from animal hair or leather or suede. Sheepskin with wool or hair attached (shearling) is considered fur; however, woven or knit materials made of animal hair or wool are not fur. “Fake” fur such as leopard print is not fur. However, rabbit fur dyed to look like mink is considered fur.

Income Tax Liability

Vendors engaging in businesses that sell seasonal items should become familiar with the taxability status of their products and services.

Vendors are reminded that any New Jersey gross income tax liability accruing on income derived from a seasonal business must be remitted with the estimated tax installment due next following the end of the quarter in which the income was earned. Remitting appropriate estimated tax payments ensures installment interest will not be charged for failure to make timely estimated payments. The fourth quarter 1999 estimated payment is due January 17, 2000. **Happy holidays!** □

GROSS INCOME TAX Hedge Funds

A taxpayer recently inquired whether a nonresident individual is subject to New Jersey gross income tax on income derived from commodities or securities trading conducted in New Jersey for their own account.

Under N.J.S.A. 54A:5-8, effective for taxable years ending after September 14, 1998, a nonresident is not deemed to be carrying on a trade, profession, occupation, or business or rendering personal services in New Jersey solely as a result of purchasing, holding and selling intangible personal property through an unincorporated business entity.

To qualify under this provision *all* of the entity’s activity must be the sale of intangible property exclusively for the entity’s own account and the entity cannot hold any intangible personal property for sale to customers.

For any year in which the entity has income that does not meet these criteria (i.e. income from the sale of tangible property) *all* of the entity’s income for that year would be deemed to be derived from New Jersey sources and taxable to a nonresident for gross income tax purposes.

A related article can be found on page 24 of the Winter 1998 issue of the *New Jersey State Tax News*. Taxpayers and tax practitioners requiring additional information should contact the Division’s Taxpayer Services Branch or the Individual Tax Audit Branch. □

Web Site Tour

The spring and summer issues of this year's *New Jersey State Tax News* examined several significant features of our recently renovated Web site. We now conclude our tour with a summary of the remaining unexplored paths and side bar menu items.



Kid's Path

Utilizing puzzles, games and other instructive materials, the Kid's Path makes learning about taxes — what they are, how they are applied and how the revenue they produce is used — fun and exciting for youngsters. Offerings aimed at all grade levels are available, but parents and educators are urged to encourage kids to try puzzles from other levels.



Everyone Else's Path

As the name suggests, Everyone Else's Path is for the average taxpayer. In addition to offering visitors access to the latest details on New Jersey taxes, tax programs and legislation, this path provides links to timely information on such varying topics as refunds, ordering forms and obtaining income tax assistance. There's even an interactive area, *Advice on Billing Notifications*, where taxpayers can get help understanding a bill, notice or statement they received. A standard side bar and e-mail link for navigational flexibility, plus links to the New Jersey State Home Page, the Division of Revenue and *Our User Survey* complete the list of options available on this page.

Publications

Clicking the Publications side bar item gives visitors the opportunity to view and print New Jersey tax publications, including:

- News Releases
- Important Tax Notices
- Cigarette Tax Act Notices & Publications
- NJ Income Tax – instructions & Tax Topic Bulletins
- Sales & Use Tax Bulletins
- *Taxpayers' Bill of Rights*
- *NJ SAVER FAQ*
- NJ Council of Economic Advisors – Outlook Reports
- Technical Bulletins
- *New Jersey State Tax News*
- Enforcement Activity Summaries
- Division *Annual Reports*
- Other Publications – This choice links to an expanded list of frequently requested publications

Taxation Topics

The Taxation Topics side bar item offers links to material on those topics most frequently requested by practitioners, businesses and individuals. Information on matters as diverse as inheritance/estate tax, sales & use tax, unclaimed property and senior citizens is accessible from this page.



Taxation Tour

Selecting the Taxation Tour whisks you away on a tour of the Division's organizational structure and introduces you to the programs designed to make tax filing easier. Your itinerary and tour guide await you — enjoy the ride!



Unclaimed Property Search

The Unclaimed Property side bar option allows visitors to search a listing of apparent owners of property which has met the statutory criteria to be classified as "unclaimed property." The abandoned funds originate from such sources as wage checks, bank accounts, certificates of deposit, bonds or stocks, etc. Why not drop by and search for your name. You might be pleasantly surprised.



Info For Seniors

From the latest on pension income, retirement exclusions and property tax benefit programs to listings of important telephone numbers or locations where free income tax preparation is available, the Info for Seniors side bar selection makes finding information on matters of concern to New Jersey's seniors a snap.

Please help us help you by sending us an e-mail with your comments, suggestions and general feedback about our new Web site.

Now that you are familiar with our Web site, we encourage you to stay abreast of any additions, changes and other developments by following a regular new feature on the subject that will appear in upcoming issues of the *New Jersey State Tax News*. □

Small Business Workshops

The New Jersey Division of Taxation and the IRS periodically conduct workshops designed to help small businesses better understand their tax obligations. These free seminars, which run from 9:00

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a.m. to 4:00 p.m., are held at various locations throughout the State. The New Jersey portion of each session is presented in the afternoon and typically covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Meeting employer responsibilities
- Reporting business income
- What's taxable and what's exempt from New Jersey sales tax
- Filing sales and use tax returns

To find out more about small business workshops, or to sign up for one of the fall sessions listed below, call the Internal Revenue Service at 1-800-829-1040, or the Division's Call Center at: 609-292-6400.

Fall 1999 Schedule

November 5	Paramus
November 12	* Linden
November 19	Gloucester
December 2	Union
December 4	Manalapan
December 10	Camden
December 16	Newark

* Special topic: S corporations. □

1999 Package NJX

Package NJX is available in both standard printed format and on CD ROM. The electronic version, *NJX PLUS*, contains many useful tax information publications in addition to the reproducible tax forms. Three-ring binders capable of holding several volumes of the printed version may be purchased separately at extra cost. See the order blank on page 23.

DIVISION OPERATIONS

Taxpayer Accounting Branch

In its most simple terms, the Mission Statement of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and have any errors in their accounts corrected.

Bills and refunds are automatically computer-generated. Some are flagged for manual review based on predetermined criteria designed to screen out errors. The Taxpayer Accounting Branch reviews the flagged transactions and attempts to correct them before they are sent to the taxpayer.

Occasionally insufficient refunds or improper bills are sent to taxpayers. When taxpayers dispute a billing or discover a discrepancy with the amount of refund received, their correspondence is sent to the Taxpayer Accounting Branch. All letters received from taxpayers in response to any notices are reviewed. When the information necessary to correct an account is received, Taxpayer Accounting staff will adjust the account and notify the taxpayer that the problem has been resolved.

When a taxpayer responds to a notice or corresponds with the Division for any other reason, it is very important to provide as much information as possible, both as to the identity of the taxpayer and the nature of the problem. In order for the Taxpayer Accounting Branch

to adequately respond to or request additional information from a taxpayer, all correspondence should include:

1. The full name and identification number of the taxpayer as it appears on the Division notice;
2. The tax type and period in question;
3. The nature of the problem;
4. The taxpayer's phone number; and
5. The taxpayer's current address.

When a taxpayer or his representative responds to a notice, the correspondence should be sent to the Post Office Box shown on the notice. This insures that it gets to the office that initiated the notice and is best suited to resolve the problem.

In Fiscal Year 1999, Taxpayer Accounting personnel:

- Responded to over 105,000 pieces of correspondence;
- Reviewed more than 51,000 bills and 66,000 refunds;
- Collected more than \$8 million; and
- Made almost 245,000 adjustments or corrections to accounts.

Additionally, Taxpayer Accounting is, and will continue to be, very heavily involved in the Property Tax Reimbursement, NJ SAVER Rebate, and Homestead Rebate programs, and staffs Tax Practitioner Hotlines for tax practitioners who are unable to resolve client problems through normal channels. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to NJ Tax Court.

December 1–

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31–

- Legal advertisement of availability of Tax List for public inspection. □

LOCAL PROPERTY TAX Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Thirteen persons passed the examination for the tax assessor certificate held on March 27, 1999 and were certified on May 14, 1999.

Atlantic County: William M. Johnson, Galloway Township.

Bergen County: Thomas Patrick Peletier, Bogota Borough.

Burlington County: James C. Rhoads, Moorestown Twp.; Neal A. Snyder, Springfield Twp.

Camden County: Charles John Poliero, Jr., Haddonfield Borough.

Essex County: Kent A. Gage, South Orange Township.

Hudson County: Donna M. Rossi, Bayonne City.

Morris County: Scott A. Branco, Washington Township; Virginia Klein, Roxbury Township.

Ocean County: Thomas J. McCartny, Beachwood Boro.

Sussex County: Kathleen M. McChesney, Sparta Township.

Warren County:

Melanie L. Bulmer,
Washington Borough.

Pennsylvania: Elizabeth S. Ashton,
Bucks County.

The next exam is scheduled for September 18, 1999. The last date for accepting applications for this exam is August 19, 1999. Admission to the exam will be by application only. There is a filing fee of \$10.00. To receive an application, call 609-292-7975 or write to:

NJ DIVISION OF TAXATION
ASSESSOR CERTIFICATION
PO BOX 251
TRENTON NJ 08695-0251

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 1, 1999, in Union County Superior Court, Luis A. Chavez, 49, of Elizabeth, New Jersey, the owner of Elizabeth Ave. Wines & Liquors, Inc., pursuant to his guilty plea on December 15, 1998 to one count of misapplication of \$69,000 in sales tax collected from July 1990 to June 1994, was sentenced to 2 years probation and ordered to pay fines and penalties of \$755. Mr. Chavez made restitution to the State of \$98,000 in tax, penalty and interest prior to sentencing. This case was investigated by the Office of Criminal Investigation and prosecuted by the State Attorney General's Office.

- On April 5, 1999, in Long Branch Municipal Court, Anthony Amorino, 58, of Eatontown, New Jersey, being the

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criminal enforcement – from pg. 9

responsible person of Absolute Clubs, Inc., was charged with filing a false 1997 corporation business tax return, failing to charge and pay \$17,974.62 in sales tax between April 1994 and June 1998, and failure to file sales tax returns for the same period. Absolute Clubs, Inc., a now closed business in Long Branch, New Jersey, was purported to be a health club by Mr. Amorino. The maximum penalty, if convicted of all charges, is a fine of \$39,000 and imprisonment of two years. This case was investigated jointly by the Monmouth County Prosecutor's Office, Long Branch Police Department, and the Office of Criminal Investigation.

- On April 7, 1999, a State grand jury indicted Naum Raichel, 51, and Bernard Mondry, 64, both of Brooklyn, New York, in connection with conspiracy and theft of \$85,085.49 in motor fuels tax collected from January 1997 to September 1998 at Gas R Us, Inc., a truckstop in Elizabeth, New Jersey, that Mr. Raichel owned and Mr. Mondry supplied with over 680,000 gallons of

“off-the-books” diesel fuel and kerosene. Mr. Raichel faces a maximum of over 50 years in prison and \$500,000 in fines if convicted on all charges; Mr. Mondry faces a maximum of 25 years in prison and \$122,500 in fines. This investigation was conducted jointly by the New Jersey State Police Organized Crime Unit and the Office of Criminal Investigation, and was presented to the grand jury by the State Attorney General's Office.

- On April 9, 1999, Eyad Bader and Osama M. Jamhour, both of Paterson, New Jersey, were detained at the Holland Tunnel by Port Authority of New York and New Jersey Police Officers after a commercial vehicle inspection found 90 full master cases (domestic) of unstamped cigarettes (5,400 cartons) in a U-Haul rental vehicle. The subjects could not provide any documents relative to the cigarettes. The Office of Criminal Investigation's Special Agents responded to the scene and arrested both subjects. They were processed, arraigned and required to post \$10,000 bail before being released from the

Hudson County Jail.

- On April 15, 1999, the Passaic County grand jury indicted Abdalla A. Dabbas of Paterson, New Jersey, for possession of over 100 cartons of contraband cigarettes, (a crime of the fourth degree), transportation of contraband cigarettes, no invoices and no consumer license.
- On April 16, 1999, Joseph Gentile, principal of Jogen, Inc., was named in a six-count indictment by a Middlesex County grand jury. Mr. Gentile was charged with theft by deception (second degree); misapplication of entrusted property (second degree); and four counts of issuing a bad check (each third degree). All counts evolved from the collection and non-remittance of State motor fuels taxes in the amount of \$123,112.71.
- On May 7, 1999, in Camden County Superior Court, Steven H. Willans, 34, of Barrington, New Jersey, was sentenced to five years imprisonment and ordered to make restitution to the State of \$16,312 in tax, penalty

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Enforcement Summary Statistics

Second Quarter 1999

Following is a summary of enforcement actions for the quarter ending June 30, 1999.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,109	• Seizures	43
Total Amount	\$51,474,010	• Auctions	41
• Jeopardy Assessments	191	• Referrals to the Attorney General's Office	0

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

and interest, as a result of Mr. Willans' plea of guilty on March 15, 1999 to having failed to file sales tax returns from 1992 to 1995 in connection with Entertainment Emporium, a computer sales and service business owned by Mr. Willans. Mr. Willans' prison term is to be served concurrently with a sentence of five years imprisonment for the theft of \$77,000 from the Barrington volunteer ambulance squad, of which Mr. Willans was the treasurer. This case was investigated jointly by the Barrington Police Department, the Camden County Prosecutor's Office, and the Office of Criminal Investigation, and was prosecuted by the Camden County Prosecutor's Office.

- On May 13, 1999, Spyridon Gizas of Dover (Morris County), New Jersey, was arrested during a New Jersey State Police investigation, for promoting gambling and maintaining an illegal gambling resort at the Greek Orthodox Club in the same city. Mr. Gizas was found in possession of 141.5 cartons of contraband cigarettes. The Office of Criminal Investigation has charged Mr. Gizas with possession of over 100 cartons of contraband cigarettes (fourth degree crime, indictable), no consumer license, no retail license, failure to register for sales tax, and no invoices, all of which are disorderly persons offenses. The seized cigarettes were unstamped, Pennsylvania stamped and US Tax-Exempt Export cigarettes.
- Toomey Vending of Egg Harbor City, New Jersey, pleaded guilty in Atlantic City Municipal Court to operating 18 unlicensed ciga-

rette vending machines. The court imposed fines, fees, and costs totaling \$2,114. Subject is now currently licensed.

- On May 24, 1999, Allan B. Shalleck, formerly of Pennington, New Jersey, entered a guilty plea to three counts of an indictment that had been presented to a grand jury by the Mercer County Prosecutor's Office in 1997. Mr. Shalleck plead guilty to one count of theft by deception, one count of forgery, and one count of failure to file a 1994 New Jersey gross income tax return. Mr. Shalleck is exposed to a fifteen year period of incarceration and \$45,000 in fines as a result of this plea. Sentencing is pending.
- On May 26, 1999, Daniel Provenzano, 36, of Upper Saddle River, New Jersey, was indicted by a State grand jury on charges of racketeering conspiracy, acting as a leader of organized crime, money laundering, various violent offenses in furtherance of his illegal activities, failing to file a 1996 New Jersey personal income tax return, and filing false and fraudulent 1994, 1995, and 1997 New Jersey personal income tax returns. The indictment alleges that most of the crimes were committed to enhance the financial operations of Advice, Inc., an actual printing business that was owned and run by Mr. Provenzano in Fort Lee, New Jersey, until 1997. This case was investigated jointly by the New Jersey Division of Criminal Justice and the Office of Criminal Investigation, and was presented to the grand jury by the State Attorney General's Office.

- On June 18, 1999, Special Agents of the Office of Criminal Investigation were conducting a follow-up investigation concerning counterfeit stamped cigarettes in the city of Camden, New Jersey. As part of that investigation, a New Jersey cigarette distributor was visited and a number of violations of the Cigarette Tax Act were found. It was during that time that the licensed distributor offered a bribe to a Special Agent in violation of N.J.S.A. 2C:27-2, Bribery in Official and Political Matters, a crime of the second degree. Subsequently, a joint investigation by the Office of Criminal Investigation, Taxation's Internal Security Unit and the New Jersey State Police Official Corruption Unit, led to the arrest of the subject after he delivered the \$2,000 bribe. Bail was set at \$10,000 after arraignment before the Camden County Superior Court. The matter is now pending action of the State-wide grand jury.
- Eighty-nine charges were filed in municipal court on thirty-four cases for violating the cigarette tax law including possession of 6,027.37 cartons of contraband cigarettes, valued at \$196,431.82.

□

Tax Briefs

Correction

Punitive Damage Awards — The Division is withdrawing the Tax Brief published on page 15 of the Spring 1998 issue of *New Jersey State Tax News* (Vol. 27, No. 1). The article incorrectly characterized punitive damage awards as interest income within the meaning of N.J.S.A. 54A:5-1e and inappropriately relied on the reasoning of a United States Supreme Court case construing Federal income tax law.

Corporation Business Tax

Manufacturing Equipment and Employment Investment Tax Credit — Where a corporation moves its equipment that otherwise would qualify for the Manufacturing Equipment and Employment Investment Tax Credit from a location outside the State to a location within the State, such equipment would be eligible for the Manufacturing Equipment and Employment Investment Tax Credit.

Depreciation, having started when the property was originally placed in service outside the State, would continue. The equipment is not disqualified from the Manufacturing Equipment and Employment Investment Tax Credit by depreciation not starting in New Jersey.

Gross Income Tax

Form DD-2058-1 — Military taxpayers who meet the conditions for nonresident status in New Jersey must file a Form DD-2058-1, State Income Tax Exemption Test Certificate. This form must be filed with the service person's payroll or finance officer in order to stop New Jersey income tax from being withheld from military pay. Form DD-2058-1 is a U.S. Government

form that is used as a basis for not withholding New Jersey income tax from military pay. This certificate should not be filed with the New Jersey Division of Taxation.

Military Pension Exclusion — P.L. 1997, c.409, effective beginning with tax year 1998, provides a gross income tax exclusion for "military pension payments or military survivor's benefit payments paid to individuals by the United States with respect to service in the Armed Forces of the United States by a person who is 62 years of age or older, or who, by virtue of a disability, is or would be eligible to receive payments under the Federal Social Security Act..." See N.J.S.A. 54A:6-26.

After retiring from military service, many military retirees work for the civilian sector of the Federal government. When these people later retire from Federal civil service, they may either receive both a military pension and a civil service annuity, or they may elect to waive the military pension and receive a civil annuity that includes military service for computation purposes. See 5 CFR §831.301(c). A military pension is received through the U.S. Defense Finance and Accounting Service, while a civil service annuity is received through the U.S. Office of Personnel Management.

The military pension exclusion was drafted with language specific enough to exempt "military survivor's benefit payments". In contrast, however, the statutory language makes no mention of civil service annuity payments. Thus, the exemption language does not provide a basis for the exclusion of any portion of a civil service annuity, including any part attributable to prior military service.

Any change in the treatment of civil service annuities would require a legislative amendment to the law.

Coast Guard Pension — P.L. 1997, c.409, effective beginning with tax year 1998, provides a gross income tax exclusion for military pension payments (or military survivor's benefit payments) paid to individuals with respect to services in the Armed Forces of the United States to a person who is 62 years of age or older, or disabled. We believe that military pension payments from the Coast Guard are included within the meaning of P.L. 1997, c.409. In this regard, we note that 10 U.S.C.A. sec. 101 defines the Armed Forces to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard. The Coast Guard is instituted under title 14 U.S.C.A., which establishes the Coast Guard as a military service and branch of the Armed Forces of the United States. A 1976 amendment transferred the Coast Guard from a service in the Treasury Department to a service in the Department of Transportation. However, the amendment provides that the Coast Guard will operate as part of the Navy in time of war or when the President directs. 14 U.S.C.A. sec. 3.1.

For Federal tax purposes under IRC sec. 7701(a)(15), the Coast Guard is included under the definition of military, naval, and Armed Forces of the United States. N.J.S.A. 38A:1-1(h) defines military as meaning any part of or all of the armed forces. This enables the Coast Guard to receive the same treatment as the other branches of the Armed Forces

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under the laws of New Jersey.

S Corporation Losses — Taxpayers cannot use a loss from a prior year to offset a current year's income or carry an unused loss into a subsequent tax year. Any S corporation losses that are not used in the current year will be an adjustment to the basis of the S corporation when sold.

At the time an S corporation is liquidated, the taxpayer will determine the gain for New Jersey purposes by using New Jersey adjusted basis in the S corporation. The New Jersey adjusted basis is generally the amount of initial contribution added to the balance of the New Jersey Accumulated Adjustments Account (AAA) as of the date of the disposition of the stock, less any unused losses from previous years. In addition, any indebtedness of the S corporation that is satisfied at the time of the disposition of stock must also be used to adjust basis.

Sales & Use Tax

New Federal SmartPay Credit Cards — The State of New Jersey will continue to extend sales and use tax exemption to all purchases by Federal employees that are paid directly from a Federal government account. Purchases made by Federal employees using funds

from their own account, even though they may be subsequently reimbursed by the government, are subject to New Jersey sales and use tax.

According to the Federal General Services Administration's new SmartPay program there are four types of SmartPay credit cards with specialized uses:

1. Purchase Cards

- Printed on Front: "United States of America – SmartPay for Official Government Purchases Only U.S. Government Tax Exempt"
- Only used to purchase tangible personal property
- Visa or MasterCard
- Billed directly to and paid by U.S. Government
- Transactions *Exempt* from New Jersey sales and use tax

2. Fleet Cards

- Printed on Front: "United States of America – SmartPay for Official Government Fleet Use Only"
- Only used to purchase fuel, repair services and other items related to vehicles, airplanes, boats and equipment
- Voyager or MasterCard
- Billed directly to and paid by U. S. Government
- Transactions *Exempt* from New Jersey sales and use tax

3. Travel Cards

- Printed on Front: "United States of America – SmartPay for Official Government Travel Only"
- Only used to purchase lodging, meals, airfare, car rentals, etc.
- Visa or MasterCard
- May or may not be billed directly to and paid by U.S. Government
- *Exempt Transactions* – Transactions billed directly to and paid by the U.S. Government are exempt from New Jersey sales and use tax. SmartPay travel cards having a 0, 6, 7, 8 or 9 as the sixth digit of the card account number are government directly billed and paid and result in tax exempt transactions
- *Taxable Transactions* – Transactions billed to and paid by Federal employees from their own accounts (even though subsequently reimbursed by the government) are subject to New Jersey sales and use tax. SmartPay travel cards having a 1, 2, 3 or 4 as the sixth digit of the card account number are Federal employee billed and paid and result in taxable transactions.

4. Integrated Cards

- Printed on Front: "United States of America – SmartPay for Official Government Use Only"
- Used for any combination of purchase, travel or fleet services
- Visa or MasterCard
- May or may not be billed directly to and paid by U.S. Government
- *Exempt Transactions* – Trans-

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actions billed directly to and paid by the U.S. Government are exempt from New Jersey sales and use tax. SmartPay Integrated cards, when used for tangible personal property purchases or fleet purchases, are always directly billed to and paid by the government and result in exempt transactions. SmartPay Integrated cards used for *travel purchases* having a 0, 6, 7, 8 or 9 as the *sixth digit* of the card account number are also government directly billed and paid and result in exempt transactions

- **Taxable Transactions** – Transactions billed to and paid by Federal employees from their own accounts (even though subsequently reimbursed by the government) are subject to New Jersey sales and use tax. SmartPay Integrated cards used for *travel purposes* having a 1, 2, 3, or 4 as the *sixth digit* of the card account number are Federal employee billed and paid and result in taxable transactions.

In order to document a sales tax exempt transaction when a SmartPay card is used, New Jersey will require that the vendor retain in his records the merchant copy of the SmartPay credit card transaction record showing the credit card number. We will not require a special exemption certificate, letter or form as additional documentation; however, a copy of the applicable contract, purchase order or travel authorization, on official letterhead, signed by a qualified officer should be provided to the vendor.

Advertising Services — The Division has received several telephone inquiries from taxpayers who mistakenly believed that recent legislation created a blanket exemption for all purchases and sales by advertising agencies. This is not true.

P.L. 1998, c.99, repealed the portion of a sales and use tax provision (N.J.S.A. 54:32B-3(b)(5)) which imposed tax on “advertising services,” in general. Under the repealed provision, services that were not otherwise taxable under some *other* category of taxable service were subject to tax if they were for advertising. For example, while writing is not a taxable service, writing an advertisement was; while web site design is not a taxable service, designing a web site for advertising was. Now that this section of the provision has been repealed, these creative services are no longer taxable.

Because an advertising agency will no longer charge tax on its professional services, it is deemed to be the retail purchaser of tangible personal property (e.g., photographs, illustrations) that it uses in rendering its professional services; it can not claim a resale exemption.

The repeal of the tax on “advertising services” in general did not affect the taxability of direct mail advertising processing services. These services are still taxable if the advertising material will be distributed to recipients within New Jersey.

In addition, advertising-related services that are already taxable under some other category of taxable service continue to be taxable. For example, imprinting logos on promotional items supplied by the customer is a taxable imprinting

service, N.J.S.A. 54:32B-3(b)(1); installing an electrical advertising display is a taxable installation service, N.J.S.A. 54:32B-3(b)(2); repairing a damaged advertising mural on a concrete wall is a taxable repair, N.J.S.A. 54:32B-3(b)(4). These services, however, were never considered “advertising services” under the prior law. The repeal of the tax on “advertising services” therefore has no effect on the taxability of related services under other subsections of N.J.S.A. 54:32B-3(b).

The repeal of the tax on advertising services, in general, of course did not affect the taxability of advertising material. Purchases of advertising posters, printed advertising brochures, promotional video cassettes and other advertising materials are still taxable as tangible personal property, N.J.S.A. 54:32B-3(a), subject to the exemption for such materials which are ultimately delivered out of State, N.J.S.A. 54:32B-8.39.

Sales and Installation of Venetian Blinds — Venetian blind installers are generally functioning as “contractors” within the meaning of the Sales and Use Tax Act. See N.J.A.C. 18:24-2.2. Contractors are deemed to be the retail purchasers of the materials and equipment that they use or install when working on their customer’s real property. N.J.S.A. 54:32B-2(e)(2). Therefore contractors must pay sales tax or use tax on property that is purchased for installation onto the real property of their customers. Their customers are liable for tax only on the installation service charges, unless the installation results in a capital improvement, in which case the installation labor is exempt as well. N.J.S.A. 54:32B-

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3(b)(2). The installation of venetian blinds is generally deemed to result in a capital improvement. (The tax brief published in the November/December issue of the 1980 *New Jersey State Tax News* may be disregarded.) When a vendor both sells blinds from a retail location and installs venetian blinds, sales and use tax payment and collection obligations will depend upon how the sales are structured by the venetian blind retailer. The following guidelines can be applied to these sales.

Sales of blinds only: In any case where a vendor sells blinds to the customer without installation, regardless of whether the customer is a homeowner, contractor, builder or developer, sales tax must be collected on the sale price if the property is either picked up or delivered to a location in New Jersey. The vendor may claim a resale exemption from sales tax on its purchase of blinds that it sells as a retailer without installation.

Sale of blinds, separate installation agreement: In any case where a vendor sells blinds to a customer as a retailer and agrees to install the item under a *separate* installation agreement (other than when acting as subcontractor for a prime contractor), sales tax must be collected on the sale price of the blinds if they will be installed at a location in New Jersey. The vendor is deemed to be making both a retail sale of the blinds, and a separate sale of the service of installation. The charge for installation is not subject to sales tax because the installation is deemed to result in a capital improvement. N.J.S.A. 54:32B-3(b)(2). The cus-

tomers should issue a Certificate of Capital Improvement (Form ST-8) to the retailer/contractor.

In cases where the separate installation agreement provides that the installation work will be done as a subcontractor for a general contractor, there is no need to obtain an ST-8 from the prime contractor. Instead, the prime contractor, who will be responsible for billing the customer, will need to obtain a completed ST-8 from the customer.

Sale of blinds installed: In any case where a vendor agrees to sell venetian blinds installed (single agreement), the person is acting as a contractor under the Sales and Use Tax Act. Thus, the contractor is liable for the remittance of use tax based on his cost of purchasing the blinds, if he purchased them with a resale exemption. Persons who act only as contractors cannot issue Resale Certificates (Form ST-3) for the purposes of the New Jersey Sales and Use Tax Act. The sale agreement, now considered one for the services of installing property which is incorporated into real property, is not subject to the collection of sales tax from the customer. The customer in this circumstance should issue a Certificate of Capital Improvement (Form ST-8) to the contractor. However, if a person is acting as subcontractor, he should not require an ST-8 from the general contractor; no tax should be charged to the general contractor. N.J.A.C. 18:24-5.12(c). Instead, the general contractor will be responsible for collecting sales tax from the property owner on any taxable services and for obtaining a completed ST-8 from him to support the capital improvement exemption applicable to venetian blind installation.

Medical Equipment to Healthcare Professionals

— Pursuant to N.J.S.A. 54:32B-8.1 of the New Jersey Sales and Use Tax Act, (See P.L. 1987, c. 383) sales of durable medical equipment are exempt from sales and use tax in this State. Durable medical equipment is defined in the law to mean equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home.

The law expressly eliminates from the exemption any durable medical equipment or other medical devices, prosthetic aids and medical supplies (other than drugs or medicines) purchased by a person who provides medical services for compensation and which are not transferred to the patient in conjunction with the performance of medical services. “Transferred to the patient” implies that the patient leaves the office, hospital etc. with the property.

Urban Enterprise Zone Program: Delivery Requirements for the 3% Sales Tax Rate — The Urban Enterprise Zone Program offers a partial sales tax exemption for certain retail sales made by certified vendors. N.J.S.A. 52:27H-80. In order for a vendor to offer the 3% sales tax rate to a purchaser who makes an in-person purchase at the vendor’s place of business in a zone, the purchaser must accept delivery at the vendor’s place of business in the zone or the vendor must deliver the goods to the purchaser from the vendor’s business location in the zone. N.J.A.C. 18:24-31.4(e) provides as follows:

All sales made by a qualified and
continued on page 16

certified vendor must be made from his place of business within an enterprise zone, that is, *either the purchaser must accept delivery at the vendor's place of business within an enterprise zone, or the vendor must deliver the tangible personal property from its place of business within an enterprise zone.* Only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

Receipts from mail order, telephone, telex and similar sale transactions are subject to sales tax at the regular rate where delivery is made to a location within the state.

Example 1

A consumer goes to a UEZ certified retail building supply business to make a purchase of materials. The retailer does not have all the materials in stock and agrees to order from another source or obtain the materials from another location operated by the retailer.

In order for the transaction to be taxed at the reduced rate, the materials must come to rest and be handled by the employees at the vendor's location in the zone. Either the purchaser must come to the vendor and pick up the materials or the vendor must deliver the materials from the zone location.

Example 2

A vendor has two certified retail stores in different UEZ zones. A purchaser makes an in-person order for goods at one location but the vendor does not have the goods at the location. The goods, however, are in stock at the second location.

Each reduced rate transaction must be originated and completed at the same UEZ location that is certified under the program. Thus, the goods that are offered at the reduced rate must be ordered and delivered from the same location.

□

In Our Courts

Corporation Business Tax Compensation – *Seventeen Thirty Corp. v. Director, Division of Taxation*, decided April 16, 1999; Tax Court; No. 003648-97.

The president of plaintiff was the sole shareholder and served as store manager for fiscal years commencing October 1, 1988 through October 31, 1992. Not only was the president compensated through regular salary, but he also supplemented it by writing checks to himself for varying amounts at varying times during each year based upon the availability of cash in plaintiff's business. Plaintiff neither withheld New Jersey gross income tax or Federal income tax nor did it issue W-2 Forms or other reporting forms reflecting these supplemental payments. However, the corporation business tax returns reported the supplemental payments as officer compensation deductions and the president reported the supplemental payments as other income on his New Jersey gross income tax returns. The Division

of Taxation disallowed the supplemental payments as deductions because there was no objective evidence to characterize the nature of the payments as compensation rather than the distribution of earnings and profits, dividends.

The Tax Court ruled that New Jersey's Corporation Business Tax Act's references to the Federal income tax principles permitted the decisional law under the Internal Revenue Code to be relevant in determining whether the payments at issue were compensation under the Corporation Business Tax Act. The Tax Court then adopted the two-pronged test for deductibility espoused in *Elliot's, Inc. v. Commissioner*, 716 F.2d 1241 (9th Cir. 1983). The test's first prong requires an inquiry into whether the amount of compensation is reasonable. The second prong requires that the payments must be entirely for services. The *Elliot's* court noted that this second prong may be difficult to establish due to its subjective nature and, in that case, the answer may be inferred from the outcome of the first prong's reasonableness test.

Applying the *Elliot's* test, the Tax Court held that the payments at issue were reasonable and constituted deductible compensation rather than dividends. The Court found the following facts to be significant in arriving at its determination: (1) The president had no sophisticated understanding of the Internal Revenue Code, New Jersey Gross Income Tax Act, or the Corporation Business Tax Act; (2) the president believed he earned the corporation's additional cash from his long work hours; (3) the defendant did not dispute that the total payments to the president

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constituted reasonable compensation; and (4) the plaintiff paid minimal dividends for four of the five years at issue. Additionally, the Court noted the *Elliot's* court's finding that a corporation is not required to pay dividends.

Gross Income Tax

Various Deductions – *John W. Dantzer, Jr. and Kathleen M. Dantzer v. Director, Division of Taxation*, decided June 1, 1999; Tax Court; No. 006040-96.

This case concerned eight separate issues involving partnership deductions, deductions for personal transactions, and the credit for taxes paid to other jurisdictions on plaintiff's gross income tax (GIT) return.

Partnership Deductions

The query is whether the following items, which are not ordinarily deductible on a New Jersey gross income tax return, are deductible by a partnership in calculating its distributive share of partnership income where they are considered ordinary business expenses.

- **Political Contributions** – The Tax Court ruled that under the Gross Income Tax Act, a partnership's political contribution may be deductible by the partners where there is demonstrated some specific nexus between the political contribution and the partnership's business. As plaintiff could not provide adequate proof linking the contribution to conduct of the partnership's business, the Court disallowed the claimed deductions.
- **Miscellaneous Expenses** – The Court disallowed the claimed deductions because plaintiff could

not prove what the expenses were and why they were deductible.

- **Medical Expense Deductions** – The partnership allocated \$2,534 of medical insurance expense to the plaintiff that was consistent with the allocations to all but 11 of the 75 partners who the Court found were either qualified or did not elect to participate. It was not known whether or to what extent the allocation represented either the partnership's actual expenditures or was related to the plaintiff.

The Court ruled that the medical insurance premium deductions are allowed to the extent that they are for all partners and employees and to the extent that the specific premiums or contributions for plaintiff exceed the Gross Income Tax Act's two percent requirement, but that they are not deductible in calculating plaintiff's distributive share of partnership income.

- **Pension Expense Deductions** – Plaintiff's partnership maintained a defined contribution plan for its eligible partners and staff. Although the plan had a 401(k) portion and a non-401(k) portion (Keogh), only the non-401(k) is at issue. Participation in the non-401(k) portion was not voluntary and was required of all eligible personnel. Only the partnership made contributions to the non-401(k) based upon a specified percentage of the person's allowable compensation.

The Court held that the pension contributions are allowed to the extent they are for all personnel. However, those contributions specific to plaintiff are not deductible on his gross income tax return.

Personal Expenditures

- **FICA Taxes** – Plaintiff deducted Federal self-employment tax (FICA) attributable to being a partner. The Court held that FICA taxes are not deductible under the Gross Income Tax Act because they are paid by the individual and not the partnership. The Court noted that a selfemployed individual was not permitted to deduct FICA because it is a tax on income.

- **Interest on Loan** – The partnership agreement required plaintiff to provide capital to the partnership. Prior to approximately May 1992, plaintiff borrowed the amount from the partnership and paid interest on such loan. After approximately April 1992, plaintiff borrowed from Citibank who paid the funds directly to the partnership to satisfy plaintiff's loan from the partnership. The partnership guaranteed repay-

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ment of the Citibank loan and paid the interest on behalf of plaintiff. The Court noted that the interest amounts on the aforementioned loans would otherwise have been distributed to plaintiff by either a cash payment or added to his capital account.

The Court held that although the interest was not considered a deductible expense connected to net profits from business, as it was not a partnership obligation, it may be deductible. The Court found that this interest was plaintiff's personal expense connected to his partnership capital contribution requirements and the situation was analogous to investment interest that is deductible to a stocks and bonds investor whose business is to invest in stocks and bonds. Therefore, the Court permitted plaintiff to deduct the interest from plaintiff's distributive share of partnership income. The Court reasoned that a partner should be allowed to deduct partnership expenditures required for participation in the partnership from his partnership income.

- **Loss on the Sale of a Home –** Plaintiff realized a gain on the sale of a personal residence and from the sale of securities attributable to his share of partnership gains. From this gain, plaintiff deducted a realized loss from the sale of another personal residence.

Following the law of *Baldwin v. Director, Division of Taxation*, 10 N.J. Tax 273 (Tax 1988), *aff'd ob. per curiam*, 237 N.J. Super. 327 (App. Div. 1990) that personal losses are not deductible from personal gains under the Gross Income Tax Act, the Court

disallowed the deduction for the loss.

Credit for Taxes Paid to Other Jurisdictions Calculation

– On their California income tax return, plaintiff claimed deductions for the FICA tax, the medical insurance expense, and the pension payment that constituted their California allocable amount. On their New Jersey gross income tax return, plaintiff claimed the credit for taxes paid to California, but did not deduct the aforementioned expenses from the numerator of the credit fraction.

In calculating the credit for taxes paid to California, the Court held that the numerator (California share) of the credit fraction must be reduced by expenses not subject to tax in California and should not be deducted in the denominator (income taxed in New Jersey).

Local Property Tax Municipalities Lack Standing to Lower Assessments

– A.G. Opinion 99-0050, March 23, 1999. N.J.S.A. 54:3-21 provides, in part, “A taxpayer...or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April 1 appeal to the county board of taxation...taxpayer or taxing district may on or before April 1 file a complaint directly with the tax court,....”

In reviewing the appeal statute, the A.G.'s Office explained, “Where a statute creates a cause of action, and identifies the requirements for bringing the action, as was done by N.J.S.A. 54:3-21, those requirements must be met.” Citing several

court decisions, the A.G. opinion reiterated that the right to appeal is statutory and the appellant is required to comply with all applicable statutory requirements.

Concluding that municipalities lacked standing to reduce assessments, the opinion relied on the Tax Court's reasoning in *Appeal of Monroe Twp.*, 16 N.J. Tax 261 (1996). A taxing district is not discriminated against by an assessment in the municipality that is too high, only by an assessment that is too low. Again citing prior case law, the opinion concurred that a municipality's appeal standing was limited to correcting under-assessments.

However, administrative remedy is available to assessors in that they can informally ask the County Board of Taxation to lower assessments. The County Tax Board can also, upon their own initiative, revise and correct assessments prior to their certification of the tax list. Finally, if administrative reduction is not possible for reason of timeliness, etc., taxpayers have the right to request a lesser assessment via the statutory appeal process.

Applicability of the Freeze Act – *Rockstone Group v. Lakewood Township*, decided March 24, 1999; Tax Court of New Jersey; No. 004614-97.

Appeal involves the Freeze Act (N.J.S.A. 54:51A-8) and whether it applies following entry of a stipulation of settlement between plaintiff and defendant upon the 1997 assessed values for two vacant land parcels assessed at \$327,000 and \$372,000 respectively. A Tax Court Judgment was entered on October 19, 1998 for tax year 1997 to reduce the assessments to
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\$230,000 per lot. The stipulation was silent as to Freeze Act application, since the parties were unable to settle that issue and had agreed to litigate it in a later proceeding.

Plaintiff's attorney then filed an application for judgment to "freeze" the assessments for tax years 1998 and 1999. Lakewood Township sought to avoid the freeze for 1998. It claimed that the subject property's value had substantially increased because it originally had a municipal site plan approval for a 54,800 square foot retail center. The land was granted conditional municipal preliminary and final site plan approval for construction of a 132-unit apartment complex on July 15, 1997, as memorialized by a Lakewood Township resolution. Approval was given subject to "posting a performance bond for any improvement in connection with this application, complying with all conditions as required by Federal, State or local law and obtaining all other approvals as required by law." Plaintiff submitted that, since the resolution required several governmental regulatory approvals not granted until after the valuation date of October 1, 1997 for the 1998 freeze year, the property essentially had no approvals at that time, and thus the Freeze Act should apply. Approvals included DOT and CAFRA permits, Municipal MUA approval, and County Soil Conservation District certification. Plaintiff asserts that the standard for "increase in value" should be final approval as defined in the Municipal Land Use Act (N.J.S.A. 40:55D-4). In opposition, the municipality's appraiser concurred with the assessor's conclusion that

obtaining final municipal planning board approval for development, even with additional permits and approvals pending, "*in and of itself* causes a substantial and meaningful increase in the value of vacant land."

The property rights that the legislature conferred on the developer automatically upon final approval of a site plan are a significant factor. During the approval period the developer is protected against re-zoning and retains all rights encompassed in the preliminary site plan approval. The economic reality is not whether every condition of final site plan approval is satisfied, but the perception in the real estate market that a protected right has been conferred on the property which has value. Defendant's experts observed that "most real estate appraisers recognize and reflect the increase in value of unimproved land created by obtaining municipal approvals" by means of adjustments. The assessor concluded that a significant increase in value resulted from the grant of approvals for the apartment complex, based on the taxpayer's appraisal report for the 1997 tax year, in which he had adjusted two comparable sales downwards by 25% due to their lack of approvals.

The municipality bears the burden of showing that the Freeze Act should not apply. In order to have defeated the freeze and thus been entitled to a plenary hearing, the municipality must have demonstrated a change in value from an internal or external change that materialized after the assessment date of the base year. The change must substantially and meaningfully increase the value of the property.

The Court found that the planning board approvals of July 15, 1997 constituted an external change subsequent to the assessment date of the base year. The municipality had submitted evidence to create a prima facie demonstration of a change in value. The Court ruled that the municipality was entitled to the plenary hearing to determine whether the change in value was sufficient to deflect the freeze that the plaintiff sought. The Court's decision was not a determination on the merits of the taxpayer's Freeze Act application, but only that the municipality had presented a prima facie allegation and provided sufficient evidence to proceed with the plenary hearing. The plenary hearing is a full evidential trial that will only address the increased valuation, if any, attributable to the site plan approval.

Sales & Use Tax

Admission Charges – *Seventeen Thirty Corp. v. Director, Division of Taxation*, decided April 16, 1999; Tax Court; No. 003648-97.

Plaintiff operates a retail store that sells adult-oriented books, periodicals, novelties, and videotapes. The store also contains a segregated area that contains 27 video booths where adult videotapes are viewed. Each booth contains a viewing device that displays ten to sixteen different videotapes with running times of approximately two hours. Entrance to the booth area generally required that each person purchase a minimum of twelve \$0.25 tokens (three dollars worth) which transactions were not subject to sales tax. Additional tokens could also be purchased.

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Exceptions to the minimum purchase requirement were made for individuals known to plaintiff's employees and persons who displayed previously purchased tokens. To operate the viewing device, a patron deposited a token that provided approximately one minute of playing time. At the end of the minute, the viewing device stopped. At this point, the patron could then insert another token to view another minute. It should be noted that no more than one token could be deposited at a time. The Division determined that the token sales were taxable under N.J.S.A. 54:32B-3(e)(1), which imposes sales tax on admission charges in excess of \$0.75 to or for the use of a place of amusement.

The Court ruled that the three-dollar minimum purchase requirement to enter the video booth area is taxable as an admission charge and that the video booth area is a place of amusement because the viewing devices provided entertainment to the patrons. Additionally, the Court ruled that a \$0.25 token deposited in the viewing device is not an admission charge because it is required only for the purpose of operating the device, not to enter the booth, and that the viewing device providing the amusement is a mechanical device, not a "place of amusement."

Sweeping Services & Garbage Removal – *Exterior Power Sweeping v. Director, Division of Taxation*, decided December 17, 1997; Tax Court; No. 011656-93, *rev'd*; Appellate Division; No. A-3346-97T5 (April 30, 1999).

Exterior Power Sweeping (EPS) was engaged in the business of power sweeping parking lots.

Essentially, on a daily to monthly basis, EPS trucks vacuumed paper products and other debris from customers' parking lots into its truck's hopper. When the hopper was full, it would either be emptied into the customer's dumpster or taken back to EPS's facility.

The Division found that EPS's services were subject to sales tax except where EPS additionally removed the debris to its own facility for disposal. Although EPS could not provide documentation showing a breakdown of the dollar amount of sales where the debris was removed to its facility, the Division estimated that it was sixty percent based upon a similar case and therefore taxed forty percent of the sales.

In an oral opinion, the Tax Court held that the power sweeping parking lot services were exempt from sales tax under the exemption for garbage removal. Furthermore, the judge voided the entire tax assessment finding that there was no factual basis for taxing forty percent of EPS's sales.

The Appellate Division reversed the Tax Court on the issue of whether sweeping services were taxable. Relying upon *D.P.S. Acquisition Corp. v. Director, Div. Of Taxation*, 16 N.J. Tax 292 (Tax 1997), *aff'd*, 17 N.J. Tax 592 (App. Div. 1998), initially, the Appellate Division held that the sweeping services performed by EPS are essentially the same as those sweeping services performed by D.P.S. and are taxable. However, there was one difference between D.P.S. and EPS and that was that D.P.S. did not remove any of the collected debris from the customers' premises to its facility while EPS did. The Appellate Division ruled that those services

were not taxable under the exemption for garbage removal.

As to the Division taxing forty percent of sales, the Appellate Division upheld the assessment. The Appellate Division ruled that the burden is not on the Division to justify its calculation but rather that the taxpayer carries the bur-

den of showing that transactions are exempt from taxation. In this case, EPS did not provide any documentation that broke down the dollar amount of transactions or the number of jobs where it removed the collected debris to its premises. Therefore, the accuracy of the figure could not be tested. □

In Our Legislature

Corporation Business Tax Tax Benefit Certificate Transfer Program — P.L. 1999, c.140 (signed into law on June 28, 1999) clarifies the Corporation Business Tax Surrendered Tax Benefit Certificate Transfer Program, established pursuant to P.L. 1997, c.334, which allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State.

The bill imposes a cap limiting the total amount of tax benefits that may be transferred under the program to \$50 million in fiscal year 2000 and \$40 million in each subsequent fiscal year. Individual companies applying to "sell" tax benefits under the program are limited to a lifetime maximum of \$10 million. In addition, the measure: (a) defines eligibility requirements for businesses

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wishing to surrender tax benefits; (b) provides criteria for approving applications for transfers; and (c) establishes a method for allocating transfers among qualified prospective participants in cases where the total amount of tax benefits requested to be surrendered by approved applicants in a particular fiscal year exceeds the ceiling on total allowable transfers for that year. This act applies to tax years beginning on and after January 1, 1999.

Gross Income Tax

Pension Exclusion, Other Retirement Income Exclusion Increased — P.L. 1999, c.177 (signed into law on August 3, 1999), increases the maximum amount of certain retirement income that may be excluded from taxable income under the New Jersey Gross Income Tax Act as follows:

- For taxpayers filing joint returns from \$10,000 to \$20,000

- For Married, filing separate filers from \$5,000 to \$10,000

- For Single filers from \$7,500 to \$15,000

Taxpayers eligible for the pension exclusion can exclude from reportable income either their actual pension income or the maximum exclusion amount for their filing status, whichever is less.

The higher exclusion limits extend as well to the Other Retirement Income Exclusion, the exclusion which allows taxpayers age 62 or older with earned income of \$3,000 or less to deduct the unused portion (if any) of their pension exclusion from their reportable gross income. The total amount of pension income plus other retirement income that may be excluded cannot exceed the new exclusion limits.

The new limits are to be phased in, in equal increments, over a four-year period commencing with taxable years beginning on or after January 1, 2000.

Miscellaneous

Garden

State

Preservation Trust Act — P.L. 1999, c.152 (signed into law on June 30, 1999), establishes statutory authority for efforts in pursuit of certain conservation objectives mandated by a recent amendment to Article VII, Section II of the State Constitution and provides a stable, dedicated source of funding for such efforts out of revenue from the sales and use tax.

The statute exempts property and income of the Trust from all taxes and special assessments of the State (except transfer inheritance and estate taxes) and provides for compensation to municipalities for tax revenues lost by reason of acquisition and ownership by the State of lands certified exempt from property taxes due to their use for conservation and recreation purposes. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
9	17	18	19	20	21	22	23
9	24	25	26	27	28	29	30
	31						

October 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

October 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 20 - continued

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
9	21	22	23	24	25	26	27
	28	29	30				

November 1

NJ-927 & NJ-927-W Gross Income Tax—Employer's quarterly return

November 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

November 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending July 31

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

November 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

November 22 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

december

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

December 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

December 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

December 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

December 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

December 27

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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from the director's desk

Increase in Retirement Income Exclusions

Although it does not take effect until tax year 2000, the new change will dramatically reduce the taxable income of elderly and disabled residents. The pension exclusion amounts* will be phased-in over a 4 year period. The charts below show the phase-in amounts. All exclusion amounts are affected by filing status.

Filing status: Married filing jointly	
Year	Exclusion
1999	\$10,000
2000	12,500
2001	15,000
2002	17,500
2003	20,000

Filing status: Single	
Year	Exclusion
1999	\$7,500
2000	9,375
2001	11,250
2002	13,125
2003	15,000

Filing status: Married filing separately	
Year	Exclusion
1999	\$5,000
2000	6,250
2001	7,500
2002	8,750
2003	10,000

* Taxpayers who did not use the maximum pension exclusion may be eligible to exclude other income.

New Zip Code

The US Postal Service recently assigned the Division of Taxation a new zip code to ensure that all mail reaches its proper destination. Items destined for the Processing Center, such as income tax returns (individual and corporate), sales and use tax returns/remittances, employer's quarterly reports, etc., should continue to use the 08646 designation. Effective immediately, mail addressed to other Division of Taxation locations in the Trenton area should bear the zip code 08695. Division stationery will be updated with the new zip code gradually as current supplies are depleted.

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**Last Chance to Renew
State Tax News**

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NJ SAVER Rebate Program Kicks Off



Taxpayer Service Representatives Marilyn Kelly and Joanne Monte discuss the new NJ SAVER rebate application while Technical Assistant Gale Parish-Davis (background) reviews the instructions for the new form.

The NJ SAVER and Homestead Rebate Act (P.L. 1999, c.63, signed into law April 15, 1999) provides direct property tax relief in the form of annual rebate checks for an estimated 1.9 million New Jersey resident homeowners.

Eligibility Requirements – New Jersey residents, regardless of age or income, who own, occupy and pay property taxes on a home in this State that was their principal residence on October 1 of any year are eligible to receive a rebate for that year. Residents of condominiums, co-ops and continuing care facilities may also qualify for the rebate.

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Important phone numbers

Call Center..... 609-292-6400
 Automated Tax Info... 800-323-4400
 609-826-4400
 Speaker Programs..... 609-984-4101
 NJ TaxFax..... 609-826-4500

Alcoholic Bev. Tax... 609-984-4121
 Corp. Liens, Mergers, Withdrawals &
 Dissolutions..... 609-292-5323
 Director's Office..... 609-292-5185
 Inheritance Tax..... 609-292-5033
 Local Property Tax... 609-292-7221
 Motor Fules Tax
 Refunds..... 609-292-7018
 Public Utility Tax..... 609-633-2576

<http://www.state.nj.us/treasury/taxation>

nj saver rebates – from page 1

Phase-in – NJ SAVER rebates will be phased in over a five-year period. The rebate for tax year 1998 will average \$120 and will increase each year until reaching a maximum of about \$600 for tax year 2002 when the program will be fully phased in.

Calculating the Rebate Amount – The State will calculate the rebate on each applicant's home using a formula that effectively exempts the first \$45,000 of the home's equalized value from school tax. Rebate amounts will vary from municipality to municipality due to differences in school tax rates, however, all homeowners within a given municipality will be eligible to receive the same rebate amount. NJ SAVER rebate amounts for 1998 are available through the Division of Taxation.

Filing the NJ SAVER Rebate Claim

Most homeowners can file their NJ SAVER claims by telephone by calling our automated NJ SAVER Rebate Claim System at 1-877-NJTAX72 (toll-free within NJ) or 609-826-4288 (anywhere). The system accommodates both Touch-tone and rotary phones. As of June 30, 1999, more than 1.6 million applications have been filed in this manner. Rebate claims can also be filed online from the Division's Web site.

Homestead Rebate Recipients – Homeowners are entitled to either

a homestead rebate or the NJ SAVER rebate, whichever provides the greater benefit. For most senior citizens the homestead rebate will be higher than the NJ SAVER rebate during the first years of the NJ SAVER phase-in period. As NJ SAVER rebates approach their maximum value (\$600 for tax year 2002) they will often provide the greater benefit.

Property Tax Reimbursement – Recipients of benefits under the Property Tax Reimbursement Program may also receive NJ SAVER rebates, if they qualify.

Property Tax Deduction/Credit – The NJ SAVER program does not affect the property tax deduction/credit claimed on Form NJ-1040.

Tenants' Benefits – While tenants are not eligible for NJ SAVER rebates, the NJ SAVER and Homestead Rebate Act extends eligibility for the homestead rebate to a category of tenants formerly ineligible for this rebate: those under age 65, not blind or disabled, with incomes between \$40,000 and \$100,000. Tenants in this category will be eligible for homestead rebates of up to \$30 for tax year 1998. The amount will increase each year, reaching \$100 for tax years 2002 and thereafter. Homestead rebates for tenants age 65 or older, blind or disabled remain unchanged. Every applicant for a homestead rebate must file Form HR-1040. □

New Jersey State Tax News

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PO Box 281
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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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Schedule of Issue Dates for Property Tax Relief Checks

<u>Program</u>	<u>Issue Date</u>	<u>Check Mailer Color</u>
Property Tax Reimbursement	7/15/99	Green
Homestead Rebate	7/31/99	Blue
NJ SAVER Rebate	9/15/99	Brown

CORPORATION TAX ***Annual Report***

As part of the Governor's plan to simplify business filings, the Annual Report filing will become part of the corporation business tax return. This change is effective with the 1999 corporation business tax return.

The Annual Report, which was previously filed separately with the Secretary of State, will now be on the reverse side of the corporation business tax payment voucher, Form CAR-100. Additionally, a line item will be added to Forms CBT-100 and CBT-100S to allow the inclusion of the Annual Report fees with the corporation tax liability. Taxpayers will be able to write one check to cover both of these corporate obligations.

The Annual Report will carry the same due date or extended due date as the corporation business tax return. However, like the corporation business tax, any extension is for filing purposes only; there is no extension of time for payment. □

GROSS INCOME TAX ***Estimated Tax Changes***

Public Law 1998, c.106, amended the gross income tax provisions on estimated tax, effective for tax years beginning on or after January 1, 1999. The amendments require a taxpayer to make estimated tax payments if the estimated tax liability for the year, in excess of withholdings and other credits, is more than \$400. Prior to this change, the threshold was \$100.

In addition, the amendments impose two new requirements. One is a requirement that estates and trusts pay estimated tax (other than estates or trusts meeting the two-year and other limitations in I.R.C. §6654(1)(2)). The other new requirement concerns a change to the "last year's tax" safe harbor for taxpayers with taxable gross income for the preceding tax year which exceeds \$150,000. "Safe harbor" refers to a minimum amount of estimated tax required to be paid to avoid underpayment penalties and interest.

Effective for tax year 1999, if a taxpayer's income after deductions for the preceding year exceeds \$150,000 (\$75,000 for married persons, filing separately), the "last year's tax" safe harbor exception to estimated tax penalties is stated as 110% of last year's tax, instead of 100%. See N.J.S.A. 54A:9-6(d)(3) as amended by P.L. 1998, c.106.

P.L. 1998, c.106, also made a technical amendment to the statutory provisions on calculating estimated tax penalties and interest. Prior to the amendment, for purposes of assessing penalties and interest, the estimated tax underpayment was based on the difference between what was actually paid and 80% of the tax shown on the current year's return. The recent amendment states that the amount of the underpayment is based on the difference between what was actually paid and either 100% of last year's tax or 80% of the current year's tax, whichever is smaller. See N.J.S.A. 54A:9-6(c), as amended by P.L. 1998, c.106.

The amendments to N.J.S.A. 54A:9-6(d) concerning the "last

year's tax" safe harbor of 110% for higher income taxpayers are not reflected in the amendments concerning the calculation of estimated tax penalties and interest.

The Division of Taxation will impose estimated tax penalties and interest only as expressly authorized under N.J.S.A. 54A:9-6(c), as amended by P.L. 1998, c.106. □

CORPORATION TAX ***Deferred Gain on Installment Sales***

Under the Federal tax code, a corporation may elect to sell property and report the gain using the installment method. The gain on an installment sale is prorated and recognized over the years in which payments are received.

Liquidating corporations that distribute installment obligations to shareholders in exchange for their stock are required to recognize gain from the distribution. However, in a complete liquidation of a subsidiary under code sections 332-334, a gain or loss is not recognized by either the subsidiary or the parent corporation.

New Jersey follows the Federal rules for the deferred gain except upon distribution of the installment obligations at the time of liquidation and dissolution. Under N.J.A.C. 18:7-14.17(h) & (i), corporations must report the untaxed balance of deferred gain on an installment sale in Entire Net Income on the final return filed by the taxpayer.

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installment sales – from page 3

A subchapter S corporation is treated as a C corporation for New Jersey corporation business tax purposes unless a timely New Jersey S corporation election is filed. The deferred gain of a New Jersey S corporation is still required to be included in adjusted Entire Net Income but it is taxed at New Jersey S corporation rates.

Foreign corporations withdrawing their certificate of authority from New Jersey are required to include the balance of deferred gain in adjusted Entire Net Income in the year of withdrawal consistent with the provisions of the above regulation. □

GROSS INCOME TAX

New Business/

Partnership Rules

New rules addressing the treatment of net profits from business under N.J.S.A. 54A:5-1(b) and partners and partnerships under N.J.S.A. 54A:5-1(k) have been adopted by the Division of Taxation. The new regulations delete and replace the old rules under N.J.A.C. 18:35-1.1, Net Profits from Business, and 1.3, Partnerships and Partners. The new rules are intended to simplify income reporting. They address controversies surrounding the proper interpretation of these sections and resolve those controversies in a manner that will benefit most taxpayers. The new rules are consistent with the ruling of the New Jersey Supreme Court in *Smith v. Director, Division of Taxation*, 108 N.J. 19, 527 A. 2d 843 (1987), and the Appellate Division decision in *Sabino v. Director, Division of Taxation*, 296 N.J. Super. 269 (A.D. 1996),

reversing and remanding 14 N.J. Tax 501 (Tax Ct. 1995), on remand 17 N.J. Tax 29 (1997).

The Division, in these new regulations, has promoted three of the Legislature's original goals when it enacted the Gross Income Tax Act. First, symmetry: business income is taxed similarly, whether earned by a partner or by a sole proprietor. Second, conformity: characterization of the business entity earning the income for gross income tax purposes conforms to the characterization for Federal income tax purposes. Third, simplicity: business income or loss is no longer reported in different categories.

A partner, for example, will immediately notice the changes on the 1999 NJ-K-1. Items of partnership income or loss, such as taxable interest, dividends and net gain (loss) from disposition of property, which had been reported separately on NJ-K-1 for 1998 and prior years and then reported in designated categories on the NJ-1040, will now be netted with the partner's share of ordinary income and guaranteed payments to become the amount of income reported as Distributive Share of Partnership Income. Detailed examples furnished in the two new regulations illustrate the reporting changes for sole proprietors and partners.

The regulations also define deductible ordinary business costs or expenses. Business costs and expenses are deductible as long as they meet all four of the following:

1. Incurred primarily and directly in the pursuit of business income; and

2. Occurred as common and accepted practice in that field of business; and
3. Required for and appropriate to the intended business purpose; and
4. Reasonable in amount in relation to the intended business purpose.

The new regulations were adopted on February 18, 1999 with an effective date of March 15, 1999.

The Division will apply these new rules for tax years beginning on or after January 1, 1999.

A complete printing of the new regulations appears in the March 15, 1999 edition of the *New Jersey Register*. □

Interest Rates

Second Qtr. '99 — 10.75%
Third Qtr. '99 — 10.75%

The interest rate assessed on amounts due for the second and third quarters of 1999 is 10.75%.

The assessed interest rate history for the previous eight quarters is listed below.

Effective Date	Interest Rate
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%

GROSS INCOME TAX

Koch Decision

On January 14, 1999 the New Jersey Supreme Court in *Sidney & Dorothy Koch v. Director* reversed a long-standing judicial doctrine that when a New Jersey resident disposes or sells their partnership interest they must use their Federal adjusted basis in the partnership in determining gain or loss for New Jersey gross income tax purposes.

In its finding, the Supreme Court stated that the intent of the gross income tax statute was to tax "economic gain," not a return of capital. The Court further stated that a taxpayer must use their Federal method of accounting in determining gain or loss as directed by N.J.S.A. 54A:5-1c. As reflected in the facts in the *Koch* case, applying one's Federal method does not always result in the use of the Federal adjusted basis, but may require the use of a New Jersey adjusted basis to reflect the economic gain realized.

Although the Supreme Court's decision in *Koch* dealt solely with the sale of a partnership interest, the Division of Taxation is not taking such a narrow view. The Division is of the opinion that this decision may also be applied to the sale or liquidation of a sole proprietorship or to the sale of rental property, not held by a business entity, whose income or loss was reported as net gains or income from rents, royalties, patents and copyrights. N.J.S.A. 54A:5-1d. The Division does not believe this opinion extends to transactions by a partnership or sole proprietorship in the day-to-day operation of its business.

As the Division of Taxation develops new information and/or opin-

ions on this complex issue, additional updates will be released. □

GROSS INCOME TAX

Garden State Savings Bonds

The Garden State Savings Act of 1991 is implemented under N.J.S.A. 18A:71-87, et seq., and provides a program to assist persons trying to save for a college education by offering State and Federal tax-free bonds for sale to the public, and to offer these bonds in low denominations to enable a large number of New Jersey families to participate.

Garden State Savings Bonds are available through participating brokerage firms and banks throughout New Jersey. They are issued as zero coupon capital appreciation bonds and unlike most tax-exempt bonds which pay interest every six months, Garden State Savings Bonds will pay interest only at maturity. All interest on Garden State Savings Bonds is compounded semi-annually at a fixed rate. Most of the bonds were available in maturities ranging from 8–20 years, redeemable in 1999 to 2011. The bonds were offered originally in \$5,000 or less denominations and the money received at maturity can be used for any purpose, not just for education.

Additionally, principal and interest paid at maturity on Garden State Savings Bonds (up to at least \$25,000) will not be considered when evaluating eligibility for college financial aid from the State of New Jersey. Furthermore, the Garden State Savings Act provides that if the original buyers of Garden State Savings Bonds use the maturity amount of the bond to

pay for a member of their immediate family to attend a public college or a participating private college in New Jersey, then they will receive a 6% bonus on the maturity amount. Two percent of the incentive amount is paid by the State, and four percent by the participating institution. This bonus is provided in tuition reduction, which is not considered income for New Jersey purposes.

Under the New Jersey gross income tax, the interest earned on Garden State Savings Bonds will not be included in gross income in accordance with N.J.S.A. 54A:6-14. The bond interest is also tax-exempt for Federal purposes.

Taxpayers may contact their broker or financial advisor for additional information regarding Garden State Savings Bonds. □

List of Judgmed Taxpayers on Web

For the first time, via our Web site, the New Jersey Division of Taxation is providing interested individuals with limited information about the largest uncollected tax liabilities owed to New Jersey. We have been unable to collect these debts through conventional tax collection methods. The detail provided on the Web site is public information previously available in less convenient formats to anyone who had the inclination to pursue such information.

There are two (2) listings available for review, one containing businesses and responsible persons for trust fund taxes and another for individual taxpayers and persons with joint liability, if any.

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judgments list on web – from pg. 5

We regret that these taxpayers have ignored our numerous attempts to bring them into compliance. They have put themselves in a position where they are included on these lists.

Each name appearing on these lists was contacted by certified mail, return receipt requested, and provided with one last chance to enter into a compliance agreement or have their name and other public information listed. The actual amount due may differ from the reflected Certificate of Debt amount, as a result of payments made and/or the accrual of interest.

Any taxpayer contained in these listings may contact the Division to make arrangements for payment by phoning 609-292-8839 or may contact the Division by e-mail. In the event that a taxpayer comes into compliance after being listed, we will happily advertise that fact just as prominently, if they request that we take that action. The Division of Taxation's home page may be accessed at:

<http://www.state.nj.us/treasury/taxation/>
□

SALES AND USE TAX ***Urban Enterprise Zone*** ***Recertification***

A vendor *may not* collect sales tax at the reduced UEZ rate unless the vendor has a currently effective UZ-2, Certificate of Authority. The UZ-2 is valid *only* for the duration of the qualified business certificate year.

Before the certificate year expires, the vendor must reapply for UEZ eligibility by contacting the local

zone coordinator. Upon designation as a qualified business by the local coordinator, the vendor then must reapply to the Division of Taxation on Form UZ-1. If the application is approved, an updated UZ-2, Certificate of Authority, will be issued to the vendor.

If a vendor fails to apply for recertification, upon expiration of the current UZ-2, the vendor must begin collecting sales tax at the 6% rate, starting with the first month following expiration of the UZ-2. The vendor must then file regular sales tax returns (Form ST-51 for monthly remittances, if appropriate, and the ST-50 quarterly return).

If a vendor fails to apply for recertification, continues to collect sales tax at the reduced rate, and continues to remit taxes collected with the UZ-50 return, *the tax due will be recalculated at the 6% rate, and the vendor will be billed for the difference along with applicable penalty and interest.*

When a vendor receives a notice of underpayment where the tax due has been recalculated at the 6% rate, this indicates that Division of Taxation records reflect that the vendor is no longer authorized to collect sales tax at the reduced UEZ rate.

If such a vendor had been a "qualified" UEZ business for the periods billed but had failed to apply, or was late in applying for recertification, there may still be some relief available. In order to prove nonliability for the full 6% sales tax, the vendor must provide the

Division of Taxation with either:

1. A copy of a current UZ-2 reflecting certification dates

that cover the billed tax periods, or

2. Written confirmation from the local UEZ coordinator that the vendor was in fact certified during the tax periods that were billed. □

Exempt Use ***Certificates***

The Exempt Use Certificate (Form ST-4) is available for certain purchases in which the property is granted a specific exemption under New Jersey law. The following are the more common general uses which qualify for sales tax exemption:

- Advertising material intended to be delivered free of charge to recipients outside of New Jersey (N.J.S.A. 54:32B-8.39)
- Packaging materials and non-returnable wrapping supplies used incidental to the delivery of property (N.J.S.A. 54:32B-8.15)
- Commercial motor vehicles with a gross vehicle weight rating of over 26,000 lbs. or used exclusively in the carriage of interstate freight (N.J.S.A. 54:32B-8.43)
- Manufacturing equipment (N.J.S.A. 54:32B-8.13(a))
- Recycling equipment (N.J.S.A. 54:32B-8.36)
- Commercial printing equipment (N.J.S.A. 54:32B-8.29)
- Broadcasting equipment (N.J.S.A. 54:32B-8.13(e))
- Research and development equipment (N.J.S.A. 54:32B-8.14)

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exempt use certificate – from page 6

In order to properly complete the Exempt Use Certificate, a New Jersey registered vendor must fill in his New Jersey Certificate of Authority number in the box in the upper right corner of the ST-4.

If the purchaser is not a registered vendor in the State of New Jersey and is not required to be registered by virtue of activity in this State, the exemption may still be claimed as long as the property will be used in the exempt manner as specified in the law. Out-of-State purchasers should complete the box marked “Eligible Nonregistered Purchaser” in the upper left corner of the ST-4, which requires the entry of either the Federal Identification Number of the business, an I.C.C. permit number or the social security number.

The exemptions granted under the Sales and Use Tax Act are only applicable under certain circumstances. Please refer to the law itself or request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*, for additional information. The publication is available on the Division’s Web site at:

<http://www.state.nj.us/treasury/taxation/>
□

The Delinquency Process

The Compliance Services Branch of the Division of Taxation has delinquency programs in place for 18 different taxes including the personal gross income tax. The Division periodically scans filing records to determine the number of delinquent taxpayers for any given tax. Delinquent taxpayers are mailed a delinquency notice.

Following are some important tips to help taxpayers and practitioners

respond to a delinquency notice and, in some cases, prevent the generation of unnecessary notices.

A delinquency notice is *not* a bill. It does not necessarily mean there is any outstanding tax liability due. A delinquency notice is sent to a taxpayer when the Division’s records reflect that a tax return for a specific period is missing. The actual tax liability is determined by the information submitted on the completed tax return.

Make sure the tax registration number or social security number on the notice is correct. If you have been filing under a different number or recently received a new Federal Employer Identification Number (FEIN), your response should include documentation from the Federal government confirming the correct number. You should also indicate which number you have been using to file tax returns, especially the return covered by the delinquency notice.

Check your records to determine if you have already filed the tax return covering the tax type and taxable period reflected in the notice. If your records indicate you already filed the return, submit a brief note along with a copy of the return. If payments were made covering the period of delinquency, enclose copies of both sides of your canceled checks.

Are you still in business?

Business taxpayers that retire or otherwise go out of business sometimes fail to notify the Division of their business termination date. The Division continues to carry these taxpayers as active with the result that unnecessary delinquency notices are generated. Complete the form REG-C that accompanies the delinquency notice, indicating the termination

date of the business. Be sure to include this form with your response. If a copy of form REG-C does not accompany the delinquency notice, use one of the equivalent forms, Form NJ-C, located in your tax return coupon booklets, or Form REG-C-L, located in the New Jersey Complete Business Registration Package and in *Package NJX*. Forms can also be obtained by calling 1-800-323-4400, by fax via NJ TaxFax at 609-826-4500, or from the Division’s Web site at:

<http://www.state.nj.us/treasury/taxation/>

Remember, if you terminate your business during a taxable period, a tax return covering the entire period is usually required. For example, let’s assume your business is liable for sales and use tax. If you went out of business in November of 1998, you would be required to file a fourth quarter ST-50 sales and use tax return covering October, November and December 1998. A return should be filed even if you conducted no business or did not have a tax liability.

Having a bad year?

Natural catastrophes, fires, poor economic conditions, a death or serious illness are factors which may cause a business to suspend operations for a prolonged period. If you plan to maintain your business you should continue to file any tax returns that are due during a suspension of activity.

For most taxes a “zeroed out”

return will prevent a delinquency notice from being generated. Please note, however, that zero returns are *not permissible* when filing Corporation Business Tax returns (Forms CBT-100 and CBT-100S).

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On the road again?

Traveling vendors who conduct business at flea markets or craft shows in New Jersey are required to collect and remit New Jersey sales and use tax on the sale of taxable goods or services. Many of these events are held during the warmer months or on a seasonal basis. Businesses that follow the same seasonal schedule every year should file form REG-C to request to be placed on a seasonal reporting basis. If your show schedule is sporadic, your business should remain on a regular reporting basis and you should continue to file returns covering idle periods. Businesses based outside of New Jersey should also try to determine if their visits to New Jersey are on a regular schedule that would qualify them for seasonal reporting. If a schedule can not be determined, an out-of-State business is still required to file quarterly returns for *all* periods, even those in which no visits were made to New Jersey. If you plan to end your visits to New Jersey shows, you must file a final quarterly return (Form ST-50) covering the period in which the visit to your final show took place. (Please note that an ST-51 monthly remittance cannot be used as a final tax return). Form REG-C should also be filed in order to terminate your business record. The out-of-business date should coincide with the date of your final show and fall within the period covered by your final tax return. The above actions must be taken even if you attended only one show in New Jersey and plan on never returning.

Are you an EFT filer?

Depending upon the type of tax, EFT filers are required to file certain returns. The tax returns are

necessary to reconcile the periodic payments remitted through your electronic funds transfer option. Check your EFT instruction booklet to determine which returns you are required to file. The receipt of a delinquency notice does *not* mean that your EFT payments were not credited to your account. If your records reflect that a tax return covering the delinquent period was filed timely, a copy of the return is usually sufficient to resolve the delinquency. Beginning in October 1998, EFT filers were afforded the option of filing quarterly sales and use tax returns via the Internet. This method of filing is quick and easy for any EFT filer having access to the Internet. Using the Internet to file ST-50 returns requires a Personal Identification Number (PIN). Please also note that the confidentiality of this sensitive information is, as always, a priority for the Division of Taxation; therefore the information is encrypted while being transmitted via EFT.

Are you in transition?

Your tax eligibility may change as the result of new legislation, moving your business to a new location or filing an application. Finding yourself liable for a new tax that replaces a former tax usually means you will be required to file a final return to cover the transitional period between the old and new tax. Failing to file the transitional tax return will almost certainly guarantee the receipt of a delinquency notice. Taxes that are subject to transitional filing provisions include UEZ, Salem County Sales Tax, Cape May County Tourism Sales Tax and Combined Atlantic City Luxury Tax/State Sales Tax (alcoholic beverage vendors subject to ACLUX are required to continue to file both

ST-50/51 and ST-250 even *after* the transition). □

Regional Offices

The New Jersey Division of Taxation maintains seven Taxpayer Service offices throughout the State. Each regional office is equipped and anxious to assist taxpayers and tax professionals:

1. Obtain New Jersey tax and registration forms
2. Obtain Taxation publications
3. Register a business
4. With questions about New Jersey taxes, including:
 - Personal income tax
 - Sales and use tax
 - Employer withholdings
 - Litter tax
 - Motor fuels tax
5. With questions about which income or property is subject to tax and which is not taxable
6. File business and personal tax returns
7. Notices of Adjustment
8. Make tax payments
9. Find out the status of refunds
10. Complete applications for the Homestead Rebate, Property Tax Reimbursement and NJ SAVER rebate.

continued on page 9

regional offices – from page 8

Regional offices are located in:

Fair Lawn

2208 Route 208 South
Across from Nabisco
201-791-0500

Somerville

75 Veterans Memorial Drive East
Suite 103
908-704-3362

Trenton

Taxation Building
50 Barrack Street
1st Floor Lobby
609-292-6400

Camden

One Port Center Suite 200
2 Riverside Drive
Across from the State Aquarium
856-614-2600

Newark

124 Halsey Street
Second Floor
973-648-6190

Sea Girt

2100 Highway 35
Old Mill Plaza
732-449-0201

Northfield

1915 New Road
(Route 9)
609-645-6673

Normal hours of operation are from 8:30 a.m. to 4:30 p.m., Monday through Friday except holidays.

For up-to-date information about office locations and hours, call 1-800-323-4400 (from Touch-tone phones within New Jersey) or 609-826-4400 from Touch-tone phones anywhere. □

Web Site Provides Paths to Future

The Spring issue of *New Jersey State Tax News* introduced the Division's recently renovated Web site and explored the site's *Practitioner's Path* in considerable detail. This article examines the *Home Page*, the *Director's Welcome Page*, the *Business Information Path* and *Tax Forms Now*.



Home Page

The Home Page, in addition to providing links to the four main paths, interactive online filing facilities and other important areas of the new site, contains *Hot News* articles and timely notices on current developments in New Jersey tax programs and procedures.

Director's Welcome Page

This page provides a friendly way to get to know more about the Division of Taxation, its mission, organization and functions, and about the taxes administered by this vital arm of the State Treasury. The page also offers a biography of the Division's Director, a Division organizational chart and a list of useful phone numbers.



Business Information Path

The Business Information Path allows visitors to quickly locate and access information of particular use to those who operate (or would like to start) a business in this State. Specifically, this path offers links to information about:

- The correct way to start and end a business in New Jersey
- Types of business entities



- How to register a business
- Sales and use tax
- Employer income tax and withholding responsibilities
- Billing notifications
- Filing returns electronically
- Online filing
- Online access to New Jersey forms, publications and Statutes
- Small Business Workshops
- Businesses that operate in both New Jersey and New York
- The Division's Tax Cheats Program (CATCH)

This path also provides visitors with the opportunity to browse a list of the largest judgemented taxpayers in New Jersey, access the full text archive of New Jersey court opinions, search for unclaimed property and link to other tax Web sites.

Tax Forms Now

All the information needed to access New Jersey tax forms resides at this location. Visitors can view, print and download forms with just a click of their mouse or learn how to order forms by mail, fax or phone.

NOTE: Visitors may e-mail the Division from almost any location on the new site.

In the next issue of the *New Jersey State Tax News* we will guide you down the *Kid's Path*, describe the features of the *Taxation Topics* and *Publications* menu bars and let you know what to expect when you *Take the Taxation Tour*. □

Compliance Award Program

On March 26, 1999, Director Robert K. Thompson, Deputy Director Harold Fox and Assistant Director David Gavin handed out 21 Awards recognizing Compliance Activity employees that made outstanding contributions to the Division of Taxation. Twenty employees were honored with Compliance Achievement Awards and one employee received the Compliance Exemplary Employee Award.

Compliance Achievement Awards were given to employees in recognition of specific contributions to the Division such as serving on special projects or committees, accomplishments, suggestions, dedication/loyalty, leadership, or general work ethics. The Achievement Award recipients were: Frances Zsolnay, Robert Kelliher, Gary Dallett, Carol Telford, Joe Marty, Mirabelle Schweck, Rocco Marotti, Thomas Stevens, Thomas Kilvington, Joseph Stack, Cheryl Akpu, Sarah Booker, Alyson Orbann, Cy Nelson, Robert Giannascoli, Richard Coleman, Peter Rapetti, Audrey Vervuurt, Barbara Odell-Naim, and Rebecca Chianese.

The Compliance Exemplary Employee Award was given to Sea Girt Technical Assistant Lillian Beebe to recognize her individual initiative, excellence, and most significant overall contribution to her work unit, and the Division of Taxation.

The annual Awards program is another avenue for senior Division management to recognize positive accomplishments of employees within the Compliance Activity. Nominations for either of these awards are submitted on a Com-

pliance Award Program Nomination Sheet to the Assistant Director, Compliance and an informal award ceremony is held on an annual basis. □

LOCAL PROPERTY TAX County Tax Board Members Confirmed

In 1998, the Senate confirmed 25 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Atlantic County	
Marvin E. Embry	5/18/98
Lucia McCabe	12/10/98
Bergen County	
Paul Pintel	1/12/98
Cape May County	
William R. Wilsey	6/29/98
Cumberland County	
Patrick Finley	11/09/98
Essex County	
Jack L. Wigler	12/17/98
Gloucester County	
Edith K. Patterson	10/22/98
Mercer County	
Richard J. Carabelli, Jr.	11/09/98
Joseph Constance	11/09/98
Morris County	
Bernard Tyson	1/12/98
Anthony J. Crecco	12/10/98
Ocean County	
Raymond A. Birchler	1/12/98
Richard E. Hall	2/26/98
Arnold B. Goldman	11/09/98
Passaic County	
Jay R. Schwartz	6/22/98
Matthew J. Trella, Esq.	6/22/98
Richard Mohr	6/22/98
Salem County	
Mary Lou Chollis	3/19/98
Joseph H. Davenport	10/22/98
Somerset County	
John M. Lore	1/12/98

Albert R. Palfy 2/26/98

Sussex County
Bernard R. Mitchell 6/22/98

Union County
Jeffrey A. Warsh 3/30/98
Anthony Amalfe 3/30/98
James M. Bennett 3/30/98

□

LOCAL PROPERTY TAX Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Eleven persons passed the September 26, 1998 exam and became certified tax assessors on December 22, 1998.

Atlantic County: Donald Everett Fegan, Brigantine City.

Bergen County: Douglas P. Yandolino, Lyndhurst Township.

Burlington County: Carl F. Cicali, Riverside Township.

Cumberland County: Michelle L. Behm, Lawrence Township.

Essex County: Michael Lepasky, Fairfield Township.

Gloucester County: Charles W. Abel, Jr., Monroe Township.

Morris County: M. Sue Aceto, Morris Township; Joseph S. Hiller, Florham Park Borough.

Ocean County: Eric L. Zanetti, Brick Township.

Somerset County: Daniel J. Hanrahan, Franklin Township.

Union County: Brian C. Loughrey, Westfield Town. □

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

July 1–

- Disallowed property tax deduction recipients granted an extension required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 2000 together with a notice that the completed form must be filed with the assessor by August 1, 1999 to each taxpayer whose land was assessed for tax year 1999 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 1999 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2000, for machinery, apparatus, or equipment directly used to manufacture petroleum products filed.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15–

- Assessor to file statement of taxable value of State-owned real property with Taxation Director. □

LOCAL PROPERTY TAX ***NJ SAVER***

Assistant Director Stephen M. Sylvester would like to extend a thank you to all of the assessors who assisted Property Administration staff in gathering the required information on cooperative housing corporations. Their assistance is greatly appreciated and helped make a tough task a little less daunting. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 21, 1998, World Sales, Inc., a defunct computer sales company formerly located in Freehold, and its Corporate President, Meyer Shevrin, were indicted by a State Grand Jury. The five count indictment included charges of theft by failure to make required disposition of property received, misapplication of entrusted

property and property of the government, failure to file tax returns, failure to pay or turn over taxes and misconduct by a corporate official. The charges stemmed from the failure of the corporation and Mr. Shevrin to remit New Jersey sales tax that was collected from customers during the years 1988 through 1994.

- On December 21, 1998, Harold W. Coleman, a former official of Hamilton Township, Mercer County Board of Fire Commissioners, and former treasurer of Hamilton Township Fire District 4, plead guilty to stealing more than \$700,000 of the district's money and failure to pay in excess of \$55,000 in New Jersey gross income tax.

- On December 23, 1998, as a result of a cigarette tax investigation in Hudson County, three individuals were charged with numerous counts of possession of contraband cigarettes, no consumers license, transporting contraband cigarettes, no invoices and failure to file sales tax returns. 130.0 cartons of Virginia stamped and unstamped cigarettes were seized in this case. In March 1999, the

defendants plead guilty to the charges and have been fined.

- In December 1998, the Division of Taxation's Office of Criminal Investigation and the Cumberland County Narcotics Task Force executed search warrants which led to numerous arrests for selling and trafficking in contraband cigarettes. 40.7 cartons of contraband cigarettes

continued on page 12

criminal enforcement – from pg. 11

were seized in the investigation, some of which bore counterfeit NJ cigarette tax stamps. Each subject arrested faces numerous charges including theft, possession/receiving stolen property, promoting gambling, possession of an unlawful weapon (firearm) and converting food stamps to other property.

- On January 15, 1999, Anita Karbett, a Camden County resident, entered a guilty plea to three counts of an indictment charging her with conspiracy, theft by deception and failure to pay New Jersey gross income tax. The charges arose from Ms. Karbett's actions while serving as an office manager for a chiropractic office and involved numerous instances of insurance fraud. Sentencing in this matter is pending.
- On February 8, 1999, in Superior Court in Camden County, Samuel F. Daley, 40, of Audubon, entered a guilty plea to one count of failing to file State tax returns in connection with his business, Emergency Support Services, which sold and serviced ambulances and emergency vehicles in Audubon from 1993 to 1997. On March 19, 1999, Mr. Daley was sentenced to two years probation and ordered to pay restitution in the amount of \$6,125 in sales tax and \$1,139 in income tax withheld in connection with his defunct business. This case was investigated jointly by the Division of Taxation's Office of Criminal Investigation and the Camden County Prosecutor's Office, and was prosecuted by the Camden County Prosecutor's Office.
- Amin Jarhoud of Bronx, NY, plead guilty on February 16, 1999, in Carneys Point Twp. Municipal Court to one count of possession of contraband cigarettes. Mr. Jarhoud was transporting 633 cartons of contraband cigarettes from Virginia to New Jersey. The Court imposed fines and fees of \$3,654.
- On February 22, 1999, a Monmouth County Grand Jury indicted Stanley W. Hudson, 52, of Monmouth Beach, on four counts of failure to file State income tax returns for 1993 through 1996, and one count of failure to pay income tax in the amount of \$24,928.48 on \$635,985.15 in gross income. Each of these counts is punishable by a fine of up to \$7,500 and three to five years in prison. In the same indictment, Mr. Hudson, who was in the business of selling jewelry on consignment, was charged with theft of approximately \$102,800 in jewelry from a client, a second degree crime punishable by a fine of up to twice the amount stolen and five to ten years in prison. This case was investigated jointly by the Monmouth County Prosecutor's Office and by the Division of Taxation's Office of Criminal Investigation, and was presented to the Grand Jury by the Monmouth County Prosecutor's Office.
- On March 12, 1999, Manuel D. Grilo, a resident of Nutley, was sentenced to seven years in state prison after having plead guilty to misapplication of entrusted property relating to the collection of, and failure to remit, New Jersey sales tax. Mr. Grilo was the President of Autobanc of New Jersey, Inc., a used car dealership located on Route 22 in Branchburg Township, NJ. During the years 1995 and 1996, the auto dealership and Mr. Grilo collected in excess of \$110,000 in New Jersey sales tax from customers and failed to remit the moneys as required by law. Upon being sentenced, Mr. Grilo was taken into custody to begin serving the seven year term of incarceration.
- On March 12, 1999, the Division of Taxation's Office of Criminal Investigation, along with the Middlesex County Prosecutor's Office and Perth Amboy Police Department executed a search warrant in Perth Amboy, NJ. As a result of this action the following items were seized: 57,962 counterfeit NJ cigarette tax stamps valued at \$46,369.60, 3,722.7 cartons of contraband cigarettes, 943 New York State/City legitimate stamps, 8,250 cigars of various brands and paraphernalia involved in attaching the counterfeit indicia. Special Agents arrested three subjects. Numerous criminal violations of the Cigarette Tax Act have been filed.
- On March 19, 1999, in Camden County Superior Court, Steven H. Willans, 33, of Barrington, NJ, plead guilty to one count of failing to file personal income tax returns for 1994 through 1997, and failing to file sales tax returns for the years 1992 through 1995 with the intent to avoid payment of \$7,609 in connection with Entertainment Emporium, a retail computer store Mr. Willans operated in Haddon Heights, NJ. Mr. Willans also plead guilty to one count of embezzling \$77,000 from the Barrington Ambulance Association,

continued on page 13

criminal enforcement – from page 12

a volunteer organization of which he was the treasurer. Under the terms of his plea agreement, Mr. Willans will be ordered to make restitution to the Division of Taxation and will be sentenced to five years in prison. This case was investigated jointly by the Barrington Police Department, the Camden County Prosecutor's Office, and the Division of Taxation's Office of Criminal Investigation, and was prosecuted by the Camden County Prosecutor's Office. In a related matter, Mr. Willans' wife, Katrina Willans, 31, also of Barrington, was ac

- cepted into the Camden County Pre-Trial Intervention (PTI) Program on the condition that she file delinquent 1993 through 1997 New Jersey personal income tax returns within one year.
- Fifty-seven charges were filed in municipal court on nine cases for violating the cigarette tax law including possession of 4,211.5 cartons of contraband cigarettes, valued at \$126,345. □

Tax Briefs

Corporation Business Tax Dissolution Without Assets —

The Division responded to an inquiry as to the treatment of corporations that are dissolved without assets pursuant to N.J.S.A. 14A:12-4.1 and whether they are absolved of liability for any back taxes incurred prior to dissolution.

The taxpayer was informed that dissolution without assets may be made by a corporation that has ceased doing business and does not intend to recommence doing business provided that no assets were distributed during the past 24 months and that there are no assets left to be distributed.

This procedure does not require the filing of a tax clearance certificate with the Office of Commercial Recording (formerly in the Secretary of State's Office), but it also does not exempt the taxpayer from filing New Jersey corporation business tax returns and paying tax up to the date of dissolution.

The minimum tax is due even though the corporation is inactive. N.J.S.A 14A:12-4.1 will not permit corporations to evade any State tax liabilities that would otherwise be paid.

Sales & Use Tax

Resale Certificates — For New Jersey sales tax purposes, liability for the tax accrues when the merchandise is delivered to the customer. Delivery includes being picked up by the customer or his agents or being delivered to a location specified by the customer. Therefore, unless a specific exemption applies, the vendor must collect and remit sales tax if the customer picks up the merchandise in New Jersey or if the vendor (or a common carrier) delivers the merchandise to the customer or his designated recipient in New Jersey.

If the customer is an individual or entity in the business of reselling the merchandise it buys from the New Jersey vendor, it will be entitled to a resale exemption, provided that it gives the vendor appropriate documentation to support the claimed exemption. (Note: A contractor who purchases materials for installation onto his customers' realty is deemed to be the retail purchaser of the materials and may *not* claim a resale exemption.) If the customer is a New Jersey vendor, who will pick up the merchandise in New Jersey or have it delivered to a New Jersey location, the customer should use a

continued on page 14

Enforcement Summary Statistics

First Quarter 1999

Following is a summary of enforcement actions for the quarter ending March 31, 1999.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	2,103	• Seizures	30
Total Amount	\$47,490,806	• Auctions	3
• Jeopardy Assessments	203	• Referrals to the Attorney General's Office	308

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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properly completed Resale Certificate (Form ST-3) to support the exemption. If the customer picks up the merchandise in his own vehicle, the property is deemed to be “delivered in New Jersey,” even though it may be taken to a location outside the State.

If the customer is an out-of-State vendor who has no offices, warehouses, stores, employees, repair or service activities in this State, and who has not voluntarily chosen to register with the New Jersey Division of Taxation, the Resale Certificate for Non-New Jersey Vendors (Form ST-3NR) must be used if the customer is picking up the merchandise from the vendor in New Jersey. If the customer is a vendor who asks the seller to ship the merchandise directly to his (the purchaser's) customer in New Jersey, his purchase will be treated as one for “resale.” The customer should use an ST-3 if he is a New Jersey vendor. If he is a non-New Jersey vendor, he may use any of the following: (1) New Jersey Form ST-3NR, (2) his home state's resale certificate, or (3) the Multi-jurisdiction Uniform Sales and Use Tax Certificate published by the Multistate Tax Commission.

Sale of Graphic Art — Under c.99, P.L. 1999, the sale of adver-

tising services in New Jersey (except direct mail processing services) is exempt from sales tax on and after November 1, 1998. Graphic design is no longer taxable as an advertising service; however, if the object of the transaction is the transfer of tangible personal property to the customer, the transaction is for the sale of tangible property which is still subject to tax under N.J.S.A. 54:32B-3(a). For example, the transfer of a disk that contains graphic design for use by a printer in the production of printed material for sale is a situation where the object of the transaction is deemed to be tangible personal property rather than an advertising service.

There are several exemptions that may apply to the sale of tangible property depending on the circumstances. For instance, the sale of property to a purchaser for resale as such, the sale of property to a commercial printer (or the printer's customer) for use in printing property for sale, and the delivery of property by the vendor to the purchaser outside of New Jersey, are transactions that are entitled to exemption.

Leasing; Excess Mileage Charge — N.J.S.A. 54:32B-2(bb)(2) of the Sales and Use Tax Act imposes the lease tax on the “amount of the total of the lease payments attributable to the lease of such property.” The tax is due from the lessor at the time an extra payment, such as an excess mileage charge, is received from the lessee and must be remitted to the State by the lessor. The lessor may, at the lessor's option, ask the lessee for reimbursement of the tax expense. The charge to the lessee is usually based on the terms of the lease contract between the parties.

Tour Operators — The Division received an inquiry regarding the sales and use treatment of travel arrangements made by tour operators. The tour operator explained that it makes arrangements for hotel stays, restaurant meals, transportation, and admissions to attractions for various groups of affiliated persons (e.g., clubs). The tour operator is not paid by the hotels, restaurants, etc. to act as their agent.

The fact that a tour operator makes travel arrangements only for preformed groups and not for individuals does not affect the sales and use tax treatment of its purchases and sales. The travel service is deemed to be a nontaxable service. Therefore the amounts that the tour operator charges its clients for trips are not subject to sales tax, even if the New Jersey meals, New Jersey hotel charges and New Jersey admissions are separately stated on invoices to customers.

The tour operator company, as the professional service provider, is treated as the “retail purchaser” of the meals, hotel reservations and

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admission tickets that it obtains for its group clients. Therefore the company must pay tax on the hotel reservations, meals and admissions in New Jersey, and may not claim a resale exemption. In addition, the tour operator cannot use a customer's Exempt Organization Certificate in order to claim exemption from the tax that hotels, restaurants and entertainment facilities are required to charge the tour company on its retail purchases. □

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In Our Courts

**Local Property Tax
Non-profit Corporation Not
Exempt from Property Tax as an
Historic Site** – *Black United Fund
of N.J., Inc., v. City of East
Orange*, decided July 20, 1998,
Tax Court of N.J.

Black United Fund of N.J., a non-profit 501(c)(3) Federal income tax exempt corporation, was not property tax exempt as an historic site under N.J.S.A. 54:4-3.52, as Green Acres per 54:4-3.64, or as a charitable organization according to 54:4-3.6 on or before the statutory October 1, 1995 pretax year assessment/exemption date for tax year 1996.

In reviewing the claim of historic site, the New Jersey Tax Court recalled the 1991 State Supreme Court's finding in *Town of Morristown v. Woman's Club of Morristown*, that, unlike other exemptions, historic exemption had no actual and exclusive use criteria but required only ownership by a nonprofit corporation and DEP certification as an historic site. Although organized under New Jersey law as a Title 15 nonprofit corporation in August 1980 and despite a Deed of Historic Preservation Restriction recorded on May 29, 1996 by the DEP, historic site designation was not actually issued by DEP until July 8, 1997. The Tax Court referred to *Ironbound Educational and Cultural Center, Inc. v. City of Newark*, in which the 1987 State Superior Court denied exemption to an historic site determined as such subsequent to its respective October 1 pretax year assessment date. The Tax Court also held that the listing in 1980 of the United Fund's mansion on the National Register of Historic Places and

receipt of State Historic Preservation Officer Certification were Federal designations and so did not fulfill the exemption requirements of N.J.S.A. 54:4-3.52.

Considering the Green Acres claim, again, as above, the prerequisite DEP certification of public, recreational, conservational use was not obtained until after October 1, 1995 and, therefore, was not applicable to tax year 1996. In rejecting the claim for Green Acres, the Court reminded us that DEP is not empowered to grant Green Acres exemption, rather its authority is to certify qualifying public purpose.

Finally, the Tax Court looked at the claim for charitable purpose exemption. It noted the eligibility conditions of 54:4-3.6, as previously summarized by the State Supreme Court, included being organized exclusively for exempt purpose; used actually and exclusively for exempt purpose; and operated and used in a nonprofit capacity. The Tax Court utilized *Planned Parenthood of Bergen County, Inc. v. Hackensack City*, 12 N.J. Tax 598, 610 n.6 (Tax Court 1992), aff'd, 14 N.J. Tax 171 (App. Div. 1993) where "organized" was ruled to pertain only to the "entity's organizational documents, its corporate charter" as the guide in deciding if the Black United Fund was structured exclusively for exempt purpose. In drawing its conclusion, the Court also reviewed *1711 Third Ave., Inc. v. City of Asbury Park*, 16 N.J. Tax 174, 182 (Tax Court 1996). It found that United Fund's certificate of incorporation and bylaws, both of which stated purposes were to create a fund to distribute grants to other Federal tax exempt

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in our courts – from page 15

organizations supporting the African American community, while commendable, were not organized exclusively for exempt purposes under 3.6. Though the Fund additionally indicated it operated exclusively for charitable, religious, educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code. This Court reiterated earlier courts in that “Federal income tax exemption standards have no relation to state law governing property tax exemption.” That qualification alone is not sufficient to meet the standards of the New Jersey statute. See *Paper Mill Playhouse v. Millburn Twp.*, 95 N.J. 503, 529 n. 2, 472 A.2d 517 (1984) & *City of Trenton v. State*, 65 N.J. Super. 1, 11, 166 A.2d 777 (App. Div. 1960).

Sales and Use Tax

Hotel’s Resale of Amenities – *Adamar of New Jersey t/a Tropicworld Casino & Entertainment Resort v. Director, Division of Taxation*, 17 N.J. Tax 80, (Tax Ct., 1997) *affirmed*, Appellate Division No. A-2250-97T2 (February 5, 1999).

In consolidated cases, plaintiff hotels sought sales tax refunds, under the sale-for-resale exemption, on purchases of various hotel amenities it provided to its guests including writing pads, stationery, postcards, pens, matches, sewing kits, shoeshine cloths or pads, soap, shampoo, conditioner, shower caps, lotion, shower gel and mouthwash.

On appeal, the Appellate Division affirmed the Tax Court’s holding that the amenities were not sold to guests and therefore did not qualify for the resale exemption. The Tax Court found that (1) the

amenities are not sold “as such” because they are “inseparably connected” to the services provided by the hotel, (2) the amenities are not sold as “a component part of a product produced for sale” because the amenities are not incorporated into the room and the room is not a product produced for sale, and (3) the sales tax imposed on the rental of a hotel room is a tax on the rental of the room, not the resale of amenities. The reasoning underlying this decision is that the “true object” concerning a room rental is the use of the room, not the acquisition of amenities. □

In Our Legislature

Corporation Business Tax/ Gross Income Tax

Neighborhood and Business Child Care Tax Incentive Program — P.L. 1999, c.102 (signed into law on May 6, 1999) provides new tax credits to certain corporations based on their expenditures for child care facilities and also allows certain unincorporated businesses to fully deduct such expenditures for gross income tax purposes.

A corporation that is a member of a small/medium business child care consortium will be allowed a credit equal to 15% of its expenditures on child care center physical plant or facilities and a credit of 10% of its contributions, in cash or in kind, to a sponsor of a neighborhood-based child care center. The credit will apply to privilege periods ending on or after July 31, 1999 and before July 1, 2002.

An unincorporated business that is a member of a small/medium business child care consortium will be allowed to deduct, for gross income tax purposes, the amount of their expenditures on child care

center physical plant or facilities, as well as the amount of their contributions, in cash or in kind, to a sponsor of a neighborhood-based child care center. These deductions are extended to members of partnerships or associations in proportion to the partner’s share of the partnership expenditure or contribution. The deduction will apply to taxable years beginning on or after January 1, 1999 and before January 1, 2002.

Gross Income Tax

State Tuition Program Accounts, Education IRAs — P.L. 1999, c.116 (signed into law on May 21, 1999) allows earnings of qualified state tuition program accounts (e.g., NJBEST accounts) and educational individual retirement accounts to be deferred from New Jersey gross income until the earnings are distributed and excludes from income qualified distributions from qualified state tuition program accounts that are used for qualified higher education expenses.

This act applies to taxable years beginning on or after January 1, 1998.

Checkoff for Korean Veterans’ Memorial Fund — P.L. 1999, c.92 (signed into law on May 3, 1999) allows gross income tax filers to contribute to the Korean Veterans’ Memorial Fund by designating a portion of their refund or by making a donation with their gross income tax return. This act applies to tax years beginning on or after January 1, 2000.

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in our legislature – from page 16

Local Property Tax

Extension of Time for Filing Property Tax Reimbursement Applications — P.L. 1999, c.67 (signed into law on April 16, 1999) extends the deadline for filing property tax reimbursement applications to April 15, 1999. The extension applies only to tax year 1998.

NJ SAVER and Homestead Rebate Act — P.L. 1999, c.63 (signed into law on April 15, 1999) establishes a new direct property tax relief program for New Jersey homeowners and expands the existing homestead property tax rebate for certain tenants.

The NJ SAVER component of the statute provides for an annual rebate to be issued to qualified New Jersey residents who own, occupy and pay property taxes on a home in this State which was their principal residence as of October 1 of the previous year. Residents of condominiums, co-ops and continuing care facilities may also be eligible for a NJ SAVER rebate.

The program will be phased in over five years, and will provide maximum rebates averaging about \$600 when fully implemented. Rebates will be phased in at the rate of 20% of the maximum for 1998, 40% for 1999, 60% for 2000, etc. Because the amount of the NJ SAVER rebate is derived by multiplying the first \$45,000 of the

qualified property's equalized value by the equalized school tax rate for the municipality in which the home is located, actual rebate amounts will differ for each municipality.

Homeowners who qualify for both the homestead rebate and the NJ SAVER rebate will receive whichever rebate provides the greater benefit.

Tenants are not eligible for NJ SAVER rebates. However, this legislation extends homestead rebate eligibility to tenants under 65 who are not blind or disabled provided that their income does not exceed \$100,000. Formerly such tenants qualified for a \$30 homestead rebate only if income was \$40,000 or less. Under the new law, homestead rebates for these tenants will be \$30 for tax year 1998, \$40 for tax year 1999, \$60 for tax year 2000, \$80 for tax year 2001 and \$100 for tax year 2002.

Miscellaneous

Nonofficial Examination of State Tax Records — P.L. 1999, c.42 (signed into law on March 12, 1999) provides that any person violating the confidentiality provisions of R.S. 54:50-8 of the State Tax Uniform Procedure Law by examining records or files for any reason other than one necessitated by the performance of official duties shall be guilty of a disorderly persons offense. Persons who divulge, disclose or use confidential

tax information will be guilty of a crime of the fourth degree.

Whenever records and files are used in the prosecution of a person for violating the provisions of R.S. 54:50-8, the defendant shall be given access to said records and files. The court shall review such records and files in camera and that portion of the court record containing the records and files shall be sealed by the court. Chapter 42 became effective upon enactment.

Shore Protection Fund — P.L. 1999, c.71 (signed into law on April 28, 1999) increases the amount annually credited to the Shore Protection Fund to \$25 million. This act took effect immediately and applies only to fiscal years beginning after enactment.

Aid for Challengers of the NYC Personal Income Tax — P.L. 1999, c.118 (signed into law on May 27, 1999) authorizes the New Jersey Attorney General to represent, or to file an action on behalf of, affected New Jersey citizens who wish to challenge the repeal of the New York City personal income tax for residents of New York State who reside in places other than New York City, but not for New Jersey residents who earn income in New York City. Appropriates \$95 million for expenses incurred in providing such assistance. □

tax calendar

july

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

July 12

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

July 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending March 31

continued

July 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

July 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

continued

July 20 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Whole-sale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

July 26

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

July 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly return

august

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

August 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending April 30

continued

August 16 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

August 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special

fuels for sales and/or use in the previous month

- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

August 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Whole-sale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

August 25

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
9	26	27	28	29	30		

September 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

September 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending May 31
- continued*

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return
- September 15 - continued*

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

September 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
 - GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
 - GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
 - MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
 - SCC-5** Spill Compensation and Control Tax—Monthly return
- continued*

September 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 27

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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NEW JERSEY DIVISION OF TAXATION
 STATE TAX NEWS
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from the director's desk

Tax Season Assistance

As the recap below shows, the Division of Taxation provided assistance to hundreds of thousands of New Jersey taxpayers during the tax season from January 1, 1999 through April 15, 1999.

❖ **Call Center**

Calls answered—296,000

❖ **NJ TaxFax**

Calls received—49,000

❖ **ARIS (Automated Refund Inquiry System)**

Calls received—166,700

❖ **HR (Homestead Rebate) InfoLine**

Calls received—118,000

❖ **TaxTalk (Automated information)**

Calls received—46,300

❖ **Automated Forms Request System**

Calls received—34,500

❖ **Taxation Home Page**

Visits to Division's World Wide Web site—2,552,500

❖ **Taxation Building Lobby**

Taxpayers assisted—8,600

❖ **Regional Offices**

Taxpayers assisted—43,500

New Jersey State Tax news

A Quarterly Newsletter

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Volume 28, Number 1
Spring 1999



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- Division Organization Chart

Director Thompson Sworn In



Treasurer James A. DiEleuterio, Jr. administers the oath of office to Robert K. Thompson, as Director of the Division of Taxation while Carmela Spedding (center) and the Director's daughter, Rebecca Thompson (right), look on.

New Call Center

In keeping with the Division's overall goal of providing the best possible taxpayer services to both the tax practitioner community and the public at large, the Tax Hotline, now called the New Jersey Taxation Call Center, recently completed the first phase of a major technology upgrade project. This first phase consisted of the acquisition and implementation of a new, state-of-the-art, telephone system. The new system both enhances the Call Center's functionality and increases its capacity to handle telephone inquiries.

The Call Center telephone system now provides callers with a menu

continued on page 2



important phone numbers

Call Center	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

new call center - from page 1



Taxpayer Services phone agent Carolyn Philhower demonstrates the Division's new Call Center equipment which features many of the latest innovations in both computer and communications technology.

of possible choices. The new menu allows the Call Center to connect a caller with a representative who is the most capable of answering their inquiry. Also, the new system prompts a caller with an account-related inquiry to enter their Social Security Number. This feature allows a representative to access a caller's account as soon as the call is connected. The benefit of this feature is to reduce the amount of time that a caller will have to wait while their account is accessed. Another system feature allows a caller to receive Corporate Public Records general information, a new function of the Division of Taxation. Finally, the new system offers a Spanish speaking caller the opportunity to speak with a representative who can converse fluently in the Spanish language.

The new telephone system increases the number of Call Center representatives by almost 50 percent. This increase will allow the Call Center to answer a larger volume of calls during peak periods. Also, the increased capacity will result in shorter hold times for the majority of callers.

The Call Center technology upgrade is a prime example of the Division of Taxation's commitment to providing top quality taxpayer services to the public. By employing cutting edge technology, the Division continually strives to make compliance with the tax laws of the State of New Jersey as easy and as painless as possible.

You can reach the Call Center by calling its main telephone number, 609-292-6400. □

Will this be your last issue of the
New Jersey State Tax News ?

See article on page 8 and the subscription renewal form on page 19.

New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:

Robert K. Thompson

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PTR-1 Extension

The filing deadline for the 1998 Property Tax Reimbursement Application, Form PTR-1, has been extended to April 15, 1999. By extending the deadline, every eligible applicant will be given the opportunity to file an application to effectively freeze property taxes at their 1997 level. However, those who file their applications after March 15, 1999 may not receive their checks with the first mailing due to be mailed by July 15, 1999.

For further information, or to obtain an application, call the Property Tax Reimbursement Hotline at 1-800-882-6597. □

New Jersey Offers PC Filing

The New Jersey Division of Taxation is proud to announce the introduction of NJ PC File. This newest method to file paperless income tax returns is available free of charge from the Division of Taxation, and allows taxpayers to prepare and file their New Jersey returns from a personal computer. "We anticipate that a majority of resident taxpayers will be able to file their 1998 New Jersey income tax returns with NJ PC File," said State Treasurer James A. DiEleuterio, Jr.

The NJ PC File software is available for downloading from the Division's web site at:

<http://www.state.nj.us/treasury/taxation/>

To use NJ PC File, taxpayers simply download NJ PC File software from the Division of Taxation's web site and then use their Windows 95/98 based PCs to complete their returns and transmit the information to the Division by modem. Taxpayers can PC File

their New Jersey returns 24 hours a day, 7 days a week.

Robert K. Thompson, Division of Taxation Director added, "NJ PC File offers taxpayers another fast, easy and secure "paperless" method for filing their State tax returns. We estimate that as many as three million taxpayers will be able to file online and in most cases, receive their refunds within two weeks."

NJ PC File requires taxpayers to enter their individual PIN number during return preparation. Taxpayers who received a 1998 Form NJ-1040 booklet with their name and address preprinted on the face of the fold-out insert will find their NJ PC File PIN number on the same panel as their preprinted label. Those taxpayers who do not have a preprinted label will still be able to use NJ PC File by entering last year's refund or balance due amount as their PIN number. NJ PC File may only be used to file original 1998 New Jersey Resident Income Tax Returns. Amended returns may not be filed with NJ PC File.

Those who owe tax to New Jersey can still use NJ PC File to prepare and transmit their returns, and then mail their payment to the Division.

Certain taxpayers will not be able to use NJ PC File: part-year residents, nonresidents, those who did not file a 1997 NJ-1040 resident return, those who are claiming a credit for taxes paid to other jurisdictions, those who have business income, or those who have income, losses, deductions or exclusions which require them to include attachments are not eligible. In addition, taxpayers who file a Federal application for

automatic extension may not use NJ PC File unless they also file Form NJ-630.

Taxpayers who have questions about NJ PC File can contact the Division's Call Center at 609-292-6400. Information on NJ PC File also appears on the Division of Taxation's home page at:

<http://www.state.nj.us/treasury/taxation/>
□

Pay by Credit Card

New Jersey income tax payments can now be made by credit card announced State Treasurer James A. DiEleuterio, Jr. Taxpayers can call 1-888-2PAYTAX, toll free, and use an American Express, MasterCard or Discover/Novus credit card to pay the tax due with a 1998 personal income tax return, or to make a payment of estimated tax for 1999. Payments cannot be made with a Visa card.

"People are using credit cards for most of their financial transactions today, from buying groceries at their local supermarket to making purchases over the Internet," said the Treasurer. "We want to make it possible for them to pay their New Jersey income tax this way too," he explained.

Taxpayers can make payments of 1998 New Jersey income tax, or estimated payments for 1999, whether they file a resident return, Form NJ-1040, nonresident return, Form NJ-1040NR, or fiduciary return, Form NJ-1041. Taxpayers who make their income tax payments by credit card on or before the April 15 due date, but who request an extension of time to file their New Jersey income tax

pay by credit card — from page 3

return, must still file an extension request with the State.

The credit card payment system can only process tax payments that are under \$100,000. Payments of \$100,000 or more must be made by check or money order. Taxpayers will be charged a convenience fee, based on the amount of the tax payment, when paying by credit card. The convenience fee ranges from a minimum of \$3.00 for any payment under \$100, up to \$2,200 for tax payments that are \$95,000 or over, but less than \$100,000.

Taxpayers can pay by credit card no matter how the 1998 return was filed — whether in traditional paper form or using one of New Jersey's "paperless" filing methods. Those taxpayers who have New Jersey tax due and who Tele-File their returns, or those who use either the new NJ PC File software or a commercial software package to prepare and transmit their New Jersey returns, can pay by credit card and eliminate the need to mail anything to the Division of Taxation.

For more information on New Jersey's credit card payment program, taxpayers may contact the Call Center at 609-292-6400. □

Year 2000 Update

Y2K is nearly here and while preparations for readiness are underway, managers throughout State Government, are concerned enough to ask "Are we really ready?" This issue is of such magnitude that the Governor's office is overseeing the Year 2000 compliance readiness efforts. Toward that end, the Division has been gathering information to identify which systems or services are at risk and taking the steps necessary to make them compliant.

To meet the challenge of the Y2K problem for the Division's mainframe systems, the Office of Information Technology (OIT), in conjunction with the Division's Office of Technical Support, has been working to make these systems Y2K compliant. Renovations have been made to both our case tracking system, TULIPS, and our Generic Tax System (GENTS).

Testing has also been performed on various Division PCs to determine if the hardware is Y2K compliant. Two tests were done: a real time test to check the

transition from 1999 to 2000, and a test to insure that the new date was retained after rebooting. PCs with a 386 processor or below did not pass the transition test, however, all machines passed the reboot test. Through recent PC acquisitions and upgrades to existing PCs, it is anticipated that all PCs within the Division will be Y2K compliant before the end of the year.

Emphasis for now has been placed on the applications designed on standalone PCs or PC-based networks. Each area prepared Assessment Worksheets for applications in their respective areas. These forms supplied information on the operating system, language or database and interfaces specific to an application.

Based upon the scope of work required, systems are being retired, replaced with new software and/or hardware or renovated to achieve Y2K compliance. Applications are being converted or revised by in-house staff responsible for the maintenance of those programs.

continued on page 5

Ride the new wave...

<http://www.state.nj.us/treasury/taxation/>



year 2000 update – from page 4

There are estimates that suggest 20% of businesses in America will cease to operate because they were not prepared for Y2K. The Division of Taxation is placing a high priority on ensuring that our tax systems will be fully operational come the year 2000 and beyond. □

CORPORATION TAX *Investment Tax Credit*

P.L. 1997, c.445, which was signed into law on January 15, 1998, provides a credit against the corporation business tax for certain investments made in small, New Jersey-based, high-technology businesses, and supplements P.L. 1945, c.162 (N.J.S.A. 54:10A-1 et seq.).

A taxpayer shall be allowed a credit against the tax in the amount equal to 10% of the qualified investment made by the taxpayer during each of the three years beginning on or after January 1, 1999, in a small, New Jersey-based, high-technology business, up to a maximum investment made by the taxpayer.

- This credit is taken after all other corporation business tax credits are taken and shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum.
- The credit allowable pursuant to this section shall be applied in the order of the credits' tax years.
- A credit shall not be allowed pursuant to Section 1 of P.L.

1993, c.175 (N.J.S.A. 54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includible in the calculation of a credit allowed under this section.

- Any unused credit may be carried over for fifteen years up to a maximum of \$500,000. However, a taxpayer may not carry over any amount of unused credit to a tax year during which a corporate acquisition, with respect to which a taxpayer was a target corporation, occurred or during which the taxpayer was a party to a merger or consolidation.

DEFINITIONS:

Advanced computing means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

Advanced materials means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

Biotechnology means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and subtechnologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

Electronic device technology means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

Environmental technology means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

Medical devices technology means a technology involving any medical equipment or product (other than a pharmaceutical product).

Pilot scale manufacturing means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotech-

continued on page 6

Interest 10.75% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1999 is 10.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%

investment tax credit — from pg. 5

nology, electronic device technology, environmental technology, and medical device technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if total gross receipts, as calculated pursuant to section 6 of P.L. 1945, c.162 (N.J.S.A. 54:10A-6), from such sales of the product, service or process do not exceed \$1,000,000.

Qualified investment means the non-refundable investment, at risk in a small, New Jersey-based, high-technology business, or cash that is transferred to the small, New Jersey-based, high-technology business by a taxpayer that is not a related person of the small, New Jersey-based, high-technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclu-

sive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein.

Qualified research expenses means qualified research expenses as defined in section 41 of the Federal Internal Revenue Code of 1986, 26 U.S.C. 41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology.

A taxpayer claiming this credit will need to request and file Form 308 with its Corporation Business Tax Return. □

GROSS INCOME TAX 1998 Roth IRA Conversion Election

Taxpayers who converted an existing IRA to a Roth IRA before December 31, 1998 and elected to recognize all the income in 1998 rather than over a four-year period for Federal tax purposes, are not required to make the same election for New Jersey gross income tax purposes. Taxpayers may make a separate election for New Jersey tax purposes and report the income over a four-year period, even though they elect to report all the income in 1998 for Federal tax purposes.

Taxpayers who elect to report the income over a four-year period for Federal tax purposes, however, must also report the income over a four-year period for New Jersey tax purposes.

Federal Form 8606 must be attached to the 1998 New Jersey gross income tax return as verification of the Federal election.

If taxpayers qualify under the Federal rules to convert an existing IRA to a Roth IRA, they also qualify for New Jersey income tax purposes. The income limitations imposed at the Federal level are applicable for New Jersey gross income tax purposes.

Example: A taxpayer, in calculating his conversion eligibility, has the following income for 1998, **not** including the Roth IRA conversion:

Federal AGI (before Conversion)

Wages	\$ 80,000
Interest	10,000
Capital Gains	12,000
Partnership Loss	(17,000)
Total	\$ 85,000

New Jersey Income

Wages	\$ 80,000
Interest	10,000
Capital Gains	12,000
Partnership Loss	-0- *
Total	\$ 102,000

* A loss in one category of income cannot offset income in another category for New Jersey gross income tax purposes.

The taxpayer in this example qualifies to convert his existing IRA to a Roth IRA since, for Federal income tax purposes, he does not exceed the income limitation of \$100,000. The amount of income realized upon conversion is not considered. As the example demonstrates, conversion eligibility for New Jersey gross income tax purposes is based solely upon Federal eligibility, even if 1998 taxable New Jersey income exceeds \$100,000. □

Pay Your NJ Income Taxes By Credit Card



Call:

1-888-2PAYTAX

For more information:

<http://www.state.nj.us/treasury/taxation/>
or
<http://www.state.nj.us/treasury/revenue/>

DIVISION OPERATIONS

New Web Look, Same Location

On February 5, 1999, the New Jersey Division of Taxation unveiled its newly renovated website. The Site has been redesigned to encompass all aspects of the Division, while being web-friendly and enjoyable to use. Changes include the addition of various links within the website. Taxpayers may now view a variety of information, from New Jersey's Statutes and the opinions of New Jersey's courts, to advice on common billing questions and errors with a click of their mouse.

Additionally, the Site now has improved e-mail and an "interactive" organizational chart. In addition to the ability to activate a specific branch or activity for a summary of functions and responsibilities, the improved organizational chart now includes various telephone numbers for Division branches and sections. Also new to the Site is **Hot News**. *Hot News* houses the most current new topics to hit the Division. Currently, *Hot News* is focusing on

- Filing methods (including NJ TeleFile, the new NJ PC File and online filing of Form ST-50); and
- Information on billing notices commonly received by taxpayers.

The most exciting of the Site's new features is a four-path system that guides individuals to the area which best addresses their informational needs. This feature will eliminate the need to scroll

through information that might not be of interest to the individual. There is a path for **practitioners**, one for **businesses**, one for **children** and one for **everyone else**. This issue will explore the Practitioners' Path and give a general overview of the menu bar located on the left-hand side of the Web Page. Subsequent issues of the *New Jersey State Tax News* will explore the remaining three paths and offer a more in-depth look at the menu bar.



Practitioners' Path

The Practitioners' Path (or page) is comprised of two menus, *Current Updates* and *Other Information*.

Current Updates — This offers updates on filing methods, new tax information, and current Division programs and notifications. As in *Hot News*, *Current Updates* features information on PC filing, TeleFiling, and filing certain Division forms online, as well as electronic filing. In an effort to help ascertain the most effective and efficient method of filing, various methods and their qualifications are defined. This menu also contains *What's New in Taxes*. Information here is available in table format (sorted by date) for easy reference. Specific columns may be activated for additional information and publications. *Package NJX* and sample bills may be viewed in this menu of the Practitioners' Path. Individuals have the ability to activate an area of the sample bill to receive specific information relating to their selec-

tion. Included is the New Jersey Income Tax Resident Notice, Sales and Use Tax Notice, Corporation Business Tax Notice and notices for Gross Income Tax Employer Weekly Remitters.

Other Information — Practitioners may access everything from the Division's Technical Bulletins and publications to a complete listing of regional offices and their telephone numbers. Additionally, links have been provided for easy access to other tax websites, such as the Internal Revenue Service, the Division of Revenue and the Federation of Tax Administrators, which contains direct links to forms for other states.

If you can't find what you need through the Practitioners' Path, simply use the menu bar located on the left-side of the Web Page for easy access to another area of the Division's site.



Selecting the New Jersey icon brings you back to the Division's home page. You may also select the Director's welcome from this menu bar. *Tax Forms Now* and *Publications* are shortcuts for ordering and viewing forms and publications. You may also view *Taxation Topics* or *Take the Taxation Tour*. *Unclaimed Property* may be accessed from this menu, as can *Information for Seniors*. Lastly, if you can't locate what you are looking for, *Search Our Site!* Look for the Business Path, the Home Page, the Director's Welcome and tax form information in the next issue. □

GROSS INCOME TAX
K-1 Attachment
with Returns

Taxpayers with investments in partnerships and S Corporations or with income derived from estates or trusts receive New Jersey K-1s and/or Federal K-1s, reporting amounts of income or loss at year end. In N.J.A.C. 18:35-1.3(g), *Partner filing requirements*, the regulation specifies that copies of K-1s shall be included with the New Jersey individual tax returns.

Following the publication of an article in the fall 1998 issue of the *New Jersey State Tax News* listing K-1s as necessary items to be enclosed when returns are filed, inquiries were received by the Division of Taxation seeking exemption from that requirement. Written permission will not be issued exempting taxpayers from furnishing information required by regulation. If however a taxpayer does not include their K-1s when the return is filed, the return will not be rejected and will be processed.

All supporting information used in the calculation of items of reportable income or used in the substantiation of deductions or exemptions must be kept by the taxpayer should the Division of Taxation subsequently require it during review or audit. The lack of K-1 copies with a submitted return will not be a criteria for the selection of that return for audit. □

DIVISION OPERATIONS
State Tax News —
Mailing List Update

All current recipients of the *New Jersey State Tax News* are asked to submit a subscription renewal request to the Division of Taxation so that the mailing list for this publication can be purged of erroneous or obsolete subscriber information. Submitting the renewal request form on page 19 of this issue will aid the Division considerably in its effort to maintain an accurate, up-to-date list.

The Division of Taxation plans to distribute future issues of the *New Jersey State Tax News* by e-mail as well as in print form. If you wish to receive your copy electronically, please enter your e-mail address on the subscription form. Current subscribers who do not return the subscription form by June 1, 1999 will be removed from the mailing list. □

GROSS INCOME TAX
Consolidated Filing
of GIT-ER and UI/DI

The tax registration files developed for the consolidated filing and remittance of Gross Income Tax Employer Withholdings and Unemployment and Disability Insurance are a combination of existing Department of Labor and Division of Taxation registration files.

An analysis of the Third Quarter of 1998 filings of the consolidated quarterly form NJ-927 (the first reporting period subject to consolidated filing) has revealed that some employers are registered and are filing and remitting under more than one identification number.

This is more than likely the result of slight differences in the employer name on the Taxation and Labor registration files, or the use of a suffix on the Federal identification number with Taxation, while Labor does not use suffixes.

The inadvertent filing and remitting under more than one number can result in the receipt by employers of delinquency or deficiency notices for one or the other of the identification numbers, even though the employer has paid what is actually owed.

If an employer has received two NJ-927 coupon books, the Division of Taxation should be advised as soon as possible as to which identification number is correct. This will insure that subsequent returns and payments will be properly credited.

If an employer receives a delinquency or deficiency notice that he suspects may be the result of having more than one identification number, the employer should send a copy of both front and back of any canceled check for which he has not been given proper credit. If the employer is an EFT remitter, he should send the wire number and the date of the wire transfer for any payment for which credit was not properly given. This information should be sent to the address indicated on the notice.

Once all of the employers with multiple registration numbers are identified and the database corrected, this problem should be eliminated. The assistance and cooperation of affected employers and practitioners will not only aid in this process, but speed it up as well. □

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GROSS INCOME TAX

S.O.I.L.

The acronym SOIL stands for Set Off of Individual Liability. The SOIL statute permits the New Jersey Division of Taxation to use State income tax refunds and homestead rebates to pay down debts owed by citizens to various governmental agencies. Persons who may have their refunds or rebates "set off" are notified by mail in the spring of the year. They have a 35 day period in which to protest the debt with the agency to which it is owed. The notification contains instructions on what procedure to follow and includes the name and the telephone number for the agency. Persons receiving SOIL notices should not call the Division of Taxation about a debt owed to another agency; only the agency certifying the indebtedness can correct any errors or omissions. □

Release of Lien

In most real estate transactions, lien searches are performed by title companies and/or the lending institutions themselves, prior to the authorization for the conveyance of title. At times, there are not sufficient funds available from the sale to satisfy all liens, creditors and applicable transfer fees. Normally at that point the taxpayer and/or his authorized representatives begin the arduous task of contacting lien holders for possible settlement for a lesser amount or requesting the lien be released from that parcel of land being transferred only, but remain a lien on the debtor and any other property that they may own.

When there are liens filed by the Division of Taxation and contact is made, all too often the submitted request lacks the required information utilized in considering the request for a Release of Lien, thereby resulting in unnecessary delays in making a determination.

Before a determination can be made the following information and supporting documentation is needed:

1. A copy of the Agreement of Sale.
2. A metes and bounds description of the property to be sold and the complete address; namely the street name and number, city, state and county.
3. A copy of the proposed Closing Statement and/or an itemization of the disbursement of the total sales price.
4. A list of all encumbrances on the property. For each encumbrance, indicate:
 - a. Name and address of the secured parties
 - b. Description of the encumbrance
 - c. Date of the agreement
 - d. Date and place recorded, if any
 - e. Original amount borrowed and rate of interest
 - f. Itemization of current balance due
 - g. Family relationship and/or affiliation between the seller and secured parties, if any
5. A certified appraisal of the property being sold and certified appraisals of any remaining property owned by the seller. These appraisals must be made by a person licensed to make such appraisals in New Jersey (if available).
6. All tax returns which are presently delinquent and all returns which become due between the date of inquiry and anticipated date of closing, whether paid or not, must be submitted.
7. The proposed consideration to be rendered the Division for a Release of Lien.
8. A written proposal, explaining in detail, the seller's plan to liquidate the balance of the outstanding tax liabilities which are due and owing.
9. Any other information that is deemed relevant to the request for Release of Lien.
10. Name, address and phone number of seller's attorney or authorized representative.

It should be noted that this is the minimum required information and based on the facts presented, additional data may be requested before a decision can be rendered. □

CORPORATION TAX

Warehouse Project

The Corporation Business Tax Act imposes a franchise tax on corporations for the privilege of having or exercising a corporate charter, doing business, employing or *owning capital or property*, or maintaining an office in New Jersey.

warehouse project - from page 9

The Special Projects Unit of Field Investigations is collaborating with the Division's Nexus group on a warehouse project. Many out-of-State corporations own property stored in New Jersey warehouses. Since these businesses own tangible personal property in New Jersey, they are subject to New Jersey Corporation Business Tax. The Special Projects Investigators are seeking proof of registration from warehouse tenants. Those that are not properly registered with the Division of Revenue are being assessed for Corporation Business Tax for each year they have stored property in this State.

Any corporation seeking voluntary compliance should write to:

NEW JERSEY DIVISION OF TAXATION
SPECIAL PROJECTS UNIT
ATTN: THOMAS MACDONALD,
REGIONAL SUPERVISOR
PO BOX 245
TRENTON NJ 08646-0245 □

Small Business Workshops

The New Jersey Division of Taxation, in conjunction with the Internal Revenue Service, conducts free workshops several times each year at various locations around the State. The objective of these seminars is to help small businesses learn about their tax obligations.

Spring 1999

Tentative Workshop Schedule

April 30	Newark
May 7	Camden
May 21	New Brunswick
June 4	Atlantic City
June 11	Trenton
June 25	Paterson

Topics covered in the workshops include: a discussion of the different types of business ownership and the tax obligations of each; procedures for registering a business with the State of New Jersey; employer responsibilities; reporting business income; and collecting and remitting sales and use tax.

Workshops run from 9:00 a.m. to 4:00 p.m. The Division of Taxation's presentation is given in the afternoon. To learn more about Small Business Workshops, or to sign up for one of the spring sessions, call the Internal Revenue Service at: 1-800-829-1040 or the Division of Taxation's Call Center at: 609-292-6400. □

Cigarettes/Tobacco Purchased Outside New Jersey

With the increase of New Jersey cigarette tax more consumers are turning to out-of-State or to mail order for their purchases. The New Jersey Cigarette Tax Act, N.J.S.A. 54:40A-20, imposes a tax on the sale, possession for sale, use, consumption or storage for use of all cigarettes within the State of New Jersey. The New Jersey cigarette tax rate effective January 1, 1998 is \$0.04 per cigarette or \$0.80 per pack.

When a consumer purchases cigarettes out-of-State or through mail order, the cigarette tax along with the 6% New Jersey sales tax becomes due. The New Jersey Cigarette Tax Act does not allow credit for taxes paid to another state. In addition to cigarettes, cigars and bulk tobacco are also taxable under the Tobacco Products Wholesale Sales and Use Tax Act. The

rate of tax on tobacco products is 48% of the invoiced price.

The Federal Government requires any entity or persons shipping cigarettes in interstate commerce to file a monthly report of all cigarette shipments with the receiving state's tax administrator. This requirement is known as the Jenkins Act. When this information is received, the New Jersey Division of Taxation will assess the consumer the cigarette tax, the New Jersey use tax and/or interest or penalty. □

Correction

An error appears on the sample W-2 Form in the article entitled "NJ Information on Form W-2" which appeared on page 9 of the winter 1998 issue of the *New Jersey State Tax News*. The employee contribution amounts shown for New Jersey Unemployment Insurance/Health Care Subsidy Fund/Workforce Development Partnership Fund (UI/HC/WD) and Disability Insurance (DI) shown in Box 14 were listed in reverse order. The correct maximum employee contribution to UI/HC/WD for 1998 is \$82.03 and the correct maximum employee contribution to DI for 1998 is \$96.50. These figures represent the *maximum* employee contributions to these funds for 1998. Not all employees will have contributed the maximum amount. This same error appears in the sample W-2 Form printed in the 1998 New Jersey Resident Return instruction booklet (Form NJ-1040-P) and 1998 Nonresident Return instruction booklet (Form NJ-1040NR-P).

New Jersey State Tax News

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1998 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
3	3/20/98	Sale of a Principal Residence — Conforms New Jersey law to Federal law with respect to the treatment of gains derived from the sale of a principal residence occurring after May 6, 1997. Qualified taxpayers, regardless of age, can now exclude up to \$250,000 of such gains (\$500,000 on certain joint returns). The taxpayer must have owned and used the residence as his (and/or her) principal residence for periods totaling two or more years during the five-year period ending on the date of the sale.	GIT	A-1296 (1R)
33	6/30/98	Business Employment Incentive Program (Amendment) — Enhances the availability of program grants for certain partnerships and limited liability companies by permitting grants authorized under the program to be determined based upon the withholding or estimated tax payments of partners and members of limited liability companies as well as upon the withholdings of employees.	MIS	S-1002 (2R)
39	6/30/98	Sale of State Tax Indebtedness — Authorizes the New Jersey State Treasurer to sell all rights, title and interest in any State tax indebtedness and lien represented by a certificate of debt, except in such instances where the taxpayer can provide clear and convincing evidence that the underlying indebtedness is not fixed, has not been finally determined by the Division of Taxation or is subject to protest or appeal.	ALL	A-1996 (1R)
40	6/30/98	ICF-MR Assessment — Provides for an annual assessment at the rate of 5.8% on the gross revenue of every intermediate care facility for the mentally retarded (ICF-MR) in New Jersey. Proceeds will be used to reduce the number of disabled persons awaiting placement in a community residence or program.	MIS	A-2141
49	7/4/98	Veteran's Tax Deduction — Extends certain benefits, including the annual \$50 veteran's deduction, to certain participants in Operation "Restore Hope" (Somalia) or Operations "Joint Endeavor" and "Joint Guard" (Bosnia and Herzegovina). This legislation became effective upon enactment.	LPT	S-1155 (1R)
57	7/24/98	Roth IRAs — Amends and supplements N.J.S.A. 54A:5-1 to provide an exclusion from New Jersey gross income tax for certain qualified distributions from Roth IRAs and to allow four-year reporting of certain taxable distributions. The act brings New Jersey's tax treatment of Roth IRAs into conformity with the Federal tax treatment received by such accounts.	GIT	S-840 (Corrected Copy)
79	8/14/98	Single Member Limited Liability Companies — Provides for single member limited liability companies and allows such companies to be treated as sole proprietorships for State income tax purposes provided the company is not classified otherwise for Federal income tax purposes.	GIT	SCS for S-378 (1R)

continued

1998 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
99	9/4/98	<p>Direct-Mail Advertising Services — Amends the New Jersey Sales and Use Tax Act to more accurately describe the kinds of direct-mail advertising services that are subject to sales and use tax. The general and indistinct term “advertising services” is replaced with the more precise phrase “direct-mail advertising processing services in connection with distribution of advertising or promotional material” to recipients in New Jersey.</p>	S&U	A-1903 (1R)
106	9/14/98	<p>Enacts various recommendations of the Tax Advisory Group established by the State Treasurer to study State tax issues.</p> <ol style="list-style-type: none"> 1. Deficiency Assessments. Allows certain taxpayers who have paid assessed deficiencies to file refund claims. 2. Hedge Funds. Nonresidents are no longer required to include in income from New Jersey sources gains or losses resulting from the trading activities of certain private investment partnerships (“hedge funds”). 3. Penalty Rules. For return periods beginning on or after January 1, 1999: (a) the penalty for failure to file a tax return is based on the amount of tax underpaid rather than on the entire tax liability; and (b) the corporation business tax underpayment penalty is capped at 25% of the amount underpaid. 4. Gross Income Tax Estimated Payments. For return periods beginning on or after January 1, 1999: (a) raises from \$100 to \$400 the tax threshold above which quarterly estimated tax payments are required; (b) requires certain estates and trusts to make estimated tax payments; and (c) modifies the method by which the penalty for underpayment of estimated tax is determined. 5. Corporation Business Tax Estimated Payments. For return periods beginning on or after January 1, 1999, modifies the method by which the penalty for underpayment of estimated tax is determined. 	MIS	A-1730 (1R)
113	10/20/98	<p>Holocaust Restitution — Provides that compensation received by victims of the Nazi Holocaust as reparations or restitution, and any accrued interest on such amounts, shall not be counted as income for New Jersey gross income tax purposes or for the purpose of determining eligibility for the Pharmaceutical Assistance to the Aged Program (PAAD).</p>	GIT	A-1981 (1R)
114	10/28/98	<p>Exemption for Municipal Electric Utilities — Exempts certain sales by municipal electric utilities from sales tax and from the corporation business tax.</p>	S&U/ CBT	A-262 (3R)

continued

1998 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
115	10/28/98	Special Improvement Districts — Authorizes municipalities to establish "special improvement districts" to revitalize downtown areas; provides \$5 million to establish a downtown business improvement revolving loan fund; and provides technical assistance for projects from the Department of Community Affairs.	MIS	A-747 (2R)
118	11/9/98	Charity Shops — Allows certain charitable and public safety organizations to make tax exempt sales of donated property at shops where substantially all of the work is done by volunteers and where substantially all of the merchandise being sold has been received by the exempt organization as gifts or contributions.	S&U	S-158 (1R)
	11/3/98	Constitutional Amendment — Amends Article VIII, Section II of the State Constitution as approved by the electorate on November 3, 1998. The amendment provides that \$98 million from State sales and use tax revenues shall be dedicated in each of the ten fiscal years commencing July 1, 1999, for the acquisition and development of lands for recreation and conservation purposes; for the preservation of farmland; and for historic preservation.	S&U	SCS for SCR 66

*Legend for 1998 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Tax
ACC = Atlantic City Casino Control Commission	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PUT = Public Utility Taxes
CMC = Cape May County Tourism Sales Tax	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	S&U = Sales and Use Tax
GIT = Gross Income Tax	TPT = Tobacco Products Tax
IPT = Insurance Premiums Tax	

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LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and

Taxation Director's certification of 2nd class railroad property.

- General tax rates certified by County Tax Boards.

May 23-

- Table of Aggregates signed and transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders by County Tax Board.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15-

- Total number and dollar amount summary of senior citizen, dis-

abled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- As part of the continuing Motor Fuels Compliance Project, on October 14, 1998 OCI, in conjunction with State Police, executed a search warrant at the business location of Naum Raichel, owner of Gas R Us Inc., t/a Delta Gas, a truckstop in Elizabeth, New Jersey. This search warrant resulted in the seizure of evidence which then resulted in the arrest of Raichel by the State Police. He was charged with misapplication of \$75,600 in motor fuel (diesel) tax for 1997 and 1998, and related charges, and was released on \$20,000 bail.
- On October 22, 1998 Mario Rivellini of Clifton, NJ entered a guilty plea in Kearny Municipal Court to violating the municipal general ordinance for failing to file sales and use tax returns for January through May 1998. This was in connection with the operation of M & R Cleaning Services Inc., a commercial cleaning company. Rivellini was fined \$330 and will be assessed civil penalty and interest. This case was investigated jointly by OCI and the Police Division of the Waterfront Commission of New York Harbor.

criminal enforcement — from pg. 11

- On November 6, 1998 Warren Kaye, a Pennsylvania resident and former officer of a defunct New Jersey corporation, was sentenced before the Honorable Ronald B. Sokalski, J.S.C. in Passaic County. Mr. Kaye was sentenced to five years probation and \$60,000 in restitution as a result of guilty pleas to one count of theft by failure to make required disposition of property and one count of failure to withhold taxes. The offenses stemmed from Mr. Kaye's conduct while an officer of General Machine & Instrument Co. Inc. in Wayne, NJ and involved the failure to remit New Jersey gross income tax withholdings and unemployment insurance withholdings as required by law. Richard L. Pessolano was sentenced on December 15, 1998 also before the Honorable Ronald B. Sokalski, J.S.C. Mr. Pessolano, of Sparta, another former officer of this defunct New Jersey corporation, was sentenced to eight years of incarceration and restitution in the amount of \$140,268.89 for failure to remit New Jersey gross

income tax withholdings and New Jersey unemployment and disability insurance monies that had been withheld from the employees of General Machine and Instrument Co., Inc.

- Allenex Inc. t/a Allenwood Exxon pleaded guilty to four counts of receiving rebates relative to the purchase of cigarettes from a NJ licensed distributor, F. A. Davis & Sons of Baltimore, MD. The fines and costs imposed were \$5,080. Other charges relative to failure to register for the Tobacco Products Tax and failure to file Motor Fuels returns resulted in guilty pleas as well.
- F. A. Davis & Sons pled guilty to a total of 11 counts of providing rebates in violation of the Unfair Cigarette Sales Act. Maximum fines for each count were imposed by the courts totaling \$12,705. This case was the result of OCI's investigation wherein F. A. Davis & Sons Inc. was found to be giving their retail customers an illegal rebate of 60 cents per carton by way of checks delivered by their salespersons.

- On November 28, 1998 Inspectors of the U.S. Customs Service at the Mexico/Laredo Texas Border Station found a female Mexican national crossing into the United States in possession of 86,100 counterfeit NJ cigarette tax stamps. The stamps were seized and the woman was detained and identified. The averted loss of revenue was \$68,880. This investigation is continuing.
- On December 4, 1998 Marijit Singh M.D., of Mahwah, was sentenced to five years probation in Bergen County Superior Court for failure to pay New Jersey income tax for 1995. Dr. Singh's probation is to run concurrently with five years probation for theft of \$900,000 from his patients and associates in an investment fraud scheme. Singh was ordered to make restitution of \$140,536 to the State in income tax, penalty and interest for tax years 1992 through 1995.
- On December 9, 1998 Hamdan A. Awawdeh of Bronx, NY was arrested by the Jackson Twp.

continued on page 13

Enforcement Summary Statistics

Fourth Quarter 1998

Following is a summary of enforcement actions for the quarter ending December 31, 1998.

<ul style="list-style-type: none"> • Certificates of Debt: <li style="padding-left: 20px;">Total Number 2,322 <li style="padding-left: 20px;">Total Amount \$54,967,062 • Jeopardy Assessments 185 	<ul style="list-style-type: none"> • Jeopardy Seizures 107 • Seizures 27 • Auctions 7 • Referrals to the Attorney General's Office 901
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For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

criminal enforcement — from page 12

Police for transporting 502 cartons of contraband cigarettes. Additional charges filed by OCI included possession of contraband cigarettes and two other disorderly persons offenses. Based on information gathered by OCI Special Agents during the debriefing of Mr. Awawdeh, the special agents proceeded to an address in North Bergen, NJ. That investigation resulted in the arrest of Muhammad Abughannam by OCI Special Agents for possession of contraband cigarettes which included over 10 cartons of counterfeit stamped cigarettes (a 3rd degree crime). The subject is the owner of Halal Meat Market on Bergenline Avenue North Bergen, NJ. Judge Falcone, J.M.C. set bail at \$10,000. Three indictable charges and two disorderly persons offenses have been filed by OCI. Abughannam was arraigned in the Hudson County Central Judicial Procession Court. This matter is awaiting grand jury proceedings.

- On December 11, 1998 Jeffrey A. Tyson of Plainsboro was indicted by a State grand jury on four counts of failure to file New Jersey gross income tax returns for the years of 1993, 1994, 1995 and 1996.
- On December 15, 1998 Luis Chavez of Elizabeth, NJ entered a guilty plea in Union County Superior Court to one count of misapplication of \$69,000 in sales tax he had collected at his liquor store, Elizabeth Ave. Wines & Liquors Inc., from 1990 to 1994. Chavez faces a

maximum sentence of five years in prison, a fine of \$15,000 and restitution of \$98,000 in tax, penalty and interest when sentenced on April 1, 1999. This case was investigated by OCI and prosecuted by the Attorney General's Office.

- OCI Special Agents arrested Abdalla A. Dabbas of Paterson for transporting and possession of 148.0 cartons of contraband cigarettes purchased in North Carolina. This arrest was made possible based on information developed by OCI's utilization of a confidential informant as well as the surveillance of Dabbas's Paterson home. Mr. Dabbas was arraigned in the Passaic County Superior Court.
- On January 13, 1999, Anagnostis Inc. corporate principal Pete Anagnostis was arrested by the Philadelphia Police Department in response to a Governor's Arrest warrant issued to the Commonwealth of Pennsylvania by the State of New Jersey. Anagnostis was then transported to the Camden County Jail and bail of \$100,000 was set with no 10% factor. In lieu of the bail amount, it appears that Anagnostis will remain incarcerated at least until the February 8 arraignment. Anagnostis was indicted by a State grand jury on or about August 8, 1998 on charges of failing to remit sales taxes collected in the amount of \$262,537 for the period of July 1990 through June 1994. This case was investigated jointly by OCI and the Division of Criminal Justice.

- Ninety-seven charges were filed in municipal court on 25 cases for violating the cigarette tax law including possession of 2,981.9 cartons of contraband cigarettes, valued at \$74,547.50. □

Tax Briefs

Corporation Business Tax

S Corporation Extension of Time to File — New Jersey corporation business tax law does not provide for the granting of administrative extensions for filing returns. Accordingly, the taxpayer may obtain a normal six-month extension by filing Form NJ-200T and paying the applicable tax on or before the 15th day of the fourth month after the close of the period. At the end of the period Form CBT-100S would be due. If additional data is needed to modify that return, the changes can be made after that by means of filing an amended return. The revenue stream of the State must be predictable, and therefore the State filing requirements are independent of any discretion that may be exercised at the Federal level.

Litter Control Tax

Sales Within the State are Subject to Tax — The litter tax is imposed on "sales within the State" which are "in the case of manufacturers, wholesalers and distributors, all sales of products for use and consumption within the State. It shall be presumed that all sales of manufacturers, wholesalers and distributors sold within the State are for use and consumption within the State unless the taxpayer shows that the products are shipped out-of-state for out-of-State use."

tax briefs — from page 13

N.J.S.A. 13:1E-94j. Based on this statute, taxpayers can exclude from the tax all of their sales of litter-generating products shipped out-of-State. However, the Division does not allow a taxpayer to exclude sales of its litter-generating products in the State to a New Jersey manufacturer who subsequently sells his products outside the State. The Division does not attempt to collect a tax on taxpayer sales out-of-State that ultimately are sold by subsequent sellers back into New Jersey.

Sales and Use Tax

Purchase of Game Birds for Hunting — For sales tax purposes, a hunting preserve is not considered a reseller of the birds that it stocks for hunters; rather the preserve is the retail purchaser of the birds and must pay tax on those used for hunting purposes. If some birds are instead sold to another bulk purchaser, the hunting preserve must collect tax unless a valid exemption can be claimed by the purchaser, such as sale for resale supported by the issuance of a Resale Certificate (Form ST-3), or unless the birds are delivered to the purchaser out-of-State. The hunting preserve may apply for a refund of the tax paid on birds that

were purchased for use on the preserve but subsequently sold as such or delivered to a purchaser outside the State.

Sales of Prewritten Software — The sale of canned software or updates in some tangible, corporeal form (e.g., disc) is subject to sales tax as the sale of tangible personal property. N.J.S.A. 54:32B-3(a). However, the sale of software or updates is not taxable if it is transmitted electronically or downloaded by the customer. If a customer who purchases software in *intangible* form is provided with a manual at no extra charge, the customer is not liable for tax if a reasonable, objective observer would view the purchase of the downloaded software as the true object of the transaction. However, the software seller who provides the manual will be obligated to pay sales or use tax on the manual. N.J.S.A. 54:32B-6. If instead the customer is specifically charged for the manual, then that portion of the transaction is deemed to be the retail sale of a manual, which is taxable. N.J.S.A. 54:32B-3(a).

Commercial Heating and Air Conditioning System Adjustments — N.J.S.A. 54:32B-3(b)(4) of the Sales and Use Tax Act imposes sales tax on receipts from services related to maintaining, repairing or servicing real property. (N.J.S.A.

54:32B-3(b)(2) applies tax on the same basis to services rendered with respect to personal property.) The Division is of the opinion that testing and balancing by adjustment of commercial heating and air conditioning systems falls within the meaning of maintaining or servicing property. Thus, receipts from such services are subject to sales tax when the service is performed in New Jersey.

Repair and Testing Services — The service of installing and repairing equipment is subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(2) if the repaired item is picked up or delivered at a New Jersey location. It is not taxable if delivered outside the State. Testing alone, without performing a repair, is deemed to be an exempt professional or personal service. N.J.S.A. 54:32B-2(e)(4)(A). The repair business is liable for sales or use tax on its purchase of tools and shop supplies used in performing repairs, installation, and testing.

Long Term Lease of Temporary Fencing — A taxpayer questioned the Division's assessment in a case where the taxpayer is in the business of renting/providing temporary fencing erected around construction sites in this State.

The facts are that the taxpayer quotes his customers a single charge. This charge is based on the height and the number of feet of fence required. This charge is for a period up to one year. This single charge includes both the erecting and dismantling of the fence by the taxpayer. After the one year period, the customer is charged a monthly amount.

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continued on page 15

tax briefs — from page 14

The true object of the transaction under these facts is the use of a temporary fence on a long term lease basis. Since the initial term of the rental is for a period more than 28 days, the transaction is defined as a lease in accordance with N.J.S.A. 54:32B-2(aa). "Lease" means the possession or control of tangible personal property by an agreement, not transferring sole title, as may be evidenced by a contract, contracts, or by implication from other circumstances including course of dealing or usage of trade or course of performance, for a period of more than 28 days.

Accordingly, the tax is due from the lessor, on either (1) the amount of the lessor's purchase price of the property used as a temporary fence or (2) the amount of the total lease payments attributable to the lease of such property. N.J.S.A. 54:32B-2(bb).

Further, since the taxpayer does not lease fences without erection and dismantling of the fence, these functions are considered incidental to the lease of the fence (*Modern Handling Equipment of New Jersey, Inc. v. Director, Division of Taxation*, decided April 6, 1998; Tax Court No. 000151-97).

Additional charges invoiced by the lessor to the lessee for the repair of damaged fence would be subject to tax under N.J.S.A. 54:32B-2(b)(2) of the law. □

In Our Courts

Gross Income Tax

Basis for Sale of Partnership Interest — *Koch, v. Director, Division of Taxation*, decided January 14, 1999; Supreme Court of New Jersey; No. A-135 September Term 1997.

The appeal involved the tax treatment under the New Jersey Gross Income Tax Act (the Act) of the taxpayer's gain realized from the sale of his partnership interest. The question was whether the cost basis of that interest should be the purchase price or the Federal adjusted basis (purchase price less losses deducted on Federal income tax returns). The deducted losses provided the taxpayer with a Federal income tax benefit. However, because the losses were not deductible on the taxpayer's New Jersey gross income tax returns, they provided no tax benefit under the Act.

Koch filed a complaint with the Tax Court, asserting that the Act does not require a taxpayer to reduce the basis of his partnership interest by losses that are not deductible under the Act. The Tax Court disagreed and concluded that, in determining gain or loss under the Act, adjusted basis for Federal income tax purposes must be used and no exception is permitted even where the taxpayer was unable to deduct partnership losses. *Koch v. Director, Div. Of Taxation*, 15 N.J. Tax 387, 395 (Tax Ct. 1995). The Appellate Division affirmed in an unpublished, *per curiam* opinion substantially for the reasons stated by the Tax Court.

The Supreme Court granted certification. The Supreme Court held that in calculating taxable income from the disposition of property under the Act, the basis cannot be the Federal adjusted basis where that basis has been reduced by losses that are not deductible under the Act. Any income tax imposed on an amount greater than the taxpayer's economic gain (in this instance, sale price less purchase price) represents a tax on a return of capital, a result not intended by the Legislature.

The Supreme Court stated that the Division's position ignores the Federal accounting and nonrecognition provisions of section 5-1c of the Gross Income Tax Act. By including reference to Federal methods of accounting or nonrecognition provisions of the Internal Revenue Code, the Legislature explicitly intended to incorporate Federal income tax concepts. Further, Koch's calculation of gain conforms to section 5-1c's directive to use methods of accounting allowed for Federal income tax purposes to determine gain or loss for New Jersey gross income tax purposes. Under the Federal method of accounting, losses not passed through to a partner would not reduce the partner's basis, and gain would be determined simply by computing the difference between a partner's cost basis (unreduced by partnership losses) and proceeds received from the sale. Accordingly, the accounting method allowed for Federal income tax purposes does not require the use of Koch's Federal adjusted basis to compute his gain.

in our courts — from page 15

Miscellaneous

Private Debt Collection Agencies

— *Lonky v. Municipal Tax Collection Bureau Inc. and New Jersey State Department of Treasury, Division of Taxation*, decided October 16, 1998; Appellate Division; No. A-0512-97T3.

In 1992, the State enacted legislation enabling the Division to hire private agents to discover tax obligations and collect payments from taxpayers. (See N.J.S.A. 54:49-12.1 to .5) Thereafter, the Division contracted with the Municipal Tax Collection Bureau Inc. (MTB) where MTB would identify and collect taxes from non-reporting taxpayers and be remunerated pursuant to a contingent fee arrangement.

MTB identified plaintiff, who was neither registered for New Jersey taxes nor filed New Jersey tax returns, as a person with potential tax liability after it discovered information that plaintiff owned and sold commercial property in New Jersey. Subsequently, plaintiff filed a complaint claiming the Division's contract with MTB was unconstitutional and invalid. The trial court's decision granted summary judgement in favor of MTB and the Division. Plaintiff appealed.

The Appellate Court affirmed the trial court's decision. Furthermore, the Court noted that (1) statutory authority exists for MTB's debt collection practices, (2) MTB has no authority to and does not assess taxes, and (3) the legislature did not expressly prohibit the Division from entering into contingent fee

arrangements with private tax collectors. The Court concluded that there was "no overriding public policy or legislative prescriptions that would render the contract with MTB invalid, particularly given the express statutory authority therefor and the substantive and procedural controls imposed by the Division."

Reclaiming Mistaken Refunds —

Playmates Toys, Inc., v. Director, Division of Taxation, decided December 8, 1998; Appellate Division; No. A-170-97T5.

Plaintiff filed a refund claim for time periods that were barred by the statute of limitations. However, the Division mistakenly granted the refund. Realizing its mistake, the Division issued a final determination directing plaintiff to return the erroneous refund from which plaintiff appealed. The Tax Court ruled that plaintiff must return the money because the issuance of the refund was not tantamount to the Division's waiver of its ability to recoup the overpayment. Plaintiff appealed.

The Appellate Court held that although the Division has no express statutory power, it does have a common law inherent power to recoup mistaken disbursements. In support of its holding, the Court cited non-tax cases where courts had upheld the government agency's inherent power to correct its mistakes.

Sales and Use Tax

Bulk Sale Provision — *M.S. Appliance Service, Inc. v. Director, Division of Taxation*, decided September 25, 1998; Tax Court; No. 3646-97.

On or about July 1, 1994, plaintiff purchased from Mr. Service, Inc. (hereinafter Mr. Service) its appliance repair business for \$193,000. The purchase consisted of the trade name, customer lists, and fixed assets, but not the inventory. At the time of the sale, Mr. Service owed the Division sales tax in excess of \$240,000 plus interest and penalty. Neither party notified the Division of this sale.

While the Division was investigating whether Mr. Service's assets would satisfy its outstanding sales tax liability, it discovered that the business was sold to plaintiff. Thereafter, the Division notified plaintiff that it was liable for \$193,000 of Mr. Service's sales tax liabilities pursuant to N.J.S.A. 54:32B-22(c). This provision requires a purchaser to notify the Division, at least ten days prior to taking possession, of the purchase of all or any part of the business assets, other than in the ordinary course of business, from a person required to collect tax. Where the purchaser fails to comply with this notice requirement, the purchaser is held personally liable for the seller's sales tax liabilities.

Plaintiff challenged the applicability of N.J.S.A. 54:32B-22(c) on the grounds that it did not purchase the merchandise or inventory. The Court ruled that the statute requires a sale of either part or all of a business or a substantial portion of assets. Therefore, the sale was held to clearly fall within the statute because plaintiff purchased the business.

continued on page 17

in our courts — from page 16

Refund Claims — *Amplicon, Inc., v. Director Division of Taxation*, decided September 18, 1998; Tax Court; No. 000413-98.

Pursuant to an audit, the Division issued a notice of assessment informing plaintiff that it owed sales and use tax. Plaintiff protested the assessment and presented documentation requesting an \$87,646 reduction in tax. Per its June 28, 1995 notice, the Division granted the entire requested reduction and recomputed the remaining sales and use tax liability. Plaintiff paid the assessment by check dated July 18, 1995. Subsequently, in a letter dated May 30, 1997, plaintiff filed a refund claim for a portion of the sales and use tax paid by the July 18, 1995 check. The Director denied the refund claim on the grounds that it was untimely filed.

The sole issue in front of the Court was whether plaintiff may seek a refund of assessed taxes more than ninety days after the taxes were assessed and paid without protesting the assessment. The Court's analysis of the statutes revealed an apparent conflict between N.J.S.A. 54:32B-20(a), which permits a taxpayer to file a refund claim within four years from the payment of tax, and N.J.S.A. 54:32B-19 and 54:3B-21, which grants the taxpayer ninety days from the date of the Division's assessment to request a hearing or file an appeal to

Tax Court. The Court found that N.J.S.A. 54:32B-20(b) resolved this apparent conflict by stating that the four year refund claim period does not apply to the situation where payments were made pursuant to an assessment and the taxpayer had a hearing or failed to file for a hearing or appeal. Therefore, the Court held that the four year period for filing a refund claim is inapplicable in the instant case and upheld the Director's decision that plaintiff's claim for refund was out-of-time. The Court noted that audits would never close if extended statute of limitations were permitted in cases like this as there could be repeated and endless attempts to seek refunds. □

In Our Legislature

Gross Income Tax

Contribution Checkoff Amounts — P.L. 1999, c.153 (signed into law on January 12, 1999) increases the amounts specified for contribution to special funds made through checkoffs on New Jersey individual gross income tax returns from "\$5, \$10 or other" to "\$10, \$20 or other." The statute also changes the name of the "Battleship New Jersey Memorial Fund" to the "U.S.S. New Jersey Educational Museum Fund." The new law applies to tax years beginning on or after January 1, 2000.

Checkoff for Drug Abuse Education Fund

— P.L. 1999, c.12 (signed into law on January 25, 1999) establishes the Drug Abuse Education Fund into which each taxpayer shall have the opportunity to contribute by indicating on his or her New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in this special fund.

All contributions to this fund will be appropriated to the Department of Education for distribution to non-governmental entities operating in the public interest that, utilizing law enforcement personnel, provide drug abuse education programs on a State-wide basis, such as, but not limited to, Project DARE (Drug Abuse Resistance Education).

This act took effect immediately, but remained inoperative until enactment of P.L. 1999, c.21. The legislation applies to tax years beginning on or after January 1, 2000.

Coded Designations for Contribution Checkoffs — P.L. 1999, c.21 (signed into law on February 8, 1999) allows for the use of coded designations on the gross income tax return form to indicate to taxpayers their statutorily authorized options for making contributions to charitable funds. The legislation applies to tax years beginning on or after January 1, 2000. □

tax calendar

april

SUN	MON	TUE	WED	THU	FRI	SAT
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4	5	6	7	8	9	10
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18	19	20	21	22	23	24
25	26	27	28	29	30	

April 12

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

April 15

- CBT-100/** Corporation Business Tax—
CBT-100S Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—
Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Property Tax Rebate—Application

continued

April 15 - continued

- NJ-1040** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

April 20 - continued

- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 26

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

April 30

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly report

may

SUN	MON	TUE	WED	THU	FRI	SAT
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30	31					

May 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

May 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending January 31

continued

May 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

May 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

May 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

May 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

june

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9	27	28	29	30			

June 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

June 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending February 28

continued

June 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

June 21

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

June 21 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

June 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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New Jersey State Tax News

Winter 1998

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Property Tax Reimbursement



Division representatives Nick Cocco (left) and John Kelly (right) discuss the new Property Tax Reimbursement Program with the VITA volunteers in Thorofare. See article on page 2.

Director Thompson Confirmed

On December 10, 1998, the Senate confirmed Robert K. Thompson as Director of the Division of Taxation. Bob has worked for the Division of Taxation for over 28 years. His experience includes two years in the Field Audit Branch, 12 years in the Conference and Appeals Branch, and six years on former Director John Baldwin's staff. In February 1990, he was named the Assistant Director of Audit Activity and in 1994, Deputy Director with the responsibility for Audit and Technical Services. He served as Acting Director of the New

continued on page 2

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Automated Tax Info.....	800-323-4400
.....	609-826-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds...	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

director confirmed - from pg. 1

Jersey Division of Taxation from February to June of 1994 and, effective November 6, 1997, once again assumed that position. On September 17, 1998, Bob was nominated by Governor Whitman to serve as Director of the Division of Taxation.

On hearing of his confirmation, Bob said "I have looked forward to this for some time now. This is a great organization with talented managers and a dedicated workforce. I have seen them respond beyond expectation to one challenge after another. I am confident that with all we have to do we will springboard into the new millennium ready to face the formidable challenges that lie ahead."

Bob was part of the team which negotiated the NY/NJ Cooperative Interstate Tax Administration Agreement; he was the Division liaison to the State and Local Expenditure and Revenue Policy Commission; Amnesty Administrator for New Jersey's First Tax Amnesty Program; and served on the Multistate Tax Commission's national Nexus Working Group.

Bob has an accounting degree from Rider College and a Masters in Government Administration from the University of Pennsylvania. □

NJ PC File

Beginning in mid-February 1999, taxpayers will be able to go to the Division's Web site to download NJ PC File which will allow them to use their Windows 95/98 based PCs to prepare and file their New Jersey gross income tax returns. Once the returns are completed, taxpayers will transmit the information to the Division by modem. In most cases, taxpayers should

receive their refunds within 2 weeks of filing.

The Division anticipates that the majority of resident taxpayers will be able to use NJ PC File to file their 1998 returns. Among those taxpayers who will not be able to use NJ PC File are those who have business income (i.e., net profits from business, distributive share of partnership income or net pro rata share of S corporation income) and those who are claiming a credit for taxes paid to other jurisdictions. It is estimated that as many as 3 million taxpayers will be able to use NJ PC File.

For more information regarding who can use NJ PC File and when the program will be available for downloading, visit our Web site at: <http://www.state.nj.us/treasury/taxation/>



Property Tax Reimbursement

The Division of Taxation will be mailing the 1998 Property Tax Reimbursement application, Form PTR-1, to targeted individuals in early 1999. The application has a filing due date of March 15, 1999 and the first reimbursement checks are scheduled to be mailed to qualified applicants on July 15, 1999.

A reimbursement will be paid annually to every eligible applicant, thereby freezing their property taxes at the 1997 level. The reimbursement will be the difference between the amount of property taxes that were due and paid by the applicant in 1997 (or the year in which the applicant becomes eligible) and the amount of property taxes due and paid in subsequent years.

Seniors and citizens with disabilities must complete a new Property

New Jersey State Tax News

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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<i>Criminal Investigation</i>	Chyrl Krangar
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Tax Reimbursement application each year for which they are filing a claim. They must also meet the eligibility requirements each year for both their base year and the year for which they are filing the application.

To ensure that their 1998 applications are processed without delays, applicants are reminded to:

1. **Complete the entire application**, providing information for both 1997 and 1998.
2. **Enclose copies** of their 1997 and 1998 property tax bills (mobile home owners enclose copies of the contract(s) or agreement(s) for both 1997 and 1998 from the mobile home park showing the amount of their site fees).
3. **Enclose proof of the amount of property taxes paid for both 1997 and 1998.** Homeowners may submit either copies of cancelled checks or receipts showing the amount of property taxes paid, or copies of Form 1098 which is provided annually by their bank or mortgage company. Mobile home owners may submit either copies of cancelled checks or receipts showing the amount of site fees paid.

Applicants who cannot locate property tax bills, or proof of the amount of taxes or site fees paid, may use one of the verification forms (Forms PTR-1A or PTR-1B) provided in the Property Tax Reimbursement booklet. These forms must be certified and completed by either the local tax collector or the owner/manager of the mobile home park and submitted with the Form PTR-1 application.

4. File Form PTR-1 on or before March 15, 1999.

Applicants who are receiving homestead rebates and/or property tax credits or deductions are also eligible for the Property Tax Reimbursement if they meet the eligibility requirements.

The Division cautions applicants that they must file a separate Homestead Property Tax Rebate Application (Form HR-1040) to receive a homestead rebate.

Volunteers in the VITA (Volunteer Income Tax Assistance) and TCE (Tax Counseling for the Elderly) Programs are available to help prepare Property Tax Reimbursement applications at some locations throughout New Jersey.

The Division has staffed a Property Tax Reimbursement Hotline to answer questions related to the program. Representatives are available at 1-800-882-6597 from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays).

New Call Center Opens

On December 7, 1998, the Division's Tax Hotline was relocated from Hamilton Township to the Taxation Building in Trenton.

The Hotline and its associated automated information systems will now be known as the Division of Taxation Call Center. Some of the Call Center's phone numbers have changed as a result of the move, while others remain the same. New numbers are marked with an asterisk (*) below.

Tax Hotline*609-292-6400

Automated Tax Information System (Touch-tone Phones Only)
 Within NJ 1-800-323-4400
 Anywhere*609-826-4400

NJ TaxFax*609-826-4500

NJ TeleFile
 Within NJ 1-888-235-FILE
 Anywhere*609-826-4448

Property Tax Reimbursement

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Ride the new wave...

<http://www.state.nj.us/treasury/taxation/>

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Hotline..... 1-800-882-6597

Calls placed to the old numbers will automatically be routed to the corresponding new number.

Look for more information about the Call Center in the spring issue of the *New Jersey State Tax News*.

□

SALES AND USE TAX ***Most Advertising Services Exempt***

On and after November 1, 1998, sales tax is no longer imposed on most advertising services.

Governor Whitman recently signed into law amendments to the Sales and Use Tax Act which repeal the tax on receipts from sales of advertising services performed in New Jersey. Receipts from the sale of direct mail processing services for advertising material sent to addresses in New Jersey remain subject to sales tax. P.L. 1998, c. 99 also makes it plain that the distribution of advertising material in New Jersey is a taxable use and imposes a compensating use tax on direct mail processing services performed outside New Jersey for in-State customers in every case where advertising material is delivered to addresses in New Jersey as a result of such services.

The sales and use tax exemptions previously provided in the law for sales of advertising or promotional material delivered to addresses outside New Jersey and for sales of direct mail processing services rendered in respect of such material delivered to addresses outside New Jersey are unaffected and still apply to all qualified transactions.

See N.J.S.A. 54:32B-3(b)(5) and N.J.S.A. 54:32B-8.39. Questions on the impact of the repeal legislation on advertising sale transactions may be addressed to:

NJ DIVISION OF TAXATION
TAX SERVICES BRANCH
PO BOX 269
TRENTON NJ 08646-0269 □

New Legislation Affects Taxes

Public Law 1998, chapter 106, was signed into law on September 14, 1998. This law amended the Gross Income Tax Act to clarify the exclusion of income from sources within New Jersey for nonresidents under N.J.S.A. 54A:5-8. Under the amendment, nonresident partners of commodities and hedge fund partnerships will not be deemed to have income from New Jersey sources solely by reason of their membership in such partnerships.

The law also made several changes to procedures and penalty provisions. An underpayment of Corporation Business Tax was redefined to be the excess of the lesser of the amount of the installment payment which would be required to be paid if all installment payments were equal to 90% of the tax shown on the return for the fiscal or calendar accounting year, or if no return was filed, 90% of the tax for that year, or 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year. The penalty for failure to pay Corporation Business Tax during an extension shall not exceed 25% of the underpayment, under the new law.

The law permits taxpayers to file a claim for refund of an assessment paid without filing a protest or

appeal from an additional assessment of tax. This provision overturns the case of *Peoples Express Co., Inc. v. Director, Div. of Taxation*, 10 N.J. Tax 417 (1989). However, the taxpayer must pay the assessment in full within one year after the expiration of the period allowed for filing a protest of the assessment, the claim for refund must be filed within 450 days of the expiration of the period allowed for filing the protest, and the amount of the refund claimed must not exceed the amount of the assessment paid. The refund claim must be filed. Refund claims are now required to be filed under oath, stating the grounds for the claim and must be limited to the issues raised by the deficiency assessment. If a protest has been filed, a refund claim is not permitted until the protest has been resolved.

N.J.S.A. 54:49-4 in the Uniform Procedure Law was amended to require that if no return has been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty shall accrue at 5% per month or fraction thereof of the total tax liability not to exceed 25% of such tax liability.

Finally, the law raised the threshold for the declaration of estimated gross income tax from \$100 to \$400, and modifies the calculation for the amount of underpayment of estimated tax on which the penalty for failure to file estimated tax is based.

The provision on income of nonresidents is effective for taxable years ending after enactment, and all other provisions in the law become effective for return periods

continued on page 5

new legislation - from page 4

beginning on or after January 1, 1999. ☐

NJ TeleFile Continued Success

The NJ TeleFile program, now in its fourth year, continues to be very successful. Last year, over 181,000 taxpayers used NJ TeleFile to file their 1997 resident income tax returns and homestead property tax rebate applications.

NJ TeleFile is part of the Division of Taxation's ongoing commitment to streamline the tax filing process. This year taxpayers who claim an additional exemption for dependent children attending accredited postsecondary institutions will be able to use NJ TeleFile.

The 1998 TeleFile season begins on Friday, January 15, 1999 and continues through midnight, Thursday, April 15, 1999. NJ TeleFile will accept returns 24 hours a day throughout the filing season. Taxpayers can access NJ TeleFile by calling 1-888-235-FILE (3453) from Touch-tone phones within New Jersey or 609-826-4448 from Touch-tone phones anywhere.

Calls to 609-588-FILE (3453), the telephone number listed in the NJ TeleFile instruction booklet, will be forwarded.

A reminder to tax practitioners – you can TeleFile for your clients provided you have a signed Power of Attorney form on record. TeleFile is fast, easy and convenient. Help us save even more tax dollars this year and TeleFile your eligible clients' returns. Refunds are mailed in just two weeks!

Liquor Audit Update



Assistant Director Richard Schrader, Field Audit Activity (top left), and Assistant Director David Gavin, Compliance Activity (top right), review the most recent results of the liquor audit project with Larry Gauges, Chief, Cash Audit Branch (bottom left), and Cheryl Fulmer, Chief, Field Investigation Branch (bottom right). As of November 1998, the Division of Taxation has collected \$149,439,307.

NJ TeleFile – TeleFile, Then Tell A Friend! ☐

SALES AND USE TAX Filing ST-50s Online

Some vendors are now able to file their quarterly sales tax returns (Forms ST-50) online. The Division of Taxation recently sent notices to those vendors who are registered for the Electronic Funds Transfer (EFT) program informing them of their ability to file Form ST-50 via the Internet. The notice contains a Personal Identification Number (PIN) which the EFT taxpayer must use when filing the online Form ST-50 located at the Division of Taxation's Web site:

<http://www.state.nj.us/treasury/taxation/>

Once the Taxpayer Identification Number and PIN are entered, the business will have access to the ST-50 template. The sales and use tax information is then entered in the appropriate fields. Once all of the necessary information has been entered, the taxpayer can transmit the information to the Division. Over 255 EFT Taxpayers have filed for the third quarter using the online Form ST-50.

Taxpayers must use a Web browser which supports Secure Sockets Layer (SSL). Netscape Navigator version 3.0 and Internet Explorer version 3.0, as well as more recent versions of these programs, support SSL. The form and the information are encrypted while being transmitted. This protects the confidentiality of taxpayer information which is sent

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filing st-50s - from page 5

to the Division.

Taxpayers must be registered with the Division of Taxation and authorized to make payments through the EFT method in order to utilize this site. Those taxpayers who would like to apply for EFT authorization can contact the Electronic Funds Transfer section by phone at 609-984-9830 or fax at 609-292-1777. The EFT section can also be contacted by writing to:

DIVISION OF REVENUE
EFT UNIT
PO BOX 191
TRENTON NJ 08646-0191 ☐

Interest Rates

Fourth Qtr. '98 — 11.50%

First Qtr. '99 — 10.75%

The interest rate assessed on amounts due for the fourth quarter of 1998 is 11.50%, and the interest rate for the first quarter of 1999 is 10.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%

GROSS INCOME TAX Withholding Income Tax of Other States

Under rule N.J.A.C. 12:55-2.5 (adopted July 13, 1998 by the New Jersey Department of Labor) New Jersey employers of nonresident individuals whose earnings are subject to the income or wage tax of a "foreign" jurisdiction may now withhold the foreign jurisdiction's tax from the salary or wages paid to the employee. (A foreign jurisdiction means a sister state or a political subdivision thereof.) The new rule became effective on August 3, 1998; it expires on November 6, 2001.

Regulation 12:55-2.5 requires New Jersey employers to (a) obtain the express written authorization of each employee from whose wages or salary the income or wage tax of a foreign jurisdiction will be withheld before withholding such tax and (b) to hold the amounts withheld in a trust fund for payment to the foreign jurisdiction on behalf of the individual taxpayer.

This regulation does not relieve employers from their New Jersey wage reporting, record keeping and gross income tax withholding obligations as required under existing law and regulations. ☐

Division Web Page to Undergo Facelift

On February 29, 1996 the New Jersey Division of Taxation launched its home page on the World Wide Web. The Division's initial presence on the Internet contained information explaining New Jersey taxes, certain forms and some publications.

The information contained on the Division's Web site has expanded since its inception to include all our forms and publications, as well as current Division news, information on public auctions, and the recently introduced Unclaimed Property Search.

To further expand the information available to the public via the Internet, a Web Site Steering Committee was formed within the Division. In addition to providing more information, the committee recommended a redesign of the page to make it as user friendly as possible.

How will the new page be different? There will be three "paths" available to visitors: a practitioner path for professionals, a path for non-professionals, and a children's section. In addition, the page will have a whole new look accented with updated graphics and information.

Watch for the new page to arrive early in 1999! ☐

TECHNICAL SERVICES E-Mail Update

In June 1996, the Division began receiving and replying to correspondence from taxpayers by e-mail. We continue to receive an ever increasing amount of correspondence by this medium. The Taxpayer Services Branch replied to 2,900 e-mail inquiries in the 1998 fiscal year (July 1, 1997 – June 30, 1998). Projecting the average monthly increase in e-mail traffic forward, the number should reach 6,000 by the end of the 1999 fiscal year.

Currently, the Division is not using nencryption technology for its e-

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e-mail update - from page 6

mail correspondence, but work is under way to develop a secure connection via a Web browser. As our technology develops we will be incorporating features that will provide some internal efficiencies that should improve e-mail response times even more. One immediate change we have made is to establish a NEW e-mail address! nj.taxation@treas.state.nj.us

Writers should send all e-mail correspondence to the Division's new address effective immediately. E-mail sent to the old address (NJTaxation@aol.com) will be forwarded to our new address for the next few months. The old address will be terminated for Division e-mail after this transition period.

E-mail the Division at:
nj.taxation@treas.state.nj.us □

Volunteers Provide Assistance

In a continuing commitment to seniors and low-income taxpayers, the Division of Taxation will once again participate in the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.

These programs provide for the training of hundreds of volunteer tax preparers who fill out tax forms

at no charge for literally tens of thousands of individuals throughout the State.

The Internal Revenue Service coordinates the VITA program and the American Association of Retired Persons (AARP) coordinates the TCE program. The Division works closely with principals in both programs to familiarize them with the New Jersey Gross Income Tax/Homestead Rebate and the new Property Tax Reimbursement.

Hundreds of sites open each February, staffed by friendly, caring volunteers who serve our senior and needy populations. Many of those served would be unable to afford professional tax preparation and do not feel comfortable preparing their own taxes. For those individuals, the VITA/TCE volunteer is providing a critical and welcome service.

The Division is proud of its long history of partnering with these worthwhile programs and will continue to support the efforts of those willing to help senior and low-income New Jersey taxpayers. □

ELF Program Expands

Beginning in January 1999, New Jersey will expand its Electronic Filing (ELF) program to allow most full-year resident individual taxpayers to file their own State income tax returns. To participate in electronic filing, taxpayers will need the use of a personal computer and a tax preparation software package. Taxpayers who file their State returns electronically must also file their Federal returns electronically. Electronic filers must also complete an Individual Income Tax Declaration for Electronic Filing (Form NJ-8453) when their return is accepted. As in prior years, taxpayers may opt to have their returns filed electronically by tax professionals.

Transmitters and Electronic Return Originators (EROs) who wish to participate in the New Jersey ELF program must register with the Division of Revenue each year. Failure to register with New Jersey will cause returns submitted by the transmitter or ERO to be rejected. Since this program includes both the Federal and State returns, those practitioners participating for the

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NJ TeleFile The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1999 income tax return/homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-826-4448 (from anywhere).

Full year New Jersey resident during 1998

Not 65 years of age or older as of December 31, 1998

Same filing status as on your 1997 NJ return

Not blind or disabled as of December 31, 1998

Total New Jersey income of \$150,000 or less

Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

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first time should also contact the electronic filing coordinator at the IRS Newark District Office at 201-645-6690. Keep in mind, registering with the IRS does not automatically allow transmitters and EROs to participate in New Jersey's program.

To learn more about New Jersey's Electronic Filing program, visit the Division of Revenue's Web site at:

<http://www.state.nj.us/treasury/revenue/>

or write to:

NJ DIVISION OF REVENUE

ELF PROGRAM

PO BOX 191

TRENTON NJ 08646-0191 ☐

GROSS INCOME TAX

NJ-1040 Filing Tips

Where's my refund? Why did you send me this bill? Where's my Homestead Rebate? These are the most frequently asked questions by anxious taxpayers who call or write to the Division of Taxation.

The following are some important tips for taxpayers and practitioners for filing 1998 New Jersey Gross Income Tax returns. If followed, these tips should prevent erroneous bills and delays in receiving refunds and homestead rebates, which all cause otherwise unnecessary calls and letters to the Division.

- Be sure to use a **1998** return. Do not use a prior year return since there are certain changes that are specific to the 1998 return year.
- Read the instruction booklet before completing the return.
- Be sure to use the **State Wages** figure from W-2s and not the

Federal wages. In many cases they will be different.

- When calculating your **Property Tax Deduction**, if you are a tenant be sure to use only 18% of your rent paid. If you are a property owner, you can claim the actual property tax paid or \$10,000, whichever is less. The **Property Tax Credit** will be \$50.
- Check your math.
- Make sure all of the required lines are completed on the return.
- If you use the Tax Tables to compute your tax due, be sure to use the correct column based upon your filing status.
- If your taxable income is \$100,000 or more and you use the Tax Rate Schedule to compute the tax due, remember to complete Step 3 on either Table A or Table B in the schedule.
- Be sure to use the correct label on the return if there are multiple filers in the same household.
- Be sure to complete page 3 of the return if you are requesting a refund or credit forward.
- Check to see that your return is signed and dated.
- Be sure that W-2s are legible.
- Review all of your payment records prior to preparing your return, so that you may properly take credit for all estimated payments, payments made with requests for extension, and credits forwarded from the prior year.
- When taking credit for taxes paid to other jurisdictions, be sure to include a copy of the tax

return that you filed with the other state or taxing jurisdiction.

- When reporting business income, be sure to include a copy of the Federal **Schedule C, C-EZ, or F**.
- Be sure to include **Schedule NJK-1, Form NJ-1065** (or a copy of Federal Schedule K-1, Form 1065) when reporting partnership income.
- When reporting S corporation income, be sure to include **Schedule NJ-K-1, Form CBT-100S** (or a copy of Federal Schedule K-1, Form 1120S).
- Be sure to enclose **Schedule NJ-2450** when claiming excess UI/HC/WD and disability contributions.
- When preparing your payment voucher, be sure to write your social security number on your check. On joint returns, be sure to write the primary social security number of the return on the check.
- Remember to complete the Homestead Rebate Application if you are anticipating a rebate.
- Since New Jersey estimated payments are due on the same dates as Federal estimated payments, be sure to mail your New Jersey payment and NJ-1040-ES to New Jersey, and your Federal payment and 1040-ES to the IRS.

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GROSS INCOME TAX
NJ Information on
Form W-2

Employers must furnish a Wage and Tax Statement (Form W-2) to each employee showing the amount of wages paid, the amount of state income tax withheld, the name of the state where the tax was remitted and certain other information. New Jersey does not have a separate form for reporting these wage and tax figures. They are reported on the Federal Form W-2 in the boxes provided for state tax information. Report information on the W-2 for employees working in New Jersey as follows:

◆ **Box 14** — Report amounts withheld as employee contributions to New Jersey Unemployment Insurance/Health Care Subsidy Fund/Workforce Development Partnership Fund (UI/HC/WD) and Disability Insurance (DI). These amounts

must be reported separately. Employers with approved private disability plans must also include their assigned private plan number in this box. New Jersey employers no longer have a separate identification number issued by the Department of Labor, except for those employers with private disability plans.

◆ **Box 16** — In most cases, New Jersey income tax is withheld from the salaries of employees working in this State. When taxes have been withheld and remitted to New Jersey, indicate “NJ” in the area of Box 16 designated as “State.” List your New Jersey Taxpayer Identification Number in the area of Box 16 designated as “Employer’s state ID no.” This number is based on your Federal Employer Identification Number (FEIN) and is located on your New Jersey Employer’s

Quarterly Report (Form NJ-927 or NJ-927-W), above your pre-printed name and address. If you are unsure of your New Jersey registration number, call the Division of Taxation Hotline at 609-292-6400 or the Division of Employer Accounts Hotline at 609-633-6400.

◆ **Box 17** — Report all salaries, wages, tips, fees, commissions, bonuses, and other remuneration subject to New Jersey Gross Income Tax.

◆ **Box 18** — Report the amount of New Jersey income tax withheld.

For more information on completing Form W-2, request a New Jersey Gross Income Tax Instructions for Employers booklet (Form NJ-WT), or Tax Topic Bulletin MISC-1, *Employer Responsibilities*.



Sample W-2 (This form is for illustration only and is not reproducible.)

a Control number		22222		Void <input type="checkbox"/>		For Official Use Only OMB No. 1545-0008				
b Employer identification number				1 Wages, tips, other compensation			2 Federal income tax withheld			
c Employer's name, address, and ZIP code				3 Social security wages			4 Social security tax withheld			
				5 Medicare wages and tips			6 Medicare tax withheld			
				7 Social security tips			8 Allocated tips			
d Employee's social security number				9 Advance EIC payment			10 Dependent care benefits			
e Employee's name (first, middle initial, last)				11 Nonqualified plans			12 Benefits included in box 1			
f Employee's address and ZIP code				13 See instrs. for box 13			14 Other UI/HC/WD 96.50 DI 82.03 DI PP. #(Private Plan No.)			
				15 Statutory employee compensation <input type="checkbox"/>		Deceased <input type="checkbox"/>		Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>
16 State	Employer's state I.D. no.	17 State wages, tips, etc.	18 State income tax	19 Locality name	20 Local wages, tips, etc.	21 Local income tax				

nj-1040 filing tips - from pg. 8

By following the above guidelines, you are helping to ensure that your return will be processed timely and accurately, your payments, withholdings and credits properly applied, your refund and/or rebate received timely and the chances of your receiving an unexpected bill, significantly reduced. ☐

GROSS INCOME TAX **Enclosures With** **Returns, Clarified**

In an article in the fall 1998 issue of the *New Jersey State Tax News*, a list was furnished of items to be enclosed with an NJ-1040 return. A tax practitioner inquired about

Coming
Soon...

Pay Your Taxes By

Credit Card

For more information:

<http://www.state.nj.us/treasury/taxation/>

or

<http://www.state.nj.us/treasury/revenue/>

the necessity of furnishing all copies of 1099s with the New Jersey tax return.

Any 1099 with New Jersey gross income tax withholdings reported must be furnished with the return to ensure proper credit of those withholdings.

Other 1099s should be retained with the taxpayer's copy of their return and furnished to the Division if and when questions arise about the information reported on the return.

It should be noted, however, that when backup material is furnished with the return, especially when Federal and State income amounts differ, a review of information supplied with the return is often enough to explain the variance without requiring an audit of the return.

In the prior article the forms issued for gambling winnings were incorrectly reported as 1099-Gs. They are W-2Gs. ☐

Survey Says...!

The Division of Taxation offered tax practitioners the opportunity to let us honestly know how we're doing. A Survey of Tax Professionals appeared in the summer 1998 issue of the *New Jersey State Tax News* (see page 13 of that issue). Our questionnaire contained 25 questions regarding the various information services provided by this Division. Although we did not receive an overwhelming number

of replies, we do wish to sincerely thank the tax professionals who were so kind to take time out of their busy schedules to share their opinions. If any tax professional was unable to respond to the survey and wants to do so now, it's not too late. Your comments and suggestions are extremely important to us.

Are you as curious about the replies as we were? *Survey says...*

- Of those who responded to the survey, 83% rated our overall service to be that of average or better and 56% found our services to be above average to excellent. Thank you for your vote of confidence!
- 48% of those surveyed called our Tax Hotline more than 5 times during the past year to speak with Division representatives. An additional 27.5% called at least once. 42% found the services provided by the Tax Hotline to be above average to excellent.
- 45% have used our Tax Practitioners' Hotline to resolve taxpayer notices. 59% found that services rendered on this hotline are above average to excellent. Many commented on the fact that they were able to resolve client notices quickly and efficiently.
- Many practitioners utilized our automated systems. 57% of the respondents ordered tax forms and publications through our Forms Request Service. Of

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those who did so, 92% considered it average or better (53% rated it above average or excellent).

- 49% of those surveyed utilized our Automated Refund Inquiry System (ARIS) and 45% responded that they had utilized our automated Homestead Rebate InfoLine. □

GROSS INCOME TAX **Accounting** **Methods**

A taxpayer recently inquired when they should recognize and report for Gross Income Tax purposes the value of stock received as part of compensation for services rendered. The taxpayer's interest in the stock was subject to substantial risk of forfeiture under the terms of his employment agreement and therefore qualifies as "restricted property" under Internal Revenue Code section 83. For Federal income tax purposes the taxpayer elected to defer recognition of the income until his interest in the stock was no longer at risk.

The Gross Income Tax Act at 54A:8-3(c), Accounting Methods, states in part that, "A taxpayer's accounting method under this act shall be the same as his accounting method for Federal income tax purposes."

A taxpayer's *method of accounting for Federal income tax purposes* determines not only the method to be used to compute income but also determines when income is to

be recognized for Gross Income Tax purposes, unless otherwise provided for in the Act or under Regulations. Thus, in most instances, a taxpayer will recognize and report income for Gross Income Tax purposes in the same period as he does for Federal income tax purposes.

The taxpayer in question would report the income from receipt of the restricted stock to New Jersey in the same year as it is reported for Federal income tax purposes. Since an election was made Federally to defer recognition of the income, the taxpayer would also defer recognition for New Jersey tax purposes.

Another example of when New Jersey income should be recognized and reported in the same year as Federal income is proceeds from sales reported under the installment method. See *Dubois v. Director*, 4 N.J. Tax 11 (1985), affd. 6 N.J. Tax 249, affd. 95 N.J. Tax 234, 470 A.2d 446, and *Guzzardi v. Director* 15 N.J. Tax 395 (1995), affd. 16 N.J. Tax 374 (App. Div. 1996). Still other examples would be the treatment of undistributed capital gains from Regulated Investment Companies and Real Estate Investment Trusts and Passive Foreign Investment Company income.

Taxpayers and tax practitioners requiring additional information on when and how income should be reported for Gross Income Tax purposes should contact the Division's Taxpayer Services Branch or the Gross Income Tax Audit Branch. □

CORPORATION TAX **Regular Place** **of Business**

In order for a domestic or foreign corporation to allocate (apportion) business activity away from New Jersey taxation, it must maintain "a regular place of business" outside New Jersey. This does not apply to corporations entitled and electing to file as an investment company, regulated investment company or real estate investment trust. These entities enjoy a reduced rate of taxation.

A regular place of business is defined as any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance.

In order to satisfy the maintenance requirement, the taxpayer must be directly responsible for the expenses incurred for the regular place of business. The location must either be owned or rented in its own name and not through a related person or entity.

A regular employee is one who is in attendance during normal business hours, performing duties on behalf of the taxpayer that are of a significant nature. The employee must be under the direction and control of the taxpayer.

In situations where a corporation does not meet the requirements to allocate activity away from New Jersey, but nevertheless has nexus and is paying corporate taxes to another taxing jurisdiction(s), there is relief from double taxation by

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place of business - from pg. 11

way of a credit for taxes paid pursuant to N.J.A.C. 18:7-8.3. □

Division Targets Non-Filers

Through a cooperative effort with the Federal Internal Revenue Service, the Compliance Services Branch has accelerated the New Jersey Personal Gross Income Tax Delinquency Program. Over 14,000 taxpayers were sent delinquency notices covering taxable years 1993, 1994 and 1995. Working from a PC-based program developed specifically for the project, investigators provided the selected taxpayers with three basic options to resolve the delinquencies:

1. Provide documentation verifying timely filing and payment;
2. Provide an adequate explanation of exemption from filing; or
3. File the delinquent return(s).

The program enabled the Division of Taxation to resolve 8,400 delinquent items and produced \$273,000 in Gross Income Tax collections. The responses received also provided an opportunity to identify and correct main-frame data input problems associated with the three years selected for

the program.

Further enforcement actions, including arbitrary assessments, judgments filed in Superior Court and seizure of assets, are slated for those individuals who did not respond.

Continuation of the program will include the 1996 taxable year. Tentative identification of potential 1996 delinquents began in October 1998 and the notices may have already been mailed by the time this issue of *New Jersey State Tax News* goes to press.

Anyone receiving a delinquency notice should carefully review their 1996 tax records and verify that the social security number on the delinquency notice matches the social security number on their 1996 NJ-1040. Taxpayers whose records indicate the return was already filed should respond by providing copies of all pages of the return, W-2 withholding statements and any other documents which were required to be filed with the original return. Taxpayers claiming credit on Schedule A for taxes paid to another jurisdiction must provide a copy of the tax return filed with the other state.

Taxpayers whose records reflect that a refund was claimed should search their financial records to verify that the refund was actually

received. The State of New Jersey issues a 1099-G to refund recipients as part of Federal tax requirements. Form 1099-Gs are issued to reflect income which may be taxable for Federal purposes and are usually issued in the year subsequent to the year the tax return was filed. For instance, a 1996 refund for a timely filed 1996 return would be issued in 1997 and the 1099-G would reflect the refund as 1997 income. The 1099-G would be issued in early 1998 prior to the Federal filing deadline for the 1997 tax return.

Taxpayers who receive a 1996 delinquency notice should verify that the social security number on the 1099-G issued for the 1996 New Jersey refund matches their correct social security number. If possible a copy of the 1099-G should be included with any delinquency response if the taxpayer claims a refund was received for the delinquent year.

Individuals who have not filed the 1996 return may request a blank return by calling the Division's automated Forms Request System from a Touch-tone phone at 1-800-323-4400 (in NJ only) or 609-826-4400 (from anywhere) or call the Tax Hotline at 609-292-6400. □

Transient Vendors Investigated

The New Jersey Division of Taxation has established a Special Compliance Unit to investigate noncompliant transient vendors who set up temporary sales locations, many out of trucks or vans. Some of these vendors are out-of-State vendors. These transient

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businesses may try to lure customers from compliant New Jersey businesses by promising "tax free" purchases. Some examples of merchandise include furniture, oriental rugs, toys and artwork/paintings. Other businesses that may promise "tax free" services are lawn maintenance, construction companies and janitorial/maid services.

In many instances time is of the essence in finding these transient vendors. The Special Compliance Unit is asking for assistance from the public in locating these tax-evading businesses. Anyone wishing to report one of these non-compliant vendors/businesses can call 1-888-705-5554 toll free and leave a message with:

- Name of the vendor
- Type of business in operation
- Business location
- Time the vendor was seen
- Caller's name and telephone number (optional)

All calls will remain confidential.

The Unit can also be contacted by writing to:

NJ DIVISION OF TAXATION
SPECIAL COMPLIANCE UNIT
PO BOX 245
TRENTON NJ 08646-0245

In gaining greater compliance, the Division of Taxation hopes to level the playing field for all businesses in New Jersey so that tax evaders do not have an unfair advantage over law-abiding vendors. □

Electronic Notices in Bankruptcy Cases

The Director of the Division of Taxation has entered into a Trading Partner Agreement for the Electronic Noticing Program with the U.S. Bankruptcy Court for the District of New Jersey. The effective date of the agreement was July 14, 1998. This agreement allows the Court to notify the Division of Taxation "electronically" of the commencement of proceedings under Chapter 7 (Asset & No Asset), Chapter 11, Chapter 12 and Chapter 13.

This electronic noticing program will allow the Division of Taxation to receive and process this information in a more efficient manner while reducing the mountains of paper normally being received containing the required information. The Division recently began receiving its first electronic files. For a short duration the Division will be receiving dual notifications, both electronic and hard copy, to ensure that all electronic notices are being correctly provided to the Division. Future enhancements may allow the Division to download this information to the State's registration files and the possibility of filing its Proofs of Claims electronically also exists.

As part of the Trading Partner Agreement, the Division of Taxation had to include **all** known addresses to which such notices were being sent. The success of this venture relies on those within the Bankruptcy "Arena" to list the Division of Taxation's address properly when listed as a creditor by the debtor.

The proper address is as follows:

NJ DIVISION OF TAXATION
BANKRUPTCY SECTION
PO BOX 245
TRENTON NJ 08646-0245

This address should be used when listing the Division of Taxation as a creditor at the commencement of insolvency proceedings for any tax which is administered by the Division. This address should be utilized regardless of the current location of the Division of Taxation's file at the commencement of the case. It is not pertinent to include in the mailing address the Tax Type, Section Name or Person's Name with whom you and/or the debtor may have been dealing with prior to, or at the time of commencement.

NOTE: This address is to be used for initial notification of commencement of proceeding. This does not relate to Process Service in Bankruptcy Cases which was addressed in the 1998 summer issue of the *New Jersey State Tax News*. □

INHERITANCE/ESTATE TAX Enforcement Increases Revenue

The Fiscal Year 1998 New Jersey Estate Tax revenue, in the amount of \$97,867,457, reflects a 28 percent share of total revenue in the amount of \$355,050,719. Transfer Inheritance Tax has the larger share in the amount \$257,183,258.

Legislation granting broad exemptions from the Inheritance Tax and separate legislation accelerating the due date for reporting and paying New Jersey Estate Tax together with renewed and determined enforcement policies of the

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enforcement revenue - from pg. 13

Division are given credit for the significant Estate Tax revenue.

The New Jersey Estate Tax is triggered whenever there is a Federal estate tax liability. The Estate Tax is applicable only to estates of resident decedents. The tax is designed to fully absorb any portion of the State Death Tax credit allowable under Federal estate tax laws. The New Jersey Estate Tax is the difference, if any, between the inheritance and other death taxes paid to this State and elsewhere from the allowable credit. Emphasis is on the word "allowable" as opposed to "allowed" or "taken."

The New Jersey Estate Tax obligation is not discretionary on the part of the taxpayer. It may not be satisfied by payment of the appropriate amount to the Federal Government in lieu of claiming the credit allowable for Federal estate tax purposes.

Amended Estate Tax statutes provide that for estates of decedents dying on or after March 1, 1992, which are subject to the New Jersey Estate Tax, an estate tax return (Form IT-Estate) must be filed together with payment of the tax within 9 months after the decedent's death.

Interest accrues at the rate of 10 percent per annum on any estate tax not paid within the nine month period. Upon receipt of a copy of a Federal extension to file the Federal Form 706, interest may be reduced to 6 percent per annum until expiration of the extension period.

Statute requires that a copy of the Federal Estate Tax Form 706 be filed with the Transfer Inheritance and Estate Tax Branch within 30 days after filing of the original

with the Federal Government. A copy of any communication from the Federal Government making any final changes, or confirming, increasing, or diminishing the tax shown to be due must also be filed with the Branch within 30 days of receipt. □

LOCAL PROPERTY TAX ***Disabled Vets*** ***Reimbursed***

New Jersey's Constitution and statutes at N.J.S.A. 54:4-3.30 provide that certain totally and permanently disabled war veterans or their surviving spouses be exempt from property taxes on their principal residences and the lots on which those residences are situated.

To qualify for property tax exemption, the veteran must be honorably discharged from active wartime service in the U.S. Armed Forces and be VA certified as having service-connected total or 100% permanent disability. The veteran must fully own and permanently reside in the dwelling for which exemption is claimed and be a legal or domiciliary resident of New Jersey. Application, Form D.V.S.S.E., must be filed with the municipal assessor of the taxing district where the dwelling is located. As the surviving spouse of a disabled veteran who met all of the above eligibility requirements, the widow or widower must not have remarried, must also be a New Jersey resident and owner-occupant of the claimed dwelling.

Generally, the State does not reimburse the municipality for the tax revenues lost by the granting of these exemptions. However,

\$5,037,244.87 in a one-time State funded retroactive property tax reimbursement (D.V.R.R. program) was issued in August 1998 to 397 totally and permanently disabled war veterans or their surviving spouses who paid taxes when their properties should have been exempt. Over 500 D.V.R.R. applications for reimbursement were received and processed by Local Property's Policy and Planning Section. The filing period for State reimbursement ran from January 1, 1998 through March 31, 1998. The reasons for the retroactive claims varied. Some veterans were unaware that the tax exemption was available to them. Other vets received the required VA certification of their service-connected 100% permanent and total disability retroactively, years after property tax payments had been made.

Procedures outlined in N.J.S.A. 54:4-3.30 for determining exemption entitlement and discretionary granting of retroactive refunds by the municipal governing body pursuant to N.J.S.A. 54:4-3.32 have not been changed by the one-time State reimbursement. □

LOCAL PROPERTY TAX ***Tax Deductions*** ***Certified***

The 1998 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1998.

Under the provisions of R.S. 54A:10-1, et seq., as amended, the

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tax deductions certified - from pg. 14

Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1998.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1998 was \$33,650,613. That amount represents a decrease of 5.4% from 1997.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1998 was 129,959. When compared to tax year 1997 the number of deductions decreased 4.5%.

The amount of veterans' deductions for 1998 was \$17,538,791. That amount represents a decrease of 2.7% from 1997.

The total number of veterans' deductions for 1998 was 343,975. When compared to tax year 1997 the number of deductions decreased 2.6%.

The total amount of property tax deductions and veterans' deductions include the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

**LOCAL PROPERTY TAX
*F.E.A.C. Adopts
Values for 1999***

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 26, 1998 at the Philip Alampi Laboratory in West Trenton to adopt productivity assessment values and imputed grazing values for land receiving farmland assessment for 1999. The thirty-fifth Report of the Committee

(showing the value ranges adopted) is mailed to municipal tax assessors and county boards of taxation by October 1 of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its agricultural or horticultural use rather than its true or market value.

The farmland productivity values adopted by the Committee for the 1999 tax year increased in 14 of the 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20 to \$60 per acre when compared to 1998 values. Overall net farm income of land in agricultural and horticultural use in New Jersey is estimated to have increased approximately 5.7% over the prior year. □

**LOCAL PROPERTY TAX
*Farmland Acreage***

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that total acreage devoted to agricultural or horticultural use in 1998 was 1,178,121 acres for the entire State.

The data for tax year 1998 reflects a continued decline in the amount of qualified farmland since enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 7.4% or a total of 93,761 acres.

24.5% of New Jersey's land mass is approved under the Farmland

Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem with 57.1% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon 51.2%; Warren 51.0%; Gloucester 38.5%; Sussex 33.8%; and Mercer 30.9%.

Copies of the 1998 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

January 1-

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10-

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before

assessors' calendar - from pg. 15

Jan. 1.

- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1-

- Notices of current assessment and preceding year's taxes mailed to taxpayer by assessor.
- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding year's taxes, or change in assessment, extended by County Tax Board.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.

February 15-

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1-

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each asses-

sor, Division of Taxation, and post a copy at the courthouse.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On June 19, 1998, Mr. Harold W. Coleman, a former official of Hamilton Township, Mercer County, Board of Fire Commissioners, was indicted by a State Grand Jury for allegedly embezzling in excess of \$700,000 while acting as Treasurer of the organization. The indictment included charges of theft, official misconduct, misapplication of entrusted property, filing false and fraudulent New Jersey gross income tax returns, failure to file a New Jersey gross income tax return and three counts of failure to pay New Jersey gross income taxes. The subject was arraigned in Mercer County Superior Court. Bail was set at \$100,000 and the subject was then incarcerated. Mr. Coleman, if convicted, could face 10 years in jail and a fine of \$330,000.
- On June 19, 1998, a Federal jury in Camden convicted four of the six defendants in the latest trial relating to the "Red Daisy" motor fuels tax investi-

gation. Those convicted at this trial included Daniel Enright, the former president of Petro Plus Petroleum, who agreed, on June 23, 1998, to forfeit more than \$2 million in cash to the Federal government which had been located in a Swiss bank account and subsequently frozen. This action clears the way for the participating agencies to receive an equitable share of these funds. Enright was convicted on conspiracy, 10 counts of money laundering, 11 counts of wire fraud and 14 counts of tax evasion. Also convicted of charges of tax evasion and money laundering were Richard Pedroni, the former president of Pedroni Fuel Company in Vineland, Mary Ingram, the former president of American Minority Petroleum located in Woodbridge and Demetrius Karamanos, a former officer of Kings Motor Oils Co. Inc. located in Edison. This undercover investigation was worked jointly by the FBI, IRS-CID, Pennsylvania Department of Revenue and Division of Taxation's Office of Criminal Investigation.

- On June 24, 1998, Himanshu K. Desai, an Ocean County Corrections Officer, of South Toms River, was indicted by a State Grand Jury for filing fraudulent sales tax returns from 1990 through 1997 in connection with a convenience store he owns in South Toms River. The amount of tax underreported is estimated to be more than \$60,000. If convicted on all counts, Desai faces up to five years in prison and fines of up to \$7,500. This case was investigated by the Office of Criminal Investigation with present-

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criminal enforcement - from pg. 16

- ment to the grand jury by the Division of Criminal Justice.
- On July 22, 1998, Fausto Diaz of Perth Amboy entered a guilty plea to an accusation of one count of money laundering and one count of filing a fraudulent New Jersey gross income tax return. Mr. Diaz faces up to 10 years in prison. This case is the first prosecution from the enhanced money laundering statutes enacted last year and was investigated jointly by the Division of Taxation's Office of Criminal Investigation and the Division of Criminal Justice.
- On August 7, 1998, Anagnostis Inc., t/a Holiday Spirit Shop, and Peter B. Anagnostis were indicted by a State Grand Jury. The indictment was five counts: theft by failure to make required disposition, misapplication of entrusted property, failure to file returns, failure to turn over taxes, and purposeful failure to turn over taxes. The total amount of sales tax collected but not remitted was \$262,537 for the period September 30, 1990 to June 30, 1994.

- On August 26, 1998, a Camden County Grand Jury indicted Steven H. Willans, of Barrington Borough, on charges of failing to file personal State income tax returns for the years 1994, 1996 and 1997, collecting and failing to remit \$7,609.07 in sales tax, failing to file returns regarding same and misapplication of said entrusted property from 1992 through 1995. Willans was also indicted on charges of embezzling more than \$75,000 from the Barrington Ambulance Association, the local first aid squad of which he was treasurer.
- In other related indictments, Katrina Willans, Steven Willans' wife, was indicted on charges of failing to file State income tax returns for the years 1993 through 1997, and Samuel F. Daley of Audobon Borough was indicted on charges of failing to remit \$6,125.88 in sales tax he had collected, failing to file and remit \$1,139.55 State gross income tax he had withheld from employees' wages, and misapplication of entrusted funds,

from 1995 through 1997. These cases were jointly investigated by the Division of Taxation's Office of Criminal Investigation, the Barrington Police Department and the Camden County Prosecutor's Office.

- Forty-five charges were filed in municipal court on nine cases for violating the cigarette tax law including possession of 1,008.9 cartons of contraband cigarettes, valued at \$25,222.50. Two cases involved the arrest of three individuals from out-of-State, who were transporting unstamped cigarettes. □

Tax Briefs

Corporation Business Tax Short Period Returns S Corporations — If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and it therefore ceases to be a New Jersey S corporation but its corpo-

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Enforcement Summary Statistics

Third Quarter 1998

Following is a summary of enforcement actions for the quarter ending September 30, 1998.

• Certificates of Debt:	• Jeopardy Seizures	5	
Total Number	2,453	• Seizures	27
Total Amount	\$56,379,820	• Auctions	16
• Jeopardy Assessments	4	• Referrals to the Attorney General's Office	346

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

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rate existence continues, the corporation files a New Jersey S Corporation return (CBT-100S) for the short period ending on the day before the disqualifying event and a C corporation short period return (CBT-100) for the remainder of the year.

The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension of time to file the CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T on or before the due date of the return.

Single Member LLCs — If a foreign corporation is the member of a single member LLC that is doing business in New Jersey, the corporate member is subject to the Corporation Business Tax, N.J.S.A. 54:10A-1 et seq., in New Jersey, assuming that the LLC is disregarded as an entity for Federal purposes. N.J.S.A. 42:2B-69.

If the LLC itself is treated as a corporation for Federal tax purposes, and is not disregarded, the LLC would be required to file a CBT-100 and pay tax in its own right. N.J.S.A. 54:10A-4(c).

P.L. 1998, chapter 79, approved August 14, 1998, provides for single member LLCs to be organized in New Jersey. The amendment applies to all existing limited liability companies whether or not formed before August 14, 1998.

Gross Income Tax

Dependent Care Accounts — The Division received an inquiry concerning whether a dependent care account to which an employee

contributes is taxable by New Jersey.

Employees are subject to State gross income tax on all income actually or constructively received. The New Jersey Gross Income Tax Act imposes the tax upon salaries, wages, tips, fees, commissions, bonuses and other remuneration received for services rendered. N.J.S.A. 54A:5-1a. There is no provision in the New Jersey law similar to the Internal Revenue Code excluding from employee income amounts paid into a dependent care account.

Payment to Widow of Fireman

Killed in Action — A taxpayer inquired whether a pension benefit paid to the widow of a fireman killed in action is exempt from gross income tax. The pension benefit is paid under N.J.S.A. 43:16A-10, which provides an accidental death benefit “upon the death of a member in active service as a result of an accident met in the actual performance of duty....” For a widow or widower, the benefit is a pension of 70% of the compensation paid in the last year of service. Unlike typical pensions, the benefit is not based on the deceased’s age and length of service.

Under section 6-6.a. of the Gross Income Tax Act, amounts received under workmen’s compensation acts as compensation for personal injuries or sickness are exempt from gross income tax. The New Jersey exemption is based on a similarly-worded Federal tax exemption found in section 104(a)(1) of the Internal Revenue Code.

Based on the wording in N.J.S.A. 54A:6-6.a. and IRS regulations and rulings, the Division of Taxation has determined that the pension

benefit paid under N.J.S.A. 43:16A-10(1) and (2) to a widow or widower of a police or fire member killed in action is exempt from the gross income tax. Taxpayers claiming the exemption must attach to their return a letter from the Division of Pensions stating that the taxpayer is eligible for the section 43:16A-10 benefits and documentation of the annual amount of the benefit.

Sales & Use Tax

Boats Subject to Registration and Sales to Nonresidents — The Form ST-10V (Vessel Dealer Sales and Use Tax Exemption Report) is used by vendors to document sales subject to the sales tax exemption allowed under N.J.S.A. 54:32B-10. This provision exempts sales of motor vehicles, aircraft and boats to nonresidents of New Jersey if the nonresident purchaser also meets four additional criteria for exemption: (1) has no permanent place of abode in New Jersey, (2) is not engaged in any employment, trade, business or profession in the State in which the motor vehicle, aircraft or vessel is used within New Jersey, (3) will not base the aircraft or boat in New Jersey within the 12 months following purchase, except on a transient basis, and (4) provides the vendor with necessary documentation to support the exemption. N.J.S.A. 54:32B-10(a) (2), (3), (5) and (4), respectively.

Although the provision does not explicitly limit the exemption to particular kinds of boats, in light of the additional criteria for the nonresident exemption, the Division believes that the boat exemption is limited to those boats that are subject to regulation by the

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Division of Motor Vehicle Services under the New Jersey Boat Act. The governing statute, N.J.S.A. 54:32B-10, in subsection (5), says that in order for the boat to be exempt, the purchaser "will not house, moor, base or otherwise place the...boat or other vessel in this State for use on other than a transient basis or for repairs at any time within 12 months from the date of purchase." This criterion for exemption parallels one of the conditions for exemption from the requirement of registration with the Division of Motor Vehicles under the New Jersey Boat Act. N.J.S.A. 12:7-34.38(b). Therefore, it is reasonable to conclude that the boats subject to exemption under N.J.S.A. 54:32B-10 are the types of boats subject to regulation by Motor Vehicle Services. (This is why the form requires information regarding state of registration of any trade-in vessel, the serial number of the boat sold, and the purchaser's driver's license.) Boats subject to registration with Motor Vehicle Services would include power vessels and sailboats larger than 12 feet long, but would not include such things as canoes, kayaks, nonmotorized rowboats or nonmotorized dinghies. See N.J.S.A. 12:7-34.38.

A business that sells only canoes, kayaks and rowboats is not deemed to be a "vessel dealer" for sales tax purposes. Unlike purchasers of motor vehicles, power vessels, and large sail boats, who may be exempt from sales tax if they satisfy the criteria for nonresidency in N.J.S.A. 54:32B-10, nonresident purchasers of canoes who take possession of the canoes in New Jersey are not exempt from paying sales tax. The explanation of the

nonresident exemption in N.J.A.C. 18:24-7.8(b), which applies to motor vehicle sales, can also be used as a guide in determining whether a purchaser of a boat qualifies for the nonresident exemption.

Limited Dividend Housing Corporation — A Limited Dividend Housing corporation wrote the Division requesting information on the proper sales and use tax refund procedures for such corporations. Limited Dividend Housing corporations and associations, organized under the Limited Dividend and Nonprofit Housing Corporations and Associations Law, are providers of low and moderate income rental housing projects in blighted areas that were developed prior to 1992.

They were advised that prior to any refund claim their application for Limited Dividend Housing sales tax exemption status must be reviewed and approved by the Division.

Limited Dividend Housing corporations (or associations) are exempt from sales tax under N.J.S.A. 55:16-19 for the purposes described in N.J.S.A. 55:16-4, i.e., "to acquire, construct, alter, maintain and operate a housing project." The tax exemption is for the purchase of materials, supplies and services for constructing the project and also for maintaining and operating the housing project after it has been constructed. The exemption is approved to the housing corporation or association only for use on the specific housing project stated in the application. The exemption extends to all purchases used to operate the housing project, including not only structural materials and supplies, but also operat-

ing expense supplies, office supplies, and business supplies for that project. The exemption does not include tenant purchases, restaurant meal purchases by owners/management or tenants, hotel occupancies or any other purchase not directly related to the housing project. Contractors doing work for a Limited Dividend Housing corporation cannot buy materials or supplies from their supplier tax free with an ST-13 but the Limited Dividend Housing corporation can buy the materials and supplies directly with payment out of their account tax free with the use of an ST-4 together with their sales and use tax exemption letter provided by the Division.

The Limited Dividend and Nonprofit Housing Corporations and Associations Law was repealed effective April 17, 1992. The repealer contained a provision to allow Limited Dividend Housing corporations and associations (renamed "urban renewal entities") with projects in existence prior to April 17, 1992 to continue with all previously granted sales tax exemptions. N.J.S.A. 40A:20-1, et seq.

Once their exemption status has been approved, the Limited Dividend Housing corporation may file a Claim for Refund form for any sales and use taxes paid, for the purposes described in N.J.S.A. 55:16-4, for a four year period prior to the date of their claim.

The claim for refund must be supported by invoices and canceled checks showing the Limited Dividend Housing corporation as the purchaser and payer of record. Purchases must be shown for use on the housing project stated on

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the application.

Sales or Installation of Certain Home Appliances — Under the Sales and Use Tax Act, a contractor is any person who improves or repairs the real property of another person. Built-in appliances are treated as capital improvements to real property and therefore any person who installs such an item for a customer is a contractor with respect to that transaction.

The Sales and Use Tax Act places responsibility with the contractor for sales and use tax on purchases of materials and supplies necessary for the installation. The contractor's customer is liable for tax only with respect to the installation labor charge, unless the installation results in a capital improvement to real property. Again, note that built-in appliances, including replacements, are usually treated as capital items.

Given the statutory framework, the following guidelines can be used by appliance retailers to ascertain the correct sales and use tax application:

- In any case where the retailer sells a built-in appliance to a customer, regardless of whether the customer is a homeowner, contractor, builder or developer, sales tax must be collected on the sales price if the property is either picked up or delivered to a location in New Jersey. (This assumes no exemption is available under law.)
- In any case where the retailer sells a built-in appliance to a customer *and agrees to install the item under a separate installation agreement*, sales tax must be collected on the sales

price of the appliance if the property will be installed in a location in New Jersey. The charge for installation is not subject to sales tax because the installation is deemed to result in a capital improvement. The customer should issue a Certificate of Capital Improvement (ST-8) to the retailer/contractor.

- In any case where the retailer agrees to sell a built-in appliance installed (single agreement), the retailer is acting as a contractor under the Sales and Use Tax Act. Thus, the retailer/contractor is liable for the remittance of use tax based on the cost of the built-in appliance, since the appliance was presumably purchased without the payment of sales tax. The sale agreement, now considered an agreement for the service of installing property which is incorporated into real property, is not subject to the collection of sales tax from the customer. The customer in this circumstance should issue a Certificate of Capital Improvement (Form ST-8) to the retailer/contractor. Note that the retailer/contractor's use tax expense may be incorporated into the price charged in the receipt.

Universal Service Assessment — Effective January 1, 1998, the Federal Communications Commission imposed an assessment on telecommunications carriers in order to fund the government's Universal Service Program, which subsidizes telecommunication services to low income and rural communities as well as schools, libraries and health care facilities. The telecommunications company may pass this cost on to its customers as part of the monthly bill for service.

The Sales and Use Tax rule provides that excise taxes which are imposed on vendors, such as the Universal Service Assessment, are included in the receipt on which sales tax is computed. Since telecommunications services, including cellular, are subject to New Jersey sales tax, the Universal Service Assessment is also subject to sales tax.

Uniform Procedure

Interest on Refunds — Taxpayers are entitled to interest on certain refunds pursuant to State Tax Uniform Procedure Law section N.J.S.A. 54:49-15.1 and Gross Income Tax Law section N.J.S.A. 54A:9-7(f). The interest will be equal to the prime rate, determined for each month or fractional month compounded annually at the end of each year, from the date the interest begins to accrue to the date of refund. The interest will begin to accrue from the later of the date of the filing of a completed claim for refund under N.J.A.C. 18:2-5.8, the date of the payment of tax, or the due date of the return.

However, the State Tax Uniform Procedure Law provides that "no interest shall be allowed or paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed whichever is later." N.J.S.A. 54:49-15.1. The same provision appears in the Gross Income Tax Law. N.J.S.A. 54A:9-7(f). Thus, the Division will not pay interest on refunds that are paid within six months of the later of the date the return is filed or the due date or extended due date of

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the returns.

N.J.S.A. 54:49-15.1, which authorized interest on refunds, was contained in Public Law 1992, c.175, the "Taxpayers' Bill of Rights," enacted December 10, 1992. N.J.S.A. 54:A:9-7(f) was enacted in 1976. These provisions balance the goal of providing timely refunds with the need to allow time for the Division and taxpayers to discover overpayments, and for the Division to receive and process completed refund claims from taxpayers. □

In Our Courts

Insurance Retaliatory Tax Treatment of Surtax as a Special Purpose Assessment — *Liberty Mutual Insurance Co., Liberty Mutual Fire Insurance Co. v. Director Division of Taxation*, decided July 21, 1998; Tax Court Nos. 006043-96 and 000258-97.

These cases involve the issue of whether the FAIR Act Private Passenger Automobile Surtax collected in 1990, 1991 and 1992 is a special purpose assessment excludible from the taxpayers' New Jersey retaliatory tax base under N.J.S.A. 17:32-15. By opinion and judgment dated July 21, 1998, the Tax Court granted the plaintiffs' summary judgment motion and denied the State's cross motion on this issue (the State prevailed on the estoppel issue raised by the plaintiffs).

Local Property Tax Former Parish Properties Eligible for Partial Exemption — *Roman Catholic Archdiocese of Newark v. City of East Orange*, decided May 27, 1998; Tax Court of New Jersey.

A decades old real estate tax exemption of two church parishes under N.J.S.A. 54:4-3.6, as properties actually and exclusively used for religious purposes or worship, was challenged when, due to declining attendance and deteriorating facilities, the parishes were dissolved and ownership reverted to the Archdiocese. During the disputed years 1994-1996 the properties were used for storing church records and artifacts, deanery meetings, a gymnasium for Catholic youth teams, a rectory for a retired clergyman, daily and weekly Mass, and classrooms rented to the city's Board of Education. Usually no more than two persons, the pastor and church security guard, attended Mass, and the meetings and sporting events were occasional. The municipality revoked the exemption contending the quantum of religious use to be insufficient. The Archdiocese countered that court examination would violate the church's U.S. and State Constitutional protections of religious freedom.

The N.J. Tax Court addressed the following religious use issues in deciding exemption status:

1. May a court inquire into the nature of religious use of otherwise qualified property;
2. Must a religious use be of a certain amount or level to attain exemption;

3. Is storage of church property and religious artifacts a religious use;
4. Is the required exclusivity of religious use invalidated by leasing a portion of the property to the Board of Education.

In its review of U.S. and N.J. law, the State Tax Court found that Constitutional protections are not absolute; inquiries into the purposes and activities of religious organizations have been approved by the Federal Courts and mandated by N.J.S.A. 54:4-3.6's actual and exclusive use condition for property tax exemption.

However, New York, Colorado and Utah Supreme Courts have examined minimum religious use criteria and rejected them, while the Michigan Court of Appeals in 1968 adopted and then in 1977 reversed a quantum of use test. The lone exception was the Vermont Supreme Court which by split decision upheld a quantum use test for an educational organization. Vermont has not applied the test to a religious entity. N.J. courts have ruled that a tax exempt religious organization's complete nonuse of a property will not sustain exemption, even where future exempt use is anticipated. Although our courts have indirectly dealt with use issues in relation to parsonages, they have not suggested a quantum, regularity or consistency of religious activity as prerequisite for exemption of religious purpose entities. N.J.S.A. 54:4-3.6 only requires actual and exclusive use and does not impose a de minimis test on entitlement to religious purpose or worship exemptions. Once occupied and utilized for appropriate exempt use, even if

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minimal, exemption is not denied.

Concerning storage, both New York and Alaska have exempted religious entities where part of the property was used for storage. Warehousing has been affirmed as an exempt use with respect to historic sites by our State Supreme Court. But until this Tax Court's review of storage as a qualifying religious use it had only been alluded to in prior case law by way of property description. As determined by this Court, if documents and artifacts warehoused at church facilities are of a religious nature or relate to church operations, use is consistent with exemption.

Finally, regarding the Archdiocese's rented classrooms — by itself, property owned and used by the Board of Education for classrooms is exempt from taxation. N.J.S.A. 54:4-3.6 also permits partial exemption for educational, hospital, and moral and improvement purpose properties where a portion of the property is used by a taxable entity for taxable purposes. Further, the courts have decided that the leasing of an exempt educational property by an exempt educational organization to another exempt educational organization for an educational use does not defeat exemption. Nevertheless, under 54:4-3.6 properties of religious and charitable organizations, if not exclusively used for those purposes, lose their entire exemption. This position reflects the two different exemption provisions of the statute. In the 1977 case *Boys' Club of Clifton v. Jefferson Twp.*, the N.J. Supreme Court declared that "occupancy [of a property owned by a charitable or religious organization] by an

organization other than a charitable or religious one, such as an educational institution, would destroy the tax exempt status." Thus, if a religious organization leases property to an otherwise exempt organization which is not religious or charitable it loses exempt standing. For religious and charitable entities the exclusive use test has not been modified and the stricter requirement still applies. Accordingly, the former parish properties were exempt from taxation as actually and exclusively used for religious purposes except for that parcel and for that period it was leased to the Board of Education.

Miscellaneous
Division's Duty to Provide Notice of Changes to Tax Statutes — *Schirmer-National Co. v. Director, Division of Taxation*, decided August 17, 1998; Tax Court No. A00348-96.

The Tax Court followed its decision in *Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation*, 16 N.J. Tax 584 (1997), that alarm monitoring services carried through telephone telecommunications are subject to sales tax. Plaintiff also argued that these services should not be subject to tax until the time the Division provided proper notice of the tax law changes. The court ruled that taxpayers are "put on notice of legislative enactments on the date the legislation becomes effective." Consequently, the Division of Taxation was not obligated to provide taxpayers with notice of changes in the tax law.

Timely Protests — *Frank Scallo v. Director, Division of Taxation*, decided July 10, 1998, clarified August 26, 1998; Tax Court No. 000387-1998.

Plaintiff was a shareholder and employee of Shore Auto Service, Inc. In 1992, the Division assessed sales and use tax against the corporation for the period October 1986 to December 1989. The corporation did not challenge the assessment. On June 28, 1996, the Division sent plaintiff a Notice of Finding of Responsible Person Status which granted the right to an administrative hearing if the plaintiff applied for a hearing within 90 days of the notice. On January 16, 1997, the Division filed a certificate of debt against the plaintiff and a Warrant of Execution was issued on February 1, 1997. On April 23, 1997, plaintiff requested an administrative hearing challenging his status as a responsible person for the period October 1986 to December 1989. Plaintiff's request was denied due to its untimeliness on November 14, 1997. Thereafter, plaintiff filed a timely complaint with the Tax Court on February 10, 1998 claiming that the request for an administrative hearing was timely and that the 1996 assessment was void *ab initio*.

The Tax Court held that plaintiff's request for an administrative hearing was untimely because the April 23, 1997 request for a hearing was more than 90 days after the Division's June 28, 1996 mailing of the Notice of Responsible Person Status and that the filing of the certificate of debt does

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not extend plaintiff's time to request an administrative hearing pertaining to the underlying tax liability. The court added that the certificate of debt may not be challenged under Rule 4:50-1 because this rule deals with the correction of liability determinations which are the result of litigation, not Division methods involving the collection of tax liabilities. Finally, the court ruled that the 1996 assessment was not void *ab initio* even if made beyond the four (4) year statute of limitations because plaintiff's failure to file a timely request for an administrative hearing barred him from raising this defense.

Sales and Use Tax

Guard Dog Security Services – *Aportela Command Dogs Inc. v. Director, Division of Taxation*, decided April 24, 1998; Tax Court No. 0003489-1997.

Plaintiff is engaged in the business of providing guard dog security services per written monthly rental agreements to various clients for the protection of their property. Typically, dogs were brought to the customer site at the end of the business day on a daily basis by their handlers and were removed before the commencement of business on the next day. On weekends and holidays, the dogs were left and the handlers visited them for purposes of feeding and cleaning up. In other situations, the dogs were kenneled on the clients' property and were released at the end of and caged at the beginning of the business day.

In a motion for summary judgment, the court held that monthly receipts attributable to these guard dogs services were not subject to sales tax because the real object of the agreement was the security of the customers' premises. In reaching its decision, the court reasoned that the purchase price of the dogs was minor when compared to the contract receipts and that the corporation incurred greater expenses in preparing the dogs for guard duty via their training, maintenance, and the handlers who dealt with the dogs.

Sales or Repairs, Alterations or Conversion of Ships – *Maher Terminals Inc., v. Director, Division of Taxation*, decided September 3, 1998; Tax Court No. 0003495-1997.

Plaintiff operated a stevedoring/port terminal business for commercial ships, barges, and other vessels at its marine terminal facility in Port Elizabeth, NJ. Plaintiff's computer equipment is located at a building which is 14 miles away from the marine terminal facilities. The computer equipment is connected by fiber optic cable to computer terminals at the marine terminal facilities and is used to process data such as the containers' number, weight, contents, destination, name of the shipping vessel and date of sailing and anticipated arrival, special handling requirements, compliance with export requirements, etc. These computers plan where outgoing containers will be placed on the ships, track the storage location of the containers, and instruct plaintiff's employees as to where the containers will be stored

and the order in which they will be loaded. Additionally, computer terminals are located on straddle carriers, equipment which straddles a cargo container, so that it can be lifted and moved efficiently, in order to maximize their efficiency and to coordinate container movement (pick up and drop off) after considering priority of the move.

At issue is whether plaintiff's computer equipment qualifies for the N.J.S.A. 54:32B-8.12 sales tax exemption. This exemption applies, *inter alia*, to "...machinery, apparatus and equipment for use at a marine terminal facility in loading, unloading and handling cargo carried by those commercial ships, barges and other vessels, and storage and other services rendered with respect to such loading, unloading and handling cargo at a marine terminal facility..."

The court ruled that the computer equipment did not qualify for the exemption because it was not directly used in the loading, unloading, and handling of cargo. The court found that the computer's use, information processing, was too remote from the actual movement of the cargo, i.e., activities of the straddle carriers, forklifts, cranes, and other movement equipment. The court reasoned that it was not the Legislature's intention to exempt such computer equipment. □

In Our Legislature

Constitutional Amendment

Open Space, Farmland, and Historic Preservation

— An amendment to Article VIII, Section II, of the State Constitution was approved by the electorate on November 3, 1998. Commencing July 1, 1999, the amendment dedicates \$98 million in each fiscal year for the next 10 years (1999 to 2009) from the State sales and use tax revenues for the acquisition and development of lands for recreation and conservation purposes, for the preservation of farmland for agricultural or horticultural use and production, and for historic preservation, and to satisfy payments relating to bonds and other obligations issued for those purposes.

The amendment also dedicates up to \$98 million each fiscal year, for up to 20 years thereafter (2009 to 2029), of sales and use tax revenues to satisfy any payments relating to bonds and other obligations issued for those same purposes.

Gross Income Tax

Holocaust Restitution — P.L. 1998, c.113 (signed into law on October 20, 1998) excludes from income amounts received by victims of the Nazi Holocaust as reparations or restitution for the loss of liberty or damage to health. Such compensation, whether recovered in the form of tangible or intangible property or as cash value in replacement of such property, payment of insurance policies purchased by Nazi Holocaust victims, and any accrued interest on such amounts, shall not be counted as income for New Jersey gross income tax purposes or for the purpose of determining eligibility

for the Pharmaceutical Assistance to the Aged Program (PAAD). This act took effect immediately and applies to all property received after enactment.

Single Member Limited Liability Companies

— P.L. 1998, c.79 (signed into law on August 14, 1998) amends various sections of the New Jersey Limited Liability Company Act to provide for single member limited liability companies and to treat such companies as sole proprietorships for State income tax purposes unless the company is classified otherwise for Federal income tax purposes. The act became effective immediately and applies to all existing limited liability companies regardless of their formation date.

Miscellaneous

Exemptions for Municipal Electric Utilities

— P.L. 1998, c.114 (signed into law on October 28, 1998) exempts certain sales by municipal electric utilities from sales tax and from the corporation business tax. The act, targeted specifically to apply to the Butler Borough Municipal Corporation, took effect immediately and is retroactive to January 1, 1998.

ICF-MR Assessment

— P.L. 1998, c.40 (signed into law on June 30, 1998) provides for an annual assessment of 5.8% of the gross revenue of every intermediate care facility for the mentally retarded (ICF-MR) in the State. The assessment must be paid to the Director of the New Jersey Division of Revenue on a quarterly basis. Proceeds will be used by the Division of Developmental Disabilities in the Department of Human Services to reduce the number of disabled persons awaiting placement in a community resi-

dence or program. The act took effect July 1, 1998.

Special Improvement Districts

— P.L. 1998, c.115 (signed into law on October 28, 1998) authorizes municipalities to establish “special improvement districts” for the purpose of revitalizing the State’s downtown areas; provides \$5 million to establish a downtown business improvement loan fund for worthwhile municipal revitalization projects; and provides technical assistance for such projects from the Department of Community Affairs. This act took effect December 27, 1998.

Multiple Taxes

P.L. 1998, c.106 (signed into law on September 14, 1998) implements various recommendations of the Tax Advisory Group established by the State Treasurer in 1994 to study State tax issues.

1. Deficiency Assessments

Allows taxpayers who have paid an assessed deficiency within one year after the expiration of the period allowed for filing a protest, but who have not protested or appealed that assessment, to file a claim for refund. Applies to return periods which begin on or after January 1, 1999.

2. Hedge Funds

Provides that income or losses which a nonresident taxpayer receives from a business entity located in New Jersey are not deemed to be derived from New Jersey sources if the business entity’s only activity is the purchase, holding or sale of intangible personal property, such as commodities or securities and such intangible property is not

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held for sale to customers. Applies to taxable years ending after enactment.

3. *Penalty Rules*

For return periods which begin on or after January 1, 1999:

- Amends the State Tax Uniform Procedure Law so that the penalty for failure to file a tax return is based on the amount of the underpayment of tax rather than on the entire tax liability; and
- Caps the corporation business tax underpayment penalty at 25% of the underpayment in conformity with the State Tax Uniform Procedure Law.

4. *Gross Income Tax Estimated Payments*

For return periods beginning on or after January 1, 1999:

- Raises from \$100 to \$400 the tax threshold above which quarterly estimated tax payments are required; and
- Requires certain estates and trusts to make estimated tax payments; and
- Modifies the method by which the penalty for underpayment of estimated tax is determined.

5. *Corporation Business Tax Estimated Payments*

For return periods beginning on or after January 1, 1999, modifies the method by which the penalty for underpayment of estimated tax is calculated.

Sales and Use Tax

Direct Mail Advertising Services

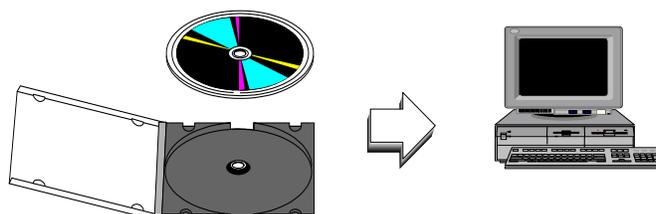
— P.L. 1998, c.99 (signed into law on September 4, 1998) amends the New Jersey Sales and Use Tax Act to more accurately describe the kinds of direct-mail advertising

services that are subject to sales and use tax. The amendment replaces the general and indistinct term “advertising services” with the more precise phrase “direct-mail advertising processing services in connection with distribution of advertising or promotional material” to recipients in New Jersey. This act took effect on November 1, 1998.

Charity Shops — P.L. 1998, c.118 (signed into law on November 9, 1998) allows certain charitable and public safety organizations to make tax exempt sales of donated property at shops where substantially all of the work is done by volunteers and where substantially all of the merchandise being sold has been received by the exempt organization as gifts or contributions. This act takes effect on February 1, 1999. □

NEW FOR '98
njx plus

the *enhanced* CD-ROM



Package NJX on compact disk features important additions for 1998.* The order form on page 27 contains details on how to order *njx plus*.

* Additions include most of the Division of Taxation's information publications including the Division's *Annual Report*, its quarterly newsletter, the *New Jersey State Tax News*, and certain NJ tax statutes.

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
9	17	18	19	20	21	22	23
9	24	25	26	27	28	29	30
	31						

January 11

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30
- continued*

January 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
 - GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
 - GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
 - MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
 - SCC-5 Spill Compensation and Control Tax**—Monthly return
 - ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- continued*

January 20 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 25

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

January 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
9	21	22	23	24	25	26	27
9	28						

February 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

February 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

February 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
 - GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
 - GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
 - MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- continued*

February 22 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
9	21	22	23	24	25	26	27
	28	29	30	31			

March 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

March 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30
continued

March 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

March 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
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- SCC-5 Spill Compensation and Control Tax**—Monthly return
continued

March 22 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

March 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

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from the director's desk

Special Message to Tax Practitioners

This year brings many important changes, both administrative and legislative. Be sure to look for the “New for '98” symbols throughout the 1998 return instruction booklets. Here is a summary of those changes:

New for Tax Preparers

- Taxpayers may authorize a Division of Taxation representative to discuss their return with their paid tax preparer by filling in the “preparer authorization” oval above the preparer’s signature line.
- Extra supplies of both the envelope for mailing Forms NJ-1040 and HR-1040, and the small window envelope for mailing Form NJ-1040-V may be ordered from the Division of Taxation.
- New, large-size (9" x 12") envelope designed to permit return(s) to be mailed flat (not folded) is also available.

To request envelopes or vouchers, call the Automated Tax Information System at 1-800-323-4400 (Touch-tone phones within New Jersey), or write to Taxpayer Forms Services, PO Box 269, Trenton NJ 08646-0269. Supplies are limited, so order early.

Legislative Changes

- Final phase-in of the property tax deduction/credit.
- Alignment with Federal treatment of Roth IRAs.
- Exemption of United States military pension or survivor’s benefit payments received from the Defense Finance and Accounting Service by taxpayers 62 years of age or older or disabled under the Federal Social Security Act.
- Deduction of medical savings account contributions.
- Alignment with Federal treatment of sale of principal residence.
- Increase in estimated tax payment threshold from \$100 to \$400 for 1999.
- Exemption of NJBEST Account earnings.
- Exclusion from New Jersey gross income of reparations and restitution paid to Nazi Holocaust victims.

New Jersey State Tax News

Fall 1998

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Division Receives FTA Award



Acting Director Robert K. Thompson (center), Deputy Director Harold Fox (right) and Deputy Director Joseph Thiel (left) display the compliance award presented to the New Jersey Division of Taxation by the Federation of Tax Administrators.

The Federation of Tax Administrators presented its 1998 Compliance Award to the New Jersey Division of Taxation and the Iowa Department of Revenue at the FTA Annual Meeting in New Orleans in June. The Award recognizes programs in tax compliance showing excellence, creativity, and effectiveness.

New Jersey's award-winning tax recovery project focused on cash businesses and in particular the retail alcoholic beverage industry. Replacement of the wholesale liquor tax by sales taxes at the retail

continued on page 2

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
.....	609-588-2525
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refund... ..	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

fia award - from page 1

level helped spur a comprehensive review program and a combined audit/compliance effort involving registration, compliance checks, audit and criminal investigation. Division of Taxation Acting Director Robert K. Thompson said, "This was a true joint effort. Investigators and auditors worked side by side to support or refute audit findings."

Obtaining third-party alcoholic beverage wholesale purchase information electronically helped in the selection of audit candidates. The Division enlisted the assistance and cooperation of both the Division of Alcoholic Beverage Control (ABC) which provided access to its database of liquor license holders, and the alcoholic beverage wholesale industry, which provided data on their sales to retail liquor licensees.

Legislation enacted in 1995, requiring all current or prospective retail liquor licensees to obtain a tax clearance certificate from the Division of Taxation before a license can be renewed or transferred, helped support the Division's efforts to ensure that all retail liquor licensees in New Jersey are properly registered and brought into compliance with State tax laws.

The Division hired additional personnel for its enforcement efforts and also formed a special group of auditors and investigators to focus on cash businesses. Working with the assigned auditor, cash team investigators visit retail businesses that make retail sales of alcoholic beverages to develop "real world" information on the number of

customers and employees the business has, the type of food and beverages served, etc. The information gathered is then used to support the auditor's findings or the taxpayer's concerns.

With the assistance of the Internal Revenue Service, Division employees were given "economic reality" training, which is an indirect audit technique that involves gathering information about a taxpayer's financial status to help determine whether reported income is sufficient to support an individual's lifestyle or standard of living.

Over the three-year period since the inception of the program, the Division of Taxation has collected, \$133,424,452 as of July 11, 1998 as a result of audit assessments against liquor license holders, and expects to collect over \$150 million. □

GROSS INCOME TAX **Roth IRAs**

Governor Whitman has approved legislation (P.L. 1998, c.57, signed into law July 24, 1998) which conforms the New Jersey gross income tax treatment of Roth IRAs to the Federal treatment.

Like any other IRA, contributions to a Roth IRA are not excludable for New Jersey income tax purposes. However, unlike other IRAs, "qualified distributions" from a Roth IRA are excludable. That is, qualified distributions do not have to be included in New Jersey gross income in the year received.

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New Jersey State Tax **News**

is published quarterly by the:

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Technical Services
Taxpayer Services Branch
PO Box 281
Trenton, NJ 08646-0281

A subscription to the *State Tax News* is free. To be placed on the mailing list, or to notify us of an address change, write to us at the address above or send e-mail to: nj.taxation@treas.state.nj.us

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director:
Robert K. Thompson

News Coordinators for This Issue:

<i>Field Audit</i>	Paul Leestma
<i>Office Audit</i>	Josephine Comfort
<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Cheryl Repici
<i>Legislative Analysis</i>	John Bodnar
<i>Property Admin.</i>	Gary Amerine
<i>Technical Services</i>	Allette Wooley

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Editor: Linda B. Hickey

roth iras - from page 2

A “qualified distribution” is one that is made after the five-tax-year period beginning with the first taxable year in which a contribution was made to an individual’s IRA, **and** which is:

1. Made on or after the date on which the individual reaches age 59½; or
2. Made to a beneficiary (or the individual’s estate) after the individual’s death; or
3. Made because the individual becomes disabled; or
4. Made as a qualified first-time home buyer distribution as defined by the Internal Revenue Code.

A payment or distribution will not be treated as a qualified distribution if it is made within the five-tax-year period which begins with the year the first contribution was made to the Roth IRA. Likewise, a payment or distribution of an allowable rollover contribution (or income earned on the amount rolled over) from an IRA other than a Roth IRA, is not a qualified distribution if it is made within the five-tax-year period which begins with the year in which the rollover contribution was made.

In the case of a nonqualified distribution from a Roth IRA, the distributed earnings are reportable as income for New Jersey purposes.

For information on New Jersey’s treatment of converting an existing IRA to a rollover Roth IRA, see *New Jersey State Tax News*, Vol. 27, Number 1, Spring 1998.

The Division of Taxation has prepared a Technical Bulletin, TB-44, *Roth IRAs*, which discusses the topic in greater detail. To obtain a copy, call our Automated Tax Information System at 1-800-323-4400 (from Touch-tone phones within New Jersey only) or 609-588-2525 (from Touch-tone phones anywhere) and request TB-44.

To obtain TB-44 via NJ TaxFax call 609-588-4500 from your fax machine’s phone. You may also download a copy from our home page on the World Wide Web at:

<http://www.state.nj.us/treasury/taxation/>

To speak with a Division representative, call our Tax Hotline at 609-588-2200. □

1998 Package NJX

Order forms for the 1998 edition of *Package NJX* were mailed in August to those who subscribed in 1997. Designed primarily for tax preparers, *Package NJX* contains those reproducible New Jersey tax forms most widely used by tax professionals.

The CD-ROM version of this year’s edition (called *NJX PLUS*) has been expanded to include a variety of tax information literature published by the Division of Taxation: several years of the Division’s quarterly newsletter, the *New Jersey State Tax News*, as well as the *Annual Report* and many other tax information bulletins issued by the Division. The *NJX PLUS* CD-ROM is priced at \$15.00 per disk.

The printed version of *Package NJX*, consisting of approximately 450 three-hole punched loose-leaf pages, continues to be available at \$7.00 per copy. Specially designed *Package NJX* 3-ring binders, large

enough to accommodate the printed version, may be ordered separately at \$7.00 apiece. (Binders do *not* include the *Package NJX* loose leaf content pages.) Prices include shipping and handling.

If you haven’t yet ordered the *1998 Package NJX* (printed version), *NJX* binder or *NJX PLUS* CD-ROM and wish to do so, complete the order blank on page 27 of this issue and send it with your payment to:

STATE OF NEW JERSEY

PACKAGE NJX

PO BOX 286

TRENTON NJ 08646-0286 □

Small Business Workshops

New Jersey entrepreneurs can receive free assistance from the Division of Taxation. The Division sponsors workshops explaining tax obligations geared for new businesses. The workshops will cover the following topics:

- Registering with the State of New Jersey
- Meeting Employer Responsibilities
- Reporting Business Income
- Filing Sales and Use Tax Returns

Division personnel will explain the proper procedure for collecting and remitting tax. Division personnel will also discuss the various types of business ownership and the tax consequences of each one. The session concludes with a discussion of the Sales and Use Tax describing what is taxable and what is exempt from the tax.

continued on page 4

Taxation Representatives at New Jersey State Fair



Annie Sanfilippo (Compliance) and Patricia Douglas (Unclaimed Property) are just two of the many Division employees who assisted taxpayers at the New Jersey State Fair, which was recently held at the Garden State Park in Cherry Hill. For ten days Division employees distributed publications, answered tax questions, and made online adjustments to taxpayer accounts when necessary. In addition to having access to the Division's Home Page, Division employees helped taxpayers determine whether they held claim to any of the unclaimed property held by the State by performing look ups on their database.

small business workshops - from page 3

Participants receive appropriate forms and brochures for their own use. Additionally, each attendee receives a Small Business Workshop resource manual that reviews each topic and provides easy to follow examples.

Workshops are held throughout the State in conjunction with the Internal Revenue Service. Sessions run from 9:00 a.m. to 4:00 p.m., with the Division of Taxation presentation in the afternoon. If you wish to find out more about the Small Business Workshops, or would like to sign up for the fall sessions, call the Internal Revenue Service at: 1-800-829-1040 or the Division of Taxation's Taxpayer Hotline at: 609-588-2200. Dates and locations for the six Small Business Workshops scheduled for the 1998 fall season are listed below.

Fall 1998 Schedule

September 17	New Brunswick
October 22	Manalapan
October 30	Camden
November 6	Newark
November 17	Jersey City
December 4	Union



Division's E-Mail Volume Grows

In recognition of the popularity of the Internet and the ever-increasing use by the public of e-mail, the Division's Technical Services Activity established an e-mail address in 1996. The e-mail address provides a fast and convenient way for the public to request information and correspond with the Division. The substantial use of e-mail by the public at large had an immediate impact on the mix of taxpayer correspondence received by the Division. The Taxpayer Services Branch

responded to more than 2,900 e-mail inquiries in the 1998 fiscal year. This was up 500% from the slightly more than 600 e-mail responses sent in 1997. While not all tax matters or requests can be resolved by e-mail, this option can be used in the majority of cases.

The Branch receives e-mail of a varied and technical nature which sometimes requires in-depth research and/or rerouting to other Division branches or specialists. This, along with the volume of e-mail received, does not always allow an immediate reply. Even so, the convenience and cost savings plus the advantage of a shorter response time continues to make e-mail a popular option.

E-mail the Division at:

nj.taxation@treas.state.nj.us

Also visit our Web site for information, publications and links to other sites. □

HOMESTEAD REBATE
Rebate Checks
Issued July 31

Approximately 1.2 million New Jersey residents received homestead rebates totaling \$304 million soon after the July 31 mailing.

“These checks are important sources of much-needed income for eligible citizens of New Jersey,” said Governor Christie Whitman.

Eligible recipients include senior citizens who are 65 years of age or older, residents who are blind or disabled, and those under age 65 who earned \$40,000 or less for the 1997 tax year.

Senior citizens over age 65 and those who are blind or disabled with gross incomes of \$70,000 or less are eligible for rebates up to \$500 if they are homeowners or tenants. Residents in this category making between \$70,000 and \$100,000 would receive \$100 if they are homeowners and \$35 if they are tenants. Residents making more than \$100,000 are not eligible for rebates.

Nondisabled taxpayers who are under age 65 with gross incomes up to \$40,000 are eligible for rebates of \$90 if they are homeowners and \$30 if they are tenants.

One of the qualifications for the homestead rebate is that property taxes be paid on the applicant’s principal residence, either directly or through rent. Thus, New Jersey residents living in dwellings which are not subject to local property tax are not eligible for the rebate.

The 1997 tax year marked the second phase of the property tax deduction/credit program. Claimants who were 65 years of age or older or blind or disabled, and who did not have to file a 1997 New Jersey income tax return (Form NJ-1040) because their gross income was below the income filing threshold will have a property tax credit of \$37.50 (\$18.75 for married persons filing separately with the same residence) added to their homestead rebate check.

New Jersey taxpayers who are eligible to receive homestead rebates, and have not received them, can call the State’s automated Homestead Rebate InfoLine from a Touch-tone telephone at 1-800-323-4400 (within New Jersey only) or 609-588-2525 (anywhere) to check on the status of their rebate applications. Callers must provide information from their rebate applications when using the InfoLine. □

SALES AND USE TAX
Enforcing Use Tax

Since the State cannot compel the collection of sales taxes by most nonresident vendors, it must rely on compensating use taxes to protect home-State vendors from unfair competition and protect the tax base. Therefore, the Sales and Use Tax Act also requires a purchaser residing in New Jersey to pay a **use tax** whenever he or she purchases taxable goods or services for use in New Jersey where the vendor does not *legally* collect the sales tax. This generally occurs in mail-order situations and in cases when the purchaser visits an out-of-State vendor to place an order that is subsequently mailed

or shipped into New Jersey. Each of the 47 states that has a sales tax also has a use tax.

Under New Jersey law, “Use” is defined as the exercise of any right or power over property by the purchaser. This includes receiving or storing property for **any** length of time. The use tax is due and payable within 20 days of the date that the consumer takes possession of the items in New Jersey. The Use Tax remittance form (Form ST-18) is available upon request from the New Jersey Division of Taxation at 609-588-2200.

Interstate vendors sometimes state to their nonresident customers that “the purchase price is the bottom line” when a delivery is made out-of-State. While these vendors may follow the letter of the law as far as not collecting sales tax for a neighbor state in which they are not authorized to do so, the zeal with which they pursue a sale can

continued on page 6

Interest 11.50% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1998 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%

enforcing use tax - from page 5

result in their customers incurring a use tax liability without being aware of it. Customers often assume that any tax due is paid to the vendor at the time of purchase. A vendor whose interest is in closing a sale may not take it upon himself to educate a potential customer on the topic of use tax.

The Division's Field Investigations Branch occasionally intercepts delivery trucks entering New Jersey. Investigators review copies of the delivery invoices to determine the name and location of the purchaser and also to determine if the appropriate sales tax has been paid. New Jersey residents who have purchased items but failed to pay the sales tax are subsequently contacted by the Division's Compliance Services Branch. The residents are given the opportunity to pay the use tax without penalty and interest. Those consumers who fail to respond may be subject to an arbitrary assessment of the use tax plus penalties and interest as mandated by law.

New Jersey residents who purchase furniture from out-of-State vendors are urged to retain receipts and any other documentation related to the purchase in the event they are contacted by the Division.

New Jersey residents who purchase taxable goods or services from out-of-State vendors should voluntarily remit the use tax on an ST-18 or the line provided on the New Jersey Income Tax Resident Return, Form NJ-1040. □

New Registration Process

New Jersey is about to introduce a new business registration form. The New Jersey Business Registration Package (NJ-REG-P) allows businesses to complete their initial tax and employer registrations through the use of a *single registration form*. The new form also allows a business that desires corporation or limited partnership status to submit their tax/ employer registration *along with* their original certificate of incorporation or formation.

In addition to providing a streamlined "One-Stop" approach to business registration, the new NJ-REG will enable the State to automatically distribute data to all concerned agencies. Specifically, once data is entered into the State's

registration system, all related databases in the Departments of Treasury and Labor will be updated.

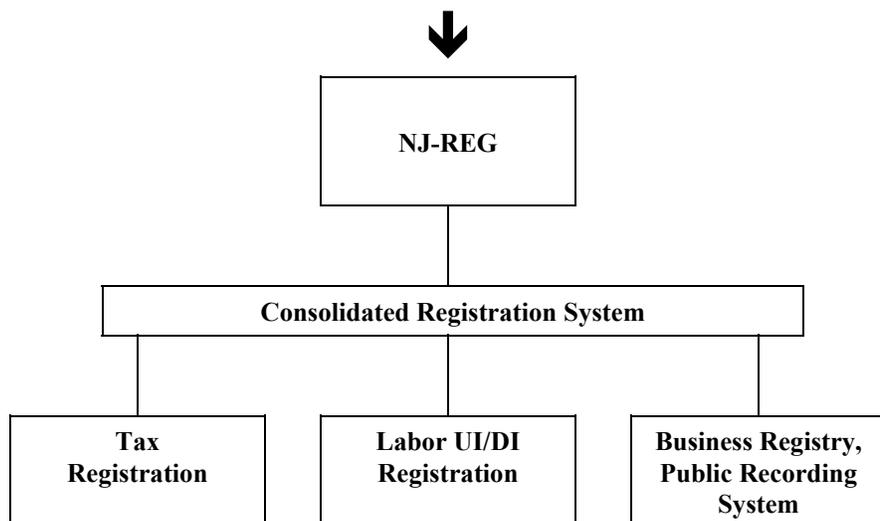
An important feature of the new NJ-REG package is the Request for Change of Registration Information, Form REG-C-L. Like the consolidated registration, the REG-C-L will enable businesses to notify the State of any changes in business identification, ownership, status, and activity with a single form.

The new NJ-REG package is scheduled to be implemented during the fall of 1998. For updated information, visit the Division of Revenue's home page at: <http://www.state.nj.us/treasury/revenue>

□

New Registration Process

Single point of information collection. Multiple service options for business entities. Extensive data base sharing and integration.



Change in Payroll Tax Reporting

Employers and professionals who handle payroll activities for businesses will notice some changes in New Jersey's reporting form. The Division of Taxation's "Quarterly Return of Gross Income Tax Withheld" (NJ-941/NJ-941-W) forms and the Department of Labor/Division of Employer Accounts' "Quarterly Contribution Report" (UC-27) form will be consolidated into one new form, "Employer's Quarterly Report" (Form NJ-927/NJ-927-W). Employers will submit one report and one check to the Division of Revenue in the Department of the Treasury to satisfy their reporting requirements with both agencies. Employers will receive their first NJ-927 reports by early October for the third quarter filing which will be due October 30, 1998.

The new forms will contain a new taxpayer identification number which will consist of the 9-digit Federal Employer Identification Number (FEIN) and a 3-digit suffix for State use. The Department of Labor will no longer require a separate New Jersey registration number for unemployment and disability purposes. Employers need only provide their new State taxpayer identification number on W-2 forms issued to employees for 1998. Employers must, however, continue to report amounts withheld from employees' wages for workforce development fund/unemployment insurance/health care subsidy fund (WD/UI/HC) and disability insurance (DI) on the W-2. □

CORPORATION TAX New Jersey QSSS Apportionment

The Division has received several inquiries recently concerning the method of apportioning income for the parent company of a New Jersey Qualified Subchapter S Subsidiary (QSSS). As indicated in the Division's Winter 1997 *State Tax News* article, QSSSs became recognized for New Jersey purposes beginning with the 1997 return year.

It is the Division's position that, as with the case of the assets, liabilities, income and deductions of the QSSS flowing through to the parent corporation, so too will the respective factor attributes of the QSSS flow through to the parent's property, receipts and payroll factors. This treatment will provide the degree of factor representation necessary to accord each QSSS with an equivalency similar to that of a division. □

CORPORATION TAX Interest Charges Between Related Parties

Section N.J.S.A. 54:10A-10 of the Corporation Business Tax Act permits the Director of the Division of Taxation to make redeterminations and adjustments when taxpayer's accounting principles or business conduct result in a distortion of entire net income or allocation.

Regulation N.J.A.C. 18:7-5.10 explains the basic standard that the Division employs. It is that a fair and reasonable tax is the tax that would have been paid by a

taxpayer reporting the same transactions on a separate entity basis where the parties to the transaction(s) had independent economic interests.

One area where the Division is discovering problems on audit is loans and advances between related parties, including stockholders. Pursuant to N.J.S.A. 54:10A-10(b) and N.J.A.C. 18:7-5.10(a)5 interest should be charged on loans or advances made by one related party to another from the day after the debt arises until it is satisfied. Interest free loans and advances will not be permitted. Interest on intercompany trade receivables need not be charged before the first day of the third calendar month.

If the creditor is regularly engaged in the business of making loans or advances, that same unrelated interest rate as charged independent parties should be charged to related entities. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100% and 130% of the Applicable Federal Rate (AFR) as determined under Internal Revenue Code Section 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100% of the

interest charges - from page 7

AFR and adjustments for excessive interest would be made at 130% of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110% of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

If the Division, upon audit, discovers a distortion because interest was improperly charged between related parties, it will make a redetermination creating or shifting interest income and interest expenses to effect a fair and reasonable tax. □

SALES AND USE TAX **Motor Vehicle** **Casual Sales**

The Casual Sales Unit, in conjunction with the Division of Motor Vehicles, insures the correct sales tax is paid on the transfers of motor vehicles and vessels. Sales of aircraft are also examined for the correct payment of sales tax.

The term casual sales refers to those transactions that are isolated or occasional sales of property which originally had been obtained for the use by the person or entity who is not regularly engaged in making retail sales of vehicles or vessels. Tax on these transactions is paid when the purchaser registers the motor vehicle at the Division of Motor Vehicles. When the vehicle is registered a "Report of Sales Tax on Motor Vehicle/Vessel" (LS-240) is submitted by the purchaser to DMV from which sales tax is calculated. The information is reviewed to certify whether sales tax appears to have been paid on the actual purchase price. When an exemption from tax is claimed or a purchase price far below fair market value for the vehicle as published in the N.A.D.A. Official Used Car Guide is indicated, the Casual Sales Section will question this transaction and send the purchaser a Notice of Inquiry. The purchaser must complete the questionnaire on the back of the notice and submit documentation verifying the claim for exemption or the lower purchase price. These responses are due within 30 days of the date of the inquiry notice.

As of the close of Fiscal Year 1998 over \$1.6 million has been collected in underpaid sales tax. □

Sale or Transfer of Business

It appears that there exists some confusion regarding notification to the Division of Taxation where a business enters into an agreement to sell any part or the whole of the business assets other than in the ordinary course of business.

Although the Bulk Transfers Section of the Uniform Commercial Code, Chapter 6 of Title 12A of the New Jersey Statutes N.J.S.A. 12A:6 and N.J.S.A. 12A:9-111 were repealed on January 10, 1995, purchasers of such business assets/businesses are required to notify the Division of the impending transfer (including liquor license transfers).

N.J.S.A. 54:32B-22(c) provides that: "Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee, or assignee shall at least 10 days before taking possession of the subject of said sale, transfer, or assignment, or paying therefor, notify the Director by Registered Mail of the proposed sale and of the price, terms, and conditions thereof...."

Whenever the purchaser shall fail to give notice to the Director or whenever the Director shall inform the purchaser that a possible claim for such tax or taxes exists, any sums of money, property or other consideration which the purchaser is required to transfer over to the seller shall be subject to a first priority right and lien for any such taxes theretofore or thereafter

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determined to be due from the seller to the State.

The purchaser is forbidden to transfer to the seller any such sums of money or property to the extent of the amount of the State's claim. For failure to comply with the provisions of this section the purchaser shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller and such liability may be assessed and enforced in the same manner as the liability for tax under this act.

Notification of the impending Sale, Transfer or Assignment in Bulk should be made utilizing Form C-9600, with a copy of the contract of sale attached thereto. Requests for Form C-9600 can be made as follows:

By Phone: 609-292-6604

By Mail:

NJ DIVISION OF TAXATION
BULK SALES SECTION
PO BOX 245
TRENTON NJ 08646-0245

By Downloading on Internet:

<http://www.state.nj.us/treasury/taxation/>



GROSS INCOME TAX

Enclosures With Returns

A taxpayer with the responsibility to file as a New Jersey resident for the first time on a 1997 NJ-1040 return inquired about the enclosures required to be supplied with the return.

The following items are to be enclosed when the return is filed to

explain the calculation of the amount of income shown on the return:

1. All W-2s, wage and tax statements.
2. All Federal Schedule Cs, C-EZs, or Fs.
3. All Schedule NJK-1s, Form NJ-1065, or if no Schedule NJK-1s were issued, Federal Schedule K-1s.
4. New Jersey Schedule B, Net Gains or Income from Disposition of Property.
5. New Jersey Schedule C, Net Gain or Income from Rents, Royalties, Patents and Copyrights.
6. All Schedule NJ-K-1s, Form CBT 100S, or if no Schedule NJ-K-1s were issued, Federal Schedule K-1s, Form 1120S.
7. All 1099-G forms for gambling winnings.
8. All Federal Schedule K-1 forms from estates and/or trusts.
9. All other Form 1099s received from pensions, annuities, prizes, real estate sales, or other income sources.
10. Copies of all tax returns filed with other states or jurisdictions for which a credit for income or wage taxes paid has been claimed.
11. Copies of any other Federal schedule which supports New Jersey income amounts.

Also, should the amount of any item of income reported on the

New Jersey return differ considerably from the amount reported on the Federal return, a schedule showing the reconciliation of the two amounts must be furnished. For example, since tax exempt interest and dividend income amounts vary on the State and Federal returns, copies of the year-end statement and State percentage breakdown analysis will support the reconciliation schedule.

INHERITANCE/ESTATE TAX ***Inheritance Tax Waivers***

Upon the death of a New Jersey resident, a statutory lien of the State of New Jersey over much of the decedent's property is activated. These liens are automatically imposed by provisions of the statutes and must be released by a written "Consent to Transfer" signed by the Director of the Division of Taxation. These releases are more commonly known as "Waivers."

A waiver is required for any New Jersey real estate in which the decedent held an interest, except real estate held by the decedent and a surviving spouse as "Tenants by the Entirety." Property held in this manner is not subject to tax and need not be reported.

A waiver is also required for the release of funds on deposit in banking institutions in the State of New Jersey which are in the name of decedent alone or in the name of decedent with others. However, in order to permit partial administration of an estate as early as possible, the proper estate representative may withdraw, without a

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waiver, as much as 50 percent of any funds on deposit for immediate estate use and up to 100 percent of the remaining funds on deposit by check made payable to "N.J. Transfer Inheritance Tax."

During the past 13 years there have been many changes in the administration of the transfer inheritance tax in this State. Spouses, children, grandchildren, parents, grandparents, and other Class "A" beneficiaries have become completely exempt from the transfer inheritance tax. Brothers, sisters, sons-in-law and daughters-in-law have been granted an exemption in the amount of \$25,000 each. New forms, policies, and procedures have been adopted in order to facilitate compliance with transfer inheritance tax requirements and many additional administrative changes have been made. However, contrary to some misconception, any waiver requirements that existed prior to these changes continue to be valid statutory requirements subsequent to changes.

The Transfer Inheritance Tax Branch continues to observe delinquent tax plus interest being paid by attorneys, CPAs, title companies, banking institutions, etc. who were negligent in failing to obtain a proper waiver for the transfer of decedent's assets. A significant portion of this type violation does not surface until real estate is sold many years after the date of the decedent's death. The additional avoidable interest penalty of 10 percent per annum from eight months after date of death becomes an added financial burden.

The Division of Taxation advises preparers of transfer inheritance tax returns and estate representatives to be extremely conscious of waiver requirements and to exercise due care. There are no acceptable excuses for non-compliance.

Further information and guidance may be obtained by calling the taxpayer information section of the Transfer Inheritance Tax Branch at 609-292-5033, 292-5035, 292-7147 or 777-4559. □

DIVISION OPERATIONS

Taxpayer Acct'g

In its most simple terms, the Mission Statement of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and correct any errors in their accounts.

Most bills and refunds are automatically computer-generated. Some may be flagged for manual review based on certain predetermined criteria, which is in place to filter out erroneous bills and refunds before they are sent out to taxpayers. These flagged bills and refunds are what the Taxpayer Accounting Branch reviews and attempts to correct.

Occasionally insufficient refunds or improper bills are sent to taxpayers. When a taxpayer disputes a billing or discovers a discrepancy with the amount of refund received, their correspondence is sent to the Taxpayer Accounting Branch. All letters sent by taxpayers in response to any notices are reviewed. When the information necessary to correct

the account is received from the taxpayer, Taxpayer Accounting staff adjusts the account and notifies the taxpayer that the problem has been resolved.

When a taxpayer responds to a notice or corresponds with the Division, it is very important that they provide as much information as possible both as to the identity of the taxpayer and the nature of the problem. In order for the Taxpayer Accounting Branch to adequately respond to or request additional information from the taxpayer all correspondence should include:

1. The full name and identification number of the taxpayer as it appears on the Division's notice;
2. The tax type and period in question;
3. The nature of the problem;
4. The taxpayer's phone number; and
5. Current address.

When a taxpayer or his representative responds to a notice, the correspondence should be sent to the Post Office Box shown on the notice. This insures that the office that sent the notice and is best suited to respond to the taxpayer's letter receives the correspondence.

In Fiscal Year 1998 Taxpayer Accounting personnel:

- Responded to more than 135,000 pieces of correspondence;
- Reviewed nearly 57,000 bills and almost 52,000 refunds;
- Collected more than \$4.9 mil-

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taxpayer accounting - from page 10

lion; and

- Made just under 227,000 adjustments or corrections to accounts. □

Unclaimed Property

Any holder who is in possession of unclaimed property, which is reportable to the State of New Jersey, should comply with the unclaimed property laws. Holders consist of all types of businesses, such as: banks, financial institutions, insurance companies, retail and manufacturing companies, service companies, public institutions, including courts, municipalities, governmental subdivisions and agencies, public corporations or authorities. Non-profit entities, as well as hospitals, utilities, estates, trusts, and any other legal or commercial entity are also required to annually report unclaimed property.

Unclaimed Property consists of any financial asset, tangible or intangible, that has been unclaimed by its rightful owner for a specific period of time. The property is due to the state of the last known address; if the address is unknown, the property is due to the state of incorporation.

Unclaimed property is not a tax or an additional liability to business. Unclaimed property is the result of a loss of communication with the rightful owner.

Each state and the District of Columbia has an unclaimed or abandoned property law. It is each state's responsibility to administer its law accordingly. The goal of the unclaimed property offices is to collect, record, and safeguard

unclaimed property and to reunite the property with the rightful owner and/or heirs.

Holders are required to report and submit the property before November 1. Insurance companies are required to report and submit the property before May 1.

Holders have an opportunity to turn over unclaimed property which is past due to the State of New Jersey without incurring any interest and penalties, if the property is reported and remitted before November 1, 1998.

In order to obtain forms and more information about unclaimed property the holder can contact Massi Calcagno at 609-984-5214 and Steven Harris at 609-777-4655 or write to:

UNCLAIMED PROPERTY
DEPARTMENT OF TREASURY
PO BOX 214
TRENTON NJ 08646-0214

Our Holder Information Package can be downloaded from the Internet. The address is:

<http://www.state.nj.us/treasury/taxation/ucpform/htm>

New Jersey statutes can also be accessed on the Internet at:

<http://www.njleg.state.nj.us>

then click on the statutes link. □

LOCAL PROPERTY TAX Income Limits for Tax Deduction

When calculating the annual \$10,000 income limitation allowable in preapproving 1999 and affirming 1998 Property Tax

Deductions, the maximum Social Security amount excludable has been established at \$16,132. This maximum is to govern the amount of pension, disability or retirement income to be excluded pursuant to Chapter 129, P.L. 1976 and was compiled from information received from the U.S. Department of Health and Human Services, Social Security Administration.

Further information on this subject, along with examples showing the correct computation for determining the income limitation, was mailed to all assessors, collectors, and county tax board commissioners and administrators in early July. □

LOCAL PROPERTY TAX Disabled Veterans' Exemption

State funding of the Disabled Veteran Retroactive Refund Program (filing deadline March 31, 1998), was a one-time appropriation for fiscal year 1998. The State is not, at present, reimbursing municipalities for the cost of granting such exemptions on an ongoing basis. Procedures outlined by N.J.S.A. 54:4-3.30 for determining eligibility, granting the exemption, and considering prior year refunds have not been changed by the D.V.R.R. initiative. □

LOCAL PROPERTY TAX **Tax Assessors Calendar**

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.

- Deadline for taxing districts' appeals of Table of Equalized Valuations to NJ Tax Court.

December 1–

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31–

- Legal advertisement of availability of Tax List for public inspection. □

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Eight persons passed the examination for the tax assessor certificate held on March 28, 1998. Nine persons became certified tax assessors on June 25, 1998.

Atlantic County: Mary C. Becker, Margate City.

Bergen County: Neil M. Burns, Hasbrouck Heights Borough; Kristina L. Hayes, Ridgewood Borough; Theodore J. Lamicella, Jr., Wood-Ridge Borough.

Camden County: Brian Schneider, National Park Borough.

Gloucester County: Michael W. Colavecchio, Washington Township.

Middlesex County: Richard Lorentzen, Woodbridge Township.

Ocean County: Robert W. Kirwan, Stafford Township; Aivar Rannamyae, Jackson Township.

□

DIVISION OPERATIONS **New Region for Field Investigations**

The Field Investigations Branch recently created a fifth region. Previously there were four geographic regions: Newark (Region A), Fair Lawn/Somerville (Region B), Mercerville/Camden (Region C) and Sea Girt/Northfield (Region D). In July 1998, a "functional region" for Field Investigations was formed. This new region is comprised of investigators from the existing field offices. One of its primary focuses will be the enforcement of Nexus issues.

"Nexus" is the business connection an out-of-State business has with New Jersey. Nexus creates the requirement of the foreign business to collect and remit New Jersey taxes. An out-of-State business delivering goods into New Jersey in its own vehicle constitutes nexus with New Jersey. These businesses are required to collect and remit New Jersey sales tax. Out-of-State contractors must withhold New Jersey income tax from their employees working in this State.

The new regional unit will investigate non-registered contractors, furniture companies, lawn maintenance businesses and the like crossing the New Jersey border and engaging in taxable sales. The

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new investigations region - from page 12

enforcement of nexus issues helps to level the playing field between businesses competing for jobs and contracts in New Jersey. Another area of concentration is cash-based businesses. The enforcement unit observes businesses first-hand and gathers available third-party information from wholesalers. This surveillance allows for more accurate audit assessments by gathering data that may not be readily available to an auditor by examining a company's books.

A third concentration is "special projects" such as the collection of use tax. Use tax is imposed and paid on goods and services on which sales tax was not collected or collected at a rate less than New Jersey's sales tax rate (currently 6%). Some examples of use tax issues to be investigated are:

- Contractors who purchase materials out-of-State without paying sales tax owe use tax to New Jersey once the materials are used in construction in this State;
- An item purchased with a resale certificate which is taken out of inventory for personal use;
- Goods and services purchased out-of-State for use in New Jersey and no sales tax was collected;
- Boats or other watercraft bought outside of New Jersey with no sales tax paid.

The primary goal of the new region's teams is to increase compliance with New Jersey's tax laws by businesses based outside of this State but who come into New Jersey and compete with New Jersey-based retailers, contractors and other businesses. Gaining uniform compliance benefits all of New Jersey's taxpayers. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 13, 1998, Lawrence Rada, formerly of Howell, NJ, entered a guilty plea to one count of attempted theft by deception. Mr. Rada's plea before Superior Court Judge Hull, Jr. in Monmouth County was based on the filing of a fraudulent 1993 New Jersey Gross Income Tax return wherein a refund in the amount of \$13,552.00 was claimed. The investigation revealed that Mr. Rada had submitted a false W-2 form with the tax return. Mr. Rada faces a maximum jail sentence of 5 years and fines of \$7,500. He is currently under house arrest for 10 months and is serving a 3 year probationary period for similar crimes prosecuted by Federal authorities.
- On April 16, 1998, in Municipal Court, Jersey City, Lasarev Kirkorian, of Englewood Cliffs, NJ, pleaded guilty to failing to file tax returns and failing to remit \$7,331.61 in Motor Fuel Tax for the period March 1996 through September 1997 at Sunny's Mobil Service, Jersey City. He was fined \$810 and restitution of the total amount of tax was paid subsequent to April 16, 1998. This case was part of the Division of Taxation's Motor Fuel Delinquency/ Deficiency Project.
- On April 27, 1998, in Superior Court, Mercer County, Russell Cerminara of Cherry Hill, NJ, pleaded guilty to theft of \$155,308 in NJ Petroleum Gross Receipts Tax that was collected

by a group of ten conspirators on the sale of diesel fuel between October 1992 and June 1993. Cerminara is the fourth of ten defendants to plead guilty in this case, which was known as Operation Boilermaker. Cerminara acted as a salesman, lining up gas stations and truckstops as customers for the group, and he was aware that the tax was being collected from the customers and not remitted. This case was investigated jointly by OCI and the New Jersey Division of Criminal Justice, and was prosecuted by the Division of Criminal Justice.

- On June 3, 1998, members of OCI participated with New York City Department of Finance, Office of Tax Enforcement in a search warrant, executed at the residence of a suspected cigarette tax indicia counterfeiter in Queens, NY. That search warrant resulted in the discovery of a significant number of NJ counterfeit cigarette tax stamps. NYC/OTE personnel arrested the subject and have filed charges in Queens County, NY. A subsequent sweep in the City of Newark and parts of Hudson County was conducted to see if the counterfeit indicia found in the NYC/OTE search warrant had made its way to NJ; no evidence of those stamps was found.

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criminal enforcement - from pg.13

- The Division's Motor Fuel Delinquency/Deficiency Project was completed in June. This project started by identifying eighty (80) taxpayer locations, using criteria relating to non-filing of Special Fuel Returns. The eighty (80) locations were visited and resulted in the identification of one hundred and thirty-nine (139) taxpayers who operated retail diesel stations at these sites during the past two (2) year period. Eighty-one (81) of these taxpayers had violations concerning filing, payments, and/or licenses. Over \$1,661,000 in unreported taxes was identified and assessed. Thirteen (13) taxpayers with liabilities totaling over \$1,555,000 will be criminally prosecuted. The success of the project was due to the cooperative efforts of numerous units within the Division, including Investigations, the Excise Group, Audit and OCI.
- Sixteen guilty pleas for thirteen cases were entered in municipal courts throughout the State by individuals and businesses for noncompliance with the cigarette tax and motor fuels laws. These thirteen cases resulted in the imposition of fines and penalties totaling \$13,063 and the forfeiture of 766 cartons of contraband cigarettes to the State of New Jersey.
- Seventy-eight charges were filed in municipal court on thirty cases for violating the cigarette tax law including possession of 5,140.7 cartons of contraband cigarettes, valued at \$128,517.50. Three cases involved the arrest of three individuals from out of State, who were transporting Virginia

stamped cigarettes. The arrest took place on the NJ Turnpike by New Jersey State Police. The individuals were remanded to Salem County Jail in lieu of \$25,000 bail, each. In another case, Samuel R. Garcia and Jose Danilo Ramos Quintero, both of New York City, were arrested by the New Jersey State Police for transporting 2,082 cartons of untaxed contraband cigarettes. In addition to the charges of possession, transportation of contraband cigarettes, failure to have the required licenses, failure to have invoices in their possession, the vehicle used by the pair in the transportation was seized by our office pending a forfeiture hearing. □

Enforcement Summary

Civil Collection Actions Quarter Ending - June 30, 1998

Following is a summary of enforcement actions for the quarter ending June 30, 1998.

Certificates of Debt

During the quarter ended June 30, 1998, the Division filed 4,004 Certificates of Debt in New Jersey Superior Court. These CODs, which have the same force and effect as docketed judgments, totaled \$44.3 million.

Levies

\$124,451.60 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending June 30, 1998, \$119,431 was collected from jeopardy assessments.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

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Division of Taxation Seizures (April - June 1998)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	1601 Paradise Inc. t/a Bentleys 1601 Arctic Ave. Atlantic City	6/17/98	Bar	Liquor license seized
	Pats Pizza & Pub Inc. 2233 Atlantic Ave. Atlantic City	6/23/98	Night club	Liquor license seized
	Farnham Ad Sign & Service Inc. t/a US Sign Company of New Jersey 20 MacArthur Blvd. Somers Point	6/25/98	Signs	Vehicles seized
	Gangplank Inc. 3700 Atlantic Brigantine Blvd. Brigantine	6/30/98	Bar	Liquor license seized
Bergen	Chris-Fran, Inc. t/a Gleason's Candelite Tavern 63 Market St. Saddle Brook	5/21/98	Bar	Liquor license released
	House of Doo, Inc. t/a Magic Noodle House 210 Main St. Ft. Lee	5/29/98	Restaurant	Liquor license seized
	Soares, Jean Claude t/a The Midnight Pub 146 Locust Ave. Wallington	6/3/98	Bar	Liquor license seized
Burlington	Gregory, Dana of Yardley, PA Columbus Farmers Market Columbus	4/30/98	Crafts	Closed
Camden	Bobgran Enterprises 202 S. Fifth St. Camden	4/24/98	Bar	Liquor license seized
Cumberland	The Garden Inn Inc. t/a The New York Inn 703 Almond St. Vineland	6/16/98	Restaurant/bar	Liquor license seized
	Ship John Inn Inc. Pier & Market Greenwich	6/24/98	Bar/restaurant	Liquor license seized
	Pitts, James t/a Jim's Auto Sale Bridgeton-Millville Pike Bridgeton	6/24/98	Auto sales	Vehicles seized
Essex	Cleo Cleo Sam Bar Inc. 4 W. Ruynon St. Newark	4/20/98	Bar	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
Essex	Ceara, Inc. t/a Beam Me Up, Watson! Books 358½ Bloomfield Ave. Montclair	4/28/98	Book store	Reopened
	Burks, Harold t/a Miniature Market 555 Central Ave. Newark	5/12/98	Bar	Liquor license released
	Du Drop Inn Inc. 38 Eleventh Ave. Newark	5/14/98	Bar	Liquor license seized
	Ebon South Inc. t/a Terminal D 895 Frelinghuysen Ave. Newark	5/29/98	Bar	Liquor license released
	Lewis Lenwood t/a A & R Lounge 614 S. 10th St. Newark	6/3/98	Bar	Business released, liquor license seized
	Leoram Liquors Inc. t/a Leo Liquors 520 Central Ave. Newark	6/4/98	Liquor store	Closed
	Rodriguez, Juan R. t/a City Line Liquors 949 Frelinghuysen Ave. Newark	6/24/98	Liquor store	Liquor license seized
Gloucester	Cedarwood Inc. Rte. 47 Malaga	4/28/98	Bar	Liquor license seized
Hudson	Shin's Market Inc. t/a Crescent Deli Grocery & Liquor 553 Communipaw Ave. Jersey City	4/21/98	Liquor store/deli	Liquor license released
	Leonard Parness Trucking Corp. 181 Pacific Ave. Jersey City	4/27/98	Trucking company	Vehicle released
	El Meson Picasso 206 Harrison Ave. Harrison	6/3/98	Restaurant	Liquor license released
Mercer	S.A. Cafe, Inc. t/a Two Hudson Place 2 Hudson Place Hoboken	6/18/98	Bar	Liquor license seized
	Fay, John R. t/a John R. Fay Landscaping of Levittown, PA Trenton	6/15/98	Landscaper	Vehicles released
Middlesex	Woodmasters Cabinetry Inc. of Newmastown, PA Yardville	6/17/98	Kitchen cabinets	Vehicle seized
	Lacon Electronic Associates, Inc. t/a LEA Inc. 2325 Plainfield Ave. South Plainfield	6/23/98	Computer sales & service	Closed
	J.J.P.I., Inc. t/a Ecstasy Rte. 35 & Hillerest Ave. South Amboy	6/26/98	Bar	Liquor license seized

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taxation seizures - from page 16

County	Name/Address	Seizure Date	Business Type	Status
Monmouth	Last Chance Tavern Inc. t/a Yakety Yak Cafe 1610 Rte. 35 South Oakhurst	4/6/98	Bar	Liquor license seized
Morris	44 Building Corp. t/a Cutters Bar & Restaurant 67 Morris St. Morristown	4/8/98	Restaurant	Liquor license released
	L & M Zoo Inc. 55 N. Sussex St. Dover	4/16/98	Bar	Liquor license released
	Great Cove Inc. t/a Great Cove Marina 15 Howard Blvd. Jefferson	4/21/98	Restaurant	Liquor license seized
	Slims Tavern Inc. t/a Lenny's Pub Mt. Hope Ave. Rockaway	4/27/98	Pub	Liquor license released
Ocean	Taylor Truck Lease of Trinity, NC t/a Taylor Trucking Point Pleasant	6/1/98	Furniture	Closed
Passaic	Elizondo, Alejanero t/a La Cantina El Trapiche 479 Market St. Paterson	5/11/98	Bar	Liquor license released
	Clifton VFW Post 142 195 Piaget Ave. Clifton	5/12/98	Social club	Liquor license seized
	Falbo, Inc. t/a N & N Tavern 322 Hope Ave. Clifton	5/12/98	Tavern	Liquor license seized
	J & J Turkowsky t/a Umbriagos Liquor Store 805 Van Houten Ave. Clifton	5/12/98	Liquor store	Liquor license released
	Gold, Inc. t/a Coppolas 125 Hamburg Turnpike Bloomingdale	5/20/98	Bar	Liquor license seized
	Ayala, Juan t/a Happy Bar 327 Market St. Paterson	5/21/98	Bar	Liquor license seized
	West Broadway Liquors Inc. t/a Madison Liquors 432 Madison Ave. Paterson	5/21/98	Liquor store	Liquor license released
	Lochiavo, Wallace t/a Hogans Cafe 931 Main St. Passaic	5/26/98	Bar	Liquor license released
	Wally's Tavern Inc. 196 Monroe St. Passaic	5/26/98	Bar	Liquor license released
	The Briefcase Inc. 441 Crooks Ave. Clifton	5/28/98	Bar	Liquor license seized

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taxation seizures - from page 17

County	Name/Address	Seizure Date	Business Type	Status
Passaic	Golden Nights, Inc. 235 Preakness Ave. Paterson	5/28/98	Bar	Liquor license seized
	Valenzuela, Rafael & Valerio, Nelson t/a Discoteca Copacabana 38-40 Park Ave. Paterson	5/29/98	Bar	Liquor license seized
	Cruz, Clara A. t/a Courtside 145 Third St. Passaic	6/1/98	Bar	Liquor license released
	Amici II, Inc. t/a Courtside Pub 66 Center St. Clifton	6/1/98	Bar	Liquor license released
	One on One Bar, Inc. 311 12th Ave. Paterson	6/2/98	Bar	Liquor license seized
	Chuprevich, Thomas t/a Montclair Tavern 923 Main St. Paterson	6/2/98	Bar	Liquor license released
Somerset	Borderline Inc. t/a Break for the Border 793 Route 22 Bridgewater	4/2/98	Restaurant	Closed
Union	Coelho's Bar & Restaurant Inc. t/a Capri 263 Third Ave. Elizabeth	4/1/98	Bar	Liquor license released
	Sharon Gagloti Inc. t/a O'Malley Pub 56 Orchard St. Elizabeth	4/16/98	Bar	Liquor license seized
	Joseph F. Downey & Sons Inc. t/a Last Call 400 So. Broad St. Elizabeth	4/16/98	Bar	Liquor license released
	Brandee & The J's Inc. t/a The Loose Caboose 16 West Grand St. Elizabeth	4/16/98	Bar	Liquor license released
	Burney Corporation t/a Taps Liquors 537 E. Second Ave Roselle	4/23/98	Liquor store	Released
	Abrams Enterprises t/a Old Corner Inn 804 W. Elizabeth Ave. Linden	5/5/98	Bar	Liquor license seized
	Garafalo Liquor t/a Martin's Liquor Store 1003 E. Second St. Plainfield	5/13/98	Liquor store	Liquor license seized
	JADT Associates Inc. t/a Devlin's Pub 907 E. Linden Ave. Linden	5/13/98	Bar	Liquor license seized

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taxation seizures - from page 18

County	Name/Address	Seizure Date	Business Type	Status
Union	David Hanwood, Inc. t/a Lily Greenleaves 226 E. Front St. Plainfield	5/14/98	Restaurant	Liquor license released
	MJAC Corp. t/a Port Liquors 148 First St. Elizabeth	5/20/98	Liquor store	Closed
	Scolin Inc. t/a Paulie D's Restaurant 34 Oxford Ave. Oxford	5/21/98	Bar	Liquor license seized
	Kirkconnell, Oscar Cinderella's Go Go Palace 1117 Elizabeth Ave. Elizabeth	6/1/98	Bar	Released
	Cervantes Inc. t/a Cervantes Lounge 454 First Ave. Elizabeth	6/12/98	Bar	Released

***Division of Taxation Auctions
(April - June 1998)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Bergen	246 Broad Ave., Inc. t/a C&E Deli Liquors 246 Broad Ave. Palisades Park	5/7/98	Deli/liquor store	Liquor license
Essex	The Ellington Corporation Inc. t/a Club Renee 507 S. Seventeenth St. Newark	5/28/98	Bar	Liquor license
	Lyon, Larry D. t/a Club Mahogany 474-476 Avon Ave. Newark	5/28/98	Bar	Liquor license
	Delmone Corporation t/a Centre Liquors 92 Centre St. Nutley	6/26/98	Package goods	Liquor license
Hudson	VCP Corp t/a Venice Restaurant 31 Cottage St. Bayonne	4/7/98	Bar/restaurant	Business/liquor license
Middlesex	Tall Stem, Inc. 104 N. Broadway South Amboy	5/13/98	Bar	Liquor license
Monmouth	Last Chance Tavern Inc. t/a Yakety Yak Cafe 1610 Rte. 35 South Oakhurst	5/13/98	Bar	Liquor license

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taxation auctions - from page 19

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Morris	Great Cove Inc. t/a Great Cove Marina 15 Howard Blvd. Jefferson	5/28/98	Restaurant	Liquor license
Passaic	SS Clinton Inc. t/a Pioneer Tavern 350 Warwick Tpke. West Milford	5/7/98	Restaurant	Liquor license
	V F W Post 142 195 Piaget Ave. Clifton	5/8/98	Social club	Liquor license
	West Broadway Liquors Inc. t/a Madison Liquors 432 Madison Ave. Paterson	6/4/98	Liquor store	Liquor license
	Elizondo, Alejandro t/a La Cantina El Trapiche 479 Market St. Paterson	6/8/98	Bar	Liquor license
	Ayala, Juan t/a Happy Bar 327 Market St. Paterson	6/10/98	Bar	Liquor license
	The Briefcase, Inc. 441 Crooks Ave. Clifton	6/10/98	Bar	Liquor license
	Golden Nights, Inc. 235 Preakness Ave. Paterson	6/17/98	Bar	Liquor license
	Gold, Inc. t/a Coppolas 125 Hamburg Turnpike Bloomingdale	6/24/98	Bar	Liquor license
Sussex	Kelly's Steak House Corp. t/a Tobacco Road 441 Rte. 23 Wantage	5/15/98	Restaurant	Liquor license
	183 Dogwood Corp. t/a Stanhope Wine Cellar 93 Rte. 183 Stanhope	5/15/98	Liquor store	Liquor license
Union	Sharon Gagloti Inc. t/a O'Malley Pub 56 Orchard St. Elizabeth	5/28/98	Bar	Liquor license
	214 Lt. Glenn Zamorski Drive Inc. t/a Caspian Tavern 214 Lt. Glenn Zamorski Dr. Elizabeth	5/28/98	Bar	Liquor license
	Garafalo Liquor Corp. t/a Martin's Liquor Store 1003 E. Second St. Plainfield	6/16/98	Liquor store	Liquor license
	JADT Associates Inc. t/a Devlin's Pub 907 E. Linden Ave. Linden	6/25/98	Bar	Liquor license

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For the quarter ending June 30, 1998, property of 65 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 15-19.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending June 30, 1998 twenty-two (22) auctions were held by the Division. A listing appears on page 19.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending June 30, 1998, 408 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected over \$4.8 million during Fiscal Year 1998.

Liquor License Program

Under State law, applicants for renewal or transfer of a liquor li-

cense must receive a certificate of tax clearance from the Division. This program began in 1996 with seven counties. Seven new counties were added to the program in 1997. Currently all twenty-one counties are reviewed.

During the quarter ending June 30, 1998, 257 notifications of liquor license transfer were received by the Division's Bulk Sales section. Twelve (12) audits relating to this project and previously requested were completed; assessments from these audits totaled \$609,190. □

Tax Briefs

Corporation Business Tax

IRC 332 Liquidation — The Division received a request for confirmation that for Corporation Business Tax purposes New Jersey recognizes a tax-free liquidation pursuant to IRC 332 - Complete Liquidation of Subsidiaries; generally no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation. In the particular inquiry both the parent company and its wholly-owned subsidiary are incorporated under the laws of New Jersey and each files a Form CBT-100.

N.J.A.C. 18:7-5.4 provides: "(a) No adjustment to Federal taxable income is permitted under this rule for: 1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue

Code but only to the extent that recapture of other provisions of the code are not paramount to these sections."

This regulatory section supports the position that New Jersey is following the Federal rule recognizing tax-free liquidations under IRC 332. When a parent corporation completely liquidates an 80% owned subsidiary, the parent shareholder does not recognize gain or loss on the liquidating distributions when certain requirements are met.

A short period return will be required for the liquidating subsidiary, and it will be required to obtain a Tax Clearance Certificate.

Gross Income Tax

Alimony Paid to Nonresident — The Division responded to an inquiry as to whether alimony paid by a New Jersey resident to a non-New Jersey resident is taxed by New Jersey.

The Division replied that a nonresident is subject to tax only on New Jersey source income under N.J.S.A. 54A:5-8. Alimony is not one of the categories of income that is sourced to New Jersey under that statute. Accordingly, alimony payments made by a New Jersey resident to a nonresident are not taxable by New Jersey.

Sales & Use Tax

Bad Debt Refund — The Division responded to an inquiry regarding the procedure for claiming a refund of sales tax remitted on bad debt accounts.

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A vendor's refund claim is governed by the "bad debts" rules, N.J.A.C. 18:24-23.1 et seq., which implement N.J.S.A. 54:32B-12(c) and N.J.S.A. 54:32B-20 of the Sales and Use Tax Act. When a vendor has already remitted the tax due on a sale, but the account receivable proves to be worthless and uncollectible, the vendor may apply for a refund. N.J.A.C. 18:24-23.2. If the vendor collected no payment at all from the customer, the vendor will be allowed a full refund of the sales tax remitted. N.J.A.C. 18:24-23.2(a)1. However, if the vendor collected only part of what the customer owed, but that partial collection amounted to *at least* the amount of sales tax due and remitted, the vendor will not be entitled to a refund. N.J.A.C. 18:24-23.2(a)2. The regulation makes it clear that any partial payments received by the vendor must first be applied toward the sales tax liability, before it is applied toward the vendor's charges for the merchandise itself. The vendor is not allowed a refund for a portion of the sales tax remitted when the customer's payments were sufficient to cover the sales tax, but fell short of covering the total charges for the merchandise plus tax. The refund claim must be within four years of the date the tax was paid. N.J.S.A. 54:32B-20.

Energy Sales to Exempt Organizations — The Energy Tax Reform Act, P.L. 1997, c.162, imposes New Jersey Sales and Use Tax on the retail sale of natural gas and electricity. The sales and

use tax on energy replaces the Gross Receipts and Franchise Tax, which was repealed as of December 31, 1997.

There is no exemption available for purchases of gas and electricity by qualified exempt organizations such as non-profit nursing homes, schools, and churches. N.J.S.A. 54:32B-9(c)(2). However, there is a provision whereby certain consumers are granted a partial sales tax exemption. In order to be eligible for this exemption, the consumer must have purchased natural gas from a non-utility vendor (gas marketer) *prior* to December 31, 1995. The partial exemption rules require the claimant to file a certification with the New Jersey Division of Taxation.

For additional information, see the Notice to Industrial and Commercial Purchasers of Natural Gas, which is available on the Division's home page.

GAP Insurance — The sale of GAP insurance by the insurance company to an automobile lessor or to a creditor financial institution is viewed as an exempt insurance service transaction. Therefore the premiums paid by the insured to the insurer are not subject to sales and use tax. *See* N.J.S.A. 54:32B-2(e)(4)(A).

If the insured automobile dealer or financial institution then contracts with a particular customer for an extra amount of money in exchange for either waiving a GAP deficiency or assigning rights under the policy to the lessee, this additional billing is not deemed to

be the sale of an "insurance service." It is simply an increase in the taxable lease receipt and is therefore includible in the tax base for purposes of computing the lessor's use tax liability under the lease-payment method. *See* N.J.S.A. 54:32B-2(d).

Sales by a New Jersey Public Authority — The Division responded to an inquiry regarding the applicability of New Jersey sales and use tax on sales of fertilizer by a New Jersey public utilities authority.

The public utilities authority, which operates regional sewer treatment facilities, converted sludge into organic fertilizer and will be marketing this fertilizer to garden centers, landscapers and other end users.

The New Jersey public utilities authority is a public authority of a political subdivision of the State of New Jersey and its sales are exempt from sales and use taxes "...where it is a vendor...of property of a kind not ordinarily sold by private persons." N.J.S.A. 54:32B-9(a)(1). When the public utilities authority sells fertilizer on a regular, ongoing basis to garden centers, landscapers and other end users, such sales would be subject to tax as this is not property of a kind not ordinarily sold by private persons. Their sales to garden centers (resellers) would be exempt when they receive an ST-3 Resale Certificate to document the exemption. Their sales to end users, including landscapers who as contractors are considered end users, would be taxable. N.J.S.A. 54:32B-2(e).

tax briefs - from page 22

Taxability of Garage Bay Leases Clarified

— In a recent conference, the imposition of sales tax on the “lease” of garage bays was upheld because the transaction was not considered to be a lease of real property. To be considered an exempt lease of real property for storage purposes the following conditions must be met:

1. The lessee contracts for the possession of real property or an identified, lock-secured compartment in which the lessee holds an exclusive right of use and possession;
2. The lessee has unlimited control of access; and
3. The lessor does not perform any duties involving the storage of tangible personal property by the lessee.

(See *New Jersey State Tax News*, Vol. 12, No. 6.)

e transactions under review differed from the self-storage warehouse lease transaction in that the lessor maintained direct control over access to the facility and the vintage automobiles stored therein by the lessee. The storage facility is comprised of 10 bays which are not separated by walls. The owner of the facility and/or their employees had to be physically present to unlock the bay to allow the lessee access to their vehicle. The lessor was responsible for damage done to other vehicles during the removal and return of the vehicle.

The lessor maintained a set of keys for all vehicles housed in the facility, and quite often the lessee would request that the lessor remove and wash, change the oil and/or tune up the vehicle being stored. Sales tax was charged and collected on these additional taxable services.

The Sales and Use Tax Act at N.J.S.A. 54:32B-3(b)(3) provides for sales and use tax on the storing of tangible personal property, therefore, based upon the facts in this case, the receipts were not from the exempt “lease” of garage bays but rather were taxable receipts for the storing of tangible personal property under the circumstances of this case. □

In Our Courts

Corporation Business Tax Offset of Overpayment Against Deficiencies of Merged Corporation

— *Sea Land Service Inc., v. Director, Division of Taxation*, decided May 20, 1998; Supreme Court of New Jersey; No. C-1066 September Term 1997.

The Supreme Court denied petitioner’s, Sea Land Service Incorporated, petition for certification. Previously, the Appellate Division had affirmed the Tax Court’s holding that the surviving corporation’s wholly owned subsidiary’s and parent’s pre-merger Corporation Business Tax (CBT) deficiencies could not be offset against the surviving corporation’s pre-merger CBT overpayments.

Gross Income Tax Credit for Taxes Paid to Other Jurisdiction – Taxes Paid by Non-New Jersey S Corporation – *Sutkowski v. Director, Division of Taxation*, decided June 15, 1998; Superior Court, Appellate Division; No. A-3725-96T3.

The NJ Gross Income Tax Act provides New Jersey (NJ) residents with a credit for income taxes paid to other states. The formula for calculating the credit is expressed as a fraction:

$$\text{Tax Credit} = \frac{\text{NJ Income Subject to Tax by Another State}}{\text{Entire NJ Income}}$$

The NJ resident taxpayer owned a New York (NY) S corporation which made actual cash distributions to taxpayer in 1991. In 1991, NJ did not recognize S corporation status. Therefore, only the actual distributions of S corporations were considered dividend income to NJ taxpayers for GIT purposes. The taxpayer did not contest that the entire dividend income was included in the denominator “Entire NJ income.” At dispute was whether the NJ taxpayer could claim any of these dividends in the numerator as “NJ income subject to tax by another state” which would result in a tax credit.

The Tax Court held that the taxpayer’s NJ dividend income did not qualify as income taxed by NY because the corporation’s income and the taxpayer’s dividend did not result from the same taxable event. Therefore, the Tax Court

continued on page 24

in our courts - from page 23

ruled that the NJ taxpayer was not entitled to any credit. However, on appeal, the Appellate Division reversed. The Appellate Division held that where the same money is taxed by another state and in NJ for the same tax year, the Legislature intended that the NJ taxpayer receive a credit for taxes paid to the other state.

First, the Appellate Division ruled that NJ dividend income was the same income taxed by NY. The court found that the legislative history enacting the resident credit was concerned only with whether tax was paid on the income and was not focused on either the taxable event or the label placed on the income. Therefore, although the taxpayer's income was labeled dividends, it was derived from the S corporation's income which was taxed in NY and that event thereby entitled the taxpayer to include the dividend in the numerator as "NJ income subject to tax by another state." The court noted that this problem will not recur for tax years commencing after July 7, 1993 because NJ legislation was enacted which recognized the S corporate entity.

Next, the Appellate Division needed to decide how much of the 1991 dividend income was the same 1991 income taxed in NY because the NJ resident credit is only applicable to out-of-State taxes paid in the same tax year. The court found that there was no statute or regulation governing this issue. Therefore, the court ruled that the proper way to determine

the source year of the 1991 dividend distribution is to first look to current earnings and profits and then any excess dividends would be attributed to accumulated earnings and profits. The court reasoned that this method most clearly resembles the legislative intent behind the resident credit of avoiding double taxation.

Sales and Use Tax

Lease Receipts – Repair and Maintenance Costs Included Therein – *Modern Handling Equipment of New Jersey, Inc. v. Director, Division of Taxation*, decided April 6, 1998; Tax Court; No. 000151-97.

Modern Handling Equipment (MHE) is engaged in the business of leasing equipment for commercial purposes. In accordance with the 1989 amendments to the Sales and Use Tax Act, N.J.S.A. 54:32B-2(bb), MHE elected to remit sales tax based on the equipment's purchase price rather than the lessee's lease payments. MHE's leases required the lessee to pay a lump sum monthly fee for the equipment including "all replacement parts, additional repairs and accessories" over a term of years. Sales tax was not charged on any portion of the monthly payment.

In calculating the monthly lease payment, MHE based its charge upon the equipment's purchase price, freight, interest, profit element, and the projected repair and maintenance costs. Two sample leases revealed that the repair and

maintenance cost component constituted between 35% and 48% of the total monthly fee. Furthermore, MHE neither assessed additional charges where it underestimated actual repair and maintenance costs nor did it refund over-estimated costs.

Although the Division determined that MHE properly paid sales tax on its equipment purchases, the Division assessed sales tax on the projected repair and maintenance portion of MHE's monthly lease receipts. MHE appealed. The Tax Court ruled that the equipment lease component and the repair and maintenance service component of the transaction are not divisible in this lease situation and therefore the repair and maintenance portion is not subject to sales tax. The Court's analysis focused on the 1989 amendments which designated the lessor (MHE) as the sole statutory user as well as the fact there was no separate agreement for the repair and maintenance portion. Therefore, the Court reasoned that MHE was entitled to protect its investment by maintaining its equipment without additional sales tax liability.

It should be noted that the court stated that its decision might be different if (1) the lessor offered unmaintained equipment, (2) repair and maintenance contracts were separate from the lease agreement, (3) MHE billed its customers for service calls, or (4) MHE had the right to charge customers for the excess of actual repair and maintenance expenses over the projected expenses. □

In Our Legislature

Gross Income Tax

Roth IRAs — P.L. 1998, c.57 (signed into law on July 24, 1998) Amends and supplements N.J.S.A. 54A:5-1 to conform the New Jersey gross income tax treatment of Roth IRAs to the tax treatment such accounts receive for Federal purposes. The Act provides exclusions from New Jersey gross income tax for certain qualified distributions from Roth IRAs and allows four-year reporting of certain taxable distributions. This legislation applies to tax years beginning after December 31, 1997.

Miscellaneous

Sale of State Tax Indebtedness — P.L. 1998, c.39 (signed into law on

June 30, 1998) authorizes the New Jersey State Treasurer to sell all rights, title and interest in any State tax indebtedness and lien represented by a certificate of debt, provided that the underlying indebtedness is fixed, has been finally determined by the Division of Taxation, and is no longer subject to protest or appeal, unless the taxpayer can demonstrate by clear and convincing evidence that the contrary is true. This legislation became effective upon enactment.

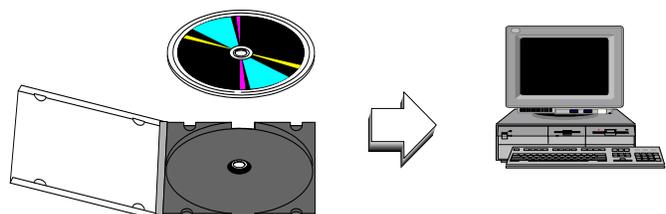
Business Employment Incentive Program (Amendment) — P.L. 1998, c.33 (signed into law on June 30, 1998) enhances the availability of program grants for certain partnerships and limited liability companies by permitting

grants authorized under the program to be determined based upon the withholding or estimated tax payments (or any combination thereof) of partners and members of limited liability companies as well as upon the withholdings of employees. This legislation became effective upon enactment.

Veteran's Tax Deduction — P.L. 1998, c.49 (signed into law on July 4, 1998) extends certain benefits, including the annual \$50 veteran's deduction, to certain participants in Operation "Restore Hope" (Somalia) or Operations "Joint Endeavor" and "Joint Guard" (Bosnia and Herzegovina). This legislation became effective upon enactment. □

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Package NJX on compact disk features important additions for 1998.* The order form on page 27 contains details on how to order *njx plus*.

* Additions include most of the Division of Taxation's information publications including the Division's *Annual Report* and its quarterly newsletter, the *New Jersey State Tax News*.

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1					1	2	3
9	4	5	6	7	8	9	10
9	11	12	13	14	15	16	17
8	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

October 13

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

October 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending June 30
continued

October 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
continued

October 20 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

October 26

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

October 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
8	22	23	24	25	26	27	28
	29	30					

November 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

November 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending July 31
continued

November 16 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

November 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
continued

November 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

November 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1			1	2	3	4	5
9	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
8	20	21	22	23	24	25	26
	27	28	29	30	31		

December 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

December 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending August 31

continued

December 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

December 21

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

December 21 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

December 28

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

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from the director's desk

Successful FY98

As this newsletter goes to print, we are compiling preliminary end of the year statistics. FY98 was a good year for us with our revenue collections increasing once again. Auditors from our Audit Activity assessed over \$264 million during FY98. Investigators from our Compliance Activity collected over \$166 million during FY98 (compared to the FY97 total of approximately \$121 million). Information currently available shows that the total revenue collected during FY98 was more than \$17 billion, an increase of \$2 billion over FY97 collections. In addition, the Division provided information to 1.4 million persons who requested assistance by phone or letter. Congratulations to all Division employees for another successful year!

Issuing Exemption Certificates

New Jersey sales tax exemption certificates issued to purchase taxable items without payment of sales tax must be given to the vendors who sold the items. The vendors are required to retain the exemption certificates in their files for a period of at least four years in the event of an audit by the Division of Taxation. Sometimes purchasers, usually new business owners, mistakenly send the exemption certificates to the Division of Taxation rather than to the vendor from whom the purchase was made. A friendly reminder to purchasers: you do not need to send sales tax exemption certificates to this Division. If you do, they will be returned to you with a request to forward them to your supplier.

New Jersey State Tax News

Summer 1998

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In the center of this issue:

- Survey of Tax Professionals

Paperless Filing Grows

This year over 385,000 New Jersey taxpayers filed paperless State returns. Of these, more than 181,000 were filed via the Division's TeleFile system, an increase of 24% over last year. Taxpayers who used NJ TeleFile received the added bonus of having their refund check mailed within two weeks of their TeleFile call.

For the 1997 tax season, New Jersey was among 19 states that offered TeleFile programs. New Jersey ranked fifth among states in the number of returns TeleFiled.

In keeping with the national trend, more and more New Jersey taxpayers are turning to electronic alternatives when filing their State tax returns. In addition to NJ TeleFile, New Jersey's Electronic Filing (ELF) Program was very successful. As of April 15, over 204,000 taxpayers used Electronic Filing to file both their Federal and State tax returns. This represents an increase of almost 87% from last year. Electronic filing continues to be available to file 1997 returns until October 15.

General Information about New Jersey's TeleFile program is available on the Division's home page:

<http://www.state.nj.us/treasury/taxation/>



One Stop Shopping for NJ Businesses

In the State's FY 1999 Budget, Governor Whitman proposed a "One Stop Shopping" initiative to simplify reporting requirements for New Jersey businesses.

The Division of Revenue in the Department of the Treasury will be a single point of entry for registration and for filing and paying gross income tax withheld and other payroll taxes previously sent to the Department of Labor (unemployment, disability, workforce development and health care contributions).

continued on page 2

important phone numbers

Tax Hotline.....609-588-2200
Automated Tax Info..... 800-323-4400
..... 609-588-2525
Speaker Programs.....609-984-4101
NJ TaxFax..... 609-588-4500

Alcoholic Bev. Tax..... 609-984-4121
Corp. Liens, Mergers, Withdrawals
& Dissolutions.....609-292-5323
Director's Office..... 609-292-5185
Inheritance Tax..... 609-292-5033
Local Property Tax.....609-292-7221
Motor Fuels Tax Refunds...609-292-7018
Public Utility Tax..... 609-633-2576

<http://www.state.nj.us/treasury/taxation/>

one stop shopping - from page 1

Employers will need to file only one form with the Division of Revenue to register with the Commercial Recording Bureau, the Division of Taxation and the Division of Employer Accounts (formerly UI/DI Financing) in the Department of Labor.

The Division of Employer Accounts and the Division of Taxation will use the same Employer Identification Number. This will mean that New Jersey businesses will need only one number when corresponding with either agency.

The Department of Labor will no longer require a separate NJ registration number for unemployment and disability purposes. The Federal Employer Identification Number will become the basic identifier. The Department already carries this number on its records for over 95% of active employers. The Division of Employer Accounts is in the process of contacting employers without an FEIN in order to obtain this information prior to the changeover.

The Division of Taxation's "Quarterly Return of Gross Income Tax Withheld" (NJ-941 and NJ-941-W) forms and the Division of Employer Accounts' "Quarterly Contribution Report" (UC-27) form will be consolidated into one new form, "Employer's Quarterly Report" (NJ-927). Employers can submit one report and one check to satisfy their reporting requirements with both agencies. Forms UC-27 and NJ-941 will be used only for prior period reporting.

The Division of Employer Accounts' "Employer Report of Wages Paid" (WR-30) will remain

a separate form and the data to be reported will remain the same. The form itself is being redesigned in order to make the most efficient use of the Division of Revenue's scanning and imaging equipment.

At the present time, the redesigned WR-30 and the new NJ-927 forms are scheduled to be implemented as of the third quarter of 1998. The new forms will be sent to all employers in advance of implementation.

For updated information visit the Division of Taxation's home page: <http://www.state.nj.us/treasury/taxation/>

GROSS INCOME TAX ***Sale of a Principal Residence***

On March 20, 1998, Governor Whitman signed Assembly Bill A-1296, sponsored by Assembly members Michael Carroll (R-Morris) and Scott Garrett (R-Sussex/Hunterdon/Morris) and Senators Bernard Kenny (D-Hudson) and John Adler (D-Camden), which conforms State law to recent changes in Federal laws governing the treatment of capital gains. The legislation updates New Jersey's treatment of capital gains derived from the sale of a principal residence for the purpose of calculating a taxpayer's New Jersey income tax liability.

The legislation provides tax relief by increasing the allowable gross income tax exclusion and enabling additional eligible taxpayers to sell their homes without reporting gains of up to \$500,000. The bill increases the allowable gross income tax exclusion to \$250,000 for single filers and \$500,000 for

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director:
Robert K. Thompson

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<i>Criminal Investigation</i>	Cheryl Repici
<i>Legislative Analysis</i>	John Bodnar
<i>Property Admin.</i>	Gary Amerine
<i>Technical Services</i>	Allette Wooley

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Editor: Linda B. Hickey

continued on page 3

sale of a residence - from page 2

joint filers. Additionally, the bill broadens the exclusion by making it available to all filers regardless of age, as long as the filer has lived in the residence for two out of the five years prior to the sale. Previous law allowed taxpayers to "roll forward" their capital gains and defer reporting of income, allowing for investment. Previous law had only allowed persons over the age of 55 to exclude \$125,000 in capital gains from reportable income.

The bill is based upon an identical Federal law enacted last year. Sales of homes occurring after May 6, 1997 are eligible for the tax relief provided for in this bill. Individuals who have filed their 1997 New Jersey income tax returns and did not take advantage of this change in the law, though eligible to do so, can file an amended return (Form NJ-1040X). □

**LOCAL PROPERTY TAX
Reimbursement
Update**

The Division of Taxation is continuing to work on the new Property Tax Reimbursement Program. The 1998 applications, which will be mailed to targeted individuals at the end of 1998, will have a filing due date of March 15, 1999. The first reimbursement checks will be mailed to qualified applicants on July 15, 1999. Look for more information in upcoming issues of this publication.

See the related article in the spring 1998 issue of the *New Jersey State Tax News* for more information on who is eligible to apply for the property tax reimbursement. □

**Attention TurboTax
Software Users**

If you used TurboTax to complete your 1997 New Jersey Income Tax Return/Homestead Rebate Application, the software may not have prompted you to complete a Homestead Rebate Application *even if you were eligible to apply for a rebate.*

If this is the case, you need to complete an amended Homestead Rebate Application (HR-1040-X) and mail it to us as soon as possible. This form is available on your TurboTax package.

We believe this problem does not exist in the professional preparers' version of this software.

For more information, check TurboTax's Website at:

www.intuit.com/turbotax/

Please be aware that although we will make every attempt to process amended homestead rebate applications as quickly as possible, we cannot guarantee that amended rebate application filers will receive their rebates in the general mailing scheduled for July 31, 1998. □

**CORPORATION TAX
Add Back of Taxes**

Effective for taxable periods beginning after July 7, 1993, pursuant to N.J.A.C. 18:7-5.2(a)1 the New Jersey tax add back requirement was changed to require *all* taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, on or measured by profits or income, or business presence or business activity, including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part

by net taxable capital to be added back to the extent such taxes were deducted in computing Federal taxable income.

Examples of the taxes which now are required to be added back include all other state corporate franchise or income taxes, net worth taxes and gross receipts taxes, local and city income taxes and business occupancy taxes.

Specifically, the New Jersey Litter Tax should also be added back. □

**CORPORATION TAX
Amended Returns**

Form CBT-100-X can be used to amend CBT-100 returns for tax periods ending on or before June 30, 1994. To amend CBT-100 returns for subsequent tax periods, as well as *any* CBT-100S returns, complete a new return of the same type and tax year that was used to file the initial return and write "AMENDED RETURN" on the front page of the form. □

**Interest 11.50% for
Second Quarter**

The interest rate assessed on amounts due for the second quarter of 1998 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%

GROSS INCOME TAX Guaranteed Payments

A New Jersey resident who is a former partner of a large, national accounting firm inquired about the New Jersey Gross Income Tax treatment of the income he receives from the partnership. He also asked whether a credit for taxes paid to other jurisdictions would be allowed.

As part of a contractual agreement with the partnership the taxpayer has received payments since his retirement. The Federal K-1 the taxpayer received from the partnership shows the amounts as guaranteed payments. The retirement guaranteed payments are the only income he receives from the partnership.

Guaranteed payments to a retired partner pursuant to a retirement agreement or pension plan and resulting from a period of service to the partnership are pension or annuity income for New Jersey Gross Income Tax purposes. Pension or annuity income may be reduced by the New Jersey pension exclusion if the taxpayer meets the age requirements.

In the past, New Jersey allowed a credit for taxes paid to another jurisdiction by a New Jersey resident if the other jurisdiction taxed the income as pension or annuity income. For tax years before 1996, states could tax the pension and annuity income of nonresidents. A Federal statute enacted in January 1996 (Title 4, Section 114 U.S.C.) prohibits state taxation of retirement income of nonresidents received after December 31, 1995. Since this Federal provision allows

only the state of residence to tax pension or annuity income for tax years 1996 and thereafter, *no* credit for taxes paid to another jurisdiction is allowed for this income. Even if the other jurisdiction classifies and taxes the guaranteed payments as "partnership income," the taxpayer is not entitled to the credit for taxes paid to other jurisdictions. □

GROSS INCOME TAX Out-of-State Composite Returns

If a New Jersey resident has consented to be included in a composite return in another state, what must be filed with the New Jersey return to be able to claim a refund for credit for taxes paid to another jurisdiction?

Some states allow composite returns to be filed on behalf of nonresident taxpayers by business entities such as partnerships. Participating in a composite return may relieve the nonresident taxpayer from filing an individual nonresident return.

A New Jersey resident participating in a composite return for another state must include with his or her New Jersey return a statement from the entity filing the composite return. The statement, on the letterhead of the entity, must include the taxpayer's share of:

- Gross income allocated to the other jurisdiction.
- The income taxed by the other jurisdiction.
- Tax paid to the other jurisdiction.

If audited, the New Jersey resident may be required to obtain a copy of the canceled check used to pay

the liability as reflected on the composite return filed with the other jurisdiction. □

GROSS INCOME TAX Caution to Tax Practitioners

Tax practitioners sometimes neglect to thoroughly review tax returns that have been prepared with the aid of commercial tax preparation software. This usually occurs when the practitioner mistakenly assumes the software package is virtually infallible, making close scrutiny of the finished form unnecessary. Suppositions of this kind can, and often do, result in returns which contain overt errors and/or errors of omission.

The Division reminds tax practitioners that a careful check of all New Jersey tax returns for accuracy *before* they are submitted to the State, including returns prepared with the aid of commercial tax preparation software packages, will help to reduce the number of filing errors and, in the process, save time, money and inconvenience for everyone involved. □

Your Opinion Counts

This issue of the *State Tax News* contains a survey regarding services offered to the public by the Division of Taxation.

We would like to hear our readers' opinions concerning the services we currently provide and suggestions for additional or expanded services they'd like to see. Please take the time to complete the survey located at the center of this issue and return it to us at your earliest convenience. Thank you. □

DIVISION HOME PAGE ***Online Extensions***

During the recent tax season, over 2,600 taxpayers used the Division's home page to request an extension of time to file their 1997 New Jersey personal income tax returns. Last minute taxpayers were able to actually complete a new, interactive version of Form NJ-630 *online* rather than having to download a hard copy of the extension application from the home page, fill it out and mail it in to the Division. With this enhancement, New Jersey became one of only a handful of states to allow online filing.

Only those taxpayers who were not paying additional tax were eligible to file the NJ-630 extension request via the home page. The Division is currently exploring the possibility of allowing taxpayers who owe taxes to file the NJ-630 extension request online next year.

More and more taxpayers are taking advantage of the Division's home page. This tax season twice as many taxpayers visited our home page compared with the same period last year. Our two millionth "hit" since coming online on February 29, 1996 was recorded in April of 1998. □

INHERITANCE/ESTATE TAX ***New Life Estate Tables***

Pursuant to the Tax Court's decision in *La Greca v. Director*, 15 N.J. Tax 22 (1995), revised Transfer Inheritance Tax Tables have been published by the Division for valuation of life estates, remainders, and terms for years of transfer inheritance tax purposes. The

Tax Court held that these types of valuations should be based on a 6% interest rate and the "most recently available" mortality data rather than on the tables previously used which were based on 1959-61 mortality data.

Transfer Inheritance Tax Tables based upon the mortality data set forth in the U.S. Decennial Life Tables for 1989-91 (Life Tables for Males: United States and Life Tables for Females: United States), have been published by the Division. The 1989-91 U.S. Decennial Life Tables were printed in October 1997 and reflect data based upon the 1990 census.

A copy of these tables may be requested by writing to:

NJ DIVISION OF TAXATION
TRANSFER INHERITANCE/ESTATE TAX
PO BOX 249
TRENTON NJ 08646-0249

or by telephone at 609-292-5033, 292-5035, 292-7147 or 777-4559.

□

INHERITANCE/ESTATE TAX ***Self-Executing Waiver (Form L-8)***

Telephone inquiries and other forms of correspondence received by the Transfer Inheritance and Estate Tax Branch indicate that there continues to be some confusion regarding proper use of the self-executing waiver, Form L-8. This is a short synopsis of various conditions regarding the implementation, purpose, and use of Form L-8.

Effective in estates of decedents dying on or after July 1, 1988, all Class "A" transferees became exempt from New Jersey Transfer Inheritance Tax. In order to facilitate the transfer of intangible

assets passing to this class transferee, an affidavit of waiver, Form L-8, was designed and adopted by the Division of Taxation.

Class "A" transferees, consisting of a surviving spouse, parent, grandparent, child, grandchild, stepchild, legally adopted child, or a child or children of a decedent's child or legally adopted child may execute Form L-8 where decedent's date of death is on or after July 1, 1988 and, under the terms of the account instrument and applicable State law, the transferee has the right of survivorship or is the named beneficiary. Form L-8 is authorized for use by a surviving spouse in estates of decedents dying on or after January 1, 1985.

Where assets in the name of decedent alone are passing to Class "A" transferees under the terms of a will or laws of interstate distribution, the executor or administrator may execute Form L-8, provided letters testamentary or of administration are attached and made part of the affidavit.

When Form L-8 is executed by the executor of the estate, a copy of decedent's last will and testament must accompany the form. Contrary to the misconception of many, the banking institution is not required to read or interpret the terms of the will. The institution is simply to confirm that the form is complete and is being executed by a qualified individual in compliance with the provisions set forth on the form.

A separate affidavit is required for each institution and for each transferee.

continued on page 6

waiver form L-8 - from page 5

Care should be exercised in the use of Form L-8 to the extent that assets are released only when the form is executed by a qualified individual as defined above.

A brother or sister, son-in-law or daughter-in-law, is not a Class "A" transferee and is not eligible to use Form L-8.

A step-child is the only step-relative who qualifies as a Class "A" transferee and who is eligible to use the form. A step-parent, step-grandparent or step-grandchild is not a Class "A" transferee and cannot use the form.

Form L-8 may not be used to transfer decedent's interest in real property. Form L-9, which is a *request for a waiver*, has been designed for that purpose.

Form L-8 is available from banks, transfer agents, and from Division of Taxation offices throughout the State.

To the extent that the Division may clarify uncertainties that exist

Correction

The address and telephone numbers found in two articles appearing on pages 8 and 9 of the spring 1998 issue of the *State Tax News* (Vol. 27, No. 1) were incorrect. Please note the following corrections to the articles entitled "ABC Clearance Process" and "Results of Non-Compliance." Inquires regarding the ABC clearance process should be directed to:

NJ DIVISION OF TAXATION
ABC CLEARANCE SECTION
PO BOX 272
TRENTON, NJ 08646-0272

For telephone inquiries please dial 609-292-0024 or 609-292-0041.

among employees of banking institutions regarding Form L-8 and other issues relating to decedent accounts, there is a free speaker program available. Upon request, a representative of the Transfer Inheritance and Estate Tax Branch will visit the financial institution and discuss legal responsibilities and obligations in handling decedent accounts.

The speaker program is, of course, available for other interested organizations such as the New Jersey Bar Association, Certified Public Accountants, senior citizen groups, etc.

Questions regarding Form L-8, or any area of the transfer inheritance and/or New Jersey estate tax, may be directed by telephone to the Transfer Inheritance and Estate Tax Branch, Taxpayer Service Section at 609-292-5033, 609-292-5035, 609-292-7147 and 609-777-4559, or by mail addressed to:

NJ DIVISION OF TAXATION
TRANSFER INHERITANCE/ESTATE TAX
TAXPAYER INFORMATION & SERVICE
PO BOX 249
TRENTON NJ 08646-0249 □

Construction Industry Review

The Investigations Branch has been reviewing various aspects of the construction industry during the past fiscal year. This includes both new construction and renovations as well as the various property maintenance trades. Some of our initiatives have included the following:

Atlantic City Project Team – A group of investigators working out of the Northfield Office have been involved in a review of various construction projects in the Greater Atlantic City area. Much of this

work focuses around casino related construction as well as the corresponding hotel, retail and residential development.

Taxation investigators are primarily looking at building materials and furnishings that are being brought in from out-of-State on which use tax may be due. Assessments and collections have been made on such items as specialty doors and windows, bathroom fixtures, air conditioning systems, office and hotel furnishings and structural steel.

Another focus is the withholding of gross income tax from the various contractors and subcontractors from around the country who are involved in construction work in this area.

Border Project – A group of investigators working out of the Somerville Office have been uncovering contractors from Pennsylvania and New York who do work in New Jersey but are unregistered in this State. Project investigators position themselves to observe these contractors primarily in Hunterdon, Warren and Sussex Counties. Assessments and collections have been secured from landscapers, painting, roofing, air conditioning and paving contractors.

Painting Contractors – Another project targeting unregistered painting contractors is being run out of the Quakerbridge Office. Over 100 painting contractors have been identified and registered through information secured from paint suppliers and various business advertisements.

Joint IRS Projects – Several projects are underway in cooperation with the Internal Revenue Service

construction industry - from page 6

and Taxation's Audit Branch. These have included research of contractor lists provided by the Division of Consumer Affairs and lists of subcontractors working on various construction sites. A pilot project to capture contractor information from local building permits is also in process in cooperation with the Department of Community Affairs and a Bergen County municipality.

All of these projects have been implemented to verify and enforce compliance by the construction industry with the New Jersey tax laws and to eliminate unfair competition for contractors who properly comply with State tax requirements. □

Set-Off Program (S.O.I.L.)

S.O.I.L. is an acronym for Set-Off of Individual Liability. During the early 1980s a State law was enacted which allowed the use of this procedure as a collection tool for debts.

Through the S.O.I.L. system, agencies or institutions are permitted to file claims against debtors. Thousands of individuals are placed into S.O.I.L. by claimant agencies such as the State of New

Jersey, the Internal Revenue Service, hospitals and county probation departments (child support).

Taxpayers filing for a New Jersey gross income tax refund or a homestead rebate, who have been identified as debtors, may have their refund or rebate withheld and sent to the claimant agency.

Since the beginning of fiscal year 1998, the Division of Taxation has placed 8,890 taxpayers who owe State taxes into the program. Of those, 93%, or 8,251 taxpayers, have had \$1,300,803.00 in State tax refunds and homestead rebates set off. Not all of those taxpayers' debts were immediately satisfied; therefore, set-off of any future State refunds or rebates will continue until the debt is paid in full.

Professional tax preparers should advise their clients of the S.O.I.L. program and the consequent potential for loss of a State tax refund or homestead rebate if the client is indebted to a qualified agency. Taxpayers who find themselves in this situation should consider making full payment now, or requesting an installment payment plan with the agency to which they are indebted.

Taxpayers who receive a S.O.I.L. notice in the mail and are unaware of the existence or nature of an

overdue debt should answer the notice in writing or contact the phone number appearing on the notice. □

Warrants of Execution

Pursuant to N.J.S.A. 54:49-12, the Division of Taxation routinely files Certificates of Debt in the Superior Court of New Jersey at Trenton against taxpayers who fail to voluntarily settle their debts with the Division. These Certificates of Debt have the same force and effect as a docketed judgement and remain as a valid lien against the taxpayer for a period of 20 years.

If after the filing of the Certificate of Debt the taxpayer has still not satisfied his indebtedness, the Division, in accordance with N.J.S.A. 54:49-13a, as an alternate remedy, will file a Warrant of Execution in any County Court where assets of the debtor have been located. After recording the warrant in the county(s) the Division will levy and/or seize any known assets of the debtor to satisfy their indebtedness. These Warrants of Execution expire sixty (60) calendar days after recording. Often, due to the quick expiration of these Warrants, more than one such Warrant may be filed in order to effect collections of the debt.

Many judgement searches *erroneously* reflect these Warrants of Execution as tax liens valid for 20 years when in fact they expire after 60 calendar days, as is provided for by statute. This erroneous reporting often results in inordinate delays in finalizing various financial transactions sub-

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warrants - from pg. 7

sequently entered into by the taxpayer. With the aid of the twenty-one (21) County Clerks, the Division is attempting to "educate" the title industry regarding the treatment of these documents.

The Warrant of Execution itself has been modified to include a statement indicating that the document *expires 60 calendar days after recording*; which should be relied upon as sufficient evidence that the document does expire. In addition, the Division has provided each county with a listing of all expired Warrants of Execution for the period July 1, 1991 through March 31, 1998. Effective April 1, 1998, any Warrant of Execution being filed in any county *must* contain a statement regarding expiration. It is believed that this process will aid taxpayers in their ability to enter into financial transactions without undue delays, subsequent to the extinguishing of their debt with the Division. □

Process Service in Bankruptcy Cases

When litigating a bankruptcy case against an agency of the State of New Jersey, many attorneys have questions about how to properly serve a motion or adversary proceeding on the State of New Jersey. This article will establish that the proper method of serving motions and adversary complaints on the State of New Jersey is to serve the Attorney General's Office and not the State agency itself. To reach this conclusion, we will review two Federal rules of bankruptcy procedure ("Bankruptcy Rules") and one New Jersey Court rule.

Initially, we must turn to Bankruptcy Rule 9014. This Bankruptcy Rule provides that motions in contested proceedings shall be served in the "manner provided for service of summons and complaint under Bankruptcy Rule 7004."

Specifically, Bankruptcy Rule 7004(b)(6) explains how to serve the State of New Jersey. This rule sets forth that service upon a state is made by "mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the *law of the state* in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Under this Bankruptcy Rule the chief executive officer is served only if state law does not prescribe a method of service on the state.

Pressler, 1988 N.J. Court Rules, (Gann), R.4:4-4(a)(7) sets forth how a party should serve the State of New Jersey. This rule requires that service upon the State of New Jersey be made by "registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the *Attorney General* or the *Attorney General's designee** named in a writing filed with the Clerk of the Superior Court." This court rule further provides that "[n]o default shall be entered for failure to appear unless personal service has been made under this paragraph." Since N.J. Court R.4:4-4(a)(7) designates the Attorney General as the party to serve, the chief executive officer is not the proper party.

The Attorney General administers the Department of Law and Public Safety ("Department"). N.J.S.A. 52:17A-3. Since this Department is comprised of several Divisions, the next question is which Division within the Department represents State agencies. The Division of Law, a part of the Department, represents "state agencies in all proceedings or actions of any kind which may be brought against them in any court of this State." N.J.S.A. 52:17A-4. Since the Division of Law represents State agencies, if a party is filing an action against a State agency, the Division of Law is the proper entity to serve within the Attorney General's Office.

The correct mailing address for the Division of Law is:

OFFICE OF THE ATTORNEY GENERAL
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
PO BOX 112
TRENTON NJ 08625-0112

If a party is filing a motion and knows the name of the Deputy Attorney General who has been assigned to the case, but does not know the address, he or she should mail the motion to the attention of the attorney at the above cited address. Additionally, if the party knows the attorney's address, he or she could send it to the attorney and to the above cited address. Needless to say, as a courtesy, an attorney may also serve a State agency, but this service does not meet the requirements of service set forth in Bankruptcy Rules 9014 and 7004(b)(6).

Proper service benefits all parties to a bankruptcy proceeding because proper service ensures that a

bankruptcy cases - from page 8

Deputy Attorney General in the Attorney General's Office, Division of Law, will timely receive the motion or complaint. Proper service ensures that the bankruptcy case will proceed in an orderly manner.

Although the road to the answer on how the properly serve the State of New Jersey is not simple, the answer is clear. A party must serve the Attorney General for service to be valid on the State of New Jersey. Since the Division of Law represents State agencies, it is the proper party to serve within the New Jersey Attorney General's Office.

* The Attorney General designates certain persons within the Division of Law to accept service. Periodically, the *New Jersey Law Journal* publishes the Attorney General's designees. □

Common EFT Errors

Many taxpayers who are required to remit electronically for gross income tax employer withholdings and/or sales and use tax are under the misconception that they no longer have to file tax returns, especially the employer quarterly reconciliation, Form NJ-941-W and the sales tax quarterly return, Form ST-50. As a result, these taxpayers are receiving delinquency notices for not filing the appropriate forms, and are assessed late filing penalty when they ultimately do file the missing returns. Since the sales and use and gross income withholding taxes are self-assessed, the required returns must be filed in order to establish a taxpayer's

liability for an applicable tax period. **Remitting payments electronically does not relieve a taxpayer from filing the required tax returns.**

The frequency of an employer's payroll does not determine whether or not he should be a weekly remitter, but rather, the amount of total withholdings for the prior year. An employer who had gross income tax withholdings *greater than \$20,000* in the previous year *must* remit weekly and *must* remit *electronically*, even if that employer does not have a weekly payroll. If an employer has been determined to be a weekly remitter, withholdings are due the *Wednesday following the period in which the payroll is paid*. In establishing the applicable Wednesday due date, the withholding period runs from Sunday through Saturday. The employers in all of the following examples are consider weekly remitters.

Example 1: An employer with prior year withholdings of \$30,000 has a semi-monthly payroll. During April of 1998, employees were paid on Wednesday, April 15 and Wednesday, April 29. The April 15 withholdings were due on Wednesday, April 22, and the April 29 withholdings were due on Wednesday, May 6.

Example 2: An employer with prior year withholdings of \$25,000 has a monthly payroll. During April of 1998, employees were paid on Thursday, April 30. The withholdings were due on Wednesday, May 6.

Example 3: An employer with prior year withholdings of \$75,000 has a quarterly payroll.

The withholdings for the quarterly payroll paid on Tuesday, March 31, 1998, were due on Wednesday, April 8.

Many payroll services and banks are incorrectly remitting their clients' electronic payments by either failing to complete the *name control* field, or by using the Federal format of last name first when the client is registered differently with the Division.

Example: Dr. James Q. Citizen has registered with the Division as Dr. James Q. Citizen, P.A., and as such the name control for New Jersey filing should be "DRJA" and not "CITI."

Because of incomplete or erroneous name controls, payments will reject and not post to taxpayers' accounts. When the return is filed, which is preprinted by the Division with the correct name control, it *will* post to the taxpayers' account. Since the payment did not, an underpayment will apparently exist and a bill will be generated, creating additional work and frustration for both the Division and taxpayers alike. □

Compliance Award Program

On January 20, 1998 Acting Director Robert K. Thompson, Deputy Director Harold Fox, and Assistant Director David Gavin handed out eleven awards recognizing Compliance Activity employees that made outstanding contributions to the Division of Taxation. Ten employees were honored with Compliance Achievement Awards and one employee received the Compliance Exemplary Employee Awards.

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achievement awards - from pg. 9

Compliance Achievement Awards were given to employees in recognition of specific contributions to the Division such as serving on special projects or committees, accomplishments, suggestions, dedication/loyalty, leadership, or general work ethics. The Achievement Award recipients were: Betty Bossert and Ivan Gehman from Special Procedures, Jeff Kerman from Compliance Services Branch, and Albert Katowitz, David Leone, Dennis Cavanaugh, Bill Bay, Robert White and Robert Winter from the Investigations Branch.

The Compliance Exemplary Employee Award was given to Sea Girt Investigator Don Smith to recognize his individual initiative, excellence, and most significant overall contribution to his work unit and the Division of Taxation.

The newly created annual awards program is another way for senior Division management to recognize positive accomplishments of employees within Compliance Activity. Nominations for either of these awards are submitted on a Compliance Award Program Nomination Sheet to the Assistant Director, Compliance and an informal award ceremony is held on an annual basis. □

LOCAL PROPERTY TAX County Tax Board Members Confirmed

In 1997, the Senate confirmed 18 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Atlantic County	
Lucia McCabe	1/16/97
Harry Brown	6/05/97
Burlington County	
Katharine M. Krasson	3/24/97
Samuel P. Alloway, Jr.	6/16/97
Cape May County	
Philip F. Judyski	6/05/97
Cumberland County	
Walter F. Gavigan	6/05/97
Essex County	
Catherine F. Willis	6/16/97
Albert A. D'Alessio	6/26/97
Gloucester County	
Francis A. McDevitt	3/24/97
Hudson County	
Frank M. Alonso	3/24/97
Mercer County	
H. Rick Kline	12/01/97
Middlesex County	
Joseph J. Nita	6/16/97
Irving Verosloff, Esq.	6/16/97
Monmouth County	
John E. Westlake	6/16/97
Hope G. Brodsky	12/01/97
Sussex County	
Joseph S. Masar	6/16/97
Warren County	
John E. Joyce, Jr.	3/24/97
Walter S. Orcutt	3/24/97
□	

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1–

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 1999 together with a notice that the completed form must be filed with the assessor by August 1, 1998 to each taxpayer whose land was assessed for tax year 1998 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 1998 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.

continued on page 11

assessors' calendar - from page 10

- Tangible business personal property returns of local exchange telephone, telegraph and messenger systems companies, with respect to tax year 1998 and thereafter, are required to be filed with the assessor for the taxing district in which the said property is located.

September 13-

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15-

- Assessor to file statement of taxable value of State-owned real property with Director, Division of Taxation. □

Criminal Enforcement

Criminal Enforcement over the past months included:

- On January 16, 1998, in Superior Court – Camden County, Moshe Levkowitz, of Vineland, was sentenced to five years probation and ordered to pay restitution to the State of \$125,000 tax, penalty and interest as a result of Levkowitz's guilty pleas to charges that he filed 32 fraudulent sales tax returns from 1989 to 1996 that underreported sales tax collected at Levkowitz's used car business, Roey's Auto, Vineland, by \$82,821. This case was investigated jointly by the Division of Taxation's Office of Criminal Investigation and the Camden County Prosecutor's Office.

- Eugene Slusker of Brooklyn, NY was sentenced by Judge Elaine L. Davis in the Hudson County Superior Court to seven years of imprisonment, giving him credit of 417 days previously served and suspended the remaining term. Slusker was placed on probation for three years and was ordered to make restitution to the State of New Jersey in the amount of \$355,467. Mr. Slusker was previously indicted on January 30, 1995 by a State Grand Jury for evading \$355,467 of motor fuel diesel taxes between the period of April 10, 1990 and August 6, 1990. Mr. Slusker, who was operating a business called Pentagon Management Co., Inc., had been indicted of five counts: theft, misapplication of entrusted property, misconduct by a corporate official, failure to file returns and failure to pay taxes.
- On January 21, 1998, in Municipal Court of Palisades Park Borough, Satnam Singh, of Palisades Park, entered a plea of guilty to one count of failure to maintain records relating to the disposition of 1,429,118 gallons of diesel fuel sold by Singh's company, Cheema Oil Corp., a truck stop in Palisades Park, between November 1994 and May 1997. The amount of tax exemption claimed was \$192,930. Singh was fined \$625 as a result of the guilty plea, and faces civil collection of the tax on the sales alleged to be tax exempt but unsupported by the required records.
- On February 10, 1998, in Jersey City Municipal Court, Luis E. Alvarez of Union, NJ, pleaded

guilty to failing to file tax returns and failing to remit \$4,414 in motor fuels tax for the period January through August 1997. He was sentenced to 60 days in jail (suspended) and fined \$810.

- On February 10, 1998, in Jersey City Municipal Court, a bench warrant was issued for Lasarev Kirkorian, of Englewood Cliffs, NJ. Kirkorian failed to appear on charges of failing to file returns, failing to remit \$7,331.61 in motor fuels tax, selling gasoline without a license, and selling diesel fuel without a license at his business, Sunny's Mobil, Jersey City, NJ.
- On March 19, 1998, Bergen County Prosecutor Schmidt announced that an eight-count indictment for tax evasion was handed up by a Bergen County Grand Jury, on Manjit Singh, a medical doctor in Mahwah. Dr. Singh is alleged to have bilked the State on New Jersey out of over \$165,000 by failing to report income derived from his alleged criminal conduct. The alleged criminal conduct is the subject matter of an eighty-two count indictment that is currently pending. Singh failed to report income from 1992, 1993, 1994 and 1995. Singh, if convicted, faces 40 years in New Jersey State Prison and \$120,000 in fines. This case resulted from a joint investigation between the Bergen County Prosecutor's Office and OCI.
- A Hudson County Grand Jury indicted Mario Rivellini, of Clifton, on charges for failing to file tax returns, failing to turn over

criminal enforcement – from pg. 11

taxes collected, misapplication of entrusted property, and providing false information to the Division between January 1, 1997, and December 31, 1997. Rivellini is the owner and responsible person of M & R Cleaning Services Inc., of Kearny, which is a commercial cleaning firm operating in Jersey City. Each charge is punishable by up to five years imprisonment and a fine of up to \$7,500 or twice the amount of tax evaded. This case was investigated jointly by the Police Division of the Waterfront Commission of New York Harbor and the New Jersey Division of Taxation.

- Eight guilty pleas for eight cases were entered in municipal courts throughout the State by individuals and businesses for noncompliance with the cigarette tax law. These eight cases resulted in the imposition of fines and penalties totaling \$3,985.
- Twenty-four charges were filed in municipal court on eight cases for violating the cigarette tax law including possession of 800.1 cartons of contraband cigarettes, valued at \$20,002.50. In one of the cases, Abdulkareem K. Ali of Brooklyn, NY was arrested and charged with possession of 766 cartons of contraband cigarettes, transportation of contraband cigarettes, no invoices and no consumer licenses. The arrest was based upon a joint investigation with Northern Virginia Tax Board Investigators, OCI and the NJ State Police. □

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1998

Following is a summary of enforcement actions for the quarter ending March 31, 1998.

Certificates of Debt

During the quarter ended March 31, 1998, the Division filed 3,786 Certificates of Debt in New Jersey Superior Court. These CODs, which have the same force and effect as docketed judgments, totaled \$45.8 million.

Levies

\$50,827 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a “jeopardy assessment”) and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending March 31, 1998, \$57,013 was collected from jeopardy assessments. Two jeopardy seizures were conducted.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending March 31, 1998, property of 34 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 15–17.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending March 31, 1998 eleven (11) auctions were held by the Division. A listing follows on page 17.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any

continued on page 13

NEW JERSEY DIVISION OF TAXATION

1998 SURVEY OF TAX PROFESSIONALS

Dear Tax Preparer:

The New Jersey Division of Taxation continually strives to make information easily available to both the general public and tax practitioners. Advanced technology has made it possible for us to provide forms, information and assistance not only in person or through the mail but also by fax and through the Internet. NJ TeleFile and electronic filing programs enable taxpayers and tax preparers to file paperless returns.

In order to improve our taxpayer services, we would like your opinion of the services we currently provide as well as any suggestions you may have. Please take the time to complete this survey and return it to us. Your comments will help us serve the taxpayers of New Jersey better.

Robert K. Thompson
Acting Director
New Jersey Division of Taxation

1. How many times did you use the Tax Hotline (609-588-2200) over the past 12 months?

- | | |
|--|--|
| <input type="checkbox"/> Over 10 times | <input type="checkbox"/> 1-5 times |
| <input type="checkbox"/> 5-10 times | <input type="checkbox"/> Not used (Go to question 3) |

2. How would you rate the services provided by the Tax Hotline (609-588-2200)?

- | | |
|--|----------------------------------|
| <input type="checkbox"/> Excellent | <input type="checkbox"/> Average |
| <input type="checkbox"/> Above Average | <input type="checkbox"/> Poor |

Comments _____

3. How many times did you use the Tax Practitioners' Hotlines (609-633-6657 for personal income tax and 609-633-6905 for business taxes) over the past 12 months?

- | | |
|--|--|
| <input type="checkbox"/> Over 10 times | <input type="checkbox"/> 1-5 times |
| <input type="checkbox"/> 5-10 times | <input type="checkbox"/> Not used (Go to question 5) |

4. How would you rate the services provided by the Tax Practitioners' Hotlines (609-633-6657 for personal income tax and 609-633-6905 for business taxes)?

- | | |
|--|----------------------------------|
| <input type="checkbox"/> Excellent | <input type="checkbox"/> Average |
| <input type="checkbox"/> Above Average | <input type="checkbox"/> Poor |

Comments _____

5. The Division of Taxation offers an Automated Tax Information System which allows Touch-tone telephone users to listen to pre-recorded tax information (NJ TaxTalk), order forms and publications (Forms Request Service) or check on the status of an income tax refund (ARIS-Automated Refund Inquiry System) or homestead rebate (Homestead Rebate InfoLine) (1-800-323-4400 within NJ or 609-588-2525 anywhere).

24. If you purchased the CD-ROM version of our *1997 Package NJX*, did you find it easy to use?

Yes

No

Comments and suggestions _____

25. How would you rate the Division of Taxation's overall performance during the tax season just concluded?

Excellent

Average

Above Average

Poor

Comments _____

(Fold Here First)

Contact the New Jersey Division of Taxation

- Home page: <http://www.state.nj.us/treasury/taxation/>
- E-mail: nj.taxation@treas.state.nj.us
- Write to: NEW JERSEY DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
PO BOX 281
TRENTON NJ 08646-0281
- Automated Tax Information System:
1-800-323-4400 (New Jersey only)
609-826-4400 (anywhere)
- Tax Hotline:
609-292-6400

FOLD SURVEY ALONG TOP AND BOTTOM FOLD LINES, SEAL WITH TAPE AND AFFIX POSTAGE.

(Fold Line)

<p>Place Stamp Here</p>

ASSISTANT DIRECTOR KAREN M WOOD
NEW JERSEY DIVISION OF TAXATION
TECHNICAL SERVICES ACTIVITY
PO BOX 240
TRENTON NJ 08646-0240

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of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending March 31, 1998, 623 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$3.9 million in revenue during the first quarter of 1998.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

During the quarter ending March 31, 1998, 183 notifications of liquor license transfer were received by the Division's Bulk Sales section. Seventeen (17) audits relating to this project and previously requested were completed; assessments from these audits totaled \$496,248. □

Tax Briefs

Gross Income Tax

Mutual Fund Distributions After Colonial Trust III — The following is a clarification of the treatment of mutual funds after the decision by the Tax Court of New Jersey *Colonial Trust III v. Director, Division of Taxation*, 16 NJ Tax 385 (1997). The Tax Court held that Federal law providing that stocks and obligations of the United States are exempt from state taxes (31 U.S.C.A. §3124) requires that distributions paid by a mutual fund must be immune from New Jersey gross income tax to the extent that they are attributable to interest earned on Federal obligations. Therefore the imposition of tax on Federal obligation income distributed by "non-qualified" investment funds pursuant to N.J.S.A. 54A:6-14.1 is barred by Federal law.

The practical effect of this decision is to remove from State taxation all Federal obligation income distributed by mutual funds. The decision does not change the calculation of New Jersey qualified investment funds under N.J.S.A. 54A:6-14.1, whereby a qualified investment fund must have at least 80% of the aggregate principal amount of all its investments in obligations which are issued by or on behalf of New Jersey or a political subdivision of New Jersey, or "which are statutorily free from State or local taxation under any other act of this State or under the laws of the United States." N.J.S.A. 54A:6-14. Federal obligations are still used to determine whether a mutual fund meets the requirements of a qualified investment fund. Regardless of whether the fund is a qualified

investment fund, however, all distributions attributable to interest earned on Federal obligations will be exempt from State tax.

Dependent Care Assistance —

The Division responded to an inquiry concerning whether amounts provided by an employer to an employee for dependant care assistance are taxed. Gross income is defined at N.J.S.A. 54A:5-1(a) to include "salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or property." There is no specific gross income tax exemption for IRC Section 129 payments. The employee is deemed to have "constructive receipt" of the funds if the employee has the option to receive cash in lieu of benefits. If the employee has constructive receipt, the amount is included in the employee's taxable income for gross income tax purposes.

Family Investment Business —

The New Jersey gross income tax is imposed on the gross amount of the taxpayer's income. It is only where a taxpayer is engaged in a business or profession that provision is made for the deduction of costs and expenses. If a taxpayer is not engaged in the operation of a business, then dividends are taxable in the dividend category of income (N.J.S.A. 54A:5-1(f)) and interest is taxable in the interest category (N.J.S.A. 54A:5-1(e)) rather than as net profits from a business. Since dividends and interest are taxed as gross, rather than net income, any expenses attributable to such income could not offset that income.

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tax briefs - from page 13

In order to be able to deduct interest and other investment expenses, a taxpayer must prove to the satisfaction of the Division that he is engaged in a business rather than managing his own investments. The specific facts that will support a finding that an individual trading for his own account is in "business" have been identified in two tax court cases in New Jersey.

A business activity was found in *Marrinan v. Taxation Div. Director*, 10 N.J. Tax 542 (Tax Ct. 1989). In that case the taxpayer was engaged full time in trading securities on a short-term basis. He maintained a separate office outside his home and had one full-time and one part-time employee. At the end of each day, he tried to get out of positions taken during the day; 90% of his trades were on a day-to-day basis. He kept a separate bank account, payroll records and ledger book for his securities activities. He made an average of 15 to 20 trades a day, and in the year in issue his total trading volume was \$97,000,000.

Taxpayer's trading activities were found not to constitute business activity in *Gilligan v. Taxation Div. Director*, 11 N.J. Tax 414 (Tax Ct., 1991). In that case, a taxpayer working full time on stock activities traded approximately twelve million dollars in gross volume of securities bought and sold in 1987. The taxpayer maintained a home office, computer hardware, software and modem, and maintained a separate telephone line for his securities activity. He subscribed to Dow Phone and Dow Jones news re-

trieval services, and a cable television service in order to monitor financial news and the stock market. He had no employees, offered no goods and services to the general public and had no clients. He maintained no separate business bank account. He had no separate office outside his home, dealt through a single stock broker and had an average of three to four broker contacts a day, but fewer trades. His research consisted primarily of reviewing secondary sources. His purchases were held, on average, more than eight months, and his stated purpose was to enhance the return on his personal estate by investing in higher risk securities. The court held that "if the transactions tend to be on a day-to-day basis so that the activities are those of a day trader, and if the location of the activities and the books and records of the operation have the characteristics of the operation of a business rather than the management of a personal estate, a business activity is indicated." In *Gilligan*, the court held that this standard had not been met.

Whether or not investment activity constitutes a business activity for purposes of the gross income tax will depend on the specific facts of the situation.

IRC Section 125 Noncash Benefits—The Division was asked whether noncash benefits under I.R.C. Section 125 are excludable from gross income for purposes of the State income tax. The value of an employee's qualified option under an I.R.C. Section 125 cafeteria plan may be excluded under very limited circumstances, as provided in N.J.S.A. 54A:6-24. If the plan is a "salary reduction

plan," that is, the employee may choose the benefits in lieu of salary, the plan will not qualify for the exclusion. (Examples of salary reduction plans include flexible spending accounts and premium conversion options.) If the plan includes an option to receive cash in lieu of a qualified employer-provided benefit, to be excluded from gross income the option may only be exercised if the employee derives a similar benefit from a source other than the employer (e.g., through the insurance of the employee's spouse). Most Section 125 plans are salary reduction plans and do not qualify for the 54A:6-24 exclusion.

Litter Control Tax

Beverage Syrup—A manufacturer of a beverage syrup product sold in glass containers with sales in New Jersey inquired as to its subjectivity under the litter control tax.

The Clean Communities and Recycling Act levies a litter control tax on all manufacturers, wholesalers, distributors and retailers engaged in business in New Jersey on the gross receipts from sales of litter-generating products within and into the State. N.J.S.A. 13:1E-99.1a.

Litter-generating products are defined in the Act, at N.J.S.A. 13:1E-94e, to include the following fifteen categories of products:

1. Beer and other malt beverages
2. Cigarettes and tobacco products
3. Cleaning agents and toiletries

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Division of Taxation Seizures (January - March 1998)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Woodo, Theodore F. t/a Tedco Vending 313 Gravel Bend Rd. Egg Harbor	3/4/98	Vending machines	Vehicles released
Bergen	246 Broad Ave Inc. t/a C&E Deli Liquors 246 Broad Ave. Palisades Park	3/6/98	Deli/liquor store	Liquor license seized
Burlington	Davis, Preston Mt. Laurel	2/29/98	N/A	Vehicle seized
	Serafine, Brian t/a B&B Landscaping 100 Hawkins Rd. Tabernacle	2/26/98	Landscaping	Vehicle released
	K&K, Inc. t/a East Coast Subs 13 Jackson Rd. Medford	3/10/98	Restaurant	Reopened
Camden	More Income, Inc. t/a Big C Super Discount Liquor 31 Mount Ephriam Ave. Camden	2/3/98	Liquor store	Liquor license seized
	Kahn, Mautz Camden	3/16/98	Mobile food cart	Released
Cape May	Waldo, Inc. t/a CR Fannies 447 W. Rio Grand Ave. Wildwood	3/11/98	Bar	Liquor license seized
Cumberland	Zemanik, Richard t/a Z-Best Painting 857 Magnolia Rd. Vineland	2/26/98	Painting	Vehicle seized
Essex	Bell Monte, Inc. 209 Irving Turner Blvd. Newark	1/23/98	Bar	Liquor license seized
	Ms. Ellie's Inc. t/a Ricci's in the Valley 459 Valley St. Orange	2/26/98	Restaurant	Liquor license seized
	MCDE Brad Corp. t/a The Cave Lounge 417 Halsey St. Newark	3/17/98	Bar	Liquor license seized
	Delmone Corp. t/a Centre Liquors 92 Centre St. Nutley	3/18/98	Package goods	Liquor license seized

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taxation seizures – continued from page 15

County	Name/Address	Seizure Date	Business Type	Status
	The Ellington Corp., Inc. t/a Club Renee 507 S. 17th St. Newark	3/18/98	Bar	Liquor license seized
	Lyon, Larry D. t/a Club Mahogany 474-476 Avon Ave. Newark	3/30/98	Bar	Liquor license seized
Gloucester	Krips, John A. t/a Krips Auto Body Delsea Dr. Hurffville	2/5/98	Body shop	Open
	Davis, Vernon Clayton	3/6/98	N/A	Vehicle seized
Hudson	VCP Corp. t/a Venice Resteraunt 31 Cottage St. Bayonne	1/13/98	Restaurant/bar	Closed Liquor license seized
	Walls Tavern Corp. t/a Roost III 1500 43rd St. North Bergen	3/5/98	Tavern	Liquor license seized
	Aztec Amusement Inc. t/a Dohoney's 746 Westside Ave. Jersey City	3/17/98	Bar	Closed
Mercer	Jess Bar & Grill, Inc. t/a Intake Lounge 602 Federal St. Trenton	2/10/98	Bar	Reopened
Middlesex	Summit Restaurant Association, Inc. t/a La Fontana New Brunswick	2/17/98	Restaurant	Reopened
	Tall Stem, Inc. t/a Babe's Bottle Shop 104 N. Broadway South Amboy	2/20/98	Bar	Liquor license seized
Monmouth	1501 License Corp. t/a The Polo Club 1501 Hwy. 35 Neptune	1/16/98	Nightclub	Liquor license released
	Brooks, Peter & Rosemary Neptune	2/19/98	N/A	Vehicles released
	Paradise Enterprises, Inc. t/a Club Marz 160 Ocean Ave. Long Branch	3/31/98	Bar	Liquor license seized
Morris	Nadara, Andrew & Wladyslaw t/a Andrezej's 4X4 Center 700 Berkshire Valley Rd. Wharton	2/24/98	Auto repair	Reopened

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taxation seizures – continued from page 16

County	Name/Address	Seizure Date	Business Type	Status
	Nahavandi Rugs 237 Main St. Chatham	3/2/98	Carpet store	Inventory seized
Passaic	SS Clinton, Inc. t/a Pioneer Tavern 1899 Clinton Rd. Hewitt	1/9/98	Restaurant	Liquor license seized
Somerset	Tequila Ville, Inc. t/a Break for the Boarder 1011-1023 Rte. 22 West North Plainfield	2/25/98	Restaurant	Liquor license seized
Sussex	Hamburg Music t/a Maxie's Country Meadows Inn 59 Rte. 23 Wantage	1/22/98	Restaurant	Liquor license seized
Union	Tri-Track Enterprises t/a Scotchwood Liquors 2261 South Ave. Scotch Plains	1/7/98	Liquor store	Liquor license seized
	214 Lt. Glenn Zamorski Drive, Inc. t/a Caspian Tavern 214 Lt. Glenn Zamorski Dr. Elizabeth	3/17/98	Bar	Liquor license seized
	La Feria Inc. t/a La Feria 311-317 W. Front St. Painfield	3/17/98	Restaurant	Liquor license seized

***Division of Taxation Auctions
(January - March 1998)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	CBO Inc. t/a Tycoons 300 Railroad Ave. Hammonton	2/25/98	Bar	Liquor license
Bergen	CNT Enterprises Inc. 26 Ridge Rd. North Arlington	1/21/98	Bar	Liquor license
Camden	Zone Imports Inc. 50 Garrett Rd. Upper Darby, PA	1/21/98	Transient vendor	Calculators
Essex	Alex Frankel Photography Inc. 193 Ferry St. Newark	1/26/98	Photography studio	Photography equipment

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taxation auctions – from page 17

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Hudson	Hardy’s Liquor & Deli 520 Ocean Ave. Jersey City	2/10/98	Liquor Store	Liquor license
	George’s Wine & Deli 381 A Ocean Ave. Jersey City	2/10/98	Liquor Store	Liquor license
Middlesex	Stein, Ethan R. 211 Locust Ln. Irvington, NY	1/21/98	Transient vendor	Books
	Oznam Corp t/a Virgos Rt. 130 & Davidson Mill Rd. North Brunswick	2/25/98	Bar	Liquor license
Passiac	Broadway Liquors 270 Broadway Paterson	1/21/98	Liquor Store	Liquor license
	Qarmout & Sons, Inc. t/a Q & S Convenience Food Store 766 Hamburg Tpke. Pompton Lakes	1/21/98	Deli	Liquor license
Union	Tri-Track Enterprises t/a Scotchwood Liquors 2261 South Ave. Scotch Plains	1/27/98	Liquor Store	Liquor license

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- 4. Distilled spirits
 - 5. Food for human or pet consumption
 - 6. Glass containers sold as such
 - 7. Groceries
 - 8. Metal containers sold as such
 - 9. Motor vehicle tires
 - 10. Newsprint and magazine paper stock
 - 11. Nondrug drugstore sundry products
 - 12. Paper products and household paper
 - 13. Plastic or fiber containers made of synthetic material sold as such
 - 14. Soft drinks and carbonated waters
 - 15. Wine
- The sale of beverage or beverage syrup would be the sale of a litter-generating product — food for human consumption — for litter control tax purposes.
- The fact that the glass containers used in the sale of the syrup product may be ultimately recyclable is irrelevant. There is no exclusion in the Act for sales of litter-generating

products in recyclable containers. Sales of the beverage syrup product in New Jersey are subject to the tax. Sales of such product shipped out-of-State for out-of-State use are not subject to the tax.

Sales of Beverages — Under N.J.A.C. 18:38-3.1(b)5.i, receipts from sales of restaurant meals and other prepared food or beverages for on-premises consumption are not subject to the litter control tax, under certain conditions. This exemption from tax only includes beverages which are not expressly subject to the litter control tax.

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The Act clearly specifies that all sales of items in the following categories result in taxable receipts, whether or not any are sold by the vendor for on-premises consumption:

1. Beer and other malt beverages;
2. Distilled spirits;
3. Wine; and
4. Soft drinks and carbonated waters. (See N.J.S.A. 13:1E-94.)

Thus, it is clear that receipts from sales of the above-categorized beverages, for on-premises consumption, are subject to litter control tax.

The Act requires that a product be produced, distributed or purchased in disposable containers or have some other litter-generating characteristic. See N.J.S.A. 13:1E-94(e). The Act contains no requirement that the litter-generating product be purchased, *by the ultimate consumer*, in disposable containers, packages or wrappings. Similarly, the Act provides no tax exemption for sales for which the retailer, rather than the consumer, disposes of the container, package or wrapping associated with the litter-generating product.

On the other hand, if the restaurant or bar purchases some of the bar beverages in *returnable* (not just recyclable) containers and sells those beverages without any disposable packaging or wrapping, the sales of those beverages would not be subject to the litter tax. Examples are: beer or wine in reusable kegs or beer in reusable bot-

les purchased in reusable (non-disposable) cartons.

Sales and Use Tax
Titling and Registration Guidelines for Motor Vehicle Dealers in Lease Transactions —

Situation One

Vehicle is sold to a leasing company by a New Jersey dealership that has no interest in the ultimate lease of the vehicle (the lessee is not the dealership's customer)—

When the dealership sells a vehicle to a *registered* leasing company which will lease the vehicle to a lessee, exemption code 9 (sale for resale) can be used when the dealer affixes its Sales Tax Satisfied Stamp when assigning the Manufacturer's Certificate of Origin or other title document to the leasing company that purchases the vehicle. The leasing company is responsible for remitting the lessor's use tax on the lease transaction. The leasing company must also stamp the title document with their own Sales Tax Satisfied Stamp and enter the purchase price, tax amount, etc. If the leasing company is *not registered* as a vendor/dealer in this State, see situation three below.

Situation Two

New Jersey dealership enters into a motor vehicle lease and assigns the lease to a lease funding source, with title to be issued in the name of the lease funding source—

When the dealership initiates a lease and assigns the lease and ownership of the vehicle to a lease funding source, the dealership is

the lessor and should affix its Sales Tax Satisfied Stamp to the title document and indicate the lessor's tax that will be remitted. The dealer should complete the Lessor's Certification (ST-40) and provide a copy to the lessee and the lease funding source. The dealership must remit the lessor's tax to the Division.

Situation Three

Vehicle is sold by an *out-of-State* dealership to an *unregistered*, out-of-State leasing company with delivery to be made to a New Jersey lessee through the New Jersey dealership (a "courtesy delivery"). The New Jersey dealership does not have any ownership interest in the vehicle and has not entered into the lease with the New Jersey resident. As a courtesy, the New Jersey dealership delivers the vehicle and assists in processing the title and registration documents on behalf of the out-of-State dealership—

Under these circumstances, the transaction may be processed by completing a Report of Sales Tax Paid (LS-240) which will reflect the amount of tax that is being remitted at that time. The New Jersey dealer will make payment directly to the New Jersey Division of Motor Vehicles, whether by their check or by check from the out-of-State leasing company.

Situation Four

Vehicle is sold by an *out-of-State*, *unregistered* dealership to an unregistered lease funding source in New Jersey, which is the lessor. The lessee is a New Jersey resident—

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The presence of leased property in this State is deemed to be a place of business. N.J.S.A. 54:32B-2(i)(F). Having property out on lease in this State is sufficient contact for the State to require the company (whether a financial institution or a dealership) to register as a vendor and in the case of a motor vehicle, to obtain a Sales Tax Satisfied Stamp. Dealers/lessors should call 609-292-7330 for information on obtaining the stamp.

Situation Five

Vehicle is leased by an *out-of-State, unregistered* dealership to a New Jersey resident. The dealership, which is the lessor, then assigns the lease to an *unregistered* lease funding source in New Jersey—

The presence of leased property in this State is deemed to be a place of business in this State. N.J.S.A. 54:32B-2(i)(F). Thus, having leased property in this State is sufficient contact for the State to require the company (whether a financial institution or a dealership) to register as a vendor and in the case of a motor vehicle, to obtain a Sales Tax Satisfied Stamp. Dealers/lessors should call 609-292-7330 for information on obtaining the stamp.

Sales of Player-worn Game Jerseys — The Division replied to an inquiry concerning the sale of player-worn game jerseys when sold mounted in a frame.

Items that are otherwise entitled to an exemption from sales tax (e.g., clothing, magazines, comic books)

are no longer exempt if they are sold as collectibles, that is to say, the price reflects the condition, rarity, age or other factors.

A game jersey sold in a frame or in an otherwise preserved state is subject to sales and use tax. A game jersey personally worn by a player, which fact is reflected in its price, is subject to tax. The fact that there is a fee for registering the jersey and a letter of authenticity is further support for the position that the item's value goes beyond use as daily clothing and is indeed a collectible item.

Charge for Boarding Horses — Charges for boarding horses are generally subject to sales tax. However, if the owner of the horses is in the business of selling them, the boarding of those horses that the owner holds for sale is treated as a purchase for resale, and is therefore exempt. The customer should use a Resale Certificate (Form ST-3) to support this exemption. It must be noted that property is not deemed to be held for resale if it is used by the owner before it is sold. For example, a horse used for racing is not held for resale even though it will eventually be sold by its owners.

If the horses or other animals being boarded are "productive animals" used on a farm, the boarding fees charged to the farmer will be exempt. See N.J.A.C. 18:24-19.6 (Schedule "A"). "Productive animals" are defined as animals raised for their meat (e.g., beef cattle), for edible products they produce (e.g., dairy cows), for their fur or skin (e.g., sheep raised

for wool), for breeding purposes (e.g., brood mares on a horse farm), or for farm work (e.g., the herding dog used by a shepherd). See N.J.A.C. 18:24-19.2. The farmer should use a Farmer's Exemption Certificate (Form ST-7) to support this exemption.

Dogs Used in Business — The Division answered an inquiry regarding the incidence of tax on receipts from a "geese-chasing" service.

The facts indicate that the taxpayer has a group of border collies trained to respond to voice and hand commands. The dogs are used to move flocks of Canada geese and chase them away from corporate parks. When businesses request this service, the dogs are taken to the site to do the job under the direction of an employee of the service provider. The dogs are never rented to customers for the customers to handle themselves.

The Division views this geese-chasing work as a personal or professional service which is not subject to sales tax. N.J.S.A. 54:32B-2(e)(4)(A). Since the dogs are not sent to customers *without* a handler, the dogs are not being rented; therefore no "sale" of tangible personal property is taking place within the meaning of N.J.S.A. 54:32B-2(f). Because the service provider is not in the business of selling or renting the dogs, a resale exemption does not apply when he purchases them. The purchase of a dog used in this business is a taxable purchase of tangible personal property. N.J.S.A. 54:32B-3(a).

tax briefs - from page 20

Sales of Pumpkins and Other Decorative Items — Sales of pumpkins that are neither carved nor decorated when sold are considered food items which are exempt from sales tax. Decorated or carved pumpkins, gourds, Indian corn and other decorative items not intended for human consumption are taxable. Free hayrides which are given with the purchase of a pumpkin do not affect the taxability of the sale.

Sales of Christmas trees, wreaths and other decorative property are subject to sales tax. These are ordinary sales of tangible personal property.

Sales of Baked Goods — The Division responded to an inquiry concerning the sale of baked goods. Baked goods sold in an unheated state, in the same form and condition as commonly used by food stores, are not subject to tax unless sold for on-premises consumption. N.J.A.C. 18:24-12.3(a). If the vendor maintains the food in a heated state (heat lamps, warming trays, etc.), the sale of the baked goods is subject to tax, regardless of where consumption takes place. □

In Our Courts
Corporation Business Tax Offset of Overpayment Against Deficiencies of Merged Corporation — *Sea Land Service Inc., v. Director, Division of Taxation*, decided March 3, 1998; Superior Court, Appellate Division; No. A1565-96T3.

The Appellate Division affirmed the Tax Court's summary judgment ruling in favor of the Director, Division of Taxation. Essentially, the Tax Court held that the surviving corporation's wholly owned subsidiary's and parent's pre-merger corporate business tax (CBT) deficiencies could not be offset against the surviving corporation's pre-merger CBT overpayments. The Tax Court case was originally reported in *New Jersey State Tax News*, Volume 26, Number 2, at Page 19.

Local Property Tax Real Estate Exemption Denied — *City of Newark v. Block 322, Lots 38 & 40, etc. Apostolic Church of Deliverance*, N.J. Tax Court, on remand from N.J. Superior Court, Appellate Division; decided December 1, 1997.

At the time of this Tax Court hearing, the Apostolic Church of Deliverance had been foreclosed for deficient tax payments and was challenging its taxable status under N.J.S.A. 54:4-3.6, which provides a real estate tax exemption for qualified nonprofit religious, charitable and educational entities.

Tax Court testimony indicated that the Church's activities between 1987-1993 were appropriate exempt uses in accordance with statute, i.e., prayer meetings and daily services, Bible classes, Sunday school, day-care, occasional church dinners, etc.

In a previous hearing in the Superior Court, it was determined that the Church was ineligible for property tax exempt standing because

it had never obtained a necessary Certificate of Occupancy. But on appeal the Appellate Division held, "[t]he lack of a certificate of occupancy is not a bright line rule requiring denial of a tax exemption...." Although in violation of the city housing code, tax exemption might prevail, where otherwise qualified, if the city did not order the use to desist. (See also *Corbacho v. Mayor and Council of Newark*, 16 N.J. Tax 240 (App. Div. 1997).)

While the Tax Court concurred that the Church's failure to timely apply for exemption in accordance with N.J.S.A. 54:4-4.4 did not defeat exempt status, it rejected the Church's contention that Newark City Council had agreed, pursuant to N.J.S.A. 54:4-3.6c, to refund three years of taxes paid and was, therefore, bound as if by contract to make reimbursement. The Court ruled that a retroactive refund where timely application was not filed was not mandatory.

However, the Church's failure to appeal the pre-1993 assessments or further appeal the County Tax Board's upholding of the 1993 assessment to the Tax Court in a timely manner was fatal to the claim of exemption, even though its ownership, use and organization conformed with 54:4-3.6 exemption prerequisites. The Tax Court also stated that to void the assessments would create an unlimited statute of limitations, violate the concept that tax appeal deadlines are strictly enforced and allow a "collateral attack" in foreclosure proceedings already resolved in bankruptcy court.

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In affirming the assessments, the Court reiterated the importance of meeting statutory appeal deadlines in tax matters. It noted if the taxpayer had timely appealed, it would have enjoyed tax exemption, would not have been tax delinquent and would have been invulnerable to tax foreclosure.

Sales and Use Tax

Taxability of Sweeping Service — *D.P.S. Acquisitions Corp., v. Director, Division of Taxation*, decided March 3, 1998; Superior Court, Appellate Division; No. A004429-96T1.

The Appellate Division affirmed the Tax Court's holding that the operation of sweeper-type vehicles suctioning parking lot debris into the vehicle, which is later emptied into dumpsters located on the parking lot, is not exempt from sales and use tax under the garbage removal exemption. The Tax Court case was originally reported in *New Jersey State Tax News*, Volume 26, Number 3, at Page 24. □

In Our Legislature

Gross Income Tax
Sale of Principal Residence — P.L. 1998, c.3 (signed into law on

March 20, 1998) conforms New Jersey law to Federal law with respect to the treatment of gains derived from the sale of a principal residence. Qualified taxpayers, regardless of age, can exclude gains of up to \$500,000 on joint returns and up to \$250,000 on single returns. The residence sold or exchanged must be owned and used by the taxpayer as his (and/or her) principal residence for periods totaling two or more years during the five-year period ending on the date of the sale or exchange. The Act applies to sales or exchanges of homes occurring after May 6, 1997. □

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
8	26	27	28	29	30	31	

July 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

July 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending March 31

July 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

July 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

July 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 27

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

July 31

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

continued

continued

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1							1
9	2	3	4	5	6	7	8
9	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
8	23	24	25	26	27	28	29
	30	31					

August 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

August 17

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 17 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

August 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

August 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1			1	2	3	4	5
9	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
8	27	28	29	30			

September 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

September 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

continued

September 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

September 21

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

September 21 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

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ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

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UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

Tax Season Assistance

During the income tax season from January 1 through April 15, 1998, the Division provided assistance to many taxpayers in New Jersey. This year was marked by further expansion of the NJ TeleFile program, which enables taxpayers to file State income tax returns and homestead rebate applications by telephone.

- * **Tax Hotline**
Calls answered—196,932
- * **NJ TaxFax**
Calls received—56,932
- * **Electronic Filing Program**
Returns filed—204,394
- * **TeleFile Program**
Returns filed—181,257
- * **Taxation Building Lobby**
Taxpayers assisted—9,512 (748 on April 15)
- * **Regional Offices**
Taxpayers assisted—40,203
- * **Taxation Home Page**
Visits to Division's World Wide Web site—908,000
- * **ARIS (Automated Refund Inquiry System)**
Calls received—122,475
- * **HR (Homestead Rebate) InfoLine**
Calls received—39,531
- * **TaxTalk (Automated information)**
Calls received—32,963
- * **Automated Forms Request System**
Calls received—80,881

New Jersey State Tax News

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- Division Organization Chart

New Property Tax Reimbursement

Gov. Christie Whitman strengthened her commitment to helping control local property taxes when she enacted a property tax freeze for approximately 300,000 New Jersey residents. The new law (P.L. 1997, c.348, approved January 14, 1998) freezes property taxes at their 1997 level for eligible seniors and citizens with disabilities.

“Throughout this administration, I have been committed to easing the property tax burden on the taxpayers of this State. And we must continue working to ease that burden,” said Gov. Whitman. “We have taken the next step by providing real property tax relief to a group of New Jerseyans who need it very much – our State’s low income seniors and citizens with disabilities.

“Together, along with the legislative sponsors of this bill, we are helping to preserve the independence of New Jersey seniors and ensuring that seniors on a fixed income will be able to make ends meet.”

The legislation signed by Gov. Whitman freezes property taxes at 1997 levels for those who meet the following criteria:

- Age 65 or older or receiving Federal Social Security disability benefits;
- Owner of a homestead or lessee of a site in a mobile home park

on which a manufactured or mobile home owned by the lessee is placed;

- Have lived in New Jersey and paid property taxes either directly or through rent for at least ten consecutive years;
- Have owned and lived in their home for at least three years; and
- Have annual income less than \$17,918, if single, or combined income of \$21,970, if married.

In order to receive benefits, eligible seniors and citizens with disabilities will have to apply by filling out forms provided by the Division of Taxation.

continued on page 2

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
.....	609-588-2525
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

property tax - from page 1

A reimbursement will be paid annually to every eligible claimant, thereby freezing their property taxes at the 1997 level. The amount of this Homestead Property Tax Reimbursement will be the difference between the amount of property taxes that were due and paid by the claimant in 1997 (or the year in which the claimant becomes eligible) and the amount of property taxes due and paid in subsequent years.

The Division of Taxation has established a hotline to assist taxpayers by answering questions related to this new legislation. Representatives will be available at 1-800-882-6597 from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Look for more information on the Homestead Property Tax Reimbursement in future issues of the *State Tax News* and on the Division's Home Page. □

TeleFile a Success

The 1997 TeleFile season is just about ready to end another successful filing season. Early statistics indicate that nearly 30% more New Jersey residents took advantage of NJ TeleFile this year over last year. The Division is encouraging taxpayers to continue to TeleFile their returns through the end of the tax season. Whether you file early or right before the deadline, refunds are mailed within two

weeks.

Purchasing additional computer equipment and increasing the gross income threshold opened up the TeleFile system to a great many more New Jersey residents than in prior years. For tax year 1997, over 1.3 million taxpayers were eligible to TeleFile. Many of those who TeleFiled this year are previous TeleFilers who were eager to receive their refund quickly again this year. TeleFile is fast, easy and convenient.

For those last minute tax filers — TeleFile will be available until midnight, April 15. You may file at any time, day or night and have your refund mailed within two weeks.

Tax preparers — just a reminder — you can TeleFile for your clients. You are eligible to TeleFile a New Jersey income tax return for your client provided that you have a Power of Attorney Form for your client in your file. For more information on how to TeleFile for a client, refer to the Winter 1997 issue of the *New Jersey State Tax News*.

The 1997 TeleFile season will continue through midnight Wednesday, April 15, 1998. To reach NJ TeleFile call 1-888-235-FILE (toll-free from Touch-tone phones within New Jersey only) or 609-588-FILE (from Touch-tone phones anywhere). □

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Taxpayer Services Branch
Office of Communication
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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation
Acting Director: Robert K. Thompson

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Editor: Linda B. Hickey

NEW STATE TAX LEGISLATION

A significant quantity of tax legislation was enacted in December 1997 and January 1998. A synopsis of these new laws has been included both in the legislative summary located in the center pullout section of this issue and in our regular *In Our Legislature* feature beginning on page 24. A more extensive summary of the legislation is available on the Division's Home Page at: <http://www.state.nj.us/treasury/taxation/>

CORPORATION TAX

NJ QSSS Estimated Payments

A subchapter S corporation that elects to be treated as a Qualified Subchapter S Subsidiary for New Jersey tax purposes and has previously filed the necessary election form (CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent company for the year in which the New Jersey QSSS election was made.

The subsidiary (QSSS) should submit a written request, signed by an officer of the corporation, to the address set forth below together with a completed copy of Federal Form 966 and a copy of the New Jersey S corporation election form (CBT-2553).

NEW JERSEY DIVISION OF TAXATION
OFFICE AUDIT BRANCH
PO BOX 269
TRENTON NJ 08646-0269

The Division will transfer all of the QSSS's estimated payments except for \$300.00 which will be used to satisfy the QSSS's current year minimum tax and the 50% estimated tax payment for the subsequent year. □

GROSS INCOME TAX

Roth IRAs

Editor's Note: At the time this newsletter went to print, the State Assembly was considering legislation that would conform New Jersey's tax treatment of Roth IRAs to the Federal treatment.

One of the provisions in the Taxpayer Relief Act of 1997 was the creation of the Roth IRA. Contributions to a Roth IRA are not excludable for Federal or New Jersey income tax purposes.

Distributions or withdrawals of income from a Roth IRA may be tax exempt for Federal income tax purposes, but are *taxable* for New Jersey gross income tax purposes in the year received.

Where periodic payments are made from a Roth IRA account, the income earned and accumulated by the Roth IRA is subject to New Jersey gross income tax on the ratio that the income bears to the total amount in the account.

For example:

Principal amount	
in the account —	\$15,000
Income earned —	3,000
Total —	\$18,000

Assume that periodic payments totaling \$2,000 from the Roth IRA account were received by the individual in his tax year.

The income earned was .167 (\$3,000 : \$18,000) of the account. The taxable income for New Jersey gross income tax purposes is therefore .167 of the \$2,000 amount withdrawn, or \$334.00. The \$334.00 is reported as pension/annuity on the NJ-1040 form.

The principal amount, or contribution(s) to the Roth IRA, was already taxed when originally earned or received and is not taxable when withdrawn from the account.

There is a Federal requirement to keep the income in the Roth IRA for five years to obtain Federal tax exempt status. Since individuals may experience different taxation treatments of Roth IRA withdrawals by New Jersey and the IRS, taxpayers are reminded to keep detailed records of contributions, income and withdrawals.

Under Federal tax law, during tax year 1998 only, taxpayers may convert an existing IRA to a roll-

over Roth IRA, spreading the fund balance over a four year period as gross income on the Federal return.

New Jersey has adopted the same four-year rule as under Federal law for reporting income on the conversion with payment of New Jersey gross income tax on the amount not previously taxed. New Jersey gross income tax had been paid on contributions to the existing IRA when the contributions were made; therefore, only the earnings are taxed for New Jersey purposes. Taxpayers *must* report the income to New Jersey over the four year period if they have made the Federal election.

continued on page 4

Interest 11.50% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1998 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%

roth iras - from page 3

By way of example, Mr. Jones contributed \$20,000 to an IRA which, at the date of conversion in 1998, had a total value of \$80,000. Mr. Jones elects the special Federal rule which allows him to spread the \$80,000 over a four year period, paying tax on \$20,000 a year.

For New Jersey gross income tax purposes, Mr. Jones would spread \$60,000 of earnings over a four year period, reporting \$15,000 a year on the pension/annuity line on the NJ-1040 return. The earnings were calculated by reducing the \$80,000 IRA value by the \$20,000 contributions, which had been previously taxed by New Jersey. □

GROSS INCOME TAX ***Deductible Business Expenses***

Recently a tax practitioner asked what criteria govern when an expenditure by a sole proprietorship or a partnership qualifies as a deductible business expense under the Gross Income Tax Act.

The item of cost or expense must meet the definition of "ordinary" and be incurred in the "ordinary course of business" to qualify as a deduction in the determination of "net profits from business" under N.J.S.A 54A:5-1(b). An expense is not deductible merely because it was incurred by the business.

For an expense to meet this "ordinary" standard and qualify as a deduction, the expense must meet all of the following criteria. The business expense must be:

1. Undertaken primarily and directly in the pursuit of business income;
2. A common and accepted practice in the taxpayer's field of business;
3. Required or appropriate to the intended business purpose; and
4. In an amount that is reasonable in relation to the intended business purpose.

Expenditures that are in violation of the Gross Income Tax Act or public policy will be disallowed. No deduction is permitted for taxes based on income or for fines and penalties.

Taxpayers are reminded that they bear the burden to prove that expenditures incurred by the business and claimed as deductions in the determination of their "net profits from business" meet the criteria above. □

SALES AND USE TAX ***Cell Phones for Promotions***

The Division has changed its opinion regarding sales and use tax responsibilities of cellular carriers and their sales agents with regard to the transfer of cellular tele-

phones in connection with the sale of cellular airtime service. Upon consideration of the relevant statutory provisions and industry practices, the Division agrees with the following tax treatment:

1. A cellular communication carrier's sales tax liability is limited to the amount charged the customer when the cellular carrier itself sells a cellular phone at any amount below cost to a retail customer in conjunction with the sale of an airtime contract subject to tax under N.J.S.A. 54:32B-3(f).
2. A cellular communication carrier is not subject to use tax when the carrier gives a cellular phone at no cost to a retail customer in conjunction with the customer's purchase of an airtime contract subject to tax under N.J.S.A 54:32B-3(f).
3. The sales tax liability of a communication carrier's agent is limited to the amount charged the customer when the agent provides a cellular phone at a price below the agent's cost to a customer who is also purchasing a cellular airtime contract subject to tax under N.J.S.A. 54:32B-3(f).

continued on page 5

NJ TeleFile AD # The fastest way to file

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1997 income tax return/ homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-588-FILE (from anywhere).

- # Full year New Jersey resident during 1997
- # Not 65 years of age or older as of December 31, 1997
- # Same filing status as on your 1996 NJ return

- # Not blind or disabled as of December 31, 1997#
- # Total New Jersey income of \$150,000 or less#
- # Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

cell phones - from page 4

- The cellular communication carrier's agents are not subject to sales and use tax when the agent provides a cellular phone at a price below the agent's cost and at no cost to a customer who is also purchasing a cellular airtime contract subject to tax under N.J.S.A. 54:32B-3(f).

This position supersedes that expressed in the article on this topic in the Winter 1995 issue of the *New Jersey State Tax News* (Vol. 24, No. 4). □

SALES AND USE TAX ***Internet Services***

The Division responded as follows to an Internet Service Provider's (ISP) inquiry about the taxability of the services it provides:

- Charges billed to a customer for Internet access, on either a lump-sum monthly basis (e.g., \$199.99/month for unlimited access) or on an hourly basis (e.g., \$3.75/hour) are treated as charges for the sale or use of information and are not subject to sales tax.
- If the Internet Service Provider is charging the customer for transmission-related services, such as dedicated phone numbers and telephone connect time, such charges are taxable telecommunications services for New Jersey services addresses (customers).
- Web Site Design – advertising services are subject to tax in New Jersey, except for use in newspapers and magazines

continued on page 6

TOBACCO TAXES ***Rate Increases***

Recent legislation (P.L. 1997, c.264, signed into law on December 19, 1997) increased the rate of both the Cigarette Tax and Tobacco Products Wholesale Sales and Use Tax as follows:

Cigarette Tax

The Cigarette Tax Act has been amended to provide for the imposition of a \$0.04 tax for each cigarette effective January 1, 1998.

Change in the Cost of Cigarette Stamps

Effective January 1, 1998 the cost of New Jersey Cigarette Tax Stamps will be as follows:

<u>Size of Pack</u>	<u>Stamp Cost</u>
10 Cigarettes	\$0.40
20 Cigarettes	0.80
25 Cigarettes	1.00

Change in the Cigarette Stamp Discount

Effective January 1, 1998, the discount to distributors for purchases of 1,000 or more New Jersey stamps will be as follows: (Stamps will only be sold in blocks of 100 or more; no discounts will be allowed on a purchase of fewer than 1,000 stamps.)

<u>Size of Pack</u>	<u>Cost of 1,000 Stamps</u>	<u>Discount per 1,000 Stamps</u>	<u>Net Cost per 1,000 Stamps</u>
10 Cigarettes	\$ 400.00	\$2.43	\$397.57
20 Cigarettes	800.00	4.50	795.50
25 Cigarettes	1,000.00	4.50	995.50

In no case will a discount be allowed on any sale of less than 1,000 stamps. Stamps will not be sold in blocks of less than 100 stamps.

Licensed distributors that have a bond or an irrevocable letter of credit issued by a state or a Federally chartered bank for the credit purchase of stamps should review the amount of the bond or letter to insure that they will be able to purchase the quantity of cigarette stamps necessary for their operation at the higher rate.

Cigarette licensees must file a return reporting inventory in their possession in New Jersey at 12:01 A.M. on January 1, 1998. The return was required to be filed on or before March 1, 1998 along with any additional tax due.

Tobacco Products Tax

The Tobacco Products Wholesale Sales and Use Tax Act was amended to provide for the imposition of a tax at the rate of 48% on the receipts from every sale of tobacco products other than cigarettes, by a distributor or wholesaler to a retail dealer or consumer. □

internet services - from pg. 5

N.J.S.A. 54:32B-3(b)(5); charges for creating and designing a web site for advertising or promotional purposes are subject to tax, just as designing a brochure or other form of advertising would be.

4. Web Site Storage – charges for housing a web page are exempt from tax as a charge for advertising space.
5. Consulting Services – separately stated consulting services are generally exempt from tax as professional services under N.J.S.A. 54:32B-2(e)(4)(A).
6. Domain Name Registration – exempt from sales tax.

CORPORATION BUSINESS TAX **CBT-100S-P** **Printing Error**

The 1997 New Jersey S Corporation Business Tax Forms booklet, CBT-100S-P, contains a printing error on pages 6 and 7 of the instructions. Corrected instruction pages were mailed to taxpayers and practitioners on the Division's mailing list. Instructions in the *1997 Package NJX* and in approved software packages *do not* contain the error.

The CBT-100S, with complete and correct instructions, can be downloaded from the Division's Home Page at:

<http://www.state.nj.us/treasury/taxation/>

Litter Control Tax

The litter control tax is imposed on each person engaged in business in

this State as a distributor, manufacturer, wholesaler or retailer. Retail sales and/or wholesale sales of litter-generating products sold within or into New Jersey are subject to the tax.

Litter-generating products are the fifteen categories of products listed below which meet any of the following conditions:

- (a) Products produced, distributed or purchased in disposable containers, packages or wrappings; or
- (b) Products not usually sold in packages, containers or wrappings but are commonly discarded in public places; or
- (c) Products of an unsightly or unsanitary nature commonly thrown, dropped, discarded, placed or deposited by a person on public property, or on private property not owned by him.

It is presumed that all products in the following categories listed satisfy at least one of the above conditions and qualify as a litter-generating product.

1. Groceries
2. Nondrug drugstore sundry products
3. Food for human or pet consumption
4. Soft drinks and carbonated waters
5. Beer and other malt beverages
6. Wine
7. Distilled spirits
8. Cigarettes and tobacco products

9. Cleaning agents and toiletries
10. Paper products and household paper
11. Newsprint and magazine paper stock
12. Motor vehicle tires
13. Glass containers sold as such
14. Metal containers sold as such
15. Plastic or fiber containers made of synthetic materials and sold as such (not including any container which is routinely reused, has a useful life or more than one year and is ordinarily sold empty at retail).

One major area of noncompliance found during recent audits concerns manufacturers not filing returns or overstating deductions under the presumption that their sales qualify for the wholesaler to wholesaler deduction under N.J.A.C. 18:38-5.2. Manufacturers, as defined in the Act, do not qualify for this deduction. Only wholesalers (who do no fabricating or processing of the product other than buying and reselling as is) selling to other wholesalers may take this deduction.

The Out-of-State Audit Branch has recently initiated contact with several manufacturers to increase compliance. These companies have been allowed to perform self-audits to determine their liability with consideration given toward abating penalties and reducing interest to statutory minimums. As of this date, 40 businesses have taken advantage of this opportunity with assessments on these companies totaling \$1,678,254.

For more information on the Litter Control Tax call 609-984-4108.

Tax Practitioners' Hotline

609-633-6657 Personal Income Tax
609-633-6905 Business Taxes

The Tax Practitioners' Hotline is a special service provided by the Taxpayer Accounting Branch of the New Jersey Division of Taxation *for tax practitioners only*. The purpose of the Hotline is to assist practitioners by resolving specific tax problems over the telephone when the practitioner has been unable to resolve the problem *through normal channels*. Practitioner Hotline technicians are authorized to perform updates to monetary account information as well as non-monetary taxpayer profile information. During calendar year 1997, the Tax Practitioners' Hotline handled about 2,200 business tax and 7,700 personal income tax calls. To be successful and to provide the best possible service, we ask that all practitioners wishing to take advantage of the service adhere to the following guidelines.

GUIDELINES

- **Types of calls handled by the Tax Practitioners' Hotline.** Account maintenance activities, adjustments, transfers, updates, and refunds.
- **Types of calls *not* handled by the Tax Practitioners' Hotline.** Tax information inquiries and form requests will not be han-

dled by the Tax Practitioners' Hotline. These calls are handled by our Taxpayer Services Hotline at 609-588-2200. Cases assigned elsewhere in the Division will not be addressed by the Tax Practitioners' Hotline. Practitioners must contact the tax representative already handling the matter.

- **This service is for tax practitioners *only*.** The telephone numbers should not be given to clients under any circumstances.
- **Power of Attorney.** The Division has a statutory obligation to protect the confidentiality of taxpayer information. Division personnel staffing this Hotline will discuss a client's account in general terms and will verify information provided by practitioners who have a Power of Attorney for their clients. New Jersey Division of Taxation Power of Attorney, Form M-5008, must be completed and submitted by practitioners requesting an adjustment to a taxpayer's account. This form must accompany every document submitted unless the taxpayer has specifically authorized his representative with complete jurisdiction until further notice. If this is the case, the authorization Form M-5008 must clearly note the tax periods covered. Form M-5008 is included in the New Jersey

Package NJX for practitioners' convenience.

Power of Attorney Forms M-5008 filed with the Tax Practitioners' Hotline are not valid for any other matters being handled by any other area of the Division. Likewise, Forms M-5008 filed with other areas of the Division do not apply to matters being handled by the Tax Practitioners' Hotline.

- **Supporting Documentation.**

All corrections and approvals performed at the request of a practitioner must be supported by documentation that has been signed and properly completed. Corrections and approvals will not be made until proper documentation has been received. All correspondence should be addressed to:

NJ DIVISION OF TAXATION
TAXPAYER ACCOUNTING BRANCH
TAX PRACTITIONERS' HOTLINE
PO BOX 266
TRENTON NJ 08646-0266

Correspondence should be marked to the attention of the agent who handled the practitioner's call.

- **Waiting Time.** Practitioners should wait a reasonable amount of time from the date a return is filed to allow for processing, before calling the Tax Practitioners' Hotline for assistance, and then only if the matter has not been able to be resolved through the Taxpayer Services Hotline. Practitioners should allow a minimum of 30 days from the date the supporting documentation has been sent before making a second call to the Tax Practitioners' Hotline on the same matter. □

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ALCOHOLIC BEVERAGE TAX

Liquor License Transfers

The enactment of P.L. 1995, Chapter 161 (signed into law on June 30, 1995) established a Sales and Use Tax reporting and review system for alcoholic beverage wholesalers and retailers. Effective September 1, 1995 a tax clearance certificate from the Division of Taxation is required in order to transfer a retail liquor license. Unlike the requirements for the renewal of a license, which are to be phased in over a period of time, the requirement for transfers pertains to all 21 counties.

The following procedure was established to allow for the transfer of liquor licenses:

1. Before a clearance certificate can be issued, the prospective purchaser of the license must notify the Division of Taxation in writing at least ten (10) days prior to the proposed date of transfer by completing and submitting Form C-9600, Notification of Sale, Transfer or Assignment in Bulk..
2. Upon receipt of a notification of sale, transfer or assignment of a liquor license, the Bulk Sales Section of the Division of Taxation will send the transferee's attorney or agent an escrow agreement requiring signature. This agreement requires the purchaser's representative to hold the stipulated escrow and to release such funds to the Division should a demand be necessitated.
3. Upon receipt of the signed agreement, the Director will issue an Alcoholic Beverage Re-

tail Licensee Clearance Certificate to the transferee's attorney or agent.

NOTE: If the agreed escrow upon which the Alcoholic Beverage Retail Licensee Clearance Certificate was conditioned is not held and remitted on demand, the transferor and the transferee shall be jointly and severally liable for tax deficiencies and subject to the Division of Taxation's collection procedures.

Requests for Form C-9600, Notification of Sale, Transfer or Assignment in Bulk, can be made as follows:

By Phone: 609-292-6604

By Mail:

NJ DIVISION OF TAXATION
BULK SALES SECTION
PO BOX 245
TRENTON NJ 08646-0245

By Downloading on Internet:

<http://www.state.nj.us/treasury/taxation/>

ALCOHOLIC BEVERAGE TAX ***ABC Clearance Process***

The Division of Taxation is conducting the annual review of tax records for *all* retail liquor licensees throughout the State's twenty-one counties. Granting of a tax clearance certificate is predicated on taxpayer compliance with the following taxes:

- Sales Tax
- Tourism Improvement and Development District Tax (Cape May County Tourism Tax)
- Atlantic City Luxury Tax

If the Division's records indicate *no* money or returns are due for the taxes listed above, the Division

will grant the licensee a tax clearance. If the Division's records indicate money or returns are due, but are for taxes *other* than the aforementioned taxes, the Division will still grant the licensee a tax clearance. If it is discovered that money or returns are due for Sales Tax, Tourism Improvement and Development District Tax, or the Atlantic City Luxury Tax, the Division will *withhold* the tax clearance certificate.

In January, the Division mailed notification to all license holders as to their tax clearance status. Licensees that did not receive a letter indicating their clearance status may contact the Division's ABC Clearance Section to get this information. It is very important that licensees with tax problems resolve them well before their submission deadlines for license renewal with their local municipalities. For licensees that owe money or returns, regardless of whether or not they received a clearance, the Division will pursue full compliance with our tax statutes.

Inquiries may be directed to:

Mail:

NJ DIVISION OF TAXATION
ABC CLEARANCE SECTION
PO BOX 245
TRENTON NJ 08646-0245

Telephone:

609-292-0168 or
609-290-0140

ALCOHOLIC BEVERAGE TAX ***Results of Non-Compliance***

Liquor license holders are prohibited from renewing their licenses if they are not in compliance with the Division of Taxation. Licensees in all twenty-one (21) counties are required to obtain a certificate of tax clearance from the Division's ABC Clearance Unit before renewing their licenses with their municipalities.

Over the next several months Field Investigators will be concentrating much of their attention on those taxpayers seeking to renew their liquor licenses but who are not in full compliance with the Division of Taxation. The ABC Clearance Section has sent notices to all licensees in an effort to resolve their outstanding liabilities; however, some taxpayers cannot or will not pay what they owe. Investigators will visit the establishment and discuss with the owners their tax delinquencies and deficiencies.

Field Investigators may be required to seize a liquor license and possibly the assets of a bar, tavern, liquor store, restaurant or other establishment which is non-compliant. During the 1997 calendar year, in which the liquor license holders in only fourteen New Jersey counties were subject to the clearance program, 95 seizures of liquor licenses occurred.

Investigators seize licenses by physically removing the license from the wall where it should be displayed in an active business location. In addition, a warrant of execution is served on the municipal clerk's office or local ABC office. These actions prevent the non-compliant licensee from transferring or renewing the license

and, in specific localities, may prevent any sales of liquor from being conducted.

Licenses that are held by non-operating businesses (pocket licenses) which have an outstanding liability are bound by the same criteria as active licenses and therefore are also subject to levy at the local ABC or clerk's office.

If a taxpayer cannot resolve their debt, the Division can auction the license, as well as any other seized business assets and apply the proceeds against the outstanding liabilities. If a balance due remains after the auction, further collection action may be taken against the business owner or corporate officers, including seizing their personal assets for future auction.

Please direct inquiries regarding liquor license holder to the ABC Clearance Section at 609-292-0168 or 609-292-0140. □

LOCAL PROPERTY TAX ***Revaluation Study Results Available***

The Property Administration Branch has compiled a statistical study, by firm, of the revaluations completed during the last five years. The study compares the general coefficient as well as the average ratio prior to the revaluation with the general coefficient and the average ratio for the first six month sampling period and for the next full year sampling period following implementation of the revaluation. Anyone wishing to obtain a copy of the study may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX ***Farmland Data***

Farmland Data reports for the tax years 1996 and 1997 have been completed. Copies of the reports have been distributed to the County Tax Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX ***Tax Assessors' Calendar***

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Boards.

assessor's calendar - from pg. 9

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders by County Tax Board.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1,

completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15-

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Six persons passed the examination for the tax assessor certificate held on September 27, 1997 and became certified tax assessors on December 8, 1997.

Atlantic County: Margaret M. Schott, Margate City.

Essex County: Howard L. Schottenfeld, Livingston Township.

Middlesex County: Bert L. Buckler, East Brunswick Township; Arthur M. Haney, Old Bridge Township.

Monmouth County: John L. Guyer, III, Oceanport Borough.

Union County: Liborio Firetto, Elizabeth City. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On October 6, 1997, a bench warrant was issued in Superior Court – Essex County for James M. Kennedy of Montville, NJ, Morris County, for failure to appear at a hearing concerning Kennedy's violation of probation. Kennedy had pleaded guilty in 1992 for failing to remit sales tax collected from 1987 to 1992, and was ordered to make restitution of tax, penalty and interest as a condition of probation. He has made sporadic payments (last payment in June 1997) and currently owes \$355,425 in tax, penalty and interest. On November 10, 1997, Kennedy surrendered on the warrant and a Violation of Probation hearing was ordered. On December 8, 1997, Kennedy claimed he has no assets and is unable to abide by the court-ordered restitution plan. The court then terminated his probation, allowing the Division to pursue its civil and administrative remedies to collect the amount due and owing.
- On October 15, 1997, Chris G. Alevras was sentenced to 87 months in prison by a Federal Judge in Newark. Mr. Alevras had committed various frauds wherein he received over \$800,000. It was determined that, of this amount, Mr. Alevras fraudulently received over \$108,000 in New Jersey gross income tax refunds by utilizing various taxpayer accounts. Appropriate adjustments have been made to cor-

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rect the taxpayers' accounts. It is unlikely that restitution will be forthcoming in this matter. The Office of Criminal Investigation participated in this investigation with the U.S. Justice Department.

- On October 20, 1997, Emanuel Leonessa, of Hazlet Township, was indicted by a Monmouth County grand jury on charges of theft by deception, uttering a forged instrument, falsifying records, and defrauding secured creditors. Leonessa forged a letter purportedly from the Division of Taxation granting abatement of \$6,213.96 penalty and interest on an outstanding judgment against Leonessa for sales tax he owed to the State. He submitted this forged letter to Champion Mortgage, in order to close on a loan. This case was investigated by the Office of Criminal Investigation as a result of a referral from the Division's Bankruptcy Section, and was prosecuted by the Monmouth County Prosecutor's Office.
- On October 27, 1997, a 19 count indictment, alleging official misconduct, theft by deception, misuse of credit cards, theft of services, conspiracy to possess a controlled dangerous substance, failing to file New Jersey tax returns, filing false and fraudulent New Jersey tax returns and failing to register a business, was handed down by a Hudson County Grand Jury. Those indicted were Michael T. Mulvaney of Hoboken, the Executive Director of the Hoboken Housing Tenants' Association and Vice President of the Hoboken

Housing Authority; Helena Mulvaney, the wife of Michael and an employee of the Hoboken Parking Authority; Enrico and Nancy Addeo of Maywood and Robert Bonovitch of North Bergen. The indictments were the result of an extensive joint investigation by the Hudson County Prosecutor's Office and the Office of Criminal Investigation.

- On November 3, 1997, Moshe Levkowitz, of Vineland, plead guilty in Superior Court – Camden County to one count of filing 32 fraudulent sales tax returns from 1989 to 1996, which underreported sales tax collected by Levkowitz's used car dealership, Roey's Auto in Vineland, by \$82,821. Levkowitz has agreed to make restitution to the State of \$125,000 in tax, penalty and interest. He will be sentenced January 9, 1998, and can face up to five years imprisonment and a fine of up to \$250,000. This case was investigated jointly by the Office of Criminal Investigation and the Camden County Prosecutor's Office.
- On November 12, 1997, Satnam Singh, of Palisades Park, was charged with failure to maintain records relating to the disposition of 1,429,118 gallons of diesel fuel sold by Singh's company, Cheema Oil Corp., between November 1994 and May 1997. Singh claimed the fuel was sold for tax-exempt purposes. The amount of tax exemption claimed was \$192,930. If convicted, Singh faces up to six months in jail and a fine of up to \$1,000. He also faces civil assessment and collection of the tax on the sales alleged to be

tax-exempt but unsupported by the required records.

- On December 1, 1997, the Monmouth County Grand Jury returned a six count indictment against Serguei Tsesarenko of Freehold, NJ, owner of United Gas of Freehold, Inc., Howell Township, NJ, alleging tax evasion of over \$142,000 in motor fuel taxes. The indictment arose out of an investigation of United Gas of Freehold, Inc. by the New Jersey Division of Taxation, Office of Criminal Investigation, and the Monmouth County Prosecutor's Office. Evidence uncovered during the investigation revealed that Tsesarenko continued to operate his service station for the sale of diesel fuel after May 1997, when the Division of Taxation denied his application to renew his license and ordered him to cease selling special fuels. In late November, Special Agents and Auditors with the Office of Criminal Investigation, along with County Detectives, executed search warrants at the defendant's home, business and accountant's office, seizing business and financial records. The six counts include misapplication of entrusted property, failure to pay over motor fuel taxes, failure to pay motor fuel taxes with intent to evade, failure to file motor fuel tax returns, issuing bad checks, and sale of motor fuels without a Seller/User license. In addition, members of the Office of Criminal Investigation and the Howell Township Police Department executed an arrest warrant. Tsesarenko was placed

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in Monmouth County Jail in lieu of \$100,000 cash bail. Tsesarenko faces up to ten years in prison and a \$100,000 fine.

- On December 17, 1997, a State Grand Jury indicted Samuel H. Brangan of Pineville, PA, on charges of failing to file tax returns, failing to pay over tax, misapplication of entrusted property, theft, and misconduct by a corporate official in connection with the theft of \$131,416 in sales tax collected and not turned over to the State by KEI Industrial Services, Inc. between 1989 and 1992. During this time, Brangan was the president of KEI, an industrial sewer-line cleaning company operating in New Jersey. As of the date of the indictment, \$381,000 in tax, penalty and interest was owed to the State.
- Bhasin Suhirdbir Singh of Northfield, NJ, who was previously charged in two separate municipalities as a result of violations uncovered during the Division's Deficiency / Delinquency project, was fined a total of \$1,522. Singh closed both of the involved service stations subsequent to the filing of the complaints and prior to the court hearings. Singh operated the Bargaintown Citgo Service Station in Bargaintown, NJ, and was charged in Egg Harbor Municipal Court with operating an unregistered business and operating without a Motor Fuel Seller/User and Retail Dealer License. Singh pleaded guilty to the charges and was fined a total of \$1,215. Singh was also charged in Northfield Municipal Court for licensing violations discovered at his station (Singh

Citgo) in Northfield, NJ. Singh pleaded guilty to two (2) licensing violations and was fined a total of \$307.

- As a result of the cigarette tax saturation enforcement operation that took place in the summer of 1997, in Ventnor, Longport and Margate, M.T. Shure Company plead guilty to twenty counts of failure to obtain 85 cigarette vending machine licenses. In a plea agreement involving the Trenton Municipal Prosecutor and defense counsel, the defendant corporation was fined the maximum \$1,000 per count and assessed \$150 in fees per count, for a total of \$23,100. Division of Taxation staff from Field Audit, Investigations and the Office of Criminal Investigation conducted this enforcement operation.
- Forty-six guilty pleas for sixteen cases were entered in municipal courts throughout the State during the month by individuals and businesses for non-compliance with the cigarette tax law and motor fuel tax law. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$37,835 and the awarding of 7,562.5 cartons of cigarettes, valued at \$151,264 to the State.
- One hundred and eleven charges were filed in municipal court on eighteen cases for violating the cigarette tax law and motor fuel tax law. Seven of the cases resulted in the seizure of 1,113.7 cartons of contraband cigarettes, valued at \$22,274 and 50.37 cartons of contraband "beedie" cigarettes, valued at \$1,007.40. □

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1997

Following is a summary of enforcement actions for the quarter ending December 31, 1997.

Certificates of Debt

During the quarter ended December 31, 1997, the Division filed 3,320 Certificates of Debt in New Jersey Superior Court. These CODs, which have the same force and effect as docketed judgments, totaled \$39.9 million.

Levies

\$50,603 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds

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used to satisfy the tax debt.

For the quarter ending December 31, 1997, \$189,675 was collected from jeopardy assessments.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1997, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 19-21.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending December 31, 1997, three auctions were held by the Division. A listing follows on page 21.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending December 31, 1997, 519 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$1.2 million in revenue during the fourth quarter of 1997.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$112 million from holders of the various types of licenses subject to audit and collected \$105 million. The Divi-

sion of Taxation expects to collect a total of \$150 million during the three-year program.

During the quarter ending December 31, 1997, 178 notifications of liquor license transfer were received by the Division's Bulk Sales section. Thirteen (13) audits relating to this project and previously requested were completed; assessments from these audits totaled \$383,931. □

Tax Briefs

Corporation Business tax

Filing Example for Affiliated Group Having Qualifying S Corporation Subsidiaries, an S Corporation Parent and Trusts as Shareholders — The Division of Taxation recently responded to an inquiry involving the following facts:

In November 1996, Corporation A was incorporated and registered to do business in the State of Delaware. It is wholly owned by two U.S. trusts, domiciled and located outside New Jersey and it is not registered to do business in New Jersey. As the result of a series of transactions, it became the parent of Corporation B.

Before January 1, 1997, Corporation B had been owned by two domestic trusts. Corporation B in turn, was the common parent of a consolidated group of corporations filing a consolidated Federal income tax return. Members of the group filed separate state tax returns in those states in which they conducted business.

Effective January 1, 1997, the trusts that are shareholders of Corporation A elected to file for Fed-

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eral S corporation status for Corporation A. Concurrently each subsidiary (Corporation B and its subsidiaries) elected to be treated as a Qualified Subchapter S Subsidiary (QSSS) for Federal purposes.

For Federal purposes, the shareholders (the trusts) of the consolidated S corporation group are the ultimate taxpayers. All income of Corporation A and its QSSS subsidiaries will flow through to the shareholders (the trusts) and be taxed at the applicable rate. To ensure this flow through of income, separate state S corporation elections were timely filed where required by Corporation A, Corporation B and every subsidiary.

Specifically, a New Jersey S corporation election was filed by Corporation A, Corporation B and Corporation C, a New Jersey subsidiary of Corporation B. The entities could then meet the definitions contained in N.J.S.A. 54:10A-4(o) and N.J.S.A. 54:10A-4(p) for an "S corporation" and a "New Jersey S corporation," respectively.

Estimated corporation business tax payments were remitted for 1997 by or on behalf of the shareholders of Corporation A, i.e. the trusts. No withholding payments were remitted to New Jersey with respect to the trusts' income for the individual beneficiaries of the trusts who are nonresidents of New Jersey. Where applicable, corporate level taxes were paid by the specific corporate entities.

In light of these facts, the Division advised as follows.

For Federal purposes as the result of Federal legislation, an S corpo-

ration may own subsidiaries. In light of this change, Instruction 32 of the 1997 New Jersey S corporation business tax return (CBT-100S) provides as follows:

Schedule Q - Qualified Subchapter S Subsidiaries (QSSS):

For the 1997 Corporation Business Tax return year, all Federal S corporations which are treated federally as a Qualified Subchapter S Subsidiary (QSSS) will be recognized accordingly by New Jersey. However, to qualify as a New Jersey QSSS, a copy of Federal Form 966 and a New Jersey Form CBT-2553 signed by a corporate officer in which the corporate parent shareholder consents to taxation by New Jersey must be submitted. The Corporation Business Tax return of the New Jersey QSSS will reflect a \$200 minimum tax liability, and its assets, liabilities, income and expenses will be treated as those of the parent corporation. Failure to file either a Federal Form 966 or a New Jersey Form CBT-2553 with the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and subject the entity to taxation in New Jersey as a C corporation. A New Jersey QSSS, like an S corporation, is required to file annually a Corporation Business Tax Return and annual report.

The present inquiry goes beyond the information contained in the instruction.

First, if the proper application and election forms have been submitted, New Jersey will recognize the existence of a consolidated S corporation group. In its definition of "entire net income" at N.J.S.A.

54:10A-4(d), the New Jersey Corporation Business Income Tax Act relates the income for New Jersey purposes to amounts required to be reported to the U.S. Treasury Department. Thus, assuming the proper election forms have been filed, Corporation B and Corporation C would file New Jersey CBT-100S returns and pay minimum tax, and Corporation A, the parent, would file a New Jersey CBT-100S return reflecting its income and that of its subsidiaries. Corporation A would pay the corporate level tax on its income. Administrative rule N.J.A.C. 18:7-3.6, supplies the applicable tax rates.

Where trusts are shareholders of an S corporation, New Jersey has taken the position that the trust beneficiaries must join in filing the New Jersey CBT-2553 S Corporation Election in addition to the trusts, as shareholders themselves. As such, the nonresident individuals who are the beneficiaries of the nonresident trusts would file and pay New Jersey gross income tax on their share of income from New Jersey sources. This could be done for convenience on a composite return: N.J.A.C. 18:35-1.30. See Form NJ-1080-E.

Second, in this case the upper tier parent corporations, Corporations A and B, should be authorized to do business in New Jersey with the New Jersey Secretary of State's Office, Division of Commercial Recording and registered with the New Jersey Division of Taxation.

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1997 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
	1/27/97	Conditional veto of bill reducing tax rate for S corporations.	CBT	S-231 (2R)
30	3/07/97	Increases reimbursements to taxing districts for veterans', senior citizens', disabled persons' and surviving spouses' property tax deduction programs, and removes requirement that the Division of Taxation annually furnish each municipality with a supply of forms.	LPT	S-1674
36	3/17/97	Removes professional wrestling from the regulation and control of the State Athletic Control Board thus eliminating the exemption from sales tax for which receipts from the sales of admissions to professional wrestling events formerly qualified.	S&U	A-2213 (1R)
40	3/27/97	Reduces the corporation business tax rate for S corporations to 2% (0.5% for those S corporations with \$100,000 or less annual income).	CBT	S-231 (3R)
41	3/27/97	Revises procedures concerning collection and distribution of funds received by the NJ Firemen's Association from the tax on fire insurance premiums.	IPT	S-253 (2R)
134	6/27/97	Alters the cap on the tax due on transfers of hazardous substances.	SCC	A-1668 (1R)
139	6/27/97	Revises the law concerning certain domestic and foreign entities authorized to transact business in this State.	MIS	A-2875 (3R)
153	7/1/97	Reduces the alcoholic beverage tax rate on certain apple cider from \$0.70 per gallon to \$0.12 per gallon.	ABT	S-1946 (1R)
162	7/14/97	Revises taxation of gas, electric and telecommunications public utilities and sales of electricity, natural gas and energy transportation service.	PUT	A-2825 (2R)
167	7/22/97	Establishes the "Energy Tax Receipts Fund," to replace the existing method of distributing certain funds guaranteed to municipalities from the State's taxation of energy and telecommunications.	PUT	A-2824 (1R)
204	8/14/97	Establishes the "Uniform Enforcement of Foreign Judgments Act."	MIS	A-2220 (2R)
207	8/14/97	Provides for an extension of time to file and pay gross income tax and certain other relief for persons in the Armed Forces serving in an area designated a "qualified hazardous duty area." This legislation affects NJ residents currently serving in Bosnia and Herzegovina, Croatia and Macedonia.	GIT	A-2883
226	8/25/97	Provides for the set-off against and collection from an individual's State gross income tax refund and homestead property tax rebate of any debt the individual owes to the Violent Crimes Compensation Board.	GIT	S-360

continued

1997 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
237	9/2/97	Establishes the "New Jersey Better Educational Savings Trust (NJBEST) Program" in the Higher Education Assistance Authority. The program will provide a means for families to save for future college costs by, among other things, excluding earnings and distributions from NJBEST accounts from New Jersey gross income for State income tax purposes.	GIT	S-2012 (2R)
245	9/9/97	Amends the Banking Act of 1948 to allow nonprofit corporations to perform certain functions presently reserved to banks. In particular, the bill allows educational institutions to act as trustee of funds in which the institutions have an interest.	MIS	A-2063 (1R)
264	12/19/97	Increases the cigarette tax from \$0.02 to \$0.04 per cigarette and the tobacco products wholesale sales and use tax from 24% to 48%.	TPT CIG	A-2157 (1R)
273	12/24/97	Permits State funding for the construction of a convention center facility in the Cape May County Tourism Improvement and Development District under certain conditions, and authorizes the New Jersey Sports and Exposition Authority to undertake certain additional projects.	CMC	S-1683 (4R)
278	1/6/98	Facilitates the remediation of contaminated real property by providing for the reimbursement to certified developers of up to 75% of the cost of remediation and for the establishment of a mechanism to fund such reimbursements. The new law also amends the property tax provisions of the "Environmental Opportunity Zone Act," P.L. 1995, c.413, to require municipalities participating in the program to provide exemptions from real property taxes for environmental opportunity zones and allows such exemptions to be extended to fifteen years at the municipality's option.	MIS	SCS for S-39, A-2250 ACS, S-1815 and 1539 (2R)
293	1/8/98	Exempts receipts from the sale of tangible personal property used directly and primarily on farms (with the exception of automobiles and property which becomes incorporated into a building or structure) from the Sales and Use Tax Act.	S&U	S-1248 (1R)
333	1/12/98	Exempts from the sales tax receipts from imprinting services performed on machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling or refining and exempt from taxation pursuant to subsection a. of section 25 of P.L. 1980, c.105 (C.54:32B-8.13).	S&U	S-142

continued

1997 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
334	1/12/98	Directs the New Jersey Economic Development Authority to establish a corporation business tax benefit certificate transfer program to allow certain emerging technology and biotechnology companies with unused R&D credits and unused NOLs to surrender these tax benefits for use by other corporate business taxpayers in the State.	CBT	S-446 (1R)
348	1/14/98	Provides for a homestead property tax reimbursement which effectively "freezes" the property taxes of certain senior and disabled homeowners at 1997 levels (or at the level prevailing during the year in which the claimant becomes eligible). Homeowners must meet specified income, residency and age (or disability) requirements.	LPT	A-3 (3R)
349	1/15/98	Authorizes a credit under the Corporation Business Tax Act for investments in small, New Jersey-based high technology businesses that conduct research here.	CBT	S-445 (1R)
350	1/15/98	Provides for a 15 year net operating loss deduction carry forward under the corporation business tax for certain high-tech companies. Applies to NOLs which occur during privilege periods which begin on and after July 1, 1998, but no later than June 30, 2001.	CBT	S-447 (1R)
351	1/15/98	Provides for a 15 year carry forward of research and development credits for certain high-tech companies. The extended carry forward applies to qualified research expenses incurred and basic research payments made during privilege periods which begin on and after July 1, 1998, but no later than June 30, 2001.	CBT	S-449 (2R)
373	1/19/98	Exempts officers and employees of drug stores and pharmacies from the fingerprinting requirements of the cigarette tax licensing provisions.	CIG	S-1074
409	1/19/98	Excludes from New Jersey gross income tax the U.S. military pensions and survivor's benefits of persons 62 years of age or older and disabled persons.	GIT	A-229 (2R)
413	1/19/98	Exempts from the corporation business tax income derived from shipping and aircraft operations by foreign national corporations whose home countries provide a similar exemption to U.S. corporations on such income.	CBT	A-670 (1R)
414	1/19/98	Effective January 1, 1998, establishes certain standards and provides certain tax exclusions and deductions for medical savings accounts which qualify under section 220 of the Internal Revenue Code of 1986, 26 U.S.C. § 220.	GIT	ACS for A-671 and 495 ACS (2R)

*Legend for 1997 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Tax
ACC = Atlantic City Casino Control Commission	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PUT = Public Utility Taxes
CMC = Cape May County Tourism Sales Tax	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	S&U = Sales and Use Tax
GIT = Gross Income Tax	TPT = Tobacco Products Tax
IPT = Insurance Premiums Tax	

Division Mailing Addresses

The Division receives many requests for the mailing addresses where tax forms, documents and responses to Division notices and statements should be sent. Generally, Division forms, notices, statements and correspondence contain the return mail address of the branch or section that originated the mail. Unless a form, notice or statement instructs otherwise, taxpayer replies and correspondence should be mailed to the return address of the originating office.

Please, always use the following address format when you send mail to the Division of Taxation:

Example

NEW JERSEY DIVISION OF TAXATION
 NAME OF SECTION OR BRANCH (if applicable)
 PO BOX XXX
 TRENTON NJ XXXXX-XXXX

The most frequently requested Division mailing addresses follow.

Tax Forms	PO Box	Zip Code
NJ-1040 (tax due)	111	08645-0111
NJ-1040 (refund or no tax due)	555	08647-0555
HR-1040 (rebate application without return)	197	08646-0197
NJ-1040NR	244	08646-0244
NJ-1040-ES	222	08646-0222
NJ-630-M	282	08646-0282
ST-50/ST-51	999	08646-0999
NJ-500/NJ-941	248	08646-0248
NJ-W-3/W-2/1099	333	08646-0333
CBT-100/100S	666	08646-0666
Other Matters		
Transfer Inheritance and Estate Tax	249	08646-0249
Unclaimed Property	214	08646-0214
Local Property Tax	251	08646-0251
Motor Vehicles Casual Sales	267	08646-0267
Deferred Payments	190	08646-0190
Conference and Appeals	198	08625-0198
Taxpayer Services OCE	281	08646-0281
Special Procedures (judgments, bulk sales, bankruptcy, liens, levies, seizures, SOIL)	245	08646-0245

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NEW JERSEY DIVISION OF TAXATION

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Acting Director
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Chief of Staff
 Mark Wintermute
 (609) 292-5185

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Inheritance and Estate Tax
 John Murray, *Chief*.....(609) 292-7025
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 George Lorbeck, *Chief*.....(609) 292-7929
Local Assessment Compliance
 James Coll, *Chief*..... (609) 984-3267
LPT Policy & Planning
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Taxpayer Services
 Joan Bench, *Chief*.....(609) 588-8526
Conference & Appeals
 William Bryan, *Chief*.....(609) 588-3933
Technical Education
 Edward Scheingold, *Ass't. Chief*..... 609-984-4101

Office of Technical Support
 John D'Errico, *Chief*..... (609) 292-5045

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Third, estimated corporation taxes should be remitted by Corporations A, B and C for 1998 as was done in 1997, and estimated New Jersey gross income taxes should be remitted by the trusts on behalf of the beneficiaries with regard to income derived from New Jersey sources. (Also see *NJ QSSS Estimated Payments* on page 3 of this issue.)

Fourth, the Federal treatment of S corporations has been adopted in so far as that is possible under the applicable New Jersey statutes. Corporations A and B are subject to tax in New Jersey by virtue of it being their place of business.

Gross Income Tax

NJ/PA Reciprocal Agreement — The reciprocal agreement between Pennsylvania and New Jersey only applies to wages. A Pennsylvania resident receiving income from any other New Jersey source must report the income to New Jersey. The sources of income subject to New Jersey taxation would include but not be limited to: 1099, partnership K-1, S corporation K-1 or sole proprietor income earned in New Jersey.

A nonresident who is a partner in a partnership or a shareholder in an S corporation that does business in New Jersey is subject to tax on the income reported on the K-1 received from their investment. This income is taxable whether it is received or not. Intangible income—interest and dividends—are not taxable to nonresidents of New Jersey.

A resident who is a partner in a partnership or a shareholder in an S corporation is subject to tax on the income reported on the K-1 received from their investment.

A partner holding an interest in a partnership for others or as part of a group of owners has an obligation to inform the partnership of the *nominee* arrangement (See Temporary Regulation 1.6031(c)-1T). If this reporting obligation is not met the nominee is to furnish the other person(s) with a written statement containing the distributive share of partnership income, gain, loss, deduction, or credit, etc. that is allocable to such interest in the partnership. The nominee failing to properly notify the other parties to the nominee agreement can be held liable for the K-1 as reported to the nominee.

New York's Commuter Tax — In New York State, the taxpayer's income from all sources is used to determine the tax rate and a base tax. The base tax is then reduced in the proportion that the taxpayer's income earned from New York sources bears to income earned from all sources. This method of calculating the tax increases the tax due to New York because the nonresident taxpayer is placed in a higher income tax rate category than would be the case if only New York source income were used to determine tax rate. However, the amount of income which is actually being taxed by the State of New York is the New York source income.

New York's method of calculating the tax on nonresidents is not within the power of New Jersey to change. A challenge to the constitutionality of New York's personal income tax as it applied to nonresidents was dismissed in Federal

court for lack of jurisdiction; the court held that the taxpayers had an adequate remedy in New York courts. *Hardwick v. Cuomo*, 891 F.2d 1097 (1989).

The issue was subsequently litigated in New York State courts in the case of *Brady, et al. v. State of New York et al.*, 607 N.E.2d 1060 (1992). In *Brady*, the New York Court of Appeals, New York State's highest court, upheld the ruling of the New York Supreme Court, Appellate Division, that in the case where one spouse works in New York and the other spouse does not, the individual can elect to file as married, filing separately. In this way, the income of the nonresident spouse who does not work in New York will not be used to determine the tax rate and base tax. However, the court also ruled that under New York's method for calculating a nonresident's tax, the income from non-New York sources was not used for anything other than as a measurement of the tax due on New York income. Therefore, the use of all sources of income was used solely to determine the rate of tax to be applied to New York source income.

New Jersey residents receive a credit for taxes they pay to New York State. N.J.S.A. 54A:4-1 of the New Jersey Gross Income Tax Act provides resident taxpayers with a credit against the tax otherwise due under the Act of the amount of any income tax or wage tax imposed for the taxable year by another state or political subdivision thereof with respect to income which is actually taxed in both jurisdictions.

Punitive Damage Awards — New Jersey's Gross Income Tax law

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excludes from income "the amount of damages received, whether by suit or agreement, on account of personal injuries or sickness." N.J.S.A. 54A:6-6(b). Compensatory damages from personal injury claims are excluded from gross income under this section. Punitive damages, however, are not excluded from income.

Prior to 1996, the New Jersey Gross Income Tax Act and the Federal Internal Revenue Code used very similar language for income from personal injury claims. Both New Jersey and Federal law excluded income that was damages received "on account of personal injuries or sickness." Prior to amendment in 1996, IRC section 104(a)(2) excluded from income "the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness." The 1996 amendment inserted the parenthetical clause, "(other than punitive damages)" after the words, "any damages" in the Federal statute.

Even before the Internal Revenue Code section was amended, the Supreme Court held that punitive damages received in a suit in connection with physical injuries or physical sickness are not "on account of" the personal injuries and are therefore not excludable from gross income. *O'Gilvie, Kelly v. U.S.*, (1996, U.S. S. Ct.). A district court in the Tenth Circuit had already concluded that punitive damages in a case involving personal injury were not received "on account of" personal injuries or sickness and were therefore not excludable from income under Code Sec. 104(a)(2). *Lane, Kari v.*

U.S., (1995, DC OK). In *Lane*, the Court's rationale was that because the purpose of punitive damages under applicable state law was to punish the tort-feasor rather than to compensate the tort victim, the portion of settlement proceeds allocated to punitive damages was not received "on account of" personal injury.

New Jersey follows the reasoning of the U.S. Supreme Court in its interpretation of the phrase, "damages received on account of personal injuries or sickness." Under New Jersey law, therefore, punitive damages resulting from personal injury claims are included in gross income for tax purposes pursuant to N.J.S.A. 54A:5-1e.

Cafeteria Plans — Although IRC §125 excludes from Federal taxable income benefits received by a taxpayer through a cafeteria plan, the New Jersey Gross Income Tax Act does not contain any provisions similar to IRC Section 125. Consequently, for New Jersey gross income tax purposes, any amounts which an employee may elect to contribute into a cafeteria plan through a salary reduction agreement must be included in gross wages *unless* such contributions are *required* as a condition of employment. In addition, employer provided benefit dollars that the employee may use to purchase benefits or may take out in cash must also be included in gross wages. Only benefit dollars that are provided by the employer which must, under the terms of the cafeteria plan, be used to purchase qualified benefits and cannot be "cashed in," may be excluded from gross income.

N.J.S.A. 54A:6-24, which became effective on January 1, 1996, authorizes a limited exclusion from

gross income for certain plans. If under the terms of the plan an employee can receive cash in lieu of qualified employer-provided benefits only if the employee derives a substantially similar benefit from a source other than the employer, then the value of the cash option shall not be included in the gross wages of those employees *who do not elect to receive cash* if the value of the cash option is excludable for Federal income tax purposes. However, this exclusion does not apply to benefits provided under a "salary reduction agreement." A "salary reduction agreement" is defined as:

an agreement between an employer and an employee under which the employee individually chooses to reduce the employee's compensation, or to forgo increases in compensation, and to have the amount provided, as an employer-provided benefit, by the employer to the employee; including but not limited to the agreements commonly known as flexible spending accounts and premium conversion options.

If the terms of a cafeteria plan require that the benefits which an employee receives must be included in New Jersey gross wages then the employer must withhold from the gross amount.

Property Tax Deduction for Principal Residence — The Property Tax Deduction Act, N.J.S.A. 54A:3A-15 et seq., enacted in 1996, provides a deduction or a credit from income taxes for property taxes paid on a homestead. Under the Act, "homestead" is defined as "a dwelling house and the land on which that dwelling house is located which constitutes

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the place of the taxpayer's domicile and is owned and *used by the taxpayer as the taxpayer's principal residence.*" N.J.S.A. 54A:3A-16 (emphasis added). "Principal residence" is further defined in the statute as "a homestead actually and continually occupied by a taxpayer as the taxpayer's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the taxpayer, and other secondary real property holdings." N.J.S.A. 54A:3A-16. The NJ-1040 instructions regarding the property tax deduction/credit (Lines 35 and 43) state that the deduction is only available for a principal residence which is occupied by the taxpayer. Thus, paying taxes on a residence does not qualify the taxpayer for the deduction/credit unless the dwelling is also the taxpayer's principal residence.

School Board Worker's Compensation — Under the New Jersey Gross Income Tax Act, amounts received by an employee through an accident or health insurance plan for personal injuries or sickness are not subject to tax. N.J.S.A. 54A:6-6(c). In order to qualify for the exclusion, all of the following requirements must be met:

1. The payments must be compensation for wage loss from absence due to injury or sickness; and
2. The payments must be due and payable under an enforceable contractual obligation under the plan; and
3. The payments must not relate to sick leave wage continuation (the taking of which is largely discretionary and the payments

are made regardless of the reason for absence from work). N.J.A.C. 18:35-1.15 (b).

New Jersey school boards must make payments to an employee injured on the job under N.J.S.A. 18A:30-2.1. The statute requires that "whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in sections 18A:30-2 and 18A:30-3." N.J.S.A. 18A:30-2.1. As long as the employee is disabled and the disability is work-related, the school district is legally obligated to provide the benefit. Such benefits are considered by the Division to be in the nature of worker's compensation payments. Therefore, the school board payments satisfy the requirements for New Jersey income tax exclusion provided by N.J.S.A. 54A:6-6(c).

Interest Accumulated on a Life Insurance Policy — Under the New Jersey Gross Income Tax Act, specific categories of income are taxed. One such taxable category is interest. N.J.S.A. 54A:5-1(e). In addition, N.J.S.A. 54A:8-3(c) requires that a taxpayer's accounting method for gross income tax purposes be the same as his accounting method for Federal income tax purposes. Taxable interest for Federal purposes is also taxable for gross income tax purposes. Accordingly, the interest accumulated on a life insurance

policy is taxable in New Jersey to the same extent as under Federal guidelines.

Sales and Use Tax

Dance Hall Admission Charges

— The Division recently determined that the admission or "cover" charge paid for admission to dance halls in New Jersey is taxable as an admission charge to, or for the use of, any place of amusement.

The statutory exception for charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools, does not apply since listening to music and dancing are not considered a "sporting activity" within the meaning of the exception. N.J.S.A. 54:32B-3(e)(1).

Cleaning of Newly Constructed Homes

— Cleaning and maintenance services performed on model houses and newly constructed homes prior to the issuance of a Certificate of Occupancy and sale of the homes are subject to sales tax as services performed in maintaining, servicing or repairing real property. N.J.S.A. 54:32B-3(b)(4). The rendering of these services results neither in an increase in the capital value of the real property upon which they are performed nor in a significant increase in its useful life. N.J.A.C. 18:24-5.7. Consequently, such services do not qualify for exemption from tax under N.J.S.A. 54:32B-3(b)(2)(v).

Beauty Consulting — The Division responded to an inquiry regarding the taxability of services and merchandise sold by a beauty consultant under the Sales and Use

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Tax Act.

The services of rendering advice, applying cosmetics, styling hair and doing "makeovers" are deemed nontaxable personal services. If small amounts of cosmetics are transferred to the client as an inconsequential element of the service transactions and no separate charges are made for these items, the entire charge is nontaxable. N.J.S.A. 54:32B-2(e)(4)(A).

However, if the beauty consultant also sells "beauty products" to customers, she must collect tax on these sales regardless of whether she personally delivers them to her customers or has her supplier drop ship them directly to her customers in New Jersey.

Hospital Beds — The Division was asked to review the taxability of specialty hospital beds under certain conditions. These beds are used by patients in hospitals, nursing centers, etc., but the cost is directly billed to the patient, referred to as private pay billing.

The New Jersey Sales and Use Tax Act provides that medical equipment which is purchased for use in providing medical services for compensation is subject to sales tax; durable medical equipment purchased by a patient for home use is entitled to exemption. N.J.S.A. 54:32B-8.1. In general, when a hospital or nursing home purchases or rents equipment, including beds, for use in the facility, such charges are taxable unless the facility is a qualified exempt organization under N.J.S.A. 54:32B-9.

Conversely, if the patient is discharged, and purchases or rents a hospital bed for home use, the sale or rental charge is exempt from

tax. The situation at issue is a hybrid of these two scenarios because the bed is used at the facility, yet the patient is directly responsible for payment.

In order to give effect to the legislative intent as expressed in N.J.S.A. 54:32B-8.1, the Division will consider the direct rental of the hospital bed to "private pay" patients in medical care facilities to be exempt from New Jersey sales tax as durable medical equipment. Thus, billings to patients for specialty hospital beds in private pay situations are not required to include sales tax.

Sale of Freshly Baked Pretzels —

The Division responded to an inquiry concerning the following facts: *"Our client makes fresh, hot pretzels, and sells them in the mall. The client makes these pretzels from scratch using flour, yeast, salt, water, basically the same ingredients as bread, and bakes them on premises. Since the pretzels are made from scratch, we are wondering if sales tax is applicable to these baked goods."*

Pursuant to N.J.S.A. 54:32B-3(c) of the Sales and Use Tax Act, sales of food in an unheated state of a type commonly sold in the same form and condition in food stores, other than those principally engaged in selling prepared foods, are granted exemption from sales tax in this State. Thus, for example, sales of various baked foods (cake, bread, cookies, donuts, etc.) by the dozen or part thereof are not taxable whether vended for off-premises consumption in a supermarket or at a stand or storefront in a mall. Freshly baked pretzels are included in the above category of baked goods.

This statutory exemption, however, is limited to food sold in an unheated state. The determination of whether food is sold in a heated state is made according to the vendor's method of merchandising. If food is maintained at a temperature which is warmer than the surrounding air temperature by using heat lamps, warming trays, ovens or similar devices, or is cooked to order, the food is deemed heated and sales are subject to sales tax whether or not intended for off-premises consumption.

School Bus Purchases — The Division responded to an inquiry about the sales tax treatment of a contract carrier's purchase of stop sign arms, radios and air conditioning and the labor for installing them in school buses that the carrier already owns.

N.J.S.A. 54:32B-8.28 exempts from sales and use tax the purchase of the buses themselves and of "repair and replacement parts and labor therefor." The Division views the additional equipment installations as exempt under this provision if they are essential to the operation of the school bus, e.g., the stop sign arm, or if they

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Division of Taxation Seizures (October - December 1997)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	CBO, Inc. t/a Tycoons 300 Railroad Ave. Hammonton	10/20/97	Bar	Liquor license seized
	Bnabramoff, Bernice Margate	11/10/97	N/A	Vehicle seized
	Kehoe, Edward J. Kehoe Sign, Art & Display, Inc. 230 E. Waveland Ave. Absecon	12/16/97	Sign company	Assets released
Bergen	CNT Enterprises t/a Molly's 26 Ridge Rd. North Arlington	11/24/97	Bar	Liquor license seized
Essex	Olivera Enterprises, Inc. t/a Panteezz 955 Frelinghuysen Ave. Newark	10/15/97	Bar	Liquor license seized
	Monchito Corp. t/a La Posa 173 Sherman Ave. Newark	12/03/97	Tavern	Liquor license seized
	Alex Fraenkel Photography, Inc. t/a Alex Fraenkel Photography 193 Ferry St. Newark	12/16/97	Photographer	Closed
Hudson	McNamara, Robert Mack Auto Sales 344 Westside Ave. Jersey City	10/29/97	Auto sales	Vehicles released
	Novielli Enterprises t/a Pizza Bistro 165 Broadway Bayonne	11/13/97	Pizzeria	Closed
	Nook Auto Repair, Inc. 888 Communipaw Ave. Jersey City	11/25/97	Auto repair	Closed
	Hardy's Liquor & Deli, Inc. 520 Ocean Ave. Jersey City	12/02/97	Liquor/grocery store	Liquor license seized
	George's Wine & Deli, Inc. 381A Ocean Ave. Jersey City	12/02/97	Liquor/grocery store	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Melania Corporation Casanova Lounge 279 Smith St. Perth Amboy	11/07/97	Bar	Reopened
Monmouth	GOJ, Inc. The Orchid Lounge, Inc. 904-906 Lake Ave. Asbury Park	10/09/97	Bar	Liquor license seized
	Route 520 Associates Nardino's 11 Rte. 520 Marlboro	10/17/97	Restaurant	Liquor license seized
	Campbell, Robert M., Jr. Chrisan Automotive 806 Sea Girt Ave. Sea Girt	12/09/97	Auto repair	Reopened
Ocean	Lacey Collision Incorporated Lacey Collision 410 N. Main St. (Rte. 9) Lanoka Harbor	10/21/97	Auto body shop	Reopened
Passaic	J&M Wines & Liquors Park 15 Wines & Liquors 15 Park Ave. Paterson	10/15/97	Liquor store	Liquor license released
	Montgomery Blue Dahlia Corp. Montgomery Tavern 80 Montgomery St. Paterson	10/15/97	Bar	Liquor license seized
	Lina Luli Corp. Casa D'Angelo 21 Rte. 23 Wayne	11/19/97	Restaurant	Liquor license seized
	Broadway Liquors, Inc. Broadway Liquors 270 Broadway Paterson	12/12/97	Liquor store	Liquor license seized
Salem	McCarthy's Bar 190 Griffith St. Salem	12/11/97	Bar	Closed
	J. Thomas McCarthy, Inc. J-Tee's Liquors Wines Beer 641 S. Broadway Pennsville	12/11/97	Liquor store	Reopened
Union	Laurel, April & McAllister M&M's 209 Jefferson Ave. Elizabeth	10/07/97	Liquor store	Reopened
	Half Time Sports Bar 476 Bloy St. Hillside	10/08/97	Bar	Reopened

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County	Name/Address	Seizure Date	Business Type	Status
Union	The Brothers Three, A NJ Corp. 901 Magnolia Ave. Elizabeth	12/03/97	Bar	Closed
	Leyva, Ann Marie & Ruber El Galeon Bar & Restaurant 246 Second St. Elizabeth	12/04/97	Bar/restaurant	Liquor license seized
	Modaca, Inc. Spanish & Portuguese Tavern 560 Grier Ave. Elizabeth	12/11/97	Tavern	Liquor license seized

Division of Taxation Auctions (October - December 1997)

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	Fusaro Enterprises, Inc. t/a Jo-Jo's Tavern 263 S. New York Rd. (Rte. 9) Oceanville	10/29/97	Bar	Liquor license
Essex	496 Corporation 489 Clinton Ave. Newark	11/20/97	Liquor store	Bar supplies
	C&D Supermarket 910 18th Ave. Newark	11/20/97	Liquor store	Bar supplies

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are standard pieces of equipment of the type that is available from a manufacturer in newly purchased vehicles. Under this standard, the installation of air conditioning and basic (not CB) radio systems in a school bus would be deemed exempt.

To support this exemption, the carrier should present a completed Form ST-4 (Exempt Use Certificate) to each vendor of the parts and installation services. "N.J.S.A. 54:32B-8.28" should be entered in the box on the form to indicate the legal basis for the exemption.

In Our Courts

Gross Income Tax Insurance Proceeds From Involuntary Conversion of Property – *Tischler v. Director, Division of Taxation*, decided January 20, 1998; Tax Court; No. 000616-97.

In a case of first impression, the Tax Court held that involuntary conversion of property is a disposition of property under N.J.S.A. 54A:5-1(c) and therefore gain is recognized (to the extent that the proceeds exceed the property's adjusted basis) in the tax year the non-reinvested insurance proceeds are received. The Court also ruled that the doctrine of equitable estoppel does not bar the Division

from imposing a tax, after the tax was previously paid and erroneously refunded, where Division employees provided incorrect advice as to taxability. Finally, the Court held that taxpayer must receive the Division's erroneous written advice prior to acting on that position in order to be relieved of paying interest on those tax liabilities attributable to that erroneous advice.

Local Property Tax Business Retention Act Found Constitutional – *General Motors Corporation v. City of Linden*, Supreme Court of New Jersey A-106 September Term 1996, decided July 21, 1997.

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The Supreme Court affirmed the Appellate Division decision that the Business Retention Act, Public Law 1992, c.24, was constitutional because it may reasonably be interpreted in a manner that does not create an unconstitutional exemption for real property from taxation that would favor business or industry. See also *New Jersey State Tax News*, Vol. 25, No. 4.

“Officiating Clergyman” Exemption Denied – *Friends of Ahi Ezer Congregation, Inc., Plaintiff v. City of Long Branch, Defendant*, decided June 19, 1997, Tax Court of New Jersey, Docket No. 007501-95.

In this local property tax complaint, the key question addressed by the N.J. Tax Court was what was meant by “officiating clergymen” relative to the parsonage exemption available under N.J.S.A. 54:4-3.6. The pertinent statute requires that the buildings, not exceeding two, be occupied as a parsonage by the officiating clergymen of any religious corporation of this State.

St. Matthew’s Lutheran Church for the Deaf v. Division of Tax Appeals, 18 N.J. Super. at 558 (1952), previously defined “officiating clergyman” as “a settled or incumbent pastor or minister, that is, a pastor installed over a parish, church or congregation.” The American Heritage Dictionary, Second College Edition defines “officiating” as “1. to perform the duties and functions of an office or position of authority. 2. to serve as a priest or minister at a religious service.”

In this decision, the Tax Court considered the extent of the clergyman’s activities as the guiding criterion. Three Saturday mornings

per month Rabbi Maslaton conducted the Bible (Torah) reading portion of the religious service at Ohel Simha synagogue, requiring about 15 hours preparation time per week. He also taught religious classes at the synagogue and at his home, the disputed property. In addition, every Friday afternoon he held religious services at an affiliated nonexempt nursing home and oversighted the maintenance of their “Kosher kitchen.”

The Court, in its analysis, compared the position and functions of an ordained deacon with the deacon’s administrator and pastor for the congregation in *Shrine of Our Lady of Fatima v. Mantua Twp.*, 12 N.J. Tax 392 (1992). Since the “vast bulk” of the congregation’s religious services were performed by the pastor/administrator, the deacon was not deemed the officiating clergyman and his residence was not exempt. In *Goodwill Home and Missions, Inc. v. Garwood Borough*, 281 N.J. Super. 596 (1995), an administrative director who “took on the direct supervisory responsibility of pastor rather than having somebody...helping me with it” was ruled an officiating clergyman whose dwelling did qualify as a parsonage.

In summary, the Court concluded that although Rabbi Maslaton contributed to the synagogue on a regular basis and Rabbi Choueka relied heavily on his assistance, he was not an officiating clergyman.

Testimony given by Rabbi Choueka, the synagogue’s rabbi of 15 years, indicated that he, himself, was the only officiating rabbi. Choueka’s duties included conducting services, giving sermons, teaching, counseling, etc. By contrast, many of Rabbi Maslaton’s

duties could also be performed by volunteer lay congregants and Bar Mitzvah students. Maslaton had no direct responsibility for religious services—did not preside over the service nor present the sermon; had no decision making role in synagogue nor counseling functions; and did not officiate at funerals or weddings. He was not the pulpit rabbi. Neither could parsonage exemption be derived from Rabbi Maslaton’s duties at the nursing home. The nursing home was not a place of public worship as a church or synagogue, nor was it a nonprofit tax exempt entity. Therefore, Monmouth County Tax Board’s assessing of the residence was sustained. However, the 1995 value at \$191,600 having been alternately contested was scheduled for further hearing.

Eligibility for Assessment as Farmland Denied – *James I. Wyer, Plaintiff, v. Middletown Township, Defendant*. Tax Court of New Jersey, Decided June 19, 1997, Docket Nos. 008699-95 & 006272-96.

At issue before the New Jersey Tax Court was whether a wooded land parcel of 6.33 acres, known as Lot 1, having nectar producing trees and planted with clover was actively devoted to the cultivation of bees and sale of apiary products, a qualifying agricultural use under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., and as such, eligible for the reduced assessment for tax years 1995 and 1996.

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Although Lot 1 had no beehives the taxpayer contended the trees' existence and planted clover was sufficient farm activity. An adjacent farm-qualified lot had ten hives which were actively devoted since 1993. Taxpayer's professional beekeeper testified as to clover's importance for pollination and the trees for nectar sources. According to the keeper, bees forage at the closest nectar source within one-half mile of the hive and the disputed Lot 1 was only a short distance away. However, Lot 1 was not a primary nectar source; the keeper indicated that other closer adjacent lots had the same nectar sources as Lot 1 and that open meadow was preferable to woodland. The bees were just as likely to forage the other lots and the surrounding countryside.

The Tax Court ruled the taxpayer failed to show proof that he had planted or maintained the trees, that the bees needed Lot 1's quality or quantity of clover, what amount of land was necessary to support honey production of off-site bees, that the amount of honey produced would decrease if Lot 1 had no clover or that there was any bee activity on Lot 1. Because clover was not planted until 1994 and no activity was substantiated for 1993, the two successive years active devotion requirement for 1995 farm assessment was not satisfied. Also planting clover was insufficient for farm qualification for 1996.

The Court also ruled that Lot 1 did not qualify as appurtenant woodland. Taxpayer did not prove that Lot 1 was legally and functionally part of apiary use or reasonably necessary for maintenance of the

beehives and honey production. Parcels were separate tax line items with distinct physical characteristics and unintegrated purposes. Lot 1 was not marginal, untillable land area with no independent productive use but rather was capable of its own agricultural productivity. Trees and clover could have been cut and sold for firewood or hay component forage crops respectively. The judgments of the County Tax Board were affirmed.

Sales and Use Tax

Sale for Resale – *Boardwalk Regency Corp. t/a Caesar's Atlantic City Hotel and Casino v. Director, Division of Taxation*, decided January 21, 1998; Tax Court; No. 006294-96.

Providing patrons with complimentary beverages is not legally sufficient consideration that would allow the purchase of the beverages to be exempt under the sale-for-resale exemption. Furthermore, per statute the Director is prohibited from entering into closing agreements that are either disadvantageous to the State or where there is no definite ending period.

The parties stipulated to the following facts: (1) Plaintiff (BRC) purchased nonalcoholic carbonated beverages free of sales tax by issuing ST-3 resale certificates to various suppliers, which certified that BRC was purchasing the products for resale; (2) a portion of these purchases were provided to patrons for no monetary consideration and neither sales nor use tax was paid on these transactions; (3) prior to the assessment the Director entered into three closing agreements with BRC, in accordance with N.J.S.A. 54:53-1, the second of which provided that

“[no] sales or use tax will be imposed on the provision of complimentary meals or complimentary liquor effective January 1, 1986;” and (4) that non-alcoholic beverages were included within the term “complimentary meals.”

The Division assessment taxed the purchase price of nonalcoholic carbonated beverages provided to patrons at no charge. BRC contested and advanced two theories for nontaxability. First, it claimed that these purchases qualified as “sales for resale” and that although it received consideration (inducement for patrons to gamble), the consideration is non-monetary and therefore not subject to tax. Secondly, BRC claimed that the closing agreement prohibits the assessment.

The Court found that the resale exemption provision provides that where purchased property is intended to be resold, the initial purchase is exempt from tax and the property's subsequent resale is subject to tax based upon the amount of consideration. However, if the purchaser does not carry through with its intention to resell the items purchased under the sale-for-resale exemption, the exemption disappears and the compensating use tax provision becomes operative to tax the purchase.

In addressing the sale-for-resale issue, the Court first determined that the transfer of beverages to patrons at no charge to induce them to gamble did not constitute consideration. Resorting to consideration's common-law definition, the Court determined that

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consideration did not exist because if a patron was denied a drink, the patron would have no enforceable rights against BRC. Therefore, the Court held that there was no resale and that BRC owed use tax on the purchase price of beverages that were not resold because it became the end user of the beverages.

Turning to the agreements between BRC and the Director, the Court found that the language of the agreement concerning the issue at hand only applied to transactions between BRC and its patrons not the transactions between BRC and its suppliers. Furthermore, the Court found N.J.S.A. 54:53-1 allows the Director only to enter into closing agreements concerning tax liabilities where there is a definite ending period and where the State will not be disadvantaged. Therefore, the Court ruled that even if the Director intended to release BRC from tax liability on the purchase transaction between it and its suppliers that the Director would have exceeded his powers and the agreement would be void because the agreement does not provide for an ending period and the elimination of this tax liability can not be construed to be advantageous to the State.

Trump Plaza Associates t/a Trump Plaza Hotel and Casino v. Director, Division of Taxation, decided January 21, 1998; Tax Court; No. 007936-96.

The facts are the same as those in the case of *Boardwalk Regency Corp.* except that these consolidated cases also involve complimentary alcohol drinks. Under the holding and reasoning in *Boardwalk Regency Corp.*, the Court held that purchases of alcohol did

not qualify for the sale-for-resale exemption where the casino provided complimentary alcoholic beverages to its customers. Consequently, use tax was due on the purchase price.

Adamar of New Jersey t/a Trop-world Casino & Entertainment Resort v. Director, Division of Taxation, decided October 1, 1997; Tax Court; No. 005059-96.

In consolidated cases, plaintiffs (hotels) sought refunds under the sale-for-resale exemption on sales tax it paid relating to purchases of various hotel amenities it provided to its customers including writing pads, stationery, postcards, pens, matches, sewing kits, shoeshine cloths or pads, soap, shampoo, conditioner, shower caps, lotion, shower gel and mouthwash.

In this case of first impression, the Court held that the amenities were not sold to guests and therefore did not qualify for the resale exemption because (1) the amenities were not sold "as such" as they are "inseparably connected" to the services provided by the hotel; and (2) they were not sold as "a component part of a product produced for sale" as the amenities are not incorporated into the room and the room is not a product produced for sale. Furthermore, the Court found that the tax imposed on the rental of hotel rooms is a tax on the rental of the rooms not the resale of amenities. The reasoning underlying this decision is that the "true object" concerning a room rental is not the acquisition of amenities but the use of the room. □

In Our Legislature **Cape May County Tourism** **Sales Tax**

Funding for Convention Center and Other Projects in Tourism District — P.L. 1997, c.273 (signed into law on December 24, 1997) permits State funding for the construction of a convention center facility in the Cape May County Tourism Improvement and Development District under certain conditions, and authorizes the New Jersey Sports and Exposition Authority to undertake certain additional projects.

Corporation Business Tax Tax Benefit Transfer Program — P.L. 1997, c.334 (signed into law on January 12, 1998) directs the New Jersey Economic Development Authority to establish a corporation business tax benefit certificate transfer program to allow certain emerging technology and biotechnology companies with unused research and development tax credits and unused net operating loss carryovers to surrender those tax benefits for use by other corporate business taxpayers in the State. The measure applies to tax years beginning on or after January 1, 1999.

Small New Jersey-based High-Technology Business Investment Tax Credit Act — P.L. 1997, c.349 (signed into law on January 15, 1998) authorizes a credit under the Corporation Business Tax Act for investments in small, New Jersey-based high-technology businesses that conduct research here. The tax credit would be equal to 10% of the investment up to a maximum

allowed credit of \$500,000 for the tax year for each qualified investment made by the taxpayer. An unused credit may be carried for-

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ward for use in future years, sub-

ject to a \$500,000 per year limitation. The measure applies to qualified investments made during each of the three tax years beginning on or after January 1, 1999.

Extended Net Operating Loss Deduction Carryforward Period — P.L. 1997, c.350 (signed into law on January 15, 1998) provides for a 15 year net operating loss deduction carryforward under the corporation business tax for certain high-technology companies. The act applies to net operating losses which occur during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Extended Carryforward of Research and Development Tax Credits — P.L. 1997, c.351 (signed into law on January 15, 1998) provides for a 15 year carryforward of research and development tax credits for certain high-technology companies. The act applies to qualified research expenses incurred and basic research payments made during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Exemption for Shipping and Aircraft Operation Income — P.L. 1997, c.413 (signed into law on January 19, 1998) exempts from New Jersey corporation business tax the income derived from shipping and aircraft operations of those foreign national corporations whose home countries exempt such income of U.S. corporations. This legislation takes effect immediately.

Gross Income Tax

Military Pension Exclusion — P.L. 1997, c.409 (signed into law on January 19, 1998) excludes

from New Jersey gross income tax the United States military pensions and survivor's benefits of persons 62 years of age or older or disabled. This legislation applies to tax years beginning on or after January 1, 1998.

Medical Savings Accounts — P.L. 1997, c.414 (signed into law on January 19, 1998) establishes certain standards and provides certain tax exclusions and deductions for medical savings accounts which qualify under section 220 of the Internal Revenue Code of 1986, 26 U.S.C. § 220. This act is effective for tax years beginning on or after January 1, 1998.

Local Property Tax

Homestead Property Tax Reimbursement for Certain Seniors & Disabled — P.L. 1997, c.348 (signed into law on January 14, 1998) provides for a homestead property tax reimbursement to certain homeowners and certain owners of manufactured or mobile homes. To qualify, the homeowner must be 65 or more years of age or receiving Federal Social Security disability benefits and have an annual income of less than \$17,918, if single, or a combined income of less than \$21,970 if married. Income eligibility limits will increase annually by the amount of the maximum Social Security benefit cost of living increase for single and married persons, respectively.

Sales and Use Tax

Exemption for Property Used on Farms — P.L. 1997, c.293 (signed into law on January 8, 1998) exempts from sales and use tax receipts from the sale of tangible personal property used directly and primarily in the production for sale of tangible personal property on

farms. Automobiles and property incorporated into a building or structure do not qualify for the exemption. This legislation takes effect immediately.

Exemption for Certain Imprinting Services — P.L. 1997, c.333 (signed into law on January 12, 1998) exempts from sales tax receipts from imprinting services performed on machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling or refining and exempt from taxation pursuant to subsection a. of section 25 of P.L. 1980, c.105 (C.54:32B-8.13).

Tobacco Taxes

Rate Increases — P.L. 1997, c.264 (signed into law on December 19, 1997) increases the cigarette tax from \$0.02 to \$0.04 per cigarette and increases the tobacco products wholesale sales and use tax from 24% to 48% effective January 1, 1998.

Cigarette Tax Licensing Requirements for Retail Drugstore Chains — P.L. 1997, c.373 (signed into law on January 19, 1998) exempts officers and employees of drugstores and pharmacies engaged in the retail sale of prescription drugs and patent medicines from the fingerprinting requirements of the cigarette tax licensing provisions. This legislation is effective immediately.

Miscellaneous

Brownfield and Contaminated Site Remediation Act — P.L. 1997, c.278 (signed into law on January 6, 1998) makes various

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changes in the law in order to facilitate the remediation of contaminated real property. The Act provides for the reimbursement of up to 75% of the cost of remediation to certified developers and stipulates the requirements for certification. A special fund, to be known as the Brownfield Site Reimbursement Fund, will be established and credited with an amount that equals the percent of remediation costs expected to be reimbursed. A special account within

the Fund will be created for each qualified developer.

The legislation also amends the property tax provisions in the Environmental Opportunity Zone Act, P.L. 1995, c.413, to require that the governing body of a municipality *shall*, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones if the municipality participates in the program and allows the property tax ex-

emption to be extended to fifteen years, at the option of the municipality, if the qualified property is to be remediated with a limited restricted use remedial action or an unrestricted use remedial action. The property tax exemption will end if the difference between the real property taxes otherwise due and payments made in lieu of those taxes equals the total remediation cost for the qualified real property. □

tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
8	26	27	28	29	30		

April 13

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

April 15

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Property Tax Rebate—Application

continued

April 15 - continued

- NJ-1040** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

April 20 - continued

- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 27

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

April 30

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
8	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
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May 11

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

May 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending January 31

continued

May 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

May 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

May 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

May 26

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
8	21	22	23	24	25	26	27
	28	29	30				

June 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

June 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending February 28

continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

June 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

June 22 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

June 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

Sale of Principal Residence

As this issue of the *New Jersey State Tax News* goes to press, a bill which would bring New Jersey's treatment of the gain on the sale of a taxpayer's principal residence in line with the Federal treatment is moving through the legislative process. If this bill is signed in its current form, it would be effective for the 1997 tax year and may affect State returns filed earlier in the tax season.

Important Tax Tip

It is very important to accurately report the county/municipality code when completing the New Jersey income tax return. All county/municipality codes are listed on pages 41-42 of the NJ-1040 booklet—carefully transfer the correct code for the county and municipality of the current residence (not necessarily the mailing address) to the appropriate boxes on the top, left-hand corner of Form NJ-1040.

Changing Business Tax Information

Form REG-C, used by businesses in New Jersey to report changes in filing status and business activity, or to change identification information (i.d. number, name, address, etc.) is included in *Package NJX*, both printed and CD-ROM versions, and is also available for downloading from the Division's home page at: <http://www.state.nj.us/treasury/taxation/> From our home page, click on Print Tax Forms and select the Tax Registration section, where you will find Form REG-C.

Replacing Lost Coupon Booklets

To obtain a replacement for a lost sales and use tax (Form ST-50/51) or employer withholding (Form NJ-500/941) coupon booklet, call our Tax Hotline at (609) 588-2200. If the business is registered and is eligible to collect and remit the tax, the Hotline representative will order the appropriate forms and instruct the caller on how to file informally until the replacement forms are received.

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Director Gardiner Retires



Retiring Director Richard D. Gardiner (left) congratulates Robert K. Thompson on his recent appointment as Acting Director of the New Jersey Division of Taxation.

On November 5, 1997, Richard D. Gardiner, Director, Division of Taxation, announced his retirement from State Government effective December 1, 1997. Dick was a career civil servant who in 1991 retired after 32 years of service. He returned as Director in June of 1994. We all wish Dick well in his future endeavors.

Deputy Director Robert K. Thompson has been named Acting Director. Bob actually returns to that position, having served in this same capacity from February 1994 until Dick's appointment. □

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
.....	609-588-2525
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refund.....	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

State Tax News Celebrates 25th Anniversary

The first edition of the *State Tax News* made its debut in June 1972. Our title became the *New Jersey State Tax News* in November 1978. The newsletter was envisioned as an important source of tax information for both tax practitioners and the general public. Considerable effort has been made over the years to develop a publication which would fulfill one of the Division's chief goals — the public's right to know.

Come visit 1972 with us to see how much you remember from 25 years ago and celebrate our 25th anniversary with us on page 12. □

TeleFile Program Expansion

Due to the success of the 1996 TeleFile program, the Division has expanded its TeleFile program for 1997. New Jersey residents can now TeleFile if their gross income for 1997 is \$150,000 or less and consists only of wages, interest (\$1,000 or less) or dividends (\$1,000 or less). Last year the total income threshold for NJ TeleFile was \$75,000, and taxpayers were limited to \$400 in interest and \$400 in dividends. Raising these income thresholds means that more than 1.3 million New Jersey residents may be eligible to TeleFile their State income tax returns this year.

In addition to increasing the gross income threshold, the Division has purchased additional computer hardware and software and installed additional telephone lines. This expansion will allow the Division to increase the eligible TeleFile population by over

300,000 taxpayers while maintaining the goal of providing 24 hour a day service during the 1997 filing season.

Taxpayers who TeleFiled their NJ returns last year will automatically be mailed 1997 NJ TeleFile booklets. In addition, every 1997 New Jersey resident income tax return booklet (Form NJ-1040-P) will contain a TeleFile worksheet and instructions. The Division encourages all eligible residents to take advantage of NJ TeleFile. It offers New Jersey residents the fastest, easiest and most convenient method of filing their State tax returns. Best of all, refunds are mailed within two weeks.

As a reminder to tax practitioners — you are eligible to TeleFile a New Jersey income tax return for your client provided that you maintain a Power of Attorney Form for your client in your file. If you use your power of attorney to TeleFile for a client, enter the information from the TeleFile worksheet as prompted by the system. At the voice signature prompt, speak the taxpayer's name, state that you have power of attorney for the taxpayer, then give your name and Federal ID#. As with any TeleFile return, the TeleFile worksheet (with confirmation number provided by the TeleFile system included) becomes the taxpayer's proof of filing.

The 1997 TeleFile season begins on Thursday, January 15, 1998 and will continue through midnight Wednesday, April 15, 1998. NJ TeleFile will accept returns 24 hours a day during the filing season. To reach NJ TeleFile call

New Jersey State Tax News

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director:
Robert K. Thompson

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Editor: Linda B. Hickey

teletype program expansion - from pg. 2

1-888-235-FILE (toll-free from Touch-tone phones within New Jersey only) or 609-588-FILE (from Touch-tone phones anywhere). For more information on NJ TeleFile, call our Tax Hotline at 609-588-2200.

Last year, last minute filers jammed our TeleFile phone lines. We've added lines this year to accommodate the last minute rush, but still suggest that *Telefilers* (and practitioners filing for them) file as early as possible. □

GROSS INCOME TAX

Changes to 1997

Resident Return

Property Tax Deduction/Credit — 1997 marks the second year of the phase in of the property tax deduction/credit benefit available to eligible New Jersey homeowners and tenants. The deduction this year has increased to 75% of property taxes due and paid on the taxpayer's principal residence or \$5,625, whichever is less. For tenants, 18% of rent due and paid during the year is considered property tax. The alternative minimum benefit available to eligible residents is a refundable credit of \$37.50.

Eligible residents who are not required to file an income tax return because their gross income is \$7,500 or less (\$3,750 for married persons filing separate returns) are entitled to the refundable credit *only* if they are at least 65 years of age or are blind or disabled.

The property tax deduction/credit benefit is *in addition* to the homestead rebate which continues to be available to many New Jersey residents.

Obtaining Mailing Envelopes, Payment Vouchers — Both the large envelope designed to accommodate the New Jersey resident income tax return and homestead rebate application (Forms NJ-1040 and HR-1040) and the small window envelope for mailing the payment voucher (Form NJ-1040-V) may be ordered from the Division of Taxation. Blank payment vouchers are also available. To request any of these items, call the Automated Tax Information System at 1-800-323-4400 (Touch-tone phones within New Jersey) or 609-588-2525 (Touch-tone phones anywhere). Supplies are limited, so order early. □

New Processing Equipment

The Division of Revenue is now using automated equipment to process employer withholding returns, sales tax returns and individual estimated payments (Forms NJ-500/NJ-941, NJ-941-W, ST-50/51 and Form NJ-1040-ES). The new mail processors remove the check and return from the envelope mechanically and read identification and tax information by means of imaging technologies. These automated procedures are expected to reduce operating costs and provide faster, more accurate return processing.

Taxpayers are urged to adhere to the following guidelines to ensure that returns and payments can be processed with as little manual intervention as possible.

- **Use preprinted tax returns.** These forms contain valuable information meant to ensure that tax payments are credited to the proper account and tax period.

- **Do not use a facsimile** return printed by a commercial software package. Instead, *transcribe* the tax information from the facsimile onto the preprinted return.
- **Use the correct return form** for the tax and tax period.
- **Send only the return and payment.** Do not include *anything* else in the envelope. If the payment check has a stub, remove it and save it for your files.
- **Use the window envelopes provided.** A year's supply of return envelopes is sent with the preprinted forms.
- **Do not staple** the return and check together.
- **Do not fold** the check or return.
- **Do not tape** the return to the inside of the envelope.
- **Do not send monthly** remittances for gross income tax withholding (Form NJ-500) or sales tax (Form ST-51) if there

continued on page 4

Interest 11.25% for Fourth Quarter

The interest rate assessed on amounts due for the fourth quarter of 1997 is 11.25%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%

processing - from page 3

is no tax due for the period. (A sales tax monthly remittance need not be filed if the amount of sales tax due for the month is \$500 or less. A monthly remittance of tax withheld is required only if the amount due for the month is \$500 or more.) □

SALES AND USE TAX ***Energy Tax Reform***

As reported in the Fall 1997 issue, effective 1/1/98, the recently enacted Energy Tax Reform legislation, P.L. 1997, c.162 repeals the gross receipts and franchise tax on electric, gas and telecommunications utilities and imposes Corporation Business Tax on those utilities and imposes sales tax on natural gas and electricity. The purpose of the legislation is to facilitate the transition to competition among utilities and other energy marketers resulting from the unbundling of energy products and services and a deregulated energy market.

The following are the basic provisions that relate to sales and use tax:

1. Natural Gas and Electricity are defined as tangible property and are subject to tax as such;
2. The service of transporting gas/electricity is a taxable service;
3. Use tax is imposed on both the commodity and the transportation charge;
4. Definition of "vendor" was amended to include energy sellers and transporters;
5. The manufacturing exemption, the farmer's exemption and the research and development exemption do not apply to the purchase of gas and electricity; the exemptions that apply in urban enterprise zones and for exempt entities such as schools, churches, etc. do not apply to the purchase of gas and electricity;
6. The tax is to be *included in the price* of the gas and electricity, as well as in the transportation charge.

In addition, the following information is from the Public Notice, which was published in the *New Jersey Register* on November 17, 1997:

"Take notice that pursuant to P.L. 1997, c.162, certain industrial and commercial purchasers of natural

gas distributed through a pipeline are granted a partial sales and use tax exemption for natural gas purchased between January 1, 1998 and December 31, 2002, inclusive.

"Any industrial or commercial purchaser whose last purchase of delivered natural gas in calendar year 1995 was from a **non-utility** (hereinafter referred to as "non-utility gas"), is deemed to be an eligible person for purposes of the statutory exemption. A **cogeneration facility** which ceased operation in 1996 and subsequently began to purchase non-utility gas is also an eligible person for purposes of the statutory exemption. A **non-utility** is a company that was not subject to the Public Utility Gross Receipts and Franchise Tax as of December 31, 1997, and is hereinafter referred to as a **gas marketer**."

For a complete explanation of the partial exemption and the procedure that must be followed to claim the exemption, please refer to the Division of Taxation's Notice in the November 17, 1997 volume of the *New Jersey Register*, which is also available on the Division's web site at:

<http://www.state.nj.us/treasury/taxation/>
□

NJ TeleFile The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1997 income tax return/homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-826-4448 (from anywhere).

Full year New Jersey resident during 1997

Not 65 years of age or older as of December 31, 1997

Same filing status as on your 1996 NJ return

Not blind or disabled as of December 31, 1997

Total New Jersey income of \$150,000 or less

Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

SALES AND USE TAX

Uniform Resale Certificate

The Multistate Tax Commission (MTC) has released a revised version of its "Uniform Sales & Use Tax Certificate—Multijurisdiction." The certificate may now be used in a majority of the 46 states with state sales taxes for the purchase — for resale — of tangible personal property and of otherwise taxable services.

The revised certificate now lists New Jersey as one of the states where the certificate is acceptable. The multijurisdiction certificate is valid in New Jersey in the case of a drop shipment (New Jersey registered vendor sells property to out-of-State customer, but delivers to a location in New Jersey, either to the end user or a third party) or when the buyer and seller are both registered with New Jersey for sales tax purposes. Additional information regarding the proper use of resale exemption certificates appeared in the Summer '97 issue of the *New Jersey State Tax News*.

The certificate is available on the Multistate Tax Commission's World Wide Web site at:

<http://www.mtc.gov/txpyrsvs/s&uexemp.pdf>

and on the Division's web site at:

<http://www.state.nj.us/treasury/taxation/>

The certificate, which may be reproduced, may also be obtained by calling Ms. Ruffin at the MTC at 202-624-8699 or by e-mailing her at **mtc@mtc.gov**. Questions concerning the form may be directed to Michael Mazerov, MTC Director of Information at 202-624-8699 or **mmazerov@mtc.gov**. □

CORPORATION TAX

Corporate Partner Regulation

On September 15, 1997 the Division promulgated a new regulation establishing rules for the taxation of corporate partners. N.J.A.C. 18:7-7.6(a)-(1) enumerates subjectivity requirements and apportionment methods for corporate partners. A brief synopsis of the regulation is as follows:

Subjectivity requirements set forth in N.J.S.A. 54:10A-2 will be satisfied if a foreign corporation is a general partner in a limited or general partnership (or deemed to be a general partner in a limited partnership) doing business in New Jersey. A foreign corporate limited partner of a limited partnership doing business in New Jersey will be subject to taxation if the limited partner is also a general partner of the limited partnership, takes an active part in the control of the partnership business or meets the criteria set forth in N.J.A.C. 18:7-1.9. Also, a membership interest in a limited liability company will satisfy the subjectivity requirements of N.J.S.A. 54:10A-2 if certain criteria set forth in the regulation are met.

For apportionment purposes, when the subject corporation and partnership are not part of a unitary business, separate accounting will determine the corporation's apportioned entire net income. An apportionment factor which includes all partnership attributes (property, payroll and receipts) will be applied to the corporation's distributive share of partnership income and an apportionment factor which includes all corporate attributes will be applied to the corporation's

entire net income (excluding the partnership income). The sum of the two will represent the corporation's apportioned entire net income.

Flow-through apportionment will determine the corporation's entire net income when the corporation's business and the business of the partnership are unitary in nature. Apportionment will be determined by combining the property, payroll and receipts attributable to both the corporate partner and partnership. This combination of corporate and partnership apportionment factors will be applied to the corporation's entire net income, including the distributive share of partnership income, in determining the corporation's apportioned entire net income.

Several examples of the subjectivity requirements and apportionment methods for corporate partners are included in the regulation and should be referred to for further clarification and guidance. The 1997 CBT-100 and CBT-100S include a new schedule (Schedule P-1) where all partnership interests are required to be shown. □

CORPORATION TAX

New Jersey QSSS Requirements

The Small Business Job Protection Act of 1996 changed the Federal tax treatment of S corporations. Under the new law an S corporation will be permitted to own a Qualified Subchapter S Subsidiary (QSSS) and effectively treat the subsidiary as if it were a division. The assets, liabilities, and items of

continued on page 6

qsss requirements - from page 5

income, deduction and credit would flow through to the parent retaining the same character.

As a result of these changes, Federal QSSS's may be recognized accordingly by New Jersey. To obtain recognition as a New Jersey QSSS the revised Form CBT-2553, along with a copy of Federal Form 966, must be filed before the 16th day of the fourth month of the first tax year the election is to take effect. However, the election date has been extended to April 15, 1998, for corporations who wish to conform with the Federal Statute effective date for tax years beginning after December 31, 1996.

To maintain the separate entity principle, every qualified NJ QSSS must file a CBT-100S and pay the minimum tax of \$200. Unless the NJ QSSS formally dissolves or withdraws with the Secretary of State, it will be required to file and pay annually a Corporation Business Tax return and an annual report with the NJ Secretary of State.

The parent corporation must consent to taxation by New Jersey by filing a CBT-100 or CBT-100S which includes the assets, liabilities, income and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent to either consent or file a CBT-100 or CBT-100S for a period will result in the denial of the NJ QSSS status and the subsidiary will be subject to taxation in New Jersey as a C corporation. □

Objections to Plans of Reorganization

Based on the advice of the Office of the Attorney General, the Division has recently instituted new policies with regard to dealing with Plans for Reorganization in Chapter 11 and Chapter 13 insolvency proceedings.

The Division will recommend that the Attorney General file objections to proposed Chapter 13 Plans of Reorganization where there appears to be one or more delinquent Gross Income Tax Returns. On cases where the Plan has been confirmed, but a claim has not yet been filed (yet still prior to the Bar Date), a motion requesting a modification of the Plan will be made to the Court. This new procedure was necessary as the Bankruptcy Courts have prohibited the Division from filing arbitrary Proofs of Claim for non-filers.

All Chapter 11 proposed Plans of Reorganization will be scrutinized to ensure that the Plan contains specific language regarding when payments will be made and the rate of interest provided for during the course of the Plan. Additionally, any Plan that contains provisions that relieve any corporate officers from personal liability for trust fund taxes will be targeted. Since many Chapter 11 Plans contain non-specific language it is expected that the Attorney General will be busy filing Objections to the proposed plans.

Over the past few months a total of one hundred forty-three (143) Objections have been filed. □

GROSS INCOME TAX Common Employer Withholding Errors

With the advent of the revised New Jersey employer withholding remittance and filing format for 1997, the Division has become aware of several common filing and remittance errors:

- Many employers are completing and forwarding quarterly reconciliation returns, NJ-941 or NJ-941-W, with each weekly or monthly withholding remittance. For the second and subsequent payments forwarded this way, the Division's computer system reads these payments and returns as duplicate filings. This not only delays the processing of the payments to the employer's account, but very often results in the generation of erroneous notices of underpayment.
- Some employers are listing the payroll wage amount, instead of the withholding amount as the weekly or monthly liability.
- A number of employers who are required to remit on a weekly basis are remitting the last withholding payment of the quarter with the quarterly reconciliation. The quarterly reconciliation is due the last day of the month following the end of the calendar quarter. However, the last weekly withholding payment is due the Wednesday following the close of the last payroll period for the quarter.

Example: An employer paid wages on Friday, March 28, 1997. The weekly withholding payment was due on Wednesday, April 2, 1997. If the em-

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ployer remitted the withholding payment on April 30, with the quarterly reconciliation, the withholding payment would have been 28 days late.

- Employers who are required to remit weekly must use Form NJ-941-W, the **weekly** filer quarterly reconciliation. The Division is finding that many weekly filers are erroneously using Form NJ-941, the quarterly reconciliation for **monthly** and **quarterly** filers. Since this is the wrong form and the weekly liabilities cannot be entered on this form, the system evenly prorates the reported monthly or quarterly liability to a weekly liability based upon the number of weeks in that month or quarter. This usually results in erroneous interest charges.
- For the payroll periods near the beginning or end of a quarter, many employers are reporting the withholding amount in the wrong quarter. Withholdings should be remitted and reported in the quarter the payroll period ends, and not when the withholdings are due.

Example: An employer paid wages on Friday, April 4, 1997, for the pay period from March 31 through April 4. The withholding liability should have been included as part of the second quarter. If the employer paid wages on Monday, March 31, 1997, for the payroll period March 25 through March 31, the withholdings should have been included as part of the first quarter.

Beginning with tax year 1997, a new notice of underpayment has been put into use for employer withholdings. This new notice details all payments received, the due dates for each withholding remittance, the period to which each payment was applied, the amount of tax on which interest was assessed, and a legend explaining payment codes on the return. The Division is hopeful that the new format and additional information will provide a clearer understanding as to the reason for the notice, and expedite the resolution of any underpayment in dispute. □

GROSS INCOME TAX Forgiveness of Debt Income

After the article on forgiveness of debt income appeared in the Summer 1997 issue of the *State Tax News* several tax practitioners asked for additional information on the subject.

Forgiveness of debt income that passes through to a partner from the discharge or cancellation of partnership indebtedness is taxable as a distributive share item for New Jersey Gross Income Tax purposes. Any distributive share item of income from a partnership represented on the Federal K-1 is taxable to the partner unless the item is specifically exempted by the New Jersey Gross Income Tax law at 54A:6-1 to 6-21.

For Federal tax purposes, under GAAP, if troubled debt restructuring (forgiveness of debt) defined by SFAS 15, para. 2, is settled by an exchange of assets or continued with a modification of terms, an extraordinary gain would be recognized.

The income from forgiveness of debt properly listed as a "1231 gain" or "Other" on the Federal K-1 is classified for New Jersey Gross Income Tax purposes as "Net gains or income from disposition of property" under 54A:5-1c.

Should the forgiveness of debt meet the criteria to be considered as *ordinary* income for Federal tax purposes, the income is "Distributive share of partnership income" for New Jersey Gross Income Tax purposes. □

GROSS INCOME TAX S Corporation Distributions

The reporting and taxing of S corporation distributions to shareholders is governed by N.J.S.A. 54A:5-1f. and 54A:5-14. These rules are the same as for Federal tax reporting purposes, modified as required for New Jersey AAA, E&P and basis differences. Shareholders who receive corporation distributions in transition years and from New Jersey "hybrid" corporations have additional rules which must be considered.

Corporations in a transition period are those corporations going from being a New Jersey C corporation to an electing New Jersey S corporation or vice versa. Distributions declared by a New Jersey C corporation are taxable to the resident shareholders for Gross Income Tax purposes as *Dividends* regardless of the year paid, providing the corporation is not a New Jersey "hybrid" corporation.

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s corp. distributions - from pg. 7

For example:

- X corporation in 1996 is a New Jersey C corporation and a Federal S corporation.
- X corporation makes a New Jersey S election effective 1/1/97.
- X corporation declares a \$1,000 distribution 12/15/96 and pays the distribution on 2/15/97.
- X corporation has \$2,000 in earnings in 1996 and \$3,000 in 1997.
- X corporation has one shareholder who is a New Jersey resident.
- What does the shareholder report on his NJ-1040 in 1996?

The shareholder reports no income from the X corporation on his 1996 NJ-1040. The shareholder is a cash basis taxpayer and does not report the dividend until received.

- X corporation files a 1996 CBT-100 and pays tax at the 9% rate on \$2,000.
- What does the shareholder report on his NJ-1040 in 1997?

The shareholder reports the \$1,000 received from the New Jersey C corporation in February as *Dividends* and their share of the electing New Jersey S corporation's 1997 earnings of \$3,000 as *Net pro rata share of S Corporation Income*.

- X corporation files a 1997 CBT-100S and pays tax at the reduced rate on \$3,000.

"Hybrid" New Jersey corporations are Federal S corporations that have not made the New Jersey S election and are conducting business in and out of New Jersey. For

Corporation Business Tax purposes the corporation is a C corporation. For Gross Income Tax purposes that portion of the corporation's income or loss from within New Jersey is considered C corporation earnings/losses and those earnings and losses from outside New Jersey are S corporation earnings/losses. The income or loss allocation factor used for New Jersey Corporation Business Tax purposes is also used for Gross Income Tax.

The reporting and taxing of distributions received by resident shareholders of a New Jersey "hybrid" corporation are governed by both C corporation and S corporation rules. The distribution must be allocated between the two distinct parts of the corporation. The allocation factor applied to the distribution is that used by the corporation on its CBT-100 tax return.

For example:

- Z corporation in 1996 is a Federal S corporation that has not made the New Jersey S election.
- Z corporation is conducting business in and out of New Jersey.
- Z corporation in 1996 had earnings of \$5,000.
- Z corporation declared and issued distributions of \$3,000 in 1996.
- Z corporation has one shareholder who is a New Jersey resident.
- Z corporation files a 1996 CBT-100 and allocates 50% of its earnings to New Jersey paying tax on \$2,500 at the 9% rate.
- What does the shareholder report on his 1996 NJ-1040?

The shareholder reports their *Net pro rata share of S Corporation Income* not allocated to New Jersey for CBT purposes, \$2,500.

The distribution of \$3,000 is reported and taxed as follows:

1. The distribution is allocated between the C and S portions of the "hybrid" corporation using the allocation factor (50%) used for CBT purposes — \$1,500 to the C corporation part and \$1,500 to the S corporation part.
2. The \$1,500 received from the C corporation part is a dividend and reported and taxed in accordance with N.J.S.A. 54A:5-1f, *Dividends*. All \$1,500 is taxable as *Dividends*.
3. The \$1,500 received from the S corporation part is a distribution and reported and taxed in accordance with N.J.S.A. 54A:5-1f and 54A:5-14.

To the extent 54A:5-14 excludes such distributions from taxation they are not reported on the shareholder's NJ-1040. The \$1,500 received from the S corporation part is not taxable in that the shareholder has \$2,500 in *Net pro rata share of S Corporation Income*. □

DIVISION HOME PAGE

Inheritance & Estate Tax Forms

New Jersey Transfer Inheritance and New Jersey Estate Tax forms may now be downloaded from the Internet at:

<http://www.state.nj.us/treasury/taxation/>

Booklets of forms and instructions to be used in reporting a decedent's estate for Transfer Inheritance and/or New Jersey Estate

forms on internet - from page 8

Tax purposes are included in their entirety – IT-R for estates of resident decedents and IT-NR for estates of nonresident decedents. These two booklets contain all of the forms, schedules, instructions, and rates necessary to prepare New Jersey Transfer Inheritance and New Jersey Estate Tax Returns. However, in addition to the complete booklets, two commonly used forms have been broken out for individual access. These are the self-executing waiver, Form L-8, and Form L-9, which is a request for a waiver. These forms are for use in estates of resident decedents under circumstances more fully described below.

Form L-8 is actually a waiver which is self-executing. It is for Class “A” beneficiaries in the estate of a resident decedent and may be used in the case of a surviving spouse of a decedent dying on or after July 1, 1985 and for any other Class “A” beneficiary of a decedent dying on or after January 1, 1988. More detailed instructions and qualifications are contained in the body of the Form L-8.

Form L-9, unlike the Form L-8, is simply a request for a real property waiver in the estate of a resident decedent. It may be used to transfer real property standing in the name of a decedent alone to a surviving spouse, in the estate of a decedent dying on or after January 1, 1985. Form L-9 may be used for other Class “A” beneficiaries in estates of decedents dying on or after July 1, 1988 and the decedent’s interest in the real estate was in the name of the decedent alone or with any other Class “A” beneficiary. Detailed

instructions are included in the body of the Form L-9.

Form L-9 may be used only when all beneficiaries are Class “A,” there is no tax, and the only reason to file a return would be for the purpose of obtaining a waiver for real estate.

A copy of the will, if decedent died testate, and any codicils and/or deeds of trust must be submitted with the form or a waiver will not be issued.

As always, should there be need for further information or assistance, you may call the Taxpayer Information Section of the Inheritance Tax Branch directly at 609-292-5033, 292-5035, 292-7147 and 777-4559. □

DIVISION HOME PAGE ***Motor Fuel License***

As of August 15, 1997, all New Jersey Motor Fuel Tax License information will be available to you through the Internet.

The information that will be available will be current information. All new licenses issued, all licenses canceled, and any license which may be revoked by the Division will be posted to the Internet on a monthly basis.

The Division’s Internet address is:
<http://www.state.nj.us/treasury/taxation/>
□

Deferred Payments

The *Taxpayers’ Bill of Rights*, Chapter 175, Public Law 1992, provides the Director of the Division of Taxation the authority to enter into payment agreements with taxpayers. Payment

agreements extend the time a taxpayer has to pay a liability and covers the unpaid tax, any penalty owed and interest. Taxpayers need to be aware that interest continues to accrue on the unpaid balance until their liability is paid in full. Requests for payment plans are reviewed on a case by case basis. Taxpayers who are approved for a payment plan sign an agreement that spells out the length of the plan, the monthly payment amount, payment due date, and that all current taxes will be filed and paid as they come due. Additionally, as part of the Payment Plan process, it is the Division’s policy to file a Certificate of Debt in New Jersey Superior Court to protect the interest of the State and to add a five percent Cost of Collections (5% of the payment plan amount) to cover the additional administrative burden of monitoring payment plans. Taxpayers who default on their payment agreements are subject to further collection action. Generally, defaulted taxpayers are referred to one of the Division’s Field Investigation offices for execution on the Certificate of Debt previously filed against the taxpayer’s liability. □

Joint Account Levies

Many questions arise from taxpayers when a joint bank account is levied. Pursuant to N.J.S.A. 17:16I-8 (amended in 1995), all the funds in a joint account are subject to a levy against one of the named holders of the account. Therefore, if only one party is the judgment debtor, the Division may levy upon 100% of the funds in

continued on page 10

joint account levies - from pg. 9

that account. The statute states:

“Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. The following payments from a multiple-party account by the financial institution, including payment of the entire account balance, are deemed authorized by all parties to, and any other person with an interest in, the multiple-party account, without any duty on the part of the financial institution to consider the net contributions of the parties to the account:

- (a) Payments, on request, to any one or more of the parties;
- (b) Payments pursuant to any statutory or common law right of set-off, levy, attachment or other valid legal process or court order, relating to the interest of any one or more of the parties; and
- (c) Payments, on request, to a trustee in bankruptcy, receiver in any state or federal insolvency proceeding, or other duly authorized insolvency representative of any one or more of the parties.

A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.”

If the judgment debtor has access to all funds in the account, the Division may levy against the entire account. □

SALES AND USE TAX

Alcoholic Beverages & Nonprofits

Effective July 1, 1990 all sales of alcoholic beverages are subject to retail sales tax. Not-for-profit organizations are not exempt from sales and use tax on alcoholic beverages sold or given away. Prior to July 1, 1990 all sales of alcoholic beverages were exempt from the retail sales tax. However, they were subject to the Alcoholic Beverage Wholesale Sales Tax Act. The wholesale tax expired as of July 1, 1992.

Sales tax is imposed on all sales of alcoholic beverages. Use tax is imposed on all alcoholic beverages given away to club members and guests. Use tax is also imposed on alcoholic beverages donated to organizations for fund raising functions.

Sales tax is based on the total receipts received by the club. Sales tax is submitted either monthly or quarterly. Monthly returns (ST-51) are due only if the organization collects sales tax of more than \$500. If monthly collections are \$500 or less, sales tax can be reported on the quarterly return (ST-50). All returns are due on the 20th of the following month.

Use tax (6%) is based on the purchase price of the alcoholic beverages given away or donated. This is reported on Line 5 of the Quarterly Sales & Use Tax Return. □

LOCAL PROPERTY TAX

Reorganization of Activity

Assistant Director, Stephen M. Sylvester recently wrote “I would

like to take this opportunity to advise anyone with an interest in local property administration of the reorganization of the local property activity within the Division of Taxation. This reorganization shifts existing personnel and resources to more effectively accomplish the mission of local property, that is, the uniform and equitable administration of local property tax statutes.

“Local Assessment Compliance Section, under the direction of Jim Coll, has responsibility for railroad valuation, tax maps, and assessment compliance at the local level. Harris Adams will continue to direct the Policy and Planning Section in legislative and regulatory issues, farmland assessment, and general administrative activities. This section will become more proactive in the areas of revaluations/reassessments, and in statute administration at the county tax board level. The Field Assistance Section, directed by George Lorbeck, will continue to ensure the integrity of the Director’s Table. Field personnel have been reassigned to the Division’s regional offices and will be making greater use of technology in the review of sales. Also, a Technical Support Group has been created to be proactive in education and training, as well as providing expertise in MOD IV and local property systems issues.

“This reorganization, together with the assistance of county tax board commissioners, county tax administrators, and assessors, is expected to improve our administration of statutes and regulations so that the local property taxpayer is better served.

continued on page 11

reorganization - from page 10

“In closing, I would like to thank the county tax boards for their years of cooperation with our field staff, the assessors for their diligence in a difficult field, and the employees of Local Property for their dedication. I look forward to working with all of you in meeting the challenges ahead.” □

LOCAL PROPERTY TAX ***Tax Assessors’ Calendar***

January 1–

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors’ omitted assessment appeals completed by County Tax Board.

January 10–

- Notice of material depreciation to structure occurring after Oct. 1 and before Jan. 1, given to assessor by taxpayer.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- One copy of each Farmland Assessment application, FA-1, forwarded to Property Administration by tax assessor.
- Two copies of Form SR-3A filed with County Tax Board.

- Statement of estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1–

- Notices of current assessment and preceding year’s taxes mailed to taxpayer by tax assessor.
- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding year’s taxes, or change in assessment, extended by County Tax Board for any taxpayer aggrieved by the assessed valuation of his property or of other property in the county.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Schedule of office hours for assessors summarized by County Tax Administrator and furnished to Director, Division of Taxation.

March 1–

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the court house.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On July 7, 1997, James Zahl of Holmdel entered a plea of not guilty to an accusation charging him with misapplication of entrusted property consisting of \$38,206.45 in sales tax collected by Zahl’s corporations, North Wood Outings Ltd. and Hazienda Evergreen, and not remitted to the State from October 1, 1990, to December 31, 1993. Zahl waived his right to have the case presented to a grand jury. He has applied for admittance into the Pre-Trial Intervention Program. This case was investigated by the Office of Criminal Investigation and is being prosecuted by the State Attorney General’s Office.
- New Jersey Division of Taxation agents uncovered 99 tax violations during a two-day sweep of 61 retail establishments selling cigarettes and motor fuels in the cities of Ventnor, Margate and Longport. On Tuesday, July 15, and Wednesday, July 16, 1997, Division staff from the Field Audit Branch, Investigations Branch and the Office of Criminal Investigation conducted the sweep. The purpose of the inspections was to ensure compliance with licensing and registration requirements of New Jersey’s Cigarette Tax, Tobacco Products Wholesale Sales and Use Tax, Motor Fuels Tax and Sales and Use Tax laws. The Division has been conducting organized sweeps of

continued on page 13

'72 – A Year to Remember vs. '97

- | | |
|---|---|
| <ul style="list-style-type: none"> • Bread — 30¢ a loaf • The Division of Taxation opened a taxpayer information facility at its Barrack Street Lobby along with six other field offices • Butter — 89¢ a pound • State sales tax rate — 5% • Lamb chops — \$2.00 a pound; pork chops — \$1.40 a pound; • The State Assembly voted down the recommendation for a personal State income tax • <i>The New York Times</i> advertised a job for an accountant paying \$15,000/yr • Legislation was passed increasing rates for the alcoholic beverage, cigarette, corporation net income, emergency transportation and motor fuels taxes • New York's 110-story World Trade Center opened • First-class postal rate — 8¢ an ounce • Revenues collected for the fiscal year reached a new high of \$1.4 billion, an increase of \$119.3 million or 9.1% over the previous fiscal year | <ul style="list-style-type: none"> • Bread — \$1.29 a loaf • Although some locations have changed, the Division continues to operate the Barrack Street Lobby along with six other field offices • Butter — \$2.69 a pound • State sales tax rate — 6% • Lamb chops — \$3.29 a pound; pork chops — \$2.89 a pound; • State income tax introduced in 1976 remains in effect today at graduated rates of 1.4% - 6.37% • <i>The New York Times</i> advertised a job for a senior accountant paying low to mid \$30k and good benefits • Legislation was passed reducing the tax rate for New Jersey S corporations; the second phase of the property tax deduction/credit went into effect and the NJ Better Educational Savings Trust Program was established • New Jersey Performing Arts Center opened in Newark • First-class postal rate — 32¢ an ounce • Revenues collected for the fiscal year were \$14.9 billion, an increase of \$315 million or 2.1% over the previous fiscal year |
|---|---|

How do you remember the Division

What has changed since then?

What do you think has been the most



Who Was Who in '72

Governor — William T. Cahill

State Treasurer — Joseph M. McCrane, Jr.

Director — Sidney Glaser *

Deputy Director — J. Robert Murphy

Superintendent, Administrative Activity — Augustus J. Costigan

Superintendent, Collection & Enforcement Activity — Robert J. Costigan *

Superintendent, Audit Activity — Edward S. Landerkin

Asst. Superintendent, Collection & Enforcement Activity — John R. Baldwin *

Asst. Superintendent, Audit Activity — Harold Leib *

Chief, Processing Branch — Richard D. Gardiner *

* Pictured at left

Division Employees Reminisce — A group of Division employees with 25 or more years of service was asked to give us some insight on what they remember about the Division as it was 25 years ago. Here is what they said:

in 1972?

- We were still adjusting to the growing pains from merging Bureaus and still in transition organizationally from a tax bureau alignment to the functional organization that has developed today.
- The Division operations were basically manual (non-computerized) for all tax administration functions.
- Governor Cahill's Tax Policy Commission had just completed a two year study of the tax system and had issued a five volume report for reforming the entire State tax structure. The Division, which assisted the Commission during the study, was called upon to draft sixty-two bills based upon the Commission's recommendations.

- Much more is accomplished today with fewer employees because of advanced technology and the higher level of understanding of what we do and how we do it.
- The need for information and the technology to supply it has transformed the Division into a highly automated and productive agency.
- Efficiency has increased due to combining collection on all taxes through field office collection activities and filing judgments for multiple taxes.
- Change in the locations and management of tax records.

significant event within the Division in the last 25 years?

- Our growth from intrastate tax issues to northeast regional issues and national concerns.
- The introduction of computers back in 1985.
- The implementation of image processing.
- The Gross Income Tax Act was enacted. The impact of the new program upon the Division was dramatic. Substantial resources were needed to administer the income tax law and the new homestead rebate program.
- Reliance on technology and reorganization. We are more accessible now.

criminal enforcement - from page 11

downtown business districts, malls, flea markets, expos, and crafts, antique and collectible shows. However, this is the second operation that the Division has conducted that focused on the sale of cigarettes. The first such operation took place in the city of Elizabeth in February 1997.

- On August 13, 1997, Michael Eliasof of Mahwah was sentenced in Superior Court, Passaic County. Eliasof previously pleaded guilty to charges that he withheld from his employees' pay but failed to remit \$40,904.38 in gross income tax. Since entering his plea, he has made restitution of \$1,700. Eliasof was sentenced to 48 months probation and ordered to make restitution in the amount of \$39,204.38 to the State of New Jersey.
- Four of twelve original individuals indicted on March 7, 1996, who were alleged to have affiliations with the Genovese crime family and were indicted at the time for racketeering, conspiracy, criminal usury, promoting gambling, possession of gambling records and tax evasion were sentenced. William Cappiello of Long Branch, who pleaded to one count of racketeering and one count of liability for the conduct of another/complicity, was sentenced to six years in prison and fined \$5,000. Andre Domando of Nutley, who pleaded to one count of racketeering, was sentenced to seven years in prison

and fined \$1,000. Anthony Gulla of West Caldwell, who pleaded to one count of racketeering, was sentenced to seven years in prison and fined \$2,500. Allan Pilione of Clifton, who pleaded to one count of racketeering, was sentenced to seven years in prison and fined \$2,500.

- On September 12, 1997, in Superior Court, Camden County, Patricia Rouse of Runnemede, was sentenced to 60 months probation and ordered to pay restitution of \$2,000 in tax, penalty and interest to the State. Rouse pled guilty in July to filing a fraudulent 1994 New Jersey income tax return, which failed to report \$24,425 in illegal income that she embezzled from her employer. She also pleaded guilty to the embezzlement, which totaled \$77,000, and was ordered to make full restitution to the victim of the embezzlement. This case was investigated jointly by the New Jersey Division of Taxation, Office of Criminal Investigation, and the Camden County Prosecutor's Office.
- On September 8, 1997, Benjamin Hernandez was sentenced in Essex County Superior Court to three years in prison and ordered to pay any taxes due to the State. Hernandez, a Newark bar owner, paid \$2,000 in bribes to a former Division of Taxation Auditor to reduce his liability in a liquor project audit. In September 1996, Hernandez was arrested after an investigation by the Office of Criminal Investigation and Internal

Security Unit and the New Jersey State Police/Criminal Justice Corruption Unit. In July 1997, Hernandez pleaded guilty to one count of bribery.

- During the month of September, the Office of Criminal Investigation prevented the mailing of three fraudulent personal income tax refunds in the amount of \$3,765.32. Three aliases were used in filing 1996 returns. This investigation is the result of a continuing cooperative effort between the states and the U.S. Postal Authorities.
- Fifteen guilty pleas for twelve cases were entered in municipal courts throughout the State during this reporting period by individuals and businesses for noncompliance with the cigarette tax law. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$6,545 and the awarding of 1,812.8 cartons of cigarettes, valued at \$36,256 to the State. In addition to the cigarettes being forfeited to the State, a 1991 Dodge van, valued at \$11,000 was forfeited to the State.
- A total of twenty-eight charges were filed in municipal court for eleven cases. Twenty-one charges were for violations of the cigarette tax law, which includes transporting, possessing, no invoices and no consumer's license. Five of eleven cases resulted in the seizure of 6,610.5 cartons of contraband cigarettes, valued at \$132,210. □

Enforcement Summary

Civil Collection Actions Quarter Ending - September 30, 1997

Following is a summary of enforcement actions for the quarter ending September 30, 1997.

Certificates of Debt

During the quarter ended September 30, 1997, the Division filed 4,079 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$45.9 million.

Levies

\$52,833 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending September 30, 1997, \$293,167 was collected from jeopardy assessments.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending September 30, 1997, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 18.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending September 30, 1997, seven auctions were held by the Division. A listing follows on page 20.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes,

but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending September 30, 1997, 974 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$3.5 million in revenue during the third quarter of 1997.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$107.5 million from holders of the various types of licenses subject to audit and collected \$98.7 million. The Division of Taxation expects to collect a total of \$150 million during the three-year program.

During the quarter ending September 30, 1997, 177 notifications of liquor license transfer were received by the Division's Bulk Sales section. Twenty-three (23) audits relating to this project and previously requested were com-

pleted; assessments from those audits totaled \$1.2 million. □

Tax Briefs

Corporation Business Tax

Deduction of Charitable Contributions — In general, Line 28 of the CBT-100 should reflect the amount of income shown on Federal Form 1120, Line 28, since N.J.S.A. 54:10A-4(k) provides that “the amount of a taxpayer’s entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income.” There is no provision of New Jersey law that would allow further use of unused charitable deductions below Line 28. Therefore, the corporate taxpayer is not permitted to deduct additional charitable deductions, unused for Federal purposes in the current year, on the New Jersey CBT-100 below Line 28.

Gross Income Tax

Income Tax Liability of a Minor — A taxpayer asked the State tax consequences of establishing an account in a mutual fund for a minor daughter under her name and social security number.

Every individual in New Jersey with income is subject to the gross income tax, regardless of age. The daughter’s account would be subject to the gross income tax. However, if her total income is less than \$7,500, she would not be required to file or pay tax under current law. If her income exceeds \$7,500, an income tax return must

be filed on her behalf by her fiduciary or other person charged with her care. The gross income tax statutes and regulations would apply to her in the same manner as to any other taxpayer.

Litter Control Tax

Advertising Space — The Division received a letter inquiring as to a company’s subjectivity to the litter control tax.

They advised that they are in the business of selling advertising to business people which is to be published in telephone directories. The published directories are distributed, free of charge, to business firms and residents in New Jersey communities. The directories are produced and distributed by outside contracting vendors.

The Clean Communities and Recycling Act levies a litter control tax on all manufacturers, wholesalers, distributors and retailers engaged in business in New Jersey on the gross receipts from sales of litter generating products within or into the State. N.J.S.A. 13:1E-99.1a.

Litter generating products are defined in the law, at N.J.S.A. 13:1E-94e, to include the following 15 categories of products:

1. Beer and other malt beverages;
2. Cigarettes and tobacco products;
3. Cleaning agents and toiletries;
4. Distilled spirits;
5. Food for human or pet consumption;
6. Glass containers sold as such;
7. Groceries;
8. Metal containers sold as such;
9. Motor vehicle tires;

10. Newsprint and magazine paper stock;
11. Nondrug drugstore sundry products;
12. Paper products and household paper;
13. Plastic or fiber containers made of synthetic material and sold as such;
14. Soft drinks and carbonated waters; and
15. Wine.

The tax does not apply to sales of services.

A company solely engaged in making sales of advertising space as described in the letter and not selling any tangible personal property which falls within one of the enumerated categories is not subject to the litter control tax.

Sales and Use Tax

Sales Tax Due on an Accrual Basis — The Division received a request for permission to remit sales tax on a cash, instead of an accrual, basis.

The Division explained that in New Jersey vendors do not have the option of remitting sales tax on a cash basis. Vendors are required to file returns and remit sales tax on an accrual basis. The tax is due for the period when the sale took place, i.e. when the goods were transferred to the customer or the services were rendered, even if the customer has not yet been billed, or failed to pay in full. The accrual method of remitting sales tax is implicit in the definition of “sale” as taking place when goods are transferred to the purchaser or services are rendered, N.J.S.A. 54:32B-2(f), and in the provision

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governing the filing of returns by vendors, N.J.S.A. 54:32b-17. It is further clarified in the Division's regulations on bad debts, N.J.A.C. 18:24-23.1 *et seq.*

Book and Periodical Rentals —

The Division received an inquiry regarding the sales tax collection obligations of a store operating a private library service. The taxpayer explained that the business will provide books, magazines, comics and other reading material to its customers in two ways. Customers may take an item out for several days, for a rental charge. They may also read materials inside the store. In that case, they will be charged based on the quantity and type of materials that they select to read in the store.

Charges for taking out books or for reading them in the store will be taxable as receipts for the "sale" of taxable tangible personal property. N.J.S.A. 54:32B-3(a). For purposes of the Sales and Use Tax Act, a "sale" includes any transfer of title *or possession* for consideration. N.J.S.A. 54:32B-2(f). It therefore encompasses both the "rental" of books that are taken home for a few days for a rental charge and the "license to use" books that are read in the store, for a charge based on the materials

selected. *Ibid.*

Newspapers, magazines and periodicals, however, are exempt from sales and use tax. N.J.S.A. 54:32B-8.5. Therefore, charges for taking out or using materials that qualify as newspapers, magazines or periodicals (N.J.A.C. 18:24-1.2 and 1.3) are not subject to tax.

Manufacturer's Rebate — The Division received a request for information regarding the sales tax treatment of a manufacturer's rebate. The taxpayers stated that when they purchased a new motor vehicle, they were charged sales tax on the full price, even though they would be receiving a \$1,500 rebate from General Motors. They questioned whether the tax should have been calculated instead on the purchase price *minus* the expected rebate.

The Division explained that the dealer is correct in collecting sales tax on the full retail price of the car before the rebate. Sales tax must be charged on the total "receipt" from a retail sale, i.e. the actual amount of the sales price payable to the retailer. See N.J.S.A. 54:32B-2(d). If a retailer chose to sell an item at a discounted price, the customer should be charged tax on the discounted price payable to the retailer, not on the original price before reductions. The reduced

price is the "receipt" on which the 6% sales tax is calculated.

However, when a customer pays a full price, but is then reimbursed *by the manufacturer* for part of that price, in the form of a manufacturer's rebate, the tax is due on the full price originally payable to the retailer. This is because the retailer is receiving the full price, and sales tax is calculated on the total "receipt" payable to the *retailer*. Similarly, if a customer pays the retailer a reduced price by using a *manufacturer's* coupon or by relying on a rebate that the *manufacturer* will send to the retailer as part of the customer's payment, the customer will owe tax on the full price. The "receipt" payable to the retailer will be the total of the reduced price payable by the customer plus the amount that the retailer will receive from the manufacturer (measured by the face value of the coupon or rebate). Sales tax is calculated on that total "receipt," not just on the portion of the receipt paid by the customer.

Spill Compensation and Control Tax

Cap Computation Revised — The following Notice was sent to all Spill Compensation and Control Tax registrants:

Cap Revision

An amendment to the Spill Compensation and Control Act was signed into law effective June 27, 1997. P.L. 1997, c.134 affects only Spill Compensation and Control taxpayers who had more than one major facility in 1986 and had a tax liability in 1986. Such taxpayers have qualified for a "Cap" on their spill tax payments in each

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subsequent tax year of no more than 125% of their 1986 spill tax liability.

P.L. 1997, c.134 provides for a cap computation revision which states, "In computing 125% of the tax due and payable by the taxpayer during the 1986 tax year, for taxes due after January 1, 1996 from an owner or operator of one or more major facilities who has continuously since 1986 filed a combined tax return for more than one major facility but who prior to January 1, 1996 has closed one or more of those major facilities, a taxpayer shall include 1986 taxes arising from major facilities which (1) caused the taxpayer to incur a tax liability in 1986, and (2) continue to cause the taxpayer to incur a tax liability during the current tax year."

This special cap provision is limited only to taxpayers who:

1. Continuously filed spill tax returns since 1986; and
2. Filed a combined return for more than one major facility in 1986; and
3. Have closed one or more of those major facilities prior to January 1, 1996.

Such taxpayers should, for taxes due on and after January 1, 1996, compute their cap in any tax year at 125% of their 1986 taxes only from major facilities they operated in 1986 and currently continue to operate. They should not include in their 1986 tax base taxes attributable to facilities they discontinued operating subsequent to 1986.

Elemental Phosphorus

P.L. 1997, c.134 also amends the tax rate applicable to transfers of substances which are or contain *elemental phosphorus*. Such transfers are taxed, effective June 27, 1997, at a rate of \$0.015 per barrel of the hazardous substance. Also, for transfers which are or contain elemental phosphorus, in computing the 125% of the taxes due and payable by the taxpayer during the *1986 tax year*, a capped taxpayer shall calculate the tax at \$0.015 per barrel.

Metals and Gas

Spill tax registrants should also take note that, due to amended Department of Environmental Protection rules, effective October 7, 1996, the following substances shall not be considered hazardous substances:

1. *Metals* in either their pure elemental form or alloyed, in solid pieces with at least one dimensional measurement equal to or exceeding 100 micrometers (0.004 inches) or chemically bonded to an inert substrate.
2. Any *flammable or inert gas* on the List of Hazardous Substances designated by an asterisk.

Additional Information

Any capped taxpayers seeking a refund for taxes overpaid since January 1, 1996 due to P.L. 1997, c.134 or any taxpayer seeking a refund due to the payment of taxes, since October 7, 1996, on solid metals or designated flammable or inert gas substances must submit a Claim for Refund form. Requests for forms, Lists of Hazardous Substances or additional clarification of these changes should be directed to: **Tax Services Branch,**

**Division of Taxation,
P.O. Box 269, Trenton,
NJ 08646-0269; Telephone: 609-
292-5994.**

Urban Enterprise Zone

Employee Tax Credit — The definition of "full-time" employee for purposes of the UEZ employee tax credit (Form 300) means an employee who works at least 30 hours per week. Note that the Labor Department Annual Certification and Calculation of Employer Unemployment Tax Rebate describes a full-time employee as a 30 hour per week employee. The Division has agreed to define full-time employee as an employee who works at least 30 hours per week. This allows for consistency with the Labor Department definition. The other elements of the definition of full-time employee at N.J.S.A. 52:27-78 and N.J.A.C. 18:7-15.4(e) and (f) remain applicable. □

In Our Courts

Local Property Tax Superintendent's Residence Denied Exemption — *Pompton Lakes Senior Citizens Housing Corp., Plaintiff, v. Borough of Pompton Lakes, Defendant*, 16 N.J. Tax 331 (Tax Ct. 1997).

The State Tax Court denied a "charitable purposes" real estate tax exemption per N.J.S.A. 54:4-3.6 on the superintendent's residence in a low income senior citizen housing complex where the

Division of Taxation Seizures (July – September 1997)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Kelly's Grille and Tavern t/a South Beach 9300 Amherst Ave. Margate	8/22/97	Bar/nightclub	Closed
	Joseph R. Lazarus Northfield	9/8/97	N/A	Vehicle released
	Jo Jo's Tavern 263 S. New York Rd. Galloway	9/25/97	Tavern	Closed
Bergen	356 Bergen Blvd. Corp. t/a The Loft 356 Bergen Blvd. Fairview	7/25/97	Bar/restaurant	Liquor license seized
Camden	ALSSIP, Inc. t/a Leo's 4th Street Cafe 1901 S. 4th St. Camden	7/25/97	Bar	Liquor license seized
	Matthew S. Weber t/a Dr. Scrub Maintenance Corp. 1 Nashua Dr. Sicklerville	8/26/97	Janitorial service	Vehicle seized
	AKME Enterprises t/a Scopello's Pizza 1661 Blackwood-Clementon Rd. Blackwood	9/14/97	Pizzeria	Closed
Cape May	Heaven Cent, Inc. t/a Rainbow Shops Boardwalk North Wildwood	7/2/97	Gift/souvenir shop	Closed
	Heaven Cent, Inc. t/a Rainbow Shops Pier C North Wildwood	7/2/97	Three gift/souvenir shops	Closed
Essex	373 Wines and Liquors 373 W. Market St. Newark	8/5/97	Liquor store	Closed
	C & D Supermarket 910 18th Ave. Newark	9/4/97	Convenience store/ liquor store	Liquor license seized
Hudson	Central Stationery 628 Newark Ave. Jersey City	7/22/97	Stationery/cigar store	Reopened
	Your Place Liquors 2815 Bergenline Ave. Union City	8/8/97	Liquor store	Liquor license seized
	T. J. Hill Advertising 3323 Paterson Plank Rd. North Bergen	9/12/97	Advertising agency	Closed

continued on page 19

taxation seizures - from page 18

County	Name/Address	Seizure Date	Business Type	Status
	Rockwell Kitchen Cabinet Wholesale 3323 Paterson Plank Rd. North Bergen	9/12/97	Cabinetry shop	Closed
Middlesex	J. & E. Guiang Old Bridge	7/9/97	N/A	Vehicle released
Monmouth	Anthony Lodato t/a Cabinet Carpentry Designers, Inc. 63 Shark River Rd. Neptune	7/8/97	Builder	Vehicle released
	Cinwood Corp. t/a Woody's Service Center 570 Joline Ave. Long Branch	7/18/97	Service station	Reopened
	Dom's Liquor and Beverage t/a The Highland Inn 49 Carr Ave. Keansburg	9/4/97	Bar/restaurant	Liquor license seized
	Loyal Order of Moose/Bayshore Lodge 603 Mayne & Myrtle Aves. Keansburg	9/4/97	Social club/fraternal organization	Liquor license seized
	James P. D'Amore Freehold	9/8/97	N/A	Stock seized
	The Crawford Group 12 Monmouth St. Red Bank	9/23/97	Jewelry retail and manufacturer	Reopened
Ocean	BPOE Lodge 42 4th Ave. Lakewood	7/2/97	Social club	Liquor license seized
	105 River Ave. Corp. t/a Paterson's Sunset Cabin 105 River Ave. Lakewood	9/4/97	Restaurant/bar	Liquor license seized
Passaic	Inca Liquors 59 Carroll St. Paterson	7/29/97	Bar	Liquor license seized
	Quarmot & Sons, Inc. t/a Q & S Convenience Store 766 Hamburg Tpk. Pompton Lakes	9/8/97	Deli/liquor store	Closed
Union	Brandee & the J's, Inc. t/a Kelly's Transit Tap Room 16 W. Grand St. Elizabeth	9/4/97	Tavern	Liquor license seized
	23 East Avenue Corp. t/a Demsey's 23 East Ave. Elizabeth	9/4/97	Tavern	Liquor license seized

Division of Taxation Auctions (July – September 1997)

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Camden	Mena, Inc. t/a Berlin True Value Liquors 251 S. White Horse Pk. Berlin	7/16/97	Liquor store	Liquor license
Gloucester	Michelina, Inc. t/a Domenico's Pizza 931 Red Bank Ave. West Deptford	7/15/97	Pizzeria	Restaurant equipment
Mercer	Herzon D. Miller t/a H & M Auto Sales 620 Calhoun St. Trenton	7/12/97	Auto dealership	Three vehicles auctioned; one vehicle released
	Herzon D. Miller t/a H & M Auto Sales 620 Calhoun St. Trenton	7/12/97	Auto dealership	One vehicle
Monmouth	Dapper Duck, Inc. t/a Harborside Inn 42 First Ave. Atlantic Highlands	7/7/97	Bar/restaurant	Liquor license; alcohol; bar and restaurant supplies
Union	James C. Yelverton t/a Jim's Wine and Liquor 408 Jefferson Ave. Elizabeth	7/28/97	Package goods store	Liquor license
	23 East Avenue Corp. t/a Demsey's 23 East Ave. Elizabeth	9/24/97	Tavern	Liquor license

in our courts - from page 17

complex qualified for abatement and paid in lieu of taxes for municipal services under N.J.S.A. 40A:20-1 *et seq.*, the Long Term Tax Exemption Law and N.J.S.A. 55:14K-37 *et seq.*, the Housing and Mortgage Finance Agency Tax Exemption Law. Both the superintendent's residence and the housing complex were owned by a nonprofit corporation formed as provided by N.J.S.A. title 15A.

The superintendent was a full-time resident responsible for overseeing all custodial, maintenance and grounds workers for the 100 unit

complex and for providing emergency access to police and first aid squads when needed. Each apartment's alarm system was also wired to the superintendent's residence.

Under N.J.S.A. 54:4-3.6, residential property owned and used by otherwise exempt charitable, religious or hospital organizations can be exempt only derivatively through those organizations. The two-fold test established in *Clinton Twp. v. Camp Brett-Endeavor* requires that a residence be predominantly used as an integral part of the exempt organization's operations rather than as a convenience

to the occupant and that it be reasonably necessary for the proper and efficient operation of the exempt organization. Despite the fact that the housing complex had not applied for or received the necessary exemption under 3.6, the housing corporation contended that the residence fulfilled a charitable purpose and met both test criteria in *Camp Brett-Endeavor*.

Denying the exemption, Tax Court conceded that the superintendent's residence was an integral part of the housing complex's operation and reasonably necessary for its efficient operation. However,

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although the housing corporation's purposes were commendable and the apartment complex filled a significant need for housing, the exclusive charitable organization and use requirements of 3.6 were not met. According to the Court, the corporation's purpose "to plan, sponsor, construct, operate, maintain...housing projects for the senior citizens of Pompton Lakes on a non-profit basis" did not express, contemplate or require charitable purpose. Its non-profit and Federal tax exempt status also did not guarantee charitable purpose. Neither was the housing complex put to charitable use because it did not relieve government of the burden of subsidizing tenants and rents were equal to or slightly higher than fair market rent. In *Salt & Light Co., Inc. v. Mount Holly Twp.*, it was ruled that receipt of government funds did not disqualify a charitable entity from exemption as long as it at least partly relieved a burden on government. This housing corporation subsidized no rents.

Because the housing complex did not qualify for charitable exemption under N.J.S.A. 54:4-3.6, the superintendent's residence cannot qualify on a derivative basis. □

In Our Legislature

Gross Income Tax

Extension for Armed Forces Personnel in Qualified Hazardous Duty Area — P.L. 1997, c.207 (signed into law on August 14, 1997) provides for an extension of time to file and pay gross income tax and certain other relief provisions for individuals in the Armed Forces who may be serving in an area designated a "qualified

hazardous duty area" by Federal statute. This legislation affects New Jersey residents currently serving in Bosnia and Herzegovina, Croatia and Macedonia. The act is effective immediately and applies to taxable years beginning on or after January 1, 1996.

Set-Off of Individual Liability for Debt Owed to Violent Crimes Compensation Board — P.L. 1997, c.226 (signed into law on August 25, 1997) provides for the set-off against and collection from an individual's State gross income tax refund and/or homestead property tax rebate of any debt the individual owes to the Violent Crimes Compensation Board for assessments or restitution ordered to be paid by the individual to the board for compensation of victims of crimes and their families. This act takes effect immediately.

New Jersey Better Educational Savings Trust Program Established — P.L. 1997, c.237 (signed into law on September 2, 1997) establishes a college savings plan known as the New Jersey Better Savings Trust Program in the Higher Education Assistance Authority. The program will provide a mechanism to allow families to plan ahead for the costs associated with college attendance and to save funds to meet those future costs. The program will be administered by the Office of Student Assistance. Earnings on and distributions from New Jersey Better Educational Savings Trust Program accounts are exempt from New Jersey gross income tax. This act takes effect immediately.

Miscellaneous

Uniform Enforcement of Foreign Judgments Act — P.L. 1997, c.204 (signed into law on August 14,

1997) provides for the filing of foreign judgments with the Clerk of the Superior Court of New Jersey. Under this act, a foreign judgment means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State. The clerk shall treat the foreign judgment in the same manner as a judgment of the Superior Court of New Jersey. This legislation takes effect immediately.

Trust Powers of Certain Not-for-Profit Corporations — P.L. 1997, c.245 (signed into law on September 9, 1997) amends a provision of the Banking Act of 1948 administered by the Department of Banking and Insurance. It allows qualified non-profit corporations to perform certain functions presently reserved to banks. In particular, the bill allows educational institutions to act as trustee of funds in which the institutions have an interest. Subsection (d) provides that qualified corporations and qualified educational institutions shall be subject to any regulations adopted by the Commissioner of Banking and Insurance and subject to examination by the Department of Banking and Insurance to ensure compliance with those regulations. This act takes effect immediately but the amendments to subsection (d) shall remain inoperative until 180 days after enactment. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
					1	2	3
1	4	5	6	7	8	9	10
9	11	12	13	14	15	16	17
9	18	19	20	21	22	23	24
8	25	26	27	28	29	30	31

January 12

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

January 20 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 26

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
	1	2	3	4	5	6	7
1	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
8	22	23	24	25	26	27	28

February 2

- NJ-941 & NJ-941-W Gross Income Tax**—Employer's quarterly return

February 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

February 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

February 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

February 20 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
8	22	23	24	25	26	27	28
	29	30	31				

March 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

March 16

- CBT-100** Corporation Business Tax—Annual return for accounting period ending November 30

continued

March 16 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

March 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

March 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

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from the director's desk

Special Message to Tax Practitioners

The Division urges all tax practitioners to continue to follow these procedures for submitting resident returns:

- **NEW – Filling in the Ovals.** This year ovals have replaced check-boxes on the tax return and homestead rebate application. When completing forms, fill in the applicable ovals completely. This will ensure that the form is scanned successfully.
- Do not staple, tape, paper clip or use any other fastening device to attach enclosures to Form NJ-1040, or to attach the return pages together.
- Mail returns and enclosures (flat, not folded) in 9" x 12" envelopes (whenever possible).
- Send 8½" x 11" copies of W-2s rather than the form itself (whenever possible). You may photocopy multiple W-2s (if space permits) on an 8½" x 11" sheet.
- Use the correct envelope/address. Use the small window envelope to mail the payment voucher with any balance of tax due. Please do not send a payment in the envelope with the return.
- **FILE ONLY ORIGINAL FORMS.** Do not submit *copies* of the resident return and rebate application form.
- Use only blue or black ink when completing forms.
- **MAKE NO ENTRY** on unused lines or any line where the amount to be reported is zero or less. (Exception: If no use tax is due, enter "0.00" on Line 40.)

Thank you for your continued cooperation.

New Jersey State Tax News

Fall 1997

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State Treasurer Named



On July 1, 1997, Governor Christine Todd Whitman appointed James A. DiEleuterio to succeed Brian W. Clymer as State Treasurer. This is only the second time in 40 years that a career State employee has been chosen for this position. Mr. DiEleuterio served as Deputy State Treasurer since 1996. But, most of his State career was spent with the Division of Taxation.

His first assignment with the Division was in the Special Procedures Branch. Mr. DiEleuterio later served the Division as Cash Receipts Account System (CRAS) Manager, Budget & Fiscal Manager, Chief of Management Services and Long Range Planning Manager. Mr. DiEleuterio's most recent assignments with the Divi-

sion were as Chief of Staff and Assistant Director of Processing and Administration. In regard to how his taxation background affects his new role, Treasurer DiEleuterio said, "My tax background has been and will continue to be very helpful in not only seeing the issues but in making decisions. This background allows me to understand the tax issues and their impact on the State budget." Shortly after his swearing in as Treasurer, Mr. DiEleuterio shared some insights on his plans for the future.

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important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
.....	609-588-2525
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation/>

new treasurer - from page 1

"I fully support Governor Whitman's goal of a smaller, smarter State government. I plan to continue to reduce operating costs, improve service to the public and raise revenue," said DiEleuterio.

Treasurer DiEleuterio is firmly committed to the use of new technology in State government. "The application of technology is not only appropriate but necessary," said DiEleuterio. "Technology helps free people from the necessity of doing repetitious work and allows them to do more creative work. Substantial strides have already been made, but we still have a target-rich environment for the use of technology, not only to process returns but also to communicate better and faster within the Treasury Department and with New Jersey's taxpayers and practitioners."

"Communication is so important to what we do," said DiEleuterio. "The average citizen just doesn't have exposure to government policies and procedures. It is our obligation to tell citizens how to comply with our laws," said DiEleuterio, "and to provide multiple ways to comply. Publications like the *New Jersey State Tax News* are important educational tools."

Treasurer DiEleuterio believes that government must work closely with the tax practitioner community. "About 50% of the returns we process are prepared by paid preparers," said DiEleuterio. "That is why a continuing dialogue with the practitioner community is extremely important to effective and efficient tax administration. I will continue to rely upon the New Jersey practitioner community to point out issues and areas of con-

cern to their clients," concludes DiEleuterio, "just as I rely on Treasury employees to bring their best ideas forward. We're all in this together. We're all taxpayers and we bring different perspectives to tax issues. I look forward to a challenging and productive tenure as State Treasurer." □

Federal Pensioners Can Now Have NJ Tax Withheld

The 55,000 Federal retirees living in New Jersey can now opt to have State income taxes withheld from their pension checks, Taxation Division Director Richard D. Gardiner announced. Until now, retired Federal employees in New Jersey had to file estimated tax payments on a quarterly basis.

"This is going to make things much easier for the retirees and eliminate paperwork for both the individuals and the Division of Taxation," said Gardiner.

The option, which became available July 1, is a new feature of Annuitant Express, a service offered by the Federal Office of Personnel Management (OPM), the agency which oversees Federal pensions.

It was made possible for New Jersey residents through a memorandum of understanding signed by the New Jersey Division of Taxation, the Division of Revenue, and OPM.

Federal retirees received a letter from OPM explaining how they can authorize the State income tax withholding by calling a toll-free

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Richard D. Gardiner

News Coordinators for This Issue:

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<i>Office Audit</i>	Josephine Comfort
<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Cheryl Repici
<i>Legislative Analysis</i>	Jerry Byrne
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Editor: Linda B. Hickey

federal pensioners - from page 2

number using a Touch-tone telephone and a series of special codes.

Using the same system, the retirees will also be able to change the amount of withholding at any time, change withholding from one state to another, or cancel withholding.

Gardiner noted that in some states, Federal retirees have been able to authorize state income tax withholding under a complex, manual system established by OPM several years ago.

“But the old system required retirees to fill out a number of different forms and deal with both Federal and state agencies. It also required the state taxation authorities to undertake complicated transmission and verification actions in order to receive the income taxes withheld from the checks in a timely manner,” Gardiner said.

“It was cumbersome for individuals and wasn’t cost-effective from the Division’s standpoint, so New Jersey — and about half of the other states with income taxes — decided not to participate until the Federal government could bring its technology up to speed.

“We have been asking the Federal government to improve its process for pension withholdings for some time. Now that they have done so, we’re very pleased to be able to offer this convenience to the Federal retirees living in New Jersey,” Gardiner said. □

Public Utility Tax Repealed

Effective January 1, 1998, a recently enacted law (P.L. 1997,

c.162) eliminates the current gross receipts and franchise tax on electric, gas and telecommunications utilities. These utilities will now be subject to the State’s corporation business tax. A transitional energy facility assessment will be applied on electric and gas utilities, which will be phased out over a five year period. The new law requires the Division of Taxation to promulgate rules and regulations necessary to administer this Act and allows the Board of Public Utilities to adopt such rules as it deems necessary to implement the provisions of this law. The State Treasurer and the Board of Public Utilities will jointly develop a statement to be included on energy user’s billings that a portion of the charges in the billing are dedicated to property tax relief.

A companion law, P.L. 1997, c.167, establishes the “Energy Tax Receipts Property Tax Relief Fund” and replaces the method of funding aid to local municipalities guaranteed from the State’s taxation of energy and telecommunications. To replace the funds lost by the repeal of the gross receipts and franchise tax, the guaranteed funds will now be generated by the State’s corporate taxation of electric, gas and telecommunications utilities. □

New Exempt Org. Registration Form

Qualifying nonprofit organizations applying for the ST-5 certificate of exemption from sales tax now have a simpler application to complete — Form REG-1E. The new form, intended only for qualifying organizations, is a combination tax registration form and application for exempt organization permit. Prior to use of the new one-page

form, applicants needed to complete both a two-page registration form (REG-1) and a short permit application form (ST-5B). Please note that non-exempt organizations (e.g., social clubs and veteran’s organizations) and businesses should continue using the REG-1 Application for Registration form for their tax registration requirements.

Organizations that qualify for the New Jersey sales and use tax exemption permit — volunteer fire companies, first aid squads, PTAs and organizations having a 501(c)(3) determination from the IRS — may request the REG-1E Application for Exempt Organization Permit by calling the Exempt Organization Unit of the Division of Taxation at 609-292-5994. □

Interest 11.25% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1997 is 11.25%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/95	11.50%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%

GROSS INCOME TAX Withholding Tax Forms Changed

The coupon booklets sent to employers and other withholders in July 1997 contained new versions of Forms NJ-941, NJ-941-W and NJ-W-3. An amended quarterly return has also been developed.

Employers and other withholders will no longer use Form NJ-W-3, Reconciliation of Tax Withheld, to request a refund or credit of an overpayment of gross income tax withheld. A request for a refund or credit must now be made on the Quarterly Return of Gross Income Tax Withheld (Form NJ-941 or Form NJ-941-W).

To correct errors in tax remitted for the current quarter, a withholder may adjust the amount remitted for the next period *within that quarter*. When necessary, a refund or credit for the quarter must be requested on the quarterly return (Form NJ-941 or Form NJ-941-W).

To correct an overpayment or underpayment on a previously filed NJ-941 or NJ-941-W, a taxpayer must file an Amended Quarterly Return of Gross Income Tax Withheld (Form NJ-941-X or NJ-941-W-X) for that quarter. Penalty and interest charges are due for underpayments in prior periods.

Employers and other withholders must continue to submit Form NJ-W-3 annually to report the number of employees, the total amount of gross wages, pension/annuity income and gambling

winnings, and the total amount of income tax withheld. When completing Form NJ-W-3, taxpayers must compare the amounts to be entered on Form NJ-W-3 with the figures reported on their quarterly returns for the year and also with the amounts reported on the W-2 forms or other forms to be attached to the NJ-W-3. An amended quarterly return (Form NJ-941-X or NJ-941-W-X) must be filed for each quarter that is found to be incorrect.

For further information on the changes to the withholding forms, or to obtain a copy of the Amended Quarterly Return of Gross Income Tax Withheld (Form NJ-941-X or Form NJ-941-W-X), call the Division's Tax Hotline at 609-588-2200. □

State Changes Address System

Effective July 1, 1997, the State of New Jersey eliminated the old Caller Number (CN) system for State of New Jersey addresses, and began using Post Office Box (PO Box) numbers. The new method of addressing all State mail is to simply replace "CN" with "PO Box." The same three-digit number previously used will become the PO Box number, rather than the CN. For example, CN 001 becomes PO Box 001.

This conversion is expected to improve the delivery of mail to State offices. The U.S. Postal Service will continue to handle mail addressed to both CN and PO Box numbers until all State agencies exhaust existing stationery supplies. □

Small Business Workshops

New Jersey entrepreneurs can receive free assistance from the Division of Taxation. The Division sponsors workshops explaining tax obligations geared for new businesses. The workshops will cover the following topics:

- Registering with the State of New Jersey
- Meeting Employer Responsibilities
- Reporting Business Income
- Filing Sales and Use Tax Returns

Division personnel will explain the proper procedure for collecting and remitting tax. Division personnel will also discuss the various types of business ownership and the tax consequences of each one. The session concludes with a discussion of the Sales and Use Tax describing what is taxable and what is exempt from the tax.

Participants receive appropriate forms and brochures for their own use. Additionally, each attendee receives a Small Business Workshop resource manual that reviews each topic and provides easy to follow examples.

Workshops are held throughout the State in conjunction with the Internal Revenue Service. The sessions run from 9:00 a.m. to 4:00 p.m., with the Division of Taxation presentation in the afternoon. Listed below is the fall workshop schedule. To find out more about Small Business Workshops, or to sign up for the fall sessions, call the Internal Revenue Service at 1-800-829-1040, or phone the

small business workshops - from pg. 4

Division's Taxpayer Hotline at 609-588-2200.

Fall 1997 Schedule

September 18	Edison
October 30	Manalapan
October 31	Camden
November 7	Newark

□

**CORPORATION TAX
New Schedule**

A new schedule, Partnership Investment Analysis (Schedule P-1) will be added to the Corporation Business Tax Returns, forms CBT-100 and CBT-100S, for tax year 1997.

All corporate taxpayers who are partners in a partnership or another type of entity which is treated for Federal tax purposes as a partnership must provide the following information for each partnership: name of partnership, Federal identification number, the corporation's percentage of ownership, whether the corporation is a general or limited partner, the tax accounting method used in reporting the partnership activity on the Corporation Business Tax Return filed, and whether or not the partnership has nexus in New Jersey.

In addition, a copy of Schedule NJK-1 from Form NJ-1065 should be attached to the Corporation Business Tax Return filed if the partnership has nexus with New Jersey. If the partnership does not have nexus, then a copy of Federal Form K-1 should be attached. □

**SALES AND USE TAX
IRP Registered Vehicles**

The exemption from sales and use tax for trucks at N.J.S.A. 54:32B-8.43 applies only to qualified commercial motor vehicles which are duly registered in New Jersey. Accordingly, the exemption does not apply to any vehicle registered under the International Registration Plan (IRP) in a home jurisdiction other than New Jersey.

The International Registration Plan simplifies and standardizes the registration process for interstate carriers by providing apportioned registration fees for commercial motor vehicles which travel in two or more IRP jurisdictions. Qualified carriers must register with their base (home) jurisdiction (state) for travel in all jurisdictions. The home jurisdiction collects the required fees which it then distributes to the other IRP jurisdictions as appropriate. States which do not belong to the IRP forfeit the authority to register commercial motor vehicles used in interstate commerce. New Jersey joined the IRP in April 1996.

An IRP registered vehicle is considered duly registered only in the carrier's base jurisdiction—the state which issued the vehicle's license plates and registration document/credential (i.e., cab card). The registration certificate bears the name of the base jurisdiction as well as that of any other IRP jurisdiction in which the carrier is authorized to operate (in which the appropriate apportioned registration fee was paid).

Therefore, although a carrier based in another IRP jurisdiction must have "NJ" listed on its cab card in order to enjoy the privilege of using our roadways (or, alternatively, must possess a valid New Jersey trip permit), such a vehicle is not duly registered in this State for the purposes of the sales tax exemption cited above. □

Homestead Rebate Checks Issued

Homestead rebates were mailed to approximately 1.2 million New Jersey residents on July 31. The rebate checks issued total approximately \$288 million.

Qualified homeowners and tenants who are age 65 or older or blind or disabled with gross incomes of \$70,000 and under are eligible for rebates of up to \$500. Residents in this category with between \$70,000 and \$100,000 in gross income will receive up to \$100 if they are homeowners and up to \$35 if they are tenants. Residents with gross incomes of more than \$100,000 are **not** eligible for rebates.

Nondisabled taxpayers who are under age 65 with gross incomes up to \$40,000 are eligible for rebates of \$90 if they are homeowners and \$30 if they are tenants.

1996 marked the first year of a three year phase-in of the property tax deduction/credit program, which allows New Jersey residents either to deduct a portion of their property taxes or rent or to claim a

homestead rebate - from page 5

property tax credit on their New Jersey income tax return. Certain homestead rebate recipients will receive a property tax credit of \$25 (\$12.50 for married persons filing separately with the same principal residence) in their rebate check. The rebate recipients who will receive their property tax credits with homestead rebates are those homeowners and tenants who were not required to file 1996 New Jersey income tax returns because their gross incomes were \$7,500 or less (\$3,750 for married persons filing separately) and they were 65 years of age or over, blind or disabled during 1996.

An eligible homeowner or tenant who is required to file a New Jersey income tax return because gross income was more than \$7,500 (\$3,750 for married persons filing separately) claims the property tax deduction or credit on Form NJ-1040. A taxpayer with gross income of \$7,500 or less (\$3,750 for married persons filing separately) who is under age 65 and not blind or disabled is not eligible for the property tax credit.

New Jersey taxpayers who are eligible to receive homestead rebates, and have not received them, can call the State's automated Homestead Rebate InfoLine from a Touch-tone telephone at 1-800-323-4400 (within New Jersey only) or 609-588-2525 (anywhere) to check on the status of their rebate applications. Callers must provide information from their rebate applications when using the InfoLine. □

ABC Clearance Update

Effective September 1, 1995, P.L. 1995, c.161, provided for an annual review of tax records for all New Jersey retail liquor licensees, and for those licensees in good standing, the issuance of an ABC Clearance Certificate. The ABC Clearance Certificate is required documentation for the annual renewal of retail liquor licenses. On June 30, 1997 the Division of Taxation completed Phase II of its three phase plan for implementation of the tax review requirements of this law. Included in Phase II was the tax review of 7,325 liquor licensees in 14 counties. Prior to the June 30th expiration, a total of 6,806 ABC Clearance Certificates were issued representing 92.9% of the licensees reviewed. The ABC Clearance Section is responsible for the issuance of the clearance certificates; for the fiscal year ending June 30, 1997 they collected \$2.4 million dollars. This amount does not include collections made by other Division activities related to the enforcement of this law. Next year's Phase III review will include all 21 New Jersey counties and approximately 10,500 licensees. This will end the implementation process and mark the beginning of the annual review of all New Jersey retail liquor licensees. □

1997 Package NJX

In August 1997, order forms for the 1997 *Package NJX* were sent to all who subscribed to the 1996 edition of this publication. *Package NJX* is a compendium of those

reproducible New Jersey tax forms most widely used by tax preparers and other tax professionals. The 1997 edition of *Package NJX* is available in two formats:

1. Printed format—this traditional version, priced at \$7.00 per copy, consists of loose-leaf pages, hole punched to fit a standard 3-ring binder; and
2. CD-ROM format—this version, new for 1997, is available for \$10.00 per copy.

Attractive *Package NJX* 3-ring binders, designed to accommodate more than one volume of the printed version, may be ordered separately at \$7.00 apiece. (Binders do *not* include the *Package NJX* loose leaf content pages.) Prices include shipping and handling. If you haven't yet ordered the 1997 *Package NJX* and/or *NJX* binder, and wish to do so, complete the order blank on the last page of this issue, and send it with your payment to:

STATE OF NEW JERSEY
PACKAGE NJX
PO BOX 286
TRENTON NJ 08646-0286
□

CONFERENCE & APPEALS ***Protests and Requests for Conferences***

N.J.A.C. 18:1-1.8 defines the items that must be included in a protest and request for a conference as the following:

1. The taxpayer's name, address, telephone number and social security or tax identification number.
2. The name, address and telephone number of the taxpayer's

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representative, if any, for the purpose of the protest. In such case, a written power of attorney, (Form M-5008) shall be filed with the notice of protest.

3. The type of tax and period(s) under protest.
4. A copy of the notice at issue.
5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested.
6. A statement of grounds upon which the protest is based.
7. The specific facts supporting each ground asserted and a summary of evidence or documentation to be presented in support of taxpayer's position.
8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest if any, that is due. Failure to submit such payment will not invalidate the protest, but the Division in accordance with the applicable law may proceed to collect outstanding amounts which are due.

A protest submitted without items 5, 6, or 7 will not be considered a valid protest and will not result in a conference. A written protest shall be signed by the taxpayer, the taxpayer's duly authorized officer or duly authorized representative.

A protest and request for a conference must be made pursuant to N.J.S.A. 54:49-18 within **90** days

of the giving of the notice or the action of the Director sought to be reviewed. It should be noted that in those cases in which the taxpayer or the authorized representative desires to protest two related notices, such as an assessment for a business and a related personal Gross Income Tax assessment, a separate protest must be submitted for *each* notice following the above itemized steps. Each protest *must* refer to the appropriate tax identification number, the proper tax and amounts, include a separate power of attorney and be accompanied by the specific notice being protested. Those notices not properly protested (protested at a later date after the **90** day period has elapsed) will be deemed invalid or out of time. □

GROSS INCOME TAX **Netting Income** **and Losses**

Newly established residents of New Jersey and nonresidents having to report income earned in New Jersey need to be aware of a provision in the New Jersey Gross Income Tax Act at 54A:5-2, *Losses*, when filing their Gross Income Tax returns. The passage states that "a net loss in one category of gross income may not be applied against gross income in another category of gross income."

Individuals who have filed their Federal returns or other states' returns using losses to reduce income/gains by netting line items to obtain a total income amount will not be able to use those losses when filing New Jersey personal income tax returns. Please further

note that no carryback or carryover of losses is permitted under the New Jersey law.

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CONFERENCE CORNER **Debt Forgiveness**

The forgiveness of debt continues to be a recurring issue for the Conference and Appeals Branch. The source of the forgiveness of debt income determines whether it would be a taxable transaction for New Jersey. For example, if the mortgage on a taxpayer's residence is foreclosed, there is no forgiveness of debt income to report to New Jersey. The forgiveness of debt in this situation is personal in nature. However, if the taxpayer owns rental real estate which is foreclosed, the forgiveness of debt income is from a business source and therefore is taxable. See related article in Summer 1997 *State Tax News*.

Relying on Written Information

The Taxpayer's Bill of Rights provides that if a taxpayer relies on written advice from the Division of Taxation regarding an issue and the advice is determined to be incorrect, the tax is still due. Penalties and interest may be waived in such a situation, provided that the erroneous advice was not the result of the taxpayer's failure to provide adequate or accurate information to the Division. □

income & losses - from page 7

Since its inception in 1976, the Gross Income Tax Act has included the prohibition against netting income and losses from different categories, shown on the return as separate line items, when determining total income. □

Taxpayer Accounting Branch

In its most simple terms, the Mission of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and have any errors in their accounts corrected.

Most bills and refunds are automatically computer-generated, but many are also flagged for manual review based on certain predetermined criteria, set up to try to catch erroneous bills and refunds before they are sent out to taxpayers. These flagged bills and refunds are what the Taxpayer Accounting Branch reviews and attempts to fix, if it is determined they are likely to be erroneous.

Since it is impossible to review every single bill and refund, many which are erroneous do get sent out, because they did not meet the criteria for review. Others that are reviewed may also be erroneous because the information available to the reviewer indicates that they are probably correct. This is where the correspondence comes in from taxpayers indicating that there is a problem with the bill or refund that they received. When the information necessary to correct the account is received from the taxpayer, Taxpayer Accounting staff fix the account and notify the tax-

payer that the problem has been corrected.

In Fiscal Year 1997, which just closed, Taxpayer Accounting personnel:

- Responded to almost 118,000 pieces of correspondence;
- Answered nearly 31,000 phone calls;
- Reviewed nearly 122,000 bills and almost 55,000 refunds;
- Collected more than \$6.3 million; and
- Made slightly under 200,000 adjustments or corrections to accounts. □

Economic Reality Training Class

The Division of Taxation, with the cooperation and assistance of the Internal Revenue Service, has held its first class on "Economic Reality." Initially dubbed Economic Reality, the IRS now refers to it as "Financial Status Auditing."

Financial Status Auditing is an indirect audit technique that involves a process of gathering information reflective of the taxpayer's financial status. The focal point is whether reported income is sufficient to support the individual's financial lifestyle or standard of living. This methodology will be a useful audit tool in those situations where the taxpayer's business activities appear to lack economic reality and/or where accounting records are not adequate for the more traditional approach.

All employees expected to benefit from this training will be given the opportunity to attend over the next fiscal year. With increased em-

phasis on cash businesses, economic reality awareness should complement current enforcement efforts. □

LOCAL PROPERTY TAX Income Limits for Tax Deduction

In determining the income limitation allowable in granting a \$250 local property tax deduction, note that the maximum Social Security amount excludable to be used in the computation has been established at \$15,950. This maximum is to govern the amount of pension, disability or retirement income to be excluded pursuant to Chapter 129, P.L. 1976 and was compiled from information received from the U.S. Department of Health and Human Services, Social Security Administration.

Further information on this subject, along with examples showing the correct computation for determining the income limitation was mailed to all assessors, collectors, and county tax board commissioners and administrators in early July. □

LOCAL PROPERTY TAX Tax Rates on Home Page

1996 General Tax Rates are now on our web page. They may be downloaded by county. Our address is:

<http://www.state.nj.us/treasury/taxation/>
□

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15-

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.

- Deadline for taxing districts' appeals of Table of Equalized Valuations to NJ Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31-

- Legal advertisement of availability of Tax List for public inspection. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Fifteen persons passed the examination for the tax assessor certificate held on March 22, 1997 and became certified tax assessors on May 20, 1997.

Burlington County: Karen E. McMahon, Eastampton Township.

Camden County: Theresa L. Chalako, Winslow Township; James A. Mancini, Voorhees Township.

Essex County: Alfonse Mattia, Cedar Grove Township.

Gloucester County: Jason W. Hesley, Monroe Township.

Hudson County: Edward R. Giunta, North Bergen Township.

Ocean County: James B. Purdie, Brick Township.

Monmouth County: Vincent A. Rado, Wall Township.

Morris County: Glenn R. Holmes, Madison Borough; Robert J. Staley, Dover Town.

Salem County: Mary Lou Chollis, Pennsville Township.

Sussex County: Walter Sullivan, Green Township.

Union County: Charles E. Heck, Cranford Township; Neil E. Rubenstein, Berkeley Heights Township; Ira B. Skolnick, Westfield Town. □

Levy Actions

When it becomes evident that an individual or business is non-compliant (unable or unwilling to pay taxes), field investigators may proceed to levy against the assets of the taxpayer. This is one of the last resorts a field investigator uses to obtain funds from an uncooperative taxpayer.

In order for levy action to take place, there must be a Certificate of Debt (COD) filed against the business and/or individual taxpayer. The COD acts as an administrative judgment. A notification that a COD is in place goes out to the concerned parties stating that the Division may execute on the COD without further notice to the taxpayer. The investigator usually gives the taxpayer at least ten days to make contact with the Division before any levy attempt takes place.

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The Division may levy on the following:

- Bank accounts
- Brokerage house accounts
- Mutual fund accounts
- Rental income
- Accounts and notes receivable
- Mortgage income
- Insurance proceeds
- Auction proceeds
- Safe deposit box contents
- Business property, inventory, cash in register, motor vehicles
- Any other asset that has been discovered

The Division may not levy on the following:

- Social Security benefits
- Workers compensation
- Disability insurance
- Railroad retirement
- ERISA
- IRAs and other pension plans
- Unemployment insurance

Before the levy is done, the investigator must secure a Warrant of Execution and register it at the county clerk's office. Once registered, it becomes a public document. The Warrant states the name of the debtor (defendant), the type of tax(es) owed with the amount, and the Docket Number of the COD. The Warrant of Execution will also contain Cost of Collection, generally ten percent of the COD amount. Cost of Collection is the amount of expense incurred by the State with respect to the issuance of a COD for, and the collection of, any State tax not paid within the time prescribed by law. These expenses include but are not limited to:

- Cost of postage
- Cost of telephone
- Cost of photocopying
- State payroll hours used, including associated overhead
- Cost of filing and prosecuting suit
- Other expenses deemed by the Director as reasonably related and necessary for the collection of any unpaid tax. □

Judgment Inquiries

The Division of Taxation is contacted daily by taxpayers and/or their authorized representatives regarding the Satisfactions of Judgment filed in the Superior Court of New Jersey, at Trenton. While the Division has filed thousands of Certificates of Debt with the court over the years, many of the judgment inquiries received request information on judgments not filed by the Division.

Whether this is just an oversight by the requester; an erroneous assumption that all State Judgments are filed by Taxation; or due to incomplete information on Judgment Search Abstracts; this necessitates that Taxation personnel contact the Superior Court, either by phone or in person, concerning judgments not identifiable as being one of ours. This process may take a matter of a day or a week just to learn that the inquiry concerns a judgment filed by another State agency. This, along with the ensuing rounds of "phone tag" to convey this information back to the requester, often results in unnecessary delays with regard to an impending financial transaction. Therefore, the requester should be sure of the "Plaintiff" or filing agency before contacting the Division of Taxation. **If unsure of**

the "Plaintiff" contact the New Jersey Superior Court directly at 609-292-4804.

For Taxation filed judgments, send requests to:

NJ Division of Taxation
Judgment Section
PO Box 245
Trenton NJ 08646-0245

Phone: 609-292-7331
Fax: 609-292-9614

Contact other State agencies at:

Division of Unemployment
& Disability: 609-292-2292

Division of Motor Vehicles
(Surcharges): 609-777-2674

Dept. of Community
Affairs: 609-292-6055

Secretary of State (Annual
Reports): 609-530-6423
□

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 4, 1997, James Bobowicz of Caldwell was sentenced to five years probation, 120 hours of community service, assessed a \$25 per month probation fee and ordered to file an amended 1992 New Jersey Income Tax Return. Bobowicz previously plead guilty to failing to file New Jersey Personal Gross Income Tax Returns (four counts - 1989-1992), failure to pay \$1,086 of New Jersey Gross Income Taxes (one count), filing a false and fraudulent tax return (one count - 1993) and theft by deception (one count - 1993) for claiming a fraudulent income tax refund.

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This case was the result of a joint investigation between the Office of Criminal Investigation and the Sussex County Prosecutor's Office.

- On April 23, 1997, Ramon L. Morell, a Union City licensed Public Accountant, plead guilty to four counts of knowingly and recklessly preparing returns containing false information. Union City Municipal Court Judge Joseph N. Falbo imposed maximum fines and costs of \$4,620. The defendant, Morell, was the preparer in a scheme to obtain 15 Homestead Rebate checks and an additional 15 duplicate Homestead Rebate checks. None of the checks were cashed. In the investigation of the attempted fraud, the duplicate checks were recovered and the cashing of the original checks was thwarted. The scheme, if it had succeeded, would have netted \$15,000 in illegally obtained Homestead Rebates.
- On April 25, 1997, Michael Immordino, formerly of Ewing Township, NJ, now living in Hawaii, was sentenced. Immordino, who plead guilty last fall to a variety of charges stemming from his role as developer in failed real estate deals, was sentenced by Superior Court Judge Rosemarie Williams in Mercer County Superior Court to five years probation, 500 hours of community service and was ordered to pay \$971,000 in restitution to 19 investors who lost more than \$1.6 million in business deals with him. Immordino previously plead guilty to misconduct by a corporate official, six counts of misapplication of entrusted property and 10 tax related counts, including failure to file a 1991 NJ Gross Income Tax Return, four counts of filing false and fraudulent income tax returns from 1987 to 1990 and five counts of failing to pay a total of \$95,872.02 in income taxes owed for the period of 1987 to 1991. The additional income taxes owed to the State of New Jersey were not made part of the restitution order; however, the liabilities have been established and the matter will be referred for civil processes. This was a joint investigation between the Mercer County Prosecutor's Office and the Office of Criminal Investigation.
- On May 1, 1997, Edmund Damiano, the former president of the now defunct Auto 2000, Chrysler, Plymouth, Dodge dealership in Newton, NJ, was sentenced in the Superior Court of Sussex County by Judge Gerald Hanifran. Damiano was found guilty in February 1997, of 44 separate charges of fraud, including failure to file personal income tax returns and failure to remit sales taxes in the amount of \$90,776.30. The judge sentenced Damiano to 11 years and 9 months in prison, incorporating all 44 charges in the sentence and ordered him to pay restitution to the Division of Taxation in the amount of \$196,603.90, which includes taxes, penalty and interest. This was a joint investigation between the Sussex County Prosecutor's Office and the Office of Criminal Investigation.
- On May 1, 1997, Marcellus Cutler of Lakewood, NJ, was indicted by a Grand Jury in Ocean County on one count of failure to file a 1995 NJ-1040 and one count of failure to pay \$1,979 in NJ personal income tax for 1995. These counts were part of a 13 count indictment charging Cutler and three co-defendants with possession of narcotics with the intent to distribute, conspiracy and money laundering. The indictment alleges that Cutler failed to file an income tax return reporting the income he had derived illegally from narcotics trafficking.
- Warren Kaye, a former official of General Machine & Instrument Co., Inc., entered a guilty plea to two counts of a nine count indictment that related to the bankrupt company's failure to remit monies withheld from employees for both New Jersey Gross Income Tax and Unemployment/Disability. Specifically, Mr. Kaye's plea involved one count of theft by failure to make the required disposition of funds and one count of failure to turn over taxes. As part of the plea agreement, Mr. Kaye will make restitution of \$60,000. Another corporate official named in the original indictment, Richard Pessolano, is awaiting trial.
- Frederic A. Dinonno, who was previously indicted by a State Grand Jury on October 17, 1995, was sentenced in Monmouth County Superior Court. The case involved commercial bribery and theft. Dinonno solicited and received monetary bribes from vendors of his employer (Ebasco Corporation) in exchange for business from Ebasco. The bribes received by

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criminal enforcement - from pg 11

Dinonno were in excess of \$200,000 over an eight year period. Under a plea agreement Dinonno plead guilty to misconduct by a corporate official and to filing and preparing a false tax return, two counts of the original twelve count indictment. The judge imposed an eight year prison term on the misconduct offense and a five year term for filing a false tax return. The terms were ordered to run concurrently. The case was a result of a joint investigation between the Division of Taxation and the Division of Criminal Justice.

- Thirty-seven guilty pleas were entered in municipal courts throughout the State during this reporting period by individuals and businesses for noncompliance with the cigarette tax law. Of these 37 guilty pleas, 15 resulted from the two day saturation enforcement operation conducted in the city of Elizabeth during February 1997. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$20,555 and the awarding of approximately 5,900 cartons of cigarettes, valued at \$118,000, to the State. In addition to the cigarettes being forfeited to the State, a 1992 Ford Crown Victoria, valued at \$10,000, was forfeited and \$6,240 in monies seized was turned over to the Burlington County Prosecutor's Office for forfeiture proceedings and eventual distribution to involved agencies.
- A total of 34 charges were filed in municipal court for 13 cases. Twenty-seven of the charges were for violations of the cig-

rette tax law, which includes transporting, possessing, and selling untaxed cigarettes. Two charges were for selling motor fuels without a license, and five charges were for other licensing violations. Three cases resulted in the seizure of 57 cartons of cigarettes, valued at \$1,140. □

Enforcement Summary

Civil Collection Actions

Quarter Ending - June 30, 1997

Following is a summary of enforcement actions for the quarter ending June 30, 1997.

Certificates of Debt

During the quarter ended June 30, 1997, the Division filed 2,109 Certificates of Debt in New Jersey Superior Court. These CODs, which have the same force and effect as docketed judgments, totaled \$32.6 million.

Levies

\$9,844 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his

or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending June 30, 1997, \$279,756 was collected from jeopardy assessments, and the assets of three businesses were seized.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt

For the quarter ending June 30, 1997, property of 61 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 16-20.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending June 30, 1997, nine auctions were held by

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the Division. A listing follows on page 20.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending June 30, 1997, 261 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$735,349 in revenue during the second quarter of 1997 and \$3,360,179 throughout fiscal year 1997 from cases like these.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey

counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has collected more than \$77 million from holders of the various types of licenses subject to audit. Richard D. Gardiner, Division of Taxation Director said he expects to collect a total of \$150 million during the three-year program.

During the quarter ending June 30, 1997, 290 notifications of liquor license transfer were received by the Division's Bulk Sales section. Nineteen (19) audits relating to this project and previously requested were completed; assessments from these audits totaled \$920,431. □

Tax Briefs

Alcoholic Beverage Tax

Bond Requirements — The Division of Taxation has adopted a new schedule of minimum bond amounts for payers of the alcoholic beverage tax. The new schedule replaces the 1984 schedule.

In determining these bond amounts, the Division has taken into account the amount at levels which should protect the State without being burdensome to the

taxpayers.

Minimum Amounts of Bonds

Rectifier & Blender.....	\$25,000
Plenary Wholesale	50,000
Limited Wholesale.....	20,000
Wine Wholesale.....	10,000
Limited Distillery:	
0 – 5,000 Gallons.....	10,000
5,000 – over.....	15,000
Restricted Brewery	5,000
Breweries	7,000
Plenary Wineries.....	7,000
Farm Winery.....	3,000
State Beverage Distributors ..	2,000
Transportation.....	None
Warehouse Receipts.....	None
Special Permit "TL".....	None
Public Warehouse:	
Storage for Retailers.....	None
Storage for Wholesalers	None
Special Permit "SM".....	None
Plenary Retail Transit:	
Railroad	5,000
Boats.....	None
Airlines	2,000
Brokers	None

Gross Income Tax

Savings Incentive Match Plan for Employees — A request for information about New Jersey's treatment of the newly enacted "savings incentive match plan for employees," or SIMPLE plan, established under Internal Revenue Code Section 408(p), was received by the Division of Taxation. SIMPLE Plans provide a simplified federally tax-favored retirement plan for small employers.

Under New Jersey law, pension plan contributions may be excluded from gross income that are "amounts contributed by an em-

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ployer on behalf of and at the election of an employee to a trust which is part of a qualified cash or deferred arrangement which meets the requirements of Section 401(k).” N.J.S.A. 54A:6-21. The statute defers State income tax on amounts contributed to retirement plans authorized by IRC Section 401(k). It does not defer income tax on plans that have similar features or requirements to 401(k) plans, but are not themselves 401(k) plans.

The inquirer was informed that the SIMPLE plan is not a 401(k) plan, and does not have to meet the requirements for qualified plans. Therefore, employee contributions to SIMPLE plans would not be excluded from gross income under N.J.S.A. 54A:6-21. There is no other relevant legislative authority for a tax deferral.

Amtrak Reauthorization and Improvement Act of 1990 — Compensation paid by an interstate motor carrier to an employee who performs *regularly assigned duties in two or more states* can only be taxed by the employee’s state of residence. For the purposes of this rule, employee means:

- An operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);
- A mechanic;
- A freight handler; and
- Any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of

the United States, any state, or any political subdivision of a state who is acting within the course of such employment.

The Act also applies to employees of interstate railroads who perform regularly assigned duties in more than one state.

Sales and Use Tax

Applicability of Trade-in Credit in Sales and Lease Transactions —

Since the lessor is considered an ultimate consumer under the lease law, when a customer is entering into a *lease* transaction, the value of any vehicle that is traded in, whether leased or owned by the customer, cannot be used to reduce the amount upon which the lessor is required to pay the lessor’s use tax.

If a customer is entering into a *sale* transaction, and is trading in a leased vehicle, whether the sales tax receipt can be reduced depends upon the chain of title of the trade-in. If the customer exercises the lease’s purchase option, and pays New Jersey sales tax on the buyout price, then the customer is entitled to a trade-in credit pursuant to the statute.

Use of ST-3NR by Contractor —

The Division responded to an inquiry concerning the applicability of the Form ST-3NR where the purchaser is an out-of-State contractor picking up paving materials in New Jersey for jobs in New York State.

The ST-3NR is available to non-registered vendors making in-person purchases for resale; it is intended to give an out-of-State vendor who enters this State the same benefits as an in-State vendor with regard to purchasing property for resale. Thus, whether the

ST-3NR can be issued depends upon the laws of the State of New Jersey.

In New Jersey, a contractor is treated as the end user of materials purchased for incorporation into real property. N.J.S.A. 54:32B-2(e)(2). A New Jersey contractor would *not* be able to issue a Resale Certificate for the purchase of construction materials in New Jersey, regardless of whether the materials were to be used on an out-of-State job. See N.J.A.C. 18:24-5.3.

American Indian Sales — In the Winter 1996 issue of *New Jersey State Tax News* (Volume 25, No. 4, p. 20) the Division published a tax brief regarding the taxability of sales to American Indians. The tax brief included a reference to the Rankokus Reservation in Burlington County. The Division has since learned that this Powhatan Renape Nation community is not on tribal land. Instead, it is located in State-owned park land. Therefore, the sales tax exemption for purchases by enrolled members of a tribe on tribal land does not apply to taxable sales on the “Rankokus Reservation.”

Sales Tax Collection on Indian Trust Lands —

The Division received correspondence regarding H.R. 1168, a Federal bill supplementing the Indian Reorganization Act, 25 U.S.C. §461 *et seq.* This bill would help protect New Jersey’s tax base in the event that lands in this State are transferred into trust, pursuant to section 5 of that Act (25 U.S.C. §465), for the purpose of providing land for Indians. The legislation would require that before any new lands are transferred into trust, the tribe that

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will have jurisdiction over the land must enter into a binding agreement with the state in which the land is located, providing that any retail establishment located on the land will pay, collect or remit the state sales and excise taxes applicable to the establishment's transactions.

The Division is aware that absent explicit Congressional authorization, a state may not enforce taxes whose legal incidence falls upon Indian tribes or on members of the tribes, on their own tribal lands. We also know that without Federal enabling legislation, a state may require Indian tribal businesses to collect and remit sales tax from non-Indian customers, provided that the burdens of collection and remittance are not more than minimally burdensome and do not violate the terms of a treaty.

Oklahoma Tax Commission v Chickasaw Nation, ___U.S.____, 115 S.Ct. 2214, 2220-2221 (1995).

H.R. 1168, which was proposed by Representative Ernest Istook of Oklahoma, would require that before receiving new trust lands, a tribe would have to agree that retail businesses located on this trust land will collect sales and excise taxes payable by their non-Indian customers. This amendment would partially protect the State sales tax

base, enabling the State to require tribal businesses to collect and remit tax on their taxable sales to customers who are not members of the tribe for which the land is held in trust, without having to debate whether normal sales tax reporting and remittance schedules, applicable to all vendors, are too burdensome to impose on vendors who are members of an Indian tribe. Sales tax collected and remitted by the retailer would be much easier for the State to enforce than the compensatory use tax that nonmembers of the tribe would otherwise be required to pay on their purchases. The amendment would also minimize the competitive disadvantage suffered by non-tribal retailers, who would inevitably lose business if their non-Indian customers sought to evade the sales tax by purchasing only from tribal establishments, where no tax would be charged.

Telephone Answering Service — On July 1, 1990, telecommunication services became subject to New Jersey sales and use tax. Telecommunications is defined in the law as the act or privilege of

originating or *receiving messages* or information through the use of any kind of one-way or two-way communication, including but not limited to: voice, video.... N.J.S.A. 54:32B-2(cc). This definition was included in a Special Notice to

registered vendors which was sent in July 1990.

The Division has consistently held that telephone answering services are included within the definition of telecommunications and thus, are subject to tax under N.J.S.A. 54:32B-3(f). See P.L. 1990, c.40. Only telecommunication services rendered with respect to a service address in New Jersey are taxed. For example, sales tax is not imposed on receipts from telephone answering services for a telephone located in another state. □

In Our Courts

Cigarette Tax

Surety Obligations Continue Under Altered Payment Agreements — *Selective Insurance Company of America v. Director, Division of Taxation*, Superior Court of New Jersey, Appellate Division, decided April 16, 1997.

Selective Insurance Company of America ("Selective"), plaintiff-appellant, was surety on a bond issued to the Division of Taxation, defendant-respondent. M&R Tobacco and Candy Company ("M&R"), defendant-respondent, a licensed cigarette distributor, was the principal on the bond. The bond secured M&R's financial obligations to New Jersey arising from credit purchases of cigarette tax stamps beginning in 1982.

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Division of Taxation Seizures (April – June 1997)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	LaBentley's at the Wonder Garden 1601 Arctic Ave. Atlantic City	4/24/97	Late night entertainment	Closed Liquor license seized
	The Absecon Liquor Store 113 New Jersey Ave. Absecon	5/16/97	Liquor store	Reopened
	Lesbirel's Liquor Locker 201 E. Collins Rd. Absecon	5/19/97	Liquor store/bar	Reopened
	China Royal Restaurant, Inc. t/a Peking Duck House 2801 Atlantic Ave. Atlantic City	6/8/97	Restaurant	Liquor license seized
Bergen	Mul Rea Bang Ah 624 Piermont Rd. Closter	4/15/97	Restaurant/bar	Liquor license seized
	DeGallo, Inc. t/a Club Kokomo 1200 Wall St. W. Lyndhurst	5/2/97	Bar	Liquor license seized
	Gianilda Tavez t/a Giany's 63 Passaic St. Garfield	5/6/97	Bar	Liquor license seized
	Elite Landscaping 21 Rosetree Terr. Ridgefield	5/7/97	Landscaping	Vehicle seized
	North Arlington Enterprises t/a Scandal's Restaurant 318 Bellville Tpk. North Arlington	5/7/97	Bar	Liquor license seized
	Lasting Image, Inc. 463 Chestnut Ridge Rd. Woodcliff Lakes	5/15/97	Photo studio	Closed
	Round the Clock t/a Wally's Backstage Cafe 87 S. Washington Ave. Bergenfield	5/21/97	Bar	Liquor license seized, later released
	Guy's Tavern Inc, t/a Orvil House 40 W. Prospect St. Waldwick	5/29/97	Tavern	Liquor license seized, later released
	Riverview Diner 5 Main St. Wallington	6/10/97	Restaurant	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
	Michelle, Inc. t/a Amore Pizza-Ristorante 255 Hackensack St. Wood-Ridge	6/19/97	Restaurant	Reopened
Burlington	Bradley's Performance Marine Rte. 73 & Old River Rd. Palmyra	4/17/97	Boat sales and repairs	Closed
	Serafine, Brian t/a B&B Landscaping 100 Hawkins Lane Tabernacle	5/22/97	N/A	Motor vehicle seized
Camden	Whiznarr t/a Old Grads 712 Whitehorse Pike Oaklyn	4/8/97	Bar	Liquor license seized
	Rea Pump & Tank 12 Danbury Dr. Erial (Gloucester Twp.)	6/20/97	Well drilling services	Vehicle seized
	Mena, Inc. t/a Berlin True Value Liquors 251 S. White Horse Pike Berlin	6/26/97	Liquor store	Liquor license seized
Cape May	Nehemiah Lodge #192 4200 Arctic Ave. Wildwood	5/1/97	Elks Club	Closed
	Lassiter, Lawrence 302 Mechanic St. Cape May Court House	6/19/97	N/A	Vehicle seized
Essex	Panteezz 955 Frelinghuysen Ave. Newark	4/3/97	Bar	Liquor license seized
	Hilltop Inn, Inc. t/a Intempo 1640 Broad St. Bloomfield	4/4/97	Restaurant/bar	Liquor license seized
	Corner's 489 Clinton Ave. Newark	4/22/97	Liquor store	Liquor license seized
	Elnan Corp. t/a Branford Bar 8 Branford Pl. Newark	5/1/97	Bar	Liquor license seized
	FGJB Enterprises 59 E. Runyon St. Newark	5/1/97	Go-go bar	Closed
	Pharmichele Corp. t/a Carolina Drug 200 Carolina Ave. Irvington	5/13/97	Liquor store/grocery store	Liquor license seized
Gloucester	McFarland, Robert 101 Lenape Trail Wenonah	4/8/97	N/A	Vehicle seized
	Michelina, Inc. t/a Domenico's Pizza 931 Red Bank Ave. West Depford	4/22/97	Pizzeria	Closed

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County	Name/Address	Seizure Date	Business Type	Status
	Utz, Michael 72 Wendee Way Turnersville	5/17/97	N/A	Vehicle seized
	Suplee, Richard S. t/a Iona Lake Inn 210 University Blvd. Glassboro	6/29/97	Restaurant	Vehicle seized
Hudson	El Oso Blanco 5000 Park Ave. Weehawken	4/10/97	Liquor store	Liquor license seized
	Nic & Mel Enterprises t/a Bowlero 5600 Kennedy Blvd. West New York	5/1/97	Bowling alley/bar	Liquor license seized
Mercer	Miller, Herzon d/b/a H M Auto Brokers 620 Calhoun St. Trenton	5/7/97	Car dealership	Motor vehicles seized
	Frank's Auto Sales & Services 435 New York Ave. Trenton	6/4/97	Auto dealership and repair shop	Closed Seven vehicles seized
	Clymer, Walter t/a Jeru Imports & Exports 64 Cresson Rd. Cherry Hill	6/8/97	Jewelry vendor	Vehicle seized (at Trenton Heritage Days Festival)
Middlesex	O Poeta Bar & Restaurant t/a El Trovatore 1776 Rte. 35 Sayreville	5/8/97	Bar/restaurant	Reopened
	Studebaker's Unlimited of Piscataway t/a Wurlitzer's 386 Hoes Ln. Piscataway	5/13/97	Restaurant/bar	Liquor license seized
	Edison Glass Co. 417 New Brunswick Ave. Perth Amboy	5/22/97	Glass company	Reopened
	2000 Park Avenue Corp. 2000 Park Ave. South Plainfield	6/6/97	Bar	Liquor license seized
	Dhabliwala, Dhaval t/a Whitesun Int'l, Inc. 288 State St. Perth Amboy	6/13/97	Delicatessen	Vehicle seized
	V & C Entertainment t/a Marilyn's Bad Girls 565 Roosevelt Ave. Carteret	6/24/97	Go-go bar	Liquor license seized
	Lacey & Sons Service, Inc. Victory Circle South Amboy	6/25/97	Truck repair company	Two vehicles seized

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County	Name/Address	Seizure Date	Business Type	Status
Monmouth	Anthony's Pizza & Luncheonette Rte. 35 & Cherry Tree Farm Rd. Middletown	4/4/97	Luncheonette	Closed
	Benlar Corp. t/a Sheehan's 25 Main St. Keansburg	6/10/97	Liquor store	Closed Liquor license seized
	Gatica, Maria H. Cafe Mi Pueblito/Coffee Delight II 6 Third Ave Long Branch	6/12/97	Coffee shop/cafe	Vehicle seized
	Gayatri, Inc. t/a Yogi's Liquor & Deli 228 W. Bergen Pl. Red Bank	6/20/97	Package store	Liquor license seized
	Shamrock Spirits, Inc. t/a Shore Liquors 1120 Ocean Ave. Sea Bright	6/24/97	Liquor store	Liquor license seized
	Dapper Duck, Inc. t/a Harborside Inn 42 First Ave. Atlantic Highlands	6/24/97	Restaurant/bar	Closed Liquor license seized
	Croat & Nap 50 A Gravel Hill-Spotswood Rd. Englishtown	6/26/97	Landscaper	Closed
	Lodato, Anthony T. Cabinet Carpentry Designers, Inc. 63 Shark River Rd. Neptune	6/30/97	Cabinet maker	Vehicle seized
	Paradise Enterprises 160 Ocean Ave. Long Branch	6/30/97	Bar	Liquor license seized
Ocean	AGC Enterprises, Inc. t/a Antonio's 1635 Bay Ave. Point Pleasant	4/14/97	Pizzeria	Two vehicles seized
	Coastal Copy System 195 Shenandoah Rd. Toms River	5/9/97	Copier business	Vehicles seized
Passaic	Sookie's Lounge 7 N. Straight St. Paterson	6/12/97	Bar	Liquor license seized
Sussex	Kelly's Steak House Corp. t/a Tobacco Road 441 Rte. 23 Wantage	4/10/97	Restaurant/bar	Liquor license seized
	183 Dogwood Corp. t/a Stanhope Wine Cellar 93 Rte. 183 Stanhope	6/17/97	Liquor Store	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
	Vosburg, Paul t/a Drew Mountain Auto Repair Rte. 517 & Drew Mountain Rd. Vernon	6/17/97	Auto repair shop	Reopened
Union	Demsey's Pub 23 E. Elizabeth Ave. Linden	4/21/97	Bar	Liquor license seized
	Chris-Don, Inc. t/a Rocco's Tavern 191 Terrill Rd. Fanwood	5/20/97	Bar	Reopened
	J & J Lounge, Inc. t/a JC's Lounge 210 Richmond St. Plainfield	5/29/97	Bar	Bankruptcy

***Division of Taxation Auctions
(April – June 1997)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	China Royal Restaurant, Inc. t/a Peking Duck House 2801 Atlantic Ave Atlantic City	6/26/97	Restaurant	Liquor license
Bergen	Riverview Diner 5 Main St. Wallington	6/24/97	Restaurant	Liquor license
Hudson	SIBA t/a Sidney's 415 N. 4th St. Harrison	5/28/97	Bar	Liquor license, bar supplies, liquor and beer
	Nic & Mel Enterprises, Inc. t/a Bowlero 5600 Kennedy Blvd. West New York	6/4/97	Bowling alley/bar	Liquor license
Monmouth	Anthony's Pizza & Luncheonette Rt. 35 & Cherry Tree Farm Rd. Middletown	4/25/97	Luncheonette	Business contents
	The Quay 280 Ocean Ave. Sea Bright	5/20/97	Bar/restaurant	Liquor license
	Sean's Place, Inc. t/a Main Street Tavern 220-222 Main St. Keansburg	5/20/97	Bar	Liquor license
Passaic	GEJ t/a Cozy Corner 136 Lake Ave. Clifton	5/13/97	Bar	Liquor license
	Sookie's Lounge 7 N. Straight St. Paterson	6/24/97	Bar	Liquor license

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In 1990, the Revenue Accounting Branch of the Division of Taxation discovered that M&R missed some of its tax stamp payments for that year. A unique weekly payment program was arranged that included interest and penalties. After several weeks, M&R began missing the weekly payments as well as payments on invoices for additional tax stamps. Finally, on March 22, 1991, after M&R missed payments on a revised payment program, the Division demanded payment of the total amount owed. M&R filed for bankruptcy the same day.

Selective sought to be discharged from their obligations as surety by bringing an action against the Division. Selective argued that their obligation was extinguished when the Division and M&R altered the terms of M&R's obligations. Selective further argued the alterations consisted of the payment extension beyond the thirty-day limit contained in N.J.S.A. 54:40A-13, the charging of interest on the initial default and the additional credit sales to M&R.

The Trial Court stated that the Director of the Division may revoke a distributor's credit privilege, for cause, at his discretion under N.J.A.C. 18:5-3.19. The Court therefore found that delinquent payments do not automatically suspend the distributor's privilege to make further credit purchases.

However, the Trial Court said that the Director lacked the authority to grant M&R an "extension of time to pay" for stamps purchased on credit. The Trial Court found that Selective was in fact discharged but only for the amount by which

it was harmed by the extension. Therefore Selective was responsible for M&R's indebtedness, the total purchase price of all the tax stamps, but not for the interest and penalties.

The Appellate Division affirmed the Trial Court's judgment but did not view the payment program as an "extension," but rather, as an attempt to collect an overdue tax. According to the Appellate Division, N.J.S.A. 54:53-10 authorizes the satisfaction of a compromised amount owed to the State through installment payments.

Gross Income Tax

Timely Refund Claims – *Charles C. Carella v. The State of New Jersey, Department of Treasury, Superior Court of New Jersey, Chancery Division: Essex County, decided May 20, 1997.*

Plaintiff sought to recover \$2,259,820 in New Jersey gross income taxes voluntarily paid by Eddie Antar ("Crazy Eddie") to the State of New Jersey for the years 1984 through 1987. Plaintiff also sought to recover \$8,652.60 and \$62,378.98 for gross income taxes paid for 1984 and 1986, respectively. Antar filed several refund claims prior to plaintiff's action here.

The Court first pointed out that N.J.S.A. 54A:9-8(a) states that written refund claims need to be filed within three years of the filing of tax returns or two years after the actual payment of those taxes. The Court further offered that *Vivoca v. Director, Division of Taxation, 116 N.J. Super. 496 (App. Div. 1979)*, says the filing of a refund claim with respect to interest and penalties assessed by the Director must be filed within

ninety days of the assessment. In accordance with those authorities, the Court found that the only amount with respect to which Antar filed a timely refund claim, and thus the only amount the Court could consider in this action, was \$11,943.80.

Plaintiff further claimed that no nexus existed between Antar and New Jersey and therefore the assertion of New Jersey's power to tax Antar's income earned elsewhere was a violation of the Due Process Clause under the Fourteenth Amendment to the U.S. Constitution.

The Court disagreed, finding that New Jersey's retention of Antar's tax payments did not constitute a violation of his due process rights. The Court explained that New Jersey did not reach beyond its borders to assess or collect the tax, but rather, the jurisdiction to tax was conferred on New Jersey by Antar's *voluntary* payments to the State.

Plaintiff also argued that, as a violation of equal protection, New Jersey did not grant Antar, as a supposed nonresident, a credit against their gross income tax obligation for taxes paid to another jurisdiction which it grants to its residents.

Rejecting plaintiff's argument, the Court stated that New Jersey imposes a tax, without credit, on New Jersey source income on both its residents and nonresidents. The credit plaintiff was concerned with is for taxes paid to other jurisdictions by New Jersey residents which New Jersey has the authority to tax without offering a credit

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at all. Nonresidents are not offered a credit by New Jersey for taxes paid to other jurisdictions because the State has no jurisdiction to tax nonresidents on non-New Jersey source income in the first place.

Based on the Court's findings, all of plaintiff's claims were dismissed.

Taxability of Distributions from Non-Qualified Investment Funds – *Colonial Trust III v. Director, Division of Taxation*, decided February 21, 1997; Tax Court of New Jersey; Docket No. 009777-93.

This was a declaratory judgment action to determine whether N.J.S.A. 54A:6-14.1 violates 31 U.S.C.A. §3124(a) and the Supremacy and Borrowing Clauses of the United States Constitution. N.J.S.A. 54A:6-14.1 excludes from gross income certain mutual fund distributions attributable to interest or gain from exempt Federal obligations or exempt obligations of the State of New Jersey or its agencies and subdivisions. However, by the terms of this provision, the exemption applies only when the fund making the distributions is a "qualified investment fund." In order for the State to determine that it is a qualified investment fund, the fund would have to have at least 80% of its investments in exempt obligations. If a fund did not satisfy these criteria, it would not be a qualified fund, and under

the terms of the statute, its distributions would not be excludable from gross income.

At issue in this case was whether the State has the power to limit the immunity of Federal obligations from state taxation, or whether instead the scope of Federal obligation immunity is grounded in the Federal constitution and therefore not subject to limitation or definition by a state. The Tax Court determined that the State did not have the power to set conditions for the immunity of Federal obligation income. Consequently the State is barred from using the conditions set forth in N.J.S.A. 54A:6-14.1 in order to impose tax on Federal obligation income paid by non-qualified investment funds. The Court's holding was based on its interpretation of the Federal immunity statute, 31 U.S.C.A. §3124, and its analysis of the nature of mutual funds.

31 U.S.C.A. §3124(a) provides, in relevant part, that "[s]tocks and obligations of the United States Government are exempt from taxation by a State or political subdivision of a State. The exemption applies to each form of taxation that would require the obligation, the interest on the obligation, or both, to be considered in computing a tax..." The Court noted that this statutory immunity is rooted in the Supremacy and Borrowing Clauses of the United States Constitution and a long line of Supreme Court case law construing these clauses. The Supremacy Clause, U.S. Const., Art. VI, cl.2, provides that the Constitution and Federal laws enacted pursuant to it are the "supreme law of the land." The Borrowing Clause, U.S.

Const. Art. I, §8, cl.2, provides that Congress has power to borrow money on the credit of the nation.

The Division argued that while Federal obligation income received by a mutual fund was nontaxable to the fund, in its capacity as a corporation, the character of the Federal obligation income did not flow through to the shareholders who then received income from the fund itself. The Tax Court rejected that argument, finding instead that mutual funds are structured and intended to be investment conduits and that their function as conduits must control the way their shareholders are taxed by the states. The Tax Court cited numerous court decisions of other states using the "conduit" analysis.

The Tax Court held that 31 U.S.C.A. §3124 requires that distributions paid by a mutual fund must be immune from New Jersey gross income tax to the extent that they are attributable to interest earned on Federal obligations. Therefore the imposition of tax on Federal obligation income distributed by "non-qualified" investment funds, pursuant to N.J.S.A. 54A:6-14.1 read in conjunction with N.J.S.A. 54A:5-1(e) or (f), is barred by Federal law. The Court explicitly limited its holding to mutual funds, specifying that it had no effect on the taxation of dividends paid by traditional C corporations not designed as investment conduits.

The Division is not appealing this decision. Taxpayers who might have refunds as a result of this decision should be mindful of the three-year statute of limitations.

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Local Property Tax Exemption as Charitable Institution Denied – 1711 Third Avenue, Inc., Plaintiff, v. City of Asbury Park, Defendant, decided October 16, 1996; Tax Court of New Jersey; Docket No. 008030-95.

Taxpayer sought local property tax exemption in the N.J. Tax Court under N.J.S.A. 54:4-3.6 as an “entity organized exclusively for the moral and mental improvement of men, women and children or as an institution that cares for, treats and studies the ‘...mentally retarded...’” after Asbury Park assessor’s \$98,000 value determination was affirmed by Monmouth County Tax Board.

The property in question was a residential dwelling funded, in part, by H.U.D. under section 811 of the Cranston Gonzalez National Affordable Housing Act. The H.U.D. program provided housing and various support services to low income adults with mental health problems. H.U.D. required that each residence be organized as a nonprofit corporation having ownership of the property, in this case Third Avenue, Inc. H.U.D. further required that all operational, counseling and other assisted living services such as shopping, cooking, etc. be provided by a nonprofit sponsoring organization, that being Collaborative Support Programs of New Jersey (CSP). CSP then contracted nonprofit corporation Butterfly Property Management to draft leases, collect rents, and handle repairs and utility bills for its sponsored properties, i.e., Third Avenue, for a management fee of 7% of the tenants’ rents. The two H.U.D. tenants paid 30% of their

Social Security income, \$110 and \$115 per month, as rent to Third Avenue Corp.

Tax Court did not dispute the property’s qualification under H.U.D.’s section 811 supportive housing program. The Court did, however, rule against the taxpayer for failing to substantiate conformance to the exemption prerequisites of N.J.S.A. 54:4-3.6.

To qualify for exemption under the “moral and mental improvement” clause of 3.6, Third Avenue Corp. would have to be organized exclusively for “moral and mental improvement” purposes. Citing *Planned Parenthood v. Hackensack*, the organizational test applied by this Court was whether the owning entity’s purpose on its certificate of incorporation or corporate charter coincided with the purpose on its claim for exemption. The Court emphasized the distinction between an entity’s organization and its operations and disagreed with an opinion in *Inter-care Health Systems, Inc. v. Cedar Grove* that an entity’s operations should be reviewed to determine if it’s organized for exempt purpose. In contrast to its claimed “moral and mental” purpose, Third Avenue’s incorporation certificate stated its organizational purposes were exclusively charitable and/or educational. Using *Schizophrenia Foundation of N.J. v. Montgomery Twp.* as a guide, the Court reasoned that while providing housing which met the physical, social and psychological needs of mental health services clients might be construed as moral and mental improvement purposes, the conclusion was not possible here

because providing housing was not a stated purpose of Third Avenue

Corp. The educational purpose failed too since there is no exemption in 3.6 for entities organized for general educational purposes; but is rather for buildings used as colleges, schools, academies or seminaries. The Court concluded that although Third Avenue was better organized for charitable purposes, it had “not offered the proper proofs nor made the necessary arguments to bring itself within the exemption for charitable institutions.”

The Court stated that Third Avenue also failed to analyze its certificate of incorporation in relation to N.J.S.A. 54:4-3.6 with respect to property owned and used in connection with “‘curriculum, work, care, treatment and study of ...mentally retarded...’” Third Avenue had no curriculum of its own and carried out no work, care or treatment. Third Avenue only held title to the real estate.

Tax Court also noted that despite oral testimony indicating the organization operated at a deficit, no financial data was provided to confirm its nonprofit status. That an entity may operate at a loss does not establish that it is “‘not conducted for profit.’” Third Avenue was remiss in not providing its and CSP’s financial records over several years time, including an explanation of their mutual financial arrangements, government funds received, use of revenues, salaries paid, rents charged and eviction policies for nonpayment. Again, taxpayer failed to bring itself within exemption statute as a nonprofit organization.

It is not the Court’s function to make appropriate arguments to bring the appellant within exemp-

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tion requirements. The burden of proving tax exempt status is upon the claimant.

Sales and Use Tax

Alarm System Services and Telecommunications – *Aetna Burglar & Fire Alarm Company v. Director, Division of Taxation*, Tax Court of New Jersey, decided May 15, 1997.

Aetna Burglar & Fire Alarm Company appealed a sales tax deficiency assessment imposed on its receipts from its services including the installation, servicing and monitoring of fire and burglar alarm systems. Aetna did not collect or remit any sales tax during the assessed period, July 1, 1991 through June 30, 1994.

The issue presented before the Tax Court was whether Aetna's services were "telecommunications" within the meaning of N.J.S.A. 54:32B-2(cc) and, if so, are subject to sales tax pursuant to N.J.S.A. 54:32B-2 & 3.

Aetna's alarm systems are connected to customers' phone lines and transmit electronic messages to a central station for both regular "check-ups" and emergencies. The phones are also used by Aetna employees to check with the customer to see if the incoming signal was caused by a real emergency.

Aetna argues that the monitoring of burglar and fire alarm systems is not within the ambiguous statutory definition of "telecommunications," and is therefore not subject to the sales tax.

The Tax Court found that while N.J.S.A. 54:32B-2(cc) enumerates

five exclusions to its definition of telecommunications, the monitoring of burglar and fire alarm systems is not one of them. The Court further added that the phrase "including but not limited to," used in addressing these taxable services, supports a legislative intention to include services such as Aetna's in the definition of telecommunications.

Aetna further argued that since it charges a flat monthly monitoring fee, rather than a charge per call, the use of a telephone is incidental to the service provided and is therefore not subject to taxation.

The Court responded by stating that without the ability to notify the central station of an intruder, fire or any other emergency, Aetna's monitoring service would be useless. The Court concluded that the use of the telephone cannot be considered incidental because Aetna's service heavily relies on it.

Partial summary judgment was granted to the Director, while another trial will be scheduled to see if the amount of tax assessed by the Director was correct.

Taxability of Sweeping Service – *D.P.S. Acquisition Corp. v. Director, Division of Taxation*, 16 N.J. Tax 292 (1997).

Taxpayer, which was in the business of sweeping parking lots with a vehicle that was capable of sweeping up dirt and collecting it in a container which could then be emptied into customers' dumpsters, appealed from a determination that it was liable for sales tax on its sales of this service. At issue was whether the sweeping should be treated as a taxable service of "maintaining real property" or as a

service of "garbage removal" which is exempt if performed on a regular contractual basis for a term of at least 30 days. N.J.S.A. 54:32B-3(b)(4).

The Court determined that, although taxpayer might carry out the dirt collected in the vehicle's container and dump it elsewhere, the garbage removal aspect of its service was only incidental to its primary service of sweeping. It therefore held that the sweeping service was a maintenance service subject to sales tax and that the garbage removal exemption did not apply.

Untimely Refund Claim – *Toys R' Us, Inc. v. Director, Division of Taxation*, decided April 29, 1997 Superior Court of New Jersey, Appellate Division.

Toys R' Us, plaintiff-appellant, ships goods with labels already affixed to its retail outlets where additional price labels are affixed. In 1990, a field agent of the Division, defendant-respondent, conducted an audit of Toys R' Us' records for the period between April 1, 1985 and September 30, 1988. On April 15, 1991, Toys R' Us paid \$463,000 in additional taxes that the Division assessed on February 28, 1991 as a result of the audit.

Toys R' Us sought to recover \$99,000 of the additional taxes which was attributable to taxes imposed on the sale and use of labels during the audited period. The Court stated that the field agent relied on an opinion from the Director, appearing in a 1981 edition of the *New Jersey State Tax News*, interpreting N.J.S.A. 54:32B-8.15. The statute exempts

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wrapping supplies, including labels, from the sales and use tax. Based on that opinion, the field agent determined that Toys R' Us' price labels were still in fact taxable.

In the March/April 1991 edition of the newsletter, the Division stated that it had taken the position that price labels were now exempt. Toys R' Us filed a refund claim in July 1991, five months after the Division's assessment against them. Pursuant to N.J.S.A. 54:32B-19, the Division denied the refund because the claim was not filed within thirty days of the Division's determination (extended to 90 days in 1992). The Tax Court agreed with the Division.

Toys R' Us argued that the claim was timely because it was filed within the six-month period in which the Division could have assessed additional taxes. Toys R' Us also argued that the Tax Court judge erred because he considered the date when Toys R' Us learned of, and not when the Division adopted, the corrected exemption policy.

The Appellate Division agreed with the Tax Court finding that the claim was untimely. Although the Division could still have assessed additional taxes, the subsequent six-month period during which the taxpayer may file a claim only applies if the taxes were volunteered by the taxpayer rather than assessed by the Division, N.J.S.A. 54:32B-27(c).

The Appellate Division remanded the case to the Tax Court for further fact finding concerning the

effective date of the Division's policy change in 1991. □

In Our Legislature

Alcoholic Beverage Tax

Tax Reduced on Certain Apple Cider — P.L. 1997, c.153 (signed into law on July 1, 1997) reduces from \$0.70 per gallon to \$0.12 per gallon the tax rate on apple ciders which have an alcohol content by volume of at least three and two tenths percent (3.2%) but not more than seven percent (7%). This statute is effective immediately but will remain inoperative until November 1, 1997.

Miscellaneous

Corporations and Limited Liability Companies, Limited Liability Partnerships — P.L. 1997, c.139 (signed into law on June 27, 1997) amends and supplements various aspects of the law concerning certain domestic and foreign entities authorized to transact business in this State.

Public Utility Taxes

Gross Receipts, Franchise tax Eliminated for Gas, Electric and Telecommunications Utilities — P.L. 1997, c.162 (signed into law on July 14, 1997) revises taxation of gas, electric and telecommunications public utilities and sales of electricity, natural gas and energy transportation service in order to preserve certain revenues under transitions to more competitive markets in energy and telecommunications.

Effective for 1998, the new law eliminates the gross receipts and franchise taxes as collected by electric, gas and telecommunications utilities. Instead, these utili-

ties will be subject to the State's corporation business tax. The State's existing sales and use tax will be applied to most retail sales of electricity and natural gas. A transitional energy facility assessment will be applied on electric and gas utilities. This assessment will be phased out over five years.

Funds guaranteed to Municipalities

— P.L. 1997, c.167 (signed into law on July 22, 1997) establishes the "Energy Tax Receipts Property Tax Relief Fund." It replaces the method of distributing certain funds guaranteed to municipalities from the State's taxation of energy and telecommunications. This new law increases the amount of municipal aid from the current guaranteed amount of \$685 million to \$740 million in 1998, \$745 million in 1999, \$750 million in 2000 and 2001, and \$755 million in 2002 and each fiscal year thereafter.

Spill Compensation Tax

Cap Altered on Tax on Hazardous Substance Transfers — P.L. 1997, c.134 (signed into law on June 27, 1997) alters the formula by which owners and operators of major facilities for the storage of hazardous substances determine the maximum annual amount of spill compensation tax due on transfers of such substances. This statute is effective immediately. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
7	26	27	28	29	30	31	

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

October 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30
continued

October 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
continued

October 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 27

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
1	2	3	4	5	6	7	8
9	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
7	23	24	25	26	27	28	29
	30						

November 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

November 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending July 31
continued

November 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly return

November 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
continued

November 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
7	21	22	23	24	25	26	27
	28	29	30	31			

December 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

December 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly return

December 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

December 22 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

December 26

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

To order copies of the **1997 Package NJX**: Complete the form below (make sure to include your daytime telephone number), detach at the dotted line and mail the order, along with payment, to:

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Total Enclosed			

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City, State _____ Zip Code _____

Telephone (_____) _____

To insure timely delivery, we must receive your request by October 15, 1997.

from the director's desk

Filing ST-50 Online

The Division of Taxation has initiated a pilot project to accept Sales Tax Quarterly Returns (Form ST-50) via the Internet. Taxpayers who file for informational purposes may now use the Division's home page to securely file their Form ST-50.

Taxpayers who have Internet access and use a browser which supports Secure Sockets Layer (SSL) should connect to the following World Wide Web address: **<https://www.state.nj.us/treasury/taxation/st50zero.htm>**. (Please note, recent versions of Netscape Navigator and Internet Explorer support SSL.) A template appears that replicates the information contained on the ST-50, such as name, address, identification number and gross sales. The taxpayer, or his representative, simply completes the appropriate fields, and then at the end of the form clicks a button to submit the data. Before actual transmittal, the home page checks to detect any errors. If there is an error, a screen pops up notifying the taxpayer of the error and prompting him to return to the original screen to make a correction. If no error is detected, the taxpayer is then prompted to submit the information to the Division. The Division recommends that taxpayers print out a hard copy for their records *before* information is submitted.

Future plans will allow taxpayers who owe sales tax to file their ST-50 returns via the Internet and the actual payment via electronic funds transfer. Please visit our home page from time to time as we will announce this option as soon as it comes online.

New Jersey State Tax News

Summer 1997

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TeleFile Program Huge Success

This year, more than 144,000 New Jersey taxpayers filed their New Jersey income tax returns via the Division of Taxation's toll-free TeleFile number. Of the taxpayers who used this convenient filing method, 25% TeleFiled their returns during the last three weeks of the tax season in April. Those who were due refunds had their checks mailed within two weeks of the date they TeleFiled.

During the 1995 filing season New Jersey became just the third State in the nation to offer taxpayers the option of filing their State income tax return by telephone. Of the 247,000 taxpayers (from specified counties in the State) who were pre-selected to participate in the pilot program that first year, 8.9% successfully filed their returns using NJ TeleFile.

For the 1996 tax season, as eight more states joined the growing ranks of those offering TeleFiling as an acceptable filing method for their state's tax return, New Jersey expanded its program, pre-selecting approximately one million residents, from all counties in the State, as potential TeleFile candidates. Candidates were mailed TeleFile packets if their filing history indicated a strong likelihood that they would meet the eligibility requirements. The impressive 14.4% successful filing rate was instru-

mental in earning New Jersey fourth place in terms of number of returns TeleFiled.

"The NJ TeleFile program is a good example of how your tax dollars are working for you," said Richard D. Gardiner, Director of the Division of Taxation. "Our theme, 'We're making tax filing less taxing for you,' certainly proved itself."

The program was not only convenient to use and easy to understand, it allowed last-minute filers to receive their refunds significantly faster. The program is expected to be further expanded next year. □

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

Resale Exemption for Out-of-State Vendors

The Division of Taxation has changed its policy regarding the use of New Jersey's resale exemption certificates by out-of-State vendors. Those vendors who are registered with their home states but are not required to register with New Jersey and have not registered with this State may now use a New Jersey resale certificate.

Qualified out-of-State vendors may now make tax-exempt purchases in New Jersey of goods and services for resale. The Division of Taxation has developed a new exemption certificate, Form ST-3NR, Resale Certificate for Non-New Jersey Vendors, for use by qualified out-of-State vendors picking up merchandise in New Jersey or drop shipping merchandise to a New Jersey address. In April 1997 the Division sent a notice to all registered vendors announcing the change in policy and enclosed a copy of the new exemption certificate, Form ST-3NR.

When making tax-exempt purchases for resale, qualified out-of-State vendors must present the seller with the following evidence of exemption:

- **Items picked up in New Jersey:** When the purchaser carries the goods away with him from the point of sale, or sends his own vehicle or messenger to pick them up in New Jersey, the *only* acceptable certificate is Form ST-3NR, Resale Certificate for Non-New Jersey Vendors.
- **Items drop shipped to New Jersey:** When the purchaser does not take delivery of the goods in New Jersey, but asks the seller to deliver the mer-

chandise to the purchaser's customer in New Jersey, the acceptable resale certificates for the qualified out-of-State vendor to use are:

1. Purchaser's out-of-State resale certificate; or
2. Multijurisdiction Uniform Sales & Use Tax Certificate published by Multi-State Tax Commission; or
3. New Jersey Form ST-3NR

Businesses that are required to be registered in New Jersey, as well as businesses that have chosen to register in this State even though not required to do so, must use a certificate showing their New Jersey tax registration number when making purchases for resale. Vendors registered in New Jersey may use either the New Jersey Resale Certificate (Form ST-3), or the Multijurisdiction Uniform Sales and Use Tax Certificate published by the Multi-State Tax Commission. □

Division of Revenue Formed

The Governor recently announced the creation of a new Division of Revenue under the New Jersey Department of the Treasury. The Processing Activity and the Tele-collection function of the Compliance Activity, formerly under the Division of Taxation, have been transferred to the Division of Revenue. Data Systems and Telecommunications, formerly part of the Processing Activity, has been renamed the Office of Technical Support to more accurately reflect its responsibilities. It will remain under the Division of Taxation. □

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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Richard D. Gardiner

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Editor: Linda B. Hickey

tobacco tax - from page 3

Tobacco Tax

Cigars and other tobacco products have lately been enjoying increased popularity among consumers. The Division of Taxation wants to remind both retailers and consumers that tobacco products (other than cigarettes) are subject to New Jersey's Tobacco Products Wholesale Sales and Use Tax.

The following notice, which was recently mailed to distributors, wholesalers and retailers of tobacco products, lists the requirements for collecting and remitting the Tobacco Products Wholesale Sales and Use Tax. The notice also describes the new Tobacco Products Wholesale Sales and Use Tax Resale Certificate, Form TPT-3, which may be used by registered distributors or wholesalers to purchase tobacco products, other than cigarettes, intended for resale.

Notice to Distributors, Wholesalers and Retailers of Tobacco Products

N.J.S.A. 54:40B-1, et seq., imposes a Tobacco Products Wholesale Sales and Use Tax at the rate of 24% on receipts from every sale of tobacco products, other than cigarettes, by a distributor or wholesaler to a retail dealer or consumer. Examples of tobacco products are: cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, tobacco substitutes, and snuff. Cigarettes are exempt from the Tobacco Products Wholesale Sales and Use Tax.

Use Tax

Distributors and wholesalers who also sell tobacco products at retail or otherwise use the tobacco products must pay a compensating use

tax of 24% on the wholesale sales price of the products.

If the distributor or wholesaler has not collected the 24% Tobacco Products Wholesale Sales Tax from the retailer or consumer, the retailer or the consumer who purchased from a distributor or wholesaler is responsible for remitting the compensating use tax of 24% of the price paid or charged directly to the Division of Taxation within 20 days of the date the tax was required to be paid.

Collection of Tax

Distributors and wholesalers are required to:

- collect the tax from the retailer or consumer when they collect the receipts for the products, and
- give the retailer or consumer an invoice, receipt, or other statement on which the tax is separately stated.

IMPORTANT NOTE:

The Tobacco Products Wholesale Sales and Use Tax is a trust tax. This means that the distributor or wholesaler who collects the tax is acting as a trustee for and on behalf of the State of New Jersey. These distributors and wholesalers are, by law, personally responsible for the tax imposed, collected or required to be collected under the Tobacco Products Wholesale Sales and Use Tax Act.

Resale Certificate (Form TPT-3)

The Tobacco Products Wholesale Sales and Use Tax Resale Certificate, Form TPT-3, may be used by registered distributors or wholesalers to purchase tobacco products intended for resale. When purchasing tobacco products, a distributor or wholesaler issues Form TPT-3 to the seller. The completed certificate documents

the fact that the wholesaler or distributor is not subject to Tobacco Products Wholesale Sales and Use Tax on the purchase. The distributor or wholesaler must collect the tax when the tobacco products are sold to a retailer or consumer. Retail dealers may not use Form TPT-3 to purchase tobacco products without paying the Tobacco Products Wholesale Sales and Use Tax.

Registering to Collect the Tax

Every distributor and wholesaler making sales of tobacco products to retail dealers or consumers must register with the Division of Taxation to collect the Tobacco Products Wholesale Sales and Use Tax. Distributors and wholesalers beginning business or opening new places of business are required to file an Application for Registration (Form REG-1) at least 15 days before beginning business.

continued on page 4

Interest 11.25% for Second Quarter

The interest rate assessed on amounts due for the second quarter of 1997 is 11.25%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%

Once the application is processed by the Division, the wholesaler or distributor will receive a Certificate of Authority to collect tax. This certificate must be prominently displayed in the wholesaler or distributor's place of business. Duplicate certificates will be provided for additional places of business.

Remitting the Tax

Distributors and wholesalers are required to file a Tobacco Products Wholesale Sales and Use Tax Return (Form TP-20) and remit the tax on or before the 20th day of the month following the month for which the return is being filed. If any due date falls on a Saturday, Sunday or legal holiday, the return is due on the next business day.

Tobacco Products Wholesale Sales and Use Tax Returns postmarked on or before their due date are considered to be filed on time. Returns postmarked after their due date are considered to be late and are recorded as being filed on the date they were actually received by the Division, not the postmark date. The tax must be paid whether or not the tax has actually been collected from the customer by the time the return is due. Full penalty and interest as provided by the State Tax Uniform Procedure Law, assessed from the due date of the return, will be imposed on a return filed and/or payment made after the due date.

An extension of time to pay the tax due will not be granted under any circumstances.

Record Keeping

Distributors and wholesalers are required to keep records of every charge and of all amounts paid, charged or due and of the tax payable on these amounts. These records include a true copy of each

invoice, receipt, statement or memorandum for all sales of tobacco products. These records must be available for inspection by the Division of Taxation for four years from the date of the transaction.

For more information about the Tobacco Products Wholesale Sales and Use Tax, call the Division's Audit Services Branch at 609-292-7288 or 609-984-7171, or write to:

DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
CN 281
TRENTON NJ 08646-0281 □

New IFTA Rules Clarified

Some New Jersey motor carriers mistakenly stopped paying a State Division of Taxation motor fuels tax following a change in State motor carrier laws.

The Motor Fuels Use Tax Act of 1963, N.J.S.A. 54:39A-1 et seq., imposes a fuel use tax on certain commercial and omnibus vehicles based on the amount of motor fuels used in their operations within New Jersey. This tax, known as the motor carriers tax, has, from its inception, been administered by the Motor Carriers Unit in the Division of Motor Vehicles.

P.L. 1995, c.347, approved January 5, 1996, provided for New Jersey's entry into the International Fuel Tax Agreement (IFTA) and required that the Motor Fuels Use Tax Act of 1963 conform to that agreement. IFTA is designed to simplify over-the-road motor carrier tax reporting. The statute made no changes in the reporting requirements of the separate Motor Fuels Tax administered by the Division of Taxation.

On July 1, 1996, when the Division of Motor Vehicles began operating under IFTA, motor carriers were directed to abandon their old reporting procedures, close their existing accounts and begin reporting "fuel use" on forms IFTA 100 and IFTA 101. But many carriers, including those licensed with the Division of Taxation as seller-users of special motor fuels, misunderstood the IFTA provisions. They believed that they were no longer required to file the Division of Taxation's Seller-User form MFT-10 since to do so would result in double reporting and taxation. The MFT-10 is used to record diesel fuel pumped into vehicles from bulk storage tanks. Seller-User licensees did not initially realize they were to take credit on the IFTA 101 for taxes required to be paid on the MFT-10.

When, in January 1997, the Division of Taxation noted a decrease in MFT-10 filings, it notified all delinquent seller-users about the IFTA law provisions and collected about \$40,000 paid to the Motor Carriers Unit in error.

Motor Carriers that mistakenly paid tax to the Division of Motor Vehicles were instructed to apply for a refund by filing an amended IFTA 100 and 101 form.

Taxpayers classified as Motor Carriers under N.J.S.A. 54:39A and holding IFTA licenses may contact the New Jersey Division of Motor Vehicles, Motor Carriers Unit at 609-633-9400 with questions concerning the IFTA 100 and 101.

Questions concerning the completion of the Motor Fuels Tax Seller-User of Special Fuels Report (Form MFT-10) may be directed to

the Division of Taxation, Excise Tax Group at 609-984-7171. □

Instructions for NJ-1040X Corrected

The 1996 Amended Income Tax Resident Return instructions contain several incorrect references to line numbers on the return form itself (Form NJ-1040X). To remedy the error, an addendum, entitled *1996 Form NJ-1040X Supplement*, has been prepared which provides the correct line number references. The Division will include the supplement with every future mailing of both the amended return instruction booklet and the *1996 Package NJX*.

To order the supplement, call our automated forms request service at 1-800-323-4400 (from Touch-tone phones within New Jersey only).

A complete set of the corrected instructions for Form NJ-1040X is available by:

- Dialing NJ TaxFax from your fax machine's phone at 609-588-4500 or
- Accessing the Division's home page on the World Wide Web at <http://www.state.nj.us/treasury/taxation/>

Interest on Refunds

The Division has received several inquiries concerning the payment of interest on refunds; specifically

when such interest begins to accrue.

In accordance with the Taxpayers' Bill of Rights, overpayments for returns due on or after January 1, 1994 are subject to the payment of interest if not made within six months of the later of the date of filing, date of payment of tax or the due date. In most cases claims are filed containing sufficient information to support both the

continued on page 6

Responding to Division Notices

The Taxpayer Accounting Branch receives many misdirected phone calls and pieces of correspondence, particularly regarding business taxes, which only serve to delay resolution of taxpayers' problems.

In general, correspondence relative to any notice from the Division should be addressed to the CN number listed on the notice to insure that it goes directly to the section responsible for that notice, and to the people most capable of resolving any issues. Phone calls about a notice should be directed to the Division's Tax Hotline, 609-588-2200, or to whichever other number may be listed on the notice.

Taxpayer Accounting is responsible for billings for the **Alcoholic Beverage, Atlantic City Luxury, Business Personal Property, Cape May Tourism, Gross Income** (employer withholdings and individual filings), **Litter, Motor Fuels, Petroleum Products Gross Receipts, Safewater, Salem, Sales and Use, Tobacco Products, and Urban Enterprise Zone** taxes. TPA also handles refund and credit requests for **Cigarette** (distributor), **Gross Income** (employer and individual), **Litter**, and **Spill** taxes.

Taxpayer Accounting also provides a **Tax Practitioner Hotline** for use by practitioners only, if client problems cannot be resolved through normal channels. The Hotline numbers are for personal income tax: **609-633-6657**; for

business taxes: **609-633-6905**.

Some other phone numbers for problems that cannot be resolved through normal channels are as follows:

- Delinquency notices for failure to file a return: **609-984-3377**
- Corporation Business Tax billings: **609-292-5257**
- Corporation Business Tax refund requests: **609-292-2168**
- Interstate Sales Tax: **609-984-0120**
- Refund requests for Atlantic City Luxury, Business Personal Property, Cape May Tourism, Salem, Sales and Use, Tobacco Products, and Urban Enterprise Zone taxes: **609-588-3767**
- Urban Enterprise Zone eligibility requirements or updates: **609-984-6150**
- Alcoholic Beverage Tax refunds: **609-984-4121**
- Refund requests for Motor Fuels or Petroleum Products Gross Receipts taxes: **609-292-7018**

□

interest on refunds - from pg. 5

grounds of the claim and calculation of the refund. However in some cases incomplete claims are filed which lack adequate detail to allow a determination to be made. In these cases, taxpayers are requested to submit all necessary, pertinent information to enable the Division to ascertain the validity of the refund request.

It is the Division's position that if sufficient information is unavailable at the end of six months, such claims will be denied and taxpayers will be provided their administrative appeal rights. □

Advertising "No Sales Tax" Violates NJ Law

Recently, several businesses in New Jersey have been contacted by the Division of Taxation for violating provisions of the New Jersey Sales and Use Tax Act by advertising "No Sales Tax," "Save the Sales Tax," "No One Likes to Pay Sales Tax" or "Tax Amnesty...we will pay the tax for you!" N.J.S.A. 54:32B-14(d) states: "No person required to collect any tax imposed by this act shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not consid-

amusement charge or rent payable by customer, or that he will pay the tax, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer...."

Phrases such as "No Sales Tax" suggest to the public that the product or sale is exempt from tax. These phrases cannot be used. Businesses who state or imply taxable items may be purchased tax-free may be subject to prosecution under N.J.S.A. 54:52-6 of the State Tax Uniform Procedure Law. □

COMPLIANCE Chapter XI Debtors in Default

A joint project was launched in March by the Division's Special Procedures Branch and Investigations Branch personnel to identify Chapter XI Bankruptcy Debtors-In-Possession who are in default to the Division of Taxation.

The project will be a two-pronged effort. Debtors who are found to be in default of their Confirmed Plan of Arrangement will be pursued by Special Procedures via remedies available through the

Bankruptcy Courts as well as the filing of Certificates of Debt in the Superior Court of New Jersey.

Investigations personnel will focus

Investigators canvassing the Sail Expo held at the Atlantic City Convention Center in January discovered a vendor actively selling merchandise while displaying this sign at his booth.

Over \$14,000 was collected from this business through a jeopardy assessment made for failure to file and pay New Jersey Sales Tax.

curring additional liabilities subsequent to the confirmation of its Plan of Arrangement, as well as those debtors who have been found to be dismissed or discharged with regard to their Chapter XI filing. Since these liabilities are outside of the plan and not subject to the automatic stay, Investigations will proceed as usual with the filing of Certificates of Debt and any other collection measures necessary to collect the indebtedness.

In either scenario, the Certificates of Debt will be filed against the debtor(s), and in the case of a corporation, Certificates of Debt will be filed against any and all responsible corporate officers personally, for "Trust Fund" taxes.

Prior to the launching of this project, a random selection process resulted in the issuance of 213 Notices of Demand For Payment for liabilities totaling \$16,461,005 and the filing of 91 Certificates of Debt for \$13,825,887. □

COMPLIANCE Disorderly Person Charges Filed

The Division is authorized to file disorderly persons charges against people who write bad checks to the Division, or who fail to register or file with Taxation or pay taxes due. Charges are filed in Trenton Municipal Court and when defendants fail to appear, bench warrants are issued for their arrest. One Mendham, New Jersey taxpayer surrendered to Taxation and was placed under arrest in February. Another was arrested in March at his Maplewood home. Both posted bail and were released.

WHY PAY TAXES?

*****Ships to All
States Outside CT

TAX FREE!

ered as an element in the price,

on those debtors who have in-

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disorderly person charges – from pg. 6
During the quarter ending March 31, 1997, seven people pleaded guilty to disorderly persons charges for bad checks. Three additional persons pled guilty to charges of failure to file returns and pay sales tax. Over \$103,500 is being recovered from these taxpayers who collectively paid over \$6,200 in court costs and fines. □

SALES AND USE TAX ***U.S. Government*** ***I.M.P.A.C. Visa*** ***Cards***

Certain employees of the executive branch of the Federal government are authorized to make official government purchases of supplies and services using a special Visa credit card (I.M.P.A.C. card, for International Merchant Purchase Authorization Card). Receipts from sales paid for by means of an I.M.P.A.C. card are exempt from New Jersey sales tax since the U.S. Government, through its employee/agent, is recognized as the direct purchaser of the goods and/or services procured.

These unique cards are valid only when used for official government purchases under \$25,000. Each card bears the Great Seal of the United States in the front upper left corner and contains the words "United States of America I.M.P.A.C. for official use only" along with the name of the Federal employee authorized to use the card. The face of the card is embossed to imprint "U.S. Govt. Tax Exempt" on the transaction charge slip which will provide the necessary documentation (in lieu of a purchase order or exemption certificate) that the purchase was exempt from tax.

The Social Security Administration, which utilizes the I.M.P.A.C. card, recently notified the Division of Taxation that it has also embossed the agency's tax identification number on the card to make it easier for merchants to accept the card for tax exempt purchases.

The I.M.P.A.C. Visa credit card has been approved by the Division of Taxation for use in New Jersey since 1989 and remains the only credit card approved for use by Federal employees to make tax-exempt purchases in this State. □

CONFERENCE & APPEALS ***Stay of Collection*** ***During Appeal***

Both before and after the Taxpayers' Bill of Rights (July 1, 1993), the Director of the Division of Taxation has had the right to pursue collection or otherwise secure protested tax liabilities while a finding or assessment was being protested to the Director. The Taxpayers' Bill of Rights did however impose certain restrictions on the Director as to when security could be required.

Basically, the Taxpayers' Bill of Rights added the following provision to the statutory provisions dealing with protests against findings or assessments (N.J.S.A. 54:49-18): "b. Except in the case of an arbitrary assessment pursuant to R.S. 54:49-5 or R.S. 54:49-7, no security shall be required for an amount in controversy of less than \$10,000. Contested assessments of \$10,000 or more shall not require security unless the director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer."

The Conference and Appeals Branch has added to its protest review process a procedure which will identify taxpayers that will be required to provide security in order to stay the collection process. The Director shall immediately stay all collection activity relative to the protested tax liability upon the furnishing of the security required.

Consistent with the relevant statutes and regulations (N.J.A.C. 18:1-1.8), the Conference and Appeals Branch will contact affected taxpayers and/or their representatives in writing advising them that the Director of the Division of Taxation requests:

- (1) That the taxpayer pay to the Division of Taxation the tax, penalty and/or interest assessed; or
- (2) Furnish the Division with a Surety Bond subject to the approval of the Director; or
- (3) Furnish the Division with a Letter of Credit subject to the approval of the Director.

Who Will Be Contacted?

Security shall be required in the case of a protest to the Director of any liability consisting in whole or in part of arbitrary or estimated assessments.

Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is substantial risk of the taxpayer's failure or inability to pay a liability, based upon the compliance history and financial condition of the taxpayer.

"Compliance History" is deter-

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stay of collection - from pg. 7

mined based upon any and all information obtained and/or maintained by the Director with respect to any State tax accounts of the taxpayer, including, but not limited to, information that the taxpayer has under reported or failed to report income.

“Financial Condition” is determined based upon any and all information that has a potential impact on the taxpayer’s ability to pay the assessed taxes.

No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

What Happens If A Taxpayer Fails to Comply?

Absent payment or the requested security, *no stay of collection is in effect*. Therefore, if a taxpayer has been asked to pay and/or furnish security, and fails to do so within the thirty days provided, a Certificate of Debt will be filed against the taxpayer in the Superior Court of New Jersey pursuant to N.J.S.A. 54:49-12. Concurrently, a “Finding of Responsible Person” will be initiated, as appropriate, in cases involving trust fund taxes.

The same security rules apply to complaints filed with the Tax Court of New Jersey as apply to protests filed with the Conference and Appeals Branch. □

CORPORATION TAX

Corporate Services Audit Groups

In an effort to improve taxpayer service, the Corporate Services Audit Group of the Office Audit Branch has recently been realigned

to form two groups. The first group, Corporate Services Audit Group A, will be responsible for Dissolutions, Withdrawals and Reauthorizations.

The second group, Corporate Services Audit B, is responsible for the Reinstatement of Corporate Charters voided by the Secretary of State. Jointly, the groups will share responsibility for the issuance of Certificates of Tax Lien Searches.

Correspondence for either group may be addressed to:

NEW JERSEY DIVISION OF TAXATION
DOCUMENT CONTROL CENTER
CORPORATE SERVICES AUDIT GROUP
(A OR B)
77 CARROLL STREET
CN 277
TRENTON NJ 08646

The Corporate Services Audit Groups may also be contacted by telephone at the following numbers:

Corporate Services Audit Group A:
609-292-5323

Corporate Services Audit Group B:
609-984-6366

Applications and forms for either group can be ordered through your fax machine by calling the Division’s TaxFax System at 609-588-4500. □

GROSS INCOME TAX ***Self-Charged Interest***

Recently, a practitioner posed this question:

A New Jersey resident shareholder in a New Jersey electing S corporation had a \$100,000 pro rata share S corporation loss for tax year 1995. The New Jersey resi-

dent is a 100% shareholder. The shareholder also had \$10,000 of “self-charged interest.” The practitioner wishes to include the “self-charged interest” on the Schedule K of the CBT-100S thus having the effect of netting the interest against the pro rata share S corporation loss of \$100,000.

Self-charged interest occurs when the taxpayer makes a loan to the S corporation. The S corporation then generates a 1099 to the shareholder for the interest payable on the loan. The interest for Federal tax purposes is not treated as portfolio interest income as listed on the 1120S K-1, but rather is reported as “taxable interest income” on the taxpayer’s Federal 1040 return. The self-charged interest may be used for Federal tax purposes to offset the passed-through interest expense of the S corporation (reported on Schedule A of the taxpayer’s Federal 1040 return) that is passed through to him.

Self-charged interest is taxable for New Jersey Gross Income Tax purposes to the individual making the loan. It is personal interest income earned from a loan to a corporation by an individual, who incidentally is a shareholder in the corporation. It is reported on the NJ-1040 as “Taxable interest income.”

The self-charged interest is not includible on Schedule K of the CBT-100S. Interest reported on Schedule K, Part 2, line 2 c., represents interest earned by the S corporation as a business entity.

The corporation should report the self-charged interest to the shareholder on Part V of Schedule NJK-1, “Interest paid to share-

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self-charged interest - from page 8 holder (per 1099-INT)." □

GROSS INCOME TAX ***Forgiveness of Debt Income***

Forgiveness of debt income that passes through to a partner from the discharge or cancellation of partnership indebtedness is taxable as "Distributive Share of Partnership Income" for New Jersey gross income tax purposes. See *Koch v. Director*, 15 N.J. Tax 387 (1995).

However, if the taxpayer makes an election under Federal Code Section 108 (b) (5) and 108 (c) and files Federal Form 982, the taxpayer may exclude the forgiveness of debt income from their Federal 1040 return in exchange for reducing their basis in depreciable real property.

Since for New Jersey purposes the basis of the property must be the same as for Federal income tax purposes, the forgiveness of debt income not recognized for Federal income tax would also be excluded from New Jersey gross income tax. Law: R.S. 54A:5-1c. □

INHERITANCE/ESTATE TAX ***Common Filing Mistakes***

"What are the most common mistakes made in filing transfer inheritance tax and New Jersey estate tax returns?"

This question is frequently asked of the Transfer Inheritance and Estate Tax Branch representatives at various functions throughout the State.

Common errors parallel those associated with the preparation of tax returns for other taxes administered by New Jersey, other states and the Federal Government. These include errors such as:

1. Failure to sign the return.
2. Failure to enclose required documents.
3. Failure to include the proper social security or other identifying number on the return.
4. Failure to prepare or include all required schedules.
5. Failure to include proper payment.
6. Mathematical errors.

In addition to these and other frequent errors made in the preparation of tax returns, there are many that are unique to the preparation of the New Jersey transfer inheritance tax and New Jersey estate tax returns.

1. Absence of Notarization. The transfer inheritance tax return is an affidavit and requires that the signature of the individual authorized to represent the estate and file a return must be notarized or acknowledged by an individual who is authorized to make such acknowledgments.
2. Incorrect Social Security Numbers. The social security number of the decedent is required on all returns as opposed to the social security number of the individual beneficiary or representative of the estate.
3. Absence of Required Attachments.
 - a. A copy of decedent's most recent full year Federal Form 1040.
 - b. A plain copy of the decedent's last will and testament.

- c. A copy of any Trust Agreements.
- d. A copy of "Buy-Sell Agreements" and other data required by regulation in regard to "Closely held corporations," partnerships, etc.

In addition to the various proofs and documentation required by statute and/or regulation, supporting evidence and explanation for any item or claim being reported should be enclosed with the return. When sufficient information is submitted with the return, it permits the Division to make necessary determinations in a more timely fashion. This is, of course, beneficial to the Division as well as to the representatives of the estate. When obviously necessary information must be requested by or expanded upon by the Division, it can only result in a processing delay and, consequently, a delay in the finalization and distribution of the estate.

Some common errors that are unique to the preparation of New Jersey estate tax returns include:

1. Failure to submit a copy of the Federal Form 706, as required by statute.
2. Failure to submit copies of the closing letter and other pertinent correspondence received from the Federal authorities.
3. Failure to take the "Credit for State Death Taxes" in the Federal proceeding thereby choosing to pay the Federal government instead of the State. This is a serious error since the New Jersey estate tax is not optional on the part of the taxpayer. It is due to the State of New Jersey regardless of

whether or not the estate utilizes the credit. This tax is based upon the amount of the credit "ALLOWABLE" as opposed to the amount taken or paid. □

LOCAL PROPERTY TAX **Property Record Card Policy Reminder**

Assessors are reminded the Local Property Tax Branch recommends a policy of openness regarding public requests for property data, including the Property Record Card, for those taxpayers seeking information that pertains to their own property. The positive results of providing a copy of the card could be increased accuracy of information in the assessor's files and greater taxpayer confidence in the assessment process. It is also not in the public interest that reasonable access to SR-1A forms in the assessor's office be denied. □

LOCAL PROPERTY TAX **Forms Available on Home Page**

Recently, the following Local Property Tax forms became available on the Division of Taxation's World Wide Web Home Page. Our address is:

<http://www.state.nj.us/treasury/taxation/>

- Property Tax Deduction Claim by Veteran or Surviving Spouse of Veteran or Serviceperson
- Claim for Real Property Tax Deduction on Dwelling House of Qualified NJ Resident Senior Citizen, Disabled Person, or Surviving Spouse
- Claim for Property Tax Exemption on Dwelling House of Disabled Veteran or Surviving

Spouse of Disabled Veteran or Serviceperson

- Petition of Appeal
- Added/Omitted Petition of Appeal
- Application for Real Property Abatement for Residential Property in an Urban Enterprise Zone
- Application for Real Property Exemption for Certain Contaminated Real Property. □

LOCAL PROPERTY TAX **Assessor Appointments**

Municipalities, when seeking to fill a vacant assessor's position, should seek input from the County Tax Administrator as well as the Division of Taxation. The Tax Administrator and the Division of Taxation can provide information regarding an individual's employment as an assessor in other districts throughout the State. Input from State and County officials who are actively engaged in the administration of the property tax can be a valuable asset to the municipality in making an informed decision. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

July 1–

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via magnetic tape.

- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 1998 together with a notice that the completed form must be filed with the assessor by August 1, 1997 to each taxpayer whose land was assessed for tax year 1997 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 1997 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns of local ex-

continued on page 11
change telephone, telegraph and

assessors' calendar - from page 10

messenger systems companies, with respect to tax year 1998 and thereafter, are required to be filed with the assessor for the taxing district in which the said property is located.

September 13-

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15-

- Assessor to file statement of taxable value of State-owned real property with Director, Division of Taxation. □

**LOCAL PROPERTY TAX
County Tax Board
Members Confirmed**

The Senate has confirmed 15 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Bergen County	
John Dilascio	6/27/96
Burlington County	
Earl D. Emmons	6/13/96
Cape May County	
Richard Lynch	10/24/96
Cumberland County	
A. William Biondi	6/13/96
Gloucester County	
Rudolph L. Marcucci (deceased)	6/13/96
Hudson County	
Vincent Cuseglio	10/24/96
Robert G. Doria	10/24/96
Hunterdon County	
Joann R. Boehm	7/25/96
Mercer County	

Richard J. Carabelli, Jr.	6/13/96
Norbert E. Donelly	12/19/96

Ocean County

Lucille C. Foley	5/16/96
John A. Coan, Jr.	12/19/96

Salem County

Robert J. Buechler, III	6/13/96
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Somerset County

William L. Linville	12/19/96
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Sussex County

Constance Flanagan	6/27/96
□	

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On January 17, 1997, Valji Mori, owner of Ray's Deli, who previously pled guilty to bribery and tax evasion, appeared before a Hudson County Superior Court Judge. Mori was sentenced to four years in prison and assessed fines and penalties totaling \$12,600. In addition to the fines and penalties, Mori paid \$75,000 in taxes to the State. This case resulted from an investigation worked jointly with OCI/Internal Security and the Division of Criminal Justice, where Mori paid an undercover Internal Security Investigator \$2,000 to reduce his \$100,000 liability by half.
- On February 7, 1997, Darlene Johnson-Hendryx, of Trenton, pled guilty to a charge of failing to file a 1995 New Jersey Gross Income Tax Return. Trenton Municipal Court Judge Garcia imposed fines and costs totaling \$1,155 and five years probation.
- On February 14, 1997, Kenneth Augustine of Holland, Pennsylvania, was indicted by a Mercer County Grand Jury on seven counts of fraud and theft. Six

counts involved failing to file New Jersey Nonresident Income Tax Returns for tax years 1992, 1993 and 1994 and failing to pay income tax on income in excess of \$190,000 he allegedly stole from Veterinary Learning Systems during the same period of time. This investigation was conducted jointly with the Mercer County Prosecutor's Office.

- On February 18, 1997, Chris Alevras was indicted by a Federal Grand Jury on 38 counts of mail, wire and bank fraud and filing false New Jersey Income Tax Returns. The Federal indictment alleges that Mr. Alevras realized in excess of \$800,000 in income from the frauds. Our State investigation has identified New Jersey Income Tax refunds that Mr. Alevras may have fraudulently obtained that totaled in excess of \$100,000. The Office of Criminal Investigation has been cooperating with the Federal government with regard to the Federal case. The State investigation is continuing.
- On February 19, 1997, Boris Surgent of Gibbsboro, New Jersey, pled guilty in Superior Court Camden County, to failing to file New Jersey State Income Tax Returns for tax years 1988, 1989, 1990 and 1991, with the intent to evade personal income tax on \$240,824 in fees that had been paid by customers to Surgent's commercial loan and brokerage firm, the Adams Group International, Inc. in Voorhees, New Jersey. Surgent also pled guilty to five counts of theft by deception relating to his conversion of the funds to his

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criminal enforcement - from pg. 11

personal use. The defendant is facing a possible prison sentence of 25 years and \$207,500 in fines. This case was investigated jointly with the Camden County Prosecutor's Office.

- On February 21, 1997, Paul McDaniel of West Chester, Pennsylvania, a waste oil dealer, was sentenced to three years probation and a fine of \$500 for failing to file a Petroleum Products Gross Receipts Tax Return. McDaniel was indicted on March 9, 1995 along with nine other defendants on 18 counts of conspiracy, racketeering, theft, misapplication of entrusted property, and failing to turn over tax in connection with a conspiracy to commit the theft of \$159,000 in New Jersey Petroleum Products Gross Receipts Tax and \$798,000 in Federal Motor Fuels Excise Tax, and various environmental offenses involving hazardous waste oil, between September 1992 and June 1993. This case was investigated jointly with the New Jersey Division of Criminal Justice as part of "Operation Boilermaker." Two other defendants have pled guilty in "Operation Boilermaker" and seven others are awaiting trial.
- On February 25 and 26, 1997, the Division of Taxation conducted 200 inspections in the City of Elizabeth to ensure compliance with licensing and registration requirements of New Jersey's Cigarette Tax, Tobacco Products Wholesale Sales and Use Tax, Motor Fuels Tax and Sales and Use Tax

laws. Of the 200 stores visited, 13% were not registered for Sales and Use Tax, 2% did not possess a Motor Fuel Tax License and 20% did not possess a Retail Cigarette Tax License. Only one store was found without New Jersey tax stamps on their cigarettes. These cigarettes were seized. This operation was the first of its kind as it focused on businesses selling cigarettes. However, the Division has been conducting organized sweeps of downtown business districts, malls, flea markets, expos, and crafts, antiques and collectibles shows. This particular project was an education and informational effort both for the Division and for the merchants we spoke to. We have a responsibility to the honest taxpayers of New Jersey to ensure that our tax laws are enforced.

- On February 27, 1997, Edmund Damiano of Verona, New Jersey, the former operator of the now defunct Auto 2000 Chrysler, Plymouth, Dodge dealership in Newton, New Jersey, was found guilty on 44 separate charges of fraud relating to the operation of that dealership. The charges included multiple counts of misapplication of entrusted property, theft by deception, misconduct by a corporate official, failure to file tax returns and failure to turn over Sales Tax in the amount of \$90,776.
- On March 4, 1997, Howard Levy, of Metuchen, New Jersey, entered into the Pre-Trial Intervention program and was ordered to pay restitution to the Division of Taxation in the amount of \$7,500. Levy was indicted by a Monmouth County Grand Jury on July 12, 1995, on

five counts relating to the evasion of New Jersey taxes. The indictment included failure to file New Jersey Corporation Business Tax Returns, failure to turn over Sales Tax, filing false and fraudulent Sales Tax Returns and misapplication of entrusted funds.

- Eighteen guilty pleas were entered in municipal courts throughout the State during this reporting period by individuals and businesses for noncompliance with the cigarette tax law. In addition, two cases were admitted to the Pre-Trial Intervention Program. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$13,755 and the awarding of 3,216 cartons of cigarettes, valued at nearly \$64,338, to the State.
- Charges were filed for violations of transporting, possessing, and selling untaxed cigarettes as well as licensing violations in municipal court for seven cases. A total of 4,784 cartons of cigarettes were seized along with a 1991 Dodge van and a 1992 Ford Crown Victoria. The value of the assets seized for these cases totaled \$117,680. □

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1997

Following is a summary of enforcement actions for the quarter ending March 31, 1997.

Certificates of Debt

During the quarter ended

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criminal enforcement - from pg. 12

March 31, 1997, the Division filed 3,049 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$33.5 million.

Levies

\$44,329.59 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending March 31, 1997, \$123,404 was collected from jeopardy assessments, and the assets of three businesses were seized.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending March 31, 1997, property of 40 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 15-17.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending March 31, 1997, two auctions were held by the Division. A listing follows on page 17.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending March 31, 1997, 705 such cases

were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$493,077 in revenue during the first quarter of 1997 and \$2,624,830 throughout the first nine months of this fiscal year from cases like these.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has collected more than \$77 million from holders of the various types of licenses subject to audit. Richard D. Gardiner, Division of Taxation Director said he expects to collect a total of \$150 million during the three-year program.

During the quarter ending March 31, 1997, 176 notifications of liquor license transfer were received by the Division's Bulk Sales section. Thirty-one (31) audits relating to this project and previously requested were completed; assessments from these audits totaled \$839,384. □

Tax Briefs

Fair Act Attorney Fee

Termination — An attorney in New Jersey wrote to the Division

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enforcement - from page 13

of Taxation requesting information as to whether the annual Fair Act attorney fee liability of \$100.00 expired in 1996 or whether it will be in effect for 1997 and subsequent years.

The Division responded that the 1996 attorney fee payment was the final payment required by law. The Fair Act (P.L. 1990, c.8) authorized seven years of attorney fee imposition beginning in 1990 and terminating in 1996.

All attorneys practicing in New Jersey who have a bona fide office in New Jersey should contact the Division to review whether any delinquencies exist for them for any of the seven years the Fair Act attorney fee was in existence. The attorneys should call the Tax Services Branch of the Division of Taxation at (609) 292-5994 or write to:

TAX SERVICES BRANCH
DIVISION OF TAXATION
50 BARRACK STREET
CN 269
TRENTON NJ 08646-0269

Gross Income Tax

Income from Intangibles — The Division responded to an inquiry regarding the taxation of nonresidents or nonresident estates on income from bank accounts, securities, or other intangibles in New Jersey.

Income from intangible personal property maintained within the State of New Jersey is *not taxable* to nonresidents or nonresident estates under the gross income tax. Income from intangibles is only taxable to nonresidents if such intangible personal property is employed in a trade, profession, occupation or business carried on in New Jersey. N.J.S.A. 54A:5-8. The maintenance of a brokerage account or bank account in New Jersey by a nonresident does not create an income tax liability in New Jersey.

Nonresident Athletes or Performers — Nonresident performers are subject to the gross income tax on all income derived from sources within this State. Income is deemed to be derived from New Jersey sources to the extent that it is earned, received or acquired in connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or from intangible personal property employed in a trade, profession, occupation or business carried on in this State. Where the nonresident has income from services performed partly within and partly outside the State an allocation must be made for those services rendered in New Jersey.

Nonresident performers are subject to tax on all compensation earned for the rendition of personal services performed in this State.

N.J.S.A. 54A:5-8(2). The amount of compensation attributable to services within New Jersey is that proportion of the total compensation which the total number of working days within New Jersey bears to the total number of working days.

If the nonresident performers are incorporated, their personal service corporation is required to file a New Jersey corporate business tax

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Division of Taxation Seizures (January – March 1997)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Jack's Electrical Service 537 Sunrise Ave. Somers Point	3/25/97	Electrical contractor	Closed
Bergen	Diamante, Inc. 565 Gorge Rd. Cliffside Park	2/6/97	Restaurant	Liquor license seized
	Forhez, Jeffrey t/a Status Auto Body 317 Franklin Tpk. Allendale	2/28/97	Auto body shop	Closed
	Dynasty Oriental Rugs 52 W. Railroad Ave. Tenafly	3/5/97	Rug store	Reopened
	Neighborhood Greenery 124 Woodward Ave. Rutherford	3/18/97	Florist/greenhouse	Closed
Burlington	RMDD Corp. d/b/a Big J's Deli 185 Route 70 Medford	1/28/97	Deli	Closed
Camden	South Jersey Restaurant Ventures LLC d/b/a J. Bodine's Road House Grill 595 Route 73 North Berlin	1/8/97	Restaurant	Liquor license seized
	Concetta Andriani 209 Tavistock Cherry Hill	1/16/97	N/A	Motor vehicle seized
	Manito, Inc. d/b/a Ristorante 73 Winslow Twp.	1/24/97	Restaurant	Liquor license seized
	Vanann, Inc. t/a Auto Doctor Repairs, Inc. 146 W. White Horse Pike Berlin	3/5/97	Auto repair shop	Reopened
	Cans and Bottles Inc. t/a Carol's 2007 Admiral Wilson Blvd. Camden	3/24/97	Bar	Liquor license seized Cash register levy
Cape May	Jim's Auto Body 512 West Taylor Ave. Wildwood	1/23/97	Auto repair shop	Reopened
	Villas Auto Mall Miami and Bayshore Rds. Villas	1/28/97	Auto dealer	Closed
	Lin-Tee, Inc. t/a Season's Restaurant 222 E. Schellenger Ave. Wildwood	2/28/97	Restaurant	Liquor license seized

continued on page 16

taxation seizures - continued from page 15

County	Name/Address	Seizure Date	Business Type	Status
Essex	David Gary Ltd. 391 Millburn Ave. Millburn	3/14/97	Art gallery	Reopened
	Don Costa Lounge 118 Fleming Ave. Newark	3/19/97	Bar	Reopened Liquor license seized
	Coblentz, Malcolm 18 Curtiss Place Maplewood	3/27/97	N/A	Two vehicles seized
Hudson	Siba, Inc. t/a Sidney's 415 N. 4th St. Harrison	2/10/97	Tavern	Closed Liquor license and vehicle seized
	Walls Tavern t/a Roost III 1500 43rd St. North Bergen	2/25/97	Tavern	Liquor license seized
	Shin's Market t/a Cresnet Deli 553 Communipaw Ave. Jersey City	3/5/97	Liquor store/deli	Reopened
	69 Kennedy Boulevard, Inc. t/a Foley's Westside Tavern 69 Kennedy Blvd. Bayonne	3/5/97	Bar	Closed
	El Pavo Nightclub 1313 Summit Ave. Union City	3/11/97	Nightclub	Liquor license seized
	Hardy's Liquor and Deli 551 Ocean Ave. Jersey City	3/26/97	Liquor store and deli	Liquor license seized
	Mercer	Candlelight Lounge 24 Passaic St. Trenton	1/29/97	Bar/restaurant	Reopened
Middlesex	Ozmam Corp. t/a Virgo's Rte. 130 and Davidson Mill Rd. North Brunswick	2/6/97	Go-go bar	Closed
	Hornack Enterprises 9 Bernath St. Carteret	2/26/97	Auto service and repairs	Two vehicles seized
	Edison Glass Co. 417 New Brunswick Ave. Edison	2/27/97	Glass company	Closed Vehicle seized
	18 Restaurant, Inc. t/a Trattoria Moderna 593 Rt. 18 North East Brunswick	3/4/97	Restaurant	Reopened
	Holley, John & Barbara 32 Davis Ave. Piscataway	3/11/97	N/A	Vehicle seized

continued on page 17

taxation seizures - continued from page 16

County	Name/Address	Seizure Date	Business Type	Status
Monmouth	HV In The House Productions, Inc. d/b/a HV In The House 3320 Highway 66 Neptune	1/29/97	Restaurant	Liquor license not renewed
	Trader Jack's 280 Ocean Ave. Sea Bright	2/25/97	Restaurant	Liquor license seized
	Paul's Lock and Safe 558 Park Ave. Freehold	3/19/97	Locksmith	Reopened
	Sean's Place, Inc. t/a Main Street Tavern 220-222 Main St. Keansburg	3/25/97	Bar	Liquor license seized
Ocean	Stromberg, Barbara 35 5th St. Barnegat	2/7/97	N/A	Boat seized
Passaic	GEJ, Inc. d/b/a Cozy Corner 136 Lake Ave. Clifton	1/17/97	Bar	Liquor license seized
	Park 15 Wines and Liquors 15 Park Ave. Paterson	1/24/97	Liquor store	Liquor license seized
	Parada, Inc. t/a Charles Bar & Liquor 57 Mill St. Paterson	3/11/97	Liquor store/bar	Liquor license seized
Salem	Mowers Plus 266 N. Virginia Ave. Carney's Point	2/6/97	Lawn mowers/plows sales and service	Reopened
Somerset	Quintec Corp. Stryker Ln. Hillsborough	2/4/97	Water treatment company	Closed
	Red Door Grille 500 West Camplain Rd. Manville	3/6/97	Restaurant	Reopened Liquor license seized

***Division of Taxation Auctions
(January – March 1997)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Hudson	Freddie's Lounge 103-105 Monticello Ave. Jersey City	3/19/97	Bar	Business contents
Warren	Oxford House Inn 31 Wall St. Oxford	1/15/97	Tavern	Liquor license

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return in any year in which he or she performs in this State as they would be deemed to be doing business in New Jersey. The performance fee paid to the corporation would be a New Jersey allocable receipt to be included in the receipts portion of the allocation factor when determining the corporation's New Jersey income. The performer would then be required to allocate to New Jersey the portion of his or her salary paid as a result of services rendered in this State and pay gross income tax on that amount.

The New Jersey source income of a nonresident professional athlete includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which the number of duty days spent within New Jersey rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without New Jersey during the taxable year. "Duty days" means all days during the taxable year from the beginning of the team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

Sales and Use Tax

Ice Skating — Charges for admission to a skating rink for purposes of skating, or otherwise engaging in activities on the ice, are not taxable. The admission to sporting facilities for participation sports is specifically exempt under the Sales and Use Tax Act. N.J.S.A. 54:32B-3(e)(1). Therefore, free admissions for the use of the skating rink are also not subject to sales or use tax.

Charges for admission to the rink to watch a show or exhibition are, however, subject to sales tax. N.J.S.A. 54:32B-3(e)(1). However, if the rink gives some audience members free admission to a show, the rink will not owe use tax on the value of those admissions.

Rental of skates is taxable as the retail sale (including rental) of taxable tangible personal property. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f). Ice skates are considered sporting equipment, and are not exempt from sales tax as ordinary footwear. N.J.A.C. 18:24-6.4. Because the rental of skates is taxable, if a rink provides complimentary rental to a customer, the rink will owe use tax on the value of the rental. N.J.S.A. 54:32B-6.

Carnival Ride Purchase — The Division received an inquiry as to whether a business that provides amusement rides for carnivals must pay sales or use tax when it purchases ride apparatus that is permanently mounted to a trailer. Both the ride apparatus and any labor charges for installing it are taxable. N.J.S.A. 54:32B-3(b)(1) and (2). Although the ride experience may be sold, the ride apparatus itself is not resold. Therefore,

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is not exempt as a purchase for resale. N.J.S.A. 54:32B-2(e)(i)(A). *Mariner's Landing v. Director, Division of Taxation*, 11 N.J. Tax 215, 229-230 (Tax Ct. 1989).

If the business purchased the ride apparatus and installation services out-of-State and paid sales tax to another jurisdiction, without any right to a refund, it will be given credit for the sales tax paid to another jurisdiction *up to* 6%. However, if no tax was paid to New Jersey or to another jurisdiction, or if the sales tax paid to another jurisdiction was less than 6%, the purchaser will need to pay compensating use tax to New Jersey when the rides are delivered to or used in New Jersey. N.J.S.A. 54:32B-6; N.J.S.A. 54:32B-2(y).

Clowns, Magicians and Dancers

— In response to a recent inquiry, the Division advised that charges for entertainment made by persons performing as clowns, magicians, dancers and children's characters, where the performers go to the customer's house, are not subject to tax. Charges for admission to a facility where entertainment is provided would be taxable as an admission to or for the use of a place of amusement. N.J.S.A. 54:32B-3(e)(i).

Prepaid Calling Cards — The Division takes the position that the retail sale of prepaid telephone calling cards is not subject to tax; the purchaser is buying the intangible right to X number of minutes of telephone calls, which may or may not be subject to New Jersey tax as a telecommunications service. The tax is imposed once the card is used to make calls that are subject to New Jersey tax. The New Jersey Sales and Use Tax Act imposes tax on intrastate, inter-

the purchase of the ride apparatus

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state, and international calls charged to a service address in New Jersey. N.J.S.A. 54:32B-3(f).

Since the tax is imposed when the card is used to make a call subject to New Jersey tax, the company that is actually providing the telecommunications service is responsible for *collecting* or paying any tax that may be due. The sponsor of the calling card or wholesaler is treated as the consumer of all calls that are transmitted through the switch. Thus, the sponsor or wholesaler should pay any applicable tax to the service provider based on their per unit cost, not the retail rate. □

In Our Courts

Corporation Business Tax Offset of Overpayment against Deficiencies of Merged Corporations Denied – *Sea-Land Service Inc. v. Director, Division of Taxation*, decided September 27, 1996; Tax Court of New Jersey; 16 N.J. Tax 132.

Sea-Land Service, Inc., plaintiff, was the wholly-owned subsidiary of Sea-Land Corporation (Parent), and the parent of its own wholly-owned subsidiary, Reynolds Leasing Corporation (RLC). Sea-Land Corporation and Reynolds Leasing Corporation were each merged into Sea-Land Service, Inc. Sea-Land Service, Inc. became liable for tax deficiencies of Sea-Land Corporation and Reynolds Leasing Corporation as a result of the mergers. The Division also determined that plaintiff had a pre-merger overpayment which exceeded the tax liabilities of the merged corporations which were paid by plaintiff.

Plaintiff and the Director agreed that plaintiff was out of time under N.J.S.A. 54:49-14 for a refund of the overpayment. However, plaintiff argued that the tax liabilities of the merged corporations should have been offset against plaintiff's overpayment pursuant to N.J.S.A. 54:49-16. Under N.J.S.A. 54:49-16, an offset is permitted where an audit finds an erroneous overpayment of a tax, a deficiency was assessed against the taxpayer for the same audit period, and both the deficiency assessment and the overpayment arise under the same State tax.

The sole issue, according to the Court, was whether plaintiff was the same taxpayer involved for the purpose of offsetting the tax deficiencies with plaintiff's overpayment. The Court held that the three corporations, plaintiff, parent, and RLC were separate entities at the time when the deficiencies arose and the overpayment was made. Plaintiff could not now claim that its current status as a single entity was retroactive to that time. Business Corporation Law provision N.J.S.A. 14A:10-6, requiring a successor corporation to possess the rights and privileges of merged corporations, was held to have no bearing on the tax laws. The Court held that the deficiencies of the other two entities could not be offset against the plaintiff's overpayment, and granted summary judgment on behalf of the Director.

Gross Income Tax Determination of New Partnership Income – *Sabino v. Director, Division of Taxation*, 296 N.J. Super. 269 (App. Div. 1996).

The Appellate Division reversed a Tax Court decision, published at 14 N.J. Tax 501 (Tax Ct. 1995), regarding the kinds of costs and

expenses that are deductible for purposes of determining net partnership income. N.J.S.A. 54A:5-1b allows net income of a business to be determined "after provision for all costs and expenses incurred in the conduct thereof...."

The lower court, relying on *Smith v. Director, Division of Taxation*, 108 N.J. 19 (1987), ruled that deductible expenses included, literally *all* and any costs and expenses, provided that they were incurred in the conduct of the partnership's business. Concluding that the Tax Court had misconstrued *Smith*, the Appellate Division determined that, in arriving at a partnership's net income, only costs and expenses incurred *in the ordinary course of its business* are to be applied against income earned in the ordinary courses of its business.

The Appellate Division remanded the case to the Tax Court for determination of whether deductible "ordinary" business expenses are limited to ordinary and *necessary* business expenses and whether the amended regulations drafted by the Division are appropriate. Noting that N.J.S.A. 54A:5-1a allows net income to be determined "in accordance with the method of accounting allowed for federal income tax purposes," it declined to rule directly on the complicated questions involving the extent to which the Division can rely on federal taxing principles. It commented that this issue should be resolved by the lower court.

Local Property Tax Training Facility Denied Exemption – *N.J. Carpenters Apprenticeship Training and Education*

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in our courts - from page 19

Fund v. Borough of Kenilworth, decided December 17, 1996; N.J. Supreme Court.

The N.J. Supreme Court denied a \$2.8 million training facility for apprentice carpenters a real estate tax exemption as a nonprofit school under N.J.S.A. 54:4-3.6. The High Court in reversing the exempt determination of the Appellate Division N.J. Superior Court affirmed the N.J. Tax Court's disallowance and that of Union County Tax Board and Kenilworth Borough assessor.

Owned and operated by the federally tax exempt N.J. Carpenters Apprentice Training and Education Fund, the training center offered no academic courses and was not accredited; its program was, however, overseen by the U.S. Department of Labor. Apprentices who attended the training facility were taken into local unions and graduates were certified as journeymen carpenters. Apprentices who didn't achieve proficiency in a skill were not passed on to the next level of carpentry and were not eligible for pay raises.

The State Supreme Court reasoned that the legislative intent of 54:4-3.6's specific wording "school, academy, college or seminary" was a narrower interpretation of school as a primary or secondary school and the disputed training facility was not within that narrower meaning. A broader definition of school as all learning institutions which would have included the training center would have made the statute's specificity superfluous.

The Court in examining the Fund's board of trustees found that, al-

though they had an independent fiduciary duty to promote the school's educational purposes, they were appointed by the construction industry's employers and unions and served at their will. The trust Fund was formed in 1969 by the N.J. State Council of Carpenters, the Building Contractors Association of N.J., other employers in the construction industry obliged per their collective bargaining agreements to contribute to the Fund, and the Fund trustees.

The Court also reviewed the financing of the Apprentice Training and Education Fund and concluded that the revenues generated were not related to educational costs but were based on a mandatory percentage of union employee wages. Assets totaled \$9,684,000 and \$5,000,000 in cash and marketable securities. While the assets were not to be distributed to the union or employers neither were they to be used for any purposes other than apprentice training and education.

The Court in its analysis often drew parallels to the case of *Textile Research Institute v. Township of Princeton*, 35 N.J. 218 (1961), in which a nonprofit research organization for the textile industry providing laboratory instruction to doctoral students many of whom were later employed by that industry was denied property tax exemption.

In ruling against exemption the Court held that the apprentice training facility benefited a particular profit-making sector of the economy, i.e., the construction industry, by providing more skilled workers to building companies and more members to labor unions,

rather than benefiting the general public.

Sales Ratio Challenge – *Bellemead Development Corp., Plaintiff, v. Roseland Boro., Director, Taxation Division, et al., Defendants*, decided March 25, 1997; Tax Court of N.J.; Docket No. 000431-97.

Corporate taxpayer challenged the Director, Division of Taxation's omission of what it felt was a usable sale for the assessment-sales ratio study from which the State school aid ratio and tax year 1997 Chapter 123 ratio for Roseland Borough was developed. The taxpayer did not request a direct review of its 1997 property assessment.

The singular issue was whether the taxpayer could obtain relief via a change in the composition of the ratio in a local property tax plenary proceeding prior to and independent of a tax appeal.

Citing prior case law, the Tax Court noted that Chapter 123 ratios create such a strong presumption of the taxing districts' common levels of assessment as to be conclusive in all but the most egregious circumstances. Absent proof of error, use of other than the Director's ratios violated statute.

The Court further noted, however, that a taxpayer has a constitutional right to timely appeal where erroneous data has "substantially skewed" a Chapter 123 ratio.

In this case, the taxpayer sought to have the Court amend the Chapter 123 ratio for all assessment appeals of the Borough across the board. Rather, when correcting an error the Court does not revise the
continued on page 21
average ratio but only applies the

in our courts - from page 20

amended ratio to the taxpayer's assessment to determine his discrimination relief. In this way, other taxpayers may contest other sales and establish their own ratios under which they may obtain value reduction.

The Tax Court held that it had no authority in a plenary proceeding to change either the school aid or Chapter 123 ratio and dismissed the taxpayer's request.

Horse-Farm Amendments — *William & Frances Brousseau, Plaintiffs v. Millstone Township, Defendant*, decided March 10, 1997; Tax Court of New Jersey; Docket No. 008450-95.

At issue before the N.J. Tax Court was the proper interpretation of the Farmland Assessment Act's (N.J.S.A. 54:4-23.1 et seq.) "horse-farm amendments," L. 1995, c.276. The taxpayers' 12.06 acres had been denied farmland assessment for tax year 1995 by Millstone Township assessor solely by reason of "noncontiguity" based on the recent changes to the Act. Monmouth County Tax Board had affirmed the denial on appeal. The disputed property consisted of 2.06 acres of appurtenant woodland, 8 acres of permanent pasture for grazing horses and 2 acres of training area with a riding rink, dressage area and 6-stall barn.

Prior to the 1995 statutory amendments, grazing livestock without breeding them for sale was not a qualifying agricultural use, nor were boarding, rehabilitating or training livestock considered farming.

The horse-farm revisions expanded the definition of agricultural use to include grazing of livestock alone

as an acceptable farm use as well as their training, boarding and rehabilitation.

The amendments also permitted "fees received for boarding, rehabilitating or training any livestock where the land under the boarding, rehabilitating or training facilities is contiguous" to other qualified farmland to be used to fulfill the minimum income requirements.

In denying the farm assessment for noncontiguity, the municipality contended that the taxpayers' entire 12.06 acres had to be contiguous to other qualified farmland in order to obtain the land value reduction provided under the Act as amended.

The taxpayers argued that the legislative intent of the amendments was to provide property tax relief to owners of horse farms, not to require land used in horse farming to be contiguous to additional (5) acres devoted to other agricultural or horticultural uses. They also argued that under the new amendments the 8 acres of grazing land was independently eligible for farmland assessment while the 2 acre training and boarding area qualified as contiguous to it. The 2.06 acres was stipulated to be appurtenant woodland dependent upon the qualification of the other 10 acres.

The Court decided in favor of the taxpayers giving the plain meaning of the statute weight. In doing so the Court reviewed both the legislative history of the statutory amendments in terms of the intent of their several revisions and their grammatical construction. □

In Our Legislature

Corporation Business Tax

Rates Changed for New Jersey S Corporations — P.L. 1997, c.40 (signed into law on March 27, 1997) reduces the tax rate for New Jersey S corporations to 2%, or 0.5% for S corporations with annual net income of \$100,000 or less. The change is effective for accounting years ending on or after July 1, 1998.

Insurance Premiums Tax

Procedures for Collecting and Distributing the Tax on Fire Insurance Premiums Revised — P.L. 1997, c.41 (signed into law on March 27, 1997) revises procedures for the collection and distribution of funds by the New Jersey State Firemen's Association. The legislation takes effect July 1, 1997.

Local Property Tax

Administrative Responsibilities for the Veterans'/Senior Citizens' and Disabled Persons' Property Tax Deductions Changed — P.L. 1997, c.30 (signed into law on March 7, 1997) eliminates the provisions of P.L. 1995 c.259 which require the Division of Taxation annually to furnish each municipality with a supply of application forms for the veterans' property tax deduction as well as the senior citizen, disabled person and surviving spouse property tax deduction.

This legislation also removes from the Division of Taxation and restores to the municipal tax collector the responsibility for mailing to each recipient of a property tax deduction the required post-tax year statement of income form

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In our legislature – from pg. 21
 accompanied by a return receipt envelope addressed to the municipality.

The legislation also requires the State to reimburse each local taxing district 102% of the amount of the deductions granted under these programs, rather than 100% as currently required. The additional two percent will compensate taxing districts for the costs of administering the programs.

The legislation is effective immediately and is applicable in tax year 1997 and thereafter.

Sales and Use Tax

Admission Charges to Professional Wrestling Events No Longer Exempt from Sales Tax — P.L. 1997, c.36 (signed into law on March 17, 1997) recognizes professional wrestling events as activities in which the primary purpose of the participants is to provide entertainment for spectators rather than to engage in a bona

fide athletic contest. The legislation removes professional wrestling from the regulation and control of the State Athletic Control Board, eliminating the taxes imposed by the Board on ticket sales as well as television and cable receipts.

As a result, admission charges to professional wrestling events are no longer exempt from sales tax under N.J.S.A. 54:32B-3(e)(1).

This legislation is effective immediately. □

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
1	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
7	27	28	29	30	31		

July 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

July 15

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending March 31
- continued*

July 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

July 21

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
 - GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
 - MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
 - SCC-5** Spill Compensation and Control Tax—Monthly return
 - ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- continued*

July 21 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

July 31

- NJ-941 &** Gross Income Tax—

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
7	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
	31						

August 11

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

August 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly return

August 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

August 20 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1		1	2	3	4	5	6
9	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
7	21	22	23	24	25	26	27
	28	29	30				

September 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

September 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending May 31

continued

September 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly return

September 22

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

September 22 - continued

- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

Tax Season Assistance

During the income tax season from January 1 through April 15, 1997, the Division provided assistance to many taxpayers in New Jersey. This year was marked by the expansion of the NJ TeleFile program, which enables taxpayers to file State income tax returns and homestead rebate applications by telephone.

- | | |
|--|---|
| <ul style="list-style-type: none"> <p>★ Tax Hotline
Calls answered—224,064</p> <p>★ NJ TaxFax
Calls received—51,063</p> <p>★ Electronic Filing Program
Returns filed—108,539</p> <p>★ TeleFile Program
Returns filed—144,237</p> <p>★ Taxation Building Lobby
Taxpayers assisted—9,592 (793 on April 15)</p> <p>★ Regional Offices
Taxpayers assisted—49,739</p> <p>★ Taxation Home Page
Visits to Division's World Wide Web site—57,408</p> | <ul style="list-style-type: none"> <p>★ ARIS (Automated Refund Inquiry System)
Calls received—147,358</p> <p>★ HR (Homestead Rebate) InfoLine
Calls received—48,839</p> <p>★ Tax Talk (Automated information)
Calls received—54,999</p> <p>★ Automated Forms Request System
Calls received—76,628</p> |
|--|---|

New Jersey State Tax News

Spring 1997

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Division Gets \$260,448



Director Richard D. Gardiner shows Supervising Auditor Joseph O'Gorman and Supervising Special Agent Albert Lugg a check for \$260,448.59 received as the result of an investigation of the bootleg motor fuels industry. Garey S. Chin, Assistant Special Agent in charge of the FBI in New Jersey looks on. For complete story see page 2.

Not Too Late to TeleFile

One million taxpayers statewide are eligible to file their 1996 State income tax this year by Touch-tone phone. Information packets and worksheets for the new Tele-File program were mailed to eligible taxpayers, offering major benefits, including tax refunds mailed within two weeks of filing.

Richard D. Gardiner, Director, New Jersey Division of Taxation, noted that the TeleFile packet includes a simple worksheet for the taxpayer to prepare before calling the toll-free TeleFile number.

important phone numbers

Tax Hotline	609-588-2200
Automated Tax Info	800-323-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-588-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576
Tax. Registration	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

continued on page 2

not too late to telefile - from page 1

Based on information provided from the worksheet, TeleFile will perform all of the math calculations and advise the taxpayer of the amount of the refund or taxes due, over the phone.

It is estimated that a toll-free TeleFile call will require less than ten minutes to complete, with no forms to mail in or other papers to fill out. Each taxpayer will receive a personal confirmation number during the TeleFile call, which will verify that the return was successfully filed, and tax refunds will be mailed within two weeks.

Taxpayers can access NJ TeleFile by calling 1-888-235-FILE from any Touch-tone phone within New Jersey 24 hours a day, 7 days a week during the tax filing period, which ends April 15. The New Jersey Division of Taxation began accepting TeleFile calls January 15.

“TeleFile is part of our continuing effort to make State income tax filing easier and simpler,” said Richard D. Gardiner, Director of the Division of Taxation. “I strongly encourage all eligible New Jersey taxpayers to TeleFile.”

It is anticipated that up to 15% of taxpayers eligible to use NJ TeleFile may not receive their packets due to change of address or other circumstances. Taxpayers can use the 1-888-235-FILE toll-free number to inquire whether they were included in the group of one million taxpayers selected to use TeleFile. □

Federal “Check the Box” Entity Classification

The Internal Revenue Service has issued final regulations effective January 1, 1997 that permit unincorporated entities that are not required to be treated as a corporation for Federal tax purposes (referred to as “eligible entities”) to choose whether to be taxed as partnerships or corporations. Federally, an eligible entity with at least two members can be classified as either a partnership or an association, and an eligible entity with a single member can be classified as an association and taxed as a corporation or can be disregarded as an entity separate from its owner.

In reporting business income to New Jersey, unincorporated entities having at least two members must file *either* a CBT-100 if they are corporations as defined at N.J.S.A. 54:10A-4(c) or if the entity has elected for Federal purposes to be taxed as a corporation and will file the Federal 1120 Corporation Tax Return. *Or*, if the eligible entity has chosen for Federal purposes to be taxed as a partnership and will file the Federal 1065 US Partnership Return of Income, it will also file for New Jersey purposes a New Jersey partnership return, NJ-1065.

Since the New Jersey Gross Income Tax Law requires that taxpayers use the same accounting methods as for Federal income tax purposes, the individual owner(s) in filing their personal gross income tax returns must report the income from those entities which have elected to be taxed as a partnership for Federal purposes in

the same manner as on the NJ-1065. Single owner entities authorized to do business in New Jersey which are not taxed as corporations for New Jersey purposes will be treated as sole proprietorships. □

Division Receives Forfeiture Check For \$260,448.54

The Division of Taxation has received a \$260,448.54 check from the Federal Bureau of

continued on page 5

New Jersey State Tax ***NEWS***

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**New Jersey Division of Taxation
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Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

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✓**Check Your Form NJ-1040**

Errors in return preparation account for a large number of the delays that occur in the processing of returns and refunds. To ensure that returns are processed in a timely and efficient manner, we offer the following helpful hints.

Like the 1995 return, the 1996 New Jersey Resident Income Tax Return, Form NJ-1040, is in a scannable format that enables automated processing equipment to electronically capture income tax information directly from the return. By checking the items listed below, you will reduce the chance of error and speed the tax return processing time.

- | | |
|---|--|
| <ul style="list-style-type: none"> ✓ Use the correct form. Form NJ-1040 should be used by part-year residents as well as full-year residents. Use only a 1996 return for the 1996 tax year. ✓ Read the instruction booklet before completing the return. ✓ File only original forms. The Division is unable to scan photocopies of tax returns. ✓ Use only blue or black ink when completing forms. ✓ Enter all numbers within the red boxes. Do not use dollar signs or dashes. ✓ Make no entry on unused lines or lines where the amount to be reported is zero or less, except for Line 40, Use Tax Due. If no use tax is owed, enter "0.00" on Line 40. ✓ Check name, address, social security number and county/municipality code for accuracy when using the label or writing information on the return. ✓ Enter last name first when writing information on the tax return. This requirement differs from the Federal return. ✓ Check only one filing status box. ✓ Use the "State wages" figure(s) from the W-2(s), not the Federal figure. | <ul style="list-style-type: none"> ✓ Check the instruction booklet to determine eligibility for the new property tax deduction or credit. ✓ Locate the correct column for filing status in the Tax Table when calculating the New Jersey tax liability on Line 37. ✓ Request a refund by completing Line 58. ✓ Check arithmetic. ✓ Return is signed and dated. Both spouses must sign a joint return. ✓ Homestead Property Tax Rebate Application. An incomplete application may delay any rebate. ✓ Enclose all supporting documents and schedules with the return. Do not staple, paper clip or tape anything to the tax return. ✓ Any balance due. Return the payment voucher with the payment. Write the social security number on the check. ✓ Use the small window envelope to mail the payment voucher with any balance of tax due. ✓ Use the large envelope to mail Form NJ-1040 and/or HR-1040 with related enclosures. On the flap of the large envelope you will find three address labels. Choose the label that applies. ✓ Keep a copy of the return together with all supporting documents or schedules. |
|---|--|

If you need additional assistance in completing the New Jersey tax return, visit one of our regional offices or call the Tax Hotline at (609) 588-2200.

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division receives check - from page 2

Investigation as part of New Jersey's share of Federal forfeiture money stemming from Operation Red Daisy, a joint Federal-State investigation of the bootleg motor fuels industry.

Taxation Director Richard D. Gardiner, who accepted the check on January 28, 1997, noted that in 1991, as part of the investigation, the FBI, the Internal Revenue Service, and personnel from the Division and the Pennsylvania Department of Revenue set up undercover fuel businesses in the two states.

Division investigators operated businesses known as RJR Management, Fuel Services of America and Ruz Fuel in Ewing Township for almost two years.

"We're very proud of the role Division investigators played in this operation and we're very pleased to share in this forfeiture money," Gardiner said.

In 1992, when approximately 150 Operation Red Daisy search and seizure warrants were executed throughout the United States, millions of dollars was seized from bank accounts, safe deposit boxes, residences and businesses.

Some of these assets have been surrendered as part of plea agreements and indictments. Under Federal law, the money is forfeited to a special fund administered by the Department of Justice and shared among state, county and local agencies who participate in joint investigations.

Gardiner said today's check brings the total New Jersey has received in forfeiture funds from Operation Red Daisy to more than \$300,000.

Additional checks are expected as the investigation and prosecutions progress.

"By law, the money must be used to enhance our investigative and law enforcement capabilities or to pay the costs associated with other investigations," Gardiner said.

He noted that the Division has already purchased a state-of-the-art radio transmission system for use by investigators and plans to upgrade the Investigations Branch computer system in the near future.

All expenditures of funds under the forfeiture-sharing program must be approved by the State Attorney General, he added. □

Attorney Audit Project Begins

A joint project by the New Jersey Division of Taxation and the Internal Revenue Service was launched in January. Letters were sent from the Directors of IRS and NJ Division of Taxation to approximately 400 New Jersey attorneys who have failed to file and/or pay their Federal and State personal income taxes describing the delinquencies and giving the recipient 30 days to either pay what he or she owes, file delinquent tax returns or resolve any discrepancies in the agencies' records.

"If they didn't respond within 30 days, members of our joint task force followed up with phone calls and personal visits," said the IRS District Director.

Although the 400 lawyers represent only 1.8 percent of the attorneys licensed in New Jersey, the project involves significant

amounts of money owed to both the Federal and State governments.

"Attorneys, as officers of the Court, take an oath to uphold the law, not break it. They know full well that they must comply with State and Federal tax laws," the IRS District Director said.

The attorneys project is the most recent initiative resulting from a formal agreement between the IRS and the New Jersey Division of Taxation to promote voluntary compliance with State and Federal tax laws by combining efforts, resources and personnel.

A similar joint project conducted two years ago, which used computer cross-checking to identify delinquent or deficient certified public accountants and public accountants in New Jersey, resulted in the collection of more than \$4 million in overdue Federal and State income taxes, interest and penalties.

"An even more positive result of that effort is the fact that when the records of the CPAs and PAs who were identified during the project were rechecked after this past April 15 filing deadline, more than 85% of them were continuing to be taxpayers in good standing," said Richard D. Gardiner, NJ Division of Taxation Director.

The IRS District Director said that the New Jersey accountants and attorneys projects are part of an on-going, cooperative effort by the IRS and many state tax agencies to improve the nation's overall tax compliance level, which is now approximately 83 percent.

The remaining 17 percent repre-

continued on page 6

attorney audit project - from pg. 5

sents a “tax gap” of more than \$150 billion each year in money not received due to non-compliance and fraud.

“We see this as a matter of fairness to all taxpayers, not as an unfair targeting of any one profession. Non-compliance by any group of taxpayers increases the burden on all taxpayers. The many citizens who do pay their taxes have a right to expect others to pay their fair share,” the IRS District Director said.

All tax liabilities paid as a result of this joint effort will be subject to the normal interest and penalties imposed under Federal and State law.

“New Jersey’s Tax Amnesty program ended on June 1,” said Gardiner. “These attorneys could have come forward during that period and at least addressed their State income tax problems without penalties and interest.

“They didn’t choose to do that for whatever reason, so now they’re going to have to pay the full amount of the back taxes they owe, the normal fines and penalties, and the additional 5% penalty New Jersey has assessed on all State liabilities that were unresolved under Amnesty,” he said.

The two directors stressed that while the initial focus of the attorney project is State and Federal personal income taxes, all

items of tax compliance will be addressed, including corporate, business or withholding taxes owed by the individuals’ employers, law firms or partnerships.

Attorneys who fail to respond to the tax agencies face possible sanctions, including temporary or permanent prohibition from practice before the IRS, and/or criminal investigation by the tax agencies. □

Honorable Mary R. “Polly” Hamill, Tax Court Judge

The Division recognizes the recent loss of the Honorable Mary R. “Polly” Hamill, Judge of the Tax Court of New Jersey.

Following is an excerpt of the Honorable Joseph C. Small’s memories of Judge Hamill reprinted from a memorial brochure with Judge Small’s permission.

“In the dozen or so years that Polly Hamill was in the Attorney General’s office she handled the state’s most significant tax cases. I mention just three of them: *Salorio v. Glaser*, 93 N.J. 447 (1983) in which Polly was able to secure from the Supreme Court of New Jersey a ruling on retroactivity of unconstitutional state taxes.

“In *Amerada Hess v. Director*, 490 U.S. 66 (1989) Polly won a favorable interpretation with regard to the New Jersey Corporation Business Tax treatment of federal windfall profits taxes.

“Finally, in *Allied Signal v. Director*, 504 U.S. 768 (1992) Polly failed by the slimmest of margins

(5 to 4) to persuade the Supreme Court of the United States to make fundamental changes in the way states tax the investment income of non-resident corporations.

“A little more than three years ago Polly became a Judge of the Tax Court of New Jersey. In her brief tenure she authored twenty published and many unpublished opinions. Her thinking and writing brought order to the complicated and often incomprehensible body of state and local tax law. Her opinions will be studied and cited as authority on New Jersey tax law for years to come.

“Polly had a true calling to the law, to New Jersey tax law, to the bench. Those of us who were privileged to have called her colleague and friend miss her now, will think of her often, and will treasure our all too brief acquaintance forever.” □

Interest 11.25% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1997 is 11.25%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%

Clarification Estate or Trust Income

The Division in an earlier *State Tax News* article, Volume 25, Number 4 issued guidelines on how and where to report income received by a beneficiary of an estate or trust. The Division's long-standing position on what income is subject to the gross income tax for either a resident or nonresident beneficiary, has not changed, only the return line on which such income is to be reported has changed.

The intent of the previous article was to inform taxpayers that the income they receive from an estate or trust which is subject to the New Jersey gross income tax is to be netted into the category "Net income derived through estates or trusts" and reported on the "Other income" line on the return. Tax exempt interest or gains received by the estate or trust that flow through to the beneficiary retain their tax exempt character.

Taxpayers must include a copy of the Federal K-1 or a schedule detailing the income received from estates or trusts with their New Jersey tax return. □

Frank Higgins, State Tax News Coordinator

Supervising Auditor Francis J. Higgins passed away on November 30, 1996. Frank served the Division of Taxation in various capacities throughout his 35 years of service, holding positions ranging from Auditor III to Conferee, to Supervising Auditor. Frank also served as Audit's News

Coordinator for the *New Jersey State Tax News*.

Frank was an avid golfer and a member of several service organizations in the Trenton area. He will be missed by his friends and co-workers in the Division and the tax practitioner community. □

GROSS INCOME TAX Extensions to File

The April 15 deadline for filing the New Jersey income tax return is fast approaching. If you need more time to file, there are two ways to request an extension.

A four-month extension of time to file the New Jersey income tax return may be granted if at least 80% of the tax liability computed when filing the return (Form NJ-1040 or Form NJ-1040NR) is paid by the original due date, **and**

1. A copy of the Federal Application for Automatic Extension is enclosed with the final return and the box at the top of the NJ-1040 or NJ-1040NR is checked;
- or**
2. If no Federal extension is filed, an Application for Extension of Time to File New Jersey Gross Income Tax Return (Form NJ-630) is filed by the original due date of the return.

Tax may be paid using any or all of three methods: employer withholdings, estimated payments, or a payment made with Form NJ-630. If a payment by April 15 is necessary to satisfy the 80% requirement, Form NJ-630 must be filed and payment remitted even if a Federal extension was requested. When filing Form NJ-630, 100% of any balance due of the estimated tax (as determined on Form NJ-

630) must be paid with the extension request.

Be sure to file the income tax return by the extended due date. If the return is late, or the payment requirements have not been met, the extension will be retroactively denied and penalty and interest charges will be imposed from the original due date of the return.

No matter which method is used to request an extension of time to file the New Jersey income tax return, this request is for an extension of time to file, *not* an extension of time to pay tax due.

Form NJ-630 is available in all New Jersey resident and nonresident income tax return instruction booklets. This year it is a card size form located in the perforated packet folded inside the front cover of the booklet. Form NJ-630 is also available through the Division's Automated Tax Information System by calling 1-800-323-4400, NJ TaxFax service by calling 609-588-4500 from your fax machine's phone, and on the Division's home page on the World Wide Web, which can be accessed via your computer at:

<http://www.state.nj.us/treasury/taxation/>

Reminder

Taxpayers who file Form NJ-630 and make a payment to the Division of Taxation are reminded to report any payments made with Form NJ-630 on the Estimated Tax Payments Line, i.e.,

Line 44, Form NJ-1040;
Line 24, Form NJ-1040NR;
Line 24, Form NJ-1041; and
Line 20, Form NJ-1080-C

GROSS INCOME TAX
**Employer
 Provided Meals**

For New Jersey gross income tax purposes, the value of employer provided meals which are furnished to an employee on the employer's premises and for the employer's convenience is not deemed to be salaries, wages or other remuneration received for services rendered and is not includible in the employee's gross income. Nor is the value of employer provided lodging which the employee is required to accept on the employer's business premises as a condition of employment includible. Consequently, the amount shown as New Jersey gross income on Form W-2 should not include the cost of such meals or lodging. □

GROSS INCOME TAX
**Educational
 Assistance Plans**

Several taxpayers have questioned what effect, if any, the retroactive reinstatement of the Federal income tax exclusion for employer-provided educational assistance plans will have in New Jersey.

The Division has replied that there is no provision in the Gross Income Tax Act similar to the Federal provision regarding educational assistance plans. Consequently, the reinstatement of the Federal exclusion does not change the treatment of such plans under the Act.

For New Jersey gross income tax purposes, unless the tuition pay

ments made by the employer are for courses that are job related the payments are subject to withholding and must be included in the employee's gross income. To be considered job related the course must:

1. Maintain or improve skills required by the employee in the employee's trade, business, or employment;
2. Meet the express requirements of the employer; or
3. Meet the requirements of applicable law or regulations imposed as a condition of the retention of the employee's salary status or employment.

In addition to the above, successful completion of the course must not be required to meet the minimum requirements for employment. □

GROSS INCOME TAX
**Gambling Winnings
 and Losses Update**

As a result of the article which appeared in the Fall, 1996 issue of the *State Tax News* concerning gambling winnings and losses a number of taxpayers have asked for more information concerning the requirements for substantiating gambling losses used to offset winnings reported on their New Jersey Gross Income Tax Return.

As was indicated in the article evidence of losses may take several forms. With respect to winnings or losses resulting from casino gambling the article stated that the Division would not accept

letters from casinos which purport to "rate" the gambling activity of an individual or "estimate" losses.

As a clarification of this position the Division **will accept as part of the proofs of wins and losses** a schedule from the casinos detailing slot play and letters from the casinos rating an individual's wins and losses from table play. The Division will also accept records from the casinos detailing an individual's casino credit history, i.e. markers.

Taxpayers should also maintain other evidential material and/or records of gambling wins and losses as was required in the Division's previous *State Tax News* pronouncement.

Taxpayers should continue to keep evidential material for a period of six years after the filing of the New Jersey Gross Income Tax Return for that period. □

INHERITANCE/ESTATE TAX
**Class "A"
 Beneficiaries**

There is still some confusion regarding provisions for the expeditious transfer of a decedent's assets when the beneficiaries are Class "A."

When Class "A" beneficiaries became fully exempt from Inheritance Tax in 1988, the Division developed Forms L-8 and L-9 to enable these beneficiaries to have quick access to particular assets. The Form L-8 is used with bank accounts, securities, deposits in credit unions, etc. Form L-9 is used in transferring real estate

class "a" beneficiaries - from page 8

under specific conditions.

The Form L-8 is a self executing waiver. Class "A" beneficiaries for whom the form may be used include:

1. A surviving spouse in estates having a date of death on or after January 1, 1985.
2. A child, grandchild, adopted child, issue of an adopted child, stepchild, parent or grandparent in estates having a date of death on or after July 1, 1988.

The only step-relative for whom the Form L-8 may be used is a stepchild. A step-parent, step-grandparent or a step-grandchild is not a Class "A" beneficiary and cannot use the form.

The Form L-8 may not be used by a brother, sister, daughter-in-law or son-in-law as they are not Class "A" beneficiaries.

The Form L-8 may not be used by a person claiming to be a "mutually acknowledged child" of the decedent.

A Class "A" beneficiary may execute the Form L-8 where under the terms of an account or instrument and applicable State law the Class "A" beneficiary has the right of survivorship or is the named beneficiary. Where assets

were held in the name of the decedent alone and are passing to a Class "A" beneficiary under the terms of the decedent's will or the laws of intestacy, the executor or administrator may execute the Form L-8 provided that letters testamentary or letters of administration are attached and made part of the form. A separate Form L-8 is required for each institution and for each beneficiary.

The Form L-8 may be obtained and completed at the institution having control of the asset. It is filed directly with the bank, transfer agent, credit union, etc.

The Form L-9, unlike the Form L-8, is a request for a waiver and is not actually the instrument which may be used as the basis for releasing control of a decedent's assets. It is an application for a waiver releasing a resident decedent's New Jersey real estate. The Form L-9 is submitted, together with a copy of the decedent's will, to the Inheritance Tax Branch in Trenton. If warranted, the Branch will issue the desired waiver.

The Form L-9 may only be used when all of the following conditions are met:

1. The decedent at death was a resident of the State of New Jersey.
2. The decedent died on or after

July 1, 1988
(January 1, 1985 if the entire estate passes to a surviving spouse).

3. All beneficiaries of the estate are Class "A."
4. The estate is untaxable.
5. The only reason to file an Inheritance Tax return would be to secure a waiver for New Jersey real estate.

Forms L-8 and L-9 may be obtained from the Inheritance Tax Branch in Trenton or from any Division of Taxation office. Division offices are located throughout the State. □

LOCAL PROPERTY TAX ***Appraiser Licenses*** ***Not Required for*** ***Assessors***

Attorney General's Opinion #97-0003, dated January 7, 1997, addressed the question of whether in order to carry out their assessment duties certified municipal tax assessors must now be licensed as real estate appraisers per L.1995, c.349, (N.J.S.A. 45:14F-21(c) as amended), effective January 4, 1997.

The conclusion of the Attorney General was that the appraiser licensing law is not applicable to assessors.

According to the recent Opinion, local assessors' appraisals do not fall within the meaning of real estate "appraisal assignment" defined in the Real Estate Appraisers Act at N.J.S.A. 45:14F-2 in that they are not contractual but statutory. Further, the office of tax assessor is legislative in nature and

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is regulated by an existing statutory scheme which provides qualification and education prerequisites, ethical and disciplinary standards, and several levels of supervision where the imposition of a second body of regulatory provisions would be unnecessary and unduly burdensome. The assessor as an appointed official performing the governmental function of assessing property for taxation is also distinguished from the real estate appraiser as an independent professional occupation. Finally, the intent of the Legislature to exclude assessors from the licensing requirement is indicated by their specific exemption in an earlier but similar version of the law and by the fact that dual compliance with the both laws would create conflicts as to jurisdiction and other matters.

However, licensing requirements would apply if appraisals are conducted outside the scope of an assessor's statutory duty. □

LOCAL PROPERTY TAX Assessment Administration

Richard D. Gardiner, Director, Division of Taxation, has directed Local Property Tax resources to focus on improving property tax administration in New Jersey. Some targeted areas will be clarifying responsibilities and obtaining greater accountability among the various State, county and municipal levels of property tax administration.

The Division is supporting a legislative proposal to require continuing education to remain certified as an assessor. Also favored is the establishment of a process where

assessors will receive input from the county tax boards for the purpose of enhancing operations and resolving problems.

Staff of the Local Property Tax office will be taking a more active role in monitoring assessment compliance to meet the Director's objectives. Efforts are also ongoing to update the Assessors' Handbook and rules under which county boards of taxation operate.

The cooperation and participation of everyone involved in administering the property tax will be needed to achieve these objectives.

□

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and clerk of board of freeholders by County Tax Board.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted a medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

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tax assessors' calendar - from page 10

June 5—

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June—

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15—

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

Fourteen persons passed the examination for the tax assessor certificate held on September 28, 1996 and became certified tax assessors on December 6, 1996.

Bergen County: Stephen P. Dougherty, Elmwood Park Borough.

Burlington County: Linda D. Stewart, Bordentown City.

Cumberland County: Lisa J. Perella, Vineland City.

Essex County: Arnold J. Kozeniesky, Cedar Grove Township.

Gloucester County: Diane A. Kusmanick, Deptford Township.

Hudson County: Joseph G. Nichols, Bayonne City.

Hunterdon County:

Harrie E. Copeland, III, Delaware Township.

Mercer County: Tina M.

Meheski-Wysocke, Trenton City.

Monmouth County: Debra J.

Piscitelli, Marlboro Township.

Morris County: James B. Kreitz,

Lincoln Park Borough; Dolores Pecorari, Washington Township.

Ocean County: Susan A.

Metcalf, Berkeley Township.

Sussex County: David Centrelli,

Newton Town.

Union County: Annmarie Switzer,

Westfield Town.

□

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 5, 1996, General Machine & Instrument Co., Inc. and its responsible officers Richard Pessolano and Warren Kaye were indicted by a State Grand Jury for failing to remit

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LOCAL PROPERTY TAX

Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

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Full year New Jersey resident during 1996

Not 65 years of age or older as of December 31, 1996

Only income from wages, interest, and/or dividends

Same filing status as on your 1995 NJ return

Not blind or disabled as of December 31, 1996

Total income of \$75,000, or less

criminal enforcement - from pg. 11

income tax withholdings of nearly \$58,000 to the State and for misconduct by a corporate official. Mr. Pessolano was also indicted for the failure to file personal income tax returns for two years and corporate business tax returns for General Machine and for NC Fabritech, Inc., a related corporation.

- Thomas Grossi and Robert Lisa were indicted on December 9, 1996 by a Hudson County Grand Jury on various charges relating to forgery and tampering with public records. These individuals are alleged to have signed another person's name to corporation business and income tax returns.
- Sheryl Terbecki pled guilty on November 18, 1996 in Ocean County Superior Court to one count of failing to file a 1991 NJ income tax return and to one count of theft by deception. Terbecki, who was indicted in February 1996, must make restitution to the State in the amount of \$12,172 for tax, penalty and interest resulting from the failure to file income tax returns and report the illegal income obtained from 1991 through 1994. She must also make restitution to the victims of the money stolen during this period. This case was conducted as a joint investigation with the Ocean County Prosecutor's office.
- The principals of two cases who had previously pled guilty were sentenced during the month. William Becker of Camden County had pled guilty to filing a false and fraudulent 1990 NJ income tax return and failing to

file a 1994 State income tax return. The unreported income was derived from the sale of cars for which Becker had illegally obtained the title. He will serve four years imprisonment on each count that he had pled guilty and must make restitution to the State in the amount of \$3,900 for tax, penalty and interest. He must also make restitution to his former employer in the amount of \$106,650. Additional information regarding this case may be found in the Summer 1996 and Winter 1996 issues of the *State Tax News*.

- Larry Ansell and Michael Gohar of Emerald Hotels had pled guilty to failing to remit sales tax, employee income tax withholdings and corporate business taxes for a chain of hotels they operated. Each was sentenced to five years probation and ordered to make restitution to the State of tax, penalty and interest totaling nearly \$2.8 million. To date, they have made restitution payments totaling \$650,000.

In addition, they were ordered to complete 800 hours of community service. Gohar was also assessed penalties unrelated to the tax charges totaling \$450,000 which are to be paid to the court. Additional information regarding this case may be found in the Summer 1996 issue of the *State Tax News*.

- The Division received a letter of appreciation from Michael Lynch, Lakewood Township Chief of Police, regarding the assistance provided by Special Agent Ron Wysiekierski in thwarting a multi-state narcotics network. This investigation involved many agencies including the Federal Bureau of Investigation, Ocean and Monmouth county prosecutor's offices, US Postal Service, the California Division of Criminal Justice, and Long Branch, Neptune City and Tinton Falls police. Arrests have been made and the investigation is ongoing.
- Robert Russo was sentenced in the Massachusetts District Court to 14 months incarceration and ordered to pay restitution to New Jersey in the amount of \$2,871. In a scheme to obtain tax refunds, Mr. Russo created bogus W-2 forms and used them to file false and fraudulent income tax returns. He victimized numerous states by collecting illegal tax refunds totaling \$98,050.
- Patricia A. Rouse and her husband Fred D. Rouse were indicted by a Camden County Grand Jury on October 31, 1996 on one count of filing a fraudulent 1994 New Jersey income tax return. The Rouses failed to report \$24,425 of the income that Mrs. Rouse embezzled from her employer. The couple was also indicted on other counts relating to the \$77,000 embezzlement, including theft by deception, forgery, and falsifying or tampering with records.

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*Legend for 1996 Tax Laws

ABT	=	Alcoholic Beverage Tax
ACC	=	Atlantic City Casino Control Commission
ALL	=	All Taxes Administered by the Division
CBT	=	Corporation Business Tax
FBT	=	Financial Business Tax
GIT	=	Gross Income Tax
LIT	=	Litter Control Tax
LPT	=	Local Property Tax
MFT	=	Motor Fuels Tax
MIS	=	Miscellaneous
S&U	=	Sales and Use Tax

1996 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
2	2-29-96	Provides for a State tax amnesty period and appropriates funds to the Division to administer the program.	ALL	A-1420 (1R)
10	3-28-96	Changes current law concerning the written verification of gross income tax returns so that such returns may be filed by telephone using a Touch-tone telephone keypad.	GIT	S-489 (1R)
24	5-8-96	Implements the constitutional amendment approved by the voters which prohibits laws and regulations that impose unfunded mandates on counties, municipalities, and school districts.	MIS	S-2 (1R)
25	5-9-96	Establishes a Business Relocation Assistance Grant Program within the Department of Commerce and Economic Development to encourage economic development and job creation in this State.	MIS	A-1414 (1R)
26	5-9-96	Establishes the Business Employment Incentive Program to be administered by the Economic Development Authority to make direct payments in the form of grants to attract businesses creating new jobs in the State.	MIS	A-1415 (1R)
33	6-17-96	Extends the expiration date and limits enactment of certain payroll taxes under the "Local Tax Authorization Act."	GIT	A-1566 (1R)
60	7-4-96	Provides a gross income tax deduction that phases in over three years to reach a maximum of up to \$10,000 for property taxes paid by homeowners, or the rental equivalent thereof paid by tenants, on a taxpayer's principal residence in this State.	GIT	S-1 SCS
62	7-12-96	Creates the New Jersey Redevelopment Authority (NJRA) to assist in the revitalization of New Jersey's urban areas.	LPT	S-800 (3R)
82	7-25-96	Permits war veterans' organizations to conduct certain income-producing activities and retain property tax exempt status.	LPT	A-1576
121	11-1-96	Repeals mandatory employer trip reduction programs and authorizes tax benefits for voluntary programs.	MIS	SCS for S-498 and 927 (2R)
Public Question No. 2	11-5-96	Amends Article VIII, Section II, of the State Constitution to dedicate 4% of the annual revenue from the Corporation Business Tax, or any other State law of similar effect, to fund hazardous discharge cleanup, underground storage tank improvements and surface water quality projects.	MIS	SCS for SCR Nos. 41 and 60
124	11-6-96	Provides for the remediation and redevelopment of municipal solid waste landfill sites under the terms and conditions of a redevelopment agreement negotiated by a developer and the State.	MIS	S-294 (1R)

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- On November 18, 1996, the appellate court upheld the decision of the lower court in four of the five areas Richard Manthey had appealed. Mr. Manthey had originally been found guilty on six counts relating to his failure to turn over to the State sales tax collected and income tax withheld. As a result of this decision, the original seven year jail sentence which was stayed pending his appeal may begin.
- Afzal M. Sheikh, president of Ehsan Corp., was sentenced on October 4, 1996 in the Hudson County Superior Court on one count of misapplication of entrusted property. The property consisted of \$45,000 of unremitted sales tax collected at the liquor store/deli that he operated in Jersey City. Prior to the sentencing, Sheikh paid the full amount of tax outstanding. Collection of the accrued penalty and interest will be subject to civil collection.
- On October 18, 1996, Melvin Shaw was sentenced to five years imprisonment for failure to remit \$36,005 in sales tax which he had collected from the sales of luxury automobiles from 1991 to 1994 at his dealership located in Berlin Borough, Camden County, New Jersey. Shaw was also sentenced to serve an additional five years for several counts of failure to deliver motor vehicle titles to customers and for defrauding customers and individuals who believed they were investing in his business. The State has obtained a judgment

against Shaw in the amount of \$50,301 for tax, penalty and interest due as of the date Shaw was sentenced. Additional interest will accrue until the entire liability is satisfied.

- Seven guilty pleas were entered in municipal courts throughout the State during this period by individuals and businesses for noncompliance with the cigarette tax law. In three additional cases, businesses were found guilty of accepting untaxed cigarettes and selling cigarettes without a license. These ten cases resulted in the imposition of fines and penalties totaling \$9,119 and the awarding of nearly \$73,000 of seized cigarettes to the State. Two of the defendants also received multi-year supervised probation. In one case, the probation was granted with the conditions of obtaining legitimate employment, submitting to drug testing and remaining arrest free.

In addition, charges were filed for violations of transporting, possessing, and selling untaxed cigarettes as well as licensing violations in municipal court for eleven cases. The value of the assets seized for these cases totaled \$25,614. □

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1996

Following is a summary of enforcement actions for the quarter ending December 31, 1996.

Certificates of Debt

During the quarter ended December 31, 1996, the Division filed 3,130 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$30.7 million.

Levies

\$88,301.29 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending December 31, 1996, \$367,086 was collected from jeopardy assessments, and the assets of 11 businesses were seized.

enforcement summary - from pg. 13

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1996, property of 23 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 17.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending December 31, 1996, three auctions were held by the Division. A listing follows on page 18.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are

made to the Office of the Attorney General. During the quarter ending December 31, 1996, 436 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$786,524 in revenue during the fourth quarter of 1996 and \$2,131,752 throughout the first six months of this fiscal year from cases like these.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$56 million from holders of the various types of licenses subject to audit and collected \$64.4 million. Richard D. Gardiner, Division of Taxation Director said he expects to collect a total of \$150 million during the three-year program.

During the quarter ending December 31, 1996, 148 notifications of liquor license transfer were received by the Division's Bulk Sales section. Forty-one (41) audits relating to this project and previously requested were completed; assessments from these audits totaled \$2,045,502. □

Tax Briefs

Gross Income Tax

Health Insurance Premium Paid By Employee — The Division responded to an inquiry regarding the taxability of the portion of health insurance premium contributions paid by employees in the following circumstances:

Employees may choose whether or not to have coverage under the company's health insurance plan. An employee who elects coverage must contribute 20% of the cost of the premium. This 20% contribution is deducted from the employee's pay. No part of the health benefit can be converted to cash, and there are no flexible spending provisions. For Federal tax purposes, the 20% contribution is treated as nontaxable under 26 U.S.C §125.

For New Jersey gross income tax purposes, the amounts contributed by the employees are not excludable from the employee's income. Since the employees participating in the plan have elected coverage, the amounts they contribute toward health coverage are treated as taxable wage income under N.J.S.A. 54A:5-1a. and should be included in the New Jersey wages reported on their W-2 forms. These amounts are deemed to be constructively received by the employees, although not actually included in their paycheck.

Personal Liability of Responsible Persons for Gross Income Tax Withheld by Employer

— A corporate officer, a member of a partnership or an employee may in some circumstances be held personally liable for gross income tax that should have been withheld

continued on page 15

tax briefs - from page 14

from employees and remitted by their business. The determination of personal liability depends on the specific facts.

For purposes of determining liability for unintentional failure to pay tax withheld, willful failure to withhold and remit the tax, or failure to file required returns, the Gross Income Tax Act defines the responsible persons to include:

An individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation) or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. [N.J.S.A. 54:A:9-6(1).]

Thus, for gross income tax purposes, the persons who can be held liable for tax that should be withheld from employees and remitted to the State include (in addition to a sole proprietor, partnership or corporation which has employees) an officer or employee or partner who has a duty to perform certain functions in carrying out the employer's responsibilities under the Gross Income Tax Act, but instead, did not carry out this responsibility correctly.

In those instances when the issue of personal liability for gross income withholding taxes has been litigated, the court has made a detailed analysis of the facts, closely examining a corporate officer's actual functions, in order to determine whether the officer was under a duty to withhold and remit gross income tax on behalf

of the employer-corporation. For example, in *Cooperstein v. State of New Jersey, Division of Taxation*, 14 N.J. Tax 192 (App. Div. 1994), certif. den. 140 N.J. 329 (1995), the Appellate Division determined that while the nominal chief executive of the corporation had general authority to supervise business affairs and to sign checks, he did not actually perform these functions. Therefore, he was not deemed to be "under a duty" to withhold and remit gross income tax on behalf of the corporation, and was not personally liable for its unpaid gross income withholding taxes. In *Lorenzo v. Director, Division of Taxation*, 14 N.J. Tax 577 (Tax Ct. 1995), the president and majority shareholder of a corporation was held not to be personally liable for the company's failure to remit gross income tax withheld from employees. An immigrant illiterate in English, he worked for the company as a laborer and supervisor of laborers. Although he had "paper" authority as president of the corporation, his actual duties had nothing to do with taxes.

Sales and Use Tax

Hostess Credit — The Division received an inquiry concerning the sales tax consequences when a New Jersey "hostess" holds a show in her home on behalf of a direct marketing company representative and receives a hostess credit based on the sales volume, which can only be used to select merchandise from the company's catalog.

The New Jersey Sales and Use Tax Act defines "sale" as any transfer of title or possession or both,... for a consideration...." N.J.S.A. 54:32B2(f). The New Jersey Tax Court has held that although the

consideration for the sale does not have to be received in cash or its equivalent, it **does** have to have a value in the marketplace. *Burger King Corp. v. Director, Division of Taxation*, 9 N.J. Tax 251 (Tax Ct. 1987), aff'd. 224 N.J. Super. 628 (App. Div. 1988).

The law provides a definition for "receipt," which is "the amount of the sales price of any property...valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser..." In interpreting this definition, the Court held that a coupon, which was used as credit against the sale price of a product so as to render it "free" to the customer, was not subject to tax because it did not have a monetary value in the marketplace. Instead, the value of the coupon was treated as a discount against the purchase price, which was not part of the taxable receipt. This is distinguishable from a manufacturer's coupon, where the manufacturer actually reimburses the retailer with monetary value for the coupon amount.

Since the hostess credit in this case can only be used towards the purchase or in exchange for company products (i.e. it has no monetary value in the marketplace), it is similar to a non-reimbursable store coupon, which is treated as a discount for New Jersey sales tax purposes. Therefore, the hostess does not owe sales tax on the products received in exchange for the hostess credit. To the extent that the purchases exceed the value of the credit, that

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amount is subject to tax.

Trade-In Credit: Leases v. Sales

— The Sales & Use Tax Act allows a trade-in credit for property of the same kind that is not tangible property purchased for lease, accepted in part payment and intended for resale by the vendor. N.J.S.A. 54:32B-2(d). In addition, the lessor is deemed the retail purchaser of leased property. N.J.S.A. 54:32b-2(e).

Since the lessor is considered an ultimate consumer under the lease law, when a customer is entering into a **lease** transaction, the value of any vehicle that is traded in, whether leased or owned by the customer, cannot be used to reduce the amount upon which the lessor is required to pay the lessor's use tax. A trade-in deduction in this case could only apply with respect to the transaction in which the lessor acquired the property intended for lease to the customer...but the statute specifically denies a trade-in credit for this transaction.

If a customer is entering into a **sale** transaction, and is trading in a **leased** vehicle, whether the sales tax receipt can be reduced depends upon the chain of title of the trade-in. If the customer exercises the lease purchase option, and pays New Jersey sales tax on the buyout, then he is entitled to a trade-in credit pursuant to the statute.

However, if the customer does not take title to the leased vehicle, but rather *assigns* the right to buy the vehicle to the dealer, who then pays off the lease and takes title, the customer is **not** entitled to a trade-in credit for sales tax

purposes. In this situation, the customer merely sold the dealer the intangible right to acquire property, and did not transfer the property itself in exchange for credit.

The following chart illustrates the availability of a trade-in credit:

Trade-in Owned Vehicle

Buy new car — Credit Available
Lease new car — No Credit

Trade-in Leased Vehicle

Customer buyout:

Buy new car — Credit Available
Lease new car — No Credit

Dealer assignment:

Buy new car — No Credit
Lease new car — No Credit

In Our Courts

Gross Income Tax

Credit for Tax Paid to Other Jurisdiction - Income from Non-New Jersey S Corporation — *Sutkowski v. Director, Division of Taxation*, decided December 20, 1996; Tax Court; No. 008632-94.

Plaintiff was the sole shareholder of a New York S corporation. New Jersey did not recognize S corporations until 1994. Therefore, for New Jersey gross income tax purposes, a distribution that was made to plaintiff during 1991 was taxable by New Jersey as dividend income for 1991. However, this distribution was not taxable by New York for 1991 because it was not part of plaintiff's pro rata share of the S corporation's income in that year. New York taxed plaintiff on the income realized by the S corporation, which was allocated to plaintiff in 1991, but was not yet distributed to him during that year.

At issue was whether, in calculating credit for taxes paid to New York, plaintiff could include the 1991 S corporation distributions as income taxed by New York State in 1991. The Court concluded that because this distribution was subject to New Jersey tax but not to New York tax in 1991, it was includable in the denominator, but not in the numerator, of the fraction used in determining the maximum credit allowed:

Income subject to tax by other jurisdiction
Entire New Jersey income

Local Property Tax

Lacked Standing To Intervene

In Appeal — *Mobil Administrative Service Co., Plaintiff, v. Mansfield Township, Defendant*, decided May 20, 1996; Tax Court of New Jersey; Docket No. 005824-95.

In June, 1995, Mobil filed complaint with Tax Court appealing a Judgment of the Warren County Board of Taxation affirming the 1995 assessment on its property. On August 30, 1995, Mobil entered into a contract to sell the property to Zeta Consumer Products Corp. The Contract of Sale made no reference to the pending appeal and provided that local property taxes would be apportioned as of the closing date, September 27, 1995.

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Division of Taxation Seizures (October – December 1996)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Burlington	Chateau Silvano Rt. 541 Medford	10/22/96	Restaurant/Cocktail lounge	Closed Liquor license seized
	Jerry S. Andrews 26 High St. Mount Holly	11/14/96	Chiropractic office	Closed Motor vehicle seized
	Ernst A. Flake 807 Eugenia Dr. Medford	11/26/96	NA	Motor vehicle seized
Camden	Old Grads (Whiznarr, Inc.) 712 Whitehorse Pike Oaklyn	10/23/96	Social club	Liquor license seized
	Michelle Pryn d/b/a Pixel Perfect 6525 S. Crescent Rd. Pennsauken	11/12/96	Video reproduction	Motor vehicle seized
Hudson	Freddie's Lounge 103-105 Monticello Ave. Jersey City	11/11/96	Tavern	Closed Liquor license seized
Mercer	H&M Auto Brokers 620 Calhoun St. Trenton	11/21/96	Used car dealership	Motor vehicles seized
	Nassau Communications Route 31 Pennington	12/5/96	Print shop	Closed
	Joseph E. Pintinalli 19 Pintinalli Dr. Trenton	12/10/96	NA	Automobile seized
Middlesex	A-1 Service Co. 1830 Rt. 35 Sayreville	10/2/96	Appliance service and repair shop	Closed
	KMT Lock 24 Barton St. Edison	10/24/96	Mobile lock repair shop	Closed
	Convenience Plus 262 Ryders Lane Heritage Plaza Milltown	12/13/96	Liquor store	Liquor license seized
Monmouth	New Club Caribbean 27 Atkins Ave. Neptune	10/24/96	Nightclub/Package goods store	Closed
	Castaways 1313 Memorial Dr. Asbury Park	10/24/96	Restaurant	Closed

taxation seizures - continued from page 17

County	Name/Address	Seizure Date	Business Type	Status
Monmouth	Frank's Brookside Inn 1 Wilson Ave. Englishtown	12/5/96	Restaurant/Bar	Closed Liquor license seized
Morris	Mario's Famous Pizzeria and Restaurant 140 Route 10 Randolph	11/19/96	Restaurant	Closed
Ocean	Antonio's 1635 Bay Ave. Pt. Pleasant	10/16/96	Pizzeria	Closed
Passaic	Ramon Sotomayor d/b/a Question Mark Bar 20 VanHouton Ave. Paterson	11/21/96	Tavern	Liquor license seized
	Betzaida Gonzalez d/b/a Lorenzo's Bar 482 Main St. Paterson	11/21/96	Tavern	Liquor license seized
Sussex	Drew Mountain Auto Repair Sussex	11/13/96	Auto repair shop	Closed
Union	Trembley Auto Body 1677 Bridge St. Rahway	10/29/96	Auto repair and sales	Closed
	Next Exit Hand Car Wash 1574 Main St. Rahway	10/29/96	Car wash	Closed
Warren	Oraco, Inc. d/b/a The Oxford House 31 Wall St. Oxford	11/12/96	Tavern	Liquor license seized

***Division of Taxation Auctions
(October – December 1996)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	Uncle Mike's Country Pine Inn Mays Landing	10/7/96	Bar	Liquor license
Camden	Steven Hoerst t/a Hoerst Landscaping Voorhees	10/19/96	Landscaping	Vehicle and equipment
Mercer	Michael Sbarro Sbarro's Famous Hot Dogs Trenton	10/3/96	Luncheonette	Business contents

in our courts - from page 16

Zeta, by letter dated December 22, 1995, advised Mobil's attorneys that it wished to be involved in settlement of the appeal. In January, Zeta requested from Mobil a copy of the appeal complaint and wanted to discuss "joint prosecution of the case." They also contacted Mansfield Township requesting a meeting to discuss the 1995 assessment. On March 5, 1996, Zeta filed its motion to intervene.

Between January 24, 1996 and March 13, 1996, Mobil and Mansfield Township reached a settlement reducing the 1995 assessment. A Stipulation of Settlement was submitted March 29, 1996 but not processed pending decision of Zeta's motion. The motion would be granted only if Zeta had standing to intervene, and such intervention did not violate statute of limitations or filing deadline, and the application satisfied the requirements of R. 4.33.1 which provides "Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Tax Court determined that Zeta lacked standing to intervene and the motion was denied. As of the appeal deadlines Zeta was not a taxpayer within the meaning of the appeal statute, had no interest in the subject property and no obligation to pay property taxes

assessed to the property. Zeta contended such denial violated its constitutional right to protect and assert its interest in the property. The contention has no merit. When the requirements of due process were satisfied regarding a prior property owner then due process was satisfied as to a successor in title. Zeta's failure to include provisions in the Contract of Sale requiring its consent to the resolution of any tax appeal to protect its interest cannot be remedied by intervening in Mobil's appeal.

Additionally, the Court offered an analysis on other legal issues concerning Zeta's motion, specifically the statute of limitations for property tax appeals and the application's compliance with the four criteria to satisfy R. 4.33.1.

Local Assessor's C.T.A. Suspended – *N.J. Division of Taxation, Petitioner v. David M. Gill, Respondent*, decided December 9, 1996; Director's Hearing; Richard D. Gardiner, Director, Division of Taxation.

David M. Gill, certified tax assessor in Milford, West Amwell, Belvidere, Frelinghuysen, Hardwick and Pahaquarry, recently had his Tax Assessor's Certificate suspended pursuant to N.J.S.A. 54:1-35.29 for not filing N.J. Gross Income Tax Returns for 1988, 1989, 1990, 1993, 1994 and 1995.

N.J.S.A. 54:1-35.29 authorizes the Director to revoke or suspend any Tax Assessor Certificate for "dishonest practices, or willful or intentional failure, neglect or refusal to comply with the constitution and laws relating to the assessment

and collection of taxes, or other good cause."

Failing to file State income tax returns is a disorderly persons offense under N.J.S.A. 54:52-6a if failure was reckless or negligent, or a crime of the third degree under N.J.S.A. 54:52-8 if the intent was to "defraud the State or to evade, avoid or otherwise not make timely payment of any tax...."

Investigation by the Division's Internal Security Unit resulted in Gill's submitting delinquent NJ-1040 returns in September 1996 including \$1,270.12 in gross income tax payments. However, after review by the Gross Income Tax Audit Branch, Gill was assessed an additional \$2,939.39 in tax, penalty and interest. The Internal Security Unit's review of the records as well as Gill's own testimony evidenced no previous requests for filing extension, mitigating circumstances or attempted compliance. In imposing the suspension, Director Gardiner exhorted that this be a warning to all holders of Tax

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Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

The New Jersey Division of Taxation accepts electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

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Assessor Certificates to conduct their professional and personal tax matters so as to promote public confidence in the integrity of the tax system.

Omitted Added & Omitted Assessments Denied – 200 43rd Street, L.L.C., Plaintiff v. Union City, Defendant decided October 18, 1996; Tax Court of New Jersey; Docket Nos. 1021-96, 1019-96.

Taxpayer appealed Hudson County Tax Board's judgments for a 1994 omitted added assessment and a 1995 omitted assessment on a 24-unit residential condominium to the New Jersey Tax Court. The omitted assessment and the added assessment procedures, N.J.S.A. 54:4-63.31 & .12 et seq. and N.J.S.A. 54:4-63.1 et seq., allow for the taxing of property omitted from assessment through oversight and of property newly constructed or which loses exemption after October 1, respectively. Union City's assessor had valued the land at \$237,500 for 1992 but had given the improvements zero value because a DEP moratorium on sewer connections for new construction had prevented completion of the living units and issuance of the certificate of occupancy. The '92 land and improvement values remained in place for tax years 1993-1995.

In January 1994, the sewer moratorium ended and in October 1995 the assessor made omitted added assessments for the improvements for 1994 and 1995. A certificate of occupancy was issued in March 1996 indicating that the property was considered substantially ready for its intended use. When the

taxing district acknowledged that added assessments were improper as no additions were made to the property in 1994 and 1995 only their standing as omitted assessments was reviewed by the Tax Court.

Canceling the omitted/added assessments for '94 and '95, the Tax Court held that omitted assessment procedures may not be used to correct errors in assessors' value determinations, nor to increase value because the basis of the prior assessment no longer existed. Although Union City's assessor could have partially valued the incomplete improvement and then made an added assessment when substantially completed, he decided to assign zero value to the buildings due to the sewer ban. The assessor's nonassessment of the improvements was not oversight but a deliberate judgment that they had no value.

Sales And Use Tax Nonresident's Exemption on Purchase of Motor Vehicle – *Furmato v. Division of Taxation*, decided July 24, 1996; Tax Court of New Jersey; Docket No. 7210-94.

At issue was whether the purchaser of a motor vehicle in New Jersey was entitled to an exemption from sales tax as a nonresident of this State.

At the time of the purchase in 1993, Furmato certified that he was a nonresident, and therefore the dealer did not charge him sales tax on the automobile. The Division later assessed sales tax, based on its determination that Furmato was a resident.

Furmato, who had been a resident of New Jersey for many years, had moved to Florida in 1990. However, he and his wife returned to the State each year since then, living for approximately five months every year in a house that had been in the wife's family for many years, which had become hers some time before Mr. Furmato's purchase of the automobile, and which the two of them furnished and maintained jointly. Mr. Furmato had a telephone listing at the New Jersey location and received mail there, and he and his wife had a checking account at a New Jersey financial institution.

The Tax Court strictly construed the sales tax exemption for purchases of motor vehicles by nonresidents provided by N.J.S.A. 54:32B-10(a), and determined that Furmato did not qualify as a "nonresident," as defined by the administrative regulation, N.J.A.C. 18:24-7.8(b)(1), clarifying the scope of the statutory exemption. The regulation makes it clear that the buyer of a motor vehicle is a "resident" if he "maintains a place of abode in New Jersey...other than a temporary or transient basis." The Court found that, because Furmato had been returning to New Jersey to spend several months at the house every year since 1990, his maintenance of the place of abode in this State was more than just temporary or transient.

The Court also pointed out that the fact that Furmato had paid use tax on the car to Florida did not alter his liability for sales tax to New Jersey. Once he paid the sales tax properly due to New Jersey, he would be able to present docu-

continued on page 21

in our courts - from page 20

mentary evidence of that payment to Florida, in order to claim a credit under Florida use tax law for the sales tax paid to New Jersey. □

In Our Legislature

Miscellaneous

Mandatory Employer Trip Reduction Programs Repealed — P.L. 1996, c.121 (signed into law on November 1, 1996) repeals mandatory employer trip reduction programs and authorizes tax benefits for voluntary programs. The tax benefit provisions are set forth in Sections 6 and 7 of the Act.

Section 6 amends C.27:26A-15 which allows employers a credit based upon the cost of "commuter transportation benefits" provided to employees. In general, the credit allowed is equal to 10% of the cost of such benefits, but not in excess of a per employee limit determined by multiplying \$100 by the number of employees participating in alternative means of commuting to work.

However, under this legislation, an employer which filed a certified compliance plan with the Department of Transportation required by Section 5 of P.L. 1992, c.32 (C.27:26A-5) on or before May 31, 1996, will be allowed a credit equal to 15% of the

commuter transportation cost subject to a per employee limit of \$150. This one-time increase applies to accounting periods that end on or after July 31, 1996, but not later than June 30, 1997.

Section 7 amends C.54A:6-23 of the Gross Income Tax Act by increasing the exclusion for employer-provided commuter transportation benefits from \$720 to \$1,000 for tax years beginning on and after January 1, 1997. (The Director is required to annually adjust the limit based upon the change in the average consumer price index for all urban consumers in the New York, Northeastern New Jersey and the Philadelphia areas.)

The legislation also extends the expiration date of the employer credits from accounting periods ending on December 31, 2004 to accounting periods ending on December 31, 2007. This legislation is effective immediately.

Municipal Landfill Site Closure, Remediation and Redevelopment Act — P.L. 1996, c.124 (signed into law on November 6, 1996) provides for the remediation and redevelopment of municipal solid waste landfill sites under the terms and conditions of a redevelopment agreement negotiated by a developer and the State.

Under a redevelopment agreement, an eligible developer who closes and remediates the municipal solid waste landfill would be eligible for reimbursement of 75 percent of the costs of closure and remediation of the municipal solid waste

landfill after the site is redeveloped, from payments derived from one half of the sales tax collected on non-exempt sales generated from any business located on the site.

To receive the reimbursement, a developer must submit an application, in writing, to the Director of the Division of Taxation for review and certification after the project is complete. The Director must review the request for certification on a timely basis. The Director is required to certify a developer to be eligible for the reimbursement if: (1) a place of business is located in the area subject to the redevelopment agreement for the purpose of making retail sales; (2) non-exempt items are regularly exhibited and offered for retail sale at that location; (3) the place of business is not utilized primarily for the purpose of catalog or mail order sales; and (4) the developer has entered into a memorandum of agreement with the Commissioner of Environmental Protection for the sound and proper closure and remediation of the municipal solid waste landfill located on the site of the redevelopment project and is in compliance with the memorandum of agreement.

The Act creates in the Department of Treasury a special fund to be known as the Municipal Landfill Closure and Remediation Fund and provides that upon approval of the certification for reimbursement by the Director, a special account be created for that developer. This legislation is effective immediately.

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in our legislature - from page 21

Resolution to Fund Environmental Remediation Activities — Public Question No. 2 (approved by the voters on November 5, 1996) amends Article VIII, Section II, of the State Constitution to provide that an amount equivalent to 4% of the revenue annually derived from the Corporation Business Tax, or any other State

law of similar effect, be deposited in a special account which could be appropriated by the Legislature only for the following purposes and in the following manner:

- (1) a minimum of one-half for funding the costs incurred by the State relating to hazardous discharge remediations;
- (2) a minimum of one-third, dedicated until December 31, 2008,

for funding or financing loans and grants for underground storage tank upgrades, replacements, closures and remediations; and

- (3) a minimum of one-sixth, or a minimum of \$5 million, whichever is less, for funding costs related to water quality monitoring, watershed planning, and nonpoint source water pollution prevention.



tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
1	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
7	27	28	29	30			

April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

April 15

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Property Tax Rebate—Application

continued

April 15 - continued

- NJ-1040** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 21

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

April 21 - continued

- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Whole-sale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

April 30

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1					1	2	3
9	4	5	6	7	8	9	10
9	11	12	13	14	15	16	17
7	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

May 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

May 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending January 31

CBT-150 Corporation Business Tax—Installment payment of

continued

May 15 - continued

NJ-500

estimated tax for 4th, 6th, 9th or 12th month of current tax year

Gross Income Tax—Employer's monthly remittance

May 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

May 20 - continued

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

May 27

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
7	22	23	24	25	26	27	28
	29	30					

June 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

June 16

CBT-100 Corporation Business Tax—Annual return for accounting period ending February 28

continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

June 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

June 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

June 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

June 16 - continued

from the director's desk



NJ TeleFiling By Practitioners

You can TeleFile a New Jersey income tax return for your client provided you have and maintain a Power of Attorney Form for that taxpayer in your file.

If you use your power of attorney to TeleFile for a client, enter the information from the TeleFile worksheet as prompted by the system. At

the voice signature prompt, speak the taxpayer's name, state that you have power of attorney for the taxpayer, then give your name and Federal ID#.

As with any TeleFile return, the TeleFile worksheet (with confirmation number provided by the TeleFile system included) becomes the taxpayer's proof of filing.

.. NJ TeleFile: 1-888-235-FILE ..

Refunds mailed within two weeks of filing.

For additional information on NJ TeleFiling
call 609-588-2200.

New Jersey State Tax News

Winter 1996

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TeleFile Program Expands

As part of the Division of Taxation's ongoing efforts to modernize and streamline the tax filing process, the TeleFile program will be expanded Statewide in the 1996 tax season. This expansion will allow more than 1 million residents across the State to file their 1996 New Jersey income tax return by Touch-tone telephone. These residents will be mailed NJ TeleFile packets (in lieu of traditional NJ-1040 packets) in early January 1997.

TeleFile offers New Jersey residents the fastest, easiest and most convenient method of filing their State tax return. The TeleFile process consists of completing a brief worksheet and making a short phone call. The call can be made from any Touch-tone phone within the State, at any time of day. Best of all, the Division of Taxation will mail refund checks for TeleFile returns within two weeks!

Taxpayers will "sign" their return by providing a voice signature (i.e., speak their name and social security number). In addition, the acquisition of new technology will allow NJ TeleFile to accept returns from eligible taxpayers who moved since filing their 1995 New Jersey tax return. These taxpayers will provide their new address during their TeleFile call.

The 1996 TeleFile season will begin on

Wednesday, January 15, 1997 and continue through Tuesday, April 15, 1997. NJ TeleFile will accept returns 24 hours a day during the filing season.

Any taxpayer who does not receive an NJ TeleFile packet may call NJ TeleFile at 888-235-FILE (toll-free), beginning on January 15, 1997, and find out if he/ she is eligible to TeleFile. Eligible callers will be mailed an NJ TeleFile packet upon request. For more information about NJ TeleFile, call the Tax Hotline at 609-588-2200. □

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

Cooperative Agreement on Domicile

Eleven northeastern states and the District of Columbia have ratified a cooperative agreement concerning the determination of an individual's domicile and/or residency and the multiple taxation of income that often results from conflicting determinations by the various states.

The historic agreement was signed by officials of the 12-member North Eastern States Tax Officials Association (NESTOA) at the group's annual meeting in Newport, Rhode Island.

The accord addresses the problem of the multiple taxation of individuals who are deemed to be domiciliaries of more than one state, and of individuals who are determined to be domiciliaries of one state and statutory residents of another state.

"The basic cause of these problems and disputes over the years has been the fact that different states in the region use different methods and criteria to determine where a person lives for the purposes of taxation," said Richard D. Gardiner, the Director of the New Jersey Division of Taxation and the current president of NESTOA.

"It's often a very subjective judgment call on the part of state tax agencies, and because each state involved makes its own determination, people often end up paying taxes on the exact same income to two or three different states, often without receiving any offset credits from any of them.

"With this historic multi-state agreement, that should change here

in the northeast, and that will be good news for many taxpayers," Gardiner said.

He said the NESTOA members, recognizing both the unfairness of the current situation to individuals and the tax compliance problems it generates, have joined together to formulate a solution which benefits both the individuals and the states.

The NESTOA agreement promotes uniformity among states in terms of tax policy relating to these individuals, and was predicated on three basic goals:

- That individuals should only be deemed to be a domiciliary of one state for any given period;
- That criteria used by the states in determining an individual's domicile should be as uniform as possible; and
- That uniform sourcing rules should be applied by the states to reduce or eliminate multiple state taxation of the same income.

Under the accord, the tax administrators have agreed to incorporate the following concepts in their tax policy relating to affected individuals:

- Apply uniform primary criteria for determining a taxpayer's domicile or residency.
- Implement an informal appeals process which would be available to taxpayers involved in a domicile dispute with multiple member states.
- Apply uniform rules in the sourcing of income and the

calculation of credits for taxes paid to other states.

- Establish a system of intrastate sharing of data and compliance techniques in the area of domicile and statutory residencies.
- Publish an informational pamphlet outlining the agreement and contact persons in each state's tax administration agency.

continued on page 3

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domicile agreement - from page 2

In states in which tax statutes and regulations do not currently permit the adoption of such methods, the tax administrators have agreed to make every reasonable attempt to encourage the necessary legislative or regulatory changes to permit the implementation of the agreement.

The NESTOA member states believe that this agreement addresses a long-standing problem recognized by both taxpayers and the states, and provides for an equitable solution for both, Gardiner said.

NESTOA includes the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware and Maryland and the District of Columbia. □

Attempt to Bribe Division Auditor

As a result of a criminal investigation undertaken jointly by the Division of Taxation and the Division of Criminal Justice, a Newark tavern owner has been charged with two counts of attempted bribery in connection with a liquor audit of his business.

The tavern owner, Benjamin Hernandez, was arraigned in Superior Court in Essex County on September 24. He was released on his own recognizance, pending action by a State grand jury.

Richard D. Gardiner, Director of the Division of Taxation, explained that on August 29, an auditor assigned to the Division's Field Audit Branch in Elizabeth was conducting an audit at Benji's Place at 439 Central Avenue in Newark as part of the Division's on-going review of liquor licensees throughout the State.

The auditor reported that Hernandez, the owner of the tavern, attempted to give him a \$100 bill. The auditor reported that he told Hernandez he would not take the money, left the bar, and reported the incident to his supervisor.

The Division of Taxation's Internal Security Unit and the Division of Criminal Justice's Corruption Bureau were notified and cooperatively began an investigation.

The following week, at the direction of investigators, the auditor met with Hernandez and accepted \$1,000 in cash as the first installment of a \$2,000 payment to reduce the tax liability. On September 20, the two met again and Hernandez paid the additional \$1,000. He was then arrested.

Gardiner commended the two investigative units and the auditor on their efforts. "This incident reinforces the message that the Division takes these matters very seriously. I'm very proud of the auditor, who did exactly what he was trained to do, and of the investigators who did an excellent job," he said. □

GROSS INCOME TAX *Property Tax Deduction/Credit Calculation*

Beginning with tax year 1996, eligible homeowners and tenants who pay property taxes, either directly or through rent, are entitled to either a deduction or a credit on their State income tax return. For the 1996 tax year, eligible residents may deduct 50% of their first \$5,000 of property taxes due and paid or \$2,500, whichever is less. For tenants, 18% of rent paid during the year is considered property taxes paid. As a minimum benefit to taxpayers, the law provides for a refundable credit of \$25.

To be eligible for the property tax deduction or credit:

1. You must have been domiciled and maintained a principal residence as a homeowner or tenant in New Jersey during 1996; and
2. Your principal residence, whether owned or rented, must be subject to local property

continued on page 4

Gardiner Elected NESTOA President

On October 2, 1996, at the 18th Annual Conference of the North Eastern States Tax Officials Association (NESTOA) in Newport, Rhode Island, the Board of Commissioners elected New Jersey Tax Director Richard D. Gardiner as President of the Association for the coming year.

deduction/credit - from page 3

taxes, and property taxes must have been paid on that residence either as actual property taxes or through rent; and

- 3. Your rented dwelling must have its own separate kitchen and bath facilities; and
- 4. Your gross income during 1996 must be more than \$7,500 (\$3,750 if your filing status is married, filing separate return) or you or your spouse were 65 years of age or older or blind or

disabled at the end of the tax year.

To determine the amount of your property tax deduction and whether you will receive a greater tax benefit by claiming the property tax deduction or taking the \$25 credit, you should complete Schedule 1 (on Page 3 of Form NJ-1040) unless you claim credit for taxes paid to another jurisdiction. See Example 1 below. If you claim credit for taxes paid to another jurisdiction, complete Schedule A and Worksheet F to make that determination.

Taxpayers who claim a credit for taxes paid to another jurisdiction will complete the newly revised Schedule A to determine the amount of that credit. By utilizing two columns, A and B, the new Schedule A permits taxpayers to calculate a credit for taxes paid to another jurisdiction both with a property tax deduction and also without a property tax deduction. After completing Schedule A, Worksheet F must be completed to determine whether taxpayers will

continued on page 5

EXAMPLE 1

A single taxpayer who lives and works in New Jersey, does not claim credit for taxes paid to another jurisdiction and is eligible for a property tax deduction or credit would complete Schedule 1 as follows:

Schedule 1 – Property Tax Deduction/Credit			
<i>Complete both columns of this schedule to find out whether the Property Tax Deduction or the Property Tax Credit is better for you. Do not complete this schedule if you claim a credit for taxes paid to other jurisdictions. Complete Schedule A.</i>			
1. Property Tax. Enter the property tax you paid in 1996. Renters enter 18% of rent paid in 1996. See instructions.	1.		4,000
2. Property Tax Deduction. Enter 50% of Line 1 (Line 1 x .50) or \$2,500, whichever is less. Also enter this amount on Line 4 below. See instructions.	2.		2,000
3. Taxable Income (Copy from Line 34 of your NJ-1040)	3.	Column A	Column B
4. Property Tax Deduction (Copy from Line 2 of this schedule)	4.	25,600	25,600
5. Taxable Income After Property Tax Deduction (Subtract Line 4 from Line 3)	5.	2,000	- 0 -
6. Tax you would pay on Line 5 amount (Go to Tax Tables or Tax Rate Schedules and enter amount)	6.	23,600	25,600
7. Now, subtract Line 6, Column A from Line 6, Column B and enter the result here	7.	343	378
			35
Is this amount \$25 or more?			
<input checked="" type="checkbox"/> Yes. You receive a greater tax benefit by taking the Property Tax Deduction. Enter the amount on Line 4 of this worksheet on Line 35 of Form NJ-1040. Make no entry on Line 43 of Form NJ-1040 and complete the balance of the return.			
<input type="checkbox"/> No. You receive a greater tax benefit by taking the Property Tax Credit. Enter \$25 on Line 43 of Form NJ-1040. Make no entry on Line 35 of Form NJ-1040 and complete the balance of the return. See instructions.			

Since Line 7 of Schedule 1 is \$25 or more, this taxpayer will receive a greater tax benefit by claiming the property tax deduction on Line 35 of the tax return rather than the credit on Line 43. If the amount of tax reduction on Line 7 of Schedule 1 were less than \$25, the taxpayer would receive a greater tax benefit by taking the property tax credit.

example 2 on page 6

deduction/credit - from page 4

receive a greater benefit from claiming the property tax deduction or taking the property tax credit. See Example 2 on page 6.

Instructions for completing the new schedules and worksheet are contained in the 1996 New Jersey Resident Income Tax Return Instruction Booklet, Form NJ-1040-P.

Eligible taxpayers or their spouses who are 65 years of age or older or blind or disabled at the end of the tax year, and who are not required to file Form NJ-1040 because gross income is \$7,500 or less (\$3,750 if your filing status is married, filing separate return), are entitled to a property tax credit in the amount of \$25 (\$12.50 if your filing status is married, filing separate return). These taxpayers should file a completed Homestead Property Tax Rebate Application, Form HR-1040, and the credit

will automatically be sent with their homestead rebate check. □

GROSS INCOME TAX
Nonresident
Composite Return

Proposed regulations eliminate the need for certain nonresidents to file an individual New Jersey nonresident income tax return (Form NJ-1040NR) by offering them the option of filing a Nonresident Composite Return (Form NJ-1080-C). The regulations permit nonresident individual members of professional athletic teams, general partnerships, limited liability partnerships, limited liability companies, New Jersey electing S corporations, and estates and trusts to participate in a composite return.

Under the proposed regulations, beginning with tax year 1996, any of the above entities doing business, conducting activities in New Jersey or having income from or connected with sources within New Jersey may file a composite return on behalf of its qualified nonresident individual members. A nonresident may participate in more than one New Jersey composite return provided they meet the requirements for qualified nonresidents listed below. Nonresidents who are not eligible to participate in the composite return must continue to file a Form NJ-1040NR.

The filing of a composite return will be considered a group of separate returns meeting the individual filing requirements for each qualified electing nonresident participant as required by the New Jersey Gross Income Tax Act. However, the Director reserves the

right to require the filing of an NJ-1040NR by any individual who participates in a composite return.

To qualify, a nonresident must elect to participate in the composite return and satisfy all of the following conditions: the participant must be a nonresident for the entire taxable year; maintain a permanent place of abode outside New Jersey for the entire tax year; file on a calendar year basis (January 1 – December 31); not have New Jersey source income other than what is reported on the NJ-1080-C; waive the right to claim any New Jersey personal exemption, credit or deduction and agree to have the tax calculated directly on this income at the highest tax rate in effect for single taxpayers (currently 6.37%); and complete and deliver to the filing entity Form NJ-1080-E (Election to Participate in a Composite Return) prior to the filing of the composite return.

Election to participate in a composite return must be made annually. This election is binding on the participant's heirs, representatives, assigns, successors, executors and administrators, and is an express consent to personal jurisdiction in New Jersey for New Jersey personal income tax purposes. In addition, the electing participant may not revoke an election to be included in the composite return or make an election to be included in the composite return after April 15 following the close of the tax year.

continued on page 7

Interest 11.75% for Fourth Quarter

The interest rate assessed on amounts due for the fourth quarter of 1996 is 11.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%

continued from page 4

EXAMPLE 2

A single taxpayer who lives in New Jersey and works in another state and is eligible for a property tax deduction or credit would complete Schedule A and Worksheet F as follows:

Schedule A CREDIT FOR INCOME OR WAGE TAXES PAID TO OTHER JURISDICTION		If you are claiming a credit for income taxes paid to more than one jurisdiction, a separate Schedule A must be enclosed for each.				
A COPY OF OTHER STATE OR POLITICAL SUBDIVISION TAX RETURN MUST BE ENCLOSED WITH FORM NJ-1040						
1.	Income actually taxed by other jurisdiction during tax year (indicate name <u>Phila, PA</u>) (DO NOT combine the same income taxed by more than one jurisdiction) (The amount on Line 1 cannot exceed the amount shown on Line 2)	1.	37,000			
2.	Income subject to tax by New Jersey (From Line 27, Form NJ-1040)	2.	38,000			
3.	Maximum Allowable Credit Percentage <u>1 37,000</u> (Divide Line 2 into Line 1) <u>2 38,000</u>	3.	97 %			
IF YOU ARE NOT ELIGIBLE FOR A PROPERTY TAX BENEFIT ONLY COMPLETE COLUMN B.		COLUMN A		COLUMN B		
4.	Taxable Income (after Exemptions and Deductions) from Line 34, Form NJ-1040	4.	37,000	4.	37,000	
5.	Property Tax and Deduction Enter property tax or 18% of rent due and paid in 1996. See instructions page 26. Eligible amount (the lesser of \$2,500 or 50% of Box A) See instructions page 26.	A. 864	5.	432	5.	- 0 -
6.	New Jersey Taxable Income (Line 4 minus Line 5)	6.	36,568	6.	37,000	
7.	Tax on Line 6 amount (From Tax Tables or Tax Rate Schedules)	7.	598	7.	613	
8.	Maximum Allowable Credit (Line 3 times Line 7)	8.	580	8.	595	
9.	Credit for Taxes Paid to Other Jurisdiction (Lesser of Line 8 or actual tax paid)	9.	580	9.	595	
<ul style="list-style-type: none"> ♦ If you are not eligible for a property tax benefit, enter the amount from Line 9, Column B, on Line 38, Form NJ-1040. Make no entry on Lines 35 or 43, Form NJ-1040. ♦ If you are eligible for a property tax benefit, you must complete Worksheet F on page 27 to determine whether you receive a greater benefit by claiming a property tax deduction or taking the property tax credit. 						

Worksheet F Which Property Tax Benefit to Use					
		COLUMN A		COLUMN B	
1.	Tax. Enter amounts from Line 7, Schedule A, Columns A and B here	1.	598	1.	613
2.	Credit for Taxes Paid to Other Jurisdictions. Enter amounts from Line 9, Schedule A, Columns A and B here. If you completed more than one Schedule A, enter the total of all Line 9 amounts (Columns A and B) in the corresponding column.....	2.	580	2.	595
3.	Balance of Tax Due. Subtract Line 2 from Line 1 in each column	3.	18	3.	18
4.	Subtract Line 3, Column A from Line 3, Column B and enter result here			4.	0
<ul style="list-style-type: none"> ♦ If Line 4 is \$25 or more (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse), you receive a greater benefit by taking the property tax deduction. Enter the amount from Line 5, Column A, Schedule A on Line 35, Form NJ-1040; and make no entry on Line 43, Form NJ-1040; and enter the amount from Line 2, Column A above on Line 38, Form NJ-1040. ♦ If Line 4 is less than \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse), you receive a greater benefit from the property tax credit. Enter \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse) on Line 43, Form NJ-1040; make no entry on Line 35, Form NJ-1040; and enter the amount from Line 2, Column B on Line 38, Form NJ-1040. ♦ If Line 4 is less than \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse) and you are filing a part-year return, see instructions on page 4. 					

Since Line 4 of Worksheet F is less than \$25, this taxpayer will receive a greater tax benefit by claiming the property tax credit on Line 43 of the tax return rather than the deduction on Line 35 and using the figures in Schedule A, Column B to claim a credit for taxes paid to other jurisdictions. If the amount of tax reduction on Line 4 of Worksheet F were \$25 or more, the taxpayer would receive a greater tax benefit by taking the property tax deduction.

nr composite return - from page 5

Written permission from the Division of Taxation to file a composite return will no longer be required. The NJ-1080-C is due on April 15 following the close of the tax year unless a valid extension of time to file is requested using Form NJ-630. An extension of time to file will be granted on a composite basis only. Extension requests must be filed under the filing entity's Federal identification number. Any composite return which is filed on behalf of 25 or more participants must be filed on diskette or by using magnetic media.

Each composite return must include each electing participant's name, social security number, address, share of income derived from or connected with New Jersey sources, gross income tax attributable to the participant's share of New Jersey source income, and a copy of the applicable schedule (NJK-1, NJ-K-1, K-1 or W-2). In addition, the return must include the name, address and social security number of all members who are not participating in the composite return. □

CORPORATION TAX ***S Corporation Reform***

On August 20, 1996, the Small Business Job Protection Act of 1996 was signed into law by President Clinton. As a result of this legislation, several changes have been made to the rules which

must be followed by S corporations. The majority of these changes apply to tax years beginning after December 31, 1996. Highlights of these changes are stated below.

The maximum number of eligible shareholders of an S corporation has been increased from 35 to 75. Also, a qualified retirement plan trust or 501(c)(3) charitable organization may be an S corporation shareholder.

After 1996, certain financial institutions may elect to become S corporations. An S corporation may now own a controlling interest in a C corporation; however, it may not file a consolidated return with its affiliates. Also, an S corporation may own 100% of the stock of a qualified S subsidiary.

For tax years beginning after December 31, 1996, basis adjustments for distributions during the year are made before applying the loss limitation for the year. Distributions reduce the adjusted basis for determining the allowable loss, but the loss does not reduce the adjusted basis for purposes of fixing the tax status of distributions.

Changes made to the Federal S legislation as a result of the Small Business Job Protection Act will impact New Jersey's tax treatment of S corporations for both Corporation Business Tax and Gross Income Tax purposes. Such changes are currently under review by the Division and as further information is developed, it will be published in subsequent issues of the *New Jersey State Tax News*. □

GROSS INCOME TAX ***Head of Household Filing Status***

At N.J.S.A. 54A:8-3.1 subsec. b. and c., the law discusses taxpayers filing New Jersey returns with the same filing status as they do for their Federal returns. If no Federal return is filed, the New Jersey taxpayer would use the same filing status they would have used if they had filed a Federal return.

For the "head of household" filing status to be used on the Federal return, the individual must not "be married" at the year end, not be a "surviving spouse" and furnish, by more than 50%, the cost of maintaining his/her home as the principal place of abode for a dependent child, grandchild, or other dependent listed in the Internal Revenue Code, for more than 50% of the year.

In a discussion of "certain married individuals living apart," the Internal Revenue Code indicates that an individual shall be considered as "not married" if the taxpayer's spouse was not a member of the household during the last six months of the tax year.

If a taxpayer:

1. Did not file a joint return with their spouse;
2. Did maintain a home for more than half the year that was the principal residence for the qualifying dependent(s);
3. Did solely support the qualifying dependent(s), thus furnishing more than 50% of their support; and

continued on page 8

head of household - from page 7

4. Did not have the spouse living in the home during the last 6 months of the tax year;

the taxpayer qualifies to file the New Jersey return using the "head of household" filing status even though still married. □

GROSS INCOME TAX ***Estate or Trust*** ***Income***

Taxpayers have inquired about the proper return line on which to report income from an estate or trust and proper calculation of the amount of income from the estate included on the line.

Some of the specifically enumerated items of taxable income indicated in the statute are not given separate lines on the NJ-1040 return. The "Other" line was provided for the reporting of:

1. Amounts received as Prizes and Awards.
2. Scholarships and Fellowships which are not excluded by statutory provisions.
3. Rental value of a residence paid by an employer to provide a home.
4. Income in Respect of a Decedent.
5. Net gains or income derived through Estates and Trusts.

All of the income amounts from each of the five above are added together and entered on the "Other" line of the return. If any of the five is a loss, the loss can not be used to reduce any other income which will be included in

the "Other" line total or any other income line found on the rest of the return.

The taxpayer receiving income from an estate and/or trust will calculate the income to be included on his return by using the information on the Federal K-1 furnished to him as a beneficiary. The income reported from estates and/or trusts is a net figure derived from the items listed on the Federal K-1. Interest, dividends, capital gains, business or partnership income, etc. shown on the K-1 will be netted together before the income is reported as "Other" income.

If any individual had the right to receive income that a deceased person would have received had he lived, and the income was not included on the decedent's final return, the recipient must report the income on his own return as income in respect of a decedent, an inclusion on the "Other" line.

Instructions for the 1994 and 1995 NJ-1040 returns had instructed taxpayers to report the income from estates and/or trusts on multiple return lines. For 1996, the Form NJ-1040 instructions advise taxpayers to include the net income from estates and/or trusts as "Other" income. □

GROSS INCOME TAX ***1996 Package NJX***

On September 24, 1996, subscribers to the 1995 version of *Package NJX* were mailed the order form for the *1996 Package NJX*. This year's edition will be printed in loose-leaf format, hole punched to fit into a standard 3-ring binder. The price of the publication remains \$7.00 per copy.

Package NJX binders are also available at \$7.00 each. Prices include shipping and handling. If you haven't yet ordered the *1996 Package NJX* and/or *NJX* binder, and wish to do so, complete the order blank in this issue, and send it with your payment to:

NEW JERSEY DIVISION OF TAXATION
PACKAGE NJX
CN 286
TRENTON NJ 08646-0286

Be sure the amount remitted is sufficient to cover the item(s) selected. The *Package NJX* binders do not include the loose-leaf *1996 Package NJX* contents, which must be ordered separately. A *1996 Package NJX* order form can be found on page 27. □

SALES AND USE TAX ***Agreement with*** ***U.S. Customs*** ***Service***

The New Jersey Division of Taxation working in cooperation with the Federation of Tax Administrators has recently signed an information sharing agreement with the United States Custom Service. The Division receives a quarterly extract from the Custom Service's Automated Commercial System providing information on goods entering the United States where the final destination is New Jersey.

This data will be used to identify unpaid sales, use and excise taxes and to identify individuals and businesses who are doing business in New Jersey and should be on our tax rolls remitting income taxes.

continued on page 9

The Division has already tested the validity of the provided informa-

us customs agreement - from page 8

tion by identifying and assessing the tax due from individuals who have incurred and did not voluntarily remit their use tax liability on property purchased overseas. Currently, the Division's Revenue Project Group is expanding its efforts from testing to full utilization of the exchanged information. □

SALES AND USE TAX

Telephone Answering Service

On July 1, 1990, telecommunication services became subject to New Jersey sales and use tax. Telecommunications is defined in the law as "the act or privilege of originating or *receiving messages* or information through the use of any kind of one-way or two-way communication, including but not limited to: voice, video..." N.J.S.A. 54:32B(cc). (Emphasis added.) This definition was included in a Special Notice to registered vendors which was sent in July 1990.

The Division has consistently held that telephone answering services are included within the definition of telecommunications and thus, are subject to tax under N.J.S.A. 54:32B-3(f). See P.L. 1990, c.40. Only telecommunication services rendered with respect to a service address in New Jersey are taxed.

For example, sales tax is not imposed on receipts from telephone answering services for a telephone located in another state. □

INHERITANCE/ESTATE TAX
Nonresident Ratio Tax

As noted by the article entitled *Nonresident Inheritance Tax* in the Winter 1995 issue, if the estate of a nonresident decedent is subject to the nonresident ratio tax, the representatives have the choice of two methods of reporting the estate and computing the tax. An estate is subject to the ratio tax if it contains New Jersey real or tangible personal property passing by will, trust agreement or intestate law, with the exception of property that is specifically devised. The two ratio methods available to the estate are the "flat tax affidavit" ratio method and the "full disclosure" ratio method.

Under either method, the amount of tax due is computed by multiplying the amount of tax that would be assessed, had the decedent been a New Jersey resident and all of his property was located here, by the "ratio" that the New Jersey taxable property bears to the total estate, thus, the State of New Jersey receives a percentage of the tax that a resident return would generate. The difference between

the two methods is that under the "flat tax affidavit" method the elements of the equation are based on the gross estate while under the "full disclosure" method they are based on the net estate.

If the "flat tax affidavit" method is elected, the estate is reported by means of an affidavit complemented by the first page (IT-NR Page 1) of the Inheritance Tax Non-Resident Return. Because this method is based upon the decedent's gross estate, there is no necessity to report debts and expenses nor are they allowed. Statutory rates and exemptions are utilized in computing the "Tax on Entire Estate" element of the equation, however. The elements of the "ratio" are the gross New Jersey estate (numerator) and the gross entire estate (denominator). The equation for this method is as follows:

$$\frac{\text{NJ Real and Tangible Personal Property}}{\text{Entire Estate}} \times \frac{\text{Tax on Entire Estate}}{\text{Entire Estate}} = \text{Tax Due}$$

When utilizing the "flat tax affidavit" method only the New Jersey taxable property, net of
continued on page 10
liens, need be disclosed in detail. While the total value of the gross estate wherever situate must be disclosed, the advantage to using this method is that the individual

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- # Full year New Jersey resident during 1996
- # Same filing status as on your 1995 NJ return
- # Not 65 years of age or older as of December 31, 1996
- # Not blind or disabled as of December 31, 1996
- # Only income from wages, interest, and/or dividends
- # Total income of \$75,000, or less

nonresident ratio tax - from pg. 9

assets comprising the gross estate need not be itemized and consequently, the cost of preparing this form of return will be less than the alternative "full disclosure" method.

In contrast, the "full disclosure" method requires a detailed disclosure of all of the estate's assets, debts, and expenses. The estate is reported on Form IT-NR, Inheritance Tax Non-Resident Return, and itemized in the applicable schedules. The difference between this method and the "flat tax affidavit" method is that all of the allowable debts and expenses, wherever incurred, are deductible in computing the net estate wherever situate upon which the "Tax on Net Estate" element of the equation is computed. The net estate wherever situate is the denominator element of the "ratio" under the "full disclosure" method.

Some expenses are particularly important in reducing the estate's tax liability under the "full disclosure" method, specifically, counsel fees, executor's or administrator's commissions, and administrative expenses. These expenses are prorated and deducted directly from the New Jersey taxable property. The amount of these directly deductible expenses is determined according to the proportion that the gross New Jersey property bears to the entire gross estate. Subtracting this prorated share results in the net New Jersey element (numerator) of the "ratio." The "full disclosure" method usually results in a lesser tax than the "flat tax affidavit" method. The equation for this method is as follows:

$$\frac{\text{NJ Real and Tangible Personal Property}}{\text{Net Estate}} \times \frac{\text{Tax on Net Estate}}{\text{Estate}} = \text{Tax Due}$$

Certain characteristics of an estate will favor the choice of the "full disclosure" method over the "flat-tax affidavit" method. Generally, for those estates in which the New Jersey taxable property constitutes a relatively large percentage of the total value of the estate, the "full disclosure" method is indicated. The "full disclosure" method is also generally indicated for those estates with relatively large debts and expenses; especially those proratable expenses discussed above. Any tax savings to be realized by using the "full disclosure" method may then be weighed against the additional expense of preparing that form of return as the criterion for selecting either method.

The worksheets provided with the Form IT-NR booklet can be used to compute the tax under both methods. Each worksheet eliminates the need to complete a return prior to figuring the tax for that particular method. The use of said worksheets enables the estate representatives to determine rather quickly which method better suits their situation.

As noted in the first paragraph, there is an exception to the ratio tax method of filing — that exception being New Jersey real and tangible personal property which is specifically devised. The method used in computing the tax under this situation is the "direct tax" method. The tax is computed only on the asset specifically devised, not on the entire or net estates as was done in the other methods. There are no ratios or

formulas involved. The tax arrived at for each asset so devised is the amount due the State of New Jersey. For example, the tax on a parcel of real estate, with a fair market value of \$100,000 after mortgages and liens, specifically devised to a brother (Class "C" beneficiary) of the decedent, is determined as follows:

\$ 100,000	Value of Devise
<u>- 25,000</u>	Class "C" Exemption
75,000	Taxable Amount
<u>x 11%</u>	Tax Rate for Class "C" Beneficiaries
<u>\$ 8,250</u>	Tax Due the State of New Jersey

In addition to specifically devised property, New Jersey real or tangible personal property which passes to a surviving joint tenant, transfers made in contemplation of death within three years of decedent's death and transfers intended to take effect at or after death are taxed under the "direct tax" method. □

CONFERENCE AND APPEALS
Samuel Sciarrotta
Retires

Samuel P. Sciarrotta, Chief of the Conference and Appeals Branch, Technical Services, retired on November 30, 1996 with over 31 years of State service. Beginning with his initial assignment with Inheritance Tax in 1965 through his appointment to Chief of the Conference and Appeals Branch in 1991, Sam served the Division in many capacities. He supervised a number of teams including the first Income Tax Hotline. Sam was Assistant Chief of both the Office Audit and Audit Adjustment Branches and Chief of the Office Audit and Field Audit Branches prior to heading the Conferences and Appeals Branch.

Sam has been instrumental in many important initiatives in the Division. Congratulations to Sam and good luck to him and his family. □

LOCAL PROPERTY TAX
Audits Yield Over
\$400,000

Municipalities throughout New Jersey were audited by Property Administration field representatives for compliance with the \$50 Veterans' Property Tax Deduction (N.J.S.A. 54:4-8.10) and the \$250 Senior Citizens, Disabled Persons, and Surviving Spouses Real Property Tax Deduction (N.J.S.A. 54:4-8.40) Programs.

Full reimbursement for these property tax deductions is made to the municipalities every year by the State via revenue sharing. In 1996, a total of \$36,036,483 was refunded to the local taxing districts for the senior citizens, disabled, and widows/widowers

deductions and \$18,076,310 was refunded for the veterans' deductions.

As a result of the recent audits, \$408,995 was credited on the certification report submitted to the State Treasurer in September 1996. □

LOCAL PROPERTY TAX
Changes to Mod IV
Program

Revised Mod IV Programs were distributed to all State certified data processing centers in early October 1996 to accommodate changes resulting from P.L. 1991, c.441, Five-year Property Tax Exemption and Abatement Law.

Seven additional limited exemption and abatement codes and an audit trail program were created which required new data entry procedures and the deletion and reentry of all limited exemptions and abatements.

Mod IV changes have also been made to accommodate R.S.54:4-3.139, the Urban Enterprise Zone Residential Tax Abatement Law, and R.S. 54:4-3.150, the Environmental Opportunity Zone Act. □

LOCAL PROPERTY TAX
F.E.A.C. Adopts
Values for 1997

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 28, 1996 at the Philip Alampi Laboratory in West Trenton to adopt productivity assessment values for land receiving farmland assessment in 1997. The committee also adopted imputed grazing values in compliance with Chapter 276, P.L. 1995. The thirty-third Report of the Committee (showing the value ranges

adopted) is mailed to municipal tax assessors and county boards of taxation by October 1 of each pretax year. Land qualifying for farmland assessment must be assessed in accordance with its agricultural or horticultural use rather than its true or market value.

The farmland productivity values adopted by the Committee for the 1997 tax year increased in 16 of the 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20 to \$40 per acre when compared to 1996 values. Overall net farm income of land in agricultural and horticultural use in New Jersey is estimated to have increased approximately 8.3% over the prior year. □

LOCAL PROPERTY TAX
Farmland Acreage

A report summarizing data from farmland assessment applications

continued on page 12

Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

The New Jersey Division of Taxation accepts electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588- 2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

(Form FA-1) has recently been

farmland acreage - from page 11

completed. The study shows that total acreage devoted to agricultural or horticultural use in 1995 was 1,191,984 acres for the entire State.

Although qualified acres increased by 14,565 acres over 1994, since 1983, (the year in which the highest acreage qualified) the amount of qualified farm acreage has declined 6.3% or a total of 80,002 acres.

24.80% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem, with 57.2%, has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 53.3%; Warren, 50.5%; Gloucester, 39.7%; Sussex 35.3% and Mercer, 32.7%. □

LOCAL PROPERTY TAX **Ivan Haftkowycz Retires**

Congratulations to Ivan Haftkowycz, Chief of Engineering, Tax Maps/Railroad Section, Local Property Branch, Property Administration, who retired October 1, 1996 after more than 36 years of State service.

Ivan has worked extensively as an appraiser of railroad property and in the oversight of municipal tax maps for compliance with regulatory specifications and revaluation standards. Ivan's expertise in the area of mapping is acknowledged and over the years he has served on various tax map panels.

We extend our best wishes to Ivan and his family, for health and happiness now as he retires and for many years to come. □

LOCAL PROPERTY TAX **Reimbursements Certified**

The 1996 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1996.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1996.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1996 was \$36,036,483. That amount represents a decrease of 3.4% from 1995.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1996 was 142,745. When compared to tax year 1995 the number of deductions decreased 4.0%.

The total amount of veterans deductions for 1996 was \$18,076,310. That amount represents a decrease of 2.0% from 1995.

The total number of veterans deductions for 1996 was 361,526. When compared to tax year 1995 the number of deductions decreased 2.2%. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

January 1-

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.

January 10-

- Notice of material depreciation to structure occurring after Oct. 1 and before Jan. 1, given to assessor by taxpayer.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- One copy of each Farmland Assessment application, FA-1, forwarded to Property Administration by tax assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Statement of estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1-

- Notices of current assessment and preceding year's taxes mailed to taxpayer by tax assessor.

continued on page 13

- Appeal time, where assessor fails to notify taxpayer of cur-

tax assessors' calendar - from page 12

rent assessment and preceding year's taxes, or change in assessment, extended by County Tax Board for any taxpayer aggrieved by the assessed valuation of his property or of other property in the county.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Schedule of office hours for assessors summarized by County Tax Administrator and furnished to Director, Division of Taxation.

March 1-

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the court house.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- William J. Becker of Haddonfield pled guilty in Superior Court on September 16, 1996 to two counts relating to income tax evasion. As a result of his filing a false and fraudulent 1990 NJ income tax return and failing to file a 1994 income tax return, Becker under reported tax in the amount of \$3,175. The unreported income was derived from the sale of automobiles whose titles had been illegally obtained from his employer, a used car dealer in Pennsauken, New Jersey. Becker also pled guilty to one count of theft by deception, relating to his fraudulently obtaining the titles to the vehicles he sold. This case was investigated jointly by the Division's Office of Criminal Investigation and the Camden County Prosecutor's Office.
- On September 16, 1996 Christopher Grungo pled guilty in Mercer County Superior Court to one count of racketeering. The theft resulted from the failure to remit \$158,843 of Petroleum Products Gross Receipts Tax which had been collected from customers

buying diesel fuel between October 1992 through June 1993. Grungo established a business using the name of a fictitious person. He then collected the tax after purchasing the fuel from suppliers tax-free by using fraudulent documents.

On September 20, 1996, Grungo's niece, Brenda Grungo, a co-defendant, also pled guilty to the same charge. Of eight other co-defendants indicted with the Grungos, one has already pled guilty and seven are currently scheduled for trial. This case was investigated jointly by the Division's Office of Criminal Investigation and the Division of Criminal Justice-Environmental Crimes Bureau.

- The investment fraud trial of Michael Immordino began in Mercer County Superior Court on September 18, 1996. Immordino, who was previously indicted on multiple counts, including 10 counts for NJ income tax evasion, has now pled guilty. He operated numerous real estate corporations and used \$2 million of investors' funds for his personal use. The case was developed through a joint investigation with the Mercer County Prosecutor's Office.
- A \$50,000 partial payment was received from Larry Ansell and Michael Gohar, the president and former co-president of Emerald Hotels Management Co., Inc. for back taxes owed to the State. The pair originally owed approximately \$1.14 million in taxes of which \$450,000 had previously been paid. As part of

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criminal enforcement - from pg. 13

the February 7, 1996 guilty plea, an additional \$100,000 must be paid by the sentencing date on November 22, 1996. Additional information regarding this case may be found in the Summer and Fall 1996 issues of the *New Jersey State Tax News*.

- Afzal M. Sheikh, president of Ehsan Corp. which trades as Torelli's Deli & Liquors in Jersey City, New Jersey pled guilty in Hudson County Superior Court to one count of misapplication of entrusted property. Sheikh had collected \$45,000 in sales tax between August 1990 and September 1994, on retail sales of alcoholic beverages and other items sold at the deli which he operated with his wife. He failed, however, to remit the tax to the Division.

As part of the plea agreement, Sheikh was to pay \$22,500 in tax before his October 4, 1996 sentencing date and make restitution of the remaining tax plus penalty and interest during the period of his probation. A payment of \$45,000 has been received and applied to the outstanding liability. Ehsan Corp. is also obligated to pay the State Division of Alcoholic Beverage Control a fine of up to 20% of

the tax liability or \$9,000. In return for this plea, the NJ Division of Criminal Justice has agreed not to seek incarceration of him nor to prosecute his wife in connection with this case.

- On July 24, 1996, Melvin Shaw pled guilty to failing to remit \$36,000 of collected sales tax and to several counts of theft involving investment fraud. Shaw, who was doing business as Shaw Motor Sport, had been indicted on February 23, 1995. As part of the plea agreement, he will be sentenced to 10 years imprisonment, five years of which is for the tax count. The exact amount of the restitution will be determined prior to the October 11, 1996 sentencing date. The case was conducted with the Camden County Prosecutor's Office.

to eight counts of failing to file New Jersey income tax returns and pay tax on unreported income, was sentenced to seven years of imprisonment for embezzlement and four years of imprisonment for each tax count. The sentences on the tax counts are to run concurrent with the embezzlement charge. Szymanski will sign a consent judgment for \$21,938, the amount of tax, penalty and interest owed at the time of sentencing. Restitution payments will begin after his release from prison.

- Fourteen guilty pleas were entered in municipal courts throughout the State during this period by individuals and businesses for noncompliance with the cigarette tax law. In four additional cases, businesses who pled not guilty to selling cigarettes without a license and possessing untaxed cigarettes were also found guilty. These 18 cases resulted in the imposition of fines and penalties totaling \$20,172. A 1988 Chevrolet van valued at \$7,000 and 3,426.1 cartons of seized cigarettes with a value of \$61,675 were also awarded to the State.

In addition, charges were filed for violations including transporting untaxed cigarettes, selling cigarettes without a license, and failing to maintain records in municipal court for 14 cases. The value of the assets seized for these cases exceeded \$59,750. □

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COMPLIANCE ACTIVITY
CN 245
TRENTON NJ 08646-0245**

- Vincent Szymanski of Bayonne, who had previously pled guilty

Enforcement Summary

Civil Collection Actions Quarter Ending - September 30, 1996

Following is a summary of enforcement actions for the quarter ending September 30, 1996.

Certificates of Debt

During the quarter ended September 30, 1996, the Division filed 2,165 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$26.3 million.

Levies

\$170,504 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-state businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at

public auction and the proceeds used to satisfy the tax debt.

For the quarter ending September 30, 1996, \$258,067 was collected from jeopardy assessments, and the assets of three businesses, including motor vehicles, were seized.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending September 30, 1996, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on page 17.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending September 30, 1996, six auctions were held by the Division. A listing follows on page 18.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes,

but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

Forgiveness of Debt — The Division received an inquiry regarding the forgiveness of corporation debt of a corporation that is an S corporation for Federal purposes and a regular corporation for New Jersey purposes. Since the Company was insolvent at the time of discharge, the amount of debt which would otherwise have been included in income was excluded for Federal purposes (IRC Section 108). Federal law also requires a reduction in certain tax attributes, in this case specifically the net operating loss. IRC section 108(b)(2)(A).

It is the position of the Division that income from cancellation of debt is excludable from New Jersey corporation business tax to the same extent that it is excludable for Federal purposes.

The New Jersey net operating loss deduction is calculated independently of the Federal tax attributes (N.J.S.A. 54:10A-4(k)(6)), and at the present time there is no provision to reduce tax attributes connected with discharge of indebtedness. Thus, New Jersey would not require the corporation to reduce New Jersey net operating loss with respect to discharge of indebtedness for corporation business tax purposes.

IC-DISC Unable to Elect New Jersey S Corporation Status —

continued on page 16

The Division responded to an

tax briefs - from page 15

inquiry as to whether an Interest Charge Domestic International Sales Corporation (IC-DISC) may make a valid election to become a New Jersey S corporation.

The New Jersey statutes provide that a "New Jersey S corporation" means a corporation that is an S corporation which made a valid election pursuant to N.J.S.A. 54:10A-5.22 and which has been an S corporation continuously since the effective date of the valid election made pursuant to N.J.S.A. 54:10A-5.22. (See N.J.S.A. 54A:5-10). "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the Federal Internal Revenue Code of 1986, 26 U.S.C. §1361.

Under present law, a prerequisite for a taxpayer to be a New Jersey S corporation is that it also be a Federal S corporation at all times since the effective date of its valid election to be a New Jersey S corporation. Accordingly, under the statutory framework adopted in New Jersey an IC-DISC is unable to elect to be a New Jersey S corporation, since it is not a Federal S corporation.

New Jobs Investment Tax Credit

— Assume that a corporation having employees in New York and Philadelphia plans to relocate these employees to an office in New Jersey. Under the applicable statute a taxpayer that is not a small business must create 50 new jobs to get a credit of 0.5% of the amount of its qualified investment as a credit for Corporation Business Tax purposes. Thus, a \$1.5 million investment would

produce a credit of \$7,500 against CBT liability.

Section 54:10A-5.5 of the New Jobs Investment Tax Credit Act provides that the term " 'New Employee' means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer's business enterprise in this State prior to the date on which the taxpayer's qualified investment is placed in service or use in this State provided that... c. the individual is not an individual who worked for the taxpayer during the six month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State;...."

Thus, to qualify, the new employee must be a domiciliary and resident of New Jersey *hired* to fill a new job in this State which did not exist prior to the qualified investment being made provided that the person was not an old employee who worked for the taxpayer less than six months before the qualified investment was made and was rehired during the six month period after the investment was made.

The question presented under this definition is whether an employee living in New Jersey who worked in Philadelphia for the taxpayer and was relocated to the taxpayer's new facility in New Brunswick would qualify as a "new employee" for purposes of the credit (The fact that the employee pays gross income tax to New Jersey under

the Reciprocal Agreement on wages earned in Pennsylvania is not relevant legally or economically since the goal is economic growth rather than State revenue growth).

It is the position of the Division that this employee would *not* qualify because, although the employee is a resident of New Jersey filling a job in this State which did not previously exist in the taxpayer's business enterprise in this State, the employee was already working for the employer and, therefore, was not "hired" (as the statute requires) to fill a job in this State.

New York State Surcharges —

The State of New Jersey calculates its corporate taxable income on entire net income allocated to the State. Entire net income for New Jersey purposes is defined as "total net income from all sources... deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax...." N.J.S.A. 54:10A-4(k). This is summarized in the New Jersey regulations which state that the starting point for determining New Jersey entire net income is Federal taxable income, which is "taxable income before net operating loss deduction and special deductions...." N.J.A.C. 18:7-5.2(a).

continued on page 19

**Division of Taxation Seizures
(July – September 1996)**

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Camden	Hoerst, Steven t/a Hoerst Landscaping Voorhees	07-10-96	Landscaping	Motor vehicles & equipment seized
	Little Spot Tavern Somerdale	09-11-96	Tavern	Closed; liquor license seized
	GaTano's Deli Stratford	09-10-96	Deli	Closed
	De Ja Vu Cafe Camden	09-26-96	Bar	Liquor license seized
	E&P Red Carpet Lounge Camden	09-26-96	Bar	Liquor license seized
Cumberland	Double Features/Games-To-Go Vineland	08-07-96	Video	Reopened
Gloucester	A-1 Accurate Oil Service Pitman	07-09-96	NA	Motor vehicles seized
Hudson	Mid Island Art Expo of NJ, Inc. t/a Art Expo Jersey City	07-12-96	Framing, Art Work	Closed
	Frankie's Tavern Jersey City	08-29-96	Tavern	Liquor license seized
Hunterdon	La Piazza Cafe Clinton	09-06-96	Restaurant	Closed
Mercer	Sbarro's Famous Hot Dogs Trenton	08-26-96	Luncheonette	Closed
	West End Liquors Trenton	08-21-96	Liquor store	Closed; liquor license seized
	Doug's Blue Max Trenton	09-19-96	Tavern	Closed; liquor license seized
	Golden Coach Diner East Windsor	09-06-96	Diner	Closed; liquor license seized
	Scott's Tavern Trenton	09-19-96	Tavern	Closed; liquor license seized
Middlesex	Whitson Int'l Inc. t/a Captain Sid Perth Amboy	07-18-96	Deli & Grocery	Closed
	Croat and Nap, Inc. Englishtown	07-23-96	Warehouse	Open

continued on page 18

taxation seizures - continued from page 17

County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Dakota Office Systems, Inc. Avenel	07-30-96	Office equipment sales & service	Closed
	J & D Office Machines, Inc. Avenel	07-30-96	Office equipment sales & service	Closed
	Center Bar and Pizzeria Woodbridge	08-21-96	Tavern/Pizzeria	Closed; liquor license seized
	XTC South Amboy	09-06-96	Tavern/Nightclub	Liquor license seized
	Jim Amick Trucking South Plainfield	09-04-96	Lawn mower repair shop	Closed
Monmouth	Paynter, Maribeth t/a Planet Poodle, Wall	07-25-96	Pet grooming	Reopened
	Kellers Auto Electric Asbury Park	09-17-96	Repair shop	Closed
	Glory's Christian Gallery Neptune	09-11-96	Book store	Motor vehicle seized
Morris	Winston's Family Tree, Inc. Morristown	07-29-96	NA	Liquor license seized (business already closed)
Ocean	C&K Texaco Brick	08-14-96	Gas and automotive service station	Closed
Union	Infodata Corp. Kenilworth	07-31-96	Computer sales & service	Closed

***Division of Taxation Auctions
(July – September 1996)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Bergen	Heljim, Inc. t/a Midland Pub and Liquors Garfield	07-29-96	Bar	Liquor license
	Castrillion Corporation Cliffside Park	07-29-96	Deli	Liquor license
	Janiec, Andrew t/a Andrew's Tavern Wallington	07-25-96	Bar	Liquor license
	Ralphson Corporation t/a Arlington Lanes North Arlington	07-29-96	Bar	Liquor license
Middlesex	Willie's Inc. Perth Amboy	07-29-96	Bar	Liquor license
	Melnizek, Frances t/a Fran's Sail Inn Carteret	07-31-96	Bar/Restaurant	Liquor license business contents

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Once Federal taxable income is determined, New Jersey requires that specific modifications be made to arrive at New Jersey entire net income. N.J.A.C. 18:7-5.2(a)(1) and (2).

One specific addition to Federal taxable income in determining New Jersey's taxable income is the addition of any taxes paid to individual states or the United States based on "or measured by profits or income, or business presence or business activity...." N.J.S.A. 54:10A-4(k)(2)(C); N.J.A.C. 18:7-5.2(a)(1)(i and iv). See also Instructions to the 1995 New Jersey Corporation Business Tax Return, Schedule A, Line 31.

The tax surcharge imposed under NY Law Section 209-A and the temporary metropolitan transportation business tax surcharge imposed by NY Law Section 209-B are to be considered taxes "on or measured by business presence or business activity" within the meaning of N.J.S.A. 54:10A-4(k)(2)(C) which was intended to be broadly applicable. Entire net income for New Jersey purposes shall therefore be determined without the exclusion, deduction or credit of such taxes and such taxes should, therefore, be added back if they had been taken in arriving at a deduction in Line 28, Schedule A. These taxes are substantially derivative from, and related to, the State income (or franchise) tax of New York and are considered to be measured by business presence or business activity in New York. It may be noted that such taxes would also be included in the credit calculation pursuant to

N.J.A.C. 18:7-8.3 for income duplicated in another state, for example.

Gross Income Tax

Assignment of Lottery Winnings

— Lottery winnings from the New Jersey lottery are exempt from taxation under the Gross Income Tax Act. N.J.S.A. 54A:6-11. However, if a New Jersey lottery winner sells the right to collect the winnings, the money received from the assignee is not "lottery winnings" and is not deemed to be "from the New Jersey lottery." Therefore the proceeds from the assignment of the right to collect lottery winnings are not exempt under N.J.S.A. 54A:6-11.

The right to collect lottery winnings is an intangible asset. When a taxpayer sells this right, the payment is deemed to be income from the sale or disposition of intangible property, which is taxable pursuant to N.J.S.A. 54A:5-1(c).

Spousal Liability For Tax After Divorce

— Under New Jersey and Federal law, a divorce agreement, or any like contract, will not relieve a taxpayer from a tax obligation. According to both state and Federal law, when a husband and wife file a joint tax return, they are each jointly and severally liable for paying taxes due. N.J.S.A. 54A:8-4; 26 U.S.C. 6013(d)(3). This means that each spouse continues to be responsible for remittance of the entire tax until it is paid, regardless of any third party contracts or agreements entered into by either spouse. States cannot sustain the added responsibility of tracking and enforcing third party contracts in order to receive remittance of tax.

Pursuant to state and Federal statutes, case law and policy concerns on the issue, a divorce agreement and a tax obligation represent two distinct contracts or transactions. If called upon to pay a state and/or Federal tax balance due the spouse is liable to pay the tax and subsequently enforce his or her legal rights set forth by the divorce agreement and seek indemnity. In all, a divorce agreement does not discharge the obligation for remittance of either state or Federal taxes.

Local Property Tax

Mobile Home Service Fee

— Municipalities are authorized by N.J.S.A. 54:4-1.6 to impose an annual municipal service fee on manufactured homes installed in mobile home parks within their boundaries. There is an exemption from the fee for "trailers" provided at N.J.S.A. 54:4-1.8. Definitions for "manufactured home" and "trailer" are provided at N.J.S.A. 54:4-1.4d and m. The distinction of whether the home is a trailer or a manufactured home would therefore appear to be relevant to the determination of whether the home is subject to the fee.

There is no exemption from the municipal service fee of N.J.S.A. 54:4-1.6 for veterans. There is an exemption from real property taxation for property owned by veterans associations under N.J.S.A. 54:4-3.25, and veterans receive a deduction from property tax of \$50.00 under N.J.S.A. 54:4-8.11.

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Sales and Use Tax

American Indian Sales — The Division received an inquiry as to whether American Indians selling

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taxable items at a "pow-pow" in New Jersey are exempt from collecting or paying New Jersey sales tax.

There is no automatic sales tax exemption for American Indians under the Sales and Use Tax Act. American Indian vendors from outside New Jersey who sell goods at the pow-pow are treated the same as any other vendors who come into New Jersey to sell at craft shows, seasonal carnivals and other special events. Similarly, shoppers at the pow-pow are subject to New Jersey sales tax on their purchases of taxable items, unless a specific statutory exemption applies (e.g. resale, exempt organization).

Based on Federal case law, however, a state may not enforce taxes whose legal incidence falls upon an Indian tribe itself or on enrolled members of a tribe purchasing items within the tribe's reservation land or other lands held in trust for the tribe. A state may nevertheless require American Indian vendors to collect and remit state sales tax on taxable sales to nonmembers of the tribe on Indian land, provided that the burdens of collection and remittance are not excessive. For example, when a festival and craft sale is held on the Rankokus Reservation in Burlington County, enrolled members of the Powhatan Renape Nation are exempt from sales tax on their purchases. However, outsiders and Indians who are not enrolled members of that tribe are subject to the tax. The State may require vendors at the festival (including tribe members) to collect and remit sales tax on their sales to all purchasers except enrolled members of the Powhatan

Renape Nation. If the State does not require the Indian vendors to collect and remit tax, the non-exempt purchasers are nevertheless subject to the compensating use tax imposed by N.J.S.A. 54:32B-6 of the Sales and Use Tax Act.

Beauty Salon Sales — Charges for haircuts, relaxers, perms, texturizers, shampoo/blow dry/curl, coloring and eyebrow arching are exempt from sales tax as personal service transactions. N.J.S.A. 54:32B-2(e)(4)(A). The salon must pay sales or use tax on purchase of products, equipment and supplies used to perform these services. If the salon sells goods at retail, a Resale Certificate (Form ST-3) may be used to purchase such items, and tax must be collected at the retail sale level. All hair care products and supplies are subject to sales tax in New Jersey.

Hair Growth Product — The Division advised a taxpayer that the over-the-counter sale of Rogaine® is subject to sales tax. Rogaine® does not qualify as a drug because it is not sold for the relief of pain, ailments, distresses or disorders of the human body within the meaning of N.J.S.A. 54:32B-8.1. The law does not exempt items that are principally used for cosmetic purposes.

Hospital Cafeteria Sales — The sales and use tax regulations, at N.J.A.C. 18:24-12.6(b), provide

as follows: "Sales of food, drink or service to employees through a cafeteria on an employer's premises are subject to the sales tax, except as provided in N.J.A.C. 18:24-14.3(a)6."

The exception provided in N.J.A.C. 18:24-14.3(a)6 is for "Meals sold in a cafeteria used exclusively by hospital employees." If a hospital cafeteria is open to the public, sales of food and drink to both hospital employees and visitors are subject to sales tax.

Military Motor Vehicle Sales — Military personnel who are residents of other states, but who are currently residing in New Jersey during military duty, are treated as residents for sales tax purposes when they purchase or register a motor vehicle here. N.J.A.C. 18:24-7.8(b)5. They are required to pay 6% sales tax when they purchase a vehicle from a dealer in New Jersey, or when they register a vehicle in New Jersey, after purchasing it under circumstances in which no New Jersey use tax was collected. (Note: These soldiers are treated as residents for sales tax purposes, even if they are nonresidents for income tax or other purposes.)

A New Jersey domiciliary living outside this State will be required to pay 6% use tax when he moves back to this State with a vehicle that was purchased elsewhere. The 6% tax must be paid when the vehicle is registered. If the returning resident used the vehicle elsewhere for more than six months, the 6% use tax should be calculated on the current fair mar-

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ket value of the vehicle, rather than on its original purchase price. If the vehicle is new (six months or less since purchase as new), the 6% tax is due on the purchase price. N.J.S.A. 54:32B-7(b)(1). This assumes that no sales or use tax was paid in the state of purchase without the right of credit or refund. New Jersey's credit for sales and use tax paid in another jurisdiction does not extend to foreign nations. N.J.S.A. 54:32B-11.

If a soldier who is not domiciled in New Jersey moves to New Jersey with a vehicle that he has already owned and used elsewhere, no sales tax will be due when he registers the vehicle in New Jersey. N.J.S.A. 54:32B-11. If that nondomiciliary purchased a car in a foreign country, had it titled and took possession of it there, and then has it shipped to his new home in New Jersey, he will not owe New Jersey sales tax on the car. However, if he purchased it in a foreign country, and has it shipped to the United States, where it is transported to a New Jersey dealer, who then has it titled in the soldier's name, then the purchase of the car is treated as a New Jersey transaction. The soldier will owe 6% New Jersey sales tax on the new car, as would any New Jersey resident. If the soldier is not going to be stationed in New Jersey or live here and is merely taking delivery of the vehicle in this State, he may qualify for exemption from tax under N.J.S.A. 54:32B-10 of the Sales and Use Tax Act.

Use Tax Notification — The Division of Taxation supports the

efforts of a coalition of state and local government organizations and retail associations that recently filed a petition urging the Federal Trade Commission to use its rule-making authority to require direct marketing companies to disclose to consumers information relating to use tax obligations on interstate consumer purchases.

The practice of not informing consumers of their obligation to pay use taxes on out-of-state purchases creates problems for both consumers and the "main street" businesses located in our State. Under current law, out-of-state direct marketers that are not required to be registered as vendors with the New Jersey Division of Taxation are not collecting use taxes from New Jersey customers. Nevertheless, customers who take delivery of taxable merchandise in New Jersey remain personally obligated to pay use tax directly to the State. The direct marketers' failure to make their customers aware that they may be required to pay use taxes when they make mail-order purchases, or any suggestion by direct marketers that there is no tax required on these purchases, reflects poor business judgment and confuses consumers.

When a consumer fails to pay use tax on mail order purchases, the Division of Taxation will later assess the consumer for these taxes, and will also impose interest and penalty charges. For many consumers, this creates an unanticipated financial burden, as well as personal embarrassment. It also makes them angry that the tax was not collected at the point of sale.

Especially in the case of major purchases, the direct marketer may undermine consumers' "good will."

Some consumers' belief that there is no tax obligation on mail-order purchases creates an unfair competitive advantage for out-of-state retailers. Consumers incorrectly assume that prices charged by out-of-state marketers are lower than those charged by local, "main street" retailers, who are required by law to collect and remit the sales tax. This gives consumers an incentive to favor out-of-state retailers over local retailers when making purchasing decisions. When local retailers lose business to direct marketers because of unfair competition, local retailing suffers and local employment declines. The erosion of this vital business sector and the ensuing job losses undermine economic development in our State.

The New Jersey Division of Taxation is unable to compel firms that do not have "nexus" with New Jersey to collect and remit these legally owed taxes. It is estimated that the avoidance of sales tax collection by out-of-state mail-order companies is costing the State approximately \$150,000,000 in lost revenues each year. Our inability to collect these sales taxes deprives our state government of revenues that would otherwise serve public purposes.

Direct marketing companies should be prevented from confusing the public about customers' obligation to pay use tax on their purchases. In order to achieve these results, we agree with the filers of the petition that any company which does not collect taxes on sales to out-of-state customers should be required to provide a written disclosure that such taxes exist and that con-

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sumers may be personally required under their state law to pay these taxes to their state governments. □

In Our Courts

Corporation Business Tax

Subsidiary's Gain Subject to Tax
– *General Building Products Corporation, Successor by Merger to Dee Wood Industries, Inc. v. Director, Division of Taxation*, 15 N.J. Tax 213 (App. Div. 1995).

The Appellate Court affirmed the Tax Court decision that a subsidiary's gain is taxable under the Corporation Business Tax Act. Corporation A sold all of the stock of its New Jersey subsidiary to plaintiff for \$16,800,000 and made a Federal IRC §338(h)(10) election to avoid double taxation on the merger. By making the §338(h)(10) election, Company A's sale of the subsidiary stock is treated as if the subsidiary sold the stock directly to the buyer. This effectively allows the subsidiary to recognize the appreciation of its assets and pay taxes on the appreciation, while Company A transfers the stock to the buyer but does not recognize any gain in doing so. Company A and the subsidiary file for a "short year" which ends on the selling date.

New Jersey, however, does not recognize consolidated returns under the Corporation Business Tax Act, and pursuant to N.J.A.C. §18:7-11.15(b), those who file a consolidated return under Federal

law are required to file in New Jersey as if their Federal return had been a separate return. The appellant raises on appeal that N.J.A.C. §18:7-11.15(d) and (e) which recognize an I.R.C.

§338(h)(10) election are inconsistent with N.J.S.A. 54:10A-4k.

The Appellate Division affirmed the judgement of the Tax Court substantially for the reason set forth in Judge Rimm's published opinion reported at 14 N.J. Tax 232 (Tax Ct. 1994).

Note: The Division's administrative regulations dealing with non-recognition of gain by a selling parent in an I.R.C. §338(h)(10) transaction have been updated. See adoption notice at 28 N.J.R. 3810 (August 5, 1996) and summary of proposed change at 28 N.J.R. 2515 (May 20, 1996). As noted in the *Register*, the change has no effect upon the treatment of the tax return of the target in an I.R.C. §338(h)(10) transaction. The regulation applicable to the target was upheld in the *General Building* opinion.

Inheritance/Estate Tax

Timely Filing of Complaint – *Gifford v. Director, Div. of Taxation*, 15 N.J. Tax 51 (Tax Court, decided June 7, 1995).

This is the first case that has come before the Tax Court regarding the timely filing of a complaint arguing against an assessment of a transfer inheritance tax. Under N.J.S.A. 54:34-1 (transfers taxable) and N.J.S.A. 54:34-2 (rates of taxation) a transfer inheritance tax was imposed following the receipt of a U.S. Gift Tax Return. The return showed that decedent, plaintiff's father, transferred 10,000 shares of stock to plaintiff and her husband.

On March 5, 1992, the Transfer Inheritance Tax Branch notified plaintiff that, in addition to the tax itself, plaintiff had 90 days to file a protest or request a hearing in

accordance with N.J.A.C. 18:26-12.9. Plaintiff didn't file a formal complaint until May 17, 1994, over two years and several correspondences later. The Division moved to have the complaint dismissed.

Before the Tax Court, plaintiff argued that the 90 day period should not have started on March 5, 1992 but on March 14, 1994. Plaintiff contended that the initial letter sent by the Division did not inform plaintiff that the tax assessment was a final decision. The taxpayer was led to believe, the plaintiff reasoned, that the matter would remain open until additional information was obtained by the Division.

Plaintiff also argued that under N.J.S.A. 54:35-10, she had three years from the date of the payment of the tax to file a refund claim.

The Tax Court rejected plaintiff's arguments and dismissed the complaint. Citing N.J.S.A. 54:51A-18, the Court pointed out the express authorization for the Division to calculate the limitation period. By this, the Court determined that the time for appeal expired on June 6, 1992. The Tax Court said that the Director's assessment became a final determination once the 90 day protest period had passed. The Court warned that otherwise, by plaintiff's argument, a taxpayer could control the appeal time, which would then frustrate the legislative purpose of any statute of limitations.

The Court said in response to plaintiff's second argument that N.J.S.A. 54:35-10 is a refund statute which only applies when taxes are miscalculated by the tax-

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payer. The Court reasoned that a longer time period to request a refund is justified for it would naturally take longer for a taxpayer to realize his or her own miscalculations.

Local Property Tax

Business Retention Act – General Motors Corporation v. City of Linden, Docket Nos. A-3694-95T3 and A-3695-95T3 (Appellate Division, decided July 26, 1996).

The Appellate Division reversed the Tax Court's decision in favor of General Motors Corporation on its consolidated complaints regarding local property tax assessments and counterclaims by the City of Linden.

The lower court had granted the city's motion for partial summary judgment that N.J.S.A. 54:4-1b is unconstitutional. It declared void on its face the language added by L.1992, c.24, §3 (Business Retention Act), which excludes personal property affixed to real property or appurtenant to real property from the definition of taxable real property when that personal property is machinery, apparatus or equipment "used or held for use in business," which is not a "structure" or equipment whose purpose is to support shelter or enclose persons or property. The Tax Court ruled that this provision violated on its face the "uniformity clause" of the New Jersey Constitution, Art. VIII, sec. 1, par. 1(a), which mandates that all real property must be assessed and taxed locally according to the same standard of value, and that real property must be assessed for taxation under general laws and by uniform rules.

The Appellate Division discussed the history and policy behind legislation designed to remove much of business personal property from local property taxation by narrowly defining "fixtures." As the court noted, this has been done in order to create an economic climate attractive to business.

In an opinion by Pressler, the Appellate Division reversed the decision below, concluding that the Business Retention Act does not violate the state constitution's uniformity clause because the subject of the provision is personal property, not real property. Therefore only the general equal protection test of reasonableness of classification applied.

The judgment below was reversed and the matter was remanded to the Tax Court for reconsideration of the assessments. The Supreme Court granted the City of Linden's petition for a motion of leave to appeal on October 1, 1996.

Denial of Parsonage Exemption – Ehrlich, Richard J. & Devorah H., Plaintiffs, v. Passaic City, Defendant, Decided August 11, 1995; Tax Court of New Jersey; Pizzuto, J.T.C.; Docket Nos. 16-07-0201-91 & 16-07-13129-91.

Rabbi and his spouse, as owners and occupants of their one-family dwelling, appealed Passaic City assessor's denial of their real estate tax exemption claim and contested the 1990 and 1991 assessments, affirmed by Passaic County Tax Board, to the Tax Court of New Jersey. Exemption had been claimed under N.J.S.A. 54:4-3.6 which, in part, excludes from property taxation "buildings, not exceeding two, actually occupied as a parsonage by the officiating

clergymen of any religious corporation of this State...."

Taxing district's denial of parsonage exemption was based on the fact that the dwelling was not owned by a religious corporation for which the rabbi officiated, but rather by the rabbi and his wife as individuals. Homeowners argued that corporate ownership was not an absolute prerequisite and that the residence should be exempted as long as all other eligibility criteria were met.

Tax Court affirmed the denial of the exemption and held that N.J.S.A. 54:4-3.6 is limited to and exclusively concerned with institutional uses of property both owned and used by nonprofit organizations.

The Court's decision was predicated upon an analysis of the statute's construction — the historical changes made to textual content and grammatical structure since its origin in 1918, particularly for the following provisions, "...provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit..." and "The foregoing exemption shall apply only where

the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed...." For example, that an earlier wording of 3.6 required corporate ownership for each of the eleven categories of exempt

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property and specifically stated that a parsonage must be owned by a religious corporation helps to confirm the correctness of applying the general condition of corporate ownership in the current statute's second sentence to all the exempt property it addresses. The Court concluded that the deletion of the 1919 specific ownership requirement, the 1937 sentence division and the 1962 plural to singular changes did not prevent "other requirements of the second sentence," from limiting the parsonage exemption.

Prior cases also cited by the Court as helpful in reaching its determination were *Jersey City v. New Jersey Baptist Convention*, 18 N.J. Misc. 209, 12 A.2d 150 (State Bd. of Tax App. 1940), where exemption was denied because legal ownership vested in a supervisory entity rather than pastor's congregation. And *Jabert Operating Corp. v. Newark*, 16 N.J. Super. 505 (App. Div. 1952), where exemption required holding of legal title by nonprofit entity using property for specified use.

Improper Bidding Process in Bulk Sale of Tax Sale Certificates – *Errico v. City of Jersey City et al.*, Appellate Division, decided May 30, 1996. The Appellate Division affirmed a Law Division decision on an improper bidding process involving the bulk sale of tax sale certificates.

Jersey City adopted a resolution authorizing the bulk sale of 102 tax sale certificates with a face value at approximately \$4,400,000. Some of the properties involved were environmentally contaminated and

had a face value less than the amount of the tax lien.

Bidders were required to submit (1) a cash payment of at least 17.5 percent of the total lien amount, (2) a note for the remainder of the bid and (3) a price for the repurchase of the note. The total bid value being the cash payment plus the purchase price.

Plaintiff, Anthony D. Errico, submitted a bid including \$88,000 as the note repurchase price. This price fell significantly below the \$135,000 minimum (2.5 percent of the total lien amount, plus \$25,000) as required by the city ordinance.

The City Council voted to accept a bid from Remediation Financial, Inc., whose bid included a purchase price of \$135,000. Contending that he was the highest bidder, plaintiff filed suit seeking an order that Jersey City rescind the sale to Remediation.

The Law Division issued an oral opinion holding that Errico's bid was nonconforming. More importantly, the Court held that the bidding process altogether was an improper attempt to circumvent the requirement of N.J.S.A. 54:5-113.1(b), which states that tax sale certificates may not be sold for less than 70 percent of their face value.

The Law Division also pointed out Jersey City's motivation for circumventing N.J.S.A. 54:5-113.1. The contamination of some of the land in question convinced Jersey City that no bidder would pay either the face value of the liens or even bid the minimum 70 percent requirement. By including the cash payment with the purchase price as the total bid value, the ordinance allowed the bids on their face to exceed the 70 percent requirement

thus qualifying under N.J.S.A. 54:5-113.1.

The Appellate Division affirmed the Law Division's decision with added comments. N.J.S.A. 54:5-114.1 and 54:5-114.2, as the Appellate Division pointed out, offer larger discounts to address situations such as this. However, Jersey City did not elect to use N.J.S.A. 54:5-114.1 or 54:5-114.2 because they do not authorize the bulk sale of tax certificates. The Appellate Division said that the inadequacy of N.J.S.A. 54:5-114.1 and 54:5-114.2 did not justify the measures taken that resulted in circumventing N.J.S.A. 54:5-113.1. Such inadequacy, the Appellate Division concluded, should be handled by the Legislature.

Miscellaneous

Taxpayers' Bill of Rights Violation – *Ravindra and Suras Vora v. Director, Division of Taxation*, decided June 5, 1996.

In this case, the Tax Court considered whether defendant violated plaintiffs' rights under the Taxpayers' Bill of Rights when settling a tax deficiency issue. The deficiency resulted from the defendant's application under N.J.S.A. 54A:5-1(c), which provides that in calculating the gain or loss realized upon the sale of property, the Federal income tax basis shall be used; thus making plaintiffs responsible for tax on the gains realized from the sale of depreciable real property. Plaintiffs and defendant disagree over the use of the statute.

Plaintiffs contended that the statute did not apply. They reasoned that using the depreciation deductions allowable for Federal income tax

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to reduce the basis for gross income tax is incorrect because by the prohibition under New Jersey law against the netting of inter-category gains and losses (N.J.S.A. 54A:5-2) plaintiffs derived no tax benefit from the depreciation deductions.

Citing *Vasudev v. Taxation Div. Director*, 13 N.J. Tax 223 (Tax 1993) and *Spinella v. Director, Div. of Taxation*, 13 N.J. Tax 305 (Tax 1993), the Court stated that it has specifically held that the tax benefit rule does not apply to the New Jersey gross income tax and therefore the statute applies.

Upholding the deficiency determination made by the defendant, the Court moved on to decide if the plaintiffs' rights, under the Taxpayers' Bill of Rights, were violated. The initial deficiency notice for \$484 was sent by the Division to plaintiffs on April 13, 1994. After several correspondences, including a check for \$25 sent by plaintiffs, a hearing was requested by plaintiffs on June 1, 1994. The hearing was never granted.

The Division then sent plaintiffs a Notice of Adjustment on June 6, stating that they had overpaid their taxes by \$25 and that they were due a refund. Then on June 7, the Division sent plaintiffs another letter including *Spinella v. Director*, to explain the Division's position with regard to plaintiffs' protest.

The Division sent plaintiffs a "Final Determination" on July 15, 1994 reaffirming the deficiency and indicating the amount owed was \$531.72. Plaintiffs filed an appeal on September 14, 1994. After

another notice from Division sent on September 21 indicated the amount owed had increased to \$592.34, plaintiffs sent a check for \$551.66 to the Deputy Attorney General assigned to the case with no indication that they were abandoning the appeal. Counsel then sent forms to plaintiffs so they could withdraw their complaint. Plaintiffs did not respond, even after several phone calls and follow up letters by counsel.

Plaintiffs contended that they sent the check in order to stop the accrual of interest; their want for an appeal did not change. Plaintiffs also put forward that they believed counsel's phone calls and sending of the withdrawal forms were attempts to coerce them to withdraw the complaint.

The Court held that the Division's conduct was in violation of plaintiffs' rights under N.J.S.A. 54:49-18, which requires the Director to grant a requested hearing if the taxpayer files a written protest. The Court concluded that the June 6 letter gave erroneous advice and that by not rectifying the error on the June 7 letter, the Division created confusion and gave mixed signals to plaintiffs. The Court affirmed the deficiency and directed the interest between June 6 and July 15 refunded to plaintiffs.

Sales and Use Tax
Refinishing Hardwood Floors Taxable — *Joseph Newman v. Director, Division of Taxation*, Superior Court of New Jersey, Appellate Division, decided September 21, 1995.

The Appellate Division affirmed an assessment of sales tax on the refinishing of hardwood floors un-

der N.J.S.A. 54:32B-3(b)(4), as "servicing...real property," and rejected the appellant's argument that the service was exempt under N.J.S.A. 54:32B-3(b)(2)(v) as the installation of property which constituted a capital improvement or addition to real property. □

In Our Legislature

Local Property Tax

Veterans' Organizations and Tax Exempt Status — P.L. 1996, c.82 (signed into law on July 25, 1996) permits war veterans' organizations to conduct certain income-producing activities and retain property tax exempt status. This bill was designed to preserve the tax exempt status of veterans' organizations, even if these entities use their property for an income-producing purpose on a auxiliary basis, if all net proceeds from such auxiliary activities are utilized in furtherance of the purpose of the organization or for other charitable purposes. This legislation is effective immediately and retroactive to January 1, 1994. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
7	26	27	28	29	30	31	

January 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30

continued

January 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

continued

January 21 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 27

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

January 31

- NJ-941 & NJ-941-W Gross Income Tax**—Employer's quarterly return

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
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9	16	17	18	19	20	21	22
7	23	24	25	26	27	28	

February 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

February 18

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31

continued

February 18 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

February 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

February 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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9	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
7	23	24	25	26	27	28	29
	30	31					

March 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

March 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending November 30
continued

March 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

March 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
continued

March 20 - continued

- ST-51** Sales and Use Tax—Monthly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

(Detach here and mail)

1996 Package NJX Order Form

(For office use only)

_____ 1996 PACKAGE NJX @ \$7.00 EACH.....\$ _____
(No. of copies)

_____ NJX 3-RING BINDER @ \$7.00 EACH (Shipped separately).....\$ _____
(No. of binders)

TOTAL AMOUNT ENCLOSED.....\$ _____

Make your check or money order payable to: **State of New Jersey - NJX.**

Name _____ Telephone (____) _____
Address _____
City, State _____ Zip Code _____

from the director's desk

Special Message to Tax Practitioners

The Division would like to thank all of the tax practitioners who assisted us last season by following our new procedures for submitting resident returns. Division staff saw many examples of notices to clients explaining why their returns, W-2s, etc. were not stapled. You can help us again this year by doing the following:

- Do not staple, tape, paper clip or use any other fastening device to attach enclosures to Form NJ-1040.
- Use only blue or black ink when completing forms.
- Mail returns and enclosures (flat, not folded) in 9" x 12" envelopes (whenever possible).
- Use the correct envelope/address. This year all New Jersey income tax return instruction booklets include a payment voucher and corresponding envelope. Another envelope for mailing returns is also provided. This envelope has perforated labels on its flap. Be sure to use the correct label.
- Send 8½" x 11" copies of W-2s rather than the form itself (whenever possible). You may photocopy multiple W-2s (if space permits) on an 8½" x 11" sheet.
- **MAKE NO ENTRY** on unused lines or any line where the amount to be reported is zero or less.

We appreciate your continued cooperation.

New Jersey State Tax News

Fall 1996

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New Property Tax Deduction/Credit

New legislation, approved July 9, 1996, provides a deduction on the State income tax return for homeowners and tenants who pay property taxes, either directly or through rent, on their principal residence in New Jersey. This benefit is in addition to the existing Homestead Property Tax Rebate which continues to be available to many New Jersey residents. Eligible residents may claim either a deduction from income or a refundable credit.

Benefits will be phased in over a three year period. For the 1996 tax year, eligible residents may deduct 50% of their first \$5,000 of property taxes paid or \$2,500, whichever is less. For tenants, 18% of the rent paid during the year is considered property taxes paid. As a minimum benefit to taxpayers, the law provides for a refundable credit of \$25.

For 1997, the deduction will be the lesser of 75% of the first \$7,500 of property taxes paid (for tenants, 18% of rent) or \$5,625; the minimum benefit will be \$37.50. For 1998 and thereafter, the deduction will be the lesser of total property taxes paid (for tenants, 18% of rent) or \$10,000; the minimum benefit will be \$50.

For taxpayers not required to file an income tax return, who are 65 years of age or older, or blind/disabled, the law provides a refundable credit of \$25 for 1996,

\$37.50 for 1997 and \$50 for 1998 and thereafter.

Further details on calculating the deduction and credit will appear in the next issue of the *New Jersey State Tax News*. □

Amnesty Generates \$359 Million

New Jersey's recently concluded Tax Amnesty program has generated a total of \$359 million, an amount that will offset the unexpected shortfall from Corporation Business Tax revenue, State Treasurer Brian W. Clymer

continued on page 2

important Phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

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announced. Clymer said the program was one of the most effective state tax amnesty efforts of its kind and cited four main reasons for its success:

“We had a good ‘carrot’ in the form of a waiver of interest and penalties, and a good ‘stick’ in the form of an additional, unabatable five percent penalty for people who chose not to participate. Second, I think the Division’s reputation for having one of the best and most comprehensive enforcement programs in the nation forced people to take us seriously when we talked about the consequences of not paying.

“Third, we had an exceptional public awareness program, highlighted by our very memorable advertising campaign and our effective outreach and public relations efforts. And finally, through our simplified filing process, we made it very easy for people to take advantage of the Amnesty opportunity,” he said.

Clymer said the standard method of measuring the success of state Amnesty programs is to take the amount of revenue raised and divide it by the state’s total population. “Before New Jersey’s 1996 Amnesty, the most successful state effort was the one undertaken by the state of New York in 1986 that netted \$401.3 million or \$22.80 per capita. Our per capita figure is \$45.30, far outpacing any other program,” he said.

“Now that Amnesty is over, tens of thousands of people and companies have cleared up their obligations, new taxpayers have come on the rolls and we’ve resolved many of our backlogged cases. We will be able to turn our

Division’s attention — and considerable audit and compliance efforts — to catching the truly hard core tax cheats,” said Clymer.

Division of Taxation Director Richard D. Gardiner noted that the Division had maintained its usually stringent enforcement efforts throughout the campaign. Among the cases he cited were: the seizure of two truckloads of furniture from North Carolina that was being sold on the roadside in Ocean County by people who were not registered to do business in New Jersey; a sweep of merchants in Union City’s Urban Enterprise Zone that found that 73 of the 387 merchants were unregistered; and ongoing sweeps of flea markets and auctions that resulted in the registration of more than 2,000 new taxpayers during a three-month period.

“Our revenue agents are out there every day, everywhere. So if you think you can continue to avoid paying taxes, you should know we are — as the slogan said — ‘going to get you’.”

Gardiner said considerable attention will continue to be focused on cash businesses by audit and compliance activities. “Cash businesses are still the major culprits when it comes to failing to remit sales tax to the Division,” he said, adding that the Division expects to add 50 new employees to its audit activities to focus exclusively on businesses, such as restaurants, liquor stores and auto shops, that the Division believes are under-reporting the taxes they collect.

More than 63,000 individuals and 48,000 companies took advantage of Amnesty. The average payment for businesses was about \$5,300, and the average payment for individuals was approximately

\$1,100. Gardiner said the Division received 48 checks for more than \$500,000 in back tax payments. He said the smallest check was for 1 cent, “which was clearly from someone with a very active conscience.”

Almost 193,000 people called the Amnesty hotline seeking information on the program. In addition, nearly 7,000 people visited

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New Jersey State Tax **news**

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

Division of Taxation Director:
Richard D. Gardiner

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Editor: Linda B. Hickey

amnesty - from page 2

the Division's regional offices on Amnesty-related matters (almost 2,000 of them on June 1, the last day of the program) and more than 8,700 people accessed the Amnesty home page on the Internet. More than \$700,000 was collected through credit card transactions which was made available as a payment method during the last month of the program.

Gardiner said that while the Legislature had appropriated \$10 million to the Division to run the Amnesty program, the total cost of advertising and administration for the program is not expected to reach that amount. He added that any funds not used for the program will be returned to the State's General Fund.

"Even if you assumed that we would spend the entire \$10 million, that would be a 35-1 return for the State," said Gardiner. "Anyone in the collection business will tell you that is a phenomenal ratio."

Treasurer Clymer cited the commitment of Taxation staff and recognized them for their success with the Tax Amnesty Program.

"I'd like to commend the staff of the Division of Taxation for their outstanding efforts on this project," Clymer said. "Designing and implementing a huge program like Tax Amnesty, especially one that generates the public response that this one did, places a tremendous burden on any staff, and everyone at the Division rose to the occasion and performed superbly." □

Rebate Checks Issued July 31

Governor Christie Whitman stressed her commitment to returning more money to the hands of the taxpayers on July 23 when she toured the Division of Taxation facilities where homestead rebate checks were being processed for distribution at the end of July.

"This administration has made a basic commitment not to take more money from taxpayers than necessary, and further not to hold on to money taxpayers are entitled to receive," said Governor Whitman. "Previously homestead rebates were not distributed until October. Now, thanks in part to improved computer technology, we are delivering rebates to the State's taxpayers in the summer. Qualified citizens will now be able to save, spend or invest their checks sooner than ever."

Approximately 1.2 million New Jersey residents received homestead rebates averaging \$220 soon after the end of July. State-of-the-art computer imaging and processing systems at the Department of Treasury enabled the State to process the checks much earlier than the traditional October mailing.

Eligible recipients include senior citizens who are 65 years of age or older, residents who are blind or disabled; and those under age 65 who earn less than \$40,000. The rebate checks issued total approximately \$264 million.

Senior citizens over age 65 and those who are blind or disabled with gross incomes of \$70,000 and under are eligible for rebates of up to \$500 if they are homeowners or tenants. Residents in this category making between \$70,000 and

\$100,000 would receive up to \$100 if they are homeowners and \$35 if they are tenants. Residents making more than \$100,000 are not eligible for rebates.

Taxpayers who are under 65 with gross income up to \$40,000 are eligible for rebates of \$90 if they are homeowners; \$30 if they are tenants.

New Jersey taxpayers who are eligible to receive homestead rebates, and have not received them, can call the State's automated Homestead Rebate InfoLine at 1-800-323-4400 to check on the status of their rebate applications. Callers must have a copy of their rebate application to use this information line. □

Division on the World Wide Web

You can find the New Jersey Division of Taxation on the Internet by accessing our home page at the following address:

<http://www.state.nj.us/treasury/taxation/>

Since February 28, 1996 the Division's home page has been accessed over 13,000 times. E-mail inquiries and form order requests have been received world wide from places as distant as Europe and Japan. The Division's home page contains a wealth of information. Some of the areas that can be visited include:

- Frequently Asked Questions
- Helpful Publications
- Important Tax Notices
- Obtaining Tax Forms
- Enforcement Activity News

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world wide web - from page 3

- Listing of Taxes Administered by the Division of Taxation
- Organization of the Division including key names and phone numbers

The World Wide Web has provided the Division of Taxation with a new avenue to inform, educate and support New Jersey taxpayers and practitioners. New Jersey taxpayers and practitioners can use the home page to communicate with the Division. Additionally, the home page has links with other helpful home pages such as the New Jersey

Legislature, the Federation of Tax Administrators and the Internal Revenue Service. The Federation of Tax Administrators link allows access to every state revenue collection agency having a home page.

The Division's home page is a continuously evolving and growing communications medium. The home page proved to be a valuable asset during the recently concluded Tax Amnesty Program. Taxpayers accessed the Amnesty section of the home page to request forms and have questions answered.

Visit our home page and send us an e-mail telling us what you would like to see included on our home page. The Division's e-mail address is:

nj.taxation@treas.state.nj.us □

ELF Program to Expand in '96

This tax year, New Jersey's Electronic Filing (ELF) Program was very successful. It allowed for the filing of refund and zero balance returns for full time residents whose returns did not require the attachment of additional forms and schedules. By April 15 the Division had received and accepted over 65,000 electronic returns. In many cases, the Division was able to generate refund checks for these taxpayers in ten days. The Division will continue to participate in Federal/State ELF and for Tax Year 1996 the program will be expanded to allow for many additional categories of returns to be filed. More complex returns, those requiring

the attachment of additional forms and schedules, may be filed this coming season.

Tax preparers are reminded that all participants in the New Jersey program must register each year. The Division will be sending 1996 registration forms, for renewal, to those that participated last year. If you have never participated or you do not have a blank copy of last year's form, you may contact the Division at (609) 588-2200 and request a copy or write to the following address:

NEW JERSEY DIVISION OF TAXATION
CN 191 — ELF
TRENTON NJ 08646-0191

While last year's overall rejection rate was only 4%, the majority of these were because either transmitters or EROs had failed to register with New Jersey. It is important to remember that registering with the IRS does not constitute registration with New Jersey. If you have never participated in this program, you should also contact the IRS coordinator at the Newark District Office, as this program includes both the Federal and State returns.

The Division continues to use the IRS Bulletin Board (BBS) to post copies of manuals and to disseminate information regarding the program. Interested parties may call the BBS at (606) 292-0137 for the latest information regarding ELF. In conjunction with New Jersey, the IRS conducts workshops which you may wish to attend. For additional information you may contact the IRS in Newark at (201) 645-6690.

Interest 11.75% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1996 is 11.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%

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elf program - from page 4

General information about New Jersey's electronic filing program is available on the Internet by accessing the Division's home page at:

<http://www.state.nj.us/treasury/taxation/>

New Jersey's Electronic Filing Handbook for tax year 1996 will be posted on our home page when it becomes available. □

CORPORATION TAX **Nexus Schedule**

A new Corporation Business Tax schedule, Schedule N, Nexus-Immune Activity Declaration, is now available. Any foreign corporation claiming immunity from tax based upon income pursuant to the Federal Interstate Income Act, Public Law 86-272, 15 U.S.C. 381, should annually complete and file Schedule N along with only page 1 of the Corporation Business Tax Return (Form CBT-100 or 100S) and remit the minimum tax prescribed by N.J.S.A. 54:10-5(e).

Foreign corporations that meet the criteria for immunity from State taxation based on income under Public Law 86-272 would qualify to file Schedule N. If the in-State activities of the foreign corporation go beyond the protected activities under Public Law 86-272, as interpreted by the applicable Federal and State case law and New Jersey Corporation Business Tax regulation N.J.A.C. 18:7-1.9, the foreign corporation must file a complete Corporation Business Tax Return and pay the appropriate tax on the allocated

income as prescribed by the three factor business allocation formula.

Schedule N is not part of the Corporation Business Tax Return packet. The schedule may be obtained by calling the Division's Automated Tax Information System at 1-800-323-4400. Any questions regarding Schedule N can be referred to the Division's Nexus Audit Group at (609) 984-5749 or write to:

NEW JERSEY DIVISION OF TAXATION
NEXUS AUDIT GROUP
CN 264
TRENTON NJ 08646-0264 □

CORPORATION TAX **Section 8 Credit**

Where the Business Allocation Factor computed on the basis of property, receipts and payroll under Section 6 of the Act (N.J.S.A. 54:10A-6) is 100% and the taxpayer in fact paid a tax based on or measured by income to a foreign state resulting in a duplication of income being taxed, it may, under Section 8 of the Act (N.J.S.A. 54:10A-8), apply for a reduction in the amount of its tax paid to New Jersey. The reduction is available only where the taxpayer in its own right acquired a taxable status in a foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6 as if the New Jersey Corporation Business Tax Act were the law of the foreign state. It should be noted that the credit for taxes paid on duplicated income is only on tax based on or measured by income to a foreign state and not to a city or other municipality or the District of Columbia.

An eligible taxpayer computes its reduction on a rider attached to its return. For purposes of calculating the reduction:

1. The reduction may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to a foreign state;
2. The apportionment formula used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and rules under N.J.A.C. 18:7-8.3;
3. The reduction must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

For details, see N.J.A.C. 18:7-8.3.

The credit for taxes paid to other states on duplicated income is carried to the face of the return and is subtracted from the amount of tax due to New Jersey.

Below is an example derived from the regulation of how the credit is computed.

Example:

Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100%. It did, however, start and complete a construction job in State Z and paid an income tax to that state at a rate of 10.5%. It may determine the portion of its Corporation Business Tax measured by net income as follows:

section 8 credit - from page 5

	NJ Tax Income Base	Duplicated In State Z
Taxable income before net operating loss deduction & special deductions	\$227,500	\$227,500
Add ACRS	\$15,000	
Less NJ Depreciation	<u>12,000</u>	0
Taxes imposed on or measured by income from State Z return	\$28,800	22,500
NJ CBT paid or accrued—add back	<u>22,500</u>	
Municipal bond interest—add back	+7,000	+0
	<u>\$260,000</u>	<u>\$250,000</u>
Dividend Exclusion NJ State Z	\$10,000 <u>0</u>	- 10,000 <u>0</u>
Entire Net Income	<u>\$250,000</u>	
Portion of entire net income duplicated		\$240,000
Apportionment (computed below)		x .25
Tax @ 9%	\$22,500	<u>\$60,000</u>
Tax @ 10.5%		<u>\$6,300</u>
Reduction 60,000 @ 9%	- 5,400	
Reduced Tax	<u>\$17,100</u>	

Corporation B computed its apportionment on its State Z return as follows:

	State Z	Everywhere	%
Property owned	\$140,000	\$500,000	
Leased property (at 8 annual rentals)	+40,000	+ 100,000	
	<u>180,000</u>	<u>÷ 600,000</u>	.30
Receipts (double weighted .20 + .20)	<u>200,000</u>	<u>÷ 1,000,000</u>	.40
Payroll	<u>90,000</u>	<u>÷ 300,000</u>	+.30
Total			<u>1.00</u>
Average 1.00 ÷ 4			<u>.25</u>

If the apportionment formula had been determined in State Z, consistent with the Corporation Business Tax Act, it would have been:

	State Z	Everywhere	%
Property owned	\$140,000	÷ \$500,000	.28
Receipts	200,000	÷ 1,000,000	.20
Payroll	90,000	÷ 300,000	+.30
			<u>.78</u>
Business Allocation Factor .78 ÷ 3			<u>.26</u>

Since the apportionment formula used in State Z produces a factor (.25) which does not exceed the New Jersey Business Allocation Factor as it would have been determined under the Act and N.J.A.C. 18:7-8.3, the State Z factor is used for purposes of determining the reduction.

The New Jersey courts have considered and upheld the use of this credit mechanism, see *Kettler Realty Corporation v. Director, Division of Taxation*, 12 N.J. Tax 470 (1992), affirmed 14 N.J. Tax 165 (App. Div. 1993).

As a result of P.L. 1995, c.245, the New Jersey sales fraction will be double weighted for fiscal years beginning on and after July 1, 1996. □

GROSS INCOME TAX Domicile

The Division of Taxation continuously receives inquiries from individuals who are New Jersey residents taking job assignments overseas and who are requesting information about their filing responsibilities to New Jersey while they are working overseas. Many of these individuals will be renting out their New Jersey homes while they are out of the country.

The New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-2(m), defines a "resident taxpayer" as any individual who is domiciled in New Jersey, unless he or she fulfills all three of the following conditions for the entire year:

1. Maintains no permanent place of abode in New Jersey; and
2. Maintains a permanent place of abode elsewhere; and
3. Spends no more than 30 days of the taxable year in New Jersey.

To determine whether a person is a resident or nonresident, it is necessary to know the person's domicile. Domicile is any place an individual regards as their permanent home. Once established, a domicile continues until the person moves to a new location with the

continued on page 7

domicile - from page 6

intent to establish a fixed and permanent home there and has no intention of returning to his or her previous home. Moving to a new location, even for a long time, does not result in a change of domicile if the intent is to remain only for a limited time.

Thus the New Jersey resident who intends to return to New Jersey after living and working in an overseas location for a period, no matter how long the duration, has not given up his New Jersey domicile and must file as a New Jersey resident for the entire period.

An individual who rents out his New Jersey home, while currently living outside of New Jersey, and has no right of use to the New Jersey home during the term of the lease, can be considered a non-resident as long as he maintains a permanent home elsewhere and spends less than 30 days in this State.

A place of abode, whether in this State or elsewhere, is not deemed to be permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose. If the dwelling is maintained for more than a temporary stay, then it will be considered permanent.

It should be noted that all the statutory conditions for non-resident taxpayer status must be satisfied by the taxpayer.

The burden of proof would be upon the individual asserting a change of domicile to show that the necessary intention existed to abandon his or her domicile in one location and to establish a fixed and permanent home in another. □

GROSS INCOME TAX ***Gambling Winnings or Losses***

Under the provisions of R.S. 54A:5-1(g), all gambling winnings, with the exception of New Jersey Lottery winnings, are subject to New Jersey Gross Income Tax.

The winnings of residents are subject to tax no matter where these winnings are received. Nonresidents' gambling winnings from New Jersey sources are likewise subject to tax.

All gambling winnings whether they are the result of legalized gambling (casino, race track, etc.) or illegal gambling are subject to the tax. However, this category of income is given treatment similar to the treatment of gambling winnings under the Federal Income Tax code. Gambling losses incurred during the same period as the winnings may be used to offset winnings. In other words, taxpayers may deduct gambling losses from their gambling winnings during the tax period not to exceed the total of the winnings. In the case of nonresidents, gambling winnings from New Jersey sources may only be offset by gambling losses incurred in New Jersey during the same tax period.

Taxpayers may be required to substantiate gambling losses used to offset winnings reported on their New Jersey Gross Income Tax Return. Evidence of losses may take several forms, including losing race track pari-mutuel tickets, a daily log or journal of wins and losses, canceled checks, notes, etc. Such evidential material should be kept by the taxpayer for a period of six years after the filing of the New Jersey Gross Income Tax Return for that period.

With respect to winnings or losses resulting from casino gambling, letters from casinos which purport to "rate" the gambling activity of an individual or "estimate" losses are not acceptable as evidence of gambling losses.

Although no specific rider to the New Jersey Gross Income Tax Return is required, it is requested that a taxpayer who enters gambling winnings net of losses on the New Jersey return indicate the total winnings and total losses on a supporting statement. Although not taxable, the supporting statement should include New Jersey lottery winnings and losses. This supporting statement may eliminate certain questions in the event the return is selected for audit. □

SALES AND USE TAX ***Carnival Rides & Nonprofits***

In reply to an inquiry regarding the treatment for sales tax purposes of sales of admissions by not-for-profit organizations for amusement rides at carnivals or circuses, the Division replied that under N.J.S.A. 54:32B-9(f)(2)(B) of the Sales and Use Tax Act, such admissions are subject to sales tax if "any professional performer or operator participates for compensation." The fact that the not-for-profit is an exempt organization pursuant to N.J.S.A. 54:32B-9 does not matter; nor is the result changed by the method of payment agreed to by the not-for-profit and the amusement ride operator. In this regard, note that N.J.S.A. 54:32B-9(f)(1) provides that under no circumstance can the splitting of proceeds support an exemption

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carnival rides - from page 7

claim.

Every recipient of admission charges is a person required to collect tax under the Act. See N.J.S.A. 54:32B-2(p); N.J.S.A. 54:32B-2(w). Whenever the proceeds are split between an amusement ride operator and a not-for-profit organization, the operator is a recipient of admission charges. The operator is required to file returns and remit the tax with respect to admission charges subject to sales tax under N.J.S.A. 54:32B-3(e)(1). See N.J.S.A. 54:32B-17; N.J.S.A. 54:32B-18. □

INHERITANCE/ESTATE TAX ***CPA Prepared*** ***Returns***

It has been ten years since Opinion No. 10 of the Committee on the Unauthorized Practice of Law was modified by the Supreme Court of New Jersey to permit preparation of inheritance tax returns by certified public accountants. However, there is still considerable unnecessary and avoidable delay in processing certain returns which is being caused by an apparent ignorance of conditions imposed by the Supreme Court.

Opinion No. 10 of the Committee on the Unauthorized Practice of Law was modified by the Supreme Court of New Jersey, on April 14, 1986, to permit the preparation and filing of New Jersey Inheritance Tax Returns by qualified certified public accountants *licensed in New Jersey provided that the accountant notifies the client in writing before work is commenced* that review of the return by a qualified attorney may be desirable because of possible application of legal principles to the preparation

of the tax return. 102 N.J. 231. For these purposes, public accountants duly licensed in New Jersey have equivalency with certified public accountants.

The Transfer Inheritance Tax Branch, in the absence of receipt of the client's original signed acknowledgment of the required notification, is precluded from accepting or negotiating returns filed by CPAs. Accountants should not expect or request that Division personnel act in a way that is contrary to the provisions of the statute. The following CERTIFICATION may be reproduced. It is suggested that it be photocopied and/or made a permanent "form" in word processors of New Jersey certified public accountants. □

CERTIFICATION

The New Jersey Supreme Court in *IMO Application of New Jersey Society of Certified Public Accountants*, 102 N.J. 231 (1986) held that the preparation of an inheritance tax return is, in general, so dependent on the correct application of legal principles as to require the Supreme Court to exercise its supervisory jurisdiction over the practice of law. In exercising this supervisory jurisdiction, the Court observed that many certified public accountants are qualified to prepare inheritance tax returns for most estates.

Therefore, the Supreme Court concluded that the public interest is best served by permitting certified public accountants to prepare and file inheritance tax returns without the supervision of any attorney, on the condition that:

- a) before the CPA commences work on the return, he or she has notified client in writing that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the return; and
- b) consistent with the professional obligation of the CPA to perform his or her services subject to a standard of care commensurate with the skill and knowledge normally possessed by members of the CPA profession in good standing, he or she recommends consultation with counsel whenever the complexities of a return indicate that legal advice is desirable.

In accordance with the New Jersey Supreme Court's directive as set forth above, this is to certify that my certified public accountant has given me this writing and that I have read it thoroughly, that I understand that review of this estate's inheritance tax return by a qualified New Jersey attorney may be desirable, that my CPA also may recommend consultation with an attorney because of complexities with this estate and the inheritance tax return, and that it is my decision whether I will seek the services of an attorney unless my CPA determines that he or she must consult with counsel.

Executor, Executrix
Administrator, Administratrix
Beneficiary, or Heir
Dated:

LOCAL PROPERTY TAX
New Rules for Tax Maps

Revised tax map regulations were adopted on January 2, 1996 by Richard D. Gardiner, Director, Division of Taxation. These rules became effective on February 5, 1996 and will expire on February 5, 2001. A full text appears in N.J.A.C. 18:23A.

Property Administration, Engineering Section, which administers tax map review and approval procedures, has developed a booklet for the New Jersey Licensed Land Surveyors who are responsible for the preparation, revision and maintenance of tax maps and for Municipal Assessors who are responsible for local assessments. The booklet includes illustrated standards, a formal opinion concerning land surveyors, seals, a check list of items to review and advice about the manner of reflecting riparian interests. □

LOCAL PROPERTY TAX
Deductions for Co-op, Mutual Housing Residents

Property Administration's Local Property Branch recently had several inquiries from cooperative and mutual housing residents who were having difficulty receiving credit for their \$250 senior citizen and \$50 veteran property tax deductions from their housing management despite their deduction claims having been approved by their municipal tax assessors.

To ensure resident shareholders' proper entitlement to and receipt of both property tax deductions for

qualified senior and disabled citizens and war veterans and their respective surviving spouses, assessors are reminded to send Form CMHC-1 to Co-op and Mutual Housing managers on a yearly basis. Unless this form is completed by property managers each year, continuance of and changes to deduction entitlement will not be verifiably documented. CMHC Forms for residential Cooperative and Mutual Housing should be returned to assessors in time to allow the data to be used for the annual October 1 property status review.

Assessors needing a copy of the CMHC Form and the accompanying transmittal letter should contact Property Administration, Policy and Planning Section. □

LOCAL PROPERTY TAX
Tax Assessors' Calendar

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1–

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assess-

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Correction

Editor's note: There were several errors in an article in the last issue of the *State Tax News* (Summer 1996, Volume 25, Number 2) on page 9. In the chart entitled *New Jersey Property Valued at \$496 Billion*, the correct figure for the 1994 True Value in Sussex County is \$8,176,299,578. In Warren County, the correct figure for the amount of Decrease/ Increase is +\$148,187,544, and for % of Change, +2.78. We apologize for these mistakes.

assessors' calendar - from pg. 9

ments filed with County Tax Board.

December 31-

- Legal advertisement of availability of Tax List for public inspection. □

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Twenty-four persons passed the examination for the tax assessor certificate held on March 30, 1996 and became certified tax assessors on May 24, 1996:

Bergen County: Lisa L. Lisciotto, Fairview Borough; Marguerite L. Pilsbury, Demarest Borough; Karen Purpura, Wyckoff Township; Mario N. Silvestri, North Arlington Borough.

Burlington County: William F. McLaughlin, Mount Laurel Township; Grace Ann Shotwell, Mount Laurel Township.

Camden County: Gregory J. Busa, Gloucester Township; Timothy W. Sheehan, Haddon Heights Borough.

Cumberland County: Lois E. Mazza, Hopewell Township.

Essex County: Brian J. Iannarone, North Caldwell Borough.

Mercer County: Peter Edward Sockler, Hightstown Borough.

Morris County: Kevin J. Cooper, Mount Olive Township; Marc Edward D'Agostino, Mendham Borough; Denis M. Duvoisin, Morris Plains Borough; Olga Rotonda, Montville Township; J. Scott Thornton, Parsippany-Troy Hills Township.

Ocean County: Kathy J. Marmur, Point Pleasant Borough.

Somerset County: Joseph M. Baxter, Bound Brook Borough; Kevin D. Smith, Bedminster Township; George John Sopko, Bridgewater Township.

Sussex County: Tamara Athoe Pyskaty, Andover Township.

Union County: Alan Rapoport, Kenilworth Borough.

Pennsylvania: John D. Charlesworth, Milford Borough; Eugene P. Davey, Philadelphia. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- James J. Bobowicz of Caldwell, New Jersey, pled guilty on May 28, 1996 to eight counts relating to State income tax violations. In addition to failing to file State income tax returns from 1989 through 1992, Bobowicz filed a false tax return and claimed a fraudulent income tax refund in 1993. This case resulted from a joint investigation effort between the Sussex County Prosecutor's Office and the Office of Criminal Investigation.
- On June 11, 1996, Paul C. McDaniel of West Chester, Pennsylvania, pled guilty to one count of failure to file a petroleum products gross receipts tax return. McDaniel, a waste oil dealer, was indicted in March 1996 with nine other individuals alleging 18 counts of conspiracy, racketeering, and falsifying records. Also included in the indictment was the theft of \$159,000 of New Jersey petroleum products gross receipts tax, the theft of \$798,000 of Federal motor fuels excise tax and various environmental offenses during the period between September 1992 and June 1993.
- Richard Lugero of Millstone Township, the sole principal of a purported security guard firm, was indicted on June 3, 1996 by a Monmouth County grand jury on four counts of filing fraudulent State income tax returns and failing to pay the tax of \$43,885 on the unreported

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income. The criminal investigation ascertained unreported income from the security firm totaling \$608,000 for the 1993 and 1994 tax periods. In addition, there was probable cause to believe that unreported proceeds also existed from the theft of goods and services that totaled \$78,951 for the two year period. The case was initiated by the Monmouth County Prosecutor's Office and conducted jointly with the Division's Office of Criminal Investigation.

- Larry Ansell and Michael Gohar, the president and former co-president of Emerald Hotels Management Co. Inc., made a partial payment of \$450,000 for back taxes owed to New Jersey. As a condition of their February 7, 1996 guilty plea, an additional \$400,000 must be paid prior to the September sentencing date. Under the plea agreement, the balance of the taxes still owed after that payment must be paid no later than one year from the date of entry of the Judgment of Conviction. This case resulted from a criminal investigation that discovered nearly \$1.25 million in unpaid New Jersey sales tax, corporation business tax and income tax for the period January 1988 through August 1995. Ten corporations owning hotel and motel franchises throughout the State were identified as being part of the scheme to evade payment of these taxes. Additional information regarding this case may be found in the Summer 1996 issue of the *State Tax News*.

- On April 30, 1996, Vincent T. Szymanski of Bayonne, New Jersey, pled guilty to embezzling monies from his employer and failing to file New Jersey income tax returns and pay the tax obligation. Szymanski, who was indicted by a Mercer County Grand Jury on March 22, 1996, admitted to embezzling \$337,000 from Conair, Inc. in East Windsor by manipulating credit accounts from 1991 through 1994 during the period of his employ. Conair discovered the missing money after Szymanski was laid off. As part of the plea agreement, Szymanski is required to pay back the money he stole, as well as pay the income tax owed which totaled over \$18,700 on the unreported income for this period. The case resulted from a joint investigation effort between the Mercer County Prosecutor's Office and the Division's Office of Criminal Investigation.
- James H. Haluszka, the former Chief Financial Officer of Ocean Gate Borough, was sentenced on April 18, 1996 to five years in prison as a result of his guilty plea to one count of official misconduct. Mr. Haluszka had received a seven count indictment in October 1995, for violations involving theft of municipal funds and the failure to perform duties imposed by law. Included in one count for official misconduct was Haluszka's failure to file and remit New Jersey withholding taxes for 1993 and 1994

for borough employees. As part of the guilty plea, however, this count and several other counts for official misconduct were dismissed. The Borough of Ocean Gate as a result of the investigation was made aware of the delinquencies for New Jersey income tax withholdings and is in the process of correcting them.

- Rosalie Randazzo, president of MVP Sports Cafe, Inc., in Aberdeen, New Jersey, was admitted to a Pre-trial Intervention Program on April 15, 1996 as a result of a plea to an accusation of misapplication of entrusted property. Ms. Randazzo was accused of under reporting the sales tax and failing to remit \$43,894 of collected tax. Prior to the plea, the taxpayer made full restitution of the sales tax monies involved.
- On March 22, 1996, Clinton Point Associates, Inc., the former operator of a bar/restaurant in Clinton, New Jersey, was sentenced in Essex County Superior Court for failing to remit \$46,523.82 of collected sales tax. As a condition of the plea, Joseph Diaz, president of the corporation, executed a Consent Judgment personally to ensure payment of the tax, penalties and interest due.
- On April 4, 1996, Ann Cinquemani, president of Friendly Three, Inc., in Flemington, New Jersey, was admitted to a Pre-trial Intervention Program as a result of an accusation involving the filing of fraudulent sales tax returns and

the failing to remit \$14,597 of *criminal enforcement - from pg. 11*

tax collected. As a condition of the program, Ms. Cinquemani is required to make full restitution of the tax and maintain steady employment during her three year term in the program.

- Twenty-one guilty pleas were entered in municipal courts throughout New Jersey between April and June 1996 by individuals and businesses for noncompliance with the cigarette tax law. The charges included counts for failure to register a business, for selling cigarettes without a license, and for transporting untaxed cigarettes. Fines and penalties were imposed in the amount of \$18,081 and 4,439 cartons of seized cigarettes with a value of \$88,000 were awarded to the State. In addition, charges were filed for violations including transporting untaxed cigarettes and selling cigarettes without a license in municipal court for eight cases. The value of the assets seized for these cases totaled \$82,629. □

Enforcement Summary

Civil Collection Actions Quarter Ending - June 30, 1996

Following is a summary of enforcement actions for the quarter ending June 30, 1996.

Certificates of Debt

During the quarter ended June 30, 1996, the Division filed 753 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$9.3 million.

Levies

\$28,355 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending June 30, 1996, property of 11 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on page 14.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending June 30, 1996, six auctions were held by the Division. A listing follows on page 14.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

Federal Modified Accelerated Cost Recovery — The Division received an inquiry as to whether New Jersey allows the use of Federal modified accelerated cost recovery depreciation for assets placed in service in New York, as well as for assets in New Jersey.

New Jersey will allow Federal modified accelerated cost recovery depreciation for assets placed in service in New York as well as in New Jersey. Taxpayers should use the same depreciation method they are using for Federal purposes. For assets placed in service on or after

July 7, 1993, New Jersey follows Federal depreciation rules. N.J.S.A. 54:10A-4(k)(2)(F)(i).

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Tax Clearance Certificate Required for Partnerships, Limited

Partnerships, Limited Liability
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Companies Mergers — Partnerships, limited partnerships and limited liability companies are permitted to merge and consolidate into other business entities, pursuant to N.J.S.A. 42:1-49, N.J.S.A. 42:2A-73 and N.J.S.A. 42:2B-20. Public Law 1995, chapter 279 amended the State Tax Uniform Procedure Law, N.J.S.A. 54:50-14, to provide that the Secretary of State shall not accept for filing a certificate of merger or consolidation of any business entity into any other business entity other than a domestic corporation or a foreign corporation authorized to transact business in this State unless the business entity files a tax clearance certificate with the Secretary of State. Partnerships, limited partnerships and limited liability companies are required to obtain a tax clearance certificate, pursuant to N.J.S.A. 54:50-14 before merging or consolidating with any other business entity other than a domestic corporation or a foreign corporation authorized to transact business in this State.

Gross Income Tax

Withholding On Wages Paid To Household Employees — It is not mandatory for an employer to withhold New Jersey gross income tax from wages paid to household workers. If Federal tax is withheld from the household worker's wages, then New Jersey gross income tax must be withheld if otherwise required under New Jersey's employer withholding instructions.

For example, an employer who is withholding Federal income tax is required to furnish the NJ-W4 to

all employees, but an employee is not required to complete the NJ-W4. If a household employee has requested that the employer withhold Federal income tax but does not wish to have State income tax withheld, the employee may claim exemption from withholding on the NJ-W4 if one of the following conditions is satisfied:

- Filing status is single, head of household or qualifying widow(er) and the employee's wages plus taxable non-wage income will be \$7,500 or less for the current year; or
- Filing status is married joint and the employee's wages combined with his spouse's wages, plus taxable non-wage income will be \$7,500 or less for the current year; or
- Filing status is married separate and the employee's wages plus taxable non-wage income will be \$3,750 or less for the current year.

Sales and Use Tax

Home Warranty Repairs — The Division responded to an inquiry regarding the taxability of warranty work performed on new houses. The taxpayer does work under contract for builders of new homes, making "adjustments and repairs" on a house whenever the homeowner reports problems with the construction that need to be corrected during the warranty period.

In these circumstances, the builder's purchase of the repair services is a purchase for resale under N.J.S.A. 54:32B-3(b), since the builder is reselling the service to the homeowner through the warranty which was included in the sale of the home.

Thus, the taxpayer may accept a Resale Certificate (ST-3) from the builder for repair services when the builder pays for the warranty work. However, the taxpayer is responsible for paying sales or use tax on any materials and supplies it purchases in order to perform the warranty work; these purchases are not considered purchases for resale. N.J.S.A. 54:32B-2(e).

Leased Hotel Room, Permanent Resident

— The Division received an inquiry concerning the sales tax exemption on the rent for a room or rooms in a hotel paid by a permanent resident. N.J.S.A. 54:32B-3(d). The New Jersey sales tax is imposed on: "The rent for every occupancy of a room or rooms in a hotel in this State, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of \$2.00 per day." N.J.S.A. 54:32B-3(d).

The Sales and Use Tax Act defines a permanent resident to be "any occupant of any room or rooms in a hotel for at least 90 consecutive days..." N.J.S.A. 54:32B-2(m). If the occupancy occurs under a lease agreement for a period of 90 or more consecutive days, the rental payments are exempt from sales

***Division of Taxation Seizures
(April – June 1996)***

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Bergen	Mercer Street Pub Wallington	06-25-96	Pub	Liquor License Seized
Gloucester	Money Max, Inc. Sewell	06-25-96	Commercial Laundry	Motor Vehicles Seized
Mercer	Tuxedo Club, Inc. Trenton	05-16-96	Bar/Social Club	Liquor License
Middlesex	Melnizek, Frances, t/a Fran's Sail Inn Carteret	06-12-96	Bar/Tavern	Closed
	ADA, Inc., t/a Fords Bar & Liquors Fords	06-28-96	Package Store/Bar	Closed
Monmouth	Cheasapeake, Inc., t/a Sand Bar Brielle	05-06-96	Restaurant/Bar	Liquor License
	Molitor, Cora, Est. of t/a Mulligan's Tavern Highlands	05-06-96	Bar	Liquor License
	Safari VIP Food & Spirits, Inc. Aberdeen	05-16-96	Bar/Restaurant	Contents seized; Business already closed
	Periwinkles, Inc. Sea Bright	05-23-96	Bar/Restaurant	Liquor License
Passaic	Kalra, Vinit, t/a Vee & Dee Towing Wayne	05-17-96	Towing	Tow Truck Seized
Union	Fork Lifters, Inc. t/a The Loading Dock Restaurant Garwood	05-15-96	Bar/Restaurant	Liquor License

***Division of Taxation Auctions
(April – June 1996)***

County	Name/Address	Auction Date	Business Type
Atlantic	1401 Arctic Ave Corp. Atlantic City	04-16-96	Liquor License
Camden	Larsid, Inc., t/a Cotton Club Camden	04-24-96	Liquor License
	Camelot Lounge Camden	06-06-96	Liquor License
Gloucester	Stiehl Grove, Inc., t/a Paulsboro Hotel Paulsboro	04-22-96	Liquor License
Monmouth	Safari VIP Food & Spirits, Inc. Aberdeen	05-30-96	Bar/Restaurant
	Molitor, Cora, Est. of t/a Mulligan's Tavern Highlands	06-19-96	Liquor License

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tax, and the hotel is not required to collect sales tax for any of the days. The agreement serves as proof of the exemption. No exemption certificate is required.

Senior Citizen Clubs — While all nonprofit organizations may make application for exempt organization status for sales and use tax purposes, the vast majority of nonprofit organizations do not qualify for exemption under the provisions of the law.

N.J.S.A. 54:32B-9(b)(1) provides exempt organization status, upon application, to “Any corporation, association, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes....” The language was taken directly from section 501(c)(3) of the Internal Revenue Code. It has been held by ruling that the intent of the New Jersey Legislature in formulating this statute was to grant exempt organization status solely to 501(c)(3) types of organizations. The New Jersey sales and use tax exempt organization application process requires the submission of an Internal Revenue Service determination letter granting the applicant exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. N.J.A.C. 18:24-8.4(c)(5).

Senior citizens clubs usually are not designated 501(c)(3) type organizations, as they are neither organized nor operated exclusively for the exempt purposes listed

under N.J.S.A. 54:32B-9(b)(1). Therefore, senior citizens clubs are not qualified for exempt organization status under the New Jersey Sales and Use Tax Act.

“Tax-Free” Shopping — The Division received a complaint about tax-free shoppers in Delaware from a New Jersey business located in Cape May County.

The Division replied that while purchases made in Delaware are not subject to any sales tax in Delaware, they are not “tax free” for New Jersey residents. When goods that are not tax-exempt in New Jersey are brought into this State for use here, the user must pay a “compensating use tax” to New Jersey. The requirement of paying use tax has been part of the Sales and Use Tax Act since 1966. See N.J.S.A. 54:32B-6. The purpose of this requirement is to ensure that out-of-State purchases of goods used mainly in the State are subject to the same tax liability as purchases of the identical items within the State. Residents cannot avoid sales tax simply by crossing State lines. *Coppa v. Director, Division of Taxation*, 8 N.J. Tax 236, 252 (Tax Ct. 1986).

Individuals who owe use tax may file a Form ST-18 and remit payment within 20 days of bringing their purchase into this State. Alternatively, if the individual has not paid the use tax liability during the year, this liability can be reported on the “use tax” line of the NJ-1040 and paid with that return. □

In Our Courts

Corporation Business Tax Entire Controversy Doctrine — *Sutton Warehousing, Inc. v. Director, Division of Taxation*, Superior Court of New Jersey, Appellate Division, decided May 31, 1996, DDS no. 35-2-9081.

The issue in this case is whether, during discovery for an appeal of taxpayer’s sales and use tax assessment, the Director of Taxation can issue a corporation business tax (CBT) notice for discrepancies found in the taxpayer’s records without violating the entire controversy doctrine. The entire controversy doctrine requires a court to adjudicate all of the equitable and legal issues arising from a single underlying transaction to the extent possible so to exercise fairness and efficiency. The Appellate Court reversed the Tax Court’s determination that the CBT assessment violated the entire controversy doctrine.

Plaintiff, while in the business of storing and distributing clothing products, purchased a storage rack system and sprinkler system. Director audited plaintiff and found that plaintiff owed sales and use tax on the storage rack system. Plaintiff appealed and contended that it was an exempt capital improvement. During discovery for the appeal, Director found that plaintiff also owed CBT for depreciating the sprinkler system over too short of a time period. Director issued plaintiff an additional assessment and plaintiff filed a complaint maintaining that Director’s actions violated the entire controversy doctrine.

in our courts - from page 15

The Appellate Court held that the entire controversy doctrine did not apply because the CBT was not a “matter in controversy between parties” when the sales and use tax was assessed. The cause of action for the CBT assessment did not arise in time to have been joined with the sales and use tax assessment as a defense or counterclaim without violating plaintiff’s statutory right to protest the assessment. Further, under N.J.S.A. 54:49-6, Director has four years to examine and audit a return and assess additional taxes, and he was within this statutory limitation. In addition, the sales and use tax assessment and the CBT assessment did not arise from one underlying transaction, and therefore cannot be said to violate the entire controversy doctrine.

The Appellate Court held that plaintiff could be assessed with the CBT and reversed the Tax Court ruling.

REITs May Deduct Dividends Paid to Shareholders – *Corporate Property v. Taxation Division*, 15 N.J. Tax 205 (Appellate Division, decided June 23, 1995).

The Tax Court decided whether a real estate investment trust (REIT) can deduct the dividends paid to its shareholders in calculating tax under the Corporation Business Tax Act (CBT). The Court held that the Director incorrectly calculated plaintiff’s taxable income by including the deduction in computing plaintiff’s entire net income under N.J.S.A. 54:10A-4(k).

On appeal, the Director contended that plaintiff’s “taxable income”

under the Internal Revenue Code (I.R.C.) is not equivalent to its “real estate investment trust taxable income” under the I.R.C.

Both plaintiff and the Director agreed that I.R.C. §63 applies to define “taxable income” to mean “gross income minus the deductions allowed by Chapter One of the I.R.C.” The Tax Court held that §857(b)(2)(B) in Chapter One authorizes a REIT to deduct dividends paid to its investors. The Director challenged the use of this deduction because §857(b)(2) uses the term “real estate investment trust taxable income.”

In rejecting that distinction, the Appellate Division agreed with the Tax Court in that the use of that phrase in the I.R.C. is only meaningful when imposing additional taxes when a REIT fails to distribute the proper amount of income to its shareholders. The Appellate Division said that the basic attraction of a REIT is the pass-through of gains and losses to shareholders to have them pay the appropriate taxes. Also the Court indicated that there is no indication in the CBT that the Legislature intended to discourage REITs from operating in New Jersey.

The Appellate Division also rejected the Director’s contention that the Federal paid deduction is a “special deduction” to be added back to Federal taxable income. The Court pointed out that the term “special deduction” is defined in I.R.C. §§241 through 249, and does not include the dividends paid deduction authorized by I.R.C. in §857(b)(2)(B). Also, as the Court stated, §857(b)(2)(A) denies any deduction from taxable income for “special deductions” for a REIT.

Litter Control Tax

Definition of “Food For Human Consumption” – *Royal Food Distributors, Inc. v. Director, Division of Taxation*, Tax Court of New Jersey, decided June 16, 1995.

This Litter Control Tax case concerns the scope of the term “food for human consumption” as a “litter generating product” subject to tax under N.J.S.A. 13:1E-94e. Plaintiff requests a refund for Litter Control Tax he paid in 1991 and 1992 for \$30,294 and \$37,772 respectively. Plaintiff contends that the products he distributed did not meet the statutory definition of “litter generating product” and therefore, plaintiff was entitled to a refund for Litter Control Tax paid on these products. The Tax Court upheld the Director of Taxation’s determination that plaintiff’s products were “litter generating products” subject to tax, and plaintiff would not be entitled to a refund of the taxes paid.

Plaintiff is a wholesale distributor to retail stores. Plaintiff distributes meats, cheeses, fruits and vegetables, and other perishable food

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products. Manufacturers ship food

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products to plaintiff prewrapped, usually in plastic wrap, plastic containers, or aluminum foil, and packaged in cardboard boxes. Plaintiff ships food products to its customers in the same wrapping as received by plaintiff from the manufacturer.

Plaintiff paid Litter Control Tax in 1991 and 1992, and subsequently filed refund claims for tax paid in the same years, claiming the Legislature did not intend for the tax to be levied upon perishable food products sold by food stores for off-premises consumption such as his products. Plaintiff points out that the Director's regulation N.J.A.C. 18:38-3.1(b)(5), defining "food for human consumption" as "any substance, the chief general use of which is for human nourishment," is too expansive, superfluous and meaningless, and overlaps the definitions of other listed "litter generating products" such as groceries, beer and malt beverages, distilled spirits, soft drinks and carbonated waters and wine. Plaintiff maintains this interpretation of "food for human consumption" contravenes Legislative intent because it creates redundancies within the regulation. Plaintiff contends that the definition should be restricted to "prepared foods sold for off-vending operators, vending machines and other similar establishments."

In deciding for the defendant, the Tax Court held that the Legislature did not intend for the definition of "food for human consumption" to deviate from the generally accepted meaning of the language. The Tax Court determined that the statute was unambiguous and plaintiff's food products met the

definition of "food for human consumption." The Tax Court refuted plaintiff's contention that the Director's definition of "litter generating product" made the regulation superfluous and meaningless. The Tax Court noted that any overlap in the regulations serves to clarify those categories of products that are considered to be "litter generating," and that the Legislative intent to promote the economy, public health and safety is conferred by the Director's interpretation of "litter generating products." With respect to the Legislative intent and the plain language of the statute, plaintiff was responsible for paying Litter Control Tax in 1991 and 1992 for his food products and the denial of a refund for this tax is justified.

Local Property Tax

Denial of 100% Veterans' Exemption – *Mary E. Jackson, Plaintiff, v. Township of Neptune, Defendant*, decided March 27, 1996; Tax Court of New Jersey; Docket No. 010542-94.

Mary E. Jackson, claiming to be the surviving spouse of a 100% permanently disabled veteran, sought exemption from local property taxation for her home under N.J.S.A. 54:4-3.30(b). Plaintiff married James Jackson in 1965. In 1967, they purchased the subject property, as tenants by the entirety, and lived there together. In June 1972, the United States Veterans' Administration declared James Jackson a 100% disabled veteran. The Jacksons' residence was exempted from property taxes beginning in 1973 and was exempt for tax year 1993.

By deed dated January 21, 1993, the property was conveyed to

plaintiff, Mary E. Jackson, individually.

On February 16, 1993, plaintiff obtained a divorce from bed and board from James Jackson but they continued to live together some of the time until James Jackson's death in April 1993.

For the 1994 tax year, defendant, Township of Neptune, denied an exemption from local property taxation for plaintiff's property. Plaintiff filed an appeal with the Monmouth County Board of Taxation. On June 28, 1994, plaintiff's exemption request was denied based on the fact that the marital home had been transferred to plaintiff in January 1993.

On September 13, 1994, plaintiff filed a complaint with the Tax Court of New Jersey seeking a determination that subject property was exempt from local taxation under N.J.S.A. 54:4-3.30(b). Plaintiff asserted that only one legal issue was before the Court. She claimed that divorce from bed and board did not affect her legal

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Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

Beginning in 1996 (1995 tax returns), the New Jersey Division of Taxation will accept electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191

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status as James Jackson's wife, therefore she is his widow and thus qualified for exemption as his surviving spouse.

Defendant contended two legal issues were before the Court. Defendant argued because of the divorce from bed and board plaintiff ceased to be James Jackson's wife and did not qualify as his surviving spouse. Defendant also contended that transfer of the property from ownership of plaintiff and her husband to sole ownership of plaintiff disqualified the property for exemption because it was no longer owned by a permanently disabled veteran. As no exemption was available to James Jackson upon his death, no exemption could be available to his surviving spouse.

The New Jersey Legislature has established both absolute divorce and divorce from bed and board. "Absolute divorce dissolves the marital bond and all dower rights are barred. In divorce from bed and board the marital bond subsists...." Divorce from bed and board is not a true divorce because it does not dissolve the bonds of matrimony but merely decrees a judicial separation. The facts before the Court suggest that the divorce from bed and board was obtained in an attempt to protect plaintiff's rights to certain veteran-related benefits such as medical insurance, commissary rights, and the veteran's dwelling tax exemption at issue.

Historically, New Jersey courts have held that divorce from bed and board does not break the bonds of matrimony, and without specific statutory disqualification, plaintiff was found to be the surviving spouse of James Jackson. Despite that finding, the exemption was still denied because of the deeded transfer of the property in January 1993 from their ownership as tenants by the entirety to sole ownership of the plaintiff. As indicated earlier, because James Jackson no longer had a right to the exemption, there was no exemption for the surviving spouse.

Greenhouse Assessed As Real Property – *Leonard Van Wingerden, Plaintiff v. Lafayette Township, Defendant*, Tax Court of New Jersey, decided March 22, 1996, Docket Nos. 008311-93 & 007139-94, Dougherty, J.T.C.

Before the New Jersey Tax Court was whether a 66,000 square feet, prefabricated modular 16 unit, Dutch-style, steel columned, glass greenhouse and shipping house with computer automated heat, electrical, ventilation and irrigation systems, anchor bolted to 500 concrete piers 18 inches across, set two and three feet deep and assessed at \$582,000 should be classed as real or personal property and taxed or exempted respectively as such. Also requested of the Court by the taxpayer was a reduction in assessed value for depreciation.

In concurring with Sussex County Tax Board's affirmation of Lafayette Township's 1993 and 1994 assessments, the Court held the greenhouse was taxable real property under N.J.S.A. 54:4-1 and the exemption under N.J.S.A. 54:4-23.12, though applicable to

the greenhouse, was void as a private, preferential benefit and a nonpermitted classification of real property. The Court affirmed, too, the amount of the township's assessments when the taxpayer failed to support his opinion of depreciated value.

New Jersey law under N.J.S.A. 54:4-1 taxes property classed as either real or personal. At present, taxable personal property is narrowly defined to include only certain property of telephone, telegraph and messenger systems companies and certain petroleum refinery equipment. The taxpayer and the State contended the greenhouse was taxable real property only in that it was affixed to the land and improvements and that it retained its character as personal property. As personal property, they further argued that N.J.S.A. 54:4-23.12 classified it nontaxable (as a single-use agricultural or horticultural facility which by definition includes greenhouses) and that the exemption clause of the State Constitution, Article VIII, S1, par. 2. authorized such classification.

The township, however, challenged N.J.S.A. 54:4-23.12 as an unconstitutional exemption of real property creating a tax preference contrary to the uniformity clause found in Article VIII, S1, par. 1(a).

In its decision, the Court restated the history and purposes of the Constitution's uniformity and exemption clauses saying they were to ensure the ad valorem taxation of all real property; to preserve charitable, religious and educational use exemptions; and to prevent tax exemption of real

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property by classification. The apparent contradiction in the exemption and uniformity provisions was justified in part by the Court on the basis of public purpose. The Court also noted that real property was not defined in the Constitution or statutes and that its meaning must be examined to reconcile the conflicting clauses. The Court looked to the five principles of statutory construction and the common law for clarification, citing *Teaff v. Hewitt*, 1 Ohio St. 511 (Sup. Ct. 1853). *Teaff* set forth the still valid three pronged test for determining when personal property becomes taxable realty based on the manner of its attachment and its intended use with intention being a critical factor.

Regarding the disputed greenhouse, the Court held that although it could be unassembled by removing its connecting bolts and flanges, as well as its concrete piers, there was no evidence the design was meant to permit movement from one location to another and the ordinary intent was that it was to remain permanently affixed. The greenhouse's permanence was also indicated by the loss in value which would occur by the sale, separate from the land, of its structures and parts used at a \$1.00 per square foot (with the land \$4.00 per square foot) versus a construction cost of \$8.94 per square foot where the structural investment would be recouped from sale of its horticultural products over a useful life of 30 years. As real property, taxable under the uniformity clause, the Court then determined the validity of the exemption specifically granted greenhouses under N.J.S.A. 54:4-23.12. While

holding the taxpayer's greenhouse was within the definition of excludable structures as per N.J.S.A. 54:4-23.12, the Court, citing *Switz v. Kingsley*, 37 N.J. 566 (1962) and *N.J. St. League of Municipalities v. Kimmelman*, 105 N.J. 422 (1987), voided the exemption as preferential and violative of Article VIII, S1, par. 1 of the State Constitution.

Finally, relative to the Court's upholding of the township's assessments, it remarked that in the absence of any true value estimate by the taxpayer, who had the burden of providing definite, positive proofs, the Court was not free to ignore the presumption of correctness attached to the assessor's value determination.

Taxes to be Paid Before Further Appeal – *Janice Bernstein, Plaintiff, v. Atlantic City, Defendant*, Tax Court of New Jersey, decided May 17, 1996, Docket No. 000158-96

Question: Must a taxpayer, who paid taxes on her original assessment, pay taxes on a county tax board's increase in that assessment to further appeal to the New Jersey Tax Court?

Background: For tax year 1995, taxpayer's property was originally assessed at \$78,600; annual property taxes were \$2,246.39. With property taxes paid in full, taxpayer appealed to reduce the original assessment. At appeal, Atlantic County Tax Board raised the assessment by \$11,400 to \$90,000, increasing the taxes \$325.82. Taxpayer then appealed that assessment to New Jersey Tax Court. Defending municipality, Atlantic City, next asked that the further appeal be dismissed for

nonpayment of the taxes resulting from the Board's revised assessment based on N.J.S.A. 54:51A-1(b). N.J.S.A. 54:51A-1(b) provides, "At the time that a complaint has been filed with the Tax Court seeking review of the judgment of county tax boards, all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid...."

Conclusion: Tax Court decided taxes to be paid before further appeal of a tax board's determination could be heard by said Court were those resulting from the original assessment, not those from a subsequent value increase by a board at appeal.

Analysis: The Court noted that while prior courts have upheld the payment of taxes on an original assessment as a statutory prerequisite to appeal, no case or statute specifically addressed the payment of taxes when a county board had increased the original assessment. In its reasoning, it utilized case law and statute concerning tax refunds rather than payments. *Woodcliff Management v. North Bergen Twp.*, 106 N.J. Super. 292 (App. Div. 1969) ordered refunds of several years taxes for assessments reduced via county tax board appeal where judgments were final, but for the year still under appeal refund was withheld until final adjudication. Statute N.J.S.A. 54:3-27.2, enacted in 1975 subsequent to *Woodcliff*, provides for property tax refunds within 60 days of the "date of final judgment" where a lesser assessment is granted. *Wilshire Selby West v. Ramsey Boro.*, 6 N.J. Tax

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60 (Tax 1983) examined the meaning of the statute's "date of final judgment" and confirmed refund deferral until all appeals were complete as appropriate. From the above, Tax Court concluded that if a refund of taxes cannot be paid on assessments lowered by a tax board but under appeal to the Court, payment of additional taxes from an assessment increased by a tax board cannot be required for appeal to the Court. The Court looked at the treatment of taxes for omitted assessments under appeal as well in *Inwood Owners v. Little Falls Twp.*, 216 N.J. Super. 485 (App. Div.), cert. den., 108 N.J. 184 (1987). Here a request for dismissal for nonpayment of taxes from an omitted assessment was denied by reason that the tax payment necessary to allow appeal applied to conventional appeals only. The Appellate Division explained its denial saying, "[a] municipality does not rely on the collection of omitted taxes unknown during the budget process to operate its government or meet its expenses...."

Using *Inwood*, the Tax Court drew the same conclusion regarding an original assessment raised by a county board of taxation. Citing also *Muscarella v. Saddle Brook Twp.*, 14 N.J. Tax 453, 457 (Tax 1995), Tax Court indicated, "The rationale behind the requirement that taxes be paid for the Tax Court to have jurisdiction over the contest of a local property tax assessment is to avoid putting the burden of an appealing taxpayer's unpaid property taxes on the other taxpayers in the taxing district...." As such burden was absent in the present circumstances, motion to

dismiss for nonpayment of taxes was denied and the amount of the assessment was permitted to be reviewed by the Court.

Sales and Use Tax
Use Tax Applicable to Tangible Personal Property For Employee Programs – *Fedway Associates, Inc. v. Director, Division of Taxation*, Superior Court of New Jersey, Appellate Division, decided June 23, 1995.

The Appellate Court affirmed the Tax Court's determination that appellant was responsible for paying use tax under the Urban Enterprise Zones Act, N.J.S.A. 52:27H-79, on purchases of tangible personal property not exclusively used or consumed in the Urban Enterprise Zone. Appellant purchased tangible personal property for its employee incentive and marketing programs including napkins, corkscrews, calendars, golf bags and home electronic equipment. Appellate Court rejected appellant's contention that the Legislature intended for these items to be exempt from use tax under N.J.S.A. 52:27H-79, and held that appellant owed use tax on the purchases, plus interest, in the amount of \$141,555.26.

Transfer Inheritance Tax
Inter Vivos Transfers – *Meyerson v. Director, Div. of Taxation*, 15 N.J. Tax 128 (Tax Court, decided September 29, 1995).

The Tax Court decided in this case that *inter vivos* transfers to decedent's niece and grandnieces were in contemplation of death and therefore subject to transfer inheritance tax.

To determine whether the transfer was a substitute for a testamentary disposition, and thus in contemplation of death, the Court said that it considers (1) the age and general health of the donor at the time of the gift; (2) the time between the *inter vivos* transfer and the death; (3) whether or not the transfer was part of a testamentary scheme or plan; and (4) whether or not the gift was made to the natural objects of the donor's bounty.

The Court then found that the decedent was almost 91 years old and had a serious heart condition when the trusts were created. The decedent passed away two years after the gifts were made. That the *inter vivos* dispositions and the testamentary dispositions were identical evidenced that the gifts were part of a testamentary plan. Also, the loving relationship and the terms of the will showed that the gifts were made to the natural object of the decedent's bounty.

Plaintiff, executor of decedent's estate, argued that the trusts for the grandnieces were "life-motivated" as shown through their short duration and use for the grandnieces' education.

The Court disagreed, saying that irrespective of any life associated motives, a gift is made in the contemplation of death "if an impelling motive exists to make a present disposition in lieu of a testamentary disposition." Even though the grandnieces were the income beneficiaries of trusts created for educational assistance, the Court pointed out that upon termination of the trusts the

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principal thereof was payable to the trust created for the benefit of the decedent's niece. "[A] disposition," the Court continued, "with a palpable *post mortem* aspect."

Pursuant to N.J.S.A. 54:34-1, the Court found that the transfer inheritance tax was properly imposed on the gifts made in. □

In Our Legislature

Gross Income Tax

Local Payroll Taxes — P.L. 1996, c.33 (signed into law on June 17, 1996) amends P.L. 1970, c.326 to extend the expiration date and limit enactment of certain payroll taxes under the "Local Tax Authorization Act." It preserves Newark's, but removes Jersey City's power to impose a local payroll tax. This legislation is effective immediately and is retroactive to January 1, 1996.

New Property Tax Deduction — P.L. 1996, c.60 (signed into law on July 4, 1996) provides a gross income tax deduction that phases in over three years to reach a maximum of up to \$10,000 for property taxes paid by homeowners or the rental equivalent paid by tenants. The deduction applies to a taxpayer's principal residence in this State. For tax years beginning in 1996, 50% of property taxes or the rental equivalent not in excess of \$5,000 may be deducted. For tax years beginning in 1997, 75% not in excess of \$7,500 may be deducted.

The Act provides for a guaranteed minimum benefit of \$25 for tax year 1996, \$37.50 for tax year 1997, and \$50 in each year thereafter. This legislation is effective immediately and applies

to taxable years beginning on or after January 1, 1996.

Local Property Tax

New Jersey Urban Redevelopment Act — P.L. 1996, c.62 (signed into law on July 12, 1996) creates the New Jersey Redevelopment Authority (NJRA) to assist in the revitalization of New Jersey's urban areas. The NJRA is given bonding authority with an annual bonding cap of \$100 million.

In addition, the Act creates a framework under which properties declared as abandoned based on their condition may be acquired in an abbreviated manner and redeveloped. The Act also authorizes the use of payments in lieu of taxes as a financing method for redevelopment projects.

The legislation also establishes a neighborhood empowerment program through which certain municipalities may be made eligible for financial assistance from the NJRA. This new statute also sets forth procedures for remediating contaminated properties.

The Act appropriates \$9 million from the General Fund to the NJRA and \$1 million from the General Fund to the Office of Neighborhood Empowerment. This legislation is effective on the 60th day following enactment except for the section establishing the New Jersey Redevelopment Authority, which is effective immediately.

Miscellaneous

State Mandate Legislation — P.L. 1996, c.24 (signed into law on May 8, 1996) implements the constitutional amendment, approved by the voters at the 1995 general election, prohibiting laws

enacted on or after January 17, 1996 and regulations adopted after July 1, 1996 that impose unfunded mandates on counties, municipalities, and school districts. The Act creates a Council on Local Mandates, as required by the constitutional amendment, to resolve disputes as to whether a statute, rule or regulation constitutes an unfunded State mandate.

The Act provides that any such law or rule that is determined to be an unfunded mandate upon boards of education, counties or municipalities shall cease in its effect and shall expire. An unfunded mandate is one that does not authorize resources to offset the additional direct expenditures it requires. An unfunded mandate does not establish a standard of care for the purpose of civil liability. This legislation is effective immediately.

Business Relocation Assistance Grant Program

— P.L. 1996, c.25 (signed into law on May 9, 1996) establishes a Business Relocation Assistance Grant Program within the Department of Commerce and Economic Development to encourage economic development and job creation in this State. To the extent that funding is available from the General Fund, and with certain other restrictions, the program will provide grants for up to fifty percent of the cost of relocation to businesses which relocate to the State and create a minimum of 25 new full-time jobs in the State. However, an individual grant may not exceed 80% of the projected new income tax revenues realized from the new

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jobs created by the grant applicant.

The grants under this bill will not be disbursed in any year until the new income tax revenues equal or exceed the amount of the grant, and grant amounts are further limited by their interaction with other grant programs. This legislation is effective immediately.

Business Employment Incentive Program — P.L. 1996, c.26 (signed into law on May 9, 1996) establishes the Business Employment Incentive Program to be

administered by the Economic Development Authority to make direct payments in the form of grants to attract businesses creating new jobs in the State. The amount of an employment incentive grant will equal a percentage, between 10% and 80%, of the total amount of State income taxes withheld by the business during a calendar year for the new employees hired. The employment incentive can be authorized for a fixed number of years, not to exceed 10.

The grants under this bill will not be disbursed in any year until the

new income tax revenues received from the business during the year equal or exceed the amount of the grant, and grant amounts are further limited by their interaction with other grant programs.

In addition, the bill grants a sales and use tax exemption for certain property purchased by a provider of cable/satellite television services, whether the provider is licensed by the Federal Communications Commission or not. This legislation is effective immediately. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
1	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
6	27	28	29	30	31		

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

October 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 15 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

October 21

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 21 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
6	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

November 12

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

November 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending July 31

continued

November 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

November 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

November 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

November 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
6	22	23	24	25	26	27	28
	29	30	31				

December 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

December 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending August 31

continued

December 16 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

December 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

December 20 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

December 26

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

Revised Due Dates For NJ-941/NJ-941-W

As reported in the Summer 1996 edition of the *State Tax News*, effective July 1, 1996 all employers and others required to withhold and remit New Jersey income tax are required to file a new quarterly return (NJ-941 or NJ-941-W). A return must be filed for each quarter regardless of the amount of withholdings. The Division has changed the due dates of these quarterly returns. Both returns are now due *on or before the last day of the month following the close of the calendar quarter*. This change applies **only** to Forms NJ-941 and NJ-941-W.

New Rebate InfoLine

With 1995 Homestead Rebate checks being mailed early this year (see related article on page 3), many taxpayers have already used the Division's Homestead Rebate InfoLine. The Homestead Rebate InfoLine is the newest addition to our Automated Tax Information System. Touch-tone phone users within New Jersey who have questions regarding their rebates can call 1-800-323-4400 to obtain information. Taxpayers will need information from their rebate application when calling the InfoLine.

Amnesty Update

The Director congratulates all the Division personnel who contributed to the State's successful Tax Amnesty initiative. See the related article on page 1.

New Jersey State Tax News

Summer 1996

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Employer Income Tax Filing Changes

Effective July 1, 1996, employers required to withhold and remit New Jersey income tax from their employees' pay will be filing one of two new quarterly reconciliation forms, Form NJ-941 or Form NJ-941-W. These new forms take the place of the quarterly NJ-500 which the employer was previously required to file. All employers are required to file Form NJ-941 (or Form NJ-941-W) for each calendar quarter, regardless of the level of tax actually due for a particular quarter. Form NJ-941/NJ-941-W is due on the fifteenth day of the month following the close of the calendar quarter. The one exception to this is the return filed for the quarter ending December 31, which is due January 31st. All employers are still required to file the year-end reconciliation, Form NJ-W-3.

As of July 1, 1996, employers will be required to remit tax on a monthly, quarterly or accelerated basis. Employers with a prior year liability of \$20,000 or more for employer income tax withholdings will be required to remit State income tax on an accelerated basis. (Note that this \$20,000 threshold is also the current threshold for the Electronic Funds Transfer (EFT) program. Vendors/employers with a prior year liability of at least \$20,000 in any tax are now required to make all State tax payments via EFT.) Accel-

erated payors must remit State income tax withheld on or before the Wednesday of the week following the week containing the pay day(s) on which the taxes were withheld. Accelerated State income tax payors will be required to file a quarterly reconciliation, Form NJ-941-W.

Employers not required to remit tax on an accelerated basis will be required to file Form NJ-500 returns and remit tax on a monthly basis for either of the first two months in a calendar quarter when tax due for the month(s) is \$500 or more. Tax due for the third month is remitted with the quarterly reconciliation, Form NJ-941. When

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important phone numbers

Tax Hotline.....	609-588-2200
Recorded Tax Topics.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corporate Mergers, Withdrawals & Dissolutions.....	609-292-5323
Corporate Tax Liens.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
.....	609-292-5035
.....	609-292-7147
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

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tax due for either of the first two months of the quarter is less than \$500, that tax may be held by the employer and remitted with Form NJ-941.

File as follows:

- **Quarterly:** Form NJ-941 for every quarter, due on the 15th of the month following the close of the quarter; January 31st, for the fourth quarter.
- **Monthly:** Form NJ-500 (if required) for either or both of the first two months in quarter when tax due for the month(s) is \$500 or more. (Form NJ-941 must be filed for the third month of that quarter and as a reconciliation of the entire quarter.)
- **Accelerated:** Tax remitted on an accelerated basis via electronic funds transfer; Form NJ-941-W filed as a quarterly reconciliation.

The semi-annual filing and payment for January 1, 1996 through June 30, 1996 remains due on July 15, 1996. Both semi-monthly and semi-annual filings will be eliminated for tax withholding periods from July 1, 1996 forward. □

SALES AND USE TAX Changes in Filing Requirements

The Division of Taxation has adopted a new rule, N.J.A.C. 18:24-11.3, and amended an existing rule, N.J.A.C. 18:24-11.2, to change the procedures for the filing of sales and use tax returns and the payment of use tax effective July 1, 1996. The new regulations increase the filing threshold for the monthly sales and use tax return, and make it

possible for some nonvendor businesses to file use tax returns on an annual basis. The new monthly threshold will be reflected on the ST-50/51 booklets being mailed this month.

Monthly Filing Threshold

The threshold for filing the Sales and Use Tax Monthly Return (Form ST-51) has been increased to \$500. Previously, taxpayers were required to file Form ST-51 when their tax liability for either of the first two months of the calendar quarter was more than \$100.

Businesses that are required to use Forms ST-50 and ST-51 to report their sales and use tax liability must continue to file a Sales and Use Tax Quarterly Return (Form ST-50) every quarter, even for quarters when no tax is due.

Annual Use Tax Return

Under the new regulations, non-vendors whose annual use tax liability for the previous three calendar years averaged \$2,000 or less may now file the new Annual Business Use Tax Return (Form ST-18B) to report purchases which are subject to New Jersey Use Tax and pay any tax due. This annual return covers purchases made during the calendar year (Jan. 1 – Dec. 31), and must be filed on or before May 1 of the following year if any use tax is due.

“Nonvendors” are those businesses or other entities registered with the Division of Taxation that do not either (1) sell taxable goods or services or (2) lease taxable property to others.

Nonvendors eligible to file the Annual Business Use Tax Return (Form ST-18B) will no longer report and remit their occasional use tax liabilities on the Use Tax

Remittance (Form ST-18). Form ST-18 will be used only by individuals.

Nonvendor businesses that qualify to use Form ST-18B, but are currently filing regular sales and use tax returns (Forms ST-50/51), or are on a nonreporting basis for sales tax, must contact the Division to request a change in their el-

New Jersey State Tax **news**

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
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eligibility status before they can file the Annual Business Use Tax Return (Form ST-18B). To request business use tax eligibility, businesses may call Taxpayer Registration at (609) 292-1730 or write to:

NEW JERSEY DIVISION OF TAXATION
CN 252
TRENTON NJ 08646-0252

Nonvendors who are now filing Forms ST-50/51, and whose average annual use tax liability for the previous three calendar years was greater than \$2,000, must continue to file Forms ST-50 and ST-51.

Nonvendor businesses are not required to file Form ST-18B for any calendar year in which they do not owe use tax. Taxpayers that had already reported and paid their use tax for 1995 with either Forms

ST-50/51 or ST-18 were not

required to file the Form ST-18B due May 1, 1996.

Note: Only nonvendor businesses may use the new Annual Business Use Tax Return (Form ST-18B). Businesses that are required to collect and remit sales tax, or that lease taxable property to others, must use Forms ST-50 and ST-51 to report and pay both their sales and use tax liabilities. □

Use Tax Filing by Businesses

The New Jersey Division of Taxation has changed the procedures for the filing of sales and use tax returns and the payment of use tax by businesses. The changes are summarized as follows:

	Prior to July 1, 1996	As of July 1, 1996
Vendors	Those vendors on a reporting basis for sales and use tax filed Form ST-50 (quarterly return) every quarter even when no tax was due. Use tax due for the quarter was reported on Line 5, "Use Tax," of Form ST-50. If the sales and use tax liability exceeded \$100 (monthly threshold for the first and/or second month of the quarter), business also had to file a monthly return (Form ST-51) with payment for that month.	Same, except monthly threshold has been increased to \$500.
Nonvendors	If use tax was due on a regular basis or as a result of a recent self-audit, business had to submit Form ST-50 every quarter, even when no tax was owed. Use tax liability, if any, was reported on Line 5, Form ST-50.	Nonvendors whose average use tax liability for the previous three years was over \$2,000 must continue to file Forms ST-50 and ST-51. Monthly threshold has been increased to \$500.
	If use tax was due infrequently, the business was not placed on a reporting basis for sales and use tax. The business used Form ST-18 (same form used by individuals) to report and remit use tax within 20 days of incurring liability.	Nonvendors whose average use tax liability for the previous three years was \$2,000 or less file the new Annual Business Use Tax Return (Form ST-18B) by May 1 of the calendar year following a year when a use tax liability was incurred.

SALES AND USE TAX
Tax on Telephone
"Yellow Pages"
Ads Repealed

P.L. 1995, c.184, approved July 25, 1995, amends the New Jersey Sales and Use Tax Act to eliminate the sales and use tax on receipts from the sale of advertising space in a telecommunications user or provider directory or index distributed in this State.

This change, which became effective April 1, 1996, applies to directories or indexes distributed on or after that date. However, sales of advertising space in directories or indexes distributed prior to April 1, 1996 remain subject to sales tax.

For example, if a client purchases "yellow pages" advertising on March 15, 1996 to appear in a directory or index to be distributed on April 1, 1996, the charge for advertising space would be exempt from sales tax. However, if a client

Interest 11.75% for
Second Quarter

The interest rate assessed on amounts due for the second quarter of 1996 is 11.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%

purchases advertising space on March 15, 1996 for a directory to be distributed on March 31, 1996, the sale of the advertising space would be subject to sales tax. □

Corporate Seminars
Offered

The Division participates in a series of one day corporate seminars targeted at either newly incorporated businesses or citizens planning to open corporations in New Jersey. The seminars are jointly sponsored by the New Jersey Departments of State, Commerce and Economic Development, Labor as well as Treasury/ Taxation.

Representing the concept of one stop shopping, citizens are presented a wealth of vital information on the incorporation process, tax registration, collecting and remitting sales tax, the Corporation Business Tax, and more. Representatives from each department are on hand to make formal presentations and to answer questions.

Entrepreneurs seeking to form corporations or other business enterprises are encouraged to attend these seminars which provide invaluable information and also present numerous opportunities to network with peers and State officials who serve as advocates for the business community.

The initial 1996 Corporate seminar was held on March 20, 1996 at Mercer County Community College. An enthusiastic overflow audience attended the seminar. The schedule for the remainder of 1996 includes:

June 19 – Bergen Cty. Community College in Paramus

Sept. 18 – Stockton State College near Atlantic City

Nov. 6 – Brookdale Community College in Lincroft

To find out about registration information call the Department of State at (609) 530-6494. □

Filing NJ-1065
Information on
Diskette

The New Jersey Division of Taxation accepts NJ-1065 Partnership Directory and NJK-1 information on diskette. The NJ-1065 Partnership Return, Schedule A and Schedule NJ-NR-A must be filed on the paper return. The diskette must be filed with the NJ-1065 Partnership Return.

The diskette filing of Partnership Directory and NJK-1 information is permitted for partnerships with a minimum of twenty-five partners. The diskette filing will reduce the burden on large partnerships of filing voluminous paper documents and enable the Division of Taxation to more efficiently process the information.

3½" or 5¼" MS-DOS compatible diskettes are required. The New Jersey Division of Taxation prefers 3½" diskettes, although 5¼" diskettes are being accepted at this time.

To be accepted, a diskette must meet the specifications established by the Division of Taxation. A copy of the specifications can be obtained by writing to the following address:

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NEW JERSEY DIVISION OF TAXATION
DISKETTE SPECS
CN 288
TRENTON NJ 08646-0288 □

CORPORATION TAX Reporting Refunds of State Tax

Inquiries have been received by the Division concerning the proper reporting method of state tax refunds for Corporation Business Tax purposes.

As a result of legislation enacted in July 1993, corporations with return periods beginning after July 3, 1993 are required to add back the amount of taxes paid to the United States, a possession or territory of the United States, a state, a political subdivision thereof or the District of Columbia measured by profits or income, business presence or activity which were deducted in arriving at Federal taxable income before net operating loss and special deductions. In the event a taxpayer deducted an amount greater than its final tax liability and has recently received a refund of the difference, this refund must be reported as other income rather than netting down the current year's expense. This is particularly important for refunds from states, other than New Jersey, for periods prior to July 1993, when no add back was required for New Jersey purposes.

By observing this reporting mechanism, taxpayers are able to accurately report tax refunds and prevent the possibility of overstating prior years' expense. □

SALES AND USE TAX

Corporate Purchasing Cards

A taxpayer wrote to the Division regarding the acceptability under N.J.S.A. 54:32B-16 of the Sales and Use Tax Act of "Corporate Purchasing Card Sales Tax Reporting," a reporting system to be sold in New Jersey by the American Express Travel Related Services Company, Inc.

Briefly stated, the corporate purchasing and tax reporting system is intended to eliminate purchase orders. In addition, vendors would not necessarily issue paper invoices to their corporate customers. Instead, corporate clients would receive a monthly consolidated statement from American Express of all corporate card purchases.

To address the need to provide sales and use tax documentation for paperless transactions, participating vendors will be asked to electronically transmit specific sale-related data to American Express. On a monthly basis, American Express will furnish their corporate clients with either a print-out or a tamper-proof computer disk containing all sales-related data received by American Express from their vendors, respectively. The data will contain a product description; the name, state and zip code of the corporate card user; and the card user's cost center. The sales tax reporting system will also list the total amount billed, the tax amount and the tax rate.

In most instances when goods are shipped by the vendor to the card user, the data can precisely identify the taxing state or other jurisdiction through the state, city

and zip code listing. In some cases, however, only the zip code may be entered.

N.J.S.A. 54:32B-16 requires vendors to keep sales and purchase records as the Division may require and make them available for inspection or examination upon demand.

Pursuant to N.J.A.C. 18:24-2.4, New Jersey registered vendors may maintain summary sales records which show, at a minimum, sales location, total receipts and taxable receipts. Summary records are not deemed adequate evidence of the accuracy of an exemption certificate. N.J.A.C. 18:24-2.5(b). In the case of out-of-State sales, the vendor is required to maintain records for each sale which show the nature of item sold, the transaction date, the name and address of the purchaser and the method of delivery to the out-of-State location. N.J.A.C. 18:24-2.6. With respect to purchase records, New Jersey busi-

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Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

Beginning in 1996 (1995 tax returns), the New Jersey Division of Taxation will accept electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191

purchasing cards - from pg. 5

nesses must maintain records which disclose the name and addresses of vendors from whom purchases were made, the amounts, the dates of purchase and the nature of the items purchased. N.J.A.C. 18:24-2.8. The records of a vendor may be found insufficient or inadequate under N.J.A.C. 18:24-2.15, in which case, the Division may determine and assess the correct tax due using any information available. N.J.S.A. 54:32B-19.

The description of the Corporate Purchasing Card Sales Tax Reporting System indicates that it will satisfy the stated requirements of N.J.A.C. 18:24-2.4, as recited above if the vendor records and maintains or receives the same information on a transaction as that communicated to American Express. Further, the minimum stated requirements of N.J.A.C. 18:24-2.6, regarding business purchase records, are also satisfied. Accordingly, Division auditors will accept records produced under the Corporate Purchasing Card Sales Tax Reporting System for inspection and examination.

In those transactions where the tax situs of a sale can be determined and the tax due is separately stated on the customer listing, the system is an acceptable substitute for vendor invoices. If the information on the report is incomplete or the tax is not separately stated, the customer may continue to be liable for payment of any applicable sales or use tax.

In those transactions where the tax situs of the sale cannot be determined, the information contained in the system would be acceptable

proof of the date and amount of the transaction. Other supporting evidence would be required to establish the correct taxing jurisdiction and tax application.

In all transactions using the Corporate Purchasing Card Sales Tax Reporting System, as with traditional vendor generated invoices, if data about the transaction is incomplete or insufficient, or if tax collected by the vendor is not separately stated, then the vendor may be liable for payment of sales tax on the transaction. Similarly, the purchaser may be liable for payment of use tax in a use tax transaction. In addition, just as with non-Corporate Purchasing Card transactions, the vendor and the purchaser must retain documentation to substantiate an exemption from tax. □

INHERITANCE/ESTATE TAX ***Changing Domicile***

As noted by the article entitled "Domicile" in the Spring 1996 issue of the *New Jersey State Tax News*, a decedent's domicile will determine the individual state death taxes to which his/her estate will be subject. Commonly encountered state death taxes include: inheritance tax, estate tax, estate tax with Federal credit, gift tax, or some combination of these.

The death tax consequence of domicile varies between states and can be significant. And, in one landmark case on domicile, both New Jersey and Pennsylvania imposed their death taxes on the same estate. See *In re Dorrance*, 115 N.J. Eq. 268, (Prerog. Ct. 1934), *aff'd.*, 13 N.J. Misc. 168 (Sup. Ct. 1935), *aff'd.*, 116 N.J.L. 362 (E. & A. 1936), *cert. den.* 298

U.S. 678 (1936), *reh. den.* 298 U.S. 692 (1936).

More than superficial attention must be given to death tax aspects of domicile. If not, a person may believe that he or she has established domicile for death tax purposes when, in fact, they have not. Consider the example of Inez Duff Bishop who endeavored cosmetically to preserve a New Jersey domicile by maintaining a home here, by voting in New Jersey, and in the filing of her tax returns. Despite her attempts, however, the Court determined that her efforts had failed. *Citizens Bank and Trust Company v. Glaser*, 70 N.J. 72 (1976).

The New Jersey courts have stated that domicile is very much a matter of the mind — of intention. Accordingly, the concurrent elements relied upon by our courts to evidence a change of domicile include "an actual and physical taking up of an abode in a particular State, accompanied by an intention to make one's home there permanently or at least indefinitely, and to abandon the old domicil." *Lyon v. Glaser*, 60 N.J. 259 at 264 (1972).

As to a person's motivation for changing his domicile, our courts have stated that "a person has the right to choose his own domicil and his motive in doing so is immaterial. The change may be to avoid taxation, so long as the necessary ingredients for the establishment of a new domicil are present." *Id.*

A common misconception is that some statutory minimum period of residency is required to establish

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domicile. Instead, our courts have noted that “a very short period of residency may be sufficient to show domicil, but mere residency, regardless of its length, is not sufficient.” *Id.* See also *Citizens Bank and Trust Company v. Glaser*, *supra* at 81.

Neither is the individual character or relative pretentiousness of the living quarters, in the case of multiple residences, determinative of domicile. Our courts have ruled in one case that a decedent, who owned a home in New Jersey, had changed her domicile to Florida despite the fact that her stay in Florida was short, in a nursing home, and she had no permanent home in Florida. The Court found that the character of the living quarters is immaterial once there is a residence such as a nursing home, a hotel or a boarding house and an intention to remain in a state permanently. *O'Hara v. Glaser*, 60 N.J. 239 (1972). See also *In re Dorrance*, *supra* at 275.

Nor, our courts have stated, are “declarations as to the place of domicile controlling where they conflict with the fact, or were prompted by a desire to avoid taxation.” *In re Michelsohn*, 136 N.J. Eq. 387 at 390 (1944). While recitals as to domicile in a will, trust, tax return or other formal document may be evidential, they are not conclusive. See *Matter of Unanue*, 255 N.J. Super. 362 (1991).

Intent is the acid-test element which determines whether a person who has changed residence has also changed domicile. A person “does not relinquish his domicile by having another residence based

on reasons of health, society, business or employment.” *Id.* at 375.

A basic tenet established by the New Jersey courts, however, is that “a home or residence in another state is commonly regarded as prima facie evidence of domicil and, the longer the period of the new residence the stronger the prima facie case becomes.... When a residence is taken up elsewhere, a presumption arises that the original residence has been abandoned.” *Lyon v. Glaser*, *supra* at 277-78.

On rare occasions, investigation by the Transfer Inheritance and Estate Tax Branch has established that a reasonable doubt existed regarding a decedent's domicile. In such cases the Director, Division of Taxation, has entered into a compromise with the other state pursuant to N.J.A.C. 18:26-4.1 fixing the amount of Transfer Inheritance Tax acceptable in satisfaction of this State's claim. Use of this procedure has been successful in avoiding the risks inherent in litigation. □

CONFERENCE & APPEALS ***Protest Issues***

A significant number of protests are received by the Division's Conference and Appeals Branch every month which protest legal issues that have already been addressed and resolved by the Tax Court of New Jersey, and sustained on appeal. A hearing before the Conference and Appeals Branch can take one of three forms: in person, via telephone or “on the papers.” Final Determinations are routinely issued pursuant to a hearing on the papers for taxpayers whose protest relates to legal

issues already litigated and ruled on by the courts. In such instances, the determination made is based upon (1) the taxpayer's written protest (N.J.A.C. 18:1-1.8), (2) the Division of Taxation's records and (3) the existing court opinion(s).

Currently, the most common issues that are resolved in this manner are Gross Income Tax cases that involve credit for taxes paid to other jurisdictions, including credit for taxes claimed paid on S corporation distributions, and the applicability of the Federal Tax Benefit Rule.

Some of the published cases for the credit for taxes paid to other jurisdictions include:

Chin v. Director, 14 N.J. Tax 305 – Worldwide Income.

Widder v. Director, 14 N.J. Tax 349 – Return Instructions.

Willett v. Director, 10 N.J. Tax 102 – Numerator Calculation; Separate Calculations for Each Jurisdiction.

Berlin v. Director, 13 N.J. Tax 405 – Loss Reducing Numerator of the Credit Calculation.

Ambrose v. Director, 198 N.J. Super. 546 – Deductions from the Numerator.

Neilson v. Director, 4 N.J. Tax 438 – Deductions from the Numerator.

Sorenson v. Director, 2 N.J. Tax 470, 184 N.J. Super. 393 – Amount Actually Taxed by Both States.

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S corporation income and credit for taxes paid to other
protest issues - from page 7

jurisdictions:

Laurite v. Director, 12 N.J. Tax 483 – Method to Use to Determine If There Can Be Any Credit.

Several decisions have been published regarding the inapplicability of the Federal Tax Benefit Rule to the New Jersey Gross Income Tax Act. In *Spinella v. Director* (13 N.J. Tax 305) and *Vasudev v. Director* (13 N.J. Tax 223), the Court discussed the applicability of this Federal principle. In an unpublished opinion, *Grabis v. Director* (Tax Court Docket No. 14-24-1005-88GI), the Court upheld the application of the statute (N.J.S.A. 54A:5-2) requiring each tax year to stand on its own, i.e. losses or deductions not used in the year incurred are lost and cannot be used in another year. □

Tax Amnesty Outreach Program

As part of the Divisionwide Amnesty Outreach program, the Conference and Appeals Branch sent letters to all taxpayers who had conferences pending before the Division and would otherwise be eligible for the Tax Amnesty program or who had recently been issued Final Determinations. This initiative was taken to insure that those taxpayers who had protested an assessment were made aware of the Amnesty program. Under the statute, tax issues that were currently under the Judicial or Administrative appeal process were **not** automatically eligible for Amnesty. Taxpayers were informed of the Amnesty program and pro-

vided with a form they could use to either withdraw their protest and request Amnesty on the outstanding tax liability or indicate that they wished to continue their protest and not apply for Amnesty. Acceptance of Amnesty and full payment of the tax ended the appeal process for that specific issue or period under protest. In addition, as new protests were received by the Branch, the taxpayers were notified of the Tax Amnesty program at the time the protest was acknowledged. □

Publication Order Form (PUB-100)

The Division of Taxation issues a variety of tax publications which are available free of charge. Use the *Publications Guide & Order Form* (PUB-100) to request copies of the publications. A copy of PUB-100 appears on page 11. □

LOCAL PROPERTY TAX "Effective"

Property Tax Rates

Although the general tax rate is used to calculate the annual taxes within a municipality, it cannot be used to measure the burden of real property taxes among municipalities. To accomplish this an effective tax rate must be applied to the same market value for properties in municipalities where a comparison of tax burdens is desired.

Effective tax rates are "equalized" so that they indicate the rates as they would be if property were assessed at true value, i.e., market value rather than taxable value. For example, the taxes on a property with a market value of \$150,000 in the Borough of Roosevelt would

be expected to be \$6,189 (\$150,000 x .04126), whereas in Cape May Point Borough the taxes on a property with the same market value would be expected to be \$1,347 (\$150,000 x .00898).

Below are two lists of municipalities ranked in the order of the twelve highest and twelve lowest effective tax rates in New Jersey.

Municipality	Highest Effective Tax Rates
Winfield Township	11.264
Audubon Park Borough	11.055
Pahaquarry Township	5.797
East Orange City	4.414
Irvington Town	4.395
Orange City	4.168
Roosevelt Borough	4.126
Roselle Borough	4.039
West New York Town	3.912
Union City City	3.892
Camden City	3.889
Passaic City	3.825

Municipality	Lowest Effective Tax Rates
Walpack Township	.444
Rockleigh Borough	.833
Mantoloking Borough	.862
Saddle River Borough	.865
Lower Alloways Creek Twp.	.887
Cape May Point Borough	.898
Harding Township	.931
Avalon Borough	.931
Alpine Borough	.954
Deal Borough	.960
Stone Harbor Borough	1.031
Barnegat Light Borough	1.044

LOCAL PROPERTY TAX

Disabled Vet's Exemption Prorated

N.J.S.A. 54:4-3.31 permits, in part, property tax exemptions of New Jersey resident honorably discharged permanently and totally disabled U.S. war veterans or their surviving spouses to be "...prorated by the assessor for the

remainder of any taxable year from the date the claimant shall have acquired title to the real property intended to be exempt by this act.”

The Handbook for New Jersey Assessors at section 305.1

(Chapter III, p.45) further clarifies the starting point for exemption, “Certain war veterans...are granted full tax exemption on their dwelling house and the lot or curtilage on which it is located, as of the date the property is acquired by such a veteran, or as of the date the veteran property owner is declared to be totally or 100% permanently disabled by the U.S. Veterans Administration.”

For example, where a qualified disabled claimant makes application on June 1st of the tax year with respect to his dwelling acquired on February 14th of the tax

year, and the assessment on the property is \$24,000, the pro-rated amount of the assessment to be taxed is \$2,893 or 44/365th’s. The remaining 321/365th’s of the assessment, or \$21,107 is exempt for the tax year.

The exemption ceases by reason of change in ownership or domiciliary residence in the dwelling as of the first day of the month following the date of the change. (Handbook, Chapter III, p.49) □

New Jersey Property Valued at \$496 Billion

Below is a comparison of 1994 and 1995 real property value by county. An increase in true value of more than \$1.5 billion occurred between 1994 and 1995.

County	True Value 1995	True Value 1994	Decrease/ Increase	% of Change
Atlantic	\$18,035,489,757	\$18,585,520,971	- \$550,031,214	- 2.96
Bergen	75,629,259,793	75,035,896,050	+ 593,363,743	+ .79
Burlington	19,522,993,696	18,988,256,754	+ 534,736,942	+ 2.82
Camden	19,580,933,982	19,509,521,344	+ 71,412,638	+ .37
Cape May	12,995,337,063	12,875,006,554	+ 120,330,509	+ .93
Cumberland	4,127,754,964	4,048,351,694	+ 79,403,270	+ 1.96
Essex	36,255,218,572	36,715,905,964	- 460,687,392	- 1.25
Gloucester	11,175,185,965	10,787,168,714	+ 388,017,251	+ 3.60
Hudson	20,140,500,625	20,596,818,505	- 456,317,880	- 2.22
Hunterdon	9,777,123,047	9,575,045,360	+ 202,077,687	+ 2.11
Mercer	18,673,849,963	18,342,934,734	+ 330,915,229	+ 1.80
Middlesex	43,024,638,437	42,702,449,726	+ 322,188,711	+ .75
Monmouth	39,868,756,563	39,160,727,525	+ 708,029,038	+ 1.81
Morris	40,763,131,112	39,645,499,677	+ 1,117,631,435	+ 2.82
Ocean	31,005,847,177	30,827,913,583	+ 177,933,594	+ .58
Passaic	22,995,600,205	22,985,276,080	+ 10,324,125	+ .04
Salem	2,837,162,833	2,794,707,394	+ 42,455,439	+ 1.52
Somerset	24,091,674,736	23,529,759,933	+ 561,914,803	+ 2.39
Sussex	8,264,344,590	8,176,229,578	+ 88,045,012	+ 1.08
Union	31,733,234,565	34,197,496,182	- 2,464,261,617	- 7.21
Warren	5,478,821,473	5,330,633,929	- 148,187,544	- 2.78
Totals	\$495,976,859,118	\$494,411,190,251	+ \$1,565,668,867	+ .32

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

July 1-

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 1997 together with a notice that the completed form must be filed with the assessor by August 1, 1996 to each taxpayer whose land was assessed for tax year 1996 under the Act.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file an application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act.

August 5-

- All SR-1A forms showing information to be used in compiling the 1997 Table of Equalized Valuations for State School Aid to

be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

September 1-

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns of local exchange telephone, telegraph and messenger systems companies, with respect to tax year 1997 and thereafter, are required to be filed with the assessor for the taxing district in which the said property is located.

September 13-

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15-

- Assessor to file statement of taxable value of State-owned real property with Director, Division of Taxation. □

**LOCAL PROPERTY TAX
County Tax Board
Members
Confirmed**

The Senate has confirmed 26 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Burlington County

Earl D. Emmons	3-30-95
Samuel P. Alloway, Jr.	3-30-95
John L. Aloï	3-30-95

Camden County

Benjamin G. Vukicevich	6-22-95
------------------------	---------

Cape May County

William R. Wilsey	12-7-95
-------------------	---------

Cumberland County

Steven S. Luciano	12-7-95
-------------------	---------

Essex County

Joan Codey Durkin	5-11-95
Robert A. Gaccione, Esq.	12-21-95

Gloucester County

Edith K. Patterson	12-18-95
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Hunterdon County

Robert M. Purcell, Jr., Esq.	12-7-95
------------------------------	---------

Mercer County

H. Rick Kline	1-10-95
---------------	---------

Middlesex County

Victor P. DiLeo	6-22-95
Joseph J. Nita	6-22-95
Bert L. Buckler	6-22-95
Irving Verosloff, Esq.	6-26-95
Arthur M. Haney	12-7-95

Morris County

Anthony Crecco	5-25-95
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Quantity	TAX TOPIC BULLETINS	Quantity	TAX TOPIC BULLETINS <i>continued</i>
	GIT-1 Pensions & Annuities		S&U-1 Restaurants and NJ Sales Tax
	GIT-2 IRA Withdrawals		S&U-2 Sales Tax and Home Improvements
	GIT-3 Credit for Taxes Pd. Other Jurisdictions		S&U-3 Contractors and NJ Sales Tax
	GIT-4 Filing Status		S&U-4 New Jersey Sales Tax Guide
	GIT-5 Exempt Obligations		S&U-5 Mail Order Businesses
	GIT-6 Part-year Residents		S&U-6 Sales Tax Exemption Certificates
	GIT-7 Military Personnel		S&U-7 Filing Sales and Use Tax Returns
	GIT-8 Estimating Income Taxes		
	GIT-9 Income from Partnerships and S Corps.	Quantity	<i>BROCHURES</i>
	GIT-10 Step-by-Step Guide to Form NJ-1040		EFT-100 NJ Electronic Funds Transfer Program
	GIT-11 New Jersey Resident Return Examples		M-5014 Exempt Organization Cert. Brochure
	HR-1 Checklist for Form HR-1040	Quantity	<i>OTHER</i>
	HR-2 Homestead Property Tax Rebate Guidelines		<i>Package NJX Order Form</i>
			<i>New Jersey State Tax News Mailing List</i>
	MISC-1 Employer Responsibilities		S Corporation Q & A
	MISC-2 Information for Senior Citizens		PUB-100 Publications Guide & Order Form
	MISC-3 Starting Business in New Jersey		
	MISC-4 Reporting Your Business Income		

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Quantity	ABOUT NEW JERSEY TAXES SERIES	Quantity	ABOUT NEW JERSEY TAXES SERIES <i>continued</i>
	ANJ-1 Taxpayers' Bill of Rights		ANJ-9 Coupons, Discounts
	ANJ-2 Professional Photographers		ANJ-10 Out-of-State Sales
	ANJ-3 Auctioneers		ANJ-11 Arts & Crafts Businesses
	ANJ-4 Landscapers		ANJ-12 Veterinarians
	ANJ-5 Floor Covering Dealers		ANJ-13 Ending Your Business in New Jersey
	ANJ-6 Auto Repair Shops		
	ANJ-7 Use Tax in New Jersey		
	ANJ-8 Air Conditioning, Heating, Refrigeration		

tax board - from page 10

Passiac County

Patti Tahan 6-22-95
Richard Mohr 6-22-95
Louis J. Batelli 6-22-95

Salem County

Joseph H. Davenport 12-7-95

Sussex County

Bernard R. Mitchell 5-11-95

Union County

Frank M. Meeks, III 6-22-95
Paul L. LaCorte 6-22-95
Anthony Amalfe 6-22-95

Warren County

Michael G. Snyder 5-11-95

□

Criminal Enforcement

Criminal Enforcement over the past several months included:

- A criminal investigation of Emerald Hotels discovered nearly \$1.25 million in unpaid New Jersey taxes for the period January 1988 through August 1995. As the criminal case developed, 10 corporations owning hotel and motel franchises throughout the State were identified as being part of the scheme to evade payment of State taxes. The findings concluded that over a million dollars of sales tax had not been paid. In addition, outstanding income tax and corporation business tax liabilities totaled more than \$235,000. These liabilities are all subject to late filing and payment penalty and interest charges mandated by law.

As part of a plea agreement, Moshe (Michael) Gohar and Larry J. Ansell, co-presidents of

the operating company, Emerald Hotels Management Company Inc., both pled guilty in the Monmouth County Superior Court on February 7, 1996 to one count of failure to make payment of taxes with the intent to evade. In addition, the corporation pled to a one-count violation of misapplication of entrusted funds, a second degree crime. The total amount of tax, penalty and interest presently owed is approximately \$3 million. A minimum payment of \$850,000 must be made on or before their date of sentencing with pre-arranged monthly payments to follow until the liability is satisfied.

- On March 5, 1996, Irving Benett, of Hackensack, New Jersey, was named in an eight-count indictment by a State Grand Jury charging misapplication of entrusted property, misconduct by a corporate official, unlawful sale of securities, and four counts of filing false personal income tax returns for the 1990 through 1993 tax periods.

Benett, the former director of Snak-Tech Inc., Snak-Tech Enterprises Corp., Snak-Tech Trading Corp., Snak-Tech Manufacture Corp., Snak-Tech Research Corp., and president of La Casita Mexican Foods Inc., solicited nearly \$1 million from approximately 100 investors under the pretense that the money would be used on behalf of these corporations to fund an initial public stock offering or to purchase manufacturing facilities. According to the indictment, Benett spent the money on personal expenses.

The case resulted from a joint investigation effort between the Division of Criminal Justice's Securities/Fraud Unit and Taxation's Office of Criminal Investigation.

- On March 7, 1996, three State Grand Jury indictments were unsealed charging 12 men alleged to have affiliations with the Genovese crime family with operating a sports betting and loan sharking ring in New Jersey since 1983. In addition to the eight counts for tax evasion, the initial 19-count indictment charged racketeering, conspiracy, criminal usury, promoting gambling, and possession of gambling records.

Charged with tax evasion were William Cappiello of Long Branch, Andre Domando of Belleville, Anthony Gulla of West Caldwell, and Allan Pilione of Clinton.

All four were charged with filing fraudulent 1994 State income tax returns and failing to pay tax on income received from illegal gambling activities.

The indictments were the result of a joint investigation by the New Jersey State Police, the Federal Bureau of Investigation, Union and Monmouth County Prosecutors' Offices, New York City Police, the Office of Criminal Investigation of the New Jersey Division of Taxation and the New Jersey Division of Criminal Justice.

- William Becker of Marlton was indicted on February 29, 1996 by a Camden County Grand Jury. The 71-count indictment charges Becker with 35 counts

continued on page 13

criminal enforcement - from pg. 12

of theft by deception, 34 counts of falsifying records, and one count each of failing to file and filing a fraudulent State income tax return.

- Jamil Satik Harham of Brooklyn, New York, was found guilty of transporting 475 cartons of untaxed cigarettes. The municipal judge imposed fines of \$1,465 and awarded the confiscated cigarettes to the State.
- Three businesses pled guilty to noncompliance with the cigarette tax laws in municipal courts throughout the State during March 1996. United Candy and Tobacco Co., Inc. and Porto Fino Distributors sold cigarettes to an unlicensed dealer. Rustic Mill Diner sold cigarettes without a license. In addition, charges were filed against ten other businesses for selling cigarettes without a license or failing to register for New Jersey sales tax.
- On February 1, 1996, Joseph Maisto of Trenton, New Jersey, a former New Jersey Department of Corrections official, was indicted by a State Grand Jury in a bribery scheme involving an \$8 million prison construction project. Mr. Maisto is charged with accepting \$20,000 from two construction company officials in 1992 while he oversaw a project at the Wagner Youth Correctional Facility in Chesterfield, New Jersey. The nine-count indictment included charges for official misconduct, bribery, accepting unlawful gifts, filing a fraudulent State income tax return, and failing to pay taxes on \$20,000 of unre-

ported income. This case resulted from a joint investigation effort between the Division's Office of Criminal Investigation and Division of Criminal Justice's Official Corruption Unit.

- On February 1, 1996 Helen Haniak, the sole proprietor of Nardone's, a go-go bar in Newark, New Jersey, pled not guilty to an accusation involving the non-filing of sales tax returns. The not guilty plea before Judge Falcone in Essex County was accepted conditionally on Ms. Haniak's entry into the pre-trial intervention program for first offenders. Prior to the plea, the business was sold and the Division of Taxation received partial restitution in the amount of \$55,000. Additional arrangements were made to satisfy the full restitution requirement of approximately \$80,000 of taxes and accruing penalties and interest.
- Sheryl Terbecki was indicted on February 14, 1996 on eight counts of failing to file and timely pay State income tax. This case, involving theft through a phony investment scheme targeting senior citizens, was investigated jointly with the Ocean County Prosecutor's office.
- Roger Turner, t/a Expert Maintenance, was indicted on six counts relating to State tax issues on January 22, 1996 by the Monmouth County Grand Jury. This Asbury Park janitorial contractor was part of the underground economy and failed to collect and remit nearly \$8,300 in sales tax and file returns for the period 1991-1995.

- Sussama Abraham, t/a Priya Grocery, Eduard Yelinskiy, and Melvut Gar each pled guilty to noncompliance with the cigarette tax laws in municipal courts throughout the State during the month. Included in the charges were the failure to register for sales tax, selling cigarettes without a license, and the possession of untaxed cigarettes. These three cases resulted in the imposition of fines and penalties totaling \$1,925 and the awarding of a seized 1987 Ford van to the Division.
- One cigarette tax case resulted in the arrest of Ruo Long Liu for transporting and possessing 533 cartons of untaxed cigarettes. Both the cigarettes and a Chevrolet van were seized. □

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1996

Following is a summary of enforcement actions for the quarter ending March 31, 1996.

Certificates of Debt

During the quarter ended March 31, 1996, the Division filed 3,423 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$28.6 million.

Levies

\$2.5 million was collected by Field Investigations as a result of executing against 787 noncompliant taxpayers. In addition, \$135,846 was collected by levying against payments made under State contracts to satisfy

continued on page 14

enforcement - from page 13

debts owed by State vendors.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending March 31, 1996, property of 13 businesses and two individual taxpayers was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on page 15.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain

closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending March 31, 1996, four auctions were held by the Division. A listing follows on page 16.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

Regular Place of Business — A taxpayer inquired whether a New Jersey corporation which is in the business of renting heavy equipment to service customers in Pennsylvania and which has no office in Pennsylvania (or presumably any other state) is permitted to allocate income outside New Jersey.

Where a New Jersey corporation does not have a regular place of business outside the State it is not permitted to allocate. Under N.J.A.C. 18:7-8.3, however, it may be given a credit against tax for income duplicated on the tax return to another state. Further, relief may be requested under Section 8 of the Corporation Business Tax Act, if the credit relief is not sufficient or results in an inequity.

There is no authority to exclude the out-of-State sales receipts from New Jersey Corporation Business Tax gross income or from the

denominator of the receipts fraction on the CBT-100 return as filed.

Gross Income Tax

Employer Group-Term Life Insurance Payments — An employer's payments toward the cost of the first \$50,000 of group-term life insurance for an employee are excluded from New Jersey gross income only if they are also excluded for Federal income tax purposes. If the exclusion is disallowed for Federal income tax purposes because, for example, the plan is limited to "key employees," then the full amount of the benefit provided by the employer will be included in New Jersey gross income as well.

When the exclusion of the cost of the first \$50,000 of coverage is allowed, the employee's New Jersey gross income must include the cost of coverage above \$50,000 of group-term life insurance provided by the employer. This cost is determined the same way for New Jersey as for Federal purposes, i.e., according to the uniform premium cost table used by Internal Revenue Service.

The cost of this coverage above \$50,000 is part of the employee's compensation. Therefore a New Jersey employer should incorporate.

continued on page 16

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Division of Taxation Seizures (January – March 1996)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Bergen	Hana Auto Corp. t/a Kim's Auto Center Carlstadt	01-16-96	Auto Repair Shop	Closed
Burlington	Myers, Philip D. Medford	01-17-96	N/A (Individual)	Motor Vehicle Seized
	Rosper, Inc. t/a Kentucky Fried Chicken Maple Shade	01-11-96	Fast Food Restaurant	Bankruptcy
	Jatalco, Inc. t/a Mitchells Tavern & Liquor Store Palmyra	02-01-96	Bar	Open; Liquor License Seized
Camden	Brown, Christian R. Mount Laurel	01-17-96	N/A (Individual)	Motor Vehicle Returned
	Larsid, Inc. t/a Cotton Club Camden	02-08-96	Bar	Liquor License Seized (Business Closed Previously)
	Pro Com Computer Center a/k/a Pro Computer Co. a/k/a Tai Tang South Jersey Expo Center	03-09-96	Computer Equipment Vendor Operating at Computer Shows	Closed
Gloucester	Allenham, Inc. t/a Kentucky Fried Chicken Williamstown	01-11-96	Fast Food Restaurant	Bankruptcy
	Stiehl Grove, Inc. t/a Paulsboro Hotel Paulsboro	02-01-96	Bar	Liquor License Seized (Business Closed Previously)
	Lehigh Valley Carting Corp. Sewell	02-07-96	Junk Dealer	Motor Vehicles Returned
Hudson	Chow Down Corporation t/a Ditto's Hoboken	01-04-96	Restaurant/Bar	Bankruptcy
	333 Washington Corp. t/a Cafe Trapani Hoboken	01-30-96	Bar/Restaurant	Reopened
Monmouth	Atlantic Art, Inc. t/a Create Your Frame Shrewsbury	01-17-96	Art Gallery; Frames	Open
Morris	Nako, Inc. t/a Le Papillon Morristown	02-08-96	Restaurant	Open; Liquor License Seized
Sussex	Fedash Enterprises, Inc. t/a Costa Azzurra Vernon	01-17-96	Pizzeria	Reopened

Division of Taxation Auctions (January – March 1996)

County	Name/Address	Auction Date	Business Type
Burlington	Myers, Philip D. Medford	03-23-96	N/A (Individual); Motor Vehicle
Hudson	Garcez, Ubiratan t/a Junior's Exxon Cranford	02-01-96	Car Repair
Middlesex	Edison Stationers & Office Supply, Inc. Edison	01-10-96	Stationery Store
	Comet Electric, Inc. North Brunswick	03-23-96	Electrical Contractor

tax briefs - from page 14

Sales and Use Tax

Sale of Database — The Division responded to a company which manufactures databases for vendor catalogs, industry and international standards, military/Federal specifications and standards, electronic component data, logistics information and related documents. The data is indexed, cross referenced and provided in various electronic media forms, including CD-ROM, on-line, Internet, magnetic tape, and microfilm.

The sale of a database in tangible form (CD-ROM, magnetic tape, microfilm etc.) is subject to tax as the sale of tangible property. N.J.S.A. 54:32B-3(a). The sale of a database which is delivered electronically or via the Internet is not subject to sales tax because nothing tangible is transferred to the customer. N.J.S.A. 54:32B-2(g).

The majority of customers “subscribe” to the database rather than making an outright purchase. In this case, it appears that the customer is obtaining a license to use the database on a monthly basis. A license to use property is subject to tax in the same manner

as an actual sale of the property. N.J.S.A. 54:32B-2(f). Thus, if the database is transferred in the form of CD-ROM, magnetic tape, etc., the license to use is subject to sales tax. If it is transferred electronically, it is not subject to tax.

Distribution of Promotional Materials — The Division responded to an inquiry concerning the use of a mailing house located in New Jersey to distribute catalogs and product samples both in-State and out-of-State.

The New Jersey Sales and Use Tax Act provides an exemption for advertising and promotional materials which are prepared within or outside of New Jersey for distribution by a New Jersey direct mail advertising or promotional firm to out-of-State recipients, and receipts from direct mail advertising processing services in connection with distribution of advertising and promotional materials to out-of-State recipients. N.J.S.A. 54:32B-8.39.

It was stated that the receipts from direct mail advertising material and advertising processing services are subject to tax in full only where the material is sent to

addresses in New Jersey. Thus, if a New Jersey direct mail house is used and all of the catalogs and promotional items are delivered to recipients outside of New Jersey, no New Jersey sales or use tax is due on either the materials or the direct mail services.

Exempt Organization Motor Vehicle Raffles — The Division recently replied to an inquiry regarding the sales tax subjectivity of an automobile won in a raffle conducted by a New Jersey sales tax exempt organization.

There are two typical ways such car raffles are conducted:

1. Exempt Organization buys motor vehicle from dealer and takes title in their name — gives ST-5 to dealer — no tax — raffle winner pays no tax when he/she takes title from exempt organization — no consideration given for motor vehicle — fills out LS-240 at motor vehicle agency and checks off vehicle was a “gift” — no consideration — and enters on LS-240 “won in a

continued on page 17

tax briefs - from page 16

charity raffle.”

2. Exempt Organization buys motor vehicle from dealer and raffles it off but *doesn't take title* in exempt organization's name. Title transfers directly from motor vehicle dealer to raffle winner — consideration is given for motor vehicle by exempt organization — ST-5 cannot be given since transfer is not titled in exempt organization's name — motor vehicle transfer is a sale and winner must pay tax to dealer who uses Sales Tax Satisfied Stamp to record tax paid.

According to the inquirer's specific situation, the dealer transferred title to the exempt organization, which gave the dealer an ST-5 exempt organization certificate to document their exempt sale.

Example #1 above would apply to this situation, and therefore, if the dealer has an ST-5 from the exempt organization they would not collect any tax on the second transaction changing title from the exempt organization to the raffle winner. □

In Our Courts

Local Property Tax

Dismissal for Failure to Prosecute – *Pipquarryco, Inc. Plaintiff, v. Hamburg Borough, Defendant*, decided January 19, 1996; Tax Court of New Jersey; Docket No. 6306-95.

The issue before the N.J. Tax Court in this complaint was whether the plaintiff Pipquarryco's appeal was properly dismissed “with prejudice” by Sussex County

Board of Taxation for “failure to prosecute.” If the Tax Board's dismissal was upheld, a further appeal to the Tax Court based on the actual facts or merits of the case could not be heard as per N.J.S.A. 54:51A-1(c)(2).

“Failure to prosecute” indicates that the plaintiff did not appear or did not provide factual evidence on which relief might be granted, e.g., proof of value. “With prejudice” indicates a final disposition barring the right to further appeal on the same claim.

One day prior to its County Tax Board hearing Pipquarryco tele-faxed its appraisal report to the Board, Hamburg Borough's tax assessor and their municipal attorney. The next day Pipquarryco's attorney appeared at the Board hearing with their appraiser and requested a temporary adjournment. The defendant Borough then asked for dismissal “with prejudice” for violation of N.J.A.C. 18:12A-1.9(h) which required evidential appraisal reports one week in advance of a hearing. The County Board rejected the plaintiff's reason for the lateness of the report and granted the Borough's request to dismiss the appeal “with prejudice.”

In ruling against Sussex County Tax Board, the Tax Court cited both *Veeder v. Berkeley Twp.* and *S.A.I.J. Realty, Inc. v. Upper Deerfield Twp.* which held that dismissal for “failure to prosecute” is appropriate only where “the conduct of the offending party is deliberate” or “deliberate and contemptuous” respectively. That

the plaintiff's appraisal report was late was not “egregious” in the manner of *Hudson Motor Lodge v. Jersey City*, where an appraisal

was provided on the day of a twice rescheduled trial, nor was Pipquarryco's timely appearance before the Board with an appraiser to request adjournment contemptuous etc. The Court noted that although the Board had a 3 month statutory deadline for completing appeal hearings to consider, it had the options of permitting the requested postponement or of dismissing “without prejudice” to allow the Tax Court to hear the facts of the dispute. Finally, in citing *VSH Realty, Inc. v. Harding Twp.* and *Rutherford Realty Assoc. v. Borough of Rutherford*, the Court made clear that the County Tax Board's first responsibility is to hear in a “meaningful way” and determine all appeals filed with it and to safeguard the taxpayer's opportunity to be heard. Court calendars and time constraints may not take precedence over the administering of justice and the reasonable accommodation of a taxpayer's rights.

Sales and Use Tax

Bulk Sales – *New Jersey Hotel Holdings, Inc. v. Director, Division of Taxation*, No. 007836-94 (Tax Ct., decided February 21, 1996).

Plaintiff acquired all of the assets of three hotel properties. It acquired the realty by way of deeds in lieu of foreclosure, and acquired the personalty by way of bills of sale. However, it did not give the Division the requisite notice prior to this bulk transfer. Because plaintiff failed to give the notice required under N.J.S.A. 54:32B-22(c), the Court held that it was liable for the sales and use tax liability of the transferor of the

continued on page 18

in our courts - from page 17

assets. ☐

In Our Legislature

Gross Income Tax

Tax Return Signature Requirement — P.L. 1996, c.10 (signed into law on March 28, 1996) changes the law concerning the written verification of gross income tax returns so that returns may be filed by telephone using a

touch-tone telephone keypad. The act permits the Director of the Division of Taxation to promulgate regulations that will allow the use of voice signatures and other technologies to satisfy the signature requirements of the gross income tax. This legislation is effective immediately and applies to returns filed on and after January 1, 1996.

Miscellaneous

Tax Amnesty Program; Credit Card Payment System for State

Taxes — P.L. 1996, c.2 (signed into law on February 29, 1996) provides for a State tax amnesty period and appropriates funds to the Division to administer the program. The act also authorizes the use of credit cards, debit cards, or electronic funds transfer for payments of State taxes. This legislation is effective immediately. ☐

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
		1	2	3	4	5	6
1	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
9	21	22	23	24	25	26	27
6	28	29	30	31			

July 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

July 15

CBT-100/ Corporation Business Tax—
CBT-100S Annual return for accounting period ending March 31

continued

July 15 - continued

CBT-150 Corporation Business Tax— Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax— Employer's semi-monthly, monthly, quarterly and semi-annual returns

July 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

July 22 - continued

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—Monthly return

July 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1					1	2	3
9	4	5	6	7	8	9	10
9	11	12	13	14	15	16	17
6	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

August 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

August 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly return

August 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

August 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
6	22	23	24	25	26	27	28
	29	30					

September 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

September 16

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

continued

September 16 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly return

NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 3 for calendar year filers

September 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

September 20 - continued

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

Tax Season Assistance

During the income tax season from January 1 through April 15, 1996, the Division provided assistance to many taxpayers in New Jersey. This year was marked by several service initiatives: the expansion of the electronic filing program; the introduction of TeleFile, a program which enables taxpayers to file income tax returns and homestead rebate applications by telephone; and on-line access to New Jersey tax information through the Division of Taxation's Home Page.

★ **Tax Hotline**

Calls answered—226,205

★ **NJ TaxFax**

Calls received—41,597

★ **Electronic Filing Program**

Returns filed—66,611

★ **TeleFile Pilot Program**

Returns filed—24,247

★ **Taxation Building Lobby**

Taxpayers assisted—11,814 (1,002 on April 15)

★ **Regional Offices**

Taxpayers assisted—28,919

★ **ARIS (Automated Refund Inquiry System)**

Calls received—239,792

★ **Tax Talk (Automated information and assistance)**

Calls received—171,399

★ **Taxation Home Page**

Visits to Division's World Wide Web site—7,762

New Jersey State Tax News

Spring 1996

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- Index for 1995 (Volume 24)
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No Penalties. No Interest. No Kidding.

The State of New Jersey recently enacted a law (P.L. 1996, c.2) allowing for the payment of tax liabilities for State taxes administered and collected by the Division of Taxation, with no penalties, no interest, no cost of collection or the imposition of any civil or criminal penalties. The Amnesty Program will begin March 15, 1996 and will end June 1, 1996.

Tax Amnesty is part of an overall effort to increase compliance with State tax laws. The Amnesty program will provide for an increase in the collection process; reduction of backlogs of both deficient and delinquent taxpayers; identify new taxpayers not on our rolls; and provide an opportunity for anyone behind in their taxes to get back on the tax rolls in good shape.

State tax liabilities for tax returns due on and after January 1, 1987 and prior to January 1, 1996 are eligible for Amnesty. The law contains a provision for the imposition of a 5% penalty at the conclusion of the Amnesty period which shall not be subject to waiver or abatement, in addition to all other penalties, interest and cost of collection otherwise authorized by law.

Amnesty covers all State taxes payable to the New Jersey Division of Taxation including the Corporation Business Tax, Sales and Use Tax and Gross Income Tax. Amnesty does not cover taxes not administered and collected by the Division of Taxation such as

tax amnesty - from page 1

local property tax, realty transfer fees and Federal liabilities.

The State will mail notices to approximately 600,000 individuals and businesses who currently owe the State back taxes. The State also plans to undertake a full-scale public awareness campaign that includes television, radio and print advertising, general information brochures and posters.

The Division is operating a special toll-free Amnesty hotline, 800-286-6613, that the public can call for information or materials.

The forms needed to file for Amnesty may also be obtained by:

- Calling the Division's TaxFax telephone number, 609-588-4500. You must call from your fax machine and the forms will be faxed to you.

- Accessing New Jersey's Internet Home Page at <http://www.state.nj.us/treasury/taxation/>.
- Visiting one of our Regional Offices.

You may also write to:

NEW JERSEY DIVISION OF TAXATION
AMNESTY FORMS REQUEST
CN 900
TRENTON NJ 08646-0900

Organizations that would like to distribute pamphlets or other informational materials to their clients, or who would like a Division representative to speak to their group, can contact the Amnesty hotline at 800-286-6613. □

Compliance Efforts Continuing

Part of the mission of the Division of Taxation has always been to monitor the compliance of individuals and businesses with the various taxing statutes.

In the past the Division has conducted compliance audits on individual taxpayers and businesses and has also identified groups of taxpayers for audit. For example, in a joint audit with the IRS, the Division identified and contacted accountants who had not filed returns.

Currently, in one project, field auditors are auditing liquor stores and restaurants for compliance with Sales and Use Tax, Gross Income Tax withholdings and corporation taxes.

Ongoing audits by the Gross Income Tax Audit Branch investigate the filing responsibilities of nonresidents who have New Jersey source income. Individuals

who have business contacts with New Jersey through partnership or S corporation ownership are reminded to file nonresident returns indicating the income allocated to New Jersey through those businesses. Likewise, if an individual comes into New Jersey to perform at a New Jersey venue, to sell crafts at a show, to lecture at a seminar, or to do any work for

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New Jersey State Tax ***news***

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

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Important phone numbers

Tax Hotline.....	609-588-2200
Recorded Tax Topics.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corporate Mergers, Withdrawals & Dissolutions.....	609-292-5323
Corporate Tax Liens.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
	609-292-5035
	609-292-7221
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

compliance efforts - from page 2

which they receive income, he has a responsibility to file a nonresident return with the Division and pay taxes on the income earned in New Jersey.

With the Division's constant attention to compliance, any taxpayer or business that has not heretofore filed and paid associated taxes to New Jersey would do well to do so *before* the Division contacts them

Whether the Division contacts groups of taxpayers in specific projects or identifies individual nonfilers, the Division will continue to serve all New Jersey taxpayers by diligently adding new taxpayers to the tax rolls to ensure that all persons pay their correct portion. □

CORPORATION TAX ***Net Operating Loss After Merger***

In *Richard's Auto City, Inc. v. Director, Division of Taxation*, New Jersey Supreme Court, 140 N.J. 523, decided June 21, 1995, the New Jersey Supreme Court reversed a judgment of the Appellate Division and reinstated the order of the Tax Court in favor of the Division, upholding the validity of N.J.A.C. 18:7-5.13(b).

Richard's Auto City, Inc., a New Jersey corporation, claimed on its 1986 Corporation Business Tax return a deduction for net operating losses (NOL's) incurred by its leasing subsidiary, Catena, Inc., during the years 1984, 1985 and 1986. Catena, Inc. was merged into Richard's Auto City in December 1986. The Director denied the deduction on the basis of N.J.A.C. 18:7-5.13(b). N.J.A.C. 18:7-

5.13(b) provides that a net operating loss may only be carried over by the actual corporation that sustained the loss.

The Court stated that the language of N.J.S.A. 54:10A-4(k)(6), which provides for net operating loss carryovers, did not indicate a legislative intent to allow the transfer of tax deductions from an acquired corporation to the surviving corporation after a merger. The Court rejected the argument that the legislature intended to adopt the Federal tax scheme which allows for the carryover of NOL's by the surviving corporation. The Court also found that provisions of the Business Corporation Act, N.J.S.A. 14A:1-1 et seq., requiring the transfer of corporate attributes from an acquired corporation to a surviving corporation in a merger, were not to be read *in pari materia* with the Corporation Business Tax Act and therefore did not support the argument that a surviving corporation can use the tax deductions of a merged corporation. Finally, the Court ruled that the regulation applied retroactively to the effective date of the Corporation Business Tax Act provisions allowing for deduction of NOL's. □

CORPORATION TAX ***Corporation Tax Credits***

A recent inquiry was made regarding the verification method used to document the net increase in employment required under the Manufacturing Equipment and Employment Investment Tax Credit (MEEITC). The taxpayer further questioned the criteria needed to prove the direct relationship between the manufacturing

equipment placed in service and the increase in employment.

The **Employment Investment** portion of the credit is valid for each of the two tax years next succeeding the tax year for which the Manufacturing Equipment credit is allowed, but is limited to 3% of the investment credit base, not to exceed a maximum allowed amount for each of the two tax years of \$1,000 multiplied by the increase in the average number of qualified employees.

The calculations for the credit are based on the increase in the average number of full-time employees and employee equivalents residing and domiciled in New Jersey employed at work locations in New Jersey from the employment base year to the employment measurement year.

Full-time employee means a New Jersey domiciled resident working

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Interest 11.75% for Fourth Quarter

The interest rate assessed on amounts due for the first quarter of 1996 is 11.75%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%

tax credits - from page 3

for the taxpayer for at least 140 hours per month at a wage not less than the State or Federal minimum wage. In calculating the average, part-time employee hours may be aggregated to determine **full-time equivalents** (140 hours equals one full-time employee equivalent) provided the part-time employee has worked for the taxpayer for at least 20 hours per week for at least six months during the tax year.

To claim the employment portion of the credit, the taxpayer is not required to show any relationship between the purchase of manufacturing equipment and the increase in employment beyond the calculation required to determine the size of the credit. The calculation itself will generally indicate the relationship between the equipment and the increase in employment. The employment credit is limited to 3% of the "investment credit base," which is defined in N.J.S.A. 54:10A-5.17 as the cost of the qualified equipment. "Qualified equipment" is further defined as equipment purchased for manufacturing. The taxpayer should maintain employment records to support the claimed credit.

For additional information on the MEEITC, see "Tax Briefs" on page 12. □

CORPORATION TAX ***Delivery Services***

The Division of Taxation has clarified its position regarding delivery of goods into the State by Non-Transportation and/or Delivery Service Companies for Corporation Business Tax purposes.

Any corporation **not** in the business of delivery or transport of goods (such as manufacturers, wholesalers, etc.) who delivers "their own" products in their own trucks to customers in New Jersey is deemed to be "doing business" in New Jersey pursuant to N.J.A.C. 18:7-1.9(b).

However, if the activities do **not** exceed mere delivery, this corporation would be protected under P.L. 86, c.272 and the minimum corporate tax would be due. Some of the activities that are considered to be beyond mere delivery would be pick-up, set-up, installation, removal, pouring, and inserting.

Any questions regarding delivery for Corporation Business Tax purposes should be directed (in writing) to:

NEW JERSEY DIVISION OF TAXATION
NEXUS AUDIT GROUP
CN 264
TRENTON NJ 08646-0264 □

CORPORATION TAX ***Joint Ventures***

Inquiries have been received by the Division regarding factor representation of joint venture interests for Corporation Business Tax purposes. Since joint ventures are not separate legal entities for New Jersey tax purposes (see *Wittner v. Metzger*, 72 N.J. Super. 438, App. Div. 1962), the pro rata share of joint venture real and tangible personal property, receipts and wages

both within and without New Jersey must be included in determining the corporate business allocation factor of the venturer. Similarly, the proportionate share of income and expense must be included in the co-venturer's taxable net income. This reflects the Division's historical position which is independent of any unitary/non-unitary analysis in a particular case. A copy of Federal Form 1065 should be included when filing the return. □

CORPORATION TAX ***LIFO Recapture***

In accordance with Section 1363(d) of the Internal Revenue Code, a C corporation using the LIFO inventory method must include in its taxable income the LIFO recapture on its last C return.

The LIFO recapture is the excess of its inventory valued by using the FIFO method over LIFO at the end of its last year as a C corporation. The additional Federal tax resulting therefrom is payable in

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Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

Beginning in 1996 (1995 tax returns), the New Jersey Division of Taxation will accept electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

LIFO recapture - from page 4

four equal installments. The Code requires that Federal Schedule J (tax computation) reflect the tax based on income that includes the LIFO recapture with a note indicating the Section 1363(d) deferral. These (three) remaining Federal installments are to be paid with each subsequent S corporation return by inclusion on line 22c with a note indicating "LIFO TAX."

The Code defers the payment of the additional tax but not the reporting of the income resulting from the recapture.

Section 4(k) of the New Jersey Corporation Business Tax Act states that "a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury...." Since N.J.A.C. 18:7-5.10(f) permits the Director to determine the period in which items of income or expense shall be reported, regardless of accounting method utilized for State purposes, the full amount of the recapture must be reported and remitted with the CBT-100 return corresponding with the year when the recapture is reported Federally. No provision exists to allow the deferral at the State level. □

INHERITANCE/ESTATE TAX ***Domicile***

The most basic, and possibly the most important, decision to be made by the representatives of an estate is to determine the domicile of the decedent at his/her death. Admittedly, for most of us the choice is simple. However, in a nation characterized by a high level of immigration, wealth, and mobility, the Transfer Inheritance and Estate Tax Branch is required to resolve the issue of domicile on a daily basis.

A decedent's domicile determines the jurisdiction for original probate, the individual State death taxes to which the estate will be subject, and the nature of the decedent's assets that will be subject to the tax.

The estate of a decedent who was domiciled in the State of New Jersey (resident decedent) is subject to both New Jersey Transfer Inheritance Tax and New Jersey Estate Tax. The estate of a decedent who was not domiciled in New Jersey (nonresident decedent) is subject only to the Nonresident Transfer Inheritance Tax.

In a resident decedent's estate, real and tangible personal property located in New Jersey and intangible personal property wherever situated is subject to tax. In the estate of a nonresident decedent, only real and tangible personal property located in New Jersey is subject to the tax.

In spite of its importance, however, very little guidance exists in the current literature and statute. Consequently, the leading New Jersey court cases must be consulted for a workable definition of domicile and for the rules that determine a person's domicile

should that become an issue at the time of death.

Guidelines established by the Court relating to domicile include:

1. No person can be without a domicile.
2. A domicile once established continues until it is superseded by a new one.
3. Domicile may be acquired in one of three ways:
 - (a) Through birth or place of origin;
 - (b) Through choice by a person legally capable of choosing domicile; or
 - (c) Through operation of law in the case of a person who lacks capacity to acquire a new domicile by choice.
4. No person can have more than one domicile at any one time. The New Jersey courts have determined that where there are multiple residences, domicile is that place which the subject regards as his true and permanent home. Home being defined for this purpose as the place where a person dwells and which is the center of his domestic, social and civil life. *Restatement, 2nd, Conflict of Laws* §12 (1971).

No simple solution for resolving a disputed domicile has been developed by the New Jersey courts. Instead, there is a recognition of the complexities that may be involved and basic tenets established for guidance. The New Jersey Supreme Court has noted that since the concept of domicile involves the concurrence of physical presence in a particular State and an intention to make that State one's home, determination of a

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domicile - from page 5

disputed issue on the subject requires an evaluation of all of the facts and circumstances of the case. *Lyon v. Glaser*, 60 N.J. 259 (1972).

The Transfer Inheritance Tax Branch has developed a "Domicile Questionnaire" which is used to gather pertinent information when the domicile of a decedent is in question. This form is available from the Branch in Trenton. □

New Imaging System for Returns

There's a good reason for the new look of the 1995 NJ-1040. This year the New Jersey Division of Taxation will begin processing income tax returns using its new electronic imaging system. This system uses "intelligent character recognition" to read printed and handwritten information from the return. By using electronic imaging, the Division will be able to process returns more efficiently and issue refunds more quickly.

The traditional NJ-1040 form is printed using red ink this year to accommodate the requirements of the scanning equipment. This red ink "drops out" and is invisible to the scanner, which sees only the information entered on the form. The equipment is expected to recognize 85% of all handwritten characters entered on the NJ-1040, which will greatly reduce processing time.

Likewise, the format approved for computer-generated forms is new this year. These returns now include a "scanband" which contains all of the information printed on the lines below. The system

will read the data contained within the scanband with an anticipated rate of over 95%.

The Homestead Property Tax Rebate Application has been moved to a separate sheet this year. This change will enable residents whose income is under the filing threshold to complete and file a rebate application without having to submit an NJ-1040.

The Division expects all of these changes to make filing New Jersey income tax returns easier and reduce the waiting time for State refunds. The Division asks filers to help by doing the following:

1. Do not staple, tape, clip, or glue W-2s, payments, schedules or anything else to the NJ-1040.
2. If possible, send 8½" x 11" copies of W-2s rather than the form itself.
3. Mail returns and enclosures (flat, not folded) in 9" x 12" envelopes. □

**DO
NOT
STAPLE**
Tape, Clip or Glue

ANYTHING
(W-2s, Schedules, Checks, etc.)

to
Form NJ-1040 or Form HR-1040

TeleFile Pilot Program Launched

Many New Jersey residents can now file their tax returns and homestead rebate applications from their own homes through their telephones. This is made possible by a TeleFile pilot program being conducted by the New Jersey Division of Taxation during the current tax season (January 16, 1996 through April 15, 1996). In this initial year, almost 300,000 taxpayers will be able to call the Division's computer and file their returns via a touch-tone telephone. That number is expected to rise significantly in coming years when the program is expanded State-wide.

Governor Christine Todd Whitman said the TeleFile pilot program is another example of the commitment of the Department of the Treasury, through its Division of Taxation, to provide New Jersey taxpayers with the best service possible.

"TeleFile provides New Jersey residents a fast, easy way to file their State taxes," said Governor Whitman. "In fact, TeleFile will make filing a tax return as simple as dialing a touch-tone telephone."

"One substantial benefit of the TeleFile program is its potential to allow the filing of more than one million income tax returns annually. This will save the State money by reducing the Division of Taxation's processing costs."

"The TeleFile project reflects the type of effort the State Department of the Treasury continues to make to ensure New Jersey taxpayers receive the best, most efficient service possible," said Governor

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Whitman.

With TeleFile, taxpayers will provide requested information by phone to the Division of Taxation. They will not need to do any calculations — TeleFile will instantly compute their refund, or payment due, and give them the amount. They will not need to mail a return or any paper to the Division. “Best of all, TeleFilers will receive their State refunds within two weeks of their call,” explains State Treasurer Brian W. Clymer.

TeleFile taxpayers have been pre-selected by the State and have received a New Jersey TeleFile return and personal identification number. To qualify for this program, the taxpayer must meet certain conditions including the following:

- use the same filing status as on last year’s return
- have total income of \$50,000 or less
- have income from wages and/or interest only
- interest income must be \$400 or less
- must live at the same residence since January 1, 1995

Pre-selected taxpayers in the following counties may participate in this year’s pilot program: Burlington, Camden, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset and Union.

Taxpayers who have questions about the TeleFile Program can call the Tax Hotline at (609) 588-2200. □

LOCAL PROPERTY TAX Summary of 1995 Court Decisions

- *New Jersey Transit Corp. v. Borough of Somerville*, Supreme Court; decided April 19, 1995.

Ten year statute of limitations for initiating State actions did not apply to real property assessment appeals; regular assessment appeal procedure applied to State same as other taxpayers.

- *Higg-A-Rella, Inc. v. County of Essex et al.*, Supreme Court; decided July 19, 1995.

Computer taped master municipal tax assessment list was not a public record under Right to Know Law but was a public record under common law, and subject to disclosure where confidentiality versus public information issues were weighed and legitimate interests served. The case has been remanded to the trial court to determine a fair selling price.

- *General Motors Corp. v. City of Linden et al.*, Superior Court, Appellate Division; decided February 3, 1995.

Citing Federal Civil Rights Act, auto assembly plant owner alleged Federal and State constitutional rights were violated by discriminatory, excessive valuation. In reversing this, Court held immunity status of municipality, tax assessor and consulted private appraiser was not absolute in civil rights suit but common law tort action for negligence was not to be imposed on municipal assessors or appraiser-consultants under Tort Claims Act. Case was appealed

to the New Jersey Supreme Court and a decision is pending.

- *R. C. Maxwell Co. v. Galloway Township*, Superior Court, Appellate Division; decided April 25, 1995.

Billboards were subject to real property tax as personal property ordinarily intended to be affixed permanently to real property; outward appearances were relevant in determining ordinary intent. Case has been appealed to the New Jersey Supreme Court and a decision is pending.

- *Goodwill Home and Missions, Inc. v. Garwood Borough*, Superior Court, Appellate Division; decided June 14, 1995.

Congregation, not municipality, evaluates minister’s duty performance; minister need not attend services where he officiates; Goodwill membership was confirmed as religious congregation though multidominational; its executive director/pastor was officiating clergyman, and residence was exempt as parsonage.

- *Borough of Paramus v. Etaner Enterprises*, Superior Court, Appellate Division; decided August 1, 1995.

Erroneous real property tax assessment caused by computer error was correctable under Correction of Errors Statute.

- *Estell Manor City v. Harry Stern*, Tax Court; decided January 5, 1995.

Woodland tracts were denied farmland assessment due to

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noncompliance with management plan, insufficient forestry activity and product income; woodlands require a two-part qualification for farmland assessment from both DEP and the municipal tax assessor.

- *J. L. Muscarelle, Inc. v. Saddle Brook Township*, Tax Court; decided February 10, 1995.

Assenting full court opinion that payment of property tax liability was prerequisite to assessment appeal as affirmed in recent consolidated Appellate Court decision relative to the same matter.

- *Emmis Broadcasting Corp. of N.Y. v. East Rutherford Borough*, Tax Court; decided March 21, 1995.

Radio towers as antennas broadcasting signals were machinery, apparatus or equipment used in business, per Business Retention Act, and exempt from real property tax but supportive concrete tower bases were taxed as real property. Taxpayer has appealed to the Superior Court, Appellate Division.

- *East & West Washington Realty v. Washington Borough*, Tax Court; decided March 31, 1995.

tax assessors' calendar - from page 8

Under Correction of Errors Statute request for reduced assessment for 1991-1993 due to fire was denied as assessor judgment and uncorrectable under limited scope of statute; assessor's statement regarding failure of appeal for non-payment of taxes did not

preclude taxpayers' right to appeal or violate due process.

- *Grandal Enterprises, Inc. v. Keansburg Borough*, Tax Court; decided June 16, 1995.

1993 and 1994 added assessments on formerly exempt lot could not be voided by Freeze Act based on 1992 court settlement judgment for the entire lot where segment of lot was not part of the appeal. Freeze Act fixed the base year assessed value for two successive years; it did not determine true value for the two successive years.

- *Freehold Township v. Javin Partnership*, Tax Court; decided June 21, 1995.

Insulated walls and ceilings of refrigeration area in beer distribution warehouse were not exempt as machinery, apparatus and equipment used in business but compressors and blowers were machinery, etc. and were exempt as such. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.

- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.

- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 15-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.

- General tax rates certified by County Tax Boards.

May 18-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and clerk of board of freeholders by County Tax Board.

May 27-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 1-

- Assessors' Property Tax De-

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duction Disallowance Notices, Form PD4, sent.

- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted a medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Division of Taxation.

June 15-

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Division of Taxation. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- A recommendation for prosecution has been submitted as a result of an investigation of a husband and wife and the various businesses they operated in central New Jersey. The investigation revealed that the taxpayers failed to file New Jersey income tax, corporation business tax, and sales tax returns from January 1990 through March 1995. The total amount of tax misappropriated and/or evaded was \$154,186.84.
- A Mercer County jury convicted Michael Keating of 24 counts of bribery, and one count each of conspiracy, official misconduct, theft by deception, misapplication of government property and tampering with public records. The five counts in the indictment charging Keating with State tax violations were dismissed as part of the prosecution trial strategy. The tax counts included failing to report \$124,000 of personal income which he had received in kickbacks during the period 1988-1991. The tax owed in the amount of \$4,487.23 has been referred for civil billing and

collection.

- Ann Cinquemani, the president of Friendly Three, Inc., trading as Circle Diner in Flemington, was indicted on October 27, 1995 by the Hunterdon County Grand Jury on four counts relating to the evasion of New Jersey taxes. The counts included the failure to turn over sales and use taxes, filing false or fraudulent sales tax returns, and the misapplication of entrusted funds. The sales tax collected but not remitted for the indictment period of April 1 through December 31, 1992 was \$14,597. The entire investigation covers the period from January 1991 to March 1994 when the diner was destroyed by fire. Additional civil action will also be taken for the remainder of the period not covered by the indictments. This investigation was worked jointly by Taxation's Office of Criminal Investigation and the Hunterdon County Prosecutor's Office.
- On November 16, 1995, a Termination of Pre-Trial Intervention hearing was conducted for Johannas Nydam in Bergen County. Mr. Nydam, whose business is Dumont Wines and Liquors, failed to make restitution as well as failed to file and remit sales tax during the PTI period. As a result of this hearing, Mr. Nydam is required to remit the sales tax collected from the business activity on a daily basis to his parole officer. In addition, he must sell the business by June 30, 1996 and is barred from being associated with the alcoholic beverage

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criminal enforcement - from pg. 9

industry in the future.

- On October 17, 1995, Frederic A. Dinonno and his company T & L Marketing Services Inc., received a twelve count indictment by a State grand jury for conspiracy, misconduct by a corporate official, filing false and fraudulent corporation tax returns and New Jersey income tax returns, and failing to file both corporation business tax returns and State income tax returns. Mr. Dinonno solicited and received monetary bribes from vendors of his employer, Ebasco Corporation, in exchange for business from Ebasco Corporation. T & L Marketing was created solely to facilitate the bribe monies and to conceal the diversion of money which lawfully belonged to Ebasco Corporation. The bribes received by Dinonno were in excess of \$200,000.00 between May 1986 and January 1994. The indictment was a result of a joint investigation between the Division of Taxation and the Division of Criminal Justice.
- Valji Mori, the owner of Ray's Deli, a Jersey City delicatessen/liquor store, was arrested on December 21, 1995 and charged with paying a \$2,000 bribe to cut his New Jersey State tax liability, alleged to be about \$100,000, in half. Mori allegedly offered a bribe initially to a Division of Taxation auditor working out of the Division's Elizabeth office. The auditor immediately reported the matter to his supervisors and the case then was taken over by the Division's Office of Criminal

Investigation. An Internal Security Unit investigator, working in an undercover capacity, received the alleged bribe money.

The investigation was conducted in cooperation with the Division of Criminal Justice/State Police Corruption Bureau. State Police detectives and members of the Hudson County Prosecutor's Office assisted in the arrest. Mr. Mori was charged with bribery, compromising a public servant for private interest, soliciting official misconduct, and conspiracy.

- Variety Candy and Tobacco, Inc. was found guilty and fined in municipal court for accepting unstamped cigarettes and for failing to maintain required records as a result of an investigation that revealed the failure to collect and remit the Tobacco Products Wholesale Sales and Use Tax. The initial investigation disclosed a means to divert taxable tobacco products to manufacturer's representatives in such a manner as to avoid the 24% tax.
- Three cigarette tax cases resulted in the arrest of individuals for transporting and possessing cigarettes not bearing the required New Jersey revenue stamps. Samer Al-Sakaf and Bing Chen, both of Richmond, Virginia, were transporting 450 cartons and 2,360 cartons of unstamped cigarettes, respectively. In the third case, Eric Chu of Long Island City, New York was in possession of 3,000 cartons of the unstamped cigarettes. All 5,810 of the confiscated cartons bore stamps for the State of Virginia.

- Dependable Limousine, Inc., a Lakewood Township limousine service and repair facility, pled guilty to failing to timely remit sales tax. The case was heard in the Mercer County Superior Court on December 22, 1995. Restitution was ordered in the amount of \$12,000 and was paid in full upon sentencing.
- A criminal investigation was conducted on an individual living in Lillian, Alabama who failed to file State income tax returns to report installment sale income from New Jersey sources for the 1991 through 1994 tax years. Although this case did not meet the criteria for criminal prosecution, the investigative efforts did result in the collection of the returns and taxes owed in the amount of \$1,027.00 on New Jersey income that totaled \$45,074.00 for the period.
- Melvut Gar of Ocean, NJ was ordered to pay a \$405 fine for failing to obtain a cigarette tax license. The case was heard in the Little Silver Municipal Court on January 18, 1996. In addition, a Teaneck grocer was charged for selling cigarettes without a license and failing to register with the Division of Taxation for sales tax. □

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1995

Following is a summary of enforcement actions for the quarter ending December 31, 1995.

Certificates of Debt

During the quarter ended December 31, 1995, the Division filed 2,901 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$34.4 million.

Levies

\$2.8 million was collected by Field Investigations as a result of executing against 706 non-compliant taxpayers. In addition, \$197,435 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1995, property of 29 businesses and three individual taxpayers was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 13 and 14.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending December 31, 1995, eight auctions were held by the Division. A listing follows on page 15.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Tax Briefs

Corporation Business Tax

Allocation — The Division answered an inquiry from a company that files corporate income tax returns in three states, New Jersey, Illinois and California. The corporation has an office in New Jersey and Illinois but not in California. The question was whether the company should file allocating returns in the states where it had an office and take a credit where there was no office.

The State of New Jersey does not use separate geographical accounting. Once a corporation has a bona fide office outside of New Jersey, then the corporation is permitted to allocate. It is immaterial that a corporation does not have an office in every state where it does business. Therefore, the issue of a credit for tax paid to another state does not come into play. If an allocating taxpayer does not believe that the allocation factor produced a fair tax to New Jersey, taxpayer may request Section 8 relief. New Jersey does not have jurisdiction to give advice as to any tax payment or filing requirements that other states may employ.

Limitation on the Deduction of Interest Owed to Certain Related Parties Repealed — P.L. 1995, c.418 repealed N.J.S.A. 54:10A-4(k)(2)(E). N.J.S.A. 54:10A-4(k)(2)(E) required, with certain exceptions, the add-back to taxable income of 90% of interest owing directly or indirectly to holders of 10% or more of the aggregate outstanding shares of the taxpayer's capital stock. The repeal is effective for fiscal or calendar accounting years ending after

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tax briefs - from page 11

January 10, 1996.

Manufacturing Equipment and Employment Investment Tax Credit —

The Manufacturing Equipment and Employment Investment Tax Credit, N.J.S.A. 54:10A-5.16 through 5.21, provides a credit against Corporation Business Tax liability for investments in certain manufacturing equipment and for certain increased employment.

To qualify for the credit, a taxpayer must have invested in qualified manufacturing equipment in tax years beginning on or after January 1, 1994. Qualified equipment is defined under N.J.S.A. 54:10A-5.17 as: "machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to subsection a. of section 25 of P.L.1980, c.105 (C. 54:32B-8.13), having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use."

N.J.S.A. 54:32B-8.13 grants an exemption from the sales and use tax for receipts from the "sales of machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining." The Division has interpreted this provision to allow an exemption

for the purchase of equipment used in a food processing plant such as a sausage factory, and for the purchase of equipment used in certain establishments where processed foods are purchased directly by the consumer, such as bakeries and bagel shops. The Division has denied the exemption, however, for the purchase of equipment for the processing of food sold in fast food establishments such as Burger King and in restaurants. Restaurants are deemed to be engaged in the service of serving food for on-premises dining rather than using equipment directly and primarily in the production of food.

The Corporation Business Tax provision N.J.S.A. 54:10A-5.16 makes specific reference to the sales tax provision N.J.S.A. 54:32B-8.13. The Division will therefore refer to its interpretation of N.J.S.A. 54:32B-8.13 in determining whether equipment purchased for the processing of food qualifies for the Corporation Business Tax credit under N.J.S.A. 54:10A-5.16. In general, equipment purchased for the processing of food in food plants and establishments such as bakeries will be eligible for the credit, but equipment purchased for the processing of food served in restaurants will not be eligible.

Gross Income Tax

Severance Pay — Severance pay is considered to be New Jersey source income, under N.J.S.A. 54A:5-8. The portion of the severance pay that is sourced to New Jersey depends on the time that the person worked in New Jersey. The formula for calculating the portion

that is "allocated" to New Jersey is as follows:

$$\frac{\text{Days worked in NJ}}{\text{Total days worked for employer (inside and outside NJ)}} \times \text{Severance Pay} = \text{NJ source amount}$$

Severance pay is taxable in New Jersey, even though the amount of the severance pay depends on the total number of years worked for the employer and some of the work was performed prior to the beginning of the gross income tax. See, *DuBois v. Director, Division of Taxation*, 4 N.J. Tax 11 (1981), affirmed 6 N.J. Tax 249 (1982), affirmed 95 N.J. 234, 470 A.2d 446 (1983).

Sales and Use Tax

Diplomatic Tax Exemption —

The U.S. Office of Foreign Missions (OFM) administers the Diplomatic Tax Exemption Program, which provides sales and use tax exemption to eligible foreign officials on assignment in the U.S. The OFM has issued guidelines on the proper use of sales tax exemption cards issued by the U.S. Department of State.

There are two types of these tax exemption cards: personal cards and mission cards.

Personal sales tax exemption cards are issued for the sole benefit of the individual identified on the card. For a transaction to be eligible for exemption from taxes, the card bearer must initiate the transaction, tender payment, and take possession of the purchase. An individual may not "loan" the card to a family member or friend.

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*Legend for 1995 Tax Laws

ABT	=	Alcoholic Beverage Tax
ACC	=	Atlantic City Casino Control Commission
ALL	=	All Taxes Administered by the Division
CBT	=	Corporation Business Tax
FBT	=	Financial Business Tax
GIT	=	Gross Income Tax
LIT	=	Litter Control Tax
LPT	=	Local Property Tax
MFT	=	Motor Fuels Tax
MIS	=	Miscellaneous
S&U	=	Sales and Use Tax

1995 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
7	1-12-95	Appropriates \$10 million of Green Acres monies toward acquisition of Sterling Forest in New York.	LPT	S-137 (4R)
26	1-26-95	Establishes the "New Jersey Breast Cancer Research Fund" and provides for a gross income tax checkoff.	GIT	A-1701 (1R)
30	2-15-95	Increases from three to five the membership of county boards of taxation in counties of the second class with a population of over 550,000 persons.	LPT	S-785
44	3-7-95	Revises law relating to selection and impaneling of juries.	MIS	A-531 (2R)
51	3-17-95	Amends the Motor Fuels Act to provide that a consumer who earns credit through purchases on a credit card may utilize these credits to receive a rebate when that person purchases motor fuels.	MFT	S-1070 (3R)
96	5-1-95	Amends the New Jersey Limited Liability Company Act and the Gross Income Tax Act to provide for the creation of limited liability partnerships.	GIT	A-1860 (1R)
108	5-30-95	Revises the "New Jersey Transportation Trust Fund Authority Act of 1984" and changes the dedication of monies to Trust Fund Account.	MIS	A-99 (2R)
111	6-1-95	Excludes certain Cafeteria Plan cash-out options from gross income under the Gross Income Tax Act.	GIT	A-1489 AS
113	6-2-95	Permits a municipality to offer tax incentives to a business that transfers commercial or industrial operations from one qualifying municipality to another qualifying municipality.	LPT	S-1466 (1R)
148	6-30-95	Appropriates fiscal year 1995 public utilities gross receipts and franchise taxes in excess of \$960,000,000 for distribution to municipalities to reduce the local municipal property tax levy.	LPT	S-2106
152	6-30-95	Clarifies procedures for disposition of property of intestate decedents.	MIS	S-2138 (1R)
158	6-30-95	Requires State agencies to provide certain taxpayer identification information to the Division of Taxation to assist in collecting delinquent State taxes.	MIS	A-2896
159	6-30-95	Authorizes payments made under State contracts to be set-off against tax debts owed by State vendors.	MIS	A-2897 (1R)
160	6-30-95	Concerns the frequency of returns and payments of gross income tax withholdings by employers, and limits the frequency of electronic funds transfer payments to once a week maximum.	GIT	A-2899 (1R)
161	6-30-95	Establishes a reporting and review system for alcoholic beverage wholesalers and retailers to verify the correct collection and reporting of sales and use taxes on alcoholic beverages.	S&U	A-3006
164	6-30-95	Appropriates funds for State Budget for fiscal year 1995-1996.	MIS	S-4000
165	7-4-95	Reduces the gross income tax rates for taxable years 1996 and thereafter.	GIT	A-100
169	7-5-95	Establishes requirements for ticket brokers concerning the resale of tickets of admissions to places of entertainment.	MIS	S-1227 (3R)
170	7-5-95	Permits residential property to be exempt from special improvement assessment.	LPT	A-2260 (1R)
173	7-6-95	Permits a municipality that has created a Landfill Reclamation Improvement District to impose a franchise assessment fee not to exceed 3% on the sale price of all tangible property sold by a business in the district.	MIS	(1R) SCS for S-1760 SCS
184	7-25-95	Eliminates the sales and use tax on advertising space in telecommunications user or provider directories or indexes.	S&U	A-520/672/ 1146 ACS (2R)

1995 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
196	8-2-95	Establishes procedures to convert a health service corporation to domestic mutual insurer.	MIS	A-2727
222	8-15-95	Provides that limited liability companies may merge or consolidate with other business entities.	CBT	A-2151 (1R)
223	8-15-95	Allows partnerships to merge or consolidate with certain other business entities.	CBT	A-2152 (1R)
224	8-15-95	Allows limited partnerships to merge or consolidate with certain other business entities.	CBT	A-2154 (1R)
245	9-11-95	Requires the receipts factor in the business allocation formula to be double weighted.	CBT	A-89 (1R)
246	9-11-95	Reduces the tax rate from 9% to 7.5% for corporations with annual entire net income of \$100,000 or less.	CBT	A-2927 (1R)
259	11-13-95	Provides for the Division of Taxation to assume the responsibility for generating, printing and mailing the forms used to administer the senior citizen/disabled and the veterans' property tax deductions.	LPT	S-7 (5R)
276	12-15-95	Supplements and amends the Farmland Assessment Act of 1964.	LPT	S-1746 (3R)
279	12-15-95	Allows corporations to merge with certain other business entities after obtaining a tax clearance certificate.	MIS	A-2155 (2R)
290	12-22-95	Permits income tax refunds and homestead rebates to be set-off to reimburse Medicaid for expenses pursuant to a child support order.	GIT	S-2348
293	12-22-95	Establishes a "New Capital Sources Partnership" to promote and support small capital business development.	CBT	A-16 (3R)/ S-1773 (1R)
299	12-22-95	Provides a gross income tax checkoff for the Battleship New Jersey Memorial Fund.	GIT	A-2726 (1R)/ S-1985 (2R)
301	1-3-96	Extends the expiration date of the tax on the sale of litter-generating products to December 30, 2000.	LIT	S-2335 (1R)
304	1-5-96	Increases penalties for the sale and distribution of tobacco products to minors.	MIS	S-279 (2R)
317	1-5-96	Exempts certain radio and television broadcast production equipment from sales and use tax.	S&U	S-1048 (1R)
320	1-5-96	Regulates sale of tobacco products to minors; increases licensing fees for tobacco dealers and vending machines and dedicates revenues to local enforcement.	MIS	SCS for S-1186 (2R)
322	1-5-96	Allows county probation departments and State IV-D agency to receive information about putative fathers and child support obligors, including information on income and assets from the Division of Taxation.	MIS	S-1307 (3R)
345	1-5-96	Permits municipalities to require county tax boards to strike general tax rates rounded up to the nearest half-penny.	LPT	A-717
361	1-5-96	Amends the Unclaimed Property Act with respect to agreements to pay compensation to recover property.	MIS	A-1609 (2R)
375	1-5-96	Permits foreign professional legal corporations to transact business within New Jersey.	MIS	A-2578 (1R)
382	1-9-96	Authorizes seven additional urban enterprise zones.	MIS	A-2606 (3R)
406	1-10-96	Establishes inception and termination dates for certain peacekeeping missions to determine veterans' eligibility for certain State benefits.	LPT	A-485 (1R)
413	1-10-96	Provides for a ten year exemption of property taxes on certain contaminated property.	LPT	ACS for A-1631 (2R)
418	1-10-96	Eliminates the corporation business tax limitation on the deduction of interest owed to certain related parties.	CBT	A-2724 (1R)

Division of Taxation Seizures (October – December 1995)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Ventnor Pizza, Inc. t/a Special Pizza City Egg Harbor Township	10-04-95	Pizza Shop	Reopened
	1401 Arctic Avenue Corp. t/a Ike's Corner Atlantic City	11-13-95	Bar	Liquor License Seized (Business Closed Previously)
	Myosoto, Inc. t/a Reflections - Cocktails Atlantic City	12-05-95	Bar/Restaurant	Open
	Uncle Mike's Country Pine Inn, Inc. Mays Landing	12-07-95	Bar	Open; Liquor License Seized
	Town Tavern, Inc. Atlantic City	12-13-95	Bar/Tavern	Reopened
Bergen	Pasquale's Pizzeria, Inc. Fair Lawn	10-02-95	Pizza Parlor	Bankruptcy
	Rosalia, Inc. t/a Leonia Pizzeria Leonina	10-11-95	Pizza Parlor	Closed
	Valley Liquors, Inc. Wood-Ridge	12-06-95	Liquor Store	Liquor License Seized (Business Closed Previously)
Burlington	Spot Lube Sales, Inc. Edgewater Park	10-03-95	Oil Change/ Auto Repair	Closed
Camden	Dar-Kur, Inc. t/a Old City Brewery Tavern Camden	10-05-95	Bar	Open; Liquor License Seized
	Harford Construction Co. Cherry Hill	10-12-95	Building Contractor	Open
	Spencer Caribbean Inn, Inc. Camden	10-17-95	Bar	Liquor License Seized (Business Closed Previously)
	Bower, Robert D. Clementon	10-25-95	N/A (Individual)	Motor Vehicle Seized
	Bluestein, Martin & Sandra Lindenwold	11-02-95	N/A (Individuals)	Motor Vehicle Seized
	1239 G&G Inc. t/a Camelot Lounge Camden	11-14-95	Bar	Liquor License Seized (Business Closed Previously)
	Cornelius Enterprises, Inc. t/a Little Spot Tavern Somerdale	12-06-95	Bar	Reopened

continued on page 14

taxation seizures - continued from page 13

County	Name/Address	Seizure Date	Business Type	Status
Cape May	Lin-Tee, Inc. t/a Seasons Restaurant Wildwood	12-18-95	Restaurant/Bar	Open; Liquor License Seized
Gloucester	Scoops Liquor Store, Inc. Woodbury	10-18-95	Liquor Store	Liquor License Seized (Business Closed Previously)
	Buoncuore, Concetta Sewell	10-18-95	N/A (Individual)	Motor Vehicle Returned
	Allenham, Inc. t/a Kentucky Fried Chicken Williamstown	11-30-95	Fast Food Restaurant	Closed
	Deptford Auto Parts, Inc. Deptford	12-12-95	Junkyard	Open; Motor Vehicle Seized
Middlesex	Gaur International, Inc. t/a Douglass Mart Liquors New Brunswick	10-02-95	Liquor Store	Reopened
	Comet Electric, Inc. North Brunswick	12-05-95	Electrical Contractor	Closed
	Edison Stationers & Office Supply, Inc. Edison	12-07-95	Stationery Store	Closed
	K&P, Inc. t/a Perri's Liquors Metuchen	12-11-95	Liquor Store	Open
Morris	Acquisition 62, Inc. t/a Anthony's Restaurant Randolph	11-08-95	Restaurant	Closed; Liquor License Seized
Ocean	Augustino, Richard t/a Computer Support & Instruction Beachwood	11-15-95	Computer Sales & Repair	Reopened
	Fujiyama Japanese Restaurant, Inc. Lakewood	11-29-95	Restaurant	Closed
Salem	Roberta, Inc. t/a The Grove Penns Grove	12-13-95	Bar	Liquor License Seized (Business Closed Previously)
Somerset	Kirn, Inc. Green Brook	11-27-95	Restaurant	Closed; Liquor License Seized
Sussex	Demicks Incorporated t/a Minuteman Press Sparta	11-20-95	Printing, Copying	Bankruptcy
Union	Garcez, Ubiratan t/a Junior's Exxon Cranford	12-12-95	Car Repair	Closed

Division of Taxation Auctions (October – December 1995)

County	Name/Address	Auction Date	Business Type
Burlington	Bang, Charney t/a Classic Video Mt. Laurel	11-21-95	Video Store
Camden	Three Star Development Group, Inc. t/a Newstop Voorhees	10-30-95	Newsstand
	Spencer Caribbean Inn, Inc. Camden	12-15-95	Liquor License
Gloucester	Iona Lake Inn, Inc. Franklin Township	10-19-95	Liquor License
Hudson	Pona, Michael & Raymond t/a Pona's Auto & Truck Repair Bayonne	12-11-95	Auto Body Repair
Mercer	Sung, Miyon t/a Classic Video East Windsor	11-21-95	Video Store
Monmouth	Labrador Lounge, Inc. Belmar	11-15-95	Restaurant
Somerset	Bang, Charney t/a Classic Video Hillsborough	11-21-95	Video Store

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Mission sales tax exemption cards are issued for official purposes only and for the sole benefit of the mission identified on the face of the card. Each mission may designate two employees to make official purchases for the mission. Mission cards may not be used by other mission employees. Additionally, the agent may not use a mission card for personal purchases. All purchases must be in the name of the mission and paid for by mission check or credit card.

Mission exemption from hotel taxes is limited to official mission uses. The mission must make the reservations and pay for the accommodations by mission check or credit card using official funds.

Individuals should use their personal tax exemption cards for exemption from hotel room taxes. Personal exemption from hotel room taxes is valid only for members of the bearer's immediate family.

The Department of State takes seriously the improper use of tax exemption cards. In instances where an individual attempts to gain privileges for which he/she is not entitled or for a private business or other commercially-related purposes, the Department of State will revoke the card and would be required to review the individual's continued acceptance in diplomatic status. Misuse of a mission card will result in that card being withdrawn and the requirement that the mission designate another employee as agent.

Questions concerning the use of the Department of State tax exemption cards should be directed to OFM at (212) 826-4500 or (202) 895-3563.

Transfer of Motor Vehicle Subject to Lien — The Division responded to an inquiry regarding the sales tax treatment of the following situation: A repair facility repaired the motor vehicle of a customer who failed to pay the bill. The facility then billed for storage charges which were also not paid. After repeated attempts to collect from the customer, the facility obtained title to the motor vehicle in order to satisfy its mechanic's lien.

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The repair and storage of the customer's motor vehicle were taxable services. N.J.S.A. 54:32B-3(b)(2) & (3). Thus, as the instructions for the Sales and Use Tax Returns state, the repair shop was obligated to pay the sales tax due at the end of the month or quarter in which the taxable services were rendered, even if it had not yet collected the tax from the customer. N.J.S.A. 54:32B-18.

When the repair shop receives title to the customer's motor vehicle to satisfy its mechanic's lien, the motor vehicle, rather than cash, is viewed as the customer's payment for the repair and storage charges. In most cases the value of the motor vehicle will exceed the 6% sales tax liability on the taxable repairs or storage which the mechanic should have paid to the State at the end of each month or quarter during which the taxable services were completed. See generally N.J.S.A. 18:24-23.

Since the transfer of title of the motor vehicle was carried out to satisfy the lien and not in a regular sales transaction, the repair shop's acquisition of title to the motor vehicle is not deemed a taxable transaction.

Motor Vehicle Equipment Purchases by Disabled Veterans From Funds Provided by U.S. Department of Veterans Affairs— A taxpayer wrote to the Division of Taxation inquiring about a refund of a portion of the sales tax paid on the purchase of a new motor vehicle attributable to a payment provided by the U.S. Department of Veterans Affairs pursuant to Federal law.

Federal law at 38 U.S.C.S. 1902 provides for payment by the U.S. Department of Veterans Affairs of authorized amounts for "necessary automotive adaptive equipment" to allow a service-connected veteran with anatomical loss or permanent loss of use of an extremity to safely operate his motor vehicle. The taxpayer had received authorization and payment by check made directly to him for such "necessary automotive adaptive equipment."

The Division advised that exemption from sales tax is provided to the "United States of America and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer..." New Jersey Sales and Use Tax Act N.J.S.A. 54:32B-9(a)(2). The Department of Veterans Affairs is an agency of the United States. However, the Federal government is only immune from State taxation when it is the direct payer and purchaser and legal incidence of the tax falls on the government, not merely the economic burden.

With regard to the taxpayer's purchase, the Federal government is not the direct purchaser, user or consumer of the vehicle or its equipment and did not make payment directly to the vehicle dealer, therefore, it is not a tax exempt U.S. Government purchase. Federal payments made to an individual, regardless of whether they are used for a specific Federally authorized purpose, and subsequently applied to a taxable purchase do not result in a tax exempt government purchase but rather a fully taxable purchase made by the nonexempt recipient of the Federal payments.

Due to the above, the Division of Taxation denied taxpayer's request for a sales tax refund on a portion of his vehicle purchase.

Use of Motor Vehicle Parts — The Division received an inquiry concerning the sales and use tax consequences when a motor vehicle dealership performs repairs for a customer free of charge for customer relations purposes. There is no obligation to perform the service under a service contract or warranty agreement.

Under such circumstances, use tax is due from the dealership on the parts since they are withdrawn from the sales inventory. Since the service is provided by the dealership for no consideration, the dealership is not required to self-assess use tax on the value of labor used in the repair. See N.J.S.A. 54:32B-3(b).

Rental Car Repair — The Division replied to an inquiry concerning the taxability of auto body repair work performed on vehicles belonging to a rental agency.

Repairs made to vehicles used exclusively for rental purposes are exempt under the Sales and Use Tax Act. N.J.S.A. 54:32B-2(e)(1). The rental agency must issue a Resale Certificate (Form ST-3) to the repair shop in order to claim the exemption on labor and parts.

Embroidery Services — If an article of clothing is embroidered or monogrammed prior to its sale to the customer, the embroidery or monogram is considered part of the resale of the item. The retail

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sale of embroidered or monogrammed clothing is exempt from sales tax; the sales of embroidered or monogrammed accessories such as duffel bags, blankets etc. are subject to tax.

If a customer brings in an article of clothing or other property to be embroidered or monogrammed, the charge to embroider/monogram is subject to tax under N.J.S.A. 54:32B-3(b)(1).

The sale of clothing with embroidery/monogram is exempt from tax if the clothing is embroidered/monogrammed prior to the sale to the customer. For example, a shirt costs \$10.00 and you can have initials embroidered on the pocket for \$2.50; the customer pays \$12.50 for the completed article, which is exempt from tax. □

In Our Courts

Gross Income Tax

Sale of Partnership Interest –
Koch v. Director, Div. of Taxation
(No. 003892-94, Tax Ct., 1994).

The Division of Taxation determined that the Kochs had a gross income tax deficiency for tax year 1988. Mr. Koch had received income from the sale of a partnership interest. On their 1988 joint New Jersey return, the Kochs claimed that the income from the sale of the interest was \$50,000. The Division of Taxation determined that the gain was \$268,161. Mr. Koch's lower figure resulted from three factors: (1) he excluded income "received" through a release of indebtedness; (2) he did not lower his basis in the property for partnership losses that he had taken on his Federal income tax

returns but not on his New Jersey returns; and (3) he subtracted the portion of the gain that, for Federal income tax, was characterized as recapture of depreciation.

On the issue of the release of indebtedness, the taxpayer had argued that the release amount was not taxable income because discharge of indebtedness is not a category of income subject to tax under the gross income tax law. The Court rejected this line of reasoning and found that the income was not income from the discharge of indebtedness. The Court emphasized that, in Koch's situation, the debt was released at the time of the sale of the partnership interest and the income was includable as part of the amount received from the sale.

On the issue of whether the basis was to be adjusted down for the losses that were taken Federally, the Court explained that Mr. Koch was arguing for the application of the tax benefit rule. The Court rejected that argument and held that the Federal adjusted basis must be used, as required by the New Jersey income tax statutes.

On the depreciation recapture issue, the Court explained that it is irrelevant that the recapture portion is characterized as recapture depreciation for Federal income tax purposes. The Court held that the recapture portion, like the other income at issue, was includable in the New Jersey income subject to tax. The Division of Taxation assessment was affirmed.

Disposition of Partnership Income –

Schiff v. Director, Division of Taxation, Tax Court No. 000625-94, decided October 31, 1995.

The plaintiffs, the Schiffs, sought review of a Division of Taxation determination of a gross income tax deficiency for tax year 1988 for \$178,593.75, plus penalties and interest. The facts were not in issue. The main issue in the case concerned disposition of partnership property and whether the taxpayers were required to use Federal adjusted basis for determining the amount of gain or loss for New Jersey income tax purposes.

Mr. Schiff had two limited partnership interests that held real estate parcels which, in 1988, were transferred to the mortgage holders, in lieu of foreclosure. During 1988, after the transfers, the partnerships ceased operations.

On their 1988 Federal income tax return, the plaintiffs reported capital gains of \$3,086,111, composed of their distributive shares of the gains attributable to the "foreclosures" on the partnerships' real estate. The Schiffs, however, reported a gain of zero on their 1988 New Jersey gross income tax return. The Division of Taxation determined that the Schiffs should have reported the same amount of gain for New Jersey income tax as they did for Federal income tax.

The Schiffs challenged the Division's determination on two grounds. The first was that they should not be required to use Federal adjusted basis when, for New Jersey tax purposes, they had been unable to use the partnership losses because of the prohibition

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against netting of intercategory gains and losses. The other ground was that their gain realized through the transfers of the real estate was offset by capital losses realized on the disposition of Mr. Schiff's partnership interests.

The Tax Court held against the taxpayers on both issues. On the first issue, the Court explained that the inability to deduct losses because of the prohibition of N.J.S.A. 54A:5-2 against intercategory netting, is irrelevant to the application of N.J.S.A. 54A:5-1(c). Section 5-1(c) mandates the use of Federal income tax basis.

On the second issue, the Court explained that there were two taxable events. One was the disposition of the interest in the partnership, which produced no gain or loss. The other taxable event was the capital gain realized upon the transfers in lieu of foreclosure. The taxpayers were required to calculate the gain by using Federal adjusted basis.

The case also involved an issue concerning whether the Division of Taxation's Notice of Deficiency was timely mailed to the taxpayers. The gross income tax law requires that tax must be assessed within three years after the return is filed. The taxpayers' return was filed on Saturday, April 15, 1989. The Division of Taxation's Notice of Deficiency had a private postage meter postmark of April 17, 1992.

The Court held that the notice was timely. The Court stated that, under N.J.S.A. 54A:9-11(c), since the Schiffs' return had been mailed (filed) on a Saturday, it was deemed to have been filed on April 17, 1989. Based on an

affidavit by a U.S. Postal Service employee, the Court determined that the private postmark proved that the Division mailed its notice on April 17, 1992, which was within the required three year time limit. The assessment was upheld.

Net Gain from Disposition of Property; Credit for Taxes Paid to Another Jurisdiction – *Estate of Guzzardi v. Director, Division of Taxation*, No. 007125-94 (Tax Ct., decided December 6, 1995).

Taxpayer sought to offset an installment sale gain with a capital loss carryover from a previous year allowed for Federal purposes. Taxpayer also sought to claim credit on a 1988 resident return for taxes paid to Pennsylvania on a gain that was taxable in New Jersey in 1988 but which was taxed in Pennsylvania in 1981.

The Court held that the gain could not be offset by a loss carried over from a previous year. This is because, while N.J.S.A. 54A:5-1c provides that net gains from disposition of property are to be determined according to the method allowed for Federal purposes, N.J.S.A. 54A:5-2 makes clear that only losses incurred during the taxable year may be deductible from gains in the same category of income, incurred in that same year.

The Court also held that taxpayer could not claim credit on a 1988 return for taxes paid to Pennsylvania in 1981. The resident credit is allowed only when the double taxation by New Jersey and another state occurs in the same tax year.

Local Property Tax Exempt Status of Nonprofit Organization – *Salt and Light Company, Inc., Plaintiff v. Mount Holly Township, Defendant*, decided November 8, 1995; Tax Court of New Jersey; Docket 000413-95 et al.

Salt and Light Company, a housing and counseling service provider to the homeless, appealed Burlington County Tax Board's affirmation of Mount Holly Township's denial of its property tax exempt status as a nonprofit, charitable organization to the New Jersey Tax Court. Per the municipality, Salt and Light Co. was a lucrative business compensated for their services by various government agencies and by tenant rents and was ineligible for property tax exemption as such. The township's decision was based on the idea that the essential characteristic of a charity is its providing of services the government otherwise would. Since about two-thirds of the homeless clients got government aid which was then passed on to Salt and Light, the government, not the company, was the true charitable provider. Also private motels/hotels similarly compensated for lodging the indigent were not tax exempt. Salt and Light countered that its self-help programs, which included assistance in getting job training, education, child care, and medical services, were not comparable to government subsidized private motel/hotel living arrangements. Also, the fees for Salt and Light's services were less than charged at traditional homeless shelters, rents were below market and their cash balance, atypical that year, was reinvested in the exempt purposes of the organization.

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In its analysis, the Tax Court stated there was no definitive authority in New Jersey as to government payments' singular effect on charitable purpose standing. But under N.J.S.A. 54:4-3.6 partial support by fees received from or on behalf of the beneficiaries of a charity and put to charitable use did not invalidate exemption. The Court reasoned that the statute did not limit the fee amount, other than to require it be partial, and therefore Salt and Light's two-thirds government financing was not disqualifying. The Court in its review of case law acknowledged that there was support for denying charitable exemption to government funded organizations and cited *Presbyterian Homes v. Division of Tax Appeals* and *Weymouth Township v. Memorial Park Family Practice Center*. However, in reversing the Tax Board's denial of Salt and Light's exempt status for 1995, the Court relied, among others, on *Catholic Charities of the Diocese of Camden v. Pleasantville* where exemption was granted and which was alike in that the majority of its clients had received government monies. The Court differentiated between operations like the Memorial Park Center's and Salt and Light Company's, noting that the company was not just a conduit for government subsidies — that while not totally relieving the government's responsibility to the homeless, its lower cost extended services lessened it. Noted too was that of Salt and Light's one-third self-supported clients, none was evicted for nonpayment of rents, as distinguished from nonexempt for-profit housing providers who didn't accept or who evicted individuals without funds. Therefore,

Salt and Light's purpose was charitable. The Court reaffirmed as well that nonprofit status did not require operating at a loss, that it was not negated by excess income nor an increased cash balance in a single fiscal year and concluded in favor of exemption. Also addressed by the Court in this case was a procedural error relative to the County Tax Board's application of omitted assessments.

Appeal of Assessments — *Township of Monroe v. Local Finance Board*, DCA Appellate Division; decided December 19, 1995, Docket #A-2652-94T3.

Held: Avenue of appeal for property tax assessments is through the County Tax Board and the various courts, not the local governing body. Monroe Township's governing body improperly circumvented the statutory assessment appeal procedure provided under N.J.S.A. 54:3-21 by attempting to abate some of a retirement community's condominium owners property taxes for 1994 who failed to pursue their right of appeal based on the alleged unfulfilled promise of the municipal tax assessor to collectively reduce their property values. Taxpayers' right of appeal was lost through their own inaction; therefore, an extension of the appeal deadline was not warranted. N.J.S.A. 54:4-99 and 100, the authority under which the township offered abatement and which was correctly interpreted by the State Divisions of Taxation and of Local Government Services to apply to illegal assessments and past due taxes, was not applicable in this case. Further, taxes which are too high or low, i.e., discriminatory, are not illegal in the context of the abatement

statute. The Local Finance Board, Division of Local Finance, Department of Community Affairs, acting in its capacity as financial regulator of local governments, exercised appropriate judgment in upholding the Divisions' joint order for withholding abatement. The Township of Monroe has filed a petition for certiorari with the New Jersey Supreme Court.

Sales and Use Tax Exemption for Commercial Fishing Head Boats — *Helper v. Director, Division of Taxation*, No. 011584-93 (Tax Court, decided October 17, 1995).

The Court determined that plaintiff's purchase of a boat in Texas was not exempt from New Jersey use tax because it satisfied only one of the requirements for exemption under N.J.S.A. 54:32B-8.12. Because the boat owner's customers were usually groups, and generally he did not charge individuals "by the head," the boat was a "charter boat," not a "head boat." In addition, because the boat was used primarily by divers, sport fishing was not its primary use. □

In Our Legislature

Corporation Business Tax Interest Owed to Stockholders — P.L. 1995, c.418 (signed into law on January 10, 1996) eliminates the Corporation Business Tax limitation on the deduction of interest owed to certain related parties. This legislation is effective immediately and applies to fiscal or calendar accounting years ending after its enactment.

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Gross Income Tax

Set-off for Expenses Paid by Medicaid — P.L. 1995, c.290 (signed into law on December 22, 1995) permits income tax refunds and homestead rebates to be set-off for reimbursements due to Medicaid for medical expenses pursuant to a child support order when the taxpayer has received payment from a third party for the cost of the health care services. This legislation is effective immediately and applies to medical payments received by the taxpayer on or after April 1, 1995.

Checkoff for " Battleship New Jersey Memorial Fund " — P.L. 1995, c.299 (signed into law on December 22, 1995) establishes the Battleship New Jersey Memorial Fund and provides taxpayers with an opportunity to contribute to the Fund by designating a portion of their refund or by making a donation at the time of filing their New Jersey income tax returns. This legislation is effective for tax years beginning on and after January 1, 1996.

Litter Control Tax

Tax Extended — P.L. 1995, c.301 (signed into law on January 3, 1996) extends the expiration date of the tax on the sale of litter-generating products to December 30, 2000. This legislation is effective immediately.

Local Property Tax

General Tax Rate — P.L. 1995, c.345 (signed into law January 5, 1996) permits municipalities to require county tax boards to strike general tax rates rounded up to the nearest half-penny. This takes effect January 1 next following enactment.

Deduction Form Distribution — P.L. 1995, c.259 (signed into law November 13, 1995) originally included provisions transferring responsibility for the administration of the senior citizen/disabled property tax deduction and veterans' property tax deduction to the Division of Taxation. Governor Whitman vetoed this provision and recommended that the Division instead assume responsibility for generating, printing and mailing the forms used in the administration of these deductions. The Governor's recommendation, which was adopted, will not become effective until the 1997 tax year. Municipalities will continue to process the applications and administer the programs. For clarification purposes, it should be noted the requirement that property owners be notified annually of their assessment as provided in P.L. 1991, c.75 remains in place. Because of inadvertent bracket omissions in Chapter 259, some people erroneously believe the annual assessment notice is no longer necessary. This law also relaxes certain State imposed mandates and revises and repeals parts of statutory law.

Contaminated Property Tax Exemption — P.L. 1995, c.413 (signed into law January 10, 1996) cited as the "Environmental Opportunity Zone Act" provides for the ten year exemption of property taxes on certain contaminated property. A municipal ordinance must be adopted on the parcel of real property for which exemption is sought. The property must be in need of a remediation due to a discharge or threatened discharge of a contaminant, and listed in the most recent Department of Environmental Protection

publication of known hazardous discharge sites.

The approved exemption must be evidenced by a financial agreement which provides that the applicant pay to the municipality an amount in lieu of real property taxes. The in lieu of property tax amount is predicated on a schedule of increasing percentages of the amount of tax otherwise due. The assessed value of the property at the time the exemption is approved by the assessor is to be used in calculating this amount.

Farmland Assessment Act Amended — P.L. 1995, c.276 (signed into law December 15, 1995) supplements and amends the Farmland Assessment Act (P.L. 1964, c.48). Primarily, the definition of land devoted to an agricultural use was amended to include the boarding, rehabilitating or training of livestock. The fees received from these uses may be included to meet income requirements of the Act where the land used for such purposes is contiguous to land otherwise qualifying for farmland assessment. Land under seasonal farm markets selling predominately agricultural products, and land under seasonal agricultural labor housing is also deemed to be devoted to an agricultural use in this law. A provision of the law also exempts the owner of the land from the income requirements where the failure is attributable due to injury, illness or death of the person responsible for producing the income. The owner must request the exemption and provide a physician's statement or death certificate, as the case may warrant.

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Amended Veteran Property Tax Benefit Dates — P.L. 1995, c.406 (signed into law January 10, 1996) revises and adopts certain active service dates for veterans' property tax deductions and exemptions.

Changes affect the termination date of the Lebanon Peacekeeping Mission and the beginning date of the Grenada Peacekeeping Mission. A list of all missions and dates either formally adopted or revised by the enacted statute follows.

Mission: Operation "Desert Shield/Desert Storm"

Inception: August 2, 1990

Termination: Ongoing

Mission: Panama Peacekeeping

Inception: December 20, 1989

Termination: January 31, 1990

Mission: Lebanon Peacekeeping

Inception: September 26, 1982
(Extended from Feb. 26, 1984)

Termination: December 1, 1987

Mission: Grenada Peacekeeping

Inception: October 23, 1983
(Extended from October 25, 1983)

Termination: November 21, 1983

World War I and World War II dates, and the Vietnam and Korean conflict dates have not been changed by this act which takes effect on the enactment date of January 10, 1996.

Miscellaneous

New Jersey Business Corporation Act — P.L. 1995, c.279 (signed into law on December 15, 1995) allows the merger or consolidation of corporations with certain other business entities including partner-

ships, limited partnerships and limited liability companies. Such mergers will require obtaining tax clearance certificates. This legislation is effective immediately, except that the sections permitting corporations to merge or consolidate with other business entities remain inoperative until 90 days after enactment.

New Capital Sources Partnership

— P.L. 1995, c.293 (signed into law on December 22, 1995) establishes a "New Capital Sources Partnership" to encourage, promote and support small capital business development in this State. This legislation is effective on the 60th day following enactment.

Penalties for Selling Tobacco

Products to Minors — P.L. 1995, c.304 (signed into law on January 5, 1996) increases penalties for the sale and distribution of tobacco to a minor under the age of 18 years and gives the Division the authority to suspend or revoke the license of a retail dealer. This legislation is effective 90 days after enactment.

Sale of Tobacco Products

— P.L. 1995, c.320 (signed into law on January 5, 1996) authorizes the Commissioner of Health to regulate the sale of tobacco products to minors; increases the licensing fee for retail tobacco dealers and vending machines, and dedicates revenues to local enforcement. The legislation also requires the Division to provide the Commissioner of Health with information about retail tobacco licensees necessary to carry out its enforcement responsibilities under the act. This legislation is effective January 1, 1996.

Child Support Enforcement

— P.L. 1995, c.322 (signed into law on January 5, 1996) allows county probation departments and the State IV-D agency to receive information contained in the records of the Division of Taxation concerning reputed fathers and child support obligors. The State Tax Uniform Procedure Law was amended to allow release of information relating to an obligor's sources of income or assets. This legislation is effective immediately.

Unclaimed Property — P.L. 1995, c.361 (signed into law on January 5, 1996) amends the Unclaimed Property Act concerning agreements to recover property for a fee. Agreements entered into before the property is presumed abandoned are valid only if the fee or compensation agreed upon is not more than 35% of the value; the agreement is in writing, signed by the apparent owner, and clearly sets forth the nature and value of the property after the fee or compensation has been deducted. Agreements made within 24 months after the date that property is paid or delivered to the administrator are void and unenforceable. Agreements entered into any time after the 24 month period are valid only if the fee or compensation agreed upon is not more than 20% of the value of the property recovered; the agreement is in writing; and if certain other conditions are met. This legislation is effective immediately.

Foreign Professional Legal Corporations

— P.L. 1995, c.375 (signed into law on January 5, 1996) permits foreign professional legal corporations to transact business within New Jersey. Such a corporation may render legal

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services of the type provided by attorneys-at-law in this State provided that it secures a certificate of authority from the Secretary of State and every shareholder or employee providing legal services here is an attorney-at-law licensed and eligible to practice in New Jersey under the Rules of the Supreme Court. This legislation is effective 120 days after enactment.

Sales and Use Tax

Exemption for Radio and Television Broadcast Production

Equipment — P.L. 1995, c.317 (signed into law on January 5, 1996) amends the Sales and Use Tax Act to exempt the sale of machinery, apparatus or equipment, other than that used in constructing or operating towers, to a commercial broadcaster operating under a broadcasting license issued by the Federal Communications Commission for use or consumption directly and primarily in the production or transmission of radio or television broadcasts. This legislation is effective April 1, 1996.

Urban Enterprise Zones

New Zones Designated — P.L. 1995, c.382 (signed into law on January 9, 1996) approved the designation of seven additional urban enterprise zones. The new enterprise zones will be located in East Orange, Guttenberg, Hillside, Irvington, North Bergen, Pemberton Township and West New York. The total number of zones will increase to 27 covering 29 municipalities. This legislation is effective on April 1, 1996. □

tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
		1 ☞	2	3	4	5	6
1	7	8	9	10 ☞	11	12	13
9	14	15 ☞	16	17	18	19	20
9	21	22 ☞	23	24	25 ☞	26	27
6	28	29 ☞	30 ☞				

April 1

NJ-500 Gross Income Tax—
Employer's semi-monthly return

April 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

April 15

CBT-100/ Corporation Business Tax—
CBT-100S Annual return for accounting period ending December 31
CBT-150 Corporation Business Tax—
Installment payment of

continued

April 15 - continued

estimated tax for 4th, 6th, 9th or 12th month of current tax year

HR-1040 Homestead Property Tax Rebate— Application

NJ-500 Gross Income Tax—
Employer's semi-monthly, monthly and quarterly returns

NJ-1040 Gross Income Tax— Resident return for calendar year filers

NJ-1040NR Gross Income Tax—
Nonresident return for calendar year filers

NJ-1041 Gross Income Tax— Fiduciary return for calendar year filers

NJ-1065 Gross Income Tax—
Partnership return for calendar year filers

NJ-1040ES Gross Income Tax— Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

continued

April 22 - continued

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—Monthly return

April 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

April 30

NJ-500 Gross Income Tax—
Employer's semi-monthly return

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
6	26	27	28	29	30	31	

May 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

May 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending January 31
- CBT-150 Corporation Business Tax**—Installment payment of

continued

May 15 - continued

- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

May 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

May 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

May 28

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

May 31

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
1	2	3	4	5	6	7	8
9	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
6	23	24	25	26	27	28	29

June 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

June 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending February 29

continued

June 17 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

June 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

June 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

June 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

New Jersey Taxation Home Page

The Division is now online! World Wide Web users may now find answers to their tax questions by pointing their web browser at <http://www.state.nj.us>. At the New Jersey State Home Page, click on state agencies until you reach the Division of Taxation. Taxation's home page includes:

- Instructions for resident and nonresident returns
- Tax Topic Bulletins on income tax and sales and use tax
- Order forms for mail delivery
- Answers to frequently asked income tax questions
- New Jersey *State Tax News*
- Information about the Division including Organization chart with phone numbers, taxes collected by the Division and a description of Division activities

Many Tax Topic bulletins and form instructions may be downloaded directly by taxpayers. Future plans include the placement of certain forms on the home page so they may also be downloaded as needed. If you have suggestions about what else should be part of the Division's home page, please send your comments to feedback@state.nj.us.

New Jersey State Tax News

Winter 1995

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New Format for Returns

The New Jersey resident income tax return has a new look in 1995. Every line of the redesigned form provides the preparer with a series of boxes in red "drop out" ink to accommodate each digit of the relevant numeric entry. The information will be scanned electronically, resulting in faster, more accurate processing of returns. Some line numbers on the NJ-1040 resident return have changed from last year because of the new format.

Information from both the NJ-1040 and the HR-1040 will be scanned electronically. When completing these forms, make sure

continued on page 2

Separate HR-1040

For tax year 1995, the Homestead Property Tax Rebate Application (Form HR-1040) is now a stand-alone form. This change was designed to simplify the filing of the HR-1040 for those qualified homeowners and tenants who are not required to file a State income tax return.

File the rebate application (Form HR-1040) and the New Jersey Income Tax Resident Return, if required, by the due date of the State income tax return, generally April 15. If an extension of time to file the income tax return is requested, the rebate application must be filed together with the tax return by the extended due date. □

Interest 11.5% for Fourth Quarter

The interest rate assessed on amounts due for the fourth quarter of 1995 is 11.5%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%

important phone numbers

Tax Hotline.....	609-588-2200
Recorded Tax Topics.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corporate Mergers, Withdrawals & Dissolutions.....	609-292-5323
Corporate Tax Liens.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5035
.....	609-292-5035
.....	609-292-7147
Local Property Tax.....	609-292-7221
Motor Fuels Tax	
Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

return format - from pg. 1

that the numbers entered are legible. All numbers must be within the red frame of each box. **Do not staple, tape or clip** anything to the NJ-1040 or HR-1040. This includes W-2s, 1099s, check or money order, schedules or copies of other states' tax returns. **Enclose** these and any other pertinent items in the envelope with the form(s). □

Telefile Program

Beginning January 16, 1996, the Division of Taxation will implement a Telefile pilot program which will allow certain New Jersey residents to file their 1995 income tax returns and homestead rebate applications by telephone. During the pilot program, the number of filers will necessarily be limited to pre-selected taxpayers but the program will be expanded the following year to permit many more taxpayers to take advantage of this new program. Studies show that close to one out of every three New Jersey resident taxpayers could file their tax returns by Telefile.

The advantages of Telefile are many. It is quick; it is easy and it is accessible. The system will be available 24 hours a day, 7 days a week beginning on Tuesday, January 16, 1996. Telefile returns will be accepted up until midnight Monday, April 15, 1996. □

GROSS INCOME TAX

Reporting Business Income

The organization and operation of a particular business enterprise dictates the category(s) that busi-

ness enterprise's income or loss is reportable in for New Jersey Gross Income Tax purposes. Individuals may derive income from enterprises organized as sole proprietors, partnerships, or S corporations. The individual's income or loss is required to be reported in the appropriate category of income, specifically, "Net Profits from Business," "Net Distributive Share of Partnership Income" plus flow-through items by category, and "Net Pro Rata Share of S Corporation Income," respectively.

The taxpayer may not reclassify and report one form of business income or loss as another, for example, "Net Distributive Share of Partnership Income" as "Net Profits from Business" and vice versa.

All choices affecting the computation and classification of partnership income are made by the partnership. The individual partner must report the items shown on their Schedule NJK-1 (Form NJ-1065) (or as reported on the Federal Form 1065 K-1 if no Schedule NJK-1 is received). The individual partner may not reclassify any item of income, loss or deduction/expense reflected on their K-1 any more than an employee-type taxpayer is permitted to reclassify or alter amounts reported on their W-2.

A new category of income, "Net Pro Rata Share of S Corporation Income," was created with the passage of legislation recognizing S corporations for New Jersey tax purposes. This applies to tax years beginning after July 7, 1993. Unlike the New Jersey and Federally recognized flow-through treatment of income, gain or loss earned by a partnership, S corporation income, gain or loss DOES NOT retain its category character when flowed-

through to the individual shareholders. Rather, the income is combined to form the single category, "Net Pro Rata Share of S Corporation Income."

Example:

An individual taxpayer in the business of real estate development acquires, fixes up, and leases

continued on page 3

New Jersey State Tax news

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

Division of Taxation Director:

Richard D. Gardinar

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Editor:

Linda B. Hickey

business income - from page 2

properties. Each property was organized and operated as a separate business enterprise, either as a partnership or an S corporation. The individual taxpayer solicits and secures investors for the various business enterprises. Occasionally the individual taxpayer would not seek additional investors and would hold the property as a sole proprietor.

From operations in 1994 the individual taxpayer filed a Schedule C and Schedule E as part of his Federal return. The Federal filing characterized the income as follows:

One Schedule C business "Properties Mine" Net Income	\$10,000
Listed on Schedule E: Partnership A "Olde Shoppe Center"	(200,000)
Partnership B "Apartment Property"	50,000
S Corporation 1 "Low Cost Housing Inc."	150,000
S Corporation 2 "Cheap Digs Corporation"	(25,000)

Also on the Federal return were other items of income derived from the partnership and S corporations. These items were reported to the individual partner/ shareholder by the businesses on the Form 1065 K-1s and Form 1120S K-1s.

	IRC& Interest	1231 Gain
Partnership A	\$100	
Partnership B	250	\$500,000
S Corporation 1	125	
S Corporation 2	225	

On the New Jersey return, the resident taxpayer reported Sched-

ule C income of \$485,700 which represents the net of all items of income from all the real estate businesses.

On audit the Division of Taxation would make the following **adjustments** reflecting the income in its proper category for New Jersey Gross Income Tax purposes:

	Adjustments
Interest (from Partnerships A & B)	\$350
Net profits from business (Schedule C) (Net profits from business will be \$10,000)	(475,700)
Net gains or income from disposition of property	500,000
Distributive share of partnership income (Net of Partnerships A & B is a \$150,000 loss)	0
Net Pro Rata share of S corporation income (Net of S Corporations 1 & 2)	<u>\$125,350</u>
Total Change - Increase to Income	\$150,000

In order to properly complete an individual New Jersey Gross Income Tax return, each individual must treat income and loss information consistent with the form in which they receive that information. The individual taxpayer may not reclassify income in a fashion that is inconsistent with the way each business enterprise reported it to them.

To further aid the taxpayer the Division of Taxation has made available Tax Topic Bulletin GIT-9, *Income from Partnerships and S Corporations*. The 44-page booklet, written for individuals, can be requested from NJ TaxFax

at (609) 588-4500 or by dialing (609) 588-2200.

□

Information for Juror Source List

P.L. 1995, c.44 (signed into law on March 7, 1995) revises the law relating to the selection and impaneling of juries. The legislation provides that the names of persons eligible for jury service will be selected from a single juror source list of county residents whose names and addresses shall be obtained from lists of registered voters, licensed drivers, and filers of gross income tax returns and homestead rebate applications.

Accordingly, the Division of Taxation will provide, annually, a list of the names, addresses and social security numbers of gross income tax and homestead rebate filers to the Administrative Office of the Courts for the purpose of compiling a juror source list. □

William Kingsley, Director

William Kingsley, former Director of the New Jersey Division of Taxation, died on October 9, 1995 at the age of 93.

Mr. Kingsley, who had been with the Division for 35 years, served as Deputy Director from 1958 to 1960, and as Acting Director from 1961 until he retired in 1969.

A 1929 graduate of the New Jersey Law School, Mr. Kingsley was also a member of the National Tax Association.

Page 4 – left blank

CORPORATION TAX
**Tax Clearance
 and Dissolution**

The Division has received numerous inquiries questioning whether or not a tax clearance certificate is required in all dissolution cases. The following is a summary of the *NO FEE* dissolution and dissolution *WITHOUT ASSETS* provisions available to certain taxpayers.

In accordance with Section 14A:12-2 of the statutes, a corporation may dissolve "before commencing business" provided that it:

- (a) has not commenced business;
- (b) has not issued any shares;
- (c) has no debts or other liabilities; and
- (d) has received no payments on subscriptions for its shares or, if it has received such payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

Section 14A:12-4.1 provides for a dissolution "Without Assets" if the corporation:

- (a) has no assets;
- (b) has ceased doing business and does not intend to commence doing business; and
- (c) has not made any distributions of cash or property to its shareholders within the last 24 months and does not intend to make any distribution following dissolution.

Corporations wishing to dissolve under the provisions of the above referenced statutes may file a certificate of dissolution with the New Jersey Secretary of State without the necessity of obtaining a tax

clearance certificate from the Director, Division of Taxation. However, there is no provision within these statutes which exempts a corporation from filing returns with the Division. All returns must be filed and paid up to the date of filing of the certificate of dissolution. □

INHERITANCE/ESTATE TAX
**Nonresident
 Inheritance Tax**

The nonresident inheritance tax is a tax on the transfer by a nonresident decedent of real and tangible personal property located in this State. If the property passes by will or intestacy, the tax is computed using the nonresident ratio tax method, unless the transfer is by specific devise. Property passing by specific devise or to a surviving joint tenant, a transfer made in contemplation of death within three years of decedent's death and transfers intended to take effect at or after death are taxed directly to the transferee at the resident rates.

The purpose of the ratio tax is to equalize the rate of tax imposed on resident and nonresident estates. The tax assessed will be a percentage of that which would be assessed against an estate if the decedent had died a resident of this State. That percentage is determined by finding the ratio of the New Jersey real and tangible personal property to the total estate everywhere.

In determining the amount due, a tax is first computed on the decedent's entire estate, wherever situated, as if the decedent was a New Jersey resident and his entire estate was located here. This hypothetical resident tax is then multiplied by the ratio that the New Jersey real

and tangible personal property bears to the entire estate, wherever situated. The tax is computed as follows:

$$\frac{\text{NJ Real and Tangible Personal Property}}{\text{Entire Estate}} \times \frac{\text{Tax on Entire Estate}}{\text{Estate}} = \text{Tax Due}$$

Like resident returns, the nonresident inheritance tax return is due within eight months of the decedent's date of death. Form IT-NR is the inheritance tax return utilized for reporting a nonresident's estate. If the transfer of the taxable property is subject to the ratio tax, the estate has the option of two methods of reporting the estate and computing the tax. The "flat tax affidavit" ratio method utilizes the gross estate, both within and outside of New Jersey, while the "full disclosure" ratio method utilizes the net estate. Worksheets are provided for the computation of the tax under either method.

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Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

Beginning in 1996 (1995 tax returns), the New Jersey Division of Taxation will accept electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

Waivers are issued for New Jersey real estate only. They are not required for the release of tangible personal property. The release of any New Jersey intangible personal property is accomplished by affidavit of domicile submitted directly to the bank, transfer agent, etc., each of whom has the authority to release those assets without a waiver if they have determined that the decedent was not a resident of New Jersey. Nonresident estates containing only New Jersey intangible personal property need only to follow this same procedure, there being no filing requirement.

There is no New Jersey Estate Tax assessed on estates of nonresidents.

□

Electronic Data Interchange

On September 1, 1995, the Division of Taxation, Field Audit Branch, established the Electronic Data Interchange (EDI) Consulting Group. This group is headed by Robert W. Shickora, Supervising Auditor, and is located in Somerville. Mr. Shickora has been involved in computer related activities for Field Audit and the Division of Taxation since 1982. Most recently, he has been the representative for the New Jersey Division of Taxation to the American National Standards Institute's Accredited Standards Committee for X12. This committee has the responsibility of approving all Electronic Data Interchange standards.

One of the main functions of the EDI Consulting Group is to meet with taxpayers and review their EDI systems to offer comments on whether or not proper controls and data retention are in place to sat-

isfy the State's record keeping requirements.

In order to identify EDI users among taxpayers, a questionnaire has been developed and will be mailed to target taxpayers, tax professionals and industry leader groups such as TEI, COST, etc. The offer to take advantage of this free consultation service is being presented to all taxpayers which we believe to be a better alternative than waiting for other contact by the Division, i.e., an investigation, or audit, which could result in the taxpayer being out of compliance with the State's regulations.

Additionally, the EDI group will be responsible for redesigning and enhancement to our current system of computer auditing. This will include moving audit data that is currently processed on the mainframe computer of the Department of the Treasury to a secure PC operation, thus saving expensive mainframe costs and speeding up turnover time. In addition, we will be assisting in the enhancement of PC applications to accommodate the newly developed EDI/Auditing procedures.

To avail yourself of the services offered, contact the EDI Consulting Group at:

Electronic Data Interchange
Consulting Group
75 Veterans Memorial Drive East
Suite 103
Somerville, NJ 08876
(908) 704-3080 □

Pennsylvania Amnesty Program

On October 13, 1995, Pennsylvania began its first-ever Tax Amnesty Program, which will run until January 10, 1996. The program applies to nonresident as well

as resident businesses and individuals.

During the 90-day tax amnesty period, taxpayers owing Pennsylvania taxes can come forward, make full payment of their delinquent state taxes plus interest without paying penalty. Those who take advantage of tax amnesty must also remain current in their reporting for a minimum of two years or risk losing the benefits of tax amnesty plus incurring additional penalties.

Delinquent taxpayers who do not take advantage of the Tax Amnesty program by January 10, 1996, will have an additional 15 percent penalty levied on all past due taxes, interest and penalty.

The Department of Revenue, which is required by law to notify tax delinquents about the amnesty program, has sent notices to over 500,000 known delinquents.

Eighteen different state taxes, such as business, sales and use, personal and motor fuels taxes, are included in tax amnesty. Taxes which are not included are: Federal or local government taxes, Unemployment Compensation Tax, Passenger Car Rental Tax, Public Transportation Tax, the \$1 tire tax or local sales taxes.

To qualify for tax amnesty, delinquent taxpayers must: have failed to file a return or pay any tax due and payable on or before December 31, 1993; owe state taxes, interest or penalties for periods due prior to December 31, 1993; or have underreported taxes on any tax return due on or before December 31, 1993. Those under criminal investigation by the PA

continued on page 7

PA amnesty program - from page 6

Department of Revenue are NOT eligible for tax amnesty. Also, taxes due after December 31, 1993 are not included in tax amnesty; penalty will not be abated for taxes due after December 31, 1993.

After January 10, 1996, the Department will begin an aggressive enforcement effort, including the use of new computer technology in addition to the 15 percent non-participation penalty. The Keystone Integrated Tax System, a new computer technology system, is slated to go on-line in mid-January and will enhance processing and increase the ability to identify delinquent taxpayers.

A first for the Department of Revenue includes the use of the internet. The Department has information available on the World Wide Web. The homepage address is: <http://www.epix.net/homepage/parev>. Information is also available 24 hours a day by calling 1-800-2-AMNESTY (226-6378). □

LOCAL PROPERTY TAX F.E.A.C. Adopts Values for 1996

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 30, 1995 at the Philip Alampi Laboratory in West Trenton to adopt productivity assessment values for land receiving farmland assessment in 1996. The thirty-second Report of the Committee (showing the value ranges adopted) is mailed to municipal tax assessors and county boards of taxation by October 1 of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its agricultural

or horticultural use rather than its true or market value.

The farmland productivity values adopted by the Committee for the 1996 tax year increased in 16 of the 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20 to \$40 per acre when compared to 1995 values. Overall net farm income of land in agricultural and horticultural use in New Jersey is estimated to have increased approximately 3.8% over the prior year. □

LOCAL PROPERTY TAX Farmland Acreage Declines

A report summarizing data from farmland assessment applications (Form FA-1) has recently been completed. The study shows that total acreage devoted to agricultural or horticultural use in 1994 was 1,177,419 acres for the entire State.

The data for tax year 1994 reflect a continued decline in the amount of qualified farmland since enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 7.4% or a total of 94,463 acres.

24.50% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem, with 58.7%, has the greatest proportion of its land qualified under the Act. Other counties with large percentages of

qualified farmland are: Hunterdon, 52.9%; Warren, 50.6%; Gloucester, 38.9%; Sussex, 34.9% and Mercer, 33.6%. □

LOCAL PROPERTY TAX Reimbursements Certified

The 1995 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1995.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1995.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1995 was \$37,320,559. That amount represents a decrease of 4.2% from 1994.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1995 was 148,619. When compared to tax year 1994 the number of deductions decreased 3.2%.

The total amount of veterans deductions for 1995 was \$18,438,452. That amount represents a decrease of 2.6% from 1994.

The total number of veterans deductions for 1995 was 369,795. When compared to tax year 1994 the number of deductions decreased 2.3%. □

LOCAL PROPERTY TAX Income Guidelines for \$250 Deduction

The Revised 1995 Income Guidelines For Real Property Tax Deduction for Senior Citizens, Disabled Persons and Surviving Spouses have been sent to tax assessors, tax collectors, county tax board commissioners, and county tax board administrators. These guidelines pertain to Property Tax Deduction Claims (Form PTD) for tax year 1995 and Annual Post-Tax Year Statements (Form PD5) filed by March 1, 1996. A statutory definition of income as well as further related information provided in the New Jersey Administrative Code can be found in this distribution. Recent inquiries concerning "rental income" have been referred to this memorandum wherein "N.J.A.C. 18:14-1.1 defines 'business income' as gross income derived from business, trade, profession or the rental of property after deductions of the ordinary and necessary expenses of the business, trade, profession or rental of property as allowed under the Federal Internal Revenue Code and regulations." It is important to remember that although the guidelines were revised two years ago, the statutory and regulatory bases have not changed. The guidelines also contain various income scenarios illustrating the amount of deduction allowed (maximum 1995 Social Security benefit is \$14,421) and the eligibility status of the claimant. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

January 1-

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.

January 10-

- Notice of material depreciation to structure occurring after October 1 and before January 1, given to assessor by taxpayer.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- One copy of each FA-1 application form for Farmland Assessment forwarded to Property Administration, Division of Taxation, by tax assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Statement of estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1-

- Notices of current assessment and preceding year's taxes issued to taxpayer by tax assessor.
- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding

year's taxes, or change in assessment extended by County Tax Board for any taxpayer aggrieved by the assessed valuation of his property or of other property in the county.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Schedule of office hours for assessors summarized by County Tax Administrator and furnished to Director, Division of Taxation.

March 1-

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the court house.

March 10 (before)-

- Equalization table hearings completed by County Tax Board.

March 10-

- Confirmed equalization table sent by County Board of Taxation to each taxing district in the county, to Director, Division of Taxation, and to the Tax Court.

□

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Thirty-five persons passed the examination for the tax assessor certificate held on September 30, 1995:

Bergen County: Daniel M. Haber, Fort Lee Borough; Timothy J. Henderson, Fair Lawn Borough.

Burlington County: James A. Jeffers, Jr., Mount Holly Township; Ernest R. Darpino, Medford Lakes Borough; Leo J. Solomon, Medford Township.

Camden County: Glenn Sudeck, Voorhees Township.

Cape May County: Donald F. Springer, Lower Township.

Essex County: Sandra L. Barrows, Caldwell Borough Township; Robert M. Noesner, Maplewood Township; Richard C. Noonan, South Orange Village Township.

Hudson County: Joan M. Comp, Kearny Town; Jennifer Mattaliano, Bayonne City.

Hunterdon County: Eileen A. Centalanza, Holland Township;

Stephen T. Carr, Readington Township.

Mercer County: William S. Borden, Jr., Princeton Borough; Mario DiStefano, Trenton City.

Middlesex County: Marie K. Bober, Woodbridge Township; Franklin P. Colon, Old Bridge Township; Richard T. Duda, Woodbridge Township; Gale Lee, Sayreville Borough; Anne M. Major, Sayreville Borough; Rodney B. Patterson, New Brunswick City.

Morris County: Lisa A. Reinhart, Mount Arlington Borough; Debra A. Secola, Dover Town.

Ocean County: Lawrence G. Caprio, Lacey Township; Linda M. Solakian, Jackson Township.

Passaic County: William N. Bradley, Jr., Pompton Lakes Borough; Michael A. Keough, Pompton Lakes Borough; John K. Marchione, Clifton City.

Somerset County: Antonio R. DiRado, Raritan Borough; Barbara A. Flaherty, Hillsborough Township; Carolyn J. Moore, Branchburg Township.

Sussex County: Robert G. Cooper, Jr., Byram Township.

Union County: Dennis M. Noonan, Cranford Township.

Warren County: Richard J. Motyka, Hope Township.

The next exam is scheduled for March 30, 1996. The last date for accepting applications for this exam is February 29, 1996. Admission to the exam will be by application only. There is a filing fee of \$10.00.

Write to:
Assessor Certification
Property Administration
Division of Taxation
CN-251
Trenton, New Jersey 08646-0251
□

**Criminal
Enforcement**

Criminal Enforcement over the past several months included:

- A Federal grand jury indicted 25 people with taking part in an elaborate "daisy chain" scheme that defrauded New Jersey and the Federal Government out of more than \$140 million in tax revenues on approximately half a billion dollars of motor fuel sales. Fifteen of those indicted are émigrés from the former Soviet Union. The charges include conspiracy, fraud, tax evasion and money laundering. This indictment, which is the biggest criminal motor fuel excise tax indictment in US history, is another case resulting from the joint undercover investigation "Operation Red Daisy." If convicted on all counts charged, the defendants face Federal prison terms and millions of dollars in fines, in addition to restitution.

New Jersey tax forms at your fingertips!
From your fax machine's phone, dial

609-588-4500

NJ TaxFax

**NJ Tax Forms & Publications
24 Hours – 7 Days a Week**



criminal enforcement - from pg. 9

- Howard R. Levy, president of Toy Box, Inc., was indicted on five counts relating to the evasion of New Jersey taxes. The counts included the failure to file or filing false or fraudulent tax returns, and the failure to turn over sales tax as required with the intent to evade. The offenses, which took place between January, 1992 and April, 1994, were uncovered in a joint investigation with the Monmouth County Prosecutor's Office.
- Elliot Mack, President of Acme Liquors, pled guilty in Essex County Superior Court to an accusation charging misapplication of entrusted funds. Between July 1990 and June 30, 1995, Mack collected \$78,074.56 in New Jersey sales tax which he subsequently misappropriated. The plea agreement mandates Mr. Mack to pay the sales taxes, penalties and interest on the misappropriated funds by December 31, 1995. He was also ordered by the judge to sell his liquor license.
- Winnie Demkowicz, President of Laurina Enterprises Inc., a bar and restaurant located in Elizabeth, New Jersey, waived Grand Jury Indictment and has requested entrance into the Pre-Trial Intervention Program. Ms. Demkowicz, who pled to a charge of misapplication of entrusted funds, collected \$43,591.04 in sales tax between July 1, 1990 and September 30, 1993 which she subsequently misappropriated. Ms. Demkowicz has made restitution to the State of the taxes she stole.
- James H. Haluszka, the former Chief Financial Officer of Ocean Gate Borough and the subject of an investigation of irregularities within the borough offices, received a seven count indictment on October 17, 1995 by the Ocean County Grand Jury. Included in one count for Official Misconduct, was Haluszka's failure to file and remit New Jersey withholding taxes for 1993 and 1994 for borough employees. Brenda Chapman, a member of the Division's Office of Criminal Investigation activity, was cited by the prosecutor's office for her professionalism and expertise in analyzing the financial records.
- Three cigarette tax cases resulted in the arrest of individuals for transporting and possessing cigarettes not bearing NJ revenue stamps. A total of 2,736 cartons were confiscated. □

Enforcement Summary

Civil Collection Actions Quarter Ending - September 30, 1995

Following is a summary of enforcement actions for the quarter ending September 30, 1995.

Certificates of Debt

During the quarter ended September 30, 1995, the Division filed 3,947 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$33.7 million.

Levies

\$2.15 million was collected by Field Investigations as a result of executing against 347 non-

compliant taxpayers. In addition, \$107,812 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending September 30, 1995, 33 businesses were seized. Some businesses were able to reopen, others remain closed. A listing of seized businesses appears on pages 13 and 14.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending September 30, 1995, four auctions were held by the Division. A listing follows on page 14.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

IRC 368(a)(1)(A) Merger — X Corporation is a New Jersey corporation. X Corporation is the holder of a note and mortgage received in exchange of the sale of real property located in the State of New Jersey. X Corporation reports gain generated from the sale of the property on the installment method for both Federal income and New Jersey Corporation Business Tax purposes. X Corporation plans to merge into a newly formed Florida corporation. There will be no parent-subsidiary relationship after the merger. The Florida corporation will not have net operating loss carryovers. The merger will qualify for tax free treatment for Federal income tax purposes under IRC Section 368 (a)(1)(A). In addition, the merger will not result in the acceleration of the installment gain for Federal income tax purposes. After the transaction, the Florida corporation will allocate income and losses for New Jersey purposes in accordance with N.J.S.A. 54:10A-6. The Florida corporation will obtain a Certificate of Authority and will, therefore, be authorized to do business in New Jersey. The Florida corporation will be involved in an active business located in Florida.

On these facts, the Division advised that, first, for New Jersey Corporation Business Tax purposes

the merger will not cause acceleration of gain, provided that the survivor is authorized in New Jersey. Second, the merger will be tax free for New Jersey Corporation Business Tax purposes. Once the survivor receives a Certificate of Authority to do business in New Jersey, taxpayer can bypass the tax clearance process. Merger documents should be submitted directly to the Office of the Secretary of State.

Research Credit — “For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business.”

The inquirer asked whether this language would disqualify expenditures relating to an existing business under the following facts: A corporation conducts in-house research for the purpose of enhancing an existing business. All of the research for which CBT

credit is to be claimed was performed in New Jersey and the dollar expenditure in 1994 was sufficient to satisfy the stipulated base period requirements. All of the expenditures for which credit is claimed for New Jersey CBT purposes are eligible for credit under IRC §41 as in effect on June 30, 1992.

The Division responded that the legislative history of P.L. 1993, c.175 which established the research credit, reads in part, “This substitute [bill] is based on the same credit base, rules and restrictions as the federal research and development credit provided under the federal Internal Revenue Code of 1986, provided that the credit under the bill is limited to expenditures made in New Jersey. This use of existing federal laws should simplify the administration of the tax and reduce compliance costs.”

Thus, the regulatory language of N.J.A.C. 18:7-3.23(r) should not be interpreted to disqualify expenditures relating to an existing business because the legislature intended that the New Jersey research credit be based upon the same credit base, rules and restrictions as the Federal credit is based upon. Since the expenditures, in this case, would qualify for the Federal credit, they also qualify for the State credit.

**DO
NOT
STAPLE**

ANYTHING
(W-2s, schedules, check, etc.)

to

Form NJ-1040
or
Form HR-1040

Division of Taxation Seizures (July – September 1995)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	TISMI, Inc. – Lenny D. Buena Borough	07-05-95	Bar	Closed; License Seized
	Jack's Electrical, Inc. Somers Point	08-15-95	Electrical	Vehicle Returned
Bergen	Augie's Riverside Oakland	08-02-95	Bar	Bankruptcy
Burlington	Hamm, David & Krienes, Joanne Marlton	07-18-95	Florist	Bankruptcy
	Channey Bang t/a Classic Video Mt. Laurel	08-03-95	Video Store	Closed
Camden	JP & EW, Inc. Lindenwold	07-13-95	Bar/Restaurant	Reopened
	Dickey, John, T., D.D.S. Pennsauken	09-13-95	Dentist	Bankruptcy
	Weber, Walter t/a Plug N Fender Chews Landing	09-20-95	Auto Repair	Closed
	Three Star Development Group, Inc. t/a Newstop Voorhees	09-28-95	Newsstand	Closed
Cape May	County Library II, Inc. North Wildwood	07-06-95	Bar	Closed; License Seized
	Pot Bellys, Inc. Rio Grande	07-25-95	Restaurant	Closed
	Waldo, Inc. Wildwood	08-01-95	Bar	Reopened
	BST Enterprises Ocean City	08-15-95	Film Developing	Bankruptcy
	Miss Kitty's Saloon & Dance Hall, Inc. North Wildwood	08-21-95	Bar	Reopened
Gloucester	J. Medica Auto Body Turnersville	08-01-95	Auto Body	Bankruptcy
	Iona Lake Inn, Inc. Franklin Township	08-11-95	Restaurant	Closed; License Seized
Hudson	Pavonia Restaurant, Inc. Jersey City	08-10-95	Bar/Restaurant	Reopened
	Pona, Michael & Raymond t/a Pona's Auto & Truck Repair Bayonne	09-14-95	Auto Body Repair	Closed

continued on page 14

taxation seizures - continued from page 13

County	Name/Address	Seizure Date	Business Type	Status
Mercer	Miyon Sun t/a Classic Video East Windsor	08-03-95	Video Store	Closed
	Davis & Davis, Inc. t/a Doug's Blue Max Trenton	09-14-95	Bar	Closed; License Seized
Middlesex	Fifty-Seven Heaven, Inc. Jamesburg	07-05-95	Restaurant	Closed; License Seized
	Vukelic, Ivica t/a World Class Auto Body New Brunswick	08-22-95	Auto Body	Reopened
	Hill Bowl Lanes, Inc. Carteret	09-19-95	Bowling Alley	Closed; License Seized
Monmouth	Paul's Restaurant & Pizza Tinton Falls	07-20-95	Pizza Restaurant	Reopened
	Alpha, Ltd. Long Branch	07-21-95	Bar	License Only
	Jeffee's Restaurant Spring Lake	07-27-95	Restaurant	Reopened
	Labrador Lounge, Inc. Belmar	09-18-95	Restaurant	Closed
Ocean	Slice of Pizza, Inc. Seaside Heights	07-05-95	Pizza Restaurant	Open
	Vergona's Pizzeria & Restaurant Toms River	08-09-95	Restaurant	Bankruptcy
Passaic	W. Milford Power Equipment, Inc. West Milford	09-07-95	Power Equipment	Auctioned
Somerset	Channey Bang t/a Classic Video Hillsborough	08-03-95	Video Store	Closed
Sussex	Branchville Lunch Branchville	07-12-95	Luncheonette	Auctioned
Union	Seebech, Herbert Kenilworth	08-08-95	Deli	Reopened

***Division of Taxation Auctions
(July – September 1995)***

County	Name/Address	Auction Date	Business Type
Monmouth	Roblor, Inc. Manalapan	07-14-95	Book Store
Passaic	W. Milford Power Equipment, Inc. West Milford	09-27-95	Power Equipment
Sussex	Branchville Lunch Branchville	08-10-95	Luncheonette
Union	Sinclair's of Westfield, Inc. Westfield	08-30-95	Bar/Restaurant (License Only)

tax briefs - from page 11

S Corporation IRC 162 — A taxpayer asked whether interest paid to acquire stock in a New Jersey S corporation in which the purchaser actively participates is deductible by the individual shareholder against flow through income of the S corporation per the Federal model as business interest.

The Division advised New Jersey law does not permit a deduction for interest expense used to buy S corporation stock unless the taxpayer is in the business of investing in S corporations. If that were the case such deduction would appear on the taxpayer's Schedule C and not reduce the taxpayer's net pro rata share of S corporation income. See *Applestein v. Taxation, Div. Director*, 5 N.J. Tax 73 (Tax Ct. 1982). *aff'd*. 6 N.J. Tax 347 (App. Div. 1984), *Marrinan v. Taxation, Div. Director*, 10 N.J. Tax 542 (Tax Ct. 1989), *Gilligan v. Taxation, Div. Director*, 11 N.J. Tax 414 (Tax Ct. 1991).

Gross Income Tax

S Corporation - Gross Income Tax Calculation — The taxpayer stated that it is a New York corporation that only does business in New York. The sole shareholder is a New Jersey resident. It has previously filed "S" elections for both Federal and New York purposes. The taxpayer has taken a Federal jobs credit and a Federal credit for increasing research activities (R & D credit) on its Federal tax return, both of which flow through to the shareholder. Per Federal law, the deductions on which these tax credits are based were reduced in connection with claiming the credits.

On these facts, the following questions were raised. First, in computing the New Jersey S corpo-

ration income of the New Jersey resident shareholder, can the reduction in the Federal salaries and wages deduction for the jobs credit be considered a subtraction for New Jersey purposes?

No. A taxpayer would not be able to take deductions on its New Jersey return for amounts that were not deducted for Federal purposes due to an election by the taxpayer to take a Federal credit in lieu of a deduction. See *AT&T Co. v. Director, Division of Taxation*, 13 N.J. Tax 534 (Tax Ct. 1993).

Second. The taxpayer raised the same issue as in issue one except as it relates to the Research and Development credit. Again the answer is no subtraction for New Jersey purposes for the reason stated in one above.

Third. The taxpayer inquired whether the answers would be the same for issues one and two if the taxpayer did business in New Jersey and filed a New Jersey S corporation tax return.

Yes, the answer would be the same. There is no authority under New Jersey law to decrease New Jersey S corporation income by amounts that are not deducted in calculating Federal taxable income.

Fourth. The taxpayer inquired whether the amounts by which the Federal deduction was reduced would be adjustments to the New Jersey Earnings and Profits, New Jersey Accumulated Adjustments Account, or New Jersey Other Adjustments Account.

Yes, such amounts would appear on line 3, Part IV-B, Schedule K, of CBT-100S as an "other reduction" to the Accumulated Adjustments Account. If this

reduction were not made, the effect would be to give a deduction not authorized by statute or inflate the basis.

Nonqualified Deferred Compensation Plan (Clarification) — The Summer 1995 issue of the *State Tax News* included a Gross Income Tax "Tax Brief" regarding nonqualified deferred compensation plans. The article stated that deferred compensation is not taxable income to an employee until actually received, provided that the plan is nonqualified and unfunded and certain conditions are satisfied.

The article was written specifically about an unfunded, nonqualified deferred compensation plan that was set up for the deferral of bonuses and compensation of highly compensated employees. However, with respect to I.R.C. Section 457 plans, although nonqualified and unfunded, it is the Division's longstanding position that because the employee can control the percentage of income being deferred or can eliminate the deferral entirely, that there is constructive receipt. Consequently, the amounts deferred under an I.R.C. Section 457 plan must be included in gross income.

Sales and Use Tax

Purchase Points For Discount From Price — The Division received an inquiry regarding the sales tax treatment of a program whereby customers of a restaurant can receive and accumulate points based on purchases, which can be redeemed for food at either a reduced price, or for free, depending upon the level of the award. The redemption certificate does not have any independent cash value, and the expense of the award will

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be incurred solely by the restaurant. There will be no third party rebates or discounts involved.

The Division responded that based on these facts, the purchase point program would be treated as a vendor coupon. Sales tax is due only on the discounted price of the item.

Crop Dusting — A taxpayer inquired as to the taxability of crop dusting and aerial applications of defoliants, fertilizers and herbicides.

Under N.J.S.A. 54:32B-8.16 chemicals used in crop dusting qualify for an exemption under the Sales and Use Tax Act. However, the farm exemption applies to certain purchases of tangible personal property and not to services. Thus, the charge for the service of crop dusting is subject to sales tax under N.J.S.A. 54:32B-3(b)(4) of the Sales and Use Tax Act.

Cellular Telephones Used For Promotional Purposes — The Division received an inquiry concerning the purchase of cellular telephones which are either resold or given away in exchange for an agreement to subscribe to service with a particular cellular company. The following facts were given for review. Retailer A sells cellular telephones at its store. Such telephones are purchased by Retailer A from a vendor for \$250 per telephone. Company B provides cellular telecommunications services to subscribers in New Jersey. Company B contracts with Retailer A for Retailer A to promote, solicit and obtain requests for the service provided by Company B. To induce customers to purchase Company B's service, Retailer A offers customers the following options

when purchasing a cellular telephone from Retailer A:

Option #1

Purchase only the telephone for \$300, or

Option #2

Purchase the telephone for \$10 and agree to subscribe to Company B's service for a minimum period of one year.

If Option #2 is chosen, Company B will pay Retailer A a \$275 commission per subscriber and \$35 per subscriber to be used by Retailer A for advertising its cellular operations.

Since the retailer is selling the phone for a nominal amount in exchange for the purchaser's agreement to use Company B as a cellular service provider, Retailer A is using the telephones for promotional purposes, i.e. - to earn an advertising fee from Company B and to earn commission income from the sale of a service subscription by Company B. Although Retailer A may purchase the cellular telephones with a Resale Certificate, they must collect sales tax on the \$10.00 charge to the customer, and remit use tax **based on their cost** of purchasing the telephone (\$250) minus the amount recovered by making a nominal charge to the customer (\$10.00). N.J.S.A. 54:32B-24. The activation commission paid to Retailer A is not subject to sales or use tax, nor is the additional payment which is to be used for advertising.

Auto Detailing — The Division replied to an inquiry concerning the taxability of auto detailing services performed for new car dealerships and auto service centers.

The services of installing tangible personal property or printing or imprinting such property including motor vehicles are subject to tax. A new car dealership and auto service center may provide a Resale Certificate (Form ST-3) where such services are purchased for resale by the buyer. Thus, the performance of auto detailing for new car dealerships and auto service centers is exempt from sales tax. □

In Our Courts

Uniform Tax Procedure

Timeliness of Tax Complaint — *Harris Corporation v. Director, Division of Taxation*, No. 005784-93 (Tax Ct., decided August 3, 1995).

At issue was the timeliness of plaintiff's appeal from the denial of its claim for a corporation business tax refund. The Director's letter denying the refund was dated January 22, 1993. Plaintiff's complaint challenging the denial was received by the Tax Court on April 27, 1993, i.e. 95 days after the date on the Director's letter.

The Court determined that under the statutes and regulation in force at the time and the applicable court rules, the 90-day time for an appeal (plus three additional days allowed for mailing) began to run when the Director mailed the letter. The Director, however, took the position that, as a matter of law, the time began to run on the date shown on the letter, and he declined to submit proof of mailing for a hearing. The Court therefore denied the Director's motion to dismiss the complaint for untimely filing.

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in our courts - from page 15

**Local Property Tax
Calculating Rollback Taxes
Under Farmland Assessment Act**
– *Calton Homes, Inc., Plaintiff, v.
Township of West Windsor,
Defendant*, Tax Court of New
Jersey, Docket No. 011369-93,
decided July 24, 1995.

This local property tax case concerned the correct methodology for calculating rollback taxes under the “Farmland Assessment Act of 1964,” N.J.S.A. 54:4-23.1 et seq., as amended. The levying of the tax itself due to a change to nonfarm use was not challenged.

The 143 acres in question were farmland valued at \$58,200 from 1983–1992 and at \$73,300 for 1993. As a result of the land’s residential development in 1993, rollback taxes of \$110,222.21 were assessed that year and for the two previous years, 1992 and 1991, in the amounts of \$94,095.83 and \$88,179.77* respectively. Mercer County Tax Board utilized the 1993 purchase price of \$5,016,000 paid by developer Calton Homes as fair market value for all three tax years and Chapter 123 average ratios of 100%, 41.33% and 42.33%* were applied to obtain the nonfarmland taxable values of \$5,016,000, \$2,073,100 and \$2,123,300*. Because 1993 was a revaluation year where the ratio was 100%, the rollback assessment of \$4,942,700 was not contested by the plaintiff and only the 1991 and 1992 rollback assessments of \$2,065,100 and \$2,014,900 were at issue.

However, the plaintiff’s computations for 1991 and 1992 were based on a fair market value of

\$1,171,816 as recommended by the appraisal firm at the time of a 1983 revaluation, plus an added 10% for entrepreneurial profit gained through 1987 subdivision approvals and resulted in nonfarmland taxable value of \$1,289,000 and rollback assessment of \$1,230,800 for both of the disputed years after deducting farmland value of \$58,200.

Calton asserted that the actual general assessment level for the taxing district in 1991 and 1992 was established eight years earlier during the 1983 revaluation and that a different standard which employed values determined as of October 1, 1990 and 1991 was applied for his rollback assessment. Plaintiff argued that this was contrary to New Jersey’s constitutional “same standard of value” clause for real property assessment, violated equal protection under both State and Federal Constitutions, and that rollback assessment at “full and fair value” didn’t conform with the statutory provisions of N.J.S.A. 54:4-23.8. It was also contended that discrimination relief provided under P.L. 1973, c.123 was not adequate.

In deciding for the defendant, the Tax Court held that there was no conflict between the “same standard of value” requirement of New Jersey’s Constitution and the “full and fair value” requirement of N.J.S.A. 54:4-23, the statute regarding real property assessment. The Constitutional provision calls for equality of treatment and burden; the statute provides the basis on which equality is to be achieved. The Court affirmed that “full and fair value” is the equivalent of “market or true value” as mandated in N.J.S.A. 54:4-2.25. Further noted by the

Court was that statute specifically directs the assessor to establish real property value as of October 1 of the pretax year. The Court revalidated, as well, the formula for rollback assessment cited at N.J.S.A. 54:4-23.8 of the Farmland Assessment Act which provides that rollback assessments are to be based on “full and fair value” using the same standard as other land in the taxing district. The plaintiff’s use of the number of line item adjustments to determine the base year was also rejected by the Court in that it would establish a dual standard of valuation not permitted by the Constitution nor intended by the Legislature. The Court refuted that uniformity of assessment or its maintenance thereafter had been proved for 1983. With respect to Chapter 123 as an acceptable means of discrimination relief, the Court held that while egregious, arbitrary or spot assessments may be outside its scope, the imposition of the rollback assessment was justified.

*Tax Board applied erroneous ratio, values reflected are as corrected by Tax Court. □

In Our Legislature

Corporation Business Tax

Allocation Formula — P.L. 1995, c.245 (signed into law on September 11, 1995) requires the receipts factor in the business allocation formula to be double weighted. This legislation is effective for accounting years beginning on or after July 1, 1996.

Tax Rate Decrease — P.L. 1995, c.246 (signed into law on September 11, 1995) reduces the tax rate from 9% to 7.5% for corporations

with annual entire net income of \$100,000 or less. This legislation applies to accounting years beginning on or after July 1, 1996.

New Merger Rules

Three statutes affecting business mergers were signed into law on August 15, 1995. Each act takes effect on the 90th day following the date of enactment.

Limited Liability Companies — P.L. 1995, c.222 provides that limited liability companies may

merge or consolidate with other business entities if authorized by the laws under which those other business entities are organized.

Partnerships — P.L. 1995, c.223 allows partnerships to merge or consolidate with certain other business entities.

Limited Partnerships — P.L. 1995, c.224 allows limited partnerships to merge or consolidate with certain other business entities. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
		1	2	3	4	5	6
1	7	8	9	10	11	12	13
9	14	15	16	17	18	19	20
9	21	22	23	24	25	26	27
6	28	29	30	31			

January 2

NJ-500 **Gross Income Tax**— Employer's semi-monthly return

January 10

CWIP-1 **Cigarette Tax**—Informational report by wholesalers
CWIP-2 **Cigarette Tax**—Informational report by wholesalers

January 16

CBT-100 **Corporation Business Tax**— Annual return for accounting period ending September 30

January 16 - continued

CBT-150 **Corporation Business Tax**— Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 **Gross Income Tax**— Employer's semi-monthly return
NJ-1040ES **Gross Income Tax**— Declaration of Estimated Tax, Voucher 4 for calendar year filers

January 22

CR-1 & CNR-1 **Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D **Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
GA-1J **Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
MFT-10 **Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 **Spill Compensation and Control Tax**—Monthly return
ST-20 **New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

January 22 - continued

ST-50 **Sales and Use Tax**—Quarterly return
ST-250 **Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
ST-350 **Cape May County Tourism Sales Tax**—Monthly return
ST-450 **Sales and Use Tax—Salem County**—Quarterly Return
TP-20 **Tobacco Products Wholesale Sales and Use Tax**—Monthly return
UZ-50 **Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 25

PPT-40 **Petroleum Products Gross Receipts Tax**—Quarterly return

January 31

NJ-500 **Gross Income Tax**— Employer's semi-monthly, monthly, quarterly and semi-annual returns

continued

continued

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1					1	2	3
9	4	5	6	7	8	9	10
9	11	12	13	14	15	16	17
6	18	19	20	21	22	23	24
	25	26	27	28	29		

February 13

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

February 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax**—Installment payment of

continued

February 15 - continued

- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

February 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

February 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 26

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

February 29

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
6	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

March 11

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

March 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30

continued

March 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

March 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

March 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

March 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

New Division Publications Available

To aid taxpayers, three new publications are now available from the Division of Taxation.

- ***S Corporation Q & A***, a comprehensive booklet which provides answers to many commonly asked questions regarding S corporation tax issues. It includes information on both New Jersey Corporation Business Tax and Gross Income Tax.
- **Tax Topic Bulletin GIT-8, *Estimating New Jersey Taxes***, a new publication on individual estimated income tax requirements and underpayment of estimated tax.
- **Tax Topic Bulletin MISC-2, *Information for Senior Citizens***, a new publication which highlights various New Jersey tax information of particular interest to senior citizens.

To request these or any Division publication call our automated service at 800-323-4400 (from Touch-tone phones within New Jersey only) or write to:

New Jersey Division of Taxation
Attention: Taxpayer Forms Service
CN 269
Trenton, New Jersey 08646-0269

Remember to check the Division's NJ TaxFax service by dialing (609) 588-4500 from your fax machine's phone for a list of publications (and forms) available by fax.

New Jersey State Tax News

Fall 1995

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Income Tax Rates Reduced

P.L. 1995, c.165, signed into law on July 4, 1995, reduces the New Jersey Gross Income Tax rates for all taxpayers for tax years 1996 and thereafter. When combined with the rate reductions enacted as P.L. 1994, c.2 and P.L. 1994, c.69, this new reduction results in cumulative tax decreases from the 1993 taxable year rates of 30%, 15% and 9%, depending on taxable income level.

Cumulative Rate Reduction

The cumulative decreases in the tax rates from their 1993 levels are shown below.

Filing Married, Filing Jointly
Status: Head of Household
 Qualifying Widow(er)

Taxable Income	% Rate Change 1993-1996
\$0— \$80,000	-30%
\$80,001—\$150,000	-15%
Over \$150,000	-9%

Filing Single
Status: Married, Filing Separately
 and
 Estates and Trusts

Taxable Income	% Rate Change 1993-1996
\$0— \$40,000	-30%
\$40,001—\$75,000	-15%
Over \$75,000	-9%

Withholding Rates

Because of the reduction in tax rates for taxable years beginning on or after January 1,

1996, new withholding tables will be required. Revised withholding tables will be mailed to employers when available.

Estimated Tax Payments

Any individual (resident or non-resident) who expects their New Jersey income tax liability to be more than \$100, after subtracting withholdings and credits, must make New Jersey estimated tax payments using Form NJ-1040ES. Taxpayers should take the new income tax rates into account when calculating the amount of their estimated tax payments for 1996. Estates and trusts are not required to make New Jersey estimated tax payments.

continued on page 2

Important phone numbers

Tax Hotline.....	609-588-2200
Recorded Tax Topics.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corporate Mergers, Withdrawals & Dissolutions.....	609-292-5323
Corporate Tax Liens.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
.....	609-292-5035
.....	609-292-7147
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

income tax rates - from page 1

1996 Tax Rates

For taxpayers whose filing status is Married, filing joint return, Head of Household or Qualifying Widow(er) the rates are:

Taxable Income	Tax rate
\$0- \$20,000	1.400%
\$20,001- \$50,000	\$280 plus 1.750% of the excess over \$20,000
\$50,001- \$70,000	\$805 plus 2.450% of the excess over \$50,000
\$70,001- \$80,000	\$1,295.50 plus 3.500% of the excess over \$70,000
\$80,001-\$150,000	\$1,645 plus 5.525% of the excess over \$80,000
Over \$150,000	\$5,512.50 plus 6.370% of the excess over \$150,000

For taxpayers whose filing status is Single or Married, filing separate return and estates and trusts the rates are:

Taxable Income	Tax rate
\$0- \$20,000	1.400%
\$20,001- \$35,000	\$280 plus 1.750% of the excess over \$20,000
\$35,001- \$40,000	\$542.50 plus 3.500% of the excess over \$35,000
\$40,001- \$75,000	\$717.50 plus 5.525% of the excess over \$40,000
Over \$75,000	\$2,651.25 plus 6.370% of the excess over \$75,000

NOTE: Nonresident aliens who otherwise meet the requirements may file as Head of Household for New Jersey purposes, even though they are unable to claim that status for Federal purposes. □

Interest 11.5% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1995 is 11.5%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%

Cafeteria Plans

Recent tax legislation (Chapter 111, P.L. 1995) made a significant change in the tax treatment of cafeteria plan benefits under the New Jersey Gross Income Tax Act. This change is effective June 1, 1995 and applies to taxable years beginning after June 1, 1995.

The new legislation allows for the value of employee cash-out options under employer-provided cafeteria benefit plans to be excluded from an employee's New Jersey gross income when the value of the options is also excludable from Federal income tax. An employee cash-out option is an option to receive cash in lieu of a qualified employer-provided benefit only when the employee re-

ceives a substantially similar benefit from another source.

To qualify for the exclusion, benefits must meet the following conditions:

1. Benefits must be provided under a cafeteria plan that meets the requirements of Section 125 of the Federal Internal Revenue Code of 1986.

*continued on page 3
cafeteria plans - from page 2*

New Jersey State Tax news

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Taxpayer Services Branch
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Alfred C. Laubsch, Deputy Director

The Division of Taxation mourns the sudden loss on June 5, 1995 of Deputy Director Alfred C. Laubsch.

Mr. Laubsch, who was appointed Deputy Director of Taxation in June 1994, had been with the Division of Taxation for 28 years. He began his career as a Field Representative specializing in Motor Fuels Tax investigations, and had advanced to the position of Supervisor of Field Investigations before becoming Deputy Director.

He received his Bachelor's degree in Business Administration from the University of Tampa in 1965. He was awarded a Certificate in Supervisory Management and was a member of the Certified Public Manager Society of New Jersey.

Director Gardiner commented, "Al's accomplishments during his years of dedicated service with the Division are numerous. His contributions are evident throughout the Division. Al will be deeply missed by his friends and colleagues."

2. Employer-provided benefits may **not** be provided under a salary reduction agreement commonly known as a flexible spending account or premium conversion option.
3. Benefits must be elected from the five Federally allowable exempt benefits, which are: group life insurance; group accident and health insurance; medical cost reimbursement; dependent care services; and cash or deferred arrangements.
4. Although a qualified cash-out option allows the employee to receive cash in lieu of benefits, the employee must elect actual coverage rather than receive cash. Benefits received in the form of cash payments are includable in New Jersey gross income. □

Division Hires Collection Firms

The New Jersey Division of Taxation recently hired two private agencies to assist in its efforts to increase collections and to decrease the number of delinquent taxpayers in the State.

Payco General American Credits, Inc. (Payco), which was hired by the Division in 1993, continues to work with the Division to locate and contact businesses and individuals who are registered on the State's tax rolls, but who have failed to file returns and to pay their corporation business, sales and use and/or gross income taxes.

Municipal Tax Collection Bureau, Inc. (MTB) will work with the Division to "discover" businesses and individuals who conducted taxable activities in New Jersey, but who are not registered with the Division of Taxation, and who

failed to file returns and pay the applicable taxes.

Both Payco and MTB are bound by the same confidentiality provisions as Division of Taxation employees in their access to and use of data in tax investigations. Taxpayers who are contacted by Payco or MTB and who wish to make payments or file tax returns should send their submission to the appropriate agency. □

Assembly Bill Aids Tax Compliance

Assembly Bill No. 2896, passed June 30, 1995, will help the Division of Taxation in obtaining information from State agencies to provide the Division with such information as social security numbers, business identification numbers, and full names and addresses. The information will be

continued on page 4

compliance bill - from pg. 3

used to identify individuals and businesses who have either not filed the required tax returns or who have not filed complete tax returns. □

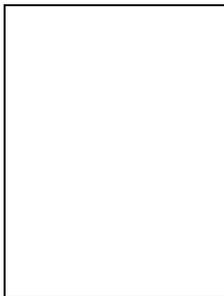
Division Plans to CATCH Tax Cheats

The New Jersey Division of Taxation is CATCHing up on those who do not pay their fair share of taxes. The State is asking citizens to call the CATCH (Citizens Against Tax CHEats) Hotline at (609) 588-2200 to report businesses or individuals cheating on their New Jersey taxes. Reports can also be made by writing to the New Jersey Division of Taxation, Office of Compliance, CN 245, Trenton, NJ 08646-0245.

Taxation Director Richard D. Gardiner urges citizens to report anyone who is cheating on their taxes. "Our revenue agents are ready to follow up on every lead," he said. "You do not have to give your name when you call, but we ask that you give as much information as you can about the business or individual."

To Catch a Cheat Call 609-588-2200

CATCH
Hotline
operates
8:30 a.m. to
4:30 p.m.
Monday
through
Friday.



Director Announces Promotions

State Tax Director Richard D. Gardiner has announced the appointment of a new Deputy Director, Harold E. Fox, and a new Assistant Director for Compliance, David M. Gavin. Their appointments are effective July 24, 1995.

Mr. Fox, who was previously Assistant Director, Compliance, has been with the Division of Taxation for over 25 years. Mr. Gavin, who was previously Senior Chief of the Revenue Opportunity Development Branch, has been with the Division of Taxation for 16 years. □

CORPORATION TAX R&D Tax Credit

An inquiry was made recently concerning New Jersey's position with regard to the Research and Development Tax Credit provided for on Form 306 and claimed on Schedule A-3 of either the CBT-100 or CBT-100S. For New Jersey purposes, a corporation can claim a credit for *research activities performed in New Jersey* based upon qualified expenditures made in taxable years beginning on and after January 1, 1994. It provides a credit of 10% of the excess qualified research expenses over a base amount, plus 10% of the basic research payments.

For Federal purposes, a corporation may claim a Research and Development Tax Credit based on 20% of the excess qualified research expenses, plus 20% of the basic research payments. For tax years beginning after 1989, any business expenditure for qualified

research expenses or basic research payments must be reduced by the full amount of the credit. Taxpayers can avoid reducing the Federal deduction by electing to reduce the research credit. This election must be made for each tax year and is irrevocable.

The question posed was how New Jersey would treat both the New Jersey deduction and credit taken in instances where a taxpayer takes a reduced credit for Federal tax purposes. Under these circumstances, since the New Jersey credit is calculated independently of the Federal credit, the taxpayer would be entitled to a 10% New Jersey Research and Development Credit pursuant to N.J.S.A. 54:10A-5.24. The expense deduction for New Jersey purposes would remain the same as that taken for Federal tax purposes. □

INHERITANCE/ESTATE TAX Audit Enhancements

Effective with estates of decedents dying on or after January 1, 1991, the New Jersey Transfer Inheritance and Estate Tax Branch was propelled into the world of the computer. The Branch's four plus years of experience with the new system has been extremely positive.

Computerization of processing in the Branch, in addition to anticipated administration advantages, has established far-reaching compliance mediums available for use in the administration of these and other taxes. Records of the various taxing agencies within the Division of Taxation are now conveniently at the fingertips of the Transfer

continued on page 5

audit enhancements - from page 4

Inheritance and Estate Tax auditor for official reference.

Proper reporting of assets which make up an estate for New Jersey Transfer Inheritance and/or Estate Tax purposes is now more easily verified. Available information enables the Branch to accurately identify assets which belonged to a decedent during his/her lifetime. The Branch is thus able to focus its attention on those estates which may not be in compliance. Such estates are subject to full audit.

The computerized processing system for death tax returns, in addition to exchange of information agreements with the Internal Revenue Service, has greatly enhanced the capabilities of the Transfer Inheritance and Estate Tax auditor. Each of these enhancements has helped to ameliorate the task of the Branch in assuring that New Jersey death taxes are administered in a manner which is equitable to both the State of New Jersey and to the taxpayer.

Benefits are not, however, unilateral. Computerization has enabled the Branch to improve service to the taxpayer in a variety of ways. Processing time has been dramatically shaved. As a result, tax assessments, bills, and waivers are received by the taxpayer within a much shorter time frame. Additionally, many taxpayer inquiries may now be promptly answered. In most instances, it is no longer necessary to retrieve the actual physical file for a decedent before being in a position to answer inquiries.

The Branch is eagerly looking forward to new technological advances. □

GROSS INCOME TAX

Voluntary Disclosure Policy

The Division of Taxation encourages resident and nonresident individuals who have not filed their personal income tax returns to come forward under the provisions of a voluntary disclosure agreement. If the individual contacts the Division before the Division contacts the individual, and the outstanding returns are filed with payment of the tax owing, no late filing or late payment penalties will be charged. Interest will be charged at the minimum rate required by law. Additional information may be obtained from the Gross Income Tax Audit Branch by calling (609) 292-0927. □

GROSS INCOME TAX

Electronic Filing of Individual Returns

The New Jersey Division of Taxation is participating in the Federal/State Electronic Filing Program for tax year 1995. The Division views this as another step forward in facilitating the process of meeting one's tax obligations. This process is designed to save money, time, and errors for the taxpayer, the preparer, and the State.

Last year New Jersey participated in the program in a limited, pilot project capacity. As a consequence, there was limited publicity on our involvement. This year, we will not be limited by the IRS criteria for first year states. For 1995, electronic filing will be available to full time residents anticipating a refund or a zero balance. Part-time and non-residents and taxpayers with a

balance due will not be eligible to file electronically.

Tax year 1995 will be open to all software developers that wish to add New Jersey to their product line. Practitioners and Electronic Return Originators (EROs) should check with their software suppliers to see if they intend to offer electronic filing for New Jersey returns for this tax season. Anyone interested in participating in this year's program, whether software developer, transmitter, ERO, or paid preparer, should write to the Division at the following address:

New Jersey Division of Taxation
50 Barrack Street
CN 191 ELF
Trenton, NJ 08646-0191

Attn: Electronic Filing

You will be placed on our mailing list. Dissemination of information from registration forms to manuals and technical bulletins is accomplished using this mailing list. If you have never participated in this program before, you should also contact the IRS coordinator at the Newark District Office, as this program includes both the Federal and State returns. The telephone number in Newark is (201) 645-6690. □

**LOCAL PROPERTY TAX
Exemption/
Abatement Law
Amended**

Chapter 113, P.L. 1995, was approved on June 2, 1995. The law amends P.L. 1991, c.441 which provides for exemption and abatement of dwellings, multiple dwellings, and commercial and industrial structures from local property taxation in areas in need of rehabilitation.

Due to the amendment a commercial or industrial structure, used or to be used by a business relocated from another qualifying municipality, may be eligible for a property tax exemption if the following conditions are met:

1. The total square footage of the floor area of the structure or part thereof used or to be used by the business at the new site together with the total square footage of the land used or to be used by the business at the new site exceeds the total square footage of that utilized by the business at its current site of operations by at least 10%.
2. The property that the business is relocating to has been the subject of a remedial action plan costing in excess of \$250,000 performed pursuant to an administrative consent order entered into pursuant to authority vested in the Commissioner of Environmental Protection under the "Water Pollution Control Act," the "Solid Waste Management Act," and the "Spill Compensation and Control Act." □

**LOCAL PROPERTY TAX
Audits Yield Over
\$600,000**

Municipalities throughout New Jersey were audited by Property Administration field representatives for compliance with the \$50 Veterans' Property Tax Deduction (N.J.S.A. 54:4-8.10) and the \$250 Senior Citizens, Disabled Persons, and Surviving Spouses Real Property Tax Deduction (N.J.S.A. 54:4-8.40) Programs.

Full reimbursement for these property tax deductions is made to the municipalities every year by the State via revenue sharing. In 1994, a total of \$18,932,660 was refunded to the local taxing districts for the veterans' deductions and \$38,951,235 was refunded for the deductions for senior citizens, the disabled, and widows/widowers.

As a result of the recent audits, \$621,533 will be credited on the certification report submitted to the State Treasurer in September 1995. □

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).

- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15-

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31-

- Legal advertisement of availability of Tax List for public inspection. □

LOCAL PROPERTY TAX Public Access to Assessment Tapes

Higg-A-Rella, Inc. v. County of Essex, et al. (See related article in *State Tax News*, Summer 1995, Vol. 24, No. 2.)

The N.J. Supreme Court affirmed on July 19, 1995 the Superior Court decision that plaintiff Higg-A-Rella, Inc. t/a State Information Service, a business corporation selling tax assessment data, had a common law right to Essex County's computer master tape of municipal tax assessment lists but remanded the matter to the Law Division's lower court to decide what and how much constitutes a reasonable fee, exclusive of compilation costs. The high Court also affirmed that the computer-taped assessment lists are not publicly accessible under the Right-to-Know Law, N.J.S.A. 47:1A-1 et seq.

Because counties and municipalities are not required to maintain their assessment lists on computer, computerized copies are not public records under the Right-to-Know Law which narrowly defines public records as documents required by statute to be "made, maintained or kept on file" by a government agency. Also as a result of a recent clarifying amendment by the Legislature, the Right-to-Know Law provides that the right to copy a record maintained by data or image processing refers "to the right to receive printed copies of such records." (L.1995, c.140)

However, computerized assessment lists are available to the pub-

lic on a case specific basis under the broader common law which defines public records as "almost every document recorded generated or produced by public officials in the exercise of public functions whether or not required by law to be made, maintained..." Before the common law right of access applies, two criteria are necessary: the individual seeking public records must establish a "wholesome public interest or a legitimate private interest in the subject matter of the material" and a balance between the citizens' right to access v. the State's right to nondisclosure must be effected based on the circumstances of each case. In balancing opposing interests, the form in which information is disseminated is a consideration since the release of data on computer tape is more revealing and intrusive than hard copy data because it can be readily retrieved, searched and reassembled.

In deciding for the plaintiffs, the Court stated that their legitimate commercial interest was sufficient absent government's interest in confidentiality given the public nature of the information in another form. It indicated that the amendment of the Right-to-Know Law regarding image processed copies does not shape or limit common law, the essence of which is its adaptability to change. The Court also recognized the State's legitimate interest in preserving the potential commercial value of the databases and the cost of computerization, but cautioned that fees could not be used to discourage access. □

Georgia to Refund Federal Retiree Payments

The Georgia Department of Revenue has announced that any Federal or military retiree who paid taxes on retirement income during the years 1985-1988 may be eligible for a refund.

Recent Legislation

- Provides a payment plan for retirees who timely filed refund claims for the years 1985, 1986, 1987 and 1988.
- Provides a window from November 1, 1995 through December 15, 1995 for those retirees who have not filed amended returns for the years 1985-1988 but now wish to file.
- Provides that claims will be refunded in four yearly installments, with interest calculated at 7%.

Anyone in New Jersey who is affected by this Federal Retiree Refund Program should call the Georgia Department of Revenue at (409) 657-6881 for forms, additional information and assistance. □

Small Business Workshops

New Jersey entrepreneurs can receive free assistance from the Division of Taxation. The Division sponsors workshops explaining tax obligations geared for new businesses. The workshops will cover the following topics:

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- Registering with the Division of Taxation
- Meeting Employer Responsibilities
- Reporting Business Income
- Filing Sales and Use Tax Returns

Division personnel will explain the proper procedures for collecting and remitting tax. Division personnel will also discuss the various types of business ownership and the tax consequences of each one. The session concludes with a discussion of the Sales and Use Tax, describing what is taxable and what is exempt from the tax.

Participants receive appropriate forms and brochures for their own use. Additionally, each attendee receives a Small Business Workshop resource manual that reviews each topic and provides easy to follow examples.

Workshops are held throughout the state in conjunction with the Internal Revenue Service. The sessions run from 9:00 AM to 4:00 PM, with the Division of Taxation presentation in the afternoon. Following is the fall workshop schedule. To find out more about the Small Business Workshops, or to sign up for the fall sessions, call the Division's Taxpayer Hotline at (609)

588-2200 or write to the Division of Taxation, Technical Services, CN 281, Trenton, New Jersey, 08646-0281, Attn: Small Business Workshops.

Fall 1995 Schedule

- Sept. 19— Shelton Senior Ctr., Edison
- Oct. 31 — Manalapan Public Library
- Nov. 3 — Rutgers University, Camden
- Nov. 8 — NJIT, Newark □

Tax Publications Guide

The Division of Taxation has issued a *Publications Guide and Order Form* (Form PUB-100) brochure listing all current tax publications (other than tax returns and instructions) which may be ordered from the Division free of charge. The order form will be updated periodically as new publications become available. To order a copy of PUB-100 contact the Tax Hotline at (609) 588-2200, call our automated system toll free at 800-323-4400 (Touch-tone phones within New Jersey only), or write to Division of Taxation, Office of Communication, CN 281, Trenton, NJ 08646-0281. □

1995 Package NJX

The New Jersey Division of Taxation has announced that order forms for the *1995 Package NJX* will be mailed in late August or early September.

The cost for this year's edition will be \$7.00 per book. Due to printing problems experienced with the 1993 edition, the 1994 edition of *Package NJX* was sent to users without charge. The Division is now returning to the established practice of charging for each copy.

Some changes are planned for the new edition in an effort to make the book easier to use. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- James Kennedy pled guilty to a violation of probation for failing to remit restitution payments to the Division for sales tax. The court has ordered monthly payments of \$1,250 to be made directly to the Division, and has extended probation for five additional years. A consent judgment was also signed for \$346,000, the amount of tax, penalty and interest still owed.
- The first criminal investigation involving the Tobacco Products Wholesale Sales Tax has been completed with assessments for a 37 month period of nearly \$14,000 plus penalty and interest. In addition, it was also determined that 50% of the retail cigarette dealers serviced by the taxpayer were unlicensed by the Division. Although mitigating factors resulted in this case be-

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criminal enforcement - from pg. 8

ing resolved civilly, the investigation did disclose a lack of compliance which the Division is now addressing.

- Three individuals were convicted of charges stemming from their involvement in selling "bootleg" gasoline and fuel oil. This case was developed from a joint undercover investigation with the US Attorney's Office and has identified an estimated \$100 million that was defrauded from the Federal government, New Jersey and two other states. Prior to this trial, nine other individuals, including four alleged organized crime associates, had pled guilty in this case.
- Four new criminal cases were initiated as a result of the liaison activities with the county prosecutor's offices. The tax aspects of three of the cases involve the failure to file income tax returns. The fourth case will focus on the filing of false returns.
- Data for the multiple filer project has been received and is being analyzed to identify individuals who filed multiple tax returns to defraud the State. The initial information indicates addresses where 20 or more income tax refunds or homestead rebates were delivered during the 1992 and 1993 tax periods. Additional information will subsequently be incorporated into the project. □

Enforcement Summary

Civil Collection Actions

Quarter Ending - June 30, 1995

Following is a summary of enforcement actions for the quarter ending June 30, 1995.

Certificates of Debt

Field Investigators secured 543 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$13.9 million.

Levies

\$2.4 million was collected by Field Investigations as a result of executing against 441 non-compliant taxpayers.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending June 30, 1995, 30 businesses were seized. Some businesses were able to re-open, others remain closed. A listing of seized businesses appears on pages 11 and 12.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. A public auction of the

business assets will be conducted in about 30 days.

During the quarter ending June 30, 1995, seven auctions were held by the Division. A listing follows on page 12.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

IRC 368 Reorganization — A taxpayer questioned the tax treatment of a reorganization under IRC 368 by a New Jersey corporation whose only asset was a promissory note secured by a mortgage received upon the sale by the corporation of real property located in New Jersey.

The Division advised that the fact that a reorganization is tax free at the Federal level is not necessarily controlling for State purposes. See N.J.S.A. 54:50-13, N.J.S.A. 54:10A-4(k)(3) and N.J.A.C. 18:7-14.17(h) and (i). It is possible that there would be New Jersey State tax liability upon the withdrawal or merger of a New Jersey corporation with a foreign corporation not authorized to do business in the State under the above circumstances.

S Corporation Distributions — The Division received and replied

continued on page 10

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to correspondence which set forth the following facts about a corporation that elects to be treated by New Jersey as an S corporation. During the first year of being treated by New Jersey as an S corporation, the corporation will earn \$100,000, all allocable to New Jersey. At the beginning of the year the company had retained earnings (prior C corporation earnings) of \$250,000 and an Accumulated Adjustments Account (AAA) of \$500,000. The corporation will distribute \$400,000 during the year.

As a result of the new legislation dealing with S corporations, the tax treatment under the facts would be as follows. The \$100,000 of current earnings would be taxed currently to the shareholders as pro rata share of S corporation income regardless of when it would be distributed. With regard to distributions to the shareholders of profits of the corporation earned by the corporation while it was a C corporation, the shareholders would be taxable for New Jersey gross income tax purposes on the amount of such distributions, in this case \$300,000. N.J.S.A. 54A:5-14a requires that such distributions be treated in the manner set forth in IRC 1368. This treatment is not the same treatment as the treatment had been before P.L. 1993, c.173 was enacted which recognized the S corporation for New Jersey purposes.

Gross Income Tax

Installment Sale of Realty — The Division received an inquiry regarding the New Jersey gross income tax treatment of interest that a nonresident receives from an

installment sale of realty located in New Jersey.

The portion of the proceeds treated as interest for Federal income tax purposes will also be treated as interest by New Jersey. However, because the interest income is derived from intangible personal property, it is not subject to New Jersey gross income tax when it is received by a nonresident unless it is derived from intangible personal property employed in a trade, profession, occupation or business in New Jersey. N.J.S.A. 54A:5-8.

S Corporation Resident Shareholder — An inquiry was received regarding the reporting of net pro rata share of S corporation income for resident shareholders.

As a result of the legislation passed in 1993, S corporation shareholders are now subject to the gross income tax on their pro rata share of the S corporation's income, *whether or not such income was actually distributed*. This income is to be reported on the New Jersey gross income tax return in the category of income called "Net pro rata share of S corporation income."

If a Federal S corporation makes the election to be treated as an S corporation for New Jersey purposes, the pro rata share of a New Jersey resident shareholder will be the pro rata share of the S corporation's income, regardless of where the income is allocated. The pro rata share of a nonresident shareholder will be that share of the S corporation's income that is allocated to New Jersey. Consequently, a resident shareholder in a New Jersey S corporation that had \$100,000 of income from all

sources must report the full \$100,000 as the net pro rata share of S corporation income on the NJ-1040.

If a Federal S corporation does not make the New Jersey election (i.e. non-electing S corporation) then the resident shareholder's pro rata share will only include the pro rata share of the S corporation's income that is *not* allocated to this State. A nonresident shareholder would not be subject to tax on any portion of the non-electing S corporation's income, even if the income is allocated to New Jersey. Thus, a resident shareholder in a Federal S corporation that allocated 10% of its income to New Jersey must report the remaining 90% as the net pro rata share of S corporation income on the NJ-1040. This is true whether or not the S corporation paid out any dividends during the year.

Household Employees — The Division received an inquiry regarding an employee's filing and withholding obligations in New Jersey with respect to wages paid to domestic employees. For Federal tax purposes, in 1995 an employer of a household worker is required to withhold social security and Medicare from an employee who is paid cash wages of \$1,000 or more in a calendar year. There is no requirement to withhold Federal income tax unless the employee asks the employer to do so and the employer agrees.

Inasmuch as withholding is not required for Federal income tax purposes, it is not deemed mandatory for an employer to withhold New Jersey gross income tax from

Division of Taxation Seizures (April – June 1995)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Bergen	Bogshand Electric Hackensack	04-04-95	Electrical Contractor	Open
	Markal Maywood Maywood	06-20-95	Truck Stop	Open
	A & T Paramus Mahwah	06-20-95	Truck Stop	Open
Burlington	Douglas, Diane P. Riverside	06-21-95	Landscaper	Open
Camden	West, Steven Cherry Hill	04-11-95	Flower Shop	Open
	Hyon, Chong Ik Camden	05-16-95	Jewelry Shop	Open
Cape May	N. Wildwood Red Garter Inc. North Wildwood	04-28-95	Bar	Open
	The Cabinet Tree Shop, Inc. Villas	05-03-95	Cabinet Shop	Closed
	McMichaels Landscaping North Wildwood	06-01-95	Garden Center	Open
Essex	James A. Dyer, Inc. Upper Montclair	04-25-95	Lawn Care	Open
Hudson	Tops Diner, Inc. Bayonne	04-27-95	Diner	Open
	Giroux, Mary I. Bayonne	05-18-95	Jewelry Shop	Open
	Filipiniana International Jersey City	06-01-95	Restaurant	Open
	The Dugout Hoboken	06-27-95	Newsstand	Open
Hunterdon	Kenlaw, Inc. Lambertville	05-02-95	Bike Shop	Open
Mercer	Mellor, Jr., James W. Ewing Twp.	04-03-95	Auto Repair	Bankruptcy
	Scenic Creations, Inc. Hightstown	05-05-95	Landscaper	Open
	Farm Boy Music Trenton	06-07-95	Bar	Closed

taxation seizures - continued from page 11

County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Elite Diversified Health Care New Brunswick	04-26-95	Health Care	Closed
	Mariella Restaurant, Inc. Hopelawn	06-05-95	Pizzeria	Open
Monmouth	Zschiegner, Herbert Manasquan	05-04-95	Vehicle	Open
	Roblor, Inc. Manalapan	06-08-95	Book Store	Closed
Morris	Rockaway Glass Rockaway	04-20-95	Glass Shop	Open
	Spero Spoto Enterprises Dover	05-03-95	Pizzeria	Bankruptcy
	Septembers Rockaway	06-06-95	Restaurant	Closed
Ocean	Glatt, Gary Toms River	05-17-95	Garage	Open
Passaic	Vera Rob, Inc. West Milford	05-12-95	Hardware	Bankruptcy
	Sports Page Cafe, Inc. Wayne	05-19-95	Bar	Closed
Sussex	Territos Tavern, Inc. Branchville	05-24-95	Bar	Open
Union	Salermo Furniture Elizabeth	04-18-95	Furniture Sales	Bankruptcy
	WOJ, Inc. t/a Jones Chateau Plainfield	05-02-95	Bar	Open

***Division of Taxation Auctions
(April – June 1995)***

County	Name/Address	Auction Date	Business Type
Atlantic	Bungalow Inn Egg Harbor	05-18-95	Bar
Camden	J. Recchinti Liquors Winslow Twp.	06-22-95	Liquor Store
Mercer	Bozarth, Howard Hamilton Twp.	05-03-95	Auto Repair
Morris	Donahue, Louise Boonton	04-05-95	Records
Passaic	Dehab Corp. West Milford	05-17-95	Bar
Union	WOJ, Inc. t/a Jones Chateau Plainfield	06-16-95	Bar
Warren	Par A Mor Phillipsburg	06-14-95	Restaurant

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wages paid to household workers. If, however, Federal income tax is withheld, then New Jersey gross income tax must also be withheld if otherwise required under New Jersey's employer withholding instructions.

For example, an employer who is withholding Federal income tax is required to furnish the NJ-W4 to all employees, but an employee is not required to complete the NJ-W4. If a household employee has requested that the employer withhold Federal income tax but does not wish to have State income tax withheld, the employee may claim exemption from withholding on the NJ-W4 if one of the following conditions is satisfied:

Filing status is single, head of household or qualifying widow(er) and the employee's wages plus taxable non-wage income will be \$7,500 or less for the current year; or filing status is married joint and the employee's wages combined with his spouse's wages, plus taxable non-wage income will be \$7,500 or less for the current year; or filing status is married separate and the employee's wages plus taxable non-wage income will be \$3,750 or less for the current year.

Sales and Use Tax

Cemetery Companies — All cemetery companies, whether owned by religious or nonreligious organizations, and whether or not profit making, are relieved of payment of any sales or use tax on any purchase in New Jersey of tangible personal property or services. This tax exemption is provided specifically for cemetery companies under N.J.S.A. 8A:5-10.

An ST-4 Exempt Use Certificate should be used to document the exemption under N.J.S.A. 8A:5-10. The cemetery company must have a sales tax Certificate of Authority number in order to issue an ST-4.

The use of an ST-5 Exempt Organization Certificate and an exempt organization number are restricted to certain qualified non-profit organizations that have applied for and been granted sales tax exempt organization status under section 9(b)(1) of the New Jersey Sales and Use Tax Act. Such exempt organizations must be specifically named in the Act or be of a class described in Section 501(c)(3) of the Internal Revenue Code. Nonreligious cemetery companies generally qualify for Federal income tax exemption under Section 501(c)(13) of the code and therefore would not qualify for New Jersey sales and use tax exempt organization status. This would preclude this type of cemetery company from using an ST-5 exemption certificate.

Hearing Test — The Division responded to an inquiry concerning the tax consequences of hearing testing conducted from a van moved from place to place throughout the State.

The inquirer was instructed that for New Jersey sales tax purposes, testing services are exempt from tax as professional services. N.J.S.A. 54:32B-2(e)(4)(A). The sale of ear plugs for use as part of a work uniform would also be exempt from tax under the clothing exemption, N.J.S.A. 54:32B-8.4; N.J.A.C. 18:24-6.3.

Pizza Delivery Charges — A taxpayer requested advice

regarding the incidence of sales tax on a separately stated food delivery charge made by pizza stores.

The Division responded that the New Jersey Sales and Use Tax Act provides an exemption from tax for separately stated charges for the transportation of property. N.J.S.A. 54:32B-2(d); N.J.S.A. 54:32B-8.11. Thus, the delivery charge for pizza and other prepared food is deemed to be exempt from sales tax under the provisions of the Sales and Use Tax Act.

Lease Entered Into Before June 26, 1989 — A leasing company is contemplating purchasing an equipment portfolio from another lessor and in turn will re-lease the same equipment to the same lessee. There will be a new lease contract drawn up. The current lessor's contract was in place prior to 1989. The lessor asked what the sales tax implications were in this case.

The Division responded that as long as the terms of the original lease apply (i.e. — the new contract is merely to reflect the correct parties to the transaction), the lessor can continue to collect sales tax pursuant to the pre-1989 law. However, if a new lease is entered into, the lessor will owe the use tax based on either the *original* purchase price (*not the fair market value*) or the total lease payments. However, the lessor may take credit for the sales tax paid by the lessee with respect to the lease of the property in New Jersey under prior law. See P.L. 1989, c.350.

Drop Shipment Sales — When an out-of-State vendor comes into

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New Jersey to pick up materials, New Jersey sales tax is due unless a completed New Jersey exemption certificate is obtained from the purchaser, for example, a New Jersey Resale Certificate (Form ST-3). A New Jersey vendor can accept an out-of-State exemption certificate in *drop shipment* transactions; that is, where a vendor registered in New Jersey delivers goods to a third party customer in New Jersey on behalf of an out-of-State vendor. See N.J.A.C. 18:24-10.6(c).

Library Services — The Division responded to an inquiry concerning the incidence of sales tax on receipts from a library service described thus:

Corporation X is a service provider who sends its employees to various clients to update changes in the client's reference libraries. All of

Corporation X's clients are in New Jersey. The materials used to update the reference libraries are not supplied by Corporation X, but are instead provided by the client.

There are no supplies or property transferred to the clients as part of the service provided. Corporation X's clients purchase the updated materials from independent publishers. A sales tax is paid on the property at the time of purchase. The publishers who provided the materials have no relationship with Corporation X. They are strictly independent of each other.

On occasion, Corporation X has managers who provide consulting services, advising the clients about their library or data storage capabilities. This is a minor portion of Corporation X's business. For both services provided by Corporation X, the fees are charged on an hourly basis only, and all invoices are prepared in this manner.

The New Jersey Sales and Use Tax Act provides an exemption for professional or personal service transactions at N.J.S.A. 54:32B-2(e)(4)(A). The filing, updating and consulting services provided by Corporation X under the above facts are deemed exempt services pursuant to this section of the law.

Sealcoating and Striping Parking Areas — The Division responded to a request regarding the sales tax treatment of the service of sealcoating and line-striping of parking areas.

The New Jersey Sales and Use Tax Act imposes tax on maintaining, servicing, or repairing real property. N.J.S.A. 54:32B-3(b)(4). Since sealcoating and line-striping are not considered a capital improvement to real property, the receipts from these services are subject to sales tax. □

In Our Courts

Corporation Business Tax Time Limit For Filing Refund Claim — *Don Dan Construction Company v. Director, Division of Taxation*, Tax Court, 16-02-00529-92CB, decided April 6, 1995.

This case involved the denial of a corporation business tax claim for refund. The denial was based on the claim having been filed beyond the time limits established by the pertinent tax laws. The parties agreed to argue only on the issue of whether the claim was timely filed. The facts were as follows: (1) the taxpayer filed its 1986 re-

turn on March 28, 1988, which was later than the approved extended filing date of March 15, 1988; (2) on October 17, 1988, the Division of Taxation (the Division) assessed late filing and payment penalties through issuing a tax lien; (3) on February 17, 1989, the taxpayer asked that the penalties be satisfied from an overpayment of its 1987 year tax; (4) on September 5, 1990, taxpayer filed an amended 1986 CBT return based on a revision of figures for closing inventory and cost of goods sold.

The taxpayer contended the statutory two year limit should run from the taxpayer's February 1989 payment of the "assessed" penalty and interest. The taxpayer argued that the 1989 payment should not be viewed as a payment of penalties and interest because the Division had not issued a notice of deficiency assessment or final determination with regard to the 1986 penalty and interest.

The Tax Court responded that the taxpayer had the opportunity to contest the penalty and interest charges by appealing to the Tax Court within 90 days of actual no-

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tice. The Tax Court noted that the taxpayer had chosen to satisfy, rather than contest, the charges. The Court upheld the refund denial and entered judgment in favor of the Division of Taxation.

Gross Income Tax

Duty to Remit Taxes Withheld from Employee Wages – *Lorenzo v. Director, Division of Taxation*, Docket No. 009219-93, decided April 7, 1995.

A president of a construction company, who was not fluent in English but signed checks and loan documents and gave personal guarantees as directed by the vice president, was not found to be under a duty to collect and remit New Jersey Gross Income Tax withheld from the wages of employees.

Taxpayer contended that other than a paper position as President, he did not have a duty regarding the collection and remittance of taxes. Therefore, N.J.S.A. 54A:9-6, which provides individual liability for a corporate employee withholding taxes, should not be applied against him.

The Division contended that the taxpayer was a responsible individual and was under a duty to perform the act in respect to which the violation occurred. The taxpayer had a 51% stock interest, the title of President of the corporation and supervised laborers. However, the evidence addressed at trial showed that he did not control the company jobs, secure bonds, supervise bookkeeping, or sign business papers without instruction to do so.

The Court, applying a nine factor test, decided in favor of the taxpayer, stating that the taxpayer lacked the duty to act for the corporation although he had authority to act and thus would not be held liable for the corporation's tax obligation.

The nine factors the Court considered are: (1) contents of the corporate bylaws; (2) role as officer and shareholder; (3) authority to sign checks and actual signing of checks; (4) authority to hire and fire employees; (5) responsibility to prepare and sign tax returns; (6) day-to-day involvement in business management; (7) power to control payments to creditors and payments of taxes; (8) knowledge of failure to remit taxes; and (9) derivation of substantial income and benefits.

The Court in making "a quantitative determination based on the totality of the circumstances" reasoned that taxpayer was not under a duty to act and cannot be held personally responsible for the unremitted withholding taxes of the corporation. The Court concluded that the taxpayer was an unsophisticated individual who could not read or write English and was instructed as to what needed his signature. The taxpayer had no involvement in day-to-day operations of the business except field operations and lacked the requisite knowledge of the outstanding tax obligation.

Relative Priority of IRS and New Jersey Tax Liens – *Monica Fuel, Inc. v. Internal Revenue Service*, Third Circuit Court of Appeals (No. 91-cv-00748), filed June 2, 1995.

The Third Circuit determined the relative priority of IRS liens and New Jersey motor fuels tax liens against a New Jersey corporation. The priority of competing liens depends upon which lien arose first. For purposes of determining priority, a state lien is deemed to have been perfected and "choate" when the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Noting that, in order for a lien to be choate, it is sufficient that the state have a right to enforce its lien summarily, the appeals court found that the fact that the Division's warrant of execution had expired did not prevent the motor fuels tax liens from being choate. It concluded that the state tax liens had priority because they were choate before the IRS liens arose.

Nonbusiness Bad Debt – *Walsh v. Director, Division of Taxation*, A-3708-93T3, decided April 19, 1995.

The Appellate Division affirmed the Tax Court's decision that a loss from a worthless nonbusiness bad debt is not a loss from the disposition of property within the meaning of N.J.S.A. 54A:5-1c, and therefore such loss cannot be deducted from gains from the disposition of property.

Local Property Tax

Inapplicability of N.J.S.A. 2A:14-1.2 to Property Tax Appeals – *New Jersey Transit Corp. v. Bor. of Somerville*, New Jersey Supreme Court, A-71-94, decided April 19, 1995.

New Jersey Transit Corporation, a governmental entity, appealed in 1991 from tax assessments levied

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against it by Somerville from 1981 to 1990. The Court affirmed the determination that these appeals were untimely. It held that the general ten year limitation period allowed by N.J.S.A. 2A:14-1.2 for actions brought by the State did not apply to challenges to real property tax assessments. These appeals were instead governed by the specific filing time limitations of N.J.S.A. 54:3-21.

Classification of Property – *Emmis Broadcasting Corporation of New York v. East Rutherford Borough Ten Fifty Limited Partnership v. East Rutherford Borough Radio Station WEVD v. East Rutherford Borough, Tax Court*, Docket Nos. 002282-92, 002284-92, 000946-93, 000681-94, 000680-94, decided March 21, 1995.

The Tax Court determined the proper assessment for a 22.58 acre property which included land on which radio towers were located and some wetlands. It ruled that the concrete bases on which the radio towers sat were assessable as

realty, while the towers themselves were personal property (machinery, apparatus, equipment) affixed to realty and not subject to local property tax. While the wetlands could not be developed, since they could “contribute” to the development of the rest of the land, the wetland portions were assessed at the same rate as the non-wetland portions.

Oklahoma Sales Tax

Tax on Interstate Bus Tickets – *Oklahoma Tax Commissioner v. Jefferson Lines, Inc.*, U.S. Supreme Court, Docket No. 93-1677, decided April 3, 1995.

Reversing an Eighth Circuit decision, the United States Supreme Court held that the imposition of Oklahoma sales tax on the full price of bus tickets for interstate travel originating in Oklahoma did not violate the Commerce Clause. It determined that the tax is valid because (1) it is applied to an activity with substantial nexus to the state of Oklahoma; (2) it is fairly apportioned; (3) it does not discriminate against interstate com-

merce; and (4) it is fairly related to the services provided by the state.

Transfer Inheritance Tax

Specific Legacy – *Estate of Baier Lustgarten*, 281 N.J. Super. 275 (*App. Div. 1995*).

Nonresident decedent’s estate included a nursery business and extensive lands located in New Jersey. This asset was part of a residuary estate, devised by means of a trust. The nursery business and lands were to be distributed to decedent’s stepson, subject to the life tenancy of decedent’s surviving spouse.

At issue was whether the gift of this nursery business and land was a “general” legacy, thus causing its value to be included in calculating the value of New Jersey property that must be considered in arriving at the ratio tax. The Court determined that this bequest was a “specific” legacy, and therefore exempt from the ratio tax pursuant to N.J.S.A. 54:34-3. □

In Our Legislature

Gross Income Tax

Cafeteria Plans — P.L. 1995, c.111 (signed into law on June 1, 1995) allows for the value of certain employee “cash-out options” under employer-provided cafeteria benefit plans to be excluded from an employee’s New Jersey gross income. This legislation applies to taxable years beginning after June 1, 1995.

Employer Returns; Electronic Funds Transfer — P.L. 1995, c.160 (signed into law on June 30, 1995) concerns the frequency of returns and payment of gross income tax withholdings by employers, and limits the frequency of electronic funds transfer payments to once a week maximum. This legislation applies to tax liabilities incurred after January 1, 1996.

Tax Rate Decrease — P.L. 1995, c.165 (signed into law on July 4, 1995) reduces the gross income tax rates. Combined with P.L. 1994, c.2, and P.L. 1994, c.69, this bill results in cumulative rate reductions for married persons filing jointly, head of household or surviving spouse of: 30% (\$0–\$80,000); 15% (\$80,000–\$150,000); and 9% (over \$150,000). Rate reductions for single individuals or married persons filing separately are 30% (\$0–\$40,000); 15% (\$40,000–\$75,000); and 9% (over \$75,000). This bill is effective for tax years 1996 and thereafter.

Local Property Tax

Tax Incentives for Commercial or Industrial Businesses — P.L. 1995, c.113 (signed into law on June 2, 1995) permits a municipality to offer tax incentives to a business that transfers commercial

or industrial operations from one qualifying municipality to another qualifying municipality. Such structures or parts thereof were previously restricted. This provision will be administered by the Division of Local Government Services in the Department of Community Affairs. This legislation takes effect immediately.

Local Property Tax Relief — P.L. 1995, c.148 (signed into law on June 30, 1995) appropriates fiscal year 1995 public utilities gross receipts and franchise taxes in excess of \$960,000,000 for distribution to municipalities to reduce the local municipal property tax levy.

Miscellaneous

Transportation Trust Fund — P.L. 1995, c.108 (signed into law on May 30, 1995) revises the New Jersey Transportation Trust Fund Authority Act of 1984 and changes the dedication of monies to the Trust Fund Account. This legislation is effective immediately, except that the section concerning the dedication of monies takes effect July 1, 1995.

Intestate Decedents — P.L. 1995, c.152 (signed into law on June 30, 1995) clarifies procedures for disposition of property of intestate decedents. This legislation takes effect immediately and applies to all estates where a fiduciary has been appointed and has not been discharged.

State Tax Administration — P.L. 1995, c.158 (signed into law on June 30, 1995) requires State agencies to obtain and furnish certain taxpayer identification information to the Division of Taxation to assist in collecting delinquent State taxes. This legislation will take effect January 1,

1996.

Set-Off of State Vendor Debt — P.L. 1995, c.159 (signed into law on June 30, 1995) authorizes payments made under State contracts to be set-off for tax debts owed by State vendors. This legislation will take effect January 1, 1996.

Landfill Reclamation Improvement District Fee — P.L. 1995, c.173 (signed into law on July 6, 1995) permits a municipality that has created a Landfill Reclamation Improvement District to impose a franchise assessment fee not to exceed 3% on the sale price of all tangible property sold by a business in the district (exclusive of transportation charges and sales taxes), and upon all rental receipts from the rental of commercial property in the district.

A municipality having a population of more than 12,000 in which there is an area designated as an urban enterprise zone in which the receipts of certain sales are exempt to the extent of 50% of the tax imposed under the sales and use tax can adopt an ordinance creating a landfill reclamation improvement district whenever the municipality determines that the district will promote job creation and economic development. A municipality may create by separate ordinances more than one district.

Health Insurance — P.L. 1995, c.196 (signed into law on August 2, 1995) establishes procedures to convert a health service corporation to a domestic mutual insurer. This legislation takes effect immediately.

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Sales and Use Tax

Alcoholic Beverage Wholesalers and Retailers — P.L. 1995, c.161 (signed into law on June 30, 1995) establishes a reporting and review system for alcoholic beverage wholesalers and retailers to verify the correct collection and reporting of sales and use taxes on alcoholic beverages. This law takes effect immediately. However, the provision which allows the Division to require reports from wholesalers of

all sales to retailers applies to sales made on and after August 1, 1995.

The compliance procedures require retailers to produce an Alcoholic Beverage Retail Licensee Clearance Certificate for the municipal clerk before they will be able to renew their license. The compliance procedures will be phased in geographically, by counties, over three years, beginning with renewals for July of 1996. The seven counties affected for the

first year are Bergen, Burlington, Essex, Gloucester, Middlesex, Ocean and Salem. For more information call (609) 292-0140.

Telephone "Yellow Pages" Advertising — P.L. 1995, c.184 (signed into law on July 25, 1995) eliminates the sales and use tax on advertising space in telecommunications user or provider directories or indexes distributed on or after April 1, 1996. □

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
5	22	23	24	25	26	27	28
	29	30	31				

October 2

NJ-500 Gross Income Tax— Employer's semi-monthly return

October 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

October 16

CBT-100 Corporation Business Tax— Annual return for accounting period ending June 30

continued

October 16 - continued

CBT-150 Corporation Business Tax— Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax— Employer's semi-monthly, monthly and quarterly returns

October 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 20 - continued

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax— Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax— Monthly return

UZ-50 Combined State Sales Tax/ Urban Enterprise Zone Sales Tax—Monthly return

October 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

October 31

NJ-500 Gross Income Tax— Employer's semi-monthly return

november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
				1	2	3	4
1	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
9	19	20	21	22	23	24	25
5	26	27	28	29	30		

November 13

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

November 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending July 31

CBT-150 Corporation Business Tax—Installment payment of

continued

November 15 - continued

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

November 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

November 20 - continued

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

November 27

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

November 30

NJ-500 Gross Income Tax—Employer's semi-monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
						1	2
1	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
9	17	18	19	20	21	22	23
5	24	25	26	27	28	29	30

December 11

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

December 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending August 31

continued

December 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

December 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

December 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

December 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

Late Charges for Video Rentals

The receipts from the rental of a home video are subject to sales tax. Since a late charge is directly related to the use of the video beyond the original rental period, it is also subject to tax. In effect, the customer is merely being charged for another rental period.

1994 Homestead Rebate Guidelines

The 1995-96 Annual State Budget has set limitations on 1994 homestead rebates scheduled to be mailed on or before October 31, 1995. Homestead rebates for 1994 will be calculated in the same manner as the 1993 homestead rebates which were also affected by the Annual State Budget last year. For taxpayers 65 years of age or older or disabled, with income of \$100,000 or less, rebates will be calculated without limitation, allowing rebates up to the maximum amount of \$500. Other qualified taxpayers with incomes of \$40,000 or less will receive a maximum rebate of \$90 for homeowners and \$30 for tenants. Taxpayers under age 65 and not disabled, with income over \$40,000, will not receive 1994 homestead rebates.

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Summer 1995

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Extension Requests

There has been much confusion among taxpayers as to the requirements for obtaining and keeping a valid extension of time to file a New Jersey gross income tax return. The Division has proposed changes to N.J.A.C. 18:35-1.18 in an effort to clarify and simplify the application and payment requirements a taxpayer must satisfy to obtain an extension of time to file a gross income tax return.

Under the proposed rule, a taxpayer may obtain a four month extension of time to file the New Jersey resident, nonresident or fiduciary income tax return (Form NJ-1040, NJ-1040NR or NJ-1041)

provided that at least 80% of the actual tax liability is paid in the

form of withholdings, estimated provided that at least 80% of the actual tax liability is paid in the form of withholdings, estimated payments or a payment made with an Application for Extension of Time to File (Form NJ-630), and the taxpayer either (1) obtains a valid four month extension for Federal purposes and attaches a copy of such application to the New Jersey gross income tax return when filed, or (2) completes and submits Form NJ-630 by the original due date if no Federal extension is requested.

If the taxpayer is unable to file the return within the four month extension period, the taxpayer may

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Interest 11.5% for Second Quarter

The interest rate assessed on amounts due for the second quarter of 1995 is 11.5%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%
4/1/95	11.5%

important phone numbers

Tax Hotline	609-588-2200
Recorded Tax Topics	800-323-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-588-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Mergers, Withdrawals & Dissolutions	609-292-5323
Corp. Tax Liens	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
.....	609-292-5035
.....	609-292-7147
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576
Tax. Registration	609-292-1730

extensions - from page 1

obtain an additional two month extension, for a total of six months. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

In an attempt to reduce the number of filings required by taxpayers, the proposed new rule eliminates the need for a taxpayer to file Form NJ-630 to obtain an additional two month extension if an additional two month Federal extension is approved and a copy of such approval is attached to the taxpayer's New Jersey gross income tax return when filed.

Taxpayers must still file Form NJ-630 if (1) no extension is obtained for Federal purposes, or (2) a payment must be made to satisfy the requirement that 80% of actual tax liability be paid by the original due date of the return. □

Annual Use Tax Return

In an ongoing effort to simplify filing procedures and assist filers in complying with the law, the Division of Taxation is currently working on regulations that would change the requirements for filing sales and use tax returns and provide an annual use tax return for businesses not operating as vendors. □

CORPORATION TAX Refunds and Assessments

The Division has proposed amendments to N.J.A.C. 18:7-13.1 and 13.8 which make minor modifications to reflect current Division practice and the language of the Uniform Procedure Law at N.J.S.A. 54:48-7 regarding transition provisions for P.L. 1992, c.175, N.J.S.A. 54:49-6(b), the provision on assessments and N.J.S.A. 54:49-14, the provision on refunds.

Assessments

Under N.J.A.C. 18:7-13.1(b), as proposed to be amended, the statute for assessments is five years from the date the return or amended return was filed, for liabilities accruing prior to July 1, 1993, and four years from the date the return or amended return was filed for tax liabilities accruing on and after July 1, 1993. In accordance with N.J.S.A. 54:49-7(b), any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. Note that the exceptions in 18:7-13.1(b)1-3 remain in place: the Director may assess any time where no return was filed, and if the return is filed before or after the due date, the statute of limitations starts running from the due date or filing date, whichever is later.

Examples:

1. Corporation A's 1992 CBT return is due April 15, 1993 and filed March 1, 1993. The Division has until April 15, 1998 to assess additional tax under 18:7-13.1(b)3, five years from the April 15, 1993 accrual date of the tax liability,

because the tax liability accrued prior to July 1, 1993.

2. Corporation B's 1993 CBT return is due April 15, 1994 and filed March 15, 1994. Corporation B files an amended return on August 15, 1994. The Division has until August 15, 1998 to assess additional tax under N.J.A.C.

continued on page 3

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refunds & assessments - from pg. 2

18:7-13.1(b)3, four years from the filing of the amended return, because the amended return relates to a tax liability accruing on April 15, 1994, after July 1, 1993.

3. Corporation C's 1990 CBT return was due and filed on April 15, 1991. The Division has until April 15, 1996 to assess additional tax, five years from April 15, 1991. Pursuant to N.J.S.A. 54:48-7(b) and N.J.A.C. 18:7-13.1(b) as proposed to be amended, any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect.
4. Corporation D's 1993 CBT return is due on April 15, 1994 and filed March 15, 1994. The Division has until April 15, 1998 to assess additional tax, four years from the April 15, 1994 accrual date of the tax liability. The tax liability accrued on April 15, 1994, after July 1, 1993, and therefore the four year statute of limitations is applicable.
5. Corporation E's 1992 CBT return is due and filed on April 15, 1993. The Internal Revenue Service changes the amount of taxable income and the taxpayer files an amended return August 15, 1994 to reflect the change. The Division has until August 15, 1999 to assess additional tax, five years from the filing of the amended return, because the amended return relates to a liability accruing on April 15, 1993, prior to July 1, 1993. If

the liability had accrued on April 15, 1994 and the amended return filed on August 15, 1995, the Division would have until August 15, 1999 to assess additional tax, four years from the filing of the amended return, because the liability would have accrued on April 15, 1994, after July 1, 1993.

6. Corporation F's 1991 CBT return was due and filed April 15, 1992. On February 1, 1997, the corporation consents in writing to a six month extension of the assessment period. The Division has until October 15, 1997 to assess under N.J.A.C. 18:7-13.1(c), five years from April 15, 1992 plus the six month extension to which the corporation consented in writing.

Refunds

The same approach regarding accrual is applied to the statute of limitations on refund claims under N.J.A.C. 18:7-13.8.

Examples:

1. Corporation A files its 1992 CBT return on April 15, 1993. On May 1, 1995 the corporation files an amended return and a claim for refund. The refund claim is barred because the two year statute of limitations for refund claims expired on April 15, 1995. Pursuant to N.J.S.A. 54:48-7(c) and the proposed amendment to 18:7-13.8(a), all claims barred by the two year statute of limitations on July 1, 1993 shall continue to be barred.
2. Corporation B files its 1993 return on

April 15, 1994. On August 1, 1995 the corporation files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (Form IRA-100) which results in a diminution of entire net income. The corporation has until August 1, 1999 to file a refund claim under 18:7-13.8(d), four years from the filing of the IRA-100, because the claim accrued after July 1, 1993. □

CORPORATION TAX ***Activity Required for Nexus***

As a result of *Pomco Graphics, Inc. v. Director, Division of Taxation*, 13 N.J. Tax 578, the Division has revisited the question of the degree of corporate activity in New Jersey which would require a corporation to file a New Jersey Corporation Business Tax return and subject it to paying, at the very least, the minimum tax.

N.J.S.A. 54:10A-2 imposes upon every domestic and foreign corporation, not otherwise exempt, a tax for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State.

As a result of *Pomco*, foreign corporations who solicit orders for sale of tangible personal property from customers in New Jersey, approve the order outside of New Jersey, and ship from outside of New Jersey and have all the other attributes affording protection under Public Law 86-272, meet the requirements of subjectivity under

nexus - from page 3

N.J.S.A. 54:10A-2 and have sufficient connection with this State for New Jersey to require it to file returns and pay a minimum tax. The presence of an employee who simply solicits orders or engages in activities ancillary to requests for an order is nevertheless exercising its corporate franchise and "doing business" here and we will require the filing of a New Jersey Corporation Business Tax return and the payment of a minimum tax. □

GROSS INCOME TAX Form 1099 Filing Requirements

Pursuant to N.J.S.A. 54A:8-6 and N.J.A.C. 18:35-1.8, all persons having the control, receipt, custody, disposal, or payment of interest, rents, salaries, wages, premiums, annuities, compensation, remuneration, etc. are required to file a copy of the Federal information return (Form 1099) on or before February 15 following the close of each calendar year. The Division will, however, consider such forms timely filed if they are submitted no later than the Federal filing deadline of February 28.

Form 1099 must be filed with the Division of Taxation, CN 248, Trenton, New Jersey 08646-0248. Such requirements may be satisfied by providing a copy of the magnetic tape provided to the IRS or copies of all forms submitted for amounts of \$1,000 or more.

A penalty of \$2.00 may be imposed on a payor for each statement he fails to file unless it is shown that such failure is due to reasonable cause and not to willful

neglect. The total penalty imposed on the delinquent payor shall not exceed \$2,000. N.J.S.A. 54A:9-6(h). In addition, any taxpayer failing to file a return may be liable for a late filing penalty of \$100 for each month or fraction thereof that the return is delinquent. N.J.S.A. 54:49-4. Finally, any person who recklessly or negligently fails to file any return or report required by any State tax law may be guilty of a disorderly persons offense. N.J.S.A. 54:52-6. □

CORPORATION TAX Meals and Entertainment on CBT-100S

A New Jersey S corporation is permitted to deduct the portion of meals and entertainment expenses that is not deductible for Federal purposes in computing the New Jersey S corporation income that is passed through to its shareholders. An entry should be made on Schedule K, Part II, Line 4 of the 1994 Form CBT-100S to indicate the meals and entertainment expenses not deductible for Federal purposes. A rider explaining the entry should be attached to the return, since Line 4, Part II of Schedule K is normally used for entering Section 179 expense from the Federal Schedule K.

In computing the 2.35% Corporation Business Tax, any meals and entertainment expenses not deductible for Federal purposes would not be deductible in computing the New Jersey Corporation Business Tax, and would be reported on Schedule C as a book expense not deducted on the tax return. □

new york credit - from page 4

GROSS INCOME TAX Calculation of Credit For Tax Paid to New York

Numerous tax protests are received based on New York's inclusion of worldwide income to determine the New York tax rate. Taxpayers typically argue that New York is effectively taxing New Jersey source income; therefore, they are entitled to take into account the "effectively" taxed amount when computing their resident credit. N.J.S.A. 54A:4-1.

On audit the claimed credit is reduced to the actual amount factually and legally taxed by New York. The Conference and Appeals Branch has routinely upheld the auditor's findings on this issue. The Director's Final Determination has been challenged by several taxpayers in the Tax Court of New Jersey. Three such cases have been decided, all in favor of the Director. These decisions identify and affirm the Director's standard against which similarly situated taxpayers will be measured.

See *Geeming Chin v. Director*, 14 N.J. Tax 304 (1994); *Charles J. Widder v. Director*, 14 N.J. Tax 349 (1994); and *Thomas J. Carroll v. Director*, decided April 8, 1994, Bench Opinion, Tax Court Docket No. 005786-93; aff'd. March 16, 1995, Superior Court of New Jersey, Appellate Division, Docket No. A-005573-93T2.

In his opinion in *Carroll*, Judge Lasser stated that what the plaintiff proposed was that "if some other state taxes more severely than we do, ...we have to give up our tax

continued on page 5

on New Jersey source income on our own residents. And that was never the intent of the legislature.”

Judge Lasser went on to say, “The intent of the legislature was to say that if you have New York source income that New York is taxing we also have the right to tax that because you are a New Jersey resident. But if New York taxes it, then we’ll give you a credit based on the New York source income that New York taxes. But we’re not going to give up our New Jersey tax on New Jersey source income just because New York is taxing you at a higher rate on your New York source income. And that’s what happens, isn’t it? The rate of tax on your New York source income is higher than it used to be because of the manner in which New York calculates it.” □

CORPORATION TAX IRC Section 338(h)(10) Change in Position

The Division has received numerous inquiries concerning its position in light of the change in Federal treatment regarding certain transactions under Section 338(h)(10) of the Internal Revenue Code. Specifically, this change allows a corporation which is a member of a selling affiliated group filing a separate return to make an election under IRC Section 338(h)(10).

As a result of this change, the Division will no longer require the inclusion of the gain or loss arising from the sale of the target corporation’s stock in the net income base of the seller. This change has been made effective for acquisition

dates occurring on or after January 14, 1992. □

INHERITANCE/ESTATE TAX No Attorney Needed for Property Transfer

The New Jersey Supreme Court recently ruled that it is no longer necessary for a buyer or seller of real property in New Jersey to be represented by an attorney. The ramifications of this decision are, of course, many and varied.

The Transfer Inheritance and Estate Tax Branch reminds those responsible that, when real property is being transferred from the estate of a deceased person, a Consent To Transfer (Waiver), issued by the Branch, is required in order to transfer clear title to the property. Failure to obtain a proper waiver will result in the State of New Jersey’s having a lien on the property for a minimum of the statutory period of 15 years after date of death.

Depending upon existing circumstances, there are differing ways in which necessary waivers may be appropriately secured.

A waiver may be acquired by filing the appropriate inheritance tax return with payment of the proper tax. Waivers are then automatically issued in the due course of business. The IT-R Form is used for a decedent who was a resident of New Jersey and Form IT-NR for non-resident decedents.

When it is impossible to file a completed inheritance tax return for the estate of a resident decedent, a preliminary return, Form L-4, may be filed and, on the basis

of the information contained therein and otherwise available to the Branch, necessary real property waivers may be issued. However, this is a preliminary return and all necessary waivers will not be issued until warranted on the basis of the filing of a completed return.

When the entire estate of a resident decedent is passing to Class “A” beneficiaries, a complete return may not be required and a waiver necessary to properly transfer the decedent’s interest in real property may be obtained by the proper filing of Form L-9. Class “A” beneficiaries consist of a decedent’s spouse, parent, grandparent, child, stepchild or legally adopted child, or a grandchild of the decedent.

It is important to understand that the waiver issued by the Branch covering a decedent’s interest in New Jersey real property is currently the only legitimate way in which the lien of the State may be automatically released.

Further information and/or forms are available by calling the Inheritance Tax Branch at 609-292-5033; 609-292-5035; 609-292-7147; or 609-777-4559. □

LOCAL PROPERTY TAX Proof Needed for Veterans' Property Tax Exemption

Questions are often received by Property Administration (Local Property Branch) concerning documentation needed to confirm total or 100% permanent disability for honorably discharged New Jersey resident war veterans claiming full property tax exemption.

Through contact with the U.S. Veterans' Administration (U.S. Department of Veterans' Affairs) via the New Jersey Department of Military and Veterans' Affairs, it was reestablished that the following conforming language as contained in VA issued statements certifies total or 100% disability for purposes of qualifying for full property tax exemption:

"This is to certify that the records of the U.S. Department of Veterans' Affairs (VA) disclose that your wartime service-connected disability is totally disabling. A 100% permanent and total evaluation was assigned effective (DATE) in accordance with the VA Rating Schedule and not so evaluated because of hospitalization or surgery and recuperation. The records further indicate that you served in the U.S. (BRANCH OF MILITARY SERVICE) from (START DATE) to (END DATE) and received an honorable discharge. The above statement is issued in accordance with N.J.S.A. 54:4-3.30 et seq."

It should be remembered that veterans of the recent peacekeeping missions, Panama, Lebanon, Grenada, and Operation Desert Shield/Desert Storm-Arabian peninsula and Persian Gulf, must have

combat zone time either in those nations or regions or on board ship patrolling the territorial waters of those nations or regions for at least 14 days. However, any person receiving a service-incurred injury or disability shall be considered a veteran whether or not 14 days service has been completed. To verify combat zone service Items 13, 18 and 12a-c, f & g of the DD214 or Certificate of Release or Discharge from Active Duty should be reviewed. Key indices for Lebanon, Grenada and Panama veterans are "Overseas Deployment Medal" in Item 13 and the notation "Participation in Lebanon, Grenada and/or Panama peacekeeping mission" and the start-end dates in Item 18. Items numbered 12 also provide dates of service. The Armed Forces Expeditionary Award for Marine Corps or Navy Expeditionary Award are other indicators. For Persian Gulf veterans key indices are "S.W. Asia Service Medal" or "Overseas Service Ribbon" in Item 13 and the notation "Participated in Operation Desert Shield/ Storm under Title 10 U.S.C. 673" and the dates in Item 18. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1-

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Deadline for assessor to mail the form to claim a continuance of valuation under the Farmland

Assessment Act for the tax year 1996 together with a notice that the completed form must be filed with the assessor by August 1, 1995 to each taxpayer whose land was assessed for tax year 1995 under the Act.

2nd Tuesday in July-

- State Equalization Table reviewed.

August 1-

- Deadline for all owners of farmland to file an application (Form FA-1) with the assessor.

August 5-

- Deadline for all SR-1A forms showing information to be used in compiling the 1995 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- Deadline for County Board of Taxation Presidents to annually file a report to the Director, Taxation.

August 25-

- Deadline for the completion of State Equalization Table by Director, Taxation.

September 1-

- Extended deadline to file Form FA-1 where assessor has determined that failure to file by August 1 was due to illness of the owner, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns of local exchange telephone, telegraph and messenger systems companies, with respect to tax year 1996 and thereafter, are required to be filed with the assessor for the

continued on page 7

busy tax assessors from page 6

taxing district in which the said property is located.

September 13-

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerk, and clerk of board of freeholders by County Boards of Taxation.

September 15-

- Deadline for assessor to file statement of taxable value of State-owned real property with the Director, Taxation. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Twenty-nine persons passed the examination for the tax assessor certificate held on March 25, 1995:

Bergen County: Robert Appaluccio, Lyndhurst Township; Marie Merolla, Ridgewood Village.

Burlington County: Jerome J. McHale, Medford Township.

Essex County: Geoffrey Gregg, Montclair Township.

Gloucester County: Karen Mitchell, West Deptford Township.

Hudson County: Eduardo C. Toloza, Jersey City.

Hunterdon County: Debra L. Blaney, Readington Township; James R. McDonald, Clinton Township; Anna Christy Peacock, East Amwell Township.

Mercer County: Robert P. Esposti, Hamilton Township; John M. Gapszewicz, Trenton City.

Middlesex County: Francine Napoli, Old Bridge Township; Joel R. Sevinsky, Middlesex Borough.

Monmouth County: Gary P. Foulks, Atlantic Highlands Borough; William J. Schulster, Fair Haven Borough; Paul A. Simon, Little Silver Borough; James A. Stuart, Colts Neck Township.

Morris County: Sandra L. Duvall, Parsippany-Troy Hills Township.

Ocean County: Raymond A. Birchler, Beachwood Borough; Richard B. Froelich, Island Heights Borough; Rosalind Mohr, Dover Township; Kathleen D. Ureneck, Lavallette Borough.

Passaic County: Jean A. Gambatese, Paterson City; Mark A. Wise, Hawthorne Borough.

Somerset County: Ernest F. DelGuercio, Jr., Bridgewater Township; Samuel M. Kearton, Bridgewater Township; Harry V. Keefe, III, Bernards Township.

Union County: Michael J. Timoni, Clark Township.

Warren County: Bernard Murdoch, Hackettstown Town.

The next exam will be held on September 30, 1995. The last date for accepting applications for this exam will be August 31, 1995. Admission to the exam will be by application only. Individuals retaking the exam must reapply. There is a filing fee of \$10.00. □

**Spill Tax
Update**

Technical Bulletin #TB-16, which contains guidelines for the Spill Compensation and Control Tax, was reissued on March 1, 1995. To obtain a copy of the updated bulletin, contact the Division's Tax Hotline at 609-588-2200.

For more information on the Spill Compensation and Control Tax or to obtain forms, call the Division's Miscellaneous Tax Branch at 609-984-7171 or write to the Division of Taxation, Miscellaneous Tax Branch, CN 265, Trenton, NJ 08646-0265. □

Busy Tax Hotline

Taxpayer Services had a busy and successful tax season recording more than 500,000 calls from taxpayers. Tax Hotline employees answered 226,707 calls from taxpayers calling with questions and requesting help in completing tax returns. In addition, the automated voice response system accepted 297,508 calls. Of these nearly 300,000 calls, form order requests accounted for 17,803 calls; a total of 113,846 taxpayers selected one of the many tax scripts available on Tax Talk; and 165,859 taxpayers called the Automated Refund Inquiry System to inquire about their current year refund.

NJ TaxFax received 16,000 calls from people requesting that forms be instantly faxed to them. NJ TaxFax, available by calling 609-588-4500, continues to grow in popularity as the Division increases the number of tax forms and publications available on the NJ TaxFax menu. □

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Criminal Enforcement

Criminal Enforcement over the past several months included:

- On February 1, 1995, Eugene Slusker doing business as Pentagon Management Company was indicted by the State Grand Jury for failing to remit \$355,467 in New Jersey motor fuel taxes.
- A prosecution report was submitted for a case involving the filing of fraudulent NJ income tax returns for the 1990 through 1993 tax periods. The taxpayer illegally received refunds in excess of \$31,200 for which she was not entitled.
- Amended PGRT returns filed by a taxpayer currently under criminal investigation resulted in an increase of reported taxable gallons of 63,750,596 with a taxable liability of \$2,550,024. The returns previously filed for the same periods (October 1, 1991 through December 31, 1992) indicated that the company had no taxable distribution.
- On March 9, 1995, an 18 count indictment was handed down by the State Grand Jury against nine individuals and one corporation for conspiracy to defraud both the Federal and State governments of motor fuel taxes. PGRT taxes identified are in excess of \$150,000. This is an ongoing investigation with the NJ Division of Criminal Justice.
- On February 23, 1995, Melvin Shaw doing business as Shaw Motor Sport was indicted by the Camden County Grand Jury for failing to remit \$36,004.92 in New Jersey sales taxes, misap-

propriating money collected on behalf of the State of New Jersey and presenting false documents to the Division.

- The Division of Criminal Justice in a negotiated settlement has arranged for the payment of \$250,000 in sales tax and Atlantic City Luxury Tax for admissions to shows staged by a production company. The initial payment of \$150,000 has been received. The remainder will be made in monthly installments of \$10,000.
- As part of a plea agreement with two officers of JSM Trenton, Inc., each will pay restitution of \$12,409.50 representing unpaid sales tax and penalty and interest charges. The consent to admission into Pre-trial Intervention is contingent on these payments. □

Enforcement Summary

Civil Collection Actions

Quarter Ending - Mar. 31, 1995.

Following is a summary of enforcement actions for the quarter ending March 31, 1995.

Certificates of Debt

Field Investigators secured 603 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$16.3 million.

Levies

\$1.8 million was collected by Field Investigations as a result of executing against 337 non-compliant taxpayers.

Seizures

When a liability, for which the Division of Taxation has secured

enforcement summary - from page 8

judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles etc., until arrangements are made for payment of the debt.

For the quarter ending March 31, 1995, 26 businesses were seized. Some businesses were able to reopen, others remain closed. A listing of seized businesses appears on pages 11 and 12.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. A public auction of the business assets will be conducted in about 30 days.

During the quarter ending March 31, 1995, nine auctions were held by the Division. A listing follows on page 12.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

S Corporation Distributions

The Division received a letter concerning a New Jersey corpora-

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tion that is a Federal S corporation, and has elected to be a New Jersey S corporation effective January 1, 1994. The corporation has accumulated earnings earned as a "C" corporation prior to its New Jersey election. The corporation has both New Jersey resident and nonresident shareholders.

The inquiry asked if the corporation earns profits in its first year as a New Jersey S corporation and makes distributions to its shareholders, are the S corporation's distributions treated as first being made from the New Jersey accumulated adjustments account until it is reduced to zero and then deducted from the accumulated C corporation earnings. The Division replied that this is the case.

In making distributions the Division advised the corporation to follow LIFO principles similar to those under the Internal Revenue Code. Here, in this situation, the Division does not follow the principles as set forth in *Laurite v. Taxation Div. Dir.*, 12 N.J. Tax 483 (1992), aff'd. 14 N.J. Tax 166 (App. Div. 1993), cert. denied 135 N.J. 301 (1994), which predated the 1993 statutory changes. Thus, distributions are considered first to come out from the 1994 period (current year's earnings) then from 1993, for example.

If derived from earnings and profits, the distributions made to the New Jersey resident shareholder are taxable dividends pursuant to N.J.S.A. 54A:5-1 f, as amended by P.L. 1993, c.173. Such dividend distributions would not be taxable to a nonresident as they would be considered intangible income.

Regulated Investment Companies — Under IRC 851(h)(1) each portfolio within a series fund or

corporation is generally treated as a separate taxpayer and therefore, files a separate Federal corporate income tax return. For fiscal years beginning after December 31, 1986 each portfolio of a series fund or corporation obtained a Federal Employer Identification Number (FEIN) and filed a separate Federal corporate income tax return. For State purposes separate New Jersey returns have been timely filed indicating the new FEIN but with the same New Jersey corporation number.

The New Jersey Corporation Business Tax Act (1945), N.J.S.A. 54:10A-1 et seq. is a franchise tax. Every domestic and foreign corporation not exempted pays an annual franchise tax for the privilege of having or exercising its corporate franchise in New Jersey, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in the State. N.J.S.A. 54:10A-2. The tax for a regulated investment company is \$250.00. N.J.S.A. 54:10A-5(d).

Since this tax is a corporate franchise tax for the privilege of doing business in New Jersey, each corporation is required to file one return, and multiple returns for the same corporation for the same taxable period would not be proper for franchise taxpayers. Accordingly, for New Jersey State purposes each separate portfolio of a series corporation is not required or permitted to file a separate corporation tax return simply because a separate Federal return is required. A single return should be filed for State purposes for each corporate entity. Copies of each Federal return for components of that entity (or fund) should be at-

tached to the New Jersey return as filed.

Gross Income Tax Nonqualified Deferred Compensation Plan — The Division replied to a request for information regarding the gross income tax consequences to employees who defer a portion of their salary and/or bonus into a nonqualified, unfunded deferred compensation plan.

The plan in question allows eligible employees to participate in the plan. Prior to the Plan Year participants make certain irrevocable elections regarding the deferral of all or part of their base salary and prospective bonus compensation. In addition, each participant makes elections as to the allocation of the deferrals between a Retirement Distribution Account and an In-Service Distribution Account, as well as the date on which the deferrals will be paid from each account. The election must be made before the beginning of the Plan Year. Because the plan is unfunded the participants are not guaranteed to receive the money.

In order to determine when income is to be reported, the Gross Income Tax Act requires that a taxpayer's accounting method be the same as his accounting method for Federal income tax purposes. N.J.S.A. 54A:8-3(c). Under Federal income tax accounting methods a cash basis taxpayer must report income in the taxable year in which it is actually or constructively received. A taxpayer constructively receives income when cash or property is credited to his account or is made available for withdrawal and is not subject to substantial limitations or restrictions. *Smyer v. Taxation*

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Div. Director, 4 N.J. Tax 42, 46 (1982); *Treas. Reg.* 1.451-2(2) (1957).

Deferred compensation is not taxable income to an employee until actually received, provided the following conditions are satisfied:

1. The deferral is agreed to before the compensation is earned;
2. The deferred amount is not unconditionally placed in trust or escrow for the benefit of the employee; and
3. The promise to pay the deferred compensation is a contractual obligation not evidenced by notes or secured in any way.

If all three conditions are satisfied the compensation will not be deemed to be constructively received. If the deferral is made after a bonus is earned, it is not constructively received as long as the deferral is made before the amount of the bonus is determined. In addition, deferred compensation is not considered to be constructively received when the terms of the deferral agreement provide for the payment of benefits in case of an unforeseeable emergency.

If a deferred compensation plan is funded, that is, contributions are made by the employer to a trust,

custodial account or escrow fund or an annuity contract is purchased, the contributions are taxable before they are actually received. Such amounts become immediately taxable when the employee's rights in the plan are either funded and nonforfeitable, or funded and transferable. It is at that point that they are constructively received.

Gross Income Tax

Mutual Fund Distributions — The New Jersey Gross Income Tax Act excludes from gross income interest earned on Federal obligations which are free from state or local taxation under the laws of the United States, and interest earned on obligations of the State of New Jersey or any of its political subdivisions.

The distributions received by shareholders of regulated investment companies, commonly referred to as mutual funds, are considered to be dividends and must be included in gross income. The only exception to this rule is for distributions from New Jersey "qualified investment funds." Such distributions may be excluded from gross income to the extent that they are attributable to interest or gains from Federal or New Jersey exempt obligations. A New Jersey "qualified investment fund" is, in general terms, a mutual fund which has at least 80% of all its investments in Federal or New

Jersey exempt obligations, and which certifies such status to the Division on an annual basis.

Sales & Use Tax

Retrieving and Photocopying Medical Records — The service of retrieving medical records for current or former patients or their representatives is exempt from sales tax as a personal service. If the retrieval service provides several copies as part of the service, that fact could transform the transaction into the sale of tangible property under N.J.S.A. 54:32B-3(a). This would be similar to copying or printing services provided by a printer.

For example, retrieval service X charges for retrieval at a fixed rate plus \$1.00 per page of copied material. For an additional charge, X will also provide its customer with complete sets of the documents retrieved for the customer. The additional charge is \$.50 per page. The bill looks like this:

Medical record retrieval	
at \$60.00	\$60.00
100 pages at \$1.00	
per page	100.00
	<u>\$160.00</u>
3 document sets	
at \$.50 per page	\$150.00
Sales Tax.....	<u>9.00</u>
Total.....	\$319.00

It is the retrieval service that is exempt from tax, which incident-

Division of Taxation Seizures **(January – March 1995)**

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Bungalow Inn Egg Harbor	03-10-95	Bar	Closed
Bergen	J & J Auto Maintenance Waldwick	01-11-95	Auto Repair	Open
	Galiza, Inc Lyndhurst	03-22-95	Restaurant	Closed
Burlington	Morrisroe, John Mt. Holly	03-29-95	Luncheonette	Open
Camden	Raheny, Inc. Gloucester Twp.	02-08-95	Printing	Open
	Seafood Gallery, Inc. Haddon Heights	03-21-95	Restaurant	Open
Essex	Framba, Inc. Irvington	01-30-95	Bar	Auctioned
	A & W Lounge, Inc. Newark	03-29-95	Bar	Closed
Gloucester	Grey Fox, Inc. Paulsboro	01-06-95	Bar	Open
Hudson	Metro Cafe Jersey City	03-17-95	Luncheonette	Open
Mercer	Mellor, Jr., James W. Ewing Twp.	03-09-95	Auto Repair	Closed
Morris	JC III Landscaping Parsippany	01-19-95	Landscaping	Auctioned
	JGSX2, Inc. Mountain Lakes	02-22-95	Deli & Liquor	Closed
	Donahue, Louise Boonton	03-07-95	Record Shop	Closed
	Oxford Leasing Parsippany	03-09-95	Equip. Leasing	Open
Ocean	Marks Lawn Mower Sales Pt. Pleasant	01-10-95	Mower Repair	Open
	Hamilton Grill New Egypt	02-23-95	Bar	Closed

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County	Name/Address	Seizure Date	Business Type	Status
Passaic	Joreg, Inc. Paterson	02-14-95	Bar	Closed
Salem	Roberta, Inc. Penns Grove	02-01-95	Bar	Open
Somerset	Dewy Meadows Farm, Inc. Bernards	01-11-95	Farm & Store	Open
	The Red Barn Manville	01-27-95	Bar	Open
	Magyar Weaver Somerset	02-08-95	Restaurant	Open
Sussex	Arms & Ammo Branchville	01-23-95	Hunt & Fish	Auctioned
	Fedash Enterprise Vernon	02-01-95	Pizza Restaurant	Open
Warren	Detrick Cabinet Phillipsburg	03-13-95	Cabinets	Open
	McCarthy, William Washington	03-29-95	N/A	Closed

***Division of Taxation Auctions
(January – March 1995)***

County	Name/Address	Auction Date	Business Type
Cape May	Corson Brothers, Inc. Marmora	01-12-95	Hardware/Retail
Essex	Framba, Inc. Irvington	03-09-95	Bar
Mercer	1267 C J, Inc. Trenton	01-26-95	Bar
	Pilla, Donald Trenton	03-22-95	Bar
	Bottoms Up Cafe Trenton	03-22-95	Bar
Morris	Lan Dee, Inc. Montville	01-05-95	Bar/Restaurant
	JC III Landscaping Parsippany	03-28-95	Landscaping
Sussex	Arms & Ammo Branchville	02-07-95	Hunt & Fish
Warren	Willin Corp. Washington	02-02-95	Print Shop

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tally includes a photocopying expense. If the service provider also performs printing services, as noted above, he must collect and remit tax just as a printer would.

Sales & Use Tax

Rental of Exhibition Space — Owners and operators of exhibition halls should inform all concessionaires, licensees or lessees using space at the exhibition that they are required to be registered as a vendor with the New Jersey Division of Taxation. The Certificate of Authority issued by the Division is required to be attached to the table, stand etc. at the vendor's location. Registered vendors must collect and remit sales tax on all taxable sales. For example, the sale of baseball cards and sports memorabilia is subject to tax.

The charge by the operator for the rental of space is exempt from tax as the rental of real property; any tangible property that is rented to the vendor (counters, displays, tables etc.) is subject to tax.

Taxability of Furniture Refinishing Supplies — The Division responded to an inquiry regarding the taxability of furniture refinishing products, such as coatings, thinners, paint removers, surface preparation products, sandpaper, gloves, steel wool, rags, and application equipment sold to professional furniture finishers and refinishers.

The Division explained that gloves are exempt from sales tax as "clothing." N.J.S.A. 54:32B-8.4. Gloves used for work fall within this exemption. N.J.A.C. 18:24-6.3. Sale of stains, varnishes, top coats, and other coatings that

become a permanent part of the property produced for sale by a purchaser, or of the property upon which a purchaser performs taxable services, are considered "sales for resale" and therefore not subject to sales tax. N.J.S.A. 54:32B-2(e)(1)(A) and (B).

All other sales, for example, sales of sandpaper, paint remover, steel wool and spray equipment, are taxable as retail sales of tangible personal property since they do not fall within any of the statutory exemptions. N.J.S.A. 54:32B-3(a). These supplies, whether consumed entirely during a particular job or retained for repeated use, are not resold as such and do not become a physical component of the property sold or refinished by the purchaser. Therefore the resale exemption is inapplicable. The furniture finisher or refinisher is considered the "ultimate consumer" of these products, and sales to them are therefore "retail sales" subject to sales tax.

Any appearance of "double taxation" is the result of some purchasers' practice of charging their customers for items such as rags, equipment, etc., that are used and consumed by the service provider and not actually "resold" to the customer. These are merely elements of expenses incurred in providing a taxable service and generally are not itemized as charges on a customer's bill. However, if furniture finishers choose to charge their customers separately for supplies that are not actually transferred to the customer, they must collect sales tax on these separately stated charges. N.J.S.A. 54:32b-2(d). This practice will not, however, affect the taxability of these

items when the finishers purchase them from their supplier.

Scaffolding Rental — The Division received an inquiry regarding the incidence of sales tax on receipts from the installation, rental and dismantling of scaffolding and hoisting equipment, as well as the installation of temporary lighting.

N.J.A.C. 18:24-5.5 provides as follows:

"(a) Taxable services purchased by a contractor are subject to tax unless such services are performed for a purchasing contractor exclusively for use in fulfilling a contract with an exempt organization.

(b) Services subject to tax include, but are not limited to:

1. The fabrication of tangible personal property;
2. Installing tangible personal property, except where such installation results in a capital improvement to real property...;
3. Maintaining, servicing, or repairing real or tangible personal property."

N.J.S.A. 54:32B-3(b)(2)(v) exempts from tax, services rendered in installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, and applies only where the installation services directly result in a capital improvement to real property. It does not apply to services performed for the construction trades that are merely related to the installation, maintenance, servicing or repairing of tangible personal property used in construction or

taxable for purposes of 413

for construction purposes. To be exempt from tax, the services must actually be rendered in installing property that will constitute a capital improvement to real property.

Accordingly, the Division advised that the entire charge for the scaffolding and hoisting equipment and temporary lighting is subject to tax, whether or not any or all of the elements of the transaction are separately stated and identified on the customer's invoice.

Exempt Purchases by Housing Sponsors — The Division recently addressed an inquiry from a "housing sponsor" of a low/moderate income housing project, exempt from sales tax under N.J.S.A. 55:14K-34 of the New Jersey Housing and Mortgage Finance Agency Law of 1983. This statute exempts all purchases by the housing sponsor of materials and supplies to be incorporated in or used in maintaining the project. This exemption can be used subsequent to the construction of the project.

Purchases by the housing sponsor of materials and supplies, but not services, directly for use and consumption in maintaining the housing project would be exempt from the tax. Thus, purchases of business personal property for the benefit and use of the housing sponsors, owners, operators, managers or tenants are subject to tax. For example, office furniture and equipment are taxable. The law only provides an exemption for purchases directly used for the benefit of the housing structure. Form ST-4 together with the housing sponsor's sales and use

tax exemption letter should be used to document an exempt purchase.

Disposal of Recyclable Materials — A New Jersey business inquired as to the incidence of sales tax on receipts from a disposal service for recyclable materials such as wood, concrete and grass mulch. The service is performed on its own premises, whereby customers will bring in their various forms of recyclable materials and the business will dispose of it for them. The business does not go to the customer's premises to pick up the materials.

The Division indicated that when a company receives material from other persons at the site of their business and charges a fee based on weight, volume, etc., such charges are not subject to sales tax.

Medical Equipment Used to Provide Health Care — The Division received an inquiry concerning the sale and rental of medical equipment to health care providers.

N.J.S.A. 54:32B-8.1 provides for the exemption of certain products and durable medical equipment. The last section of the exemption states that equipment and supplies, other than medicines and drugs, which are used by a service provider in providing medical services but not transferred to the purchaser of the service, are taxable retail sales. "Transferred to the purchaser" means that the patient actually leaves the hospital, office, etc. with the product. In general, property purchased for use in diagnostic or procedural applications is subject to tax because it is not transferred to the patient in connection with treatment. □

In Our Courts

Gross Income Tax Instructions for Computation of Credit Not "Erroneous" — Charles J. Widder v. Director, 14 N.J. Tax 349 (1994).

The statute at N.J.S.A. 54:49-11b enacted as part of the Taxpayers' Bill of Rights legislation provides that "The Director shall waive the payment of any part of any penalty or any part of any interest attributable to the taxpayer's reasonable reliance on erroneous advice furnished to the taxpayer in writing by an employee of the Division of Taxation acting in the employee's official capacity, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information."

The Tax Court in *Charles J. Widder v. Director*, 14 N.J. Tax 349 (1994) addressed the instructions and the waiver of penalty and interest.

The Court said "Since the New Jersey return instructions plainly state that the numerator of the credit fraction was to include income taxed by the other jurisdiction, the instructions were not 'erroneous' within the meaning of N.J.S.A. 54:49-11b. Plaintiff simply misread those instructions to require the inclusion of his Federal adjusted gross income rather than his New York State adjusted gross income. As the Division's instructions were not erroneous and since the plaintiff has obtained all the relief to which he is entitled under N.J.S.A. 54:49-11a, the Director's assessment of interest at the statutory minimum was affirmed."

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Insurance Premiums Tax Surtax Applicability to Passenger Automobiles Used Commercially — *Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, Liberty Insurance Corporation v. State of New Jersey, Division of Taxation*, Tax Court - 4738-94; 4740-94; 4741-94; 4743-94; decided February 15, 1995.

At issue was whether the surtax imposed by N.J.S.A. 17:33B-49(a) applies to passenger vehicles used for commercial purposes. The court noted that the definition of "automobile" includes (1) private passenger or station wagon vehicles unless they are used as taxicabs or limousines, (2) commercial vehicles when used for noncommercial purposes and (3) either of the above two categories of vehicle when used on a farm or ranch. It concluded that private passenger vehicles used commercially do not fit this definition and therefore are not subject to the surtax.

Local Property Tax Assessment of Billboards as Real Property — *R.C. Maxwell Company, tenant, & Scola, Inc., owner, Plaintiffs-Appellants, v. Galloway Township, Defendant-Respondent, & Director, Division of Taxation, Intervenor-Respondent*, Superior Court of New Jersey, Appellate Division, A-2601-93T5, decided April 25, 1995.

R.C. Maxwell Co. & Scola, Inc. appealed the final judgment of the N.J. Tax Court upholding Galloway Township's 1992 omitted assessment of billboards as taxable real property to the Appellate Division, N.J. Superior Court. The

high court affirmed and expounded on the lower court's decision.

As background, the Legislature in order to tax as realty certain property which under prior law could be taxed as personalty provided, via Chapter 117, Laws 1986 [N.J.S.A. 54:4-1], that personal property attached to real property would be exempt from taxation as real property only if it is "not ordinarily intended to be affixed permanently to real property."

In an analysis of the status of billboards as real property for this case, the Superior Court examined the Tax Court's opinion that billboards are "ordinarily intended to be affixed permanently to real property." The disputed billboards were wooden on site constructions having 14 vertical anchors and beams 6 feet below ground. Under scrutiny was the wording "ordinarily intended" as opposed to actually intended. The Superior Court agreed that because property is removable without physical injury to itself or the real property to which it's attached does not preclude that the same property is "ordinarily intended" to be permanently affixed. Further outward appearances are relevant in determining "ordinary intent."

The Superior Court concurred with the Tax Court's finding that even if the disputed billboards were viewed as personal property attached to real property, the tenant-owner did not establish, for example, that they could be moved intact or that salvageable parts were ever reassembled as the same billboard and that they were "not ordinarily intended to be permanently affixed."

Interest on Refunds — *New York Life Insurance Company v.*

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Lyndhurst, Appellate Division, A-2375-93T2, decided March 24, 1995.

The Appellate Division affirmed the Tax Court's ruling that N.J.S.A. 54:3-27.2, the sole source of authority for imposing interest on property tax refunds, provides for interest to be paid at the rate of 5% from the date of payment of tax to the date of refund.

Denial of Farmland Assessment on Woodlands — *Estell Manor City, Plaintiff, v. Harry Stern, Defendant*, Tax Court of New Jersey, Docket No. 001273-93, decided January 5, 1995.

In this case, Estell Manor City appealed the Atlantic County Board of Taxation's reversing of the local tax assessor's 1992 denial of farmland assessment on six woodland parcels to the New Jersey Tax Court. The City contended that the property owner's woodland management plan itself, although developed by an Environmental Protection Department-approved forester, hadn't satisfied the woodland prerequisites of the Farmland Assessment Act of 1964, as amended, effective 1987 (N.J.S.A. 54:4-23.3 & 3a.); that further the owner hadn't complied with that management plan; that forestry activity on the property was insufficient; and that proof of income or anticipated income from yearly gross sales of tree and forest products was inadequate.

The Department of Environmental Protection's position was that, by statute, it had exclusive authority to approve or disapprove woodland management plans for purposes of the Farmland Assessment Act and that an assessor could not reject a

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plan as unacceptable or as noncomplying if DEP sanctioned it. DEP acknowledged, however, that the assessor had final authority to determine whether land otherwise qualified for farmland assessment. Statute also provided that if DEP failed to make a timely definitive decision as to a management plan, the assessor could decide farmland eligibility based on the nonwoodland requirements of the Act.

The taxpayer argued that complying with a woodland management plan alone entitled the property to farmland assessment despite any assessor's determination to the contrary. He also felt that income and other criteria had been substantiated.

Conflicting statements of two foresters retained at different times by the property owner between 1989 and 1993 provided varying opinions about the effectiveness of the management plan and its level of completion and maintenance. The municipal assessor and a forestry witness for the city also testified about deficiencies in the plan and its implementation. Evidence indicated that basic recommendations for boundary marking, timber harvesting, weeding and thinning, and reopening of roads had either not been done or were incomplete.

In conclusion, the Tax Court ruled in favor of the municipality and the assessor reinstating the original assessments totaling \$780,200 and voiding the reduced aggregate assessment of \$40,100 granted by the County Tax Board. In doing so, the Court concurred that there was neither the required income nor sufficient harvesting, fire break construction, removal of diseased

and dying trees etc. to constitute horticultural or agricultural activity and to justify farmland assessment. The Court reasoned that the Act's amendment created two-tier woodland qualification for farmland assessment. Eligibility required both compliance with the revised woodland conditions and all other conditions of the Act regarding acreage, use, income etc. While agreeing that DEP had jurisdiction over the woodland management plans, the Court held that the assessor had final authority to approve or disallow applications for farmland assessment, and that proper recourse for both an assessor or a taxpayer who is dissatisfied with a DEP woodlands evaluation is by appeal of the assessment to the county tax board and the courts.

Postal Service Denied Property Tax Exemption – *United States Postal Service; Raintree Associates and Rainhold Holding Company v. Freehold Township*, 14 N.J. Tax 266, decided September 27, 1994.

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Government tenant, United States Postal Service, property owner, Rainhold Holding Company, and ground lessor, Raintree Associates moved for summary judgment for the tax years 1993 and 1994 on the ground that Freehold Township could not include the value of a post office building in the assessments because it is owned by the Federal Postal Service and immune from state and local taxation as such. At issue was immunity as well as who was legally liable for the tax.

The New Jersey Tax Court held that although a tenant, the United States Postal Service had standing to pursue the appeal in the name of the owner because the landlord's, Raintree Associates', interests are represented, in that, a successful appeal substantially reducing the assessment would be to his benefit and that the lessor and owner had no objections.

The Postal Service entered into a 50-year nonrenewable lease with Raintree Associates with an option to buy at its termination at land value only. Failure to do so would destroy its "title" to the building and the property would revert to Raintree Associates. The lease terms also obligated the Postal Service to construct a post office building and to obtain property and liability insurance naming the landlord as an additional insured. A casualty does not relieve the Service from paying rent or permit them to terminate the lease except during the last two years of the term. The terms of the lease strongly suggest a leasehold and that legal ownership of the building is not in the Postal Service.

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Leasehold estates may be separately assessed when they have the permanence or perpetuity of a fee interest and the tenant's rights are comparable to those of an owner. However, the Postal Service's lease does not give it comparable rights. There is no provision permitting the local property tax to be charged to and collected from a tenant. The local property tax is not legally imposed on the Postal Service's leasehold estate, and the Federal government's immunity from state taxation is not infringed.

The legal incidence of the local property tax is on the property itself. The tax is charged to and collected from the legal owner of the fee. Where there is separate ownership of the land and improvement, the tax is a lien on the entire fee. Even when a lessee can be said to own a building constructed by him on leased land, the lien for the tax is against the landowner's fee.

Rainhold Holding owns the fee for the entire property subject only to the leasehold interests of Raintree Associates and the Postal Service. It thus has a property interest that is separable from the government's leasehold estate and may be reached by an ad valorem property tax. Therefore, Rainhold Holding has the legal obligation to pay the local property tax. The legal incidence of tax is not on the Postal Service.

In conclusion, the judge rejected the Postal Service's argument and denied the motion for summary judgment.

Municipal Property Tax Assessment Lists Are Public Record – *Higg-a-Rella, Inc. et al. v. County of Essex et al.*, Superior Court, Appellate Division; Docket

No. A-4830-92T3; decided September 23, 1994.

The Superior Court held that the computerized master tape of municipal property tax assessments generated and maintained by the Essex County Board of Taxation from the individual municipal lists is not a public record under the Right-to-Know Law because it is not required to be maintained. However, it is a public record under common law because it is prepared and maintained by the county board and is used by the county board as an expeditious way to print any of the municipal assessment lists, which are admittedly public when on paper. Thus, it was held that the plaintiffs were entitled to a computer-readable electronic copy of the tax list subject only to payment of a reasonable fee, since the availability of such public information should not be limited by its technological form.

Tax Sale Certificates Equivalent to Payment of Taxes – *Echelon Glen Cooperative, Inc. v. Voorhees Township*, Superior Court; Docket No. A-6188-92T2; decided August 4, 1994.

The Superior Court held that the purpose of N.J.S.A. 54:3-27, which requires a taxpayer who files an appeal to pay the amount of the contested taxes, is to ensure municipal revenues during the prosecution of a tax appeal. Therefore, the Court decided that it was inappropriate to dismiss a direct appeal to the Tax Court where the municipality did in fact receive those revenues prior to the time the dismissal motion was made. A tax-sale certificate is the equivalent of the payment of taxes; however, while pre-payment

of taxes is not a jurisdictional requirement to a direct appeal to the Tax Court, payment of the contested taxes is a jurisdictional prerequisite for an appeal to the Tax Court from a judgment of a county board of taxation.

Church Caretaker Residence Not Exempt – *St. Ann's Catholic Church v. Borough of Hampton*, Tax Court of New Jersey, Docket No. 009158-93, decided May 16, 1994.

A local property tax exemption was denied by the Tax Court under N.J.S.A. 54:4-3.6 for an improved lot adjacent to a church cemetery. The residence of a part-time church and cemetery maintenance man and caretaker was not reasonably necessary to the operation of the church. □

In Our Legislature

Gross Income Tax

Limited Liability Partnerships — P.L. 1995, c.96 (signed into law on May 1, 1995) amends the New Jersey Limited Liability Company Act and the Gross Income Tax Act to provide for the creation of limited liability partnerships. This legislation is effective 60 days after enactment.

Local Property Tax

Membership of Certain County Boards of Taxation — P.L. 1995, c.30 (signed into law on February 15, 1995) increases from three to five the membership of county boards of taxation in counties of the second class with a population of over 550,000 persons. Middlesex County meets the designation requirements. This legislation

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is effective immediately.

School Budget Calendar — P.L. 1995, c.94 (signed into law on April 25, 1995) gives municipal governments more time to reformulate school board budgets that have been rejected by voters. The date for determination of the budget changed from May 14 to May 19; the date for the table of aggregates changed from May 15 to May 20; and the date for the certification of tax assessments

changed from May 27 to June 3. This law takes effect immediately.

Motor Fuels

Rebates for Gasoline Purchases — P.L. 1995, c.51 (signed into law on March 17, 1995) amends the Motor Fuels Act to provide that a consumer who earns credit through purchases on a credit card may utilize these credits to receive a rebate when that person purchases motor fuels. The bill is effective immediately.

Urban Enterprise Zones

Final Four Zones Designated — P.L. 1993, c.367 (signed into law on January 5, 1994) approved the designation of 10 additional urban enterprise zones. The following is a list of the names and effective dates of the final four zones to be designated under that legislation:

Municipality	Effective Date
Carteret	February 22, 1995
Mount Holly	March 7, 1995
Pleasantville	February 9, 1995
Union City	February 11, 1995

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
	2	3	4	5	6	7	8
1	9	10	11	12	13	14	15
9	16	17	18	19	20	21	22
9	23	24	25	26	27	28	29
5	30	31					

July 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

July 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending March 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated

continued

July 17 - continued

tax for 4th, 6th, 9th or 12th month of current tax year

- NJ-500 Gross Income Tax**—Employer's semi-monthly, monthly and quarterly returns

July 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

continued

July 20 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return

- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return

- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

July 25

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly return

July 31

- NJ-500 Gross Income Tax**—Employer's semi-monthly and semiannual returns

august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
1	6	7	8	9	10	11	12
9	13	14	15	16	17	18	19
9	20	21	22	23	24	25	26
5	27	28	29	30	31		

August 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

August 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly return

August 21

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

August 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

August 31

NJ-500 Gross Income Tax—Employer's semi-monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
						1	2
1	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
9	17	18	19	20	21	22	23
5	24	25	26	27	28	29	30

September 11

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

September 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

continued

September 16 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly return

NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 3 for calendar year filers

September 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

September 20 - continued

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

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TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

from the director's desk

New Division Publications

As this issue goes to print, the Division is preparing new publications that should be available shortly.

- *S Corporation Q & A*, a comprehensive booklet of questions and answers on S corporation tax issues, includes information on both New Jersey Corporation Business Tax and Gross Income Tax.
- *About New Jersey Taxes*, a new series of short (1 page) publications on topical New Jersey tax issues, primarily sales tax.

To request the *S Corporation Q & A* or any Division publication call our automated service at 800-323-4400 (Touch-tone phones within New Jersey only).

Division Deposits Record Revenue

During the month of April 1995 the Division of Taxation deposited over 1,200,000 checks resulting in revenue in excess of \$1.5 billion.

Division Appeals Decision

The Division is appealing the March 1995 New Jersey Tax Court decision of *Charles A. and Dolores C. Sabino v. Director, Division of Taxation* (Docket #002494-93). The Division's position re-garding unreimbursed business expenses and charitable contributions of a partner is unchanged, pending the decision of the Superior Court of New Jersey.

NJ Tax Question? Send your questions to:

From the Director's Desk
New Jersey State Tax News
NJ Division of Taxation
CN 281
Trenton, NJ 08646-0281

New Jersey State Tax NEWS

Volume 24, Number 1
Spring 1995

A Quarterly Newsletter

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Use Tax Billings

During calendar year 1994 the Division issued some 14,000 use tax bills to residents of this State.

The New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) requiring New Jersey vendors to collect sales tax became law in 1966. However, unless a vendor or any of its agents are physically doing business in New Jersey, they cannot be held liable for the collection and payment of the New Jersey Sales Tax.

Since the State cannot force the collection of sales tax by most nonresident vendors, it must rely on compensating use taxes to protect home state vendors from unfair competition and protect the tax base. Therefore, the New Jersey Sales and Use Tax Act also requires a purchaser residing in New Jersey to pay a use tax whenever he or she purchases taxable goods or services for use in New Jersey where the vendor does not legally collect the sales tax. Generally this occurs in mail order situations and in cases when the purchaser visits an out-of-state vendor to place an order that is subsequently mailed or shipped into New Jersey.

In order to minimize penalty and interest charges, individuals who incur a use tax liability are required to remit the tax within twenty (20) days of the date that they took possession of the item in New Jersey. The use tax remittance form (ST-18) may be obtained at any of our District Offices as well as by calling 609-588-2200. In

addition on page 18 of the New Jersey Gross Income Tax Packet you will find an ST-18 together with instructions.

Having recognized that many New Jersey residents were not aware of the existence of the use tax portion of the Sales and Use Tax Act, the Division initiated, in 1981, a use tax publicity campaign designed to reach every New Jersey resident filing the New Jersey Gross Income Tax return. A use tax remittance line appears on every New Jersey resident income tax return for tax years on and after 1981.

For the year 1994 use tax may be reflected on line 36 when filing the New Jersey Gross Income Tax return.

continued on page 2



important phone numbers

Tax Hotline 609-588-2200
Recorded Tax Topics .. 800-323-4400
Speaker Programs 609-984-4101
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals
& Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
609-292-5035
609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax
Refunds 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730

use tax billings - from page 1

Vendors who are registered to collect and remit New Jersey Sales Tax should continue to reflect use tax on line 5 of the ST-50. □

Alcoholic Beverage Project

The New Jersey Division of Taxation will, very shortly, begin conducting a comprehensive review of the New Jersey retail alcoholic beverages industry. The Division has requested the assistance and cooperation of all licensed wholesalers and distributors of alcoholic beverages in providing the Division with industry-wide retailer summary sales information.

It is the Division's intention to consolidate each retail licensee's purchase data from all alcoholic beverage suppliers and compare it to tax returns filed by the retailers. Appropriate action, including audits and investigations, will be initiated for retailers who do not appear to be in reasonable compliance with applicable State tax laws. □

Interest 11.5% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1995 is 11.5%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%
1/1/95	11.5%

GROSS INCOME TAX S Corporation Fringe Benefits

Effective for tax year 1994, a Federal S corporation which has made the election to be treated as an S corporation for New Jersey purposes must include in New Jersey gross income the value of fringe benefits paid for 2% shareholders. Consequently, such amounts included in Federal gross income on the 1994 Form W-2 must also be included in New Jersey gross income. These reporting requirements apply to both calendar year and fiscal year corporations that were New Jersey S corporations for any part of 1994.

With respect to Federal S corporations that have not made the S election in New Jersey the treatment will be the same as in previous tax years. Such corporations should continue to exclude the value of fringe benefits paid for 2% shareholders from New Jersey gross income. □

Electronic Funds Transfer

Under P.L. 1992, c.140, beginning March 1, 1993, taxpayers with a prior year's liability of \$200,000.00 or more in any one tax are required to remit all their tax payments to the Division using Electronic Funds Transfer (EFT). The eligibility threshold was reduced to \$100,000.00 in March 1994. The eligibility threshold will be reduced to \$50,000.00 in 1995 and \$20,000.00 in 1996.

If a taxpayer meets the requirements for participation in the EFT Program, they will be notified by the Division. The taxpayer will be asked to complete a new Application for Registration (Form REG-1). This allows the

Division to update registration information and tax eligibilities. An Authorization Agreement for Electronic Funds Transfer (EFT-1) and associated worksheets must be completed within 30 days.

There are two methods that can be used when making electronic payments, the Automated Clearing House Credit (ACH Credit) and Automated Clearing House Debit (ACH Debit).

continued on page 3

New Jersey State Tax news

is published by the:

**New Jersey Division of Taxation
Technical Services
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

Division of Taxation Director:
Richard D. Gardiner

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Editor: Linda B. Hickey

electronic funds transfer - from page 2

ACH Debit Option

The ACH Debit method allows the transfer of funds by authorizing the State to electronically debit an authorized bank account. This process is initiated by a toll-free telephone call to a data collection service to provide the appropriate security and tax payment information. All ACH Debit costs are paid for by the State.

ACH Credit Option

The ACH Credit Option allows the taxpayer to transfer funds by notifying their bank to debit their account and credit the State's bank account. Using this method the bank must originate the transaction using the ACH CCD+/TXP format. As the taxpayer is the originator of the transaction, the taxpayer is responsible for any costs incurred using this method.

For the fiscal year ending June 30, 1994 the Division collected over \$3.6 billion and processed over 74,000 transactions through the EFT Program. For more information on the Electronic Funds Transfer Program call (609) 984-9830 or write to:

New Jersey Division of Taxation
EFT Unit
CN 191
Trenton, NJ 08646-0191

New Urban Enterprise Zones

The New Jersey Department of Commerce and Economic Development recently announced the following newly approved urban enterprise zones and corresponding effective dates.

MUNICIPALITY	EFFECTIVE DATE
Passaic	Aug. 24, 1994
Paterson	Sept. 2, 1994
Asbury Park*	Sept. 21, 1994
Perth Amboy	Oct. 29, 1994

Lakewood Twp. Nov. 1, 1994
Phillipsburg Nov. 1, 1994
Long Branch* Nov. 21, 1994

*Asbury Park and Long Branch hold a joint designation as one zone.

Four additional urban enterprise zones will be designated shortly.

Urban enterprise zones were previously established in: Bridgeton (April 22, 1985), Camden (Oct. 18, 1984), Newark (Dec. 5, 1984), Plainfield (June 17, 1985), Trenton (April 24, 1985), Millville/Vineland (April 3, 1986), Elizabeth (Dec. 17, 1985), Jersey City (Jan. 16, 1986), Kearny (Jan. 12, 1986), and Orange (Dec. 23, 1985).

Designations are effective for 20 years. In addition, the tax benefits become available only after the designation occurs and the particular business applies for and is certified by the Department of Commerce as a "qualified business." The certification must be renewed annually. Once the certification is issued, the business can purchase certain goods and services without paying any sales tax. If the entity is a corporation, it may also be entitled to credits for newly hired workers.

Retailers who wish to qualify for the reduced sales tax benefit must apply to the Division of Taxation to become eligible for the certification that allows them to charge 3% sales tax. This benefit applies to receipts from sales of certain tangible personal property. The 3% certification stays in force as long as the business continues to retain its status as a "qualified business."

The Division issues certifications and renewals to qualified businesses on a continuing basis. Although each zone

has its own local coordinator, the Division also responds to numerous inquiries relating to the tax benefits. □

CORPORATION TAX S Corporation Built-in Gains

An inquiry was recently made concerning New Jersey's tax treatment of built-in gains for New Jersey S corporations. For New Jersey Corporation Business Tax purposes, a New Jersey S corporation will be required to report the same gross amount of built-in gains as reported on Schedule D for Federal tax purposes. These gains will be taxed at the full Corporation Business Tax rate of 9.00%.

In accordance with N.J.S.A. 54:10A-5 (c)(3), the 9% Corporation Business Tax rate will be applied to "any of its (a New Jersey S Corporation's) entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State..." Accordingly, the amount of income taxed on the Federal corporate return (after application of the business allocation factor) will be subject to the 9% Corporation Business Tax rate. □

Correction

Editor's note: There was an omission in an article in the last issue of the *State Tax News* (Winter 1994, Volume 23, Number 4) on page 5. In the article titled *Tax Assessor Certificates*, also listed under Essex County should have been **K. Sean Cooney, Verona Township**, who passed the exam held on September 24, 1995 and received a Tax Assessor Certificate. We apologize for this mistake. □

CORPORATION TAX **Manufacturing** **Credit for Leased** **Equipment**

A taxpayer recently inquired as to how the Manufacturing Equipment and Employment Investment Tax Credit would apply to a business that entered into a 5-year equipment lease contract on September 5, 1993. The following questions were raised:

1. Can the credit be prorated for the period in which the lease contract occurred subsequent to the effective date?
2. How would the renewal of the lease be treated?

In order to qualify for this credit, a taxpayer must invest in qualified manufacturing equipment in its tax year beginning *on or after* the effective date of January 1, 1994. Qualified equipment means machinery, apparatus or equipment acquired by purchase or lease for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing or refining, as defined in N.J.S.A. 54:32 B-8 13(a), having a useful life of four or more years, and *placed in service* in New Jersey.

For purposes of the credit, property is considered placed in service or use in New Jersey in the earlier of the following tax years:

1. The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins, **or**
2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

Therefore, any purchase or lease contracts entered into prior to January 1, 1994 would not qualify since there are no provisions for prorating use subsequent to January 1, 1994.

In reference to the second question, lease renewals, subleases or assignments shall not be considered under "qualified equipment." □

GROSS INCOME TAX **Credit for NYC** **Unincorporated** **Business Tax**

The Division of Taxation has previously determined that tax paid to New York City as Unincorporated Business Tax (UBT) is not tax on an individual's income but is imposed on the unincorporated business income of every unincorporated business wholly or partly carried on in New York City and is deductible by the business or partnership. Thus, the UBT is not considered a tax on the individual taxpayer's income and the income and tax cannot be used to calculate a credit for taxes paid to other jurisdictions. (*New Jersey State Tax News* July/August 1990).

However, New Jersey resident taxpayers who are subject to New York City Unincorporated Business Tax are required to add back the UBT paid to Line 22, New York State Additions, in the Federal Amount Column of the New York State Non-Resident Income Tax Return.

The amount of UBT added back may be used in the numerator of the credit calculation for taxes paid to other jurisdictions (New York State) on the New Jersey Resident Income Tax Return. The addback is included with other New York State income reportable on Line 1, Schedule A of the New Jersey Return.

This New York Addition satisfies both of the necessary requirements: 1) it is consistent with New Jersey Tax law (N.J.S.A. 54A:5-1b requires that net profits from business be determined without a deduction for taxes based on income) and 2) it is attributable only to business income earned and actually taxed in New York.

If a deduction from New Jersey taxable income was taken for the Unincorporated Business Tax paid, the amount of deduction must be added back to New Jersey taxable income, which results in a revised New Jersey tax. □

INHERITANCE/ESTATE TAX **Frequently Asked** **Questions**

This is the third and final of three successive issues in which the Transfer Inheritance and Estate Tax Branch will respond to specific inquiries taken from a list of most frequently asked questions.

1. Is an inventory by a representative of the Division of Taxation of the contents of a decedent's safe deposit box required?

Required inventory of safe deposit boxes was suspended by the Division, effective November 1991. This was accomplished by a revision to the Administrative Code which will expire January 1, 1997. There is no reason to believe that this revision will not be readopted at that time.

2. Why is it necessary for a return to be filed when the entire estate passes to Class "C," Class "D," or Class "E" beneficiaries and no tax is owed?

When any portion of an estate passes to Class "C" or Class "D"

continued on page 5



inheritance tax questions - from page 4

beneficiaries, a return is required to establish that the cumulative total of all assets passing to such a beneficiary is less than the statutory exemption. In the case of a Class "E" beneficiary, a return is necessary to establish that the recipient does, in fact, qualify as a Class "E" beneficiary for New Jersey Transfer Inheritance Tax purposes.

3. Is an inheritance tax return required when the estate is passing to a trust for the benefit of Class "A" beneficiaries?

Yes, a return must be filed so that the Branch may determine whether or not there may be potential tax consequences, however remote, due to the possible ultimate disposition of contingent interests.

4. Are IRAs subject to inheritance tax?

Yes, IRAs are taxable as a transfer to take effect at death for New Jersey Inheritance Tax purposes. The tax treatment of IRAs for Federal income tax purposes may cause some confusion in this area, however, they must be reported for inheritance tax purposes.

5. Is an IRA subject to Inheritance Tax if Federal income taxes are paid on the account?

Yes, the determining factors regarding taxability for Inheritance Tax purposes are the decedent's date of death and the relationship of the beneficiary to the decedent.

6. Is a copy of the Federal estate tax return required to be submitted in those cases where no estate tax is due?

Yes, a copy of the Federal 706 is required by statute to be submitted

to the Branch within 30 days after it is filed with the Federal government. The statute also requires that a copy of all correspondence from the Federal government regarding acceptance of the return as filed or changes to be made must be filed with the Branch within 30 days of receipt.

7. Where can an ID number be obtained to open an estate bank account?

This is a Federal matter and further information in this regard may be obtained by calling 1-(800) 829-1040. □

Unclaimed Property

As defined in N.J.S.A. 46-30B, et seq. (enacted in 1989, updating 1947 law) unclaimed property is essentially identified as intangible personal property that, after a specific abandonment period, must be reported and paid over to the State. The State must return the property to the rightful owner upon presentation of a valid claim.

A "Holder" means a person, wherever organized or domiciled, who is:

1. In possession of property belonging to another;
2. A trustee; or
3. Indebted to another on an obligation.

Any person or entity who wishes additional information may write to:

State of New Jersey
Division of Taxation
Property Administration
CN 214
Trenton, NJ 08646-0214

**LOCAL PROPERTY TAX
Tax Assessors'
Calendar**

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to New Jersey Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks and Director, Taxation.

April 15-

- Forms SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 15-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certifications of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

continued on page 6

tax assessors' calendar - from pg. 5

May 18-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and clerk of board of freeholders by County Tax Board.

May 27-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted a medical extension sent.
- Repayment of disallowed Property Tax Deductions previously granted required. Nonpayments become liens.

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June-

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15-

- Total # and \$ amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified by County Tax Board to Director, Taxation. □

Revenue Opportunities Suggested by Division Staff

Division of Taxation Director Richard D. Gardiner recently recognized the efforts of five Division employees. To identify areas of noncompliance, suggestions were sought from employees throughout the Division. Selected suggestions will be considered for possible program implementation by the newly organized Revenue Opportunities Branch.

Director Gardiner announced that the five best suggestions were proposed by the following Division employees: Anita Green, Taxpayer Service Representative; John Lombardo, Supervising Investigator; Cathy Petrino, Taxpayer Service Representative; James Pronchick, Investigator; and Peter Rapetti, Investigator. "We are proud of our employees' professionalism and expertise," said Director Gardiner. "These suggestion awards are an acknowledgement by senior management of our employees' involvement in our compliance effort." □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Investigations to prevent the increase of fraudulent rebate checks recently identified multiple homestead rebate checks that were addressed to the same location. A total of 88 checks were identified for delivery to two post office boxes, a single family residence and an apartment. In each of these cases, the checks were intercepted prior to delivery.

- A prosecution report has been submitted for a liquor store and its president pursuant to an investigation revealing the filing of fraudulent sales tax returns wherein \$1.5 million in sales was not reported nor was \$98,092 of collected tax related to the unreported taxable sales remitted.
- An investigation of a restaurant and its president uncovered the filing of fraudulent sales tax returns and the failure to report \$642,384 in taxable sales. In addition, \$43,894 of collected tax associated with the unreported sales was not remitted. This case was forwarded for prosecution.
- Two taxpayers have violated their probation by failing to make monthly court restitution payments. In the first case, over \$115,000 in sales tax was collected but not remitted. Sales tax collected but not remitted in the second case was \$44,700. Since the restitution was a condition of the probation, a request to terminate the probation for both taxpayers has been submitted.
- Four more defendants have pled guilty to tax evasion charges in the undercover operation to identify motor fuel tax evasion labeled "Operation Red Daisy." In total, the defendants stole more than \$60 million in taxes and laundered \$66 million. This investigative effort was conducted jointly by the states of New Jersey and Pennsylvania, FBI, Criminal Investigation Division of the IRS and the U.S. Attorney's Office - Newark.
- George J. Fahoury of Fahoury Bros. Auto Body Shop pled guilty to keeping false and fraudulent

continued on page 7



criminal enforcement - from page 6

books and records with the intent to evade taxes. He was ordered to make restitution in the amount of \$5,000 for sales tax owed.

- Prosecution reports were forwarded to the prosecutor's office for two cases involving the filing of fraudulent New Jersey income tax returns. In each case, a refund was sought by the taxpayer to which he was not entitled. The total amount illegally claimed exceeded \$43,700.
- Charges were filed against three businesses for the sale of unstamped cigarettes. The taxpayers in two of these cases also failed to obtain motor fuels and cigarette retailer licenses for multiple years. In one situation, employees were being paid off the books. □

Enforcement Summary

Civil Collection Actions Quarter Ending - Dec. 31, 1994

Following is a summary of enforcement actions for the quarter ending December 31, 1994.

Certificates of Debt

Field Investigators secured 667 Certificates of Debt in New Jersey Superior Court. These Certificates of Debt, which have the same force and effect as docketed judgments, totaled \$17.7 million.

Levies

As a result of executing against 430 non-compliant taxpayers, Field Investigations collected \$2.9 million.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection have been exhausted, sei-

zure of the business and personal assets will take place. Field investigators will close a business seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1994, 63 businesses were seized. Some businesses were able to re-open, others remain closed. A listing of seized businesses appears on pages 9, 10, 11 and 12.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. A public auction of the business assets will be conducted in about 30 days.

During the quarter ending Dec. 31, 1994, 9 auctions were held by the Division. A listing follows on page 12.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the responsible officers of the business. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax. □

Tax Briefs

Corporation Business Tax

S Corporation Estimated Tax — A New Jersey C corporation with a fiscal year ended 9-30-94 paid \$10,000 in tax for the year ended 9-30-94. It elects to be treated as a New Jersey S corporation for the year 10-1-94 to 9-30-95. The issue concerns the "safe haven" provision for estimated returns for the year ended 9-30-95.

N.J.S.A. 54:10A-15.4d(1) provides that no addition to the tax need be

paid if the total amount of the installment payments equals or exceeds: "An amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year." (Current year's rates, prior year's facts.)

For a New Jersey S corporation whose taxable year begins on or after January 1, 1994 but before January 1, 1995, the tax rate for a New Jersey S corporation is 2.35%. Thus, using current year rates and prior year facts, the estimated tax applicable under the example considered would be \$261.11 to qualify for the safe haven. (Assuming income of \$11,111.11 in both fiscal years multiplied by the rates applicable in both years, 9% and 2.35% respectively.)

Gross Income Tax

Credit for Taxes Paid on Partnership Income — The reciprocal agreement between New Jersey and the Commonwealth of Pennsylvania only applies to wage income. Consequently, a New Jersey resident who receives self-employment income or distributive share of partnership income from Pennsylvania sources is eligible to receive a credit for taxes paid to Pennsylvania. Additionally, a taxpayer is eligible for the credit, even if the other jurisdiction's taxes were paid through mandatory withholdings.

The credit for taxes paid which is authorized by N.J.S.A. 54A:4-1(a), is allowed only for the amount of income or wage tax **imposed** by another jurisdiction. The statute does not authorize a credit for taxes **withheld** during the taxable year. In other words, the credit is authorized only for the tax actually levied on the tax-

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payer and not for taxes withheld as an estimate of the taxpayer's liability. A taxpayer is, therefore, required to provide the Division with proof of the final tax liability paid to the other jurisdiction for which a credit is being claimed. On this basis, the Division cannot accept a copy of a W-2 or a Schedule K-1 which simply shows the amount of tax withheld and gives no indication of the taxpayer's final tax liability. The Division considers a copy of the final tax return filed in the other jurisdiction to be sufficient proof.

In cases where a partnership files composite return(s) in various jurisdictions on behalf of its nonresident partners, the partnership should provide its partners with a certification detailing each partner's final tax liability to the other jurisdictions. The Division will accept such a certification as verification of a credit claimed, instead of requiring the New Jersey resident partner to attach to Form NJ-1040 a copy of each composite return filed by the partnership. □

In Our Courts

Corporation Business Tax

Investment Company – International Thomson Business Information, Inc. v. Director, Division of Taxation, Tax Court - 07-14-11509-91 CB, decided January 23, 1995.

Plaintiff corporation appealed from denial of its application to be taxed more favorably as an "investment company" pursuant to N.J.S.A. 54:10A-5(d) and N.J.S.A. 54:10A-4(f).

Plaintiff reported that it derived at least 90% of its total income from cash or investment assets or both, and therefore satisfied the "asset test" for an investment company, as defined by

N.J.S.A. 10A:-4(f). However, the assets included in the requisite 90% may not be assets attributable to services or direct day-to-day management provided for affiliated corporations. N.J.A.C. 18:7-1.15(b)(4).

The court found that plaintiff was actively involved with its subsidiaries and that its principal income consisted of management fees paid by the subsidiaries. Therefore it held that plaintiff did not qualify as an investment company.

Gross Income Tax

Computation of credit for taxes paid to other jurisdiction – David R. Allen v. Director, Division of Taxation, Tax Court 004866-93, decided November 30, 1994.

Plaintiffs, New Jersey residents, had New York source income in 1990. Their dispute with the Director arose over the calculation of credit for taxes paid to New York pursuant to N.J.S.A. 54A:4-1(b). Specifically at issue was the calculation of the numerator of the fraction used in determining the maximum credit:

Income subject to tax by other jurisdiction
Entire New Jersey income

Taxpayers' entire New Jersey income consisted of wages, interest, dividends, capital gains, and other income. Their net capital gains for New Jersey purposes reflected the deduction of capital losses of \$21,237 from capital gains. Taxpayers' New York source income consisted of wages, capital gains, and other income. Their income subject to tax in New York reflected the deduction of a \$5,744 rental loss. However, their New York income was not reduced by the capital loss. The resulting income subject to New York tax was \$147,682. Because of the large capital loss, their entire New Jersey income was \$143,199.

While taxpayers agreed that, in order to avoid double taxation, the numerator of the fraction should reflect a deduction of the amount of capital loss not taxed by New Jersey, they argued that the numerator should not reflect further deduction for rental loss. The Director argued that the calculation of the numerator required deduction of both the capital loss that reduced entire New Jersey income and the rental loss that reduced income taxed in New York. This argument was based on N.J.A.C. 18:35-1.12(a) 4i, which provides: "Income subject to tax by the other jurisdiction means those categories of income which are taxed by another jurisdiction...and which are also subject to tax under the New Jersey Gross Income Tax Act."

While acknowledging that the Director's approach was consistent with the regulation, the Tax Court decided that plaintiffs should prevail. It viewed the facts as unique because (1) income subject to New Jersey tax was lower than income taxed by New York and (2) one deduction was allowed only by New Jersey and another only by New

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Index for 1994

Here is the index for the *New Jersey State Tax News*, Volume 23 (1994) and a list of tax legislation for 1994 for your use. As with the indexes last year, the index is in the center of the issue for easy removal. Once removed, the index can be stored wherever convenient and helpful for retrieval. □

New Jersey State Tax News

1994 (Volume 23)

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1994 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
2	March 7	Decreases gross income tax rates 5% for taxable years 1994 and thereafter.	GIT	A-1
3	March 7	Discontinues Corporation Business Tax surtax as of 1/1/94.	CBT	A-3
8	March 16	Increases minimum income necessary to be subject to GIT.	GIT	A-2 (1R)
28	May 5	Extends expiration date of certain taxes under "Local Tax Authorization Act."	MIS	S-346 (1R)
50	June 23	Changes qualifications of surplus lines insurers that are insurance exchanges with syndicates that are S corporations.	CBT	A-519
61	June 30	Appropriates FY 1994 public utilities gross receipts and franchise taxes in excess of \$723,000,000 that are not identified under general law for State use to municipalities for local property tax relief.	LPT	S-1251 Sca (1R)
64	June 30	Provides enhanced surcharge collection methods, to be used by DMV to collect debts. Unpaid debts will be deducted from income tax refunds and homestead rebates.	GIT	A-1845
69	July 6	Decreases gross income tax rates for taxable years 1995 and thereafter.	GIT	A-10
72	July 14	Revises statutes concerning collection and payment of real property tax bills and revises certain budget dates for State fiscal year municipalities.	LPT	A-1769 Acs
98	Aug. 11	Authorizes counties to establish food distribution authorities.	LPT	S-930(1R)
109	Sept. 7	Supplemental appropriation of \$700,000 in FY 1995 for in-lieu-of-tax payments to New Brunswick by Rutgers, The State University.	LPT	S-1286
117	Oct. 12	Revises partnership reporting requirements under gross income tax.	GIT	A-1524
139	Nov. 1	Provides for a checkoff for taxpayers to make voluntary contributions on GIT returns for the Vietnam Veterans' Memorial Fund for five additional years.	GIT	A-1585
182	Dec. 20	Revises procedures for registration of voters. (Requires Division of Taxation to include registration forms in gross income tax packets.)	GIT	A-2307(1R)

*Legend for Tax Type Column

ABT	=	Alcoholic Beverage Tax
ACC	=	Atlantic City Casino Control Commission
ALL	=	All Taxes Administered by the Division
CBT	=	Corporation Business Tax
FBT	=	Financial Business Tax
GIT	=	Gross Income Tax
LPT	=	Local Property Tax
MIS	=	Miscellaneous
S&U	=	Sales and Use Tax

Division of Taxation Seizures (October - December 1994)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Rosa's Southern Dining Atlantic City	12-08-94	Restaurant	Open
	Blue Diamond Diner Pomona	12-09-94	Diner	Open
Bergen	KVN Corp. Fairview	09-12-94	Bar & Restaurant	Open
	SE Jong, Inc. Palisades Park	10-18-94	Bar	Closed
	G & B Foods, Inc. Emerson	11-04-94	Bar	Closed
	Bridgeview Auto Leonia	11-21-94	Car Wash	Open
	Team Computing Fair Lawn	12-09-94	Computers	Closed
Burlington	Jatalco, Inc. Palmyra	10-05-94	Bar	Open
	Job Well Done, Inc. Marlton	11-03-94	Cleaning Service	Closed
	Bark Group, Inc. Marlton	11-10-94	Retail CDs & Tapes	Closed
Camden	IK Donuts Corp. Cherry Hill	10-13-94	Coffee Shop	Open
	Gibau Corp. Cherry Hill	10-26-94	Cash Registers	Closed
	Prause Beauty Supply Collingswood	10-27-94	Beauty Supply	Auction
Cape May	Le Bistro N. Wildwood	09-14-94	Bar	Auction
	Corson Brothers, Inc. Marmora	11-03-94	Retail Hardware	Closed
	Cape Abstract Co. Wildwood Crest	11-17-94	Title Company	Open
	Molly O'Toole Bev. Inc. No. Cape May	12-14-94	Bar	Open
Essex	Kerner, Bruce Belleville	09-13-94	Candy Sales	Open

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taxation seizures - continued from page 9

County	Name/Address	Seizure Date	Business Type	Status
Essex	Johnston Letter Co. Newark	10-25-94	Stationery	Open
	One Washington Square, Inc. Newark	12-15-94	Liquor Store	Closed
Gloucester	Sweeten Sport Center East Greenwich	11-29-94	Boats	Open
Hudson	Best for Less Autos, Inc. Jersey City	09-07-94	Used Car Sales	Open
	Grove Imports, Inc. Jersey City	10-20-94	Pizza	Closed
	Vincenzos Pizzeria, Inc. Jersey City	10-20-94	Restaurant	Open
	Castellyna, Inc. Harrison	12-02-94	Pizza Restaurant	Open
Mercer	Delux Service Corp. Jersey City	12-06-94	Appliance Repair	Open
	1267 C J Inc. Trenton	10-04-94	Bar	Auction
	Hoaglands Landscaping Hamilton Township	11-02-94	Landscaping	Open
	Casa Lido Ltd. Trenton	11-09-94	Bar	Open
	Cipolloni, Robert Trenton	11-16-94	Auto Repair	Open
	Gabari, Inc. Hopewell	11-23-94	Bar	Closed
	Pilla, Donald Trenton	11-30-94	Bar	Closed
	Pilla, John J. & Donald Trenton	11-30-94	Bar	Closed
	Bottoms Up Cafe Trenton	11-30-94	Bar	Closed
Middlesex	Lacy Sayreville	09-08-94	Truck Repair	Open
	Jeff Cafiero North Brunswick	09-15-94	Photographer	Open
	Henry Solomon, Inc. Sayreville	10-13-94	Auto Repair	Open
	Sayreville Muffler Sayreville	10-13-94	Auto Repair	Open

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taxation seizures - continued from page 10

County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Raritan Bay Auto Body Cliffwood Beach	10-18-94	Auto Repair	Open
	Great Coastal Trucking, Inc. East Brunswick	12-14-94	Trucking	Open
Monmouth	D&D Enterprises Brielle	09-20-94	Restaurant	Open
	Anthony Valenti West Long Branch	10-11-94	Electrician	Open
	Campbell, Robert Sea Girt	11-17-94	Auto Repair	Open
Morris	Paylou Ltd. Rockaway	09-15-94	Bar	Closed
	Lan Dee, Inc. Montville	11-17-94	Bar & Restaurant	Closed
	RJ Lake Enterprise Madison	12-02-94	Restaurant	Closed
	Louise Donahue Boonton	12-07-94	Records	Closed
	Hoffman Appliance Morristown	12-08-94	Appliance Repair	Closed
Ocean	Karla's Pet Shop Jackson	09-14-94	Pet Store	Open
	Panda Inn Lakewood	10-05-94	Restaurant	Closed
	Auers, Inc. Brick	10-25-94	Food Store	Open
	Flowers With Class Toms River	10-27-94	Flower Shop	Open
Passaic	Hewitt House West Milford	09-08-94	Bar	Closed
	Joreg, Inc. Paterson	09-29-94	Bar	Open
	Jacob Rothwacks Passaic	10-18-94	Bar	Open
	Garcia, Ratiel Passaic	11-03-94	Car Radios	Open
Salem	Fumbles Tavern, Inc. Carneys Point	11-15-94	Bar	Open
Union	Kurnmueller Tool Co., Inc. Union	10-18-94	Tool Wholesaler	Open

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County	Name/Address	Seizure Date	Business Type	Status
Union	Heads-Up Corp. of NJ Elizabeth	11-15-94	Video Store	Open
	Catwell Enterprises, Inc. Plainfield	12-08-94	Catering	Open
Warren	La Cava, Inc. Phillipsburg	10-06-94	Restaurant	Auction
	Willin Corp. Washington	11-28-94	Print Shop	Closed
	Par A Mor Phillipsburg	11-28-94	Restaurant	Closed

***Division of Taxation Auctions
(October - December 1994)***

County	Name/Address	Auction Date	Business Type
Camden	Lacasa Cafe, Inc. Clementon	09-22-94	Bar
	Prause Beauty Supply Collingswood	12-07-94	Beauty Supply
Cape May	Le Bistro North Wildwood	12-05-94	Bar
Mercer	Bi Page, Inc. Trenton	09-22-94	Bar
	1267 C J Inc. Trenton	12-08-94	Bar
Middlesex	1001 Auto Parts, Inc. Colonia	10-06-94	Auto Parts
Monmouth	1001 Auto Parts Keyport	10-03-94	Auto Parts
Ocean	DSKR Enterprises, Inc. Forked River	12-05-94	Deli
Warren	La Cava, Inc. Phillipsburg	11-01-94	Restaurant

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York. It concluded that in light of the specific facts and the statutory goal of avoiding double taxation, the principles of categorization of income in the regulation should not apply in this case. Instead deductions used in calculating the numerator must be limited to the greater of the total amount of deductions in either state. Summary judgment was entered for taxpayers.

The Division of Taxation is appealing this decision.

**Gross Income Tax
Operative Effect of Interest
Waiver Provision, N.J.S.A. 54:49-11b – *George V. Richardson v. Director, Division of Taxation*, Tax Court - 005783 - 93, decided December 9, 1994.**

Plaintiff and his wife incorrectly calculated the amount of credit for taxes paid to New York on their timely 1988 joint return. The Division first sent them a notice of adjustment in March 1992 charging them additional tax plus penalty and interest, but later

waived the penalty and reduced the interest calculation by two percentage points. In May 1993 plaintiff filed a complaint, arguing that because his error resulted from his reliance upon erroneous instructions in the 1988 return, he was entitled to a waiver of all of the penalty and interest.

At issue was the operative effect of N.J.S.A. 54:49-11b, which provides for the waiver of any penalty or interest resulting from a taxpayer's reasonable reliance upon erroneous written advice furnished by the Division of Taxation. Enacted as part of the Taxpayers' Bill of Rights, P.L.1992, c.175, the provision became effective January 1, 1993.

Because plaintiff's reliance upon the Division's allegedly erroneous 1988 instructions occurred in 1989, well before the effective date of the new law, and because the provision created a substantive right to a complete abatement of interest, the Tax Court concluded that applying the provision retroactively would change the expectations under which both taxpay-

ers and the Division operated in 1989. Finding that none of the exceptions to the presumptions against statutory retroactivity existed in this case, the court ruled that the usual rule of prospective operation applies. Judgment was entered affirming the Director's assessment of interest.

**Local Property Tax
Correction of Errors Statute – *Hovbilt, Inc. v. Township of Howell*, Supreme Court A-9; on appeal from 263 N.J. Super. 567 (App. Div. 1993); decided December 22, 1994.**

Plaintiff Hovbilt, Inc. owned a parcel of land used for farming. Each year from 1985 through 1990 its application to the township for farmland assessment was granted. The tax assessor lost plaintiff's timely application for the 1991 tax year, and assessed the land at full value.

Instead of appealing the assessment to the county board of taxation, plaintiff filed a complaint with the Tax Court alleging an error correctable

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under the Correction of Errors Statute, N.J.S.A. 54:51A-7. Plaintiff sought to have the matter remanded to the local tax assessor to determine its entitlement to farmland assessment. The Correction of Errors Statute, which provides an exception to the standard appeal process, allows the Tax Court to correct typographical or transposition errors or mistakes in tax assessment.

The Supreme Court affirmed the judgment of the Appellate Division, which had affirmed the Tax Court's dismissal of the complaint. Because the correct assessment would require a determination as to whether the property met the criteria in the Farmland Assessment Act, it was not subject to

easy calculation based solely on the nature of the tax assessor's mistake, i.e., losing plaintiff's application. The Court therefore held that the assessor's mistake was not the kind that is correctable under the Correction of Errors Statute and that plaintiff was not entitled to relief under that exceptional procedure. □

In Our Legislature

Gross Income Tax

Voter Registration Revisions — P.L. 1994, c.182 (signed into law on December 20, 1994) makes numerous revisions to the voter registration laws. Among the revisions is the requirement to include voter registration forms in the gross income tax instruction booklets.

This law is effective immediately, but became operative on January 1, 1995.

Gross Income Tax

"New Jersey Breast Cancer Research Fund" Donation Checkoff — P.L. 1995, c.26 (signed into law on January 26, 1995) establishes the "New Jersey Breast Cancer Research Fund" and provides taxpayers with an opportunity to contribute to the Fund by designating a portion of their refund or by making a donation at the time of filing their New Jersey income tax returns.

This legislation is effective for tax years beginning on and after January 1, 1996. □

tax calendar

april

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April 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

April 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending December 31
CBT-150 Corporation Business Tax—Installment payment of estimated

continued

April 17 - continued

- NJ-500** Gross Income Tax—Employer's semi-monthly and monthly returns
NJ-1040 Gross Income Tax—Resident return for calendar year filers
NJ-1040NR Gross Income Tax—Non-resident return for calendar year filers
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers
NJ-1041 Gross Income Tax—Fiduciary return for calendar year filers

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special

continued

April 20 - continued

- SCC-5** Spill Compensation and Control Tax—Monthly return
ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return
ST-50 Sales and Use Tax—Quarterly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return



may

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May 1

NJ-500 Gross Income Tax—Employer's semi-monthly return

May 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

May 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending January 31
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

May 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return

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May 22 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return
ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

May 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

May 31

NJ-500 Gross Income Tax—Employer's semi-monthly return

june

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June 12

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

June 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending February 28
CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

June 15 - continued

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax, Voucher 2 for calendar year filers

June 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return
ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

June 20 - continued

ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

June 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

June 30

NJ-500 Gross Income Tax—Employer's semi-monthly return

from the director's desk

Casino Hotel Parking Charges

Is sales tax due on the \$2.00 Casino Parking Fee imposed in Atlantic City?

No, receipts from motor vehicle parking are not subject to sales tax in New Jersey. Therefore, the "Atlantic City Parking Fee" whether or not collected from parking patrons, is not a taxable receipt for tax purposes under the New Jersey Sales and Use Tax Act.

Pet Grooming & Training

Will sales tax be charged on the grooming of my dog? How about obedience training?

Dogs and other animals are considered tangible personal property under the law. As such, the sales of dogs, pet supplies (including food) and grooming of the dog are subject to sales tax. However, charges for obedience classes are exempt from the tax.

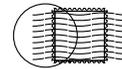
News Clipping Service

Are charges for a news clipping service subject to sales tax in New Jersey?

No, as parts of a research service, both the research fee and the separately stated "per clip" charge are exempt from sales tax. In this case, the "per clip" charge is an inconsequential element of the receipt if used only to ascertain the price charged for the research.

NJ Tax Question? Send your questions to:

From the Director's Desk
New Jersey State Tax News
 NJ Division of Taxation
 CN 281
 Trenton, NJ 08646-0281



State of New Jersey
 Department of the Treasury
 Division of Taxation
 Taxpayer Services Branch
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Interest 9% for Fourth Quarter

The interest rate assessed on amounts due for the fourth quarter of 1994 remains at 9%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%
10/1/94	9%

New Filing Requirements for Partnerships

Partnerships with one or more New Jersey resident partners or deriving income/loss from New Jersey sources are now required to file a New Jersey partnership return, Form NJ-1065. The effective date of this new filing requirement is for tax years ending on or after 12/31/94. The partnership is required to file this new form on or before the fifteenth day of the fourth month following the close of the partnership's taxable year.

This new filing requirement is for informational purposes only. The partnership is not subject to Gross Income Tax but the individual partners are

liable for the payment of Gross Income Tax based upon their distributive share of partnership income/loss.

The New Jersey Gross Income Tax Act does not follow all the Federal income tax provisions for partnerships and/or partners. The proper determination, classification, and reporting of income/loss by the partnership is critical to the proper reporting of a New Jersey income/loss by the individual partners. The partnership information required to be reported on the form is needed to adjust items of Federal income/loss and expense to conform with New Jersey Gross Income Tax statutes and to separate income/loss derived from New Jersey sources from amounts derived from all sources.

continued on page 2



important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-984-2402
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
..... 609-292-5035
..... 609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax Refunds
..... 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730

partnerships - from page 1

All choices affecting the computation of income/loss from a partnership are made by the partnership, not each partner. This includes the choice of method of accounting, depreciation, capitalization of organizational fees, and the use of installment sale provisions. It also includes the determination and classification of income/loss and the allocation of income to New Jersey. All partnership elections are equally applicable and binding to all of the partners.

Part of the filing requirements of Form NJ-1065 is the completion of Schedule(s) NJK-1 (Form NJ-1065). A separate Schedule NJK-1 must be completed for each partner in the firm, both residents and nonresidents. Furthermore, a completed Form NJK-1 must be supplied to each partner for use in the filing of his/her personal Gross Income Tax return.

The use of these new forms will standardize the information reporting requirements and simplify the completion of the individual partner's personal Gross Income Tax return.

The Division is in the process of preparing an information booklet for partners in partnerships and shareholders in S corporations to aid them in filing their personal tax returns. This new booklet entitled *Income Received from Partnerships and S Corporations* will be ready for the 1994 tax year.

Reinstatement Fees

As a result of clarification in the interpretation of several existing corporate statutes, N.J.S.A. 14A:15-2(7), N.J.S.A. 14A:15-3(15) and N.J.S.A. 54:11-5, the correct reinstatement fee for a voided corporate charter amounts

to \$70.00, plus any deficiencies and/or delinquencies of tax, penalty and interest that caused the voidance of the corporate charter.

This fee structure became effective April 14, 1988.

CORPORATION TAX **New Jobs** **Investment Tax** **Credit**

The New Jobs Investment Tax Credit Act (P.L. 1993, c.170), N.J.S.A. 54:10A through 5.15, became effective for tax years beginning on or after July 7, 1993. This credit allows a business tax credit for those corporations who make an investment in new or expanded business facilities that create new jobs in New Jersey.

To qualify for the New Jobs Investment Tax Credit, the investment must create at least 5 new jobs for small businesses (defined as those with annual payrolls of not more than \$2,000,000 and annual gross receipts of not more than \$6,000,000) and 50 new jobs in the case of large businesses. The median annual compensation for the new jobs must be \$27,000. In addition, the investment must be in new or expanded business facilities purchased from an unrelated party during or after the taxpayer's accounting period beginning on or after July 7, 1993. The property must be employed by the taxpayer in a taxable activity and must not have been in use during the 90 day period prior to purchase.

The credit is based upon a percentage of the cost of the property purchased and is determined based on the expected depreciable life of the property, categorized by 3 year, 5 year, and 7 or more year recovery periods.

The taxpayer cannot claim a credit for a number of new employees that exceeds either the increase in the taxpayer's average employment for the tax year, or one-half the taxpayer's average employment for the year. Therefore, in order to qualify for this credit, there must be increases in both New Jersey property and employment. The credit is spread out over a five-year period.

continued on page 3

New Jersey State Tax **news**

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Richard D. Gardiner

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Editor: Linda B. Hickey



new jobs investment tax credit - from pg. 2

The credit may not exceed 50% of the corporation business tax liability otherwise due and shall not reduce the tax below the statutory minimum. If the credit exceeds this limitation, the taxpayer is eligible for a refund limited to 50% of the sum of property tax and implicit property tax directly resulting from qualified investment. Any amounts in excess of this amount cannot be carried forward.

This credit can be taken on Form 304. (See *Business Incentive Tax Package* booklet and Forms 300 through 307 for other tax credits which may be taken on the Corporation Business Tax Return). These forms and the booklet are available upon request from the Forms Distribution Section, CN 269, 50 Barrack Street, Trenton, New Jersey 08646-0269 or by calling 1-800-323-4400.

INHERITANCE/ESTATE TAX ***Frequently Asked Questions***

This is the second of three successive issues in which the Transfer Inheritance and Estate Tax Branch will respond to specific inquiries taken from a list of most frequently asked questions.

1. What is a Form L-8?

The Form L-8 is a self-executing waiver which was born of the legislation granting Class "A" beneficiaries full exemption from New Jersey Transfer Inheritance Tax. The form was designed and implemented to accommodate those beneficiaries directly affected by this legislation. The purpose of the form is to allow convenient and expeditious access to assets of a resident decedent which are passing under specified conditions to a Class "A" beneficiary.

Class "A" beneficiaries for whom the Form L-8 is authorized include a surviving spouse in estates having a date of death on or after January 1, 1985, and a child, adopted child, stepchild, parent, grandparent, or grandchild of a decedent when date of death is on or after July 1, 1988. A step grandchild is not a Class "A" beneficiary and is not authorized to use the form.

The Form L-8 self-executing waiver may be obtained and completed at the institution having control of the asset requiring the waiver. This may be a banking facility or, in the case of New Jersey securities, the transfer agent. Detailed instructions are included in the form.

2. What is a Form L-9?

Unlike the Form L-8, the Form L-9 is a request for a waiver and is not actually an instrument which may be used as the basis for releasing control of a decedent's assets.

The Form L-9 is an application for a waiver for the release of a resident decedent's interest in New Jersey real estate. Form L-9 is submitted, together with a copy of the decedent's will, to the Inheritance Tax Branch in Trenton. If warranted, the Branch will then issue the desired waiver. **Form L-9 may only be used when all beneficiaries are class "A" and a Transfer Inheritance Tax Return is not required.** Instructions and criteria are set forth in Form L-9.

3. When using the Form L-8 or the Form L-9, does the executor or administrator have to be a Class "A" beneficiary?

The relationship of the beneficiary to the decedent is the controlling factor. The beneficiary must be a

Class "A" beneficiary.

The relationship of an executor or administrator to the decedent is not relevant unless he/she is also a beneficiary.

4. Is jointly held property part of a decedent's estate for New Jersey Inheritance Tax purposes? If so, is it taxed at full or one-half the rate of death value?

Under provisions of the statute, jointly held property is subject to the tax. For this purpose, the asset is assumed to have belonged entirely to the decedent except that portion that can be proven to have originally belonged to the surviving joint owner(s) and never to have belonged to the decedent.

INHERITANCE/ESTATE TAX ***New Compromise Tax Guide***

The Transfer Inheritance and Estate Tax Branch has recently published its first instructional booklet on the computation of the Compromise Tax. The booklet includes tables and detailed instructions as well as examples based on different sets of circum-

continued on page 4

Correction

Editor's note: There was a typographical error in the last issue of the *State Tax News* (Fall 1994, Volume 23, Number 3) on page 3. On the Organizational Chart of the Division of Taxation, the phone number for Craig Rook, Chief, Out-of-State Audit should have been **(708) 298-9550**. We apologize for any inconvenience caused by this mistake.

compromise tax guide - from pg. 3

stances that would normally require a compromise tax offer.

A copy of the new booklet, *New Jersey Inheritance Tax Guide for Computation of the Compromise Tax*, may be requested by writing to the Transfer Inheritance and Estate Tax Branch, CN 249, 50 Barrack St., Trenton, NJ 08646.

LOCAL PROPERTY TAX

Property Tax Reimbursements

The 1994 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1994.

Under the provisions of R.S. 54A:10-1 *et seq.*, as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1994.

The total number of property tax deductions for senior and disabled citizens and surviving spouses was 153,556. When compared to tax year 1993, the number of deductions increased .4%, i.e., less than half of 1%.

The total number of veterans' deductions for 1994 was 378,665. That is a 2% decrease from 1993 to 1994.

LOCAL PROPERTY TAX

Farmland Acreage Decline

A report summarizing data from farmland assessment applications (Form FA-1) has recently been completed. The study shows that total acreage devoted to agricultural or horticultural use in 1993 was 1,166,531 acres for

the entire state. The data for tax year 1993 reflect a continued decline in the amount of qualified farmland since enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, i.e., 1.27 million acres, qualified for farmland assessment, the amount of qualified acreage has declined 8.2% or a total of 105,351 acres. 24.27% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union Counties each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem County, with 57%, has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 52%; Warren, 48%; Gloucester, 39%; Mercer, 34%; and Sussex, 33%.

LOCAL PROPERTY TAX

Tax Assessors' Calendar

January 1-

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.

January 10-

- Notice of material depreciation to structure occurring after Oct. 1 and before Jan. 1, given to assessor by taxpayer.
- Copy of Initial Statement and Further Statement filed with County Tax Board.

- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- One copy of each Farmland Assessment application, Form FA-1, forwarded to Property Administration by tax assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Statement of estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1-

- Notices of current assessment and preceding year's taxes issued to taxpayer by tax assessor.
- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding year's taxes, extended by County Tax Board for any taxpayer aggrieved by the assessed valuation of his property or of other property in the county.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Schedule of office hours for assessors summarized by County Tax Administrator and furnished to Director, Division of Taxation.

March 1-

- Post-Tax Year Statement PD5 filed with tax collector by all recipients of property tax deduction.

March 10-

- Equalization table hearings completed by County Tax Board.

LOCAL PROPERTY TAX

Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certifi-

continued on page 5



tax assessor certificates - from page 4

cation and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971, must hold a tax assessor certificate.

Twenty-two persons passed the examination for the tax assessor certificate held on September 24, 1994.

Bergen County: Terence J. Cooney, Ridgefield Park Village; Michael S. Filip, Cresskill Borough.

Camden County: Paul J. Breitenstine, Gloucester Township.

Essex County: Edward R. Longo, Cedar Grove Township; Douglas E. Wiedman, Nutley Township; John F. Williams, Belleville Township.

Hudson County: Michael T. DeNoble, Jersey City.

Hunterdon County: Peter H. Mehring, Clinton Township; Marianne S. Busher, Holland Township.

Mercer County: Lee H. Pavel, Princeton Township.

Middlesex County: James Ciacciarelli, Sayreville Borough.

Monmouth County: Peter J. Barnett, Little Silver Borough; Blanche A. Braillard, Highlands Borough; Bernard Friel, Rumson Borough; Robert Gagliano, Tinton Falls Borough; Robert E. Gibney, Middletown Township; Walker J. Matlack, Long Branch City.

Morris County: Joseph H. Cimiluca, Parsippany-Troy Hills Township.

Ocean County: Martin W. Lynch, Seaside Park Borough.

Sussex County: John K. McChesney, Sparta Township.

Union County: Frederick C. Engelman, Elizabeth City.

The next exam is scheduled for Saturday, March 25, 1995. The last date for accepting applications for this exam will be February 23, 1995. Admission to the exam will be by application only. Individuals retaking the exam must reapply. There is a filing fee of \$10.00.

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Dipak C. Shah, president of Mili Liquors, Inc., plead guilty in Essex County court to charges of failing to turn over sales tax collected. Mr. Shah was ordered to serve three years probation and make restitution of \$72,287.28.
- A prosecution report has been forwarded to the Division of Criminal Justice for a liquor store and its president pursuant to an investigation revealing the filing of fraudulent sales tax returns wherein \$1.4 million in sales was not reported nor was \$85,400 of collected tax related to the unreported sales taxable sales remitted.
- An investigation of an auto dealer uncovered the filing of fraudulent sales tax returns and the failure to report \$600,082 in taxable sales. In addition, \$36,005 of collected tax associated to the unreported sales was not remitted. This case was forwarded for prosecution.
- Fraudulent sales tax returns filed by a tree farm business failed to report \$458,233 in taxable sales. Sales tax collected of \$27,437 on the unreported taxable sales was not remitted. Prosecution was recommended and the matter forwarded to the prosecutor's office.

- A taxpayer plead guilty to the charges filed resulting from a cigarette tax investigation. The fines assessed by the court totaled \$1,300. Thirteen additional cases were filed in municipalities throughout the State. The court dates have not yet been scheduled. There is an increased incidence of unstamped cigarettes being transported through this State which in part is attributed to some other states' eliminating the stamping of cigarettes. This situation is of concern and is being monitored closely.

Enforcement Summary

Civil Collection Actions Quarter Ending - September 30, 1994

Following is a summary of enforcement actions for the quarter ending September 30, 1994.

Certificates of Debt

When demands for payment were unsuccessful, Field Investigations docketed 800 Certificates of Debt in Superior Court totaling \$21.9 million.

Levies

Executing against 390 bank accounts, Field Investigations collected \$2.3 million.

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

A total of 45 businesses were scheduled for seizure for the quarter end-

continued on page 6

enforcement summary - from pg. 5

ing September 30, 1994. Of these, 13 businesses were actually closed and six were left open. A listing of seized businesses appears on pages 7, 8 and 9.

If the liability of the closed business is not satisfied, the Division can sell the business assets at public auction after 30 days. For the quarter ending September 30, 1994, two auctions were conducted. When an auction does not realize enough to resolve the entire debt, seizure of personal assets of the responsible officers will be pursued by the Division. This action is executed for the trust fund tax portion of the debt.

Tax Briefs

Corporation Business Tax

S Corporation Minimum Tax — The 1994 minimum tax for a period beginning in 1994 for an S corporation that has elected to be a New Jersey S corporation is \$50 for a domestic corporation and \$100 for a foreign corporation.

Minimum tax for a period beginning in 1994 for a Federal S corporation which has not elected to be a New Jersey S corporation is \$50 for a domestic corporation and \$100 for a foreign corporation.

For periods beginning in calendar year 1995, the amounts would be \$100 for a domestic corporation and \$200 for a foreign corporation. N.J.S.A. 54:10A-5(e). The minimum tax amounts at instruction 11b of the CBT-100 and the CBT-100S relate generally to domestic and foreign corporations whether or not they are S corporations and the instruction assumes they are not investment companies or regulated investment companies.

Gross Income Tax

S Corporation Distributions — The Division received a request for advice with respect to a fiscal year S corporation with a year end June 30, 1994, that has elected New Jersey S status beginning with its fiscal year July 1, 1994. The S corporation typically pays dividends to its shareholders throughout its tax year. The inquirer asked whether these distributions constitute distributions of current earnings which would be taxable to the shareholders on their calendar year 1995 income tax returns or whether these distributions constitute dividends of 1994 fiscal subchapter C earnings.

The Division stated that distributions by a New Jersey S corporation are made pursuant to the priorities found in IRC 1368, N.J.S.A. 54A:5-14. Distributions from the corporation's fiscal year beginning July 1, 1993 and ending June 30, 1994 are dividends for New Jersey purposes. Distributions from the corporation's fiscal year beginning July 1, 1994 and ending June 30, 1995 are tax free to the extent of current period earnings.

In Our Courts

Local Property Tax

Valuation, Discrimination and the Application of Chapter 123—Martin W. & Margaret C. Caulfield, v. Surf City Borough, Tax Court of New Jersey, Docket No. 010296-93, decided July 18, 1994.

This was a local property tax matter concerning valuation, discrimination, and the application of Chapter 123 which provides a statutory formula of relief for properties under tax appeal. The taxpayers appealed to the Tax Court of New Jersey after the Ocean County Board of Taxation affirmed their 1993 assessment of \$425,000. On appeal to the Court, the taxpayers' real

estate appraiser testified that based on four comparable sales the 1993 fair market value of the property, a single family dwelling, was \$360,000. Under cross-examination, he also stated that the highest and best use for the property was its current use as a single family residence. The taxpayers themselves argued that the municipality's establishment of a dune line and a building line reduced the property's buildable area, and therefore it should be considered and valued as a vacant lot.

The municipal tax assessor, using both the replacement cost and three comparable sales, set the property's 1993 fair market value for land and improvements at \$415,000. He then indicated that the difference in his assessed value determination of \$425,000 as compared with his market value determination of \$415,000 was acceptable since the property's assessment to sales ratio of 102.41% fell within the corridor (high 111.81%; low 82.65%) provided under Chapter 123 and that no reduction was warranted.

A brief explanation of Chapter 123 terms and concepts follows:

Chapter 123 Ratio—average ratio for a municipality as determined by Director, Division of Taxation. **Common Level Range**—range which is plus or minus 15% of the average ratio for a municipality. **County Percentage Level**—100% for all 21 counties in New Jersey. Where the ratio of a subject property's assessed to true value exceeds the upper limit or falls below the lower limit of the common level range, the property's taxable value shall be revised by applying the average ratio for the municipality to the true value of the property except as follows:

continued on page 9



**Division of Taxation Seizures
(July - September 1994)**

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Billy Pizza, Inc. T/A Dominos Pizza 200 S. Whitehorse Pike Hammonton	07-12-94	Pizzeria	Closed
Bergen	E P Distribution, Inc. T/A 1001 Auto Parts 1 Highway 46 Elmwood Park	07-13-94	Auto Parts & Tires	Bankrupt 07-22-94
	Micott Enterprises, Inc. T/A A & J Sunoco 292 Forest Avenue Paramus	08-16-94	Gas Station & Auto Repair	Closed
	G & B Foods, Inc. T/A Vanno's 214 Kinderkamack Rd. Emerson	08-23-94	Restaurant & Bar	Reopened 08-25-94
	K V N Corp. T/A Partview Diner 354 Fairview Avenue Fairview	09-12-94	Restaurant/Diner	Closed
Camden	Mohawk Mold & Machine 900 Chestnut Street Somerdale	07-13-94	Factory Injection Molding/Plastic Parts	Bankrupt 07-14-94
	R.W.T. Enterprises, Inc. T/A RT'S Showplace 110 White Horse Pike Oaklyn	07-21-94	Bar/Nightclub	Bankrupt 07-22-94
	Eaglespeed, Inc. 1300 Collings Ave. Collingswood	08-31-94	Auto, Oil & Lube	Closed
Cape May	George W. Davis T/A G. W. Davis Auto Body 2204 Shore Road Whitesboro	08-24-94	Auto Body Shop	Closed
	Winship, Inc. T/A Le Bistro 1610 New York Ave. N. Wildwood	09-14-94	Tavern with Food	Closed
Essex	Auto Express, Inc. 66-68 Prospect Street Newark	07-13-94	Auto Body Shop	Closed

taxation seizures - continued from pg. 7

County	Name/Address	Seizure Date	Business Type	Status
Essex	Ornellas Pizzeria T/A Puzo's Family Ristorante 397 Route 46 West Fairfield	08-16-94	Pizzeria	Bankrupt 08-18-94
Gloucester	Daniel J. & Elizabeth Morris T/A Tussie Mussie Country Store 485 Hurffville-Crosskeys Rd. Washington Twp.	07-07-94	Home Decor Retailer, Arts & Crafts	Bankrupt 07-07-94
	Murray/Mende Pest Control Services, Inc. 6 2nd Avenue Pitman	08-30-94	Pest Control	Closed
Mercer	Bipage, Inc. T/A Ernie's Pub 13 N. Willow St. Trenton	08-05-94	Bar	Closed
Middlesex	1001 Auto Parts Distributors, Inc. 1009 St. Georges Ave. Colonia	07-13-94	Auto Parts & Supplies	Closed
	1001 Auto Parts, Inc. 591 Highway 18 East Brunswick	07-13-94	Auto Parts Store	Bankrupt 07-22-94
	Lacey & Sons Service, Inc. Victory Circle South Amboy	09-08-94	Truck Stop & Storage	Reopened 09-20-94
Monmouth	1001 Auto Parts Keyport, Inc. Keyport	07-13-94	Auto Parts Store	Closed
	Pistol Pete's, Inc. T/A Pistol Pete's Ocean & Chelsea Aves. Long Branch	09-01-94	Bar/Restaurant	Reopened 09-06-94
Morris	Peter's Boathouse 26 Nolans Point Park Rd. Lake Hopatcong	09-14-94	Bar	Reopened 09-15-94
Ocean	Karla Callahan T/A Pet Pantry County Line & New Prospect Rds. Jackson	09-14-94	Pet Store	Closed
Passaic	Dahab Corporation T/A Hewitt House 736 Warwick Tpk. Hewitt	09-08-94	Restaurant/Bar	Released to owner 09-27-94

continued on page 9



taxation seizures - continued from pg. 8

County	Name/Address	Seizure Date	Business Type	Status
Salem	Fashion Graphics, Inc. Rt. 49 163 N. Broadway Pennsville	07-14-94	Plant with Machinery, Showroom	Reopened 07-15-94
Sussex	Byram Video 17 Route 206 Store 4 Stanhope	08-18-94	Video Store	Reopened 08-23-94
Union	WOJ, Inc. T/A Jones Chateau 44 Watchung Ave. Plainfield	07-07-94	Bar	Closed
Warren	Baykun Corporation T/A Golden River Diner 14 Route 57 Hackettstown	09-22-94	Diner w/Counter, Booths & Tables	Released Keys to Landlord 09-26-94

in our courts - continued from pg. 6

Where a municipality's average ratio is below the county percentage level and a subject property's ratio of assessed to true value exceeds the county percentage level, the property's taxable value shall be revised by applying the average ratio to its true value.

Where both the municipality's average ratio and the subject property's ratio of assessed to true value exceed the county percentage level, the property's taxable value shall be revised by applying the county percentage level to its true value.

The Court rejected the taxpayers' contention that the property be valued as vacant land based on their own appraiser's opinion that the highest and best use of the property was its existing use as a single family dwelling. To value the property as vacant ground, it would have to be proved that the land alone was worth more than the land and building together. To the contrary, when attempting to support his value estimate of \$360,000 for the entire subject property, the taxpayers' ap-

praiser used an unadjusted comparable sale for \$360,000 where the improvements had been demolished, saying in effect that the subject property's improvements were valueless. The vacant lot use was also contradicted by the facts that the taxpayers occupied the property as a second home, maintained it in good condition, did not intend to sell it nor demolish it and rebuild within the new boundary line. In addition, the municipal assessor determined the land value of the property to be \$350,000, very close to the taxpayers' appraiser's estimate for the entire property using a vacant land sale as a measure. The Court concurred with assessor and affirmed the fair market value of the entire property at \$415,000.

However, the Court then went on to disagree with the assessor's taxable value or assessed valuation of the property stating that he had misconstrued both Chapter 123 statutes and prior case law. The purpose of the Chapter is to ensure that a property's assessment be equal to or less than its

fair market value, but not greater. Even though, as the assessor had indicated, the ratio of assessment to fair market value was within the common level range at 102.41%, it exceeded the county percentage level of 100%. Since the municipality's average ratio of 97.23% was below the 100% county percentage level, the property's assessment was revised downward to \$403,500 by multiplying the fair market value, \$415,000, by the average ratio, 97.23%. The Court further held that the assessor should not deal with the mathematics of Chapter 123, except when calculating the effective tax rate for factoring a capitalization rate in the income approach to value or when advancing a superior ratio. It was the Court's province to apply Chapter 123 for purposes of discrimination appeals.

**Sales and Use Tax
Responsible Party Personally Liable for Tax – Harry Skaperdas/
George Skaperdas, and Barry
Birkenholtz v. Director, Division of**

continued on page 10

in our courts - continued from pg. 9

Taxation, Tax Court of New Jersey, Docket No. 16-02-920-91ST; decided May 27, 1994.

The Tax Court heard an appeal from a determination of the Director, Division of Taxation, finding each of three plaintiffs personally liable for unpaid sales and use tax. It was held that performing supervisory functions, reserving and exercising signatory authority, and receiving substantial benefits made two of the officers personally liable for tax under N.J.S.A. 54:32B-2(w) and N.J.S.A. 54:32B-14 of the Sales and Use Tax Act. However, the third officer was not subject to personal liability for the collection and payment of sales tax based on his limited participation in corporate affairs and receipt of only nominal corporate benefits.

Urban Enterprise Zone Promotional Items and Employee Incentives — Fedway Associates, Inc. v. Director, Division of Taxation, Tax Court, Docket No. 16-02-10134-91ST; decided June 1, 1994.

The Tax Court held that a beverage distributor, holding an "Urban Enterprise Exempt Purchase Permit" in accordance with the Urban Enterprise Zone Act, N.J.S.A. 52:31B-1 *et seq.*, is subject to use tax pursuant to the Sales and Use Tax Act (N.J.S.A. 54:32B-6) on goods purchased as either compensation for its salespersons or as promotional items. To be exempt from tax, goods must be exclusively used or consumed within the enterprise zone. Promotional items are not exclusively consumed until they are used by the salesperson to promote the company's products. Compensation items, though

consumed within the enterprise zone when distributed to salespersons, are not exclusively consumed because they retain economic utility to the recipient to use outside the enterprise zone.

In Our Legislature

Gross Income Tax

New Partnership Return — P.L. 1994, c.117 (signed into law on October 12, 1994) revises the partnership reporting requirement under the Gross Income Tax Act. This act requires a New Jersey Partnership Return for taxable years ending on and after December 31, 1994. Each partnership is also required to furnish each person who is a partner or holds an interest as a nominee with an information return as prescribed by the Director. This bill is effective immediately.

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1	1	2	3	4	5	6	7
9	8	9	10	11	12	13	14
9	15	16	17	18	19	20	21
5	22	23	24	25	26	27	28
	29	30	31				

January 3

NJ-500 Gross Income Tax—Employer's semi-monthly return

January 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

continued

January 17

CBT-100 Corporation Business Tax—Annual return for accounting period ending September 30

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's semi-monthly return

January 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return
ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

January 20 - continued

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

January 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

January 31

NJ-500 Gross Income Tax—Employer's semi-monthly, monthly, quarterly and semi-annual returns



february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1				1	2	3	4
9	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
5	19	20	21	22	23	24	25
	26	27	28				

February 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

February 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax**—Installment payment of

continued

February 15 - continued

- NJ-500** estimated tax for 4th, 6th, 9th or 12th month of current tax year
Gross Income Tax—Employer's semi-monthly and monthly returns

February 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

February 21 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

February 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

February 28

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1				1	2	3	4
9	5	6	7	8	9	10	11
9	12	13	14	15	16	17	18
5	19	20	21	22	23	24	25
	26	27	28	29	30	31	

March 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

March 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated

continued

March 15 - continued

- NJ-500** tax for 4th, 6th, 9th or 12th month of current tax year
Gross Income Tax—Employer's semi-monthly and monthly returns

March 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

March 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

March 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

March 31

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

from the director's desk

New for 1994 Filing Season

Gross Income Tax Changes

- In addition to tax rate schedules, the 1994 New Jersey income tax instruction booklets for Forms NJ-1040, NJ-1040NR and NJ-1041 will include **Tax Tables** similar in design to the Federal income tax tables.
- A line for **Net Pro Rata Share of S Corporation Income** has been added to forms NJ-1040, NJ-1040NR and NJ-1041. Line numbers will change after the insertion of the net pro rata share line.
- A reminder that the minimum **income threshold** for Gross Income Tax was raised in 1994 from \$3,000 to **\$7,500** for individuals filing as single, head of household, qualifying widow(er) or married, filing joint return, and estates and trusts (and from \$1,500 to \$3,750 for individuals filing as married, filing separate return). See *State Tax News*, Volume 23, Number 2, page 1, for more information.

New Forms

- A new business allocation form, **Form NJ-NR-A**, is available for this tax season. It replaces Forms NJ-1041-A and NJ-1040NR-A.
- **Form NJ-1065, New Jersey Partnership Return**, is now available for filing by every partnership or limited liability company that has income from New Jersey sources or a partner who is a New Jersey resident, for taxable years ending on or after December 31, 1994.
- **Form CBT-100S, New Jersey S Corporation Tax Return**, is now available for filing by eligible S corporations.
- A new **Application for Registration (Form REG-1)** and instructions are available. The registration packet (REG-P) includes new forms such as applications for cigarette and motor fuel licenses and a New Jersey S Corporation Election form.

State of New Jersey
Department of the Treasury
Division of Taxation
Taxpayer Services Branch
CN 281
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Income Tax Rates Reduced

P.L. 1994, c.69, approved July 6, 1994, reduces the New Jersey Gross Income Tax rates for all taxpayers for tax years 1995 and thereafter. When combined with the 5% rate reduction for all rate brackets enacted as P.L. 1994, c.2, this new reduction results in cumulative tax decreases from the 1993 taxable year rates of 15%, 7.5% and 6%, depending on taxable income level.

Cumulative Rate Reduction

For tax year 1994, the New Jersey income tax rates for all taxpayers were reduced by 5%, and the rates have been further reduced for taxable years 1995 and thereafter. The cumulative decreases in the tax rates from their 1993 levels are shown below.

Filing Status: Married, Filing Jointly	
Head of Household*	
Qualifying Widow(er)	
	% Rate Change
Taxable Income	1993-1995
\$0—\$80,000	-15%
\$80,001—\$150,000	-7.5%
Over \$150,000	-6%

Filing Status: Single	
Married, Filing Separately	
and	
Estates and Trusts	

	% Rate Change
Taxable Income	1993-1995
\$0 —\$40,000	-15%
\$40,001 —\$75,000	-7.5%
Over \$75,000	-6%

Withholding Rates

Because of the reduction in tax rates for taxable years beginning on or after January 1, 1995, new withholding tables will be required. Revised withholding tables will be mailed to employers when available.

Estimated Tax Payments

Any individual (resident or nonresident) who expects their New Jersey income tax liability to be more than \$100, after subtracting withholdings and credits, must make New Jersey estimated tax payments using Form NJ-1040-ES. Taxpayers should take the new income tax rates into account when calculating the amount of their estimated tax payments for 1995. Estates and trusts are not required to make New Jersey estimated tax payments.

continued on page 2



important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-588-3179
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
..... 609-292-5035
..... 609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax Refunds
..... 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730

income tax rates - from page 1

1995 Tax Rates

For taxpayers whose filing status is Married, filing joint return, Head of Household* or Qualifying Widow(er) the rates are:

Taxable Income	Tax Rate
\$0 - \$20,000	1.7%
\$20,001 - \$50,000	\$340 plus 2.125% of the excess over \$20,000
\$50,001 - \$70,000	\$977.50 plus 2.975% of the excess over \$50,000
\$70,001 - \$80,000	\$1,572.50 plus 4.250% of the excess over \$70,000
\$80,001 - \$150,000	\$1,997.50 plus 6.013% of the excess over \$80,000
Over \$150,000	\$6,206.60 plus 6.580% of the excess over \$150,000

For taxpayers whose filing status is Single or Married, filing separate return and estates and trusts the rates are:

Taxable Income	Tax Rate
\$0 - \$20,000	1.7%
\$20,001 - \$35,000	\$340 plus 2.125% of the excess over \$20,000
\$35,001 - \$40,000	\$658.75 plus 4.250% of the excess over \$35,000
\$40,001 - \$75,000	\$871.25 plus 6.013% of the excess over \$40,000
Over \$75,000	\$2,975.80 plus 6.580% of the excess over \$75,000

*Nonresident aliens who otherwise meet the requirements may file as Head of Household for New Jersey purposes, even though they are unable to claim that status for Federal purposes.

Interest 9% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1994 remains at 9%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%

New York State Amnesty Program

On September 1, 1994, New York State began a limited three-month amnesty program aimed at specific taxpayers during particular years.

Those who qualify must pay any taxes owed, plus interest, but will be protected from any related criminal prosecution or administrative penalty.

The **income tax** component applies only to nonresidents of New York who have failed to file any required income tax returns for tax years beginning on and after January 1, 1986 and ending before December 31, 1993. Thus, 1992 would be the last

continued on page 4

Division Realignment

Acting Director Richard D. Gardiner has announced a realignment of Division of Taxation personnel. For details, see the Division of Taxation Organizational Chart on the next page. For your convenience, the organizational chart includes a contact phone number with each name.

New Jersey State Tax News

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**New Jersey Division of Taxation
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

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Richard D. Gardiner

Area News Coordinators:

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<i>Compliance</i>	Jim Pronchick
<i>Criminal Investigations</i>	Ronald Rehl
<i>Legislative</i>	John Bodnar
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Editor: Linda B. Hickey



ny amnesty - from page 2

calendar year for which participants can file for amnesty. Excluded is anyone currently under criminal investigation, anyone who has already been contacted by the Tax Department, and anyone who participated in New York's 1985 general Amnesty Program.

Similarly, the **business tax** component applies only to out-of-state businesses that have been doing business in New York and who should have filed returns between 1986 and December 1, 1993. Thus, 1992 would be the last calendar year, and November 1993 the last month for which participants can file for amnesty. Once again, any business under criminal investigation or already contacted by the Tax Department is ineligible.

The **use tax** component of amnesty applies to resident individuals and smaller businesses, those with a New York payroll of less than a million dollars. The Compensating Use Tax is the flip side of the Sales Tax and applies to any taxable goods or services that are brought into, shipped into, or used in New York. For example, the computers, supplies, reference materials, etc. that professionals such as architects, dentists, lawyers, and doctors have shipped into the state without the sales tax being charged are subject to a use tax equal to the sales tax. To qualify for amnesty, any individual or business must not have already filed a sales or use tax return or have been registered for the period in question. Also, they must not be under criminal investigation, nor have already been contacted by the Tax Department. Only use tax liabilities for goods or services brought into or used in New York during the period June 1, 1986, to May 31, 1993, will be covered.

Additional information and amnesty forms can be obtained by writing: Amnesty, New York State Department of Taxation and Finance, Building 8, W. A. Harriman Campus, Albany, NY 12227.

From within New York, You may call 1 800 CALL-TAX (225-5829), and from outside New York 1-518-438-8581.

Contact:
Karl E. Felsen or
Paul A. Rickard
(518) 457-4242

Please Note: The **City** of New York is also conducting a tax amnesty from September 1, 1994 to November 30, 1994. The taxes covered are the commercial rent tax (for periods ending on or before May 31, 1993); the utility tax (for periods ending on or before March 31, 1994); the real property transfer tax (for taxable events occurring before April 1, 1994); and the hotel room occupancy tax (for periods ending on or before February 28, 1994). More information is available from the New York City Department of Finance at (718) 935-6000 or (718) 935-6675.

Appeals of DEP Denials

A taxpayer requested a hearing with the Division regarding the Department of Environmental Protection & Energy's (now the Department of Environmental Protection or DEP) denial of certification of certain machinery as recycling equipment. Because of DEP's action, the taxpayer was precluded from taking a credit on their Corporation Business Tax return under the provisions of N.J.S.A. 54:10A-5.3.

Under Section 5.3, the Director of Taxation cannot act independently of the Commissioner of DEP regarding the allowance of the credit for the acquisition of recycling equipment. N.J.A.C. 18:7-3.18 provides that the tax credit will not be allowed by the Director until the taxpayer receives certification from the Commissioner that the equipment for which the credit is sought is qualified recycling equipment. The certificate must be part of the return claiming the credit.

DEP has established fact finding procedures under N.J.S.A. 52:14B-1 et seq. The Director of Taxation has no role in that process, nor does he have a role in DEP's administrative process in determining whether individual items qualify for certification. It naturally follows that the Director of Taxation would also have no role in the adjudicative process. Since there is no specific action of the Director regarding the certification question, the taxpayer (applicant) does not have a right to a hearing with the Division under the provision of N.J.S.A. 54:49-18, nor does the taxpayer have the right to appeal to the Tax Court of New Jersey (N.J.S.A. 54:10A-19.2).

The Conference and Appeals Branch advised the taxpayer that this matter properly belongs before the Office of Administrative Law according to DEP regulations.

GROSS INCOME TAX Withholding and Employment Contractors

With the change in business operation throughout the country, more

employment contractors - from page 4

businesses are contracting with employment contractors for employees. These individuals remain the employees of the employment contractors. When an employment contractor or labor contractor has employees who perform services in New Jersey, said contractor must withhold New Jersey Gross Income Tax. This requirement includes every employer maintaining an office or transacting business within this State (whether or not a paying agency is maintained within the State) and making a payment of any wages subject to New Jersey Gross Income Tax to a resident or nonresident individual. It also includes any person or organization paying wages to a former employee after termination of employment.

The compensation subject to withholding includes salaries, wages, tips, fees, commissions, bonuses and other remuneration recovered for services rendered: basically anything regarded as "wages" for Federal Income Tax withholding purposes.

CIGARETTE TAX

Update

In order to improve the efficiency of Cigarette Tax audits handled by the Office Audit Branch, the Division is working on a computerized system to maintain all Cigarette Tax returns. This will provide an improved system of internal control and return tracking that will ensure the filing of timely and accurate returns. A future goal of the system will be to provide access for filing returns electronically.

Cigarette Tax returns and schedules have recently been changed. Revised forms have been printed and mailed to all active manufacturers and distributors. The line items are the same as

shown on the old forms but descriptions have been clarified in many cases. The revisions to the Cigarette Tax return include:

—In the Unstamped Cigarette Account, a new line has been added: *Credit: Returns to Manufacturer;*

—In the Stamp Account section, a new line has been added: *Ending Inventory: Damaged, Stolen or Returned Stamps;*

—The Stamp Account section has also been updated to include only those stamps currently available. Meter units have been eliminated from the return;

In addition, the following schedules have been revised:

—Resident Distributor's Cigarette Tax Return; Form CR-1, CR-2 Schedule A, CR-3 Schedule B, CR-4 Schedule C, CR-5 Schedule D, and CR-7 Schedule F.

—Distributor's Monthly Informational and Sales Report; Form CDIS-1, CDIS-2 Schedule S.

—Non-Resident Cigarette Dealer Sales Return; Form CNR-1, CNR-2 Schedule A, CNR-3 Schedule B, and CNR-5 Schedule D.

—Manufacturer's Monthly Report of Special Shipments of Taxable Cigarettes into New Jersey; Form MSS-1.

All Cigarette Tax returns should now be sent to the following address:

State of New Jersey, Division of Taxation, Office Audit-Cigarette Tax, CN 271, Trenton, NJ 08646.

NOTE: This address should only be used for the filing of returns and related correspondence. Matters related to the purchase of Cigarette Tax stamps should be sent to the address that is

currently being used: CN 250.

There has been no change in the procedure for purchasing New Jersey cigarette stamps.

It is no longer necessary to file returns and supporting schedules in duplicate and triplicate. One copy of the return along with supporting schedules will now be accepted by the Division. The revised forms can be obtained by writing to the address shown above.

INHERITANCE/ESTATE TAX ***Frequently Asked Questions***

The Transfer Inheritance and Estate Tax Branch has compiled a list of questions frequently received by the Branch. These questions will be answered in three successive issues of this publication.

1. How Long Does it Take to Process A Return?

Normal processing time for a transfer inheritance tax return that is accepted as filed, is approximately 4 to 6 weeks. When a return is not accepted as filed and is selected for audit, the estate representatives should hear from the Branch in 8 to 10 weeks. The nature of the communication from the Branch will most likely be in the form of a request for additional information which is necessary for completion of the proceeding. Finalization of the process from this point will depend upon the nature and availability of the information and documentation required. If it should become necessary to contact the Branch prior to the times indicated, you may telephone (609) 292-5033, 292-5034, or 292-7147.

2. Why are Waivers Needed?

In order to insure that the taxpayers

continued on page 6

frequent questions - from pg. 5

of this State are treated in an equitable manner, the legislature enacted laws that require a consent to transfer (waiver) before a decedent's interest in specifically defined assets may be turned over to the decedent's estate. The institution or corporate entity having control of the asset(s) must have a waiver before releasing these types of assets or be subject to penalty as provided by law. In order to obtain a required waiver, the tax, as estimated by the Branch, must be paid or acceptable provision for payment must be made.

3. Can Waivers be Obtained Prior to the Audit of a Report?

There are several methods of obtaining a consent to transfer (waiver) other than on the basis of a complete inheritance tax return submitted with full payment of tax chargeable.

At any time after filing an inheritance tax return, and prior to the completion of the audit proceeding, estate representatives may request the issuance of some or all of the required waivers. Such a request should explain the unusual or emergency nature of the circumstances prompting the request. Waivers may be issued prior to the audit provided that an appropriate payment on account of estimated taxes has been received and/or waivers are withheld on sufficient other assets to provide for taxes. The Branch will not rely on real estate in determining which waivers, if any, may be issued.

Form L-4 is designed for use when the estate is not in a position to file a complete report with the Branch. The form is completed on the basis of informa-

tion available to estate representatives. It is submitted to the Branch and, if it is deemed warranted, waivers will be issued. The Branch will normally withhold waivers covering sufficient assets to pay expected tax.

Forms L-8 and L-9 are new forms designed to accommodate Class "A" beneficiaries and will be discussed in the next issue of the *New Jersey State Tax News*.

Transfer Inheritance and Estate Tax forms may be obtained from regional offices or by contacting the Transfer Inheritance and Estate Tax Branch at the numbers listed on page 5 or by writing to 50 Barrack Street, CN 249, Trenton, NJ 08646.

LOCAL PROPERTY TAX **Tax Assessors Calendar**

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.

- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15-

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31-

- Legal advertisement of availability of Tax List for public inspection.

Criminal Enforcement

Criminal enforcement actions over the past several months included:

May 10, 1994 - Soni's Gift Shop, of Jackson, NJ, plead guilty in Municipal Court to charges of failing to possess a cigarette license, and possession of cigarettes not bearing the required New Jersey revenue stamps. The subject was fined \$2,225.00.

May 10, 1994 - Crystal Vending Corp., of Elizabeth, NJ, plead guilty



criminal enforcement - from pg. 6

in Municipal Court to charges of not possessing a cigarette vending machine license, and not having proper identification on a vending machine. The subject was fined \$500.00

May 18, 1994 - Hongan Lai, of Queens, NY, was found guilty in Municipal Court on charges of transporting cigarettes not bearing the required New Jersey revenue stamps. The subject was fined \$520.00, and the vehicle used in the transportation, a 1993 Dodge Shadow, was awarded to the New Jersey Division of Taxation.

June 9, 1994 - China Chef, Inc., of Secaucus, NJ, plead guilty in Municipal Court to charges of possessing cigarettes not bearing the required New Jersey revenue stamps, and failure to possess a cigarette license. The subject was fined \$1,965.00.

July 7, 1994 - Dipak Shah, an officer of Mili Liquors, Inc., entered a guilty plea to charges of failing to remit Sales Tax collected from customers of this West Caldwell liquor store. Mr. Shah signed a consent judgment and agreement to make restitution of \$72,287.00.

July 20, 1994 - Juice-A-Peel of Staten Island, a South Amboy, NJ company, entered guilty pleas in Municipal Court to charges of failing to have a cigarette tax license and failure to have identification on cigarette vending machines. The subject was fined \$1,305.00.

Enforcement Summary

Civil Collection Actions Quarter Ending - June 30, 1994

Compliance Activity personnel collected a total of \$48.1 million for the

quarter ending June 30, 1994. Following is a summary of enforcement actions.

Certificates of Debt

After demands for payment were unsuccessful, the Division entered 1,443 Certificates of Debt in Superior Court totaling \$38.5 million.

Contact and Demand

Prior to the filing of Certificates of Debt, the Division collected \$43.0 million through normal collection procedures.

Levies

The Division collected \$2.4 million by levying against 454 bank accounts.

Settlements

Another \$2.2 million was collected by closing 179 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

If the liability of the closed business is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the Division can seize the personal assets of the responsible officers where trust fund taxes (Sales Tax and Income Tax Withholding) are involved.

A total of 40 businesses were scheduled for seizure for the quarter ending June 30, 1994. Of these, 25

businesses were actually closed and 15 were left open, resulting in collections of \$500,000. A listing of seized businesses appears on pages 8, 9 and 10.

Tax Briefs

Corporation Business Tax

Taxation of Foreign Airlines and International Shipping Companies

— The Division has modified its position with regard to foreign airlines and international shipping companies that exclude income from Federal taxation pursuant to IRC Section 883 and are therefore not required to file Federal income tax returns. (See State Tax News, Vol. 22, No. 2, Fall 1993.) Foreign carriers' income is deemed to be exempt from the New Jersey Corporation Business Tax.

However, foreign airlines and international shipping companies will be required to file a corporation business tax return (CBT-100) and pay the minimum tax. New Jersey's minimum tax for a foreign corporation is \$50 for all years through 1993. The minimum tax is scheduled to increase to \$100 for 1994 and \$200 for 1995 and subsequent years.

Affected corporations that did not enter into formal closing agreements may apply for refund of any tax paid within the applicable statute of limitations.

Sales Tax

Exempt Organization Purchases

— An organization holding a valid sales tax exempt organization permit in New Jersey may make exempt purchases by issuing to the vendor a valid Exempt Organization Certificate (ST-5) and making payment from the funds of the organization. The organization must be the direct purchaser and payer

continued on page 10

Division of Taxation Seizures (April - June 1994)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Murtezan Jonuzi T/A Chelsea Pizza II 1735 Atlantic Avenue Atlantic City	5-16-94	Pizza Shop	Reopened 5-18-94
Burlington	The Fabric Center T/A Princeton Design Center 42 Mill Street Mt. Holly	4-6-94	Carpet & Upholstery Store	Reopened 4-11-94
	Robert J. Volpe, II T/A Splash Inground Pool Service, 2439 Route 206 Eastampton	5-17-94	Pool Service & Repair, Retail Pool Supplies	Closed
	Spiros Missovoulos T/A Neptune Pizza 106 E. Main Street Maple Shade	5-26-94	Pizza Shop	Closed
Camden	Sandra Heaps T/A Station Liquors 1848 New White Horse Pike Camden	4-14-94	Liquor Store	Released Keys to Power of Attorney DPC 4-25-94
	William J. Carman T/A Mr. CS Vac & Sew 219 White Horse Pike Audubon	5-4-94	Vacuum Cleaners/ Sewing Machines	Reopened 5-4-94
	Fine Arts Productions, Inc. T/A Red Lion Fine Arts 701 Cooper Road, Suite 11 Voorhees	5-25-94	Retail, Wholesale Home Accessories	Reopened 5-27-94
Cumberland	TISMI, Inc. T/A Lenny D's Harding Highway, Rt. 40 Vineland	5-11-94	Tavern	Closed
Essex	Los Prados Restaurant, Inc. 454-456 Mulberry Street Newark	5-17-94	Restaurant/Tavern	Reopened 5-18-94
	American Blue Chip T/A Ronnie's Bad Girls 511 Frelinghuysen Avenue Newark	5-19-94	Diner	Closed
	Pro Auto Collision, Inc. 37 Park Street Orange	6-8-94	Auto Body Shop	Reopened 6-23-94

continued on page 9



taxation seizures - continued from pg. 8

County	Name/Address	Seizure Date	Business Type	Status
Mercer	Hoaglands Landscape & Garden Center, Inc. 201 Hughes Ave. Trenton	4-27-94	Landscaper, Sales of Plants and Flowers	Closed
Middlesex	John K. Bostick T/A Bostick's Auto Body 909 Middlesex Ave. Metuchen	6-8-94	Auto Repair/Body Shop	Reopened 6-10-94
Monmouth	Furiatos, Inc. T/A Dom's Liquors 215 Third Ave. Long Branch	4-7-94	Liquor Store	Closed
	William B. Nunn W.B. Contracting, Inc. 5010 Industrial Road Wall Twp.	5-23-94	Removal & Installation of Underground Tanks and Gas Delivery Machines	Opened (Vehicles Seized)
	188 Westwood, Inc. T/A Chubb's Pub 188 Westwood Ave. Long Branch	6-2-94	Bar/Restaurant	Reopened 6-2-94
Morris	Skat, Inc. T/A Skats 75 Maple Ave. Rockaway	5-3-94	Bar & Restaurant	Closed
	Jepco, Inc. T/A Rockaway Auto Body 311 W. Main Street Building A Rockaway	5-11-94	Auto Body Repair Shop	Closed
	Danjill Video, Inc. T/A Video Wiz 59A North Beverwyck Road Lake Hiawatha	5-18-94	Small Video Store	Closed
	The Bingham Cochran Co., Inc., T/A Manker Florist 19-1 Waverly Lane Madison	6-9-94	Florist	Closed
Ocean	DSKR Enterprises, Inc. T/A Bamber Village Store 2700 Lacey Road Forked River	6-1-94	Country Store	Closed
	Victor R. DiGandi T/A Vic's Original Barnegat Deli 59 Rosehill Drive Barnegat	6-14-94	Deli	Reopened 6-16-94

taxation seizures - continued from pg. 9

County	Name/Address	Seizure Date	Business Type	Status
Ocean	AGC Enterprises T/A Antonio's 1635 Bay Ave. Point Pleasant	6-14-94	Pizza Restaurant with Dining Room	Reopened 6-14-94
Somerset	Del Val Decorators, Inc. 446 Route 206 Bedminster	4-27-94	Interior Decorating	Reopened 5-3-94
Union	Importex Commercial Luso T/A American Corp. 540 Spring Street Elizabeth	6-15-94	Car Sales	Reopened 6-20-94

tax briefs - continued from pg. 7

of record. Any bill, invoice or receipt given by the vendor must show the organization, and not any individual member of the organization, as purchaser.

Payment must be made from funds drawn from the account of the organization. The vendor, subject to the "good faith" requirements specified on the back of the ST-5 form, may assume, unless he has reason to know otherwise, that a payment, accompanied by a valid ST-5 made in the form of cash, cashier's check, bank check or money order and purported to be organizational funds by the purchaser, is organizational funds and acceptable for a tax exempt purchase.

A payment made by an organization member's personal check or an organization member's personal credit card or by cash, known by the vendor not to be organizational funds, even when accompanied by a valid ST-5 certificate, is not acceptable for a tax exempt purchase.

Heating Oil Tank Repair — The New Jersey Sales and Use Tax Act provides an exemption for maintaining, servicing or repairing a residential heating system unit, N.J.S.A. 54:32B-

3(b)(4). This exemption would apply to services performed on the oil burner as well as the oil tank, since both are integral parts of the residential heating system. There is no exemption available when such services are performed on commercial heating systems.

Promotional Items — The Division replied to an inquiry concerning the sale of promotional packs of crayons and markers to a manufacturer that intended to include them in its products. At issue was whether the manufacturer could purchase the crayons and markers with a Resale Certificate (ST-3).

The promotional items do not qualify for the resale exemption because they are not being sold as such or converted into or as a component part of a product produced for sale by the purchaser under N.J.S.A. 54:32B-2(e)(1)(A). However, the New Jersey Sales and Use Tax Act provides an exemption for sales of advertising or promotional materials which are ultimately delivered to out-of-state recipients. See N.J.S.A. 54:32B-8.39. If the manufacturer takes delivery in New Jersey, it may issue an Exempt Use Certificate (ST-4) to exempt the purchase of the promotional items. The manu-

facturer would be required to submit 6% New Jersey use tax on that portion of the promotional items purchase receipt that relates to in-state use of the crayons and markers.

In Our Courts

Gross Income Tax

Filing joint return as husband and wife — *New Jersey Superior Court, Appellate Division; Rinier et al. v. New Jersey*, A-1871-92T3; decided May 4, 1994. On appeal from the Tax Court of New Jersey.

The plaintiffs filed a declaratory judgment action claiming that provisions of the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 to 54A:10-12, violate their Federal equal protection and due process rights by requiring them to file a joint state income tax return if they file a joint Federal return.

The Superior Court held that the New Jersey Gross Income Tax, which requires a married couple that files a joint Federal income tax return to file a State income tax return and thus subjects their aggregate income to a higher statutory tax rate than that applicable to married couples filing sepa-

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courts - continued from pg.10

rately, is not an unconstitutional denial of equal protection since the requirement is reasonably related to legitimate governmental purposes (facilitating uniformity in revenue-collecting procedures between the State and Federal government and auditing of State and Federal returns) and because taxpayers can choose to avoid the higher State tax rate by filing separately for Federal tax purposes.

Local Property Tax

Federal law preempts New Jersey Statute – Superior Court Appellate Division; New Jersey Transit Corporation v. Borough of Somerville, A-6210-92T3; opinion decided May 11, 1994.

The Superior Court held that the Tax Court was correct in finding that N.J.S.A. 2A:14-1.2, which establishes a ten-year limitations period for actions commenced by the State and its agencies, does not apply to property tax appeals; nevertheless, plaintiff, which owns and operates a commuter rail line, is entitled to the retroactive tax exemption in 45 U.S.C.A. 581(c)(5); to the extent that N.J.S.A. 54:3-21 bars such a claim, it must yield to principles of preemption.

Surviving Spouses of Nonresident Disabled Veterans – Phyllis Garma v. Township of Lakewood, Tax Court of New Jersey, 15-15-11786-91S; decided March 22, 1994.

Taxpayer sought, via the New Jersey Tax Court, local property tax exemption on her single family residence as the surviving spouse of an honorably discharged 100% permanently disabled U.S. Army war veteran under N.J.S.A.54:4-3.30 and Article 8, Section 1, Paragraph 3 of the State Constitution. Ocean County Tax Board

had affirmed Lakewood Township's denial of the exemption on the basis that the veteran was not a New Jersey resident at the time of his death. Both the deceased veteran and his widow had been past residents of this State, but had relinquished domicile when they moved to Florida. The appellant's husband died while they were Florida residents. At his death, neither owned property in New Jersey. Except for the issue of residency, all other eligibility criteria for exemption were met and the facts of the case were not disputed.

Plaintiff's appeal to the Tax Court was based on three arguments: 1. that she was a victim of discrimination, 2. that she was denied equal protection and "the right of migration" guaranteed under the United States Constitution, and 3. that she was entitled to retroactive reimbursement of all property taxes previously paid on the residence. The taxpayer requested that the Court declare both the New Jersey statute and constitutional provision in violation of the 14th Amendment because they required the veteran's state residency and citizenship for spousal exemption, and declare New Jersey's scheme of tax exemption in violation of Article 4 of the Privileges and Immunities Clause of the U.S. Constitution.

Regarding the charge of denial of equal protection and class discrimination, the taxpayer contended that N.J.S.A.54:4-3.30 contained a "fixed date" or "fixed event" residence requirement which unlawfully divided veterans' surviving spouses into two classes: resident surviving spouses living in New Jersey when their spouse died and who qualified, and resident surviving spouses who established New Jersey residence after their spouse's death who did not.

Cited in support was a decision in which a New Mexico statute granting exemption only to Vietnam veterans residing in the state prior to a fixed date while denying later resident Vietnam vets was struck down by the United States Supreme Court. The Court reasoned that the legislation did not simply distinguish between resident and nonresident veterans but rather favored established residents over new residents, and that new residents cannot be discriminated against solely on the basis of the date they arrived in the state. A similar U.S. Supreme Court ruling of the state of Alaska's distribution to its citizens varying amounts of dividends based on years of residence as unconstitutional was also offered as evidence.

The Equal Protection Clause of the 14th Amendment does not require that all persons be treated alike; it requires that similar persons be treated similarly, and that people of different circumstances be treated differently. Alleged equal protection violations are divided into three categories: 1. fundamental rights, e.g., voting or suspect class (e.g., race); 2. semi-suspect class, e.g., gender; 3. all other cases; and are tested at three levels of scrutiny based on the nature of the violation. Generally, a tax statute will survive scrutiny under the equal protection clause if the distinctions or classifications made reflect a legitimate government purpose, bear a reasonable relationship to that purpose and are uniformly applied.

Although this case involved a class of veterans vs. a class of New Jersey resident veterans, the disputed statute was found to be constitutional. The U.S. Supreme Court has held that "legislatures have especially

in our courts - continued from pg. 11

broad latitude in creating classifications and distinctions in tax statutes." Further a class of veterans doesn't result in "invidious or irrational" distinctions among a state's residents, a suspect or semi-suspect class, nor affect fundamental rights and therefore need only satisfy the rationally based legitimate state purpose criteria to comply with the equal protection clause. A bona fide residence requirement furthers a legitimate state purpose to assure that benefits provided for residents are enjoyed only by residents. In this case the taxpayer was not a member of the class of persons intended to receive the exemption under N.J.S.A.54:4-3.30, that is resident surviving spouses of resident veterans. Thus, ironically the denial of her exemption was equal protection since she could not be treated in the same manner as qualified class members. Also, the residence requirement was not fixed-date or durational as the taxpayer argued, but a rational bona fide residence requirement in which the State benefited its resident veterans equally, limited not by length of residence but by actual residence. The appellant's disqualification was not based on her recent arrival or period of residence. She did not qualify because her husband did not qualify. No surviving spouse of a nonresident vet who takes up residence in New Jersey is entitled to exemption.

The taxpayer did not request that the exemption be broadened to include her although the Court inferred this to be her intent. Had the law been found unconstitutional, no one would have been entitled to exemption under the existing statute. To extend the exemption to create a new class of surviving spouses was deemed contrary to the intent of the State

constitutional amendment granting the exemption. The denial was upheld and the complaint dismissed.

Veterans' Organization Not Exempt from Real Property Tax – *The John Dolak Home Association, Inc. v. Borough of Alpha*, Superior Court of New Jersey, Appellate Division, on appeal from Tax Court of New Jersey, A-5027-92T3; decided June 23, 1994.

The John Dolak Home Association, a veterans' organization affiliated with the American Legion, appealed the New Jersey Tax Court's denial of its request for real property tax exemption. The Tax Court ruled that the Association's property was not actually used for charitable purposes as under N.J.S.A.54:4-3.6, nor was it a bona fide national war veterans' organization under N.J.S.A.54:4-3.25 because it was established after the statutory deadline for formation and its membership was open to non-veterans. Consequently, it did not qualify for exemption. The Superior Court concurred and affirmed the Tax Court's judgment.

To receive exemption for charitable cause under N.J.S.A.54:4-3.6 the claimant must be organized exclusively for the moral and mental improvement of men, women and children; the property must be actually used for tax-exempt purpose; and the operation and use of the property must not be conducted for profit. A claimant who fails to satisfy any one of these three criteria is disqualified.

The by-laws of the J. Dolak Association stipulated that the Home was to be used at all times for the moral and mental improvement of men, women and children and its membership. The goals of the Association as stated in the by-laws were to promote community involvement, good citizenship, a rapport between veterans and non-veter-

ans, and to help the distressed, sick, needy children and destitute of the area.

The Home Association as a service organization sent food baskets to the poor; donated to an emergency squad, a high school athletic program, the Vietnam Memorial in Washington; financed the construction of a swimming pool for Borough children; built a pavilion and rest rooms and planted trees at a public park; sponsored children's athletic events; funded a public school youth program; bought insurance for Borough's baseball teams and raised money for the American Legion.

The property, 4 lots and a structure which was formerly a hotel, was used for American Legion meetings and fund raisers. Class reunions, social affairs, and J.D. Home Association meetings were also held there, as well as occasional activities for nearby hospitalized veterans. However, the Home Association also conducted a non advertised "by word of mouth" catering business from the premises. Proceeds from the business were used for building maintenance, taxes, insurance, trash removal and paying waitresses, cooks and janitorial workers. Several association officers received salaries. Surplus funds went into a general fund. In 1991 and 1992, \$226,104 and \$233,000 respectively was earned through catering. For 1990 tax year, a net surplus of \$12,500 was donated to charity. For tax year 1991, a net loss of \$7,000 was indicated. Per the Association, their year's end goal was to have a zero balance not a profit.

The decision of the Superior Court hinged on the second criterion or test of eligibility, i.e., the actual use of the property. While occasional or inci-

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in our courts - continued from pg. 12

dental fund raising did not preclude exemption, a substantial, independent and permanent endeavor designed to make profit, even for beneficent purposes, did. Prior case law had determined that where property was used for commercial enterprise, the fact that all profits were devoted to charity did not justify granting an exemption. On that basis, in keeping with strict construction of exemption statutes, the Tax Court's denial was upheld.

The Home Association did not seek exemption on its status as a fraternal organization under N.J.S.A. 54:4-3.26, nor did the Court address this issue. An attempt by the Association to have the assessment reduced was dismissed.

Sales and Use Tax

Use Tax on Catalogs Shipped into the State – *Superior Court, Appellate Division; Comfortably Yours, Inc. v. Director, Division of Taxation*, A-1115-92T1; decided April 22, 1994. On appeal from the Tax Court, 12 N.J. Tax 570 (Tax 1992).

Comfortably Yours, Inc. (CYI), a New Jersey vendor involved in retail mail-order sales, appealed from a use-tax deficiency assessed by the Director, Division of Taxation, and upheld by the Tax Court. The deficiency represented the tax on the cost of producing and distributing promotional catalogs at the direction of CYI by out-of-state printing contractors who shipped the catalogs by mail to customers in New Jersey.

CYI contended that the Tax Court erred in determining that the production and distribution of its promotional catalogs constitute a use within the meaning of N.J.S.A. 54:32B-2(h) and in declaring that the imposition of the tax is not a violation of the commerce clause of the U.S. Const., art. I section 8, cl. 3.

The Tax Court decision was affirmed substantially for the reasons expressed in its opinion.

Thus, the production and distribution of promotional catalogs by an out-of-state contractor at the direction of a New Jersey corporation and the mailing of those catalogs to New Jersey consumers constitute a use within the meaning of N.J.S.A. 54:32B-2(h) subjecting the New Jersey corporation to the imposition of a use tax.

In Our Legislature

Gross Income Tax

Tax Rate Decrease — P.L. 1994, c.69 (signed into law on July 6, 1994) reduces the gross income tax rates. Combined with P.L. 1994, c.2, results in cumulative reduction for married persons filing jointly, head of household or surviving spouse of: 15% (\$0-\$80,000); 7.5% (\$80,000 - \$150,000) and 6% (over \$150,000). Reduction for single individuals or married persons filing separately is: 15% (\$0-\$40,000); 7.5% (\$40,000-\$75,000) and 6% (over \$75,000).

This bill is effective for tax years 1995 and thereafter.

Setoff of Individual Liability

New Jersey DMV Merit Rating Plan — P.L. 1994, c.64 (signed into law on June 30, 1994) provides for enhanced surcharge collection methods to be used by the Division of Motor Vehicles. Setoff of Individual Liability Program will be utilized to deduct unpaid debts from income tax refunds and homestead rebates, and docketed judgments to collect delinquent surcharges.

Merit Rating Plan surcharges are levied on persons convicted of drunk driving and other vehicular offenses pursuant to P.L. 1983, c.65 (C.17:29A-

33 et al.). This law dedicates surcharge revenue, net of collection expenses, for deposit in the New Jersey Automobile Insurance Guaranty Fund for the repayment of debt incurred by insurance pools of high risk drivers.

The Division of Motor Vehicles (DMV) has the authority to suspend the driver's licenses of offenders who fail to pay their surcharge assessments. However, experience has demonstrated that this sanction is not adequate to compel the collection of these surcharge debts. This bill is intended to provide the Director of DMV with additional and more effective remedies to collect this debt.

To afford greater flexibility and convenience to those assessed, this bill also removes indigency as a condition for paying off surcharges in installments, and increases the number of allowable installment payments from 10 to 12 per year. The bill also authorizes the DMV to accept credit card payments.

This bill is effective immediately.

Attention NJX Subscribers

If you subscribe to New Jersey's *Package NJX* and your name and/or address has changed (or will change by November 15, 1994), please contact the Division to insure that you receive the 1994 edition. Contact the Division at the address indicated in *Obtaining New Jersey Tax Forms* below.

Obtaining New Jersey Tax Forms

In anticipation of the upcoming tax season, please note the various methods for obtaining forms from the Division.

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- Orders for forms can be placed by calling the Division's toll free number 1 (800) 323-4400, 24 hours a day;
- Request a copy of the New Jersey *Package NJX* which contains the most commonly used tax forms by writing to: New Jersey Division of Taxation, OCE, 50 Barrack St, CN 286, Trenton, NJ, 08646-0286, Attn: NJX;
- Anyone with a fax machine can call our NJ TaxFax service at (609) 588-4500. This service is also available 24 hours a day and can be utilized by anyone with a telephone attached to their fax machine. NJ TaxFax contains many of the most commonly requested forms; a list

of the available forms can be obtained directly from the service. (NJ TaxFax users are cautioned that the Division of Taxation will not accept returns filed on fax paper. Forms received by fax must be photocopied before they are filed with the Division.)

Need a Mentor?

The New Jersey Department of Commerce and Economic Development has the next best thing, "MENTOR Magazine." *MENTOR* is a quarterly publication that assists entrepreneurs. It provides information concerning marketing, government procurement, business planning, loan assistance, and other topics essential to running a successful business. *MENTOR* also has a Calendar of Events which features

workshops, conferences, and seminars devoted to the needs of New Jersey companies. Approximately 200 of these functions, supported by diverse organizations are listed in every *MENTOR*.

MENTOR was developed by the New Jersey Division of Development for Small Businesses and Women and Minority Businesses (SWMB) located within Commerce. This free magazine is one of the technical services that SWMB provides to the small business community. In order to receive a subscription, please mail your request to:

Renee Franklin
MENTOR Editor
 SWMB Division
 CN-835
 Trenton, NJ 08625-0835

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1							1
9	2	3	4	5	6	7	8
9	9	10	11	12	13	14	15
4	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

October 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 Gross Income Tax—Employer's semi-monthly, monthly and quarterly returns

October 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

- SCC-5** Spill Compensation and Control Tax—Monthly return
ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

October 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-450 Sales and Use Tax—Salem County—Quarterly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-500** Gross Income Tax—Employer's semi-monthly return



november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	28	29	30				

November 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

November 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending July 31
- CBT-150 Corporation Business Tax**—Installment payment of

continued

November 15 - continued

- NJ-500** estimated tax for 4th, 6th, 9th or 12th month of current tax year
- Gross Income Tax**—Employer's semi-monthly and monthly returns

November 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

November 21 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

November 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

November 30

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

December 12

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

December 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

December 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

December 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

December 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

Filing Homestead Rebate Applications in Two States

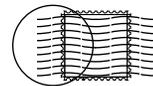
What are the tax implications of a taxpayer filing Homestead Property Tax Rebate Applications with both New Jersey and another state? If a taxpayer claims a homestead rebate in two states (for example, New Jersey and Florida), the Division of Taxation, at the discretion of the Director, is allowed to exchange information with the taxing officials of the other state, provided the other state grants like privileges to this State and the information is used for tax purposes only (N.J.S.A. 54:50-9). In addition to repaying the rebate, the taxpayer can be charged with a disorderly persons offense. Under N.J.S.A. 54:52-6, it is a disorderly persons offense to file or give information "required by any State tax law" which is false. Providing false information to hinder an audit is also subject to criminal penalty. A disorderly persons offense carries a fine of \$1,000 and a jail term of up to 6 months.

On-line Services

Are subscription fees for on-line computer bulletin board service which offers general information, on-line games, "E" mail and other similar services subject to sales tax?

No. Subscription fees for computer bulletin boards are not subject to New Jersey sales tax.

NJ Tax Question? Send your questions to:



From the Director's Desk
New Jersey State Tax News
NJ Division of Taxation
CN 281
Trenton, NJ 08646-0281

State of New Jersey
Department of the Treasury
Division of Taxation
Taxpayer Services Branch
CN 281
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New Jersey State Tax NEWS

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New Director Named

Governor Christine Todd Whitman has announced the nomination of Richard D. Gardiner as Director of the Division of Taxation. Pending Senate confirmation, Mr. Gardiner was appointed Acting Director effective June 1, 1994.

State Treasurer Brian Clymer described Mr. Gardiner as "a top-notch professional who understands every aspect of the tax system." He added, "I expect to work closely with him as the Governor works to restructure our tax system."

A career public servant, Mr. Gardiner began his State career in 1959 as an Examiner with the Corporation Tax Bureau. In 1966, Mr. Gardiner was selected to organize the Sales Tax Bureau. He advanced to Supervising Auditor in 1968 and was placed in charge of the Audit and Compliance Section of that Bureau.

Following a complete reorganization of the Division, Mr. Gardiner was promoted to Chief of the Processing Branch in 1971 and was named Assistant Superintendent of Collection and Enforcement in 1977 and Superintendent of Collection and Administration in 1979.

In 1983, Mr. Gardiner was appointed to Assistant Director of Investigations/Special Procedures. In 1984, he was elevated to Deputy Director. He served the Division in this capacity through May 31, 1991. He

graduated from Mount St. Mary's College in 1958 with a B.S. degree in business administration with a major in accounting.

Income Tax Threshold Raised

P.L. 1994, c.8, approved March 16, 1994, increases the minimum income required to be subject to New Jersey Gross Income Tax. Effective January 1, 1994, the threshold was raised from \$3,000 to \$7,500 for individuals filing as single, head of household, qualifying widow(er) or married, filing joint return, and estates and trusts. For married persons filing separately, the threshold was raised from \$1,500 to \$3,750.

continued on page 2



important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-588-3179
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323

Corporate Tax Liens .. 609-292-5323

Director's Office 609-292-5185

Inheritance Tax 609-292-5033

..... 609-292-5035

..... 609-292-7147

Local Property Tax 609-292-7221

Motor Fuels Tax Refunds

..... 609-292-7018

Public Utility Tax 609-633-2576

Tax. Registration 609-292-1730

threshold - from page 1

Beginning with tax year 1994, a single individual, married couple, or estate or trust with gross income for the year of \$7,500 or less (\$3,750 for married persons filing separately) has no tax liability to New Jersey. This means that many low income persons, senior citizens, students and others who had to file New Jersey income tax returns in the past will no longer be required to file. However, taxpayers whose income is below the minimum still have to file a return to claim a Homestead Property Tax Rebate or to get a refund if they had tax withheld from wages or made estimated tax payments.

Part-year Residents

Part-year New Jersey residents are subject to tax if their income for the *entire year* exceeds \$7,500 (\$3,750 for married persons filing separately), even if the income reported for the period of New Jersey residence was \$7,500 or less (\$3,750 for married persons filing separately).

A New Jersey income tax return must be filed by a part-year resident who receives any income (whether from New Jersey sources or not) during the part of the year spent as a resident of this State. However, no New Jersey income tax is due if the income a part-year resident received during the *entire year* was \$7,500 or less (\$3,750 for married persons filing separately). A copy of the Federal income tax return should be attached to the taxpayer's part-year return, or, if no Federal income tax return was filed, a statement to the effect that income for the entire year was \$7,500 (\$3,750) or less.

Nonresidents

Nonresidents who receive any amount of income from New Jersey sources during the year must file a New

Jersey nonresident income tax return. No tax is due if a nonresident's income from all sources (both inside and outside New Jersey) for the *entire year* was \$7,500 or less (\$3,750 for married persons filing separately).

Exemption from Withholding

As a result of the change in the minimum income requirement, some employees may no longer be subject to New Jersey income tax withholding. The Division of Taxation has created the Employee's Withholding Exemption Form (Form NJ-W4-E) for use by employees who claim they are exempt from withholding because they expect their income for the year to be less than the minimum amount.

Employers must furnish Form NJ-W4-E to their employees, but employees are not required to complete it. Employers may not withhold tax from the wages of an employee who has given them a completed Form NJ-W4-E certifying that he or she meets the minimum income conditions for the current year. If an employee does not complete Form NJ-W4-E, the employer uses the information on the employee's Federal W-4 or NJ-W4 Form for New Jersey withholding purposes.

CAUTION: Employees who complete Form NJ-W4-E indicating that they are exempt from New Jersey withholding may owe New Jersey income tax when they file a return at the end of the year if their income for the year exceeds \$7,500 (\$3,750 for married persons filing separately). An underpayment penalty may be imposed if the amount of tax due exceeds \$100.

Interest 9% for Second Quarter

The interest rate assessed on amounts due for the second quarter of 1994

remains at 9%. This rate is calculated as follows:

$$6\% \text{ (prime)} + 3\% = 9\%, \\ \text{compounded annually}$$

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/93	9%
1/1/94	9%
4/1/94	9%

New Jersey State Tax news

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Taxpayer Services Branch
Office of Communication
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Editor: Linda B. Hickey



Reduced Sales Tax in Salem County

Effective July 1, 1994, certain sales made by businesses located in Salem County will become taxable at a sales tax rate of 3% instead of 6%.

The 3% sales tax rate will apply to retail sales of tangible personal property, except as otherwise noted. To qualify for the 3% rate, the sale must be made from a place of business regularly operated by the vendor for the purpose of making retail sales at which items are regularly exhibited and offered for retail sale and which is not utilized primarily for the purpose of catalogue or mail order sales. Also, the merchandise must be ordered in person by the purchaser at the place of business in Salem County.

Items Eligible for the 3% Sales Tax Rate

In general, the reduced 3% sales tax rate applies to retail sales of tangible personal property. Tangible personal property means goods, merchandise and wares. The following are some examples of property that are considered tangible personal property.

- Books and Stationery
- Furniture and Carpeting
- Appliances (e.g., radios, tv's, etc.)
- Business Supplies/Equipment
- Computer Hardware
- Tobacco products other than cigarettes
- Toys
- Jewelry
- Cosmetics & Toilet Goods
- Luggage, Handbags and Wallets
- Lumber, Plumbing & Electrical Supplies

Retail Sales Ineligible for the 3% Sales Tax Rate

The following are not eligible for the reduced 3% sales tax rate. Vendors must collect tax on these transactions at the full 6% sales tax rate. (Vendors are liable for any sales taxes that are not collected and remitted to the State.)

- Motor vehicles
- Alcoholic beverages
- Cigarettes
- Catalogue or mail order sales
- Sales of services (e.g., maintenance and repairs)
- Prepared food, meals and beverages
- Telephone and electronically communicated sales
- Sales made from locations outside of the county
- Charges for room occupancy, admissions and amusements

Remitting Sales Tax

Reduced Sales Tax. If the 3% reduced sales tax is collected, Form ST-451, *New Jersey Sales and Use Tax Monthly Remittance—Salem County*, and Form ST-450, *New Jersey Sales and Use Tax Quarterly Return—Salem County*, must be filed in place of Forms ST-50 and ST-51. Returns and payments must be sent to the Division of Taxation at the address provided on the form.

State Sales Tax. If the reduced sales tax is collected, vendors will no longer file the *Sales and Use Tax Monthly Remittance* (Form ST-51) and *Sales and Use Tax Quarterly Return* (Form ST-50), except for the *Sales and Use Tax Quarterly Return* for the second quarter, due July 20, 1994. Detailed instructions will be sent to vendors with the Salem County sales tax forms.

Consolidated Reporting. If a vendor is currently filing a *Consolidated Sales*

Tax Return, Form ST-52, for any business located in Salem County, the vendor will now be required to file Forms ST-450 and ST-451 to report the transactions from the Salem County business. Receipts reported on the *New Jersey Sales Tax—Salem County* return should be excluded from the *Consolidated Sales Tax Return*.

Financial Business Tax Repealed

In accordance with the provisions of Chapter 295, Laws of 1993, the annual excise tax imposed on *unincorporated* financial businesses since 1946 has been repealed. As a result, the tax presently imposed upon partnerships, associations and individuals doing a financial business in New Jersey, calculated at the rate of 1-1/2% of the adjusted net worth, is no longer due effective January 1, 1994.

NOTE: This does not affect *corporations* qualifying as financial business corporations in accordance with N.J.S.A. 54:10A-4(m).

INHERITANCE/ESTATE TAX Waiver Requirements Unchanged

Despite the many changes in the administration of the New Jersey Transfer Inheritance Tax, both statutory and procedural, the statute regarding "Consents To Transfer" (Waivers) has not been rescinded nor revised in any manner.

In estates of decedents dying on or after July 1, 1988, Class "A" beneficiaries of an estate are fully exempt from New Jersey Transfer Inheritance Tax and Class "C" beneficiaries, as of that

waiver requirements - from pg. 3

date, each receive an exemption from the tax in the amount of \$25,000. However, contrary to what seems to be a growing misconception, any waiver requirements that existed prior to these changes continue to be valid statutory requirements subsequent to the changes.

The Transfer Inheritance Tax Branch is experiencing an increase in instances where delinquent tax collections are being paid by Attorneys, CPA's, Title Companies, Banking Institutions, etc. due to negligence in failing to obtain a waiver for the transfer of decedent's assets when required.

Many of the collections from members of this group are the result of not having obtained a waiver before transferring a decedent's interest in real property located in New Jersey. In this regard, tax has been collected from representatives of the seller who failed to obtain a waiver and, in some instances, from representatives of the buyer who failed to insist on a required waiver prior to closing.

Since most of these violations do not surface until many years after the sale of the property, when the buyers attempt to sell, there is the added burden of interest at the rate of 10% per annum, from eight months after the decedent's date of death. There is, of course, no unavoidable cause of delay in the payment of the tax and, therefore, interest cannot be reduced.

The Transfer Inheritance and Estate Tax Branch advises preparers of transfer inheritance tax returns and estate representatives to be very cautious in this area. There are no acceptable excuses for non-compliance and none shall be entertained.

Use Tax Billing

In the spring of 1994, the Audit Services Branch sent out over 6,000 bills to individuals for Use Tax including penalty and interest. These bills were the result of out-of-state taxpayer purchases of merchandise that was shipped to a New Jersey address.

Use Tax is due 20 days after purchases enter New Jersey. State Form ST-18 should be used to remit Use Tax on a timely basis. Use tax may also be remitted on Line 35 of the taxpayer's NJ-1040 form.

Doctor Self Audit Program

The Division of Taxation recently started a use tax self audit program for doctors who are licensed to practice medicine in New Jersey. This program was initiated based on the results of a series of recent test audits that indicate the medical community is not meeting its obligations under the Sales and Use Tax Act. The period covered by the self audit is limited to the three year period of July 1, 1991 through June 30, 1994.

During the first week of June, the Division mailed approximately 26,000 self audit packages. These packages contained a letter explaining the program, instructions on completing the audit, a questionnaire, a list of items commonly purchased by doctors and whether they are taxable or non-taxable, worksheets for listing untaxed, taxable purchases and a summary report to be used for remitting use tax.

The program allows doctors until September 20, 1994 to report and pay any unreported use tax together with the minimum interest allowed by law. After that date, late filing and payment penalties totaling 30% will be added to any underpayment.

While this is a self audit program designed to minimize the effort necessary to bring non-filing taxpayers into compliance, it is not voluntary. Those doctors who fail to respond to the notice or appear to substantially under-report their liability will be contacted. This contact may result in a field audit for a period of up to seven years. Any additional tax discovered will be subject to maximum penalty and interest.

Self audit programs are one of several methods currently being used to bring taxpayers into compliance with their use tax responsibilities. Questions regarding use tax may be answered by contacting the Division's Taxpayer Information Service.

Tax Assessor Certificates

Twenty-four persons qualified to become municipal tax assessors by passing the tax assessor's examination held on March 19, 1994.

Atlantic County: Gilbert F. Bosies, Egg Harbor City; Maryanne C. Lorenzi, Margate City

Bergen County: Derek P. Eisenberg, Engelwood City; Evan K. Elias, Closter Boro; Joseph J. McKeon, Ridgewood Village; Joyce Ranone, Carlstadt Borough; James S. Rizzo, Teaneck Township; Michael Baldwin Weber, Dumont Borough

Burlington County: James J. Renwick, Maple Shade Township

Camden County: John A. Dymond, Merchantville Borough

Essex County: Kevin J. Dillon, West Orange Township; Samuel Stubbs, South Orange Village

continued on page 5



assessor certificates - from page 4

Hudson County: Arlene Reiner, Secaucus Town

Monmouth County: Jeremiah J. Bowen, Long Branch City; Kenneth L. Walker, Jr., Shrewsbury Borough

Morris County: Susan I. Cusano, Morris Township; Bruce H. Downing, Parsippany-Troy Hills Township; Barbara Gothie, Denville Township

Ocean County: Mark M. Calozzo, Dover Township; Marilyn Rogers, Brick Township

Passaic County: Gale Barth, West Milford Township; Ellen Skoler Garfing, Wayne Township; Mohammad Imran, Ringwood Borough

Union County: Michael J. Frangella, Linden City

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate. The next exam is scheduled to be held on September 24, 1994.

LOCAL PROPERTY TAX **Revised SR-1A Form**

The SR-1A, created in 1957 as a legal extension of the deed recording process, has been revised in order to provide for the capturing of certain information, which when present on the SR-1A will minimize inquiries to the assessor for this information. The changes to the SR-1A form consist of two new fields located in Section Two of the document and an expanded area for assessor's "Remarks."

The two fields added to Section Two are entitled "Floor Area" and "Year Built." The municipal tax assessor

may complete the "Floor Area" field by including the gross square footage of the improvement or improvements conveyed by the transfer of real estate. The "Year Built" field should include the actual year in which the improvement(s) were constructed. The illustration below shows the two new fields of data for the revised SR-1A form.

and appraisers' requests to review property record card data to determine a final estimate of real property value.

The additional data will not be mandatory for the July 1, 1994 to June 30, 1995 sampling period. However, the revised SR-1A forms will be distributed to all county board of taxa-

The revisions have been discussed with and endorsed by a sampling of tax assessors, the New Jersey Association of County Tax Board Commissioners and County Tax Administrators, the New Jersey Board of Real Estate Appraisers and the New Jersey Real Estate Commission.

The data to be included in the revisions has always been of invaluable assistance to realtors and appraisers. While the new information will require the SR-1A to undergo additional adjustments within the parameters of the MOD IV System, accurate entry of this data by assessors should effectively reduce the number of realtors'

tion offices prior to July 1994. Assessors are strongly urged to employ the new fields on the appointed date and to review all of the proper procedures for completion of Section Two of the SR-1A form outlined in Section 1002.33 of the Handbook for New Jersey Assessors.

Lastly, assessors should be aware that the "Remarks" area in Section Two has now been expanded. In the past computerization replaced the manual systems many taxing districts employed for the continuous processing of SR-1A's, and the "Remarks" field had diminished. As a result, the assessor's comments were necessarily

revised sr-1a - from pg. 5

reduced. Assessors will now find additional space where they may enhance their comments with more substantive data pertaining to the usability or nonusability of a particular sale. This should assist everyone involved in the process of the Sales Ratio study, and ultimately lead to a more accurate Table of Equalized Valuations as promulgated by the Director of the Division of Taxation.

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 reevaluated 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 in the Class 4 commercial category. Where a tax appeal has been filed within the two years prior to sale, the transaction is non-usable.

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

Freeze Act

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

property sales occurring in the two years subsequent to consent judgments are non-usable. Likewise, if an assessment has been adjusted in the two years prior to the year of sale and the Freeze Act is in effect, the sale is also non-usable.

Alcoholic Beverage Enforcement

Several major enforcement initiatives are underway to combat noncompliance with the retail sales tax on alcoholic beverages.

P.L. 1993, c.232 (approved August 6, 1993) amends the Alcoholic Beverage statutes in R.S. 33: 1-26 to permit a liquor license to be deemed property subject to lien, fees, interest and penalty imposed by any State tax law for which a lien may be attached. Previously only the Internal Revenue Service could seize and sell a liquor license.

The Division's Investigations Branch has developed guidelines which have been approved by the Director's Office for the seizure and sale of liquor licenses. These will only be undertaken as a last resort after all other enforcement measures have been attempted.

Through the month of May 1994, the Division has auctioned three (3) liquor licenses with proceeds in the amount of \$260,000.

Suspensions of Alcoholic Beverage licenses for nonpayment of taxes to the Division of Taxation have also been requested by Taxation and approved by Alcoholic Beverage Control, where significant noncompliance exists. Taxation has requested that these licenses be suspended until such time as all taxes due to the Division are paid.

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alcoholic bev. enforcement - from p. 6

In addition to these enforcement initiatives, the Division's Office of Criminal Investigation is engaged in a joint project with the Division of Alcoholic Beverage Control to combat noncompliance by alcoholic beverage retailers. Agents from both agencies are performing on site inspections statewide, which has resulted to date in 29 cases being referred to the Division of Criminal Justice for prosecution. Sixteen guilty pleas or verdicts and almost \$3,000,000 in tax assessments have resulted.

Taxpayers and Preparers are urged to come forward concerning problems that may exist in these areas. In most circumstances, voluntary disclosures will be helpful in reducing the severity of civil and/or criminal sanctions that will be imposed.

Criminal Enforcement

Criminal enforcement actions over the past several months included:

March 11, 1994 - Joseph P. Miller, the owner of Spanky McFarland's Restaurant and Lounge in Ocean Township, was fined \$105,000 and sentenced to five years probation for failing to pay State sales and wage taxes. Miller was indicted in February 1993 for failing to pay \$98,000 in Sales Tax between April 1989 and July 1992.

March 15, 1994 - Daniel J. Fitzpatrick of Seaside Heights was charged with filing false State income tax returns and homestead rebate applications for four people, including a dead person. The purpose of filing the returns was not to pay more taxes or collect a refund, but to get the homestead rebates, which ranged from \$30 to \$500.

\$2 Million Motor Fuels Tax Judgment

March 18, 1994 - Petro AM Ltd., Inc. and Gregory Plishka were sentenced after pleading guilty last August to the misapplication of entrusted property and the property of government. The corporation also had pleaded guilty to failing to file returns or reports in violation of the State's motor fuels tax laws. The corporate defendant was ordered to pay over \$2 million in motor fuels tax restitution. Gregory Plishka was sentenced to five years in prison and also ordered to make restitution in the same amount as the corporation.

April 5, 1994 - Maria C. Rodriguez, a Howell Township bookkeeper, was indicted by an Ocean County Grand Jury on charges of embezzlement and filing fraudulent income tax returns. The indictment is the result of a joint investigation with the Ocean County Prosecutor's Office.

April 18, 1994 - Matthew J. Werneth, president of JR Associates of NJ, Inc., was sentenced on charges regarding the failure to remit \$82,421 of Sales Tax that had been collected from patrons of this bar located in Dunellen, NJ. The judge ordered full restitution of the tax to commence 30 days after Mr. Werneth is released from jail. Werneth was sentenced to 364 days in jail and 4 years probation.

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1994

Compliance Activity personnel collected a total of \$40.3 million for the

quarter ending March 31, 1994. Following is a summary of enforcement actions.

Certificates of Debt

After demands for payment were unsuccessful, the Division entered 1,252 Certificates of Debt in Superior Court totaling \$32.6 million.

Contact and Demand

Prior to the filing of Certificates of Debt, the Division collected \$36.1 million through normal collection procedures.

Levies

The Division collected \$2.3 million by levying against 409 bank accounts.

Settlements

Another \$1.6 million was collected by closing 147 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

If the liability of the closed business is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the Division can seize the personal assets of the responsible officers where trust fund taxes (Sales Tax and Income Tax Withholding) are involved.

A total of 23 businesses were scheduled for seizure for the quarter end-

continued on page 8

enforcement - continued from pg. 7

ing March 31, 1994. Of these, 20 businesses were actually closed and 3 were left open, resulting in collections of \$300,000. A listing of seized businesses appears on pages 9 and 10.

Tax Briefs

Corporation Business Tax Allocation; Property Factor & Storage Fees – A taxpayer raised a question about storage fees at public warehouses. The storage fees are paid at a per carton - per day rate. In the typical case, there is no definite lease as in a building rental or office rental.

The Division advised that New Jersey would consider storage fees paid to a public warehouse as rent for Corporation Business Tax purposes. Under N.J.A.C. 18:7-8.5(c), leased or rented property is valued at 8 times its annual rent. The storage fees would be included in this calculation. It does not appear that the fact inventory exists in the property fraction affects the way storage fees are treated in the property fraction for allocation purposes.

ESOP Deduction – A taxpayer inquired as to the position of the State of New Jersey on deducting ESOP dividends on the New Jersey Corporation Business Tax Return (CBT-100). Under IRC section 404(a), the ESOP dividends are a deductible item for Federal purposes.

The Division advised that the Corporation Business Tax Act provides in pertinent part that "...a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to re-

port to the United States Treasury Department for the purpose of computing its federal income tax..." N.J.S.A. 54:10A-4(k). Thus, deductions made above Line 28 on the Federal Form 1120 would similarly be deductible for State purposes in arriving at Line 28 of Schedule A of CBT-100, and as such the applicable ESOP deduction would be reflected on the NJ CBT-100 above Line 28 Schedule A.

Gross Income Tax

Per Diem Lodging and Meals – An inquiry was made regarding whether an employer is required to withhold gross income tax from per diem amounts which cover lodging and meals.

The Division replied that it follows the guidelines of the Internal Revenue Service in determining whether the value of meals and lodging is taxable for New Jersey income tax purposes. Thus, the per diem amounts for meals are includible in gross income as wages and subject to withholding unless furnished for the employer's convenience and on the employer's premises. Amounts for lodging are includible in gross income and subject to withholding unless the lodging is furnished for the employer's convenience on the employer's premises **and** is a condition of employment.

S Corporation Losses – The Division received an inquiry regarding whether an individual shareholder could use S corporation losses to reduce other New Jersey taxable income on the NJ-1040, now that New Jersey permits S corporation status.

The reply stated that such treatment is not permitted under the Gross Income Tax Act. S corporation losses and income are included in a new category of income referred to as "net pro rata share of S corporation income." See

P.L. 1993, c.173. This category is the net amount of the shareholder's portion of S corporation income and losses. The losses would not be deductible against other categories of income.

N.J.S.A. 54A:5-2 limits the offset of gains in one category of income against losses which occur in the same category of income. Consequently, a taxpayer who is a shareholder in more than one S corporation may reduce the net gain from one by using the net loss from another, but cannot use a net S corporation loss to reduce any other taxable income.

A separate line for reporting net pro rata share of S corporation income will be added to the 1994 NJ-1040, NJ-1040NR, and NJ-1041.

Sales Tax

Condominium Association Purchases – A condominium association does not qualify as an exempt organization pursuant to N.J.S.A. 54:32B-9; thus, sales tax must be paid on the purchase of taxable goods and services. For example, repairing, maintaining and servicing real property are taxable services. N.J.S.A. 54:32B-3(b)(4). Snow removal, clean-up of common areas, lawn cutting, tree trimming, and repairs to sewers, curbs, sidewalks, etc. are all subject to tax. Trash removal services are exempt from tax only if performed on a regular contractual basis for a term not less than thirty days.

Diplomatic/Consular Exemption – The Division received a request for an ST-5 exemption certificate for New Jersey sales tax exemption documentation for a Vice Consul at the Consulate General of Egypt in New York. The Vice Consul resides in New Jersey and is seeking exemption from



**Division of Taxation Seizures
(January - March 1994)**

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Decor Art, Inc. T/A Decor Art Gallery & Framing, Hamilton Mall Mays Landing	2-17-94	Art Gallery/Frames	Bankrupt 2-25-94
	Decor Art, Inc. T/A Decor Art Gallery & Framing, Ocean One Mall Atlantic City	2-17-94	Art Gallery/Frames	Bankrupt 2-25-94
Burlington	Mohan Village Paint & Hardware Co., Inc. Marlton Square Shopping Ctr. Route 70 Marlton	1-11-94	Hardware Store	Reopened 1-14-94
	Sidney & Gail L. Jirak T/A Sid's Music 6 W. Camden Ave. Moorestown	3-30-94	Music Store - Instruments, Sheet Music, Instruction	Closed
Camden	Belo Electronics Inc. T/A Bell Radio & TV 1017 W. Marlton Pike Cherry Hill	2-1-94	Appliance Repair - TV's, Radios, VCR's	Closed
	Petcare Industries, Inc. 1820 Garden Ave. Cherry Hill	3-22-94	Pet Supply Store	Closed
Cape May	Genove, Inc. T/A Venezia Ristorante 326 Cloverdale Avenue Villas	2-2-94	Restaurant/Bar	Reopened 2-7-94
Hudson	The Dugout 1 Hudson Place Hoboken	3-16-94	Restaurant/Fast Food	Reopened 3-24-94
Mercer	Michael T. Exedaktilos T/A Manukas Coffee Shop 230 East State Street Trenton	1-27-94	Coffee Shop	Closed
	T/C Cafe, Inc. T/A Take It Easy Bar & Liquor Store, 69-71 Rt. 156 Hamilton	2-2-94	Liquor Store/Lounge	Closed
	Buzgo Radice, Inc. T/A Jamey's 700 Roebling Ave. Trenton	3-10-94	Small Bar & Restaurant	Closed

taxation seizures - continued from pg. 9

County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Asian Gardens, Inc. T/A Asian Gardens 6 Edgeboro Rd. & Rt. 18 East Brunswick	2-16-94	Restaurant	Reopened 2-17-94
	Harbans Singh T/A Sahib Restaurant 575 New Brunswick Ave. Fords	2-16-94	Restaurant	Reopened 2-23-94
Monmouth	Paisanos, Inc. T/A Paesano's 78 Oceanport Ave. W. Long Branch	1-25-94	Restaurant	Closed
	Monmouth Video, Inc. 319 Main Street Keansburg	3-2-94	Video Shop	Reopened 3-9-94
	Craig L. Riley T/A CJ's Place 45 Third Ave. Long Branch	3-14-94	Luncheonette/Breakfast & Lunch Trade	Released Keys to Landlord 3-28-94
Morris	Skat, Inc. T/A Skats 75 Maple Ave. Rockaway	1-12-94	Bar & Restaurant	Reopened 1-14-94
Ocean	New Jersey Diamonds Brokers, Inc. 853 Mill Creek Road, #4 Manahawkin	3-21-94	Jewelry Store	Reopened 3-25-94
Somerset	Gerald Debaro Plumbing 618 East Main Street Bridgewater	2-22-94	Plumbing Fixtures/Supplies	Closed
Union	Athas Merkouriou T/A Colonial III Restaurant 1731 E. 2nd Street Scotch Plains	2-15-94	Restaurant/Cafe	Closed

tax briefs - continued from pg. 8

sales tax on his telecommunications bills from his telephone company.

The Division advised that foreign diplomatic and consular personnel issued United States Department of State tax exemption cards by the Office of Foreign Missions, U.S. Department of State, Washington, D.C., are entitled

to New Jersey sales tax exemption for their telecommunications services purchased in New Jersey. ST-5 exemption certificates, issued to exempt organizations, such as churches and charities, but never to individuals, would not be the proper exemption documentation in this instance. A photocopy (front and back) of the

Department of State Tax Exemption Card would suffice to document this exemption.

Additional information on diplomatic/consular sales tax exemption in New Jersey is available for diplomatic/consular personnel or New Jersey vendors from the Division of Taxation, Tax Services Branch.

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tax briefs - continued from pg. 10

Fire Damage Cleanup & Repair –

In response to an inquiry concerning damage and repair it was indicated that services such as cleaning dishes, glassware, personal items, bric-a-brac, etc., damaged in a house fire, are subject to sales tax as maintaining or servicing tangible personal property under N.J.S.A. 54:32B-3(b)(2).

In addition, smoke or fire damage restoration work on buildings (real property) is a service subject to sales tax under N.J.S.A. 54:32B-3(b)(4) when the service involves maintaining, servicing or repairing the real property. The receipts from smoke or fire damage restoration work for the contents of buildings, such as furniture or appliances, are subject to sales tax under N.J.S.A. 54:32B-3(b)(2) for maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business, **except** any receipts from laundering and dry cleaning.

The laundering and dry cleaning exemption would include (1) rug and carpet cleaning, including the incidental charges of picking up and re-laying cleaned rugs and carpets; (2) on-location rug and carpet cleaning performed on the customer's premises; and (3) cleaning of upholstered fabrics, including cleaning of draperies and other textile home furnishings.

A separately stated and identified charge for cleaning (laundering) upholstery, carpets and rugs is excludible from the taxable receipt for damage restoration services.

Please note that restoration work that does not qualify as "laundering" as explained above would be subject to tax under N.J.S.A. 54:32B-3(b)(2).

Refrigerated Trailer for Farm Use

– An inquiry was received regarding

the taxation of rentals of refrigerated semi-trailers for use by a nursery.

A nursery qualifies as a farm business and may issue a Farmer's Exemption Certificate (Form ST-7) when applicable. The regulations governing the application of the farm exemption, N.J.S.A. 54:32B-8.16, provide exemption for property used to preserve farm products upon the farm premises, and to prevent or deter the destruction, injury or spoilage of farm products, N.J.A.C. 18:19.4(f)(5). Thus, the rental of a refrigerated trailer by a farmer for such purposes is exempt from tax.

This exemption is only available to farmers, defined as those who operate or manage a farm for gain or profits, N.J.A.C. 18:24-19.2. When a refrigerated trailer is rented to a florist, wholesaler, distributor, etc., for use as storage on the premises (as opposed to use in combination with a motor vehicle qualified for exemption under N.J.S.A. 54:32B-8.43), there are no exemptions available under the law.

Services to Aircraft – The Division received an inquiry concerning the application of sales tax in New Jersey to the receipts from various services performed on the interior and exterior of aircraft.

The New Jersey Sales and Use Tax Act subjects the services of maintaining, servicing or repairing tangible personal property to sales tax under N.J.S.A. 54:32B-3(b)(2). However, the law also provides the following exemption from tax:

“Receipts from sales of aircraft and repairs thereto including machinery or equipment to be installed on such aircraft and replacement parts therefor when utilized by an air carrier as defined by the Civil Aeronautics Board or the Code of Federal

Regulations having its principal place of operations within the State and engaging in interstate, foreign, or intrastate air commerce are exempt from the tax imposed under the Sales and Use Tax Act.” N.J.S.A. 54:32B-8.35.

The “repair” of tangible personal property includes “maintenance” or servicing such property. Thus, the following services are exempt from sales tax when performed on aircraft qualified for exemption under N.J.S.A. 54:32B-8.35: The sale of cleaning and maintenance services performed on the interior of air carrier airplanes. This service may include such things as cleaning and scrubbing, as well as vacuuming, removing trash, stocking items, emptying ashtrays, cleaning windows, etc.; the sale of deicing services performed on the exterior of air carrier airplanes during the winter months; and the sale of lavatory and water services performed for air carrier airplanes. Such services include removing waste from the plane's lavatory tanks, filling the plane's lavatory tanks with chemicals, and filling the plane's fresh water tanks; and the sale of cleaning services performed on the exterior of air carrier airplanes.

In Our Courts

Corporation Business Tax Allocation Factor May Include Rental Property – Brunswick Corporation v. Director, Division of Taxation, Supreme Court of New Jersey, Argued November 9, 1993; Docket Number A-53-93, decided March 30, 1994.

Brunswick Corporation is engaged in the manufacture and sale of recreational products and services in the defense, aerospace and industrial

continued on page 12

courts - continued from pg.11

fields. Brunswick contested the deficiency tax assessments, interest and penalties imposed by the Director of the Division of Taxation (Director) in respect of Brunswick's 1986 and 1987 Corporation Business Tax (CBT) returns. During the years in issue, Brunswick owned and leased real property and tangible personal property located in New Jersey. Brunswick challenged the authority of the Director to adopt a regulation, N.J.A.C. 18:7-8.5(b), that adjusts the manner of calculating franchise taxes under the New Jersey Corporation Business Tax Act (CBTA). The CBTA assesses a franchise tax on all corporations doing business in New Jersey according to a business allocation factor that measures a corporation's business activity in the State.

Brunswick contended that the challenged regulation is inconsistent with N.J.S.A. 54:10-6(A) because the Legislature intended to limit the meaning of "taxpayer's property" to property **owned** by the taxpayer. According to Brunswick, that legislative intent can be inferred from: 1) the origins of the CBTA; 2) almost forty years of implementation by the Director limiting the meaning of that section owned; and 3) the Legislature's failure to enact statutory amendments that would have accomplished the same result as the new regulation. The Director, on the other hand, believed that Sections 8 and 27 of the CBTA granted the authority to promulgate the regulation at issue.

The Tax Court sustained the Director's authority to adopt the regulation. That Court found that the term "taxpayer's property" is neutral as to whether the allocation factor includes or excludes rental property. The Tax Court also concluded that it is reason-

able to infer that the Legislature intended to grant to the Director broad discretion as to how the property should be computed, in order to reflect the change from net worth to net income and the legislative directive to tax income measured by capital employed. The court found that inference confirmed by an examination of Section 8 of the CBTA as interpreted by the Supreme Court in *Metromedia, Inc. v. Director of the Division of Taxation*, 97 NJ 313 (1984).

The Appellate Division had affirmed the Tax Court's decision substantially for the reasons stated by that Court. The Supreme Court granted certification. The Supreme Court held that the regulation, N.J.A.C. 18:17:7-8.5(b), adopted by the Director of the Division of Taxation, which included New Jersey property rented by a taxpayer in calculating the percentage of the taxpayer's net income properly attributable to the State, was not beyond the authority granted to the Director under the enabling legislation of the Corporation Business Tax Act.

The Supreme Court stated that the decision of the Tax Court was affirmed substantially for the reasons expressed in Judge Lasser's opinion. The Court concluded that the Legislature vested in the Director broad authority to adjust the property factor. The Director's authority to define that factor derives from Sections 8 and 27 of the CBTA. Through these sections, the Legislature has painted with a broad brush, intending that the Director supply the details through the promulgation of regulations. Because the description of property does not include the term "owned," the language of Section 6(A) permits an interpretation that includes leased property. The Director could properly conclude that a lessee should pay its fair share of the cost of public

benefits and services that it uses to generate profits. In view of the changes in economic conditions, the Director needs the authority to adapt the Division's regulations to assess more accurately the income of a lessee that is reasonably attributable to this State. If the Director has misperceived that authority, the Legislature may override the regulation through the appropriate legislation.

Net Operating Loss after Merger - *Richard's Auto City, Inc. v. Director, Division of Taxation*, A-2194-92T1; decided February 1, 1994.

On October 31, 1986, Catena, Inc. merged into Auto City, leaving Auto City as the surviving corporation. The functions of Catena, Inc. were assumed by the leasing department of Auto City. Auto City claimed as a deduction on its 1986 corporation business tax return the net operating losses incurred by Catena, Inc. during the tax years prior to the merger. These losses were incurred as a result of an accelerated depreciation method that was available at the time for leased automobiles.

The issue was whether N.J.A.C. 18:7-5.13(b) was valid as consistent with N.J.S.A. 54:10A-4(k)(6). The regulation provides that "[t]he net operating loss may only be carried over by the actual corporation that sustained the loss," however, it may "be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger."

N.J.S.A. 54:10A-4(k)(6) permits carryover losses but is silent as to whether those losses may be carried over in a merger or reorganization. Plaintiff notes that the language and legislative history of 54:10A-4(k)(6) and the scheme of the New Jersey

continued on page 13

in our courts - continued from pg.13

tax acts evidence an intent by the Legislature to afford net operating loss carryovers at the State level the same treatment as provided at the Federal level under the I.R.C. Under subsection 381 of the I.R.C., the transferee corporation of a statutory merger may carry over the net operating losses of the transferor corporation.

The Court held that although N.J.S.A. 54:10A-4(k)(6)(D) is not explicit, under the reasoning of *Helvering v. Metropolitan Edison*, 306 U.S. 522 (1938), since the successor corporation is liable for the debts, it should also be provided the tax attributes, including the net operating losses in this case, subject of course, to the limitations of subsection (D). The State's proclaimed interest in providing a non-hostile economic environment for business, as implemented by the statute, favors this result.

N.J.S.A. 14A:10-6 is akin to the holding of *Metropolitan Edison*. Thus, the corporate personality of the transferor is consumed by that of the transferee and the transferee was liable for the debts of the transferor. Therefore, it was not unreasonable to conclude that the tax attributes of the predecessor corporation actually become the tax attributes of the surviving corporation. Because Catena, Inc. merged with Auto City, Auto City inherited the obligations and liabilities of Catena, Inc. and should also inherit the rights and privileges, such as the tax attributes. It follows that the tax attributes of the predecessor corporation are inherited by the surviving corporation, subject to the "primary purpose" limitation of subsection (D).

There was no change in the trade or business of Catena, Inc. Further, there is nothing in the record to indi-

cate that the primary purpose of the merger was to permit Auto City to use the net operating losses of Catena, Inc. The situation is not one of abuse wherein 54:10A-4(k)(6)(D) seeks to disallow the deduction.

**Local Property Tax
Floating Docks Deemed to be Real Property – *John Taylor and Jean Taylor v. Township of Lower*, No. 05-05-8680-90S, 1993 WL 520581 (Tax Court, August 30, 1993).**

In the case of *Taylor v. Township of Lower*, the Tax Court of New Jersey held that floating docks and finger piers which were part of a marina condominium were real rather than personal property and subject to property tax assessment as such. The docks and piers in question, although floating, had infrastructure for built-in electrical systems; were constructed to remain in place twelve months a year; and were laid out so that they could not be changed without amending the master deed. Based on these characteristics the installation was considered permanent. In applying the Business Retention Act, the Court found that the docks and piers were not exempt from real property taxation as they did not fit the definition of machinery, apparatus or equipment; nor were they used or held for use in business. The judge concluded "the fact that the docks and piers float to accommodate the ebbing and flowing of tides does not distinguish these docks and piers, for local property tax assessment purposes, from piers and docks permanently installed."

Outdoor Billboard Signs Deemed to be Real Property – *R.C. Maxwell Co. and Scola, Inc. v. Galloway Township*, No. 012330-92 (Tax Court, December 9, 1993).

In another case (*R.C. Maxwell and Scola, Inc. v. Galloway Township*), the taxpayer contested the taxation of billboards as real property by Galloway Township. The subject billboards were four wooden A-frame structures with metal components that display outdoor advertising. They were erected by R.C. Maxwell Company on land leased from Scola, Inc. The plaintiff contended that a billboard is personal property, an impermanent structure not affixed to the ground, which can be removed or disassembled without material injury to either the land to which it is affixed or to the billboard itself. Plaintiff further argued that the billboard was not intended to be affixed permanently to the property as evidenced by the two-year lease agreement entered into between the landowner and itself, whereby it maintains the right to remove the billboard. Its impermanence was expressed by the lease and understood within the billboard industry. Then, the plaintiff alleged that the billboards were "apparatus or equipment" as defined in the Business Retention Act and thus were exempt from real property taxation. First, the judge found that the billboards did not fall within the definition of "apparatus or equipment" as defined in the act and even if they did, they would not be excepted because a billboard is a "structure." N.J.S.A. 54:4-1.15 defines "structure" as "any assemblage of building or construction materials fixed in place for the primary purpose of supporting...property." The judge continued "upon dismantling and removal of the billboard, ...there results no material injury to the real property; however, I find to the contrary relative to the billboard itself" in that "it is practically impossible to disassemble a billboard without material injury to

courts - continued from pg.13

the billboard.” Concerning the plaintiff’s claim that the billboards are ordinarily not intended to be affixed permanently, the judge found “that billboards are ordinarily maintained and retained where originally constructed for the duration of their economic or useful life and that practice indicates an intent for billboards to be permanently affixed to the land.” In final summary, the judge held that outdoor billboard signs are taxable as real property.

Tax-Sale Certificates Fraud/Mutual Mistake – Appellate Division: *Simon et al. v. Deptford Township*, Supreme Court of New Jersey, A-5879-91T3; decided March 14, 1994.

Where no representations were made regarding the property for which the tax-sale certificate was issued, the doctrine of mutual mistake should not ap-

ply. Since the tax collector testified that she was not aware of any environmental problems and the purchaser subsequently discovered that the property had been used as a landfill, there was nothing to suggest a misrepresentation, deliberate concealment or non-disclosure by the tax collector, or that the township deliberately kept the tax collector in the dark concerning the problems at the property and, therefore, the purchaser’s fraud claim was properly dismissed.

In Our Legislature

Corporation Business Tax

Surtax Discontinued—P.L. 1994, c.3 (signed into law on March 7, 1994) eliminates the surtax effective January 1, 1994, and provides a formula for determining an adjusted surtax rate for taxpayers with accounting periods ending between 1/1/94 and 6/30/94.

Gross Income Tax

Decrease in Tax Rate—P.L. 1994, c.2 (signed into law on March 7, 1994) reduces gross income tax rates 5% for all taxpayers.

This bill is effective for tax years beginning January 1, 1994 and thereafter.

Increase in Income Threshold—P.L. 1994, c.8 (signed into law on March 16, 1994) increases the income threshold for qualifying for exemption from income tax. For single individuals, estates and trusts, and married couples filing jointly, the income threshold is increased from \$3,000 to \$7,500. For a married person filing separately, the threshold is increased from \$1,500 to \$3,750.

The bill is effective for tax years beginning on and after January 1, 1994.

tax calendar

july

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1						1	2
9	3	4	5	6	7	8	9
9	10	11	12	13	14	15	16
4	17	18	19	20	21	22	23
	24	25	26	27	28	29	30
	31						

July 11

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

July 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending March 31

continued

July 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer’s semi-monthly, monthly and quarterly returns

July 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor’s monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber’s monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

July 20 - continued

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return



august

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1 9 9 4		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30	31			

August 1

NJ-500 Gross Income Tax—Employer's semi-monthly and semiannual returns

August 10

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

August 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns

August 22

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return
ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

August 22 - continued

ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

August 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

August 31

NJ-500 Gross Income Tax—Employer's semi-monthly return

september

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1 9 9 4					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	

September 12

CWIP-1 Cigarette Tax—Informational report by wholesalers
CWIP-2 Cigarette Tax—Informational report by wholesalers

September 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending May 31

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

September 15 - continued

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax for calendar filers

September 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel
MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
SCC-5 Spill Compensation and Control Tax—Monthly return
ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

September 20 - continued

ST-51 Sales and Use Tax—Monthly return
ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
ST-350 Cape May County Tourism Sales Tax—Monthly return
ST-451 Sales and Use Tax—Salem County—Monthly return
TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return
UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

September 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

September 30

NJ-500 Gross Income Tax—Employer's semi-monthly return

from the director's desk

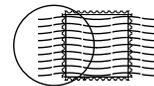
Refinancing of Motor Vehicles

What are the tax implications of automobile dealers entering into refinancing agreements with customers? When a customer transfers a motor vehicle to the dealer who pays off the current loan, and then the dealer transfers ownership back to the customer to enter into a new financing agreement at a lower rate, the dealer would treat the transaction as a trade-in where the customer "buys back" the vehicle for the same amount as the trade-in allowance. The New Jersey Sales and Use Tax Act recognizes an exemption for security transactions. The distinction between a completed sale and a sale for financing purposes is based upon economic realities and the intent of the parties. This transaction would qualify for exemption as a financing arrangement. (See N.J.S.A. 54:32B-2(e)(3)(G) and *Monmouth Airlines, Inc. v. Taxation Division Director*, 2 NJ Tax 47, 1980.)

New Bulletins

The Division is currently working on a new publication. The *Business Incentive Tax Package Packet* will be comprised of a series of Technical Bulletins on the various laws that make up the Business Incentive Tax Package. All persons on our mailing list will receive this publication when available.

NJ Tax Question? Send your questions to:



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Income Tax Rates Reduced

Recent tax legislation (Chapter 2, P.L.1994) reduces the New Jersey Gross income tax rates 5% for all taxpayers for tax years 1994 and thereafter. The reduction is retroactive to January 1, 1994, and will affect the amount of tax employers are required to withhold and remit to the State.

The Division is currently sending notices and revised withholding tables to all employers registered in the State. The tables are effective May 1, 1994, and take into account the additional reduction in withholding required because tax was withheld at the old (higher) rates on wages paid between January 1, 1994 and April 30, 1994.

Corp Surtax Eliminated

Recent tax legislation (Chapter 3, P.L. 1994) discontinues the surtax on corporate net income as of January 1, 1994. The surtax was enacted in 1986 (Chapter 144, P.L. 1986) as a temporary measure, and affects returns for tax years ending in fiscal years 1989 through 1994.

The legislation provides a formula for determining an adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994. That rate is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of

complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the accounting period.

$$.00375 \times \frac{\text{Months ending before 1/1/94}}{\text{Total months in tax year}}$$

= Adjusted Surtax Rate

This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then eliminated for fiscal year 1995 and thereafter.

The adjusted surtax rates for taxpayers with accounting periods covering

continued on page 2



important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-588-3179

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
..... 609-292-5035
..... 609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax Refunds

..... 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730



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12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above (on page 1).

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

Use the adjusted surtax rate at Line 7 (b) of Form CBT-100 (1993) and Line 13 of Form CBT-100S (1993). Any surtax due is in addition to tax on corporate net income, and is subject to all the penalty and interest provisions related to estimated tax payments, late payments and late filings.

Interest 9% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1994 remains at 9%. This rate is calculated as follows:

6% (prime) + 3% = 9%,
compounded annually

Listed below is the prime rate and assessed interest rate history.

Date	Prime Rate	Interest Rate
1/1/93	6%	11%
3/1/93	6%	11%
6/1/93	6%	11%
7/1/93	6%	9%
10/1/93	6%	9%
1/1/94	6%	9%

Index for '92-'93

In the center of this issue you will find two separate documents for your use. The indexes for both Volume 21 (1992) and Volume 22 (1993), as well as a listing of tax legislation for 1993, appear in two separate removable (pull-out) sheets. Once removed, the indexes can be stored wherever convenient and helpful for retrieval.

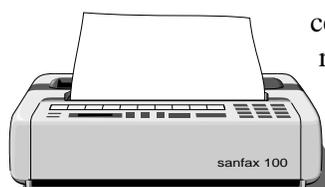
NJ TaxFax

Burning the midnight oil doing taxes only to find you need another form? If you have access to a fax machine, a new service offered by the New Jersey Division of Taxation can provide instant relief. NJ TaxFax makes State tax forms available 24 hours a day, 7 days a week to fax machine users.

“This new service is aimed primarily at professional tax preparers,” said Acting State Taxation Division Director Bob Thompson, “but anyone who has facsimile capability can now get a State tax form whenever they need it.”

At present, 20 of the more frequently requested individual and corporation income tax forms are available through NJ TaxFax. In the future, notices of changes in New Jersey’s tax laws and new technical information and procedures also may be available through NJ TaxFax.

The new feature is part of an on-going effort to improve services to tax practitioners and taxpayers of New Jersey,



and speed receipt of tax returns, said State Treasurer Brian Clymer.

The NJ TaxFax number is (609) 588-4500. Once connected, simply enter the form number of the desired form. It will be faxed to you within seconds. Persons unsure of the number of the form they need can request a list of all forms available by phoning NJ TaxFax.

TaxFax users are cautioned that the Division of Taxation will not accept returns filed on fax paper. Forms

continued on page 3

New Jersey State Tax news

is published by the:

**New Jersey Division of Taxation
Taxpayer Services Branch
Office of Communication
CN 281
Trenton, NJ 08646-0281**

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received by fax must be photocopied before they are filed with the Division.

Persons without fax machines can receive tax forms by mail by calling the Division's 24-hour toll-free Hotline at 1-800-323-4400.

GROSS INCOME TAX **Income from** **S Corps**

Effective with taxable years beginning after July 7, 1993, New Jersey will allow limited pass-through taxation of S corporation (corp) income. For shareholders who report on a calendar year, this change will be effective beginning with tax year 1994.

S corp shareholders must report their pro-rata share of S corp income whether or not distributed. A new category of income, Net Pro-rata Share of S Corporation Income, has been created at N.J.S.A.54A:5-1p. A separate line will be added to the 1994 NJ-1040, NJ-1040NR and NJ-1041 for reporting this income.

The reporting and taxing of S corp income for New Jersey Gross Income Tax purposes is to be done on a limited flow-through basis. Unlike the Federal S corp or Federal and New Jersey partnership reporting, the income or loss earned by the S corp does not maintain its character when flowed through to the individual shareholders. Items such as interest, dividends and capital gains are to be included in the Net Pro-rata Share of S corp income (N.J.S.A. 54A:5-1p.) The income or loss to be reported by the shareholder in this category is the net income or loss

reported on the shareholder's Federal 1120S K-1 modified as required by New Jersey Tax statutes.

Nonresident taxpayers will report only their pro rata share of S corp income allocated to this State of a New Jersey S corp pursuant to N.J.S.A. 54A:5-8. (6).

No resident will be allowed a credit against the tax otherwise due under this Act for S corp income allocated to this State and taxed by another jurisdiction. See amendments to N.J.S.A. 54A:4-1.

Estimated payments as required by N.J.S.A. 54A:8-4 have not changed. S corp shareholders will need to make estimated payments to cover their pro rata share of S corp income to avoid interest for the underpayment of estimated taxes.

Future publications will have additional information about the tax effect of this legislation.

CORPORATION TAX **Reporting S Corp** **Income**

Effective with taxable years beginning after July 7, 1993, New Jersey will allow limited pass-through taxation of S corporation income.

The basic concept remains similar to that under the Internal Revenue Code; that is, S corporation shareholders must pay personal income tax on their pro rata share of S corporation income whether or not actually distributed to the shareholder during the shareholder's tax year.

For New Jersey CBT purposes, Federal S corporations failing to elect New Jersey S corporation status are

taxed at the same rate as a C corporation (9%). Those Federal S corporations electing New Jersey S corporation status will receive a 7% reduction in the current tax rate from 9% to 2%. This reduction is equal to the maximum rate charged under New Jersey Gross Income Tax. In addition, entire net income that is taxable at the Federal corporation level as C income will be taxed for New Jersey S corporations at the rate of 9%.

In determining the "entire net income" for New Jersey S corporations, the Federal 1120S, line 21, is to be modified to reflect all distributive items of income and expense plus or minus the adjustments enumerated in CBT 54:10A-4(k). The new legislation now disallows the deduction of taxes paid or accrued to U.S. possessions, District of Columbia, and all other states. The allocation provisions under Section 6 of the Statute remain unchanged and applicable to New Jersey S corporations.

In addition, the legislation defines "operational income" as income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations and includes investment income serving an operational function. With regard to non-operational income, the taxpayer must clearly demonstrate that it is not operational in order to exclude it from entire net income. Such non-operational income, other than income attributable to taxpayers who have a New Jersey location as their principal place from which their business is managed, is not subject to allocation. Corporate expenses re-



reporting s corp income - from pg. 3

lating to non-operational income are not deductible from entire net income.

A New Jersey S corporation is a corporation that is an S corporation as defined by IRC 1361 and has made a valid New Jersey election. For the election to be valid, the corporation and all present shareholders, referred to as initial shareholders, must consent to the election and the requirements of the Statute. The corporation will be required to pay the tax on the pro rata share of S corporation income allocated to New Jersey at the rate of 7% for the subsequent shareholders that fail to consent and/or object to the New Jersey jurisdictional requirements.

The following increase in the minimum tax for domestic and foreign corporations will also apply to New Jersey S corporations:

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	\$ 50	\$ 100
1995	100	200
1996	100	200
1997	200	200

Subsequent increases at intervals of five years after 1997 will be determined based on the annual average total producer price index for finished goods as published by the U.S. Department of Labor.

The Division is now in the process of preparing the 1994 CBT-100S Return and the related schedules with pertinent instructions.

CORPORATION TAX **Recoupling**

As a result of legislative changes adopted July 7, 1993, taxpayers subject to the Corporation Business Tax whose accounting periods begin on or after July 7, 1993, may recouple to Federal depreciation for recovery assets placed in service on or after this date. Taxpayers whose accounting periods begin prior to July 7, 1993, who place recovery assets in service either before or after July 7, 1993, may *not* recouple to Federal depreciation. The distinguishing feature is the date the accounting period begins.

This method allows for an orderly phase-out of New Jersey's requirement to recompute depreciation on recovery property placed in service after 1980 but prior to a taxpayer's fiscal or calendar year accounting period beginning on or after July 7, 1993. This change is anticipated to affect all 1994 returns, as well as selected 1993 returns.

INHERITANCE/ESTATE TAX **Speaker Program**

The Transfer Inheritance and Estate Tax Branch has had positive results with a revamped speaker program launched in July 1991 in conjunction with New Jersey Banking institutions. The program provides for a delegate of the Branch to visit various representative groups of financial institutions to address specific areas of New Jersey Transfer Inheritance and Estate Tax laws as they apply to the banking community.

This program has served to provide the Branch and this particular group with a better understanding of their mutual concerns and problems. From

the Branch point of view, it provides for the dissemination of accurate Transfer Inheritance and Estate Tax information to those who are confronted with related compliance requirements. Benefits to the Branch are unmistakably attested to in the form of improved quality in certain areas of reporting and compliance.

It is the belief of the Branch that mutual benefits may be realized with other interested groups through similar communication.

For additional information about the inheritance tax speaker program, call the Transfer Inheritance Tax Branch in Trenton.

Audit Activity

Audit Activity uses many techniques to determine if taxpayers are meeting their obligations under New Jersey's tax statutes. One method that Audit Activity expects to make greater use of is third party information.

The Field Audit Branch is about to conclude a project where most of the pizza restaurants in New Jersey were subjected to an audit and where third party information was a major tool in the audit program. In addition to the normal verification and audit procedures, businesses that supply raw materials such as flour, cheese, and tomato sauce were contacted by Audit personnel. They were asked to submit the total amount of these purchases for the audit period for the pizza restaurants that they supplied. In most cases the suppliers provided this information in a cooperative manner. When they did not, the Division acquired the needed information through the use of a



audit activity - from page 4

subpoena. Once the purchase information was available, the mark-up percentage for each restaurant was determined and applied to the cost of the raw materials.

The resulting estimated gross receipts were adjusted for various factors unique to each operation and then compared to the figures reported to the Division. Significant differences resulted in assessments for unreported taxes. When it appeared that there were gross understatements of receipts, the case was turned over the Division's Office of Criminal Investigations for possible criminal actions.

As resources permit, the Division intends to develop other projects and techniques that will make use of available third party information. These projects will help the Division of Taxation meet their goal of insuring that taxpayers are meeting their tax obligations.

Revaluation Firms

Regulations issued under N.J.S.A. 54:1-35.35 pertain to standards and qualifications of appraisal firms that value property for assessment purposes under municipal contract. Firms and individuals contracting for this business are required to annually provide certain information to the Director of the Division of Taxation. The following firms have submitted the necessary information for the 1994 tax year.

- AMS Appraisals, Inc.
- Appraisal & Revaluations Services
- Appraisal Surveys, Inc.
- Appraisal Systems, Inc.
- Certified Valuations, Inc.
- Cole-Layer-Trumble Company
- Herskowitz, Rosen & Walton

- Market Value Appraisal Service
- MGM Associates
- MMC, Inc.
- Municipal Data Services, Inc.
- Property Evaluations Co., Inc.
- Realty Appraisal Company
- Harry F. Renwick Jr., & Assoc.
- Security Appraisal Company, Inc.
- Vital Appraisal Systems

Complete mailing addresses for the firms listed can be obtained by writing to Property Administration, Policy and Planning Section, CN 251, Trenton, NJ 08646.

Criminal Enforcement

Criminal enforcement actions over the past several months included:

November 16, 1993 - James V. Ferlisi, former president of Vitos Ristorante, Inc., of North Bergen, will enter a Pre-Trial Intervention program as the result of failing to remit Sales Tax. Mr. Ferlisi will make full restitution of the tax, including penalties and interest. This case is the result of a joint investigation with the Division Of Alcoholic Beverage Control and the Division of Criminal Justice.

November 29, 1993 - David Peselli, President of 2N, Inc., T/A Sluggo's Saloon, of North Arlington, was admitted to a Pre-Trial Intervention program as the result of failing to file and remit Sales Tax. Mr. Peselli will make full restitution of the tax, including penalties and interest. This case is the result of a joint investigation with the Division Of Alcoholic Beverage Control and the Division of Criminal Justice.

January 12, 1994 - Lalji Patel, manager of Uni Mart, Inc. in Mt. Holly,

entered a guilty plea to charges of possessing cigarettes not bearing New Jersey revenue stamps and failure to obtain a license. Mr. Patel was fined \$1,750.

January 19, 1994 - Mathew J. Werneth, president of JR Associates of NJ, Inc., entered a guilty plea to charges of failing to remit Sales Tax. As part of the plea agreement, restitution will be ordered and a consent judgment will be filed to secure the tax debt.

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1993

Compliance Activity personnel collected a total of \$38.0 million for the quarter ending September 30, 1993. Following is a summary of enforcement actions.

Certificates of Debt

After demands for payment were unsuccessful, the Division entered 1,271 Certificates of Debt in Superior Court totaling \$24.1 million.

Contact and Demand

Prior to the filing of Certificates of Debt, the Division collected \$34.7 million through normal collection procedures.

Levies

The Division collected \$1.5 million by levying against 323 bank accounts.

Settlements

Another \$1.4 million was collected by closing 140 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

continued on page 6



enforcement summary - from pg. 5

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

If the liability of the closed business is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the Division can seize the personal assets of the responsible officers where trust fund taxes (Sales Tax and Income Tax Withholding) are involved.

A total of 28 businesses were scheduled for seizure for the quarter ending December 31, 1993. Of these, 13 businesses were actually closed and 15 were left open, resulting in collections of \$400,000. A listing of seized businesses appears on pages 7 and 8.

Tax Briefs

Corporation Business Tax

S Corporations; Loss Carry Forward – A taxpayer inquired as to whether New Jersey S corporation losses can be carried over at either the S corporation or individual level.

The Division advised that the provisions for net operating loss carry forwards for the corporation business tax are found at N.J.S.A. 54:10A-4(k)(6). Under the statute establishing S corporation recognition, for tax years starting after July 7, 1993,

P.L. 1993, c173, Sec. 2 (N.J.S.A. 54:10A-5(c)(2), New Jersey S corporations currently would pay tax at a rate of 2.375%. A net operating loss deduction would be taken into account in computing entire net income (the tax base) subject to allocation and tax in New Jersey for a New Jersey S corporation for corporation business tax purposes. There is, however, no provision to permit an individual taxpayer to carry forward an S corporation operating loss on his or her individual return. Under the new law net pro rata share of S corporation income is a taxable category of income N.J.S.A. 54A:5-1p., and losses from one category of income cannot be offset by income in another category pursuant to N.J.S.A. 54A:5-2. See also N.J.S.A. 54A:5-12.b.

Subjectivity – A question was raised concerning whether a foreign corporation would be subject to tax in New Jersey based upon the following facts and circumstances.

F corporation is organized in a state other than New Jersey and has its sole office in the state of incorporation. Accordingly, F corporation does not maintain an office in New Jersey, nor does it have employees in New Jersey. F is engaged in business activities, as follows:

F corporation manufactures a patented machine which it sells to a customer in New Jersey. The sales orders are executed in the state of incorporation and not in New Jersey. Shipments of machines are made by common carrier. Installation and training of customer staff are done by F corporation's employees at the customer's location. F corporation sells the equipment to its customer at

a price equal to cost of materials, labor and overhead, plus 6%. A license agreement is executed between F corporation and its New Jersey customer. The license agreement consists of an "initial payment" for use of certain patents, know-how, and inventions. Title to the equipment passes to the purchaser upon receipt of the initial payment. An additional license fee is paid by the purchaser of the equipment to F corporation based upon production. The production payment continues until the patents expire or the license agreement is terminated. F corporation warrants that the equipment meets published specifications and services the equipment within the one (1) year period from the date of delivery. After the initial warranty period will have expired, F corporation will continue to service the machines provided the customer pays for labor and replacement parts.

In *Mark Andy, Inc. v. Taxation Div., Director*, 8 N.J. Tax 593 (1986) a Missouri corporation was "doing business" in New Jersey for purposes of corporation business tax. The corporation actively solicited customers in New Jersey through a sales representative and through its preventive maintenance program, and established continuous relationship with customers in order to promote sale of replacement parts.

Based upon the facts, including the installation and training of customer staff at customer's location, the servicing of the equipment for one year from date of delivery, and the arrangement by which F corporation

continued on page 8



**Division of Taxation Seizures
(Oct. - Dec. 1993)**

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Moo Kyoung Yang T/A Han Kuk Kwan 15 S. Tennessee Avenue Atlantic City	11-04-93	Sushi Bar & Restaurant	Reopened 11-05-93
	GGs Women's Minority Group, T/A Bungalow Inn 200 Philadelphia Avenue Egg Harbor	12-02-93	Bar w/Kitchen Facilities	Closed
Bergen	M & S Video Amusements 25 Saddle River Avenue S. Hackensack	11-23-93	Concession Counter	Closed
	Budget Trade Show Displays, Inc. 21 Third Street Ridgefield Park	12-02-93	Small Warehouse w/Office	Closed
Burlington	Thomas E. Lucas T/A Tom's Auto & Wrecker Service RD 1, Chambers Corner Mount Holly	12-09-93	Auto Welder & Junk Yard	Reopened 12-17-93
Camden	NACE, Inc. T/A French Quarter Inn 2350 Admiral Wilson Blvd. Camden	10-13-93	Go Go Bar	Reopened 10-15-93
	Gaston Jones T/A Crest Lanes Pro Shop 100 Woodcrest Plaza Cherry Hill	12-07-93	Bowling Alley/Pro Shop	Reopened 12-10-93
Cumberland	Dorene Hand 203 Kates Blvd. Millville	11-30-93	Miniatures & Collectibles	Closed
Essex	William J. Ferdon T/A Eurotech 151 Forest Street Montclair	12-07-93	Auto Repair Shop	Reopened 12-22-93
Hudson	Mike's Garden Auto Body Inc. 800 Jackson Street Hoboken	10-20-93	Auto Body	Closed



taxation seizures - continued from pg. 7

County	Name/Address	Seizure Date	Business Type	Status
Ocean	Berky Incorporated T/A Speakeasy Pizzeria 14th & Blvd. Ship Bottom	12-14-93	Pizzeria & Restaurant	Reopened 12-15-93
Passaic	Serrano Builders, Inc. T/A Duke's Tavern 7 Church Street Paterson	11-18-93	Bar	Closed
Salem	Foster's Tire Sales, Inc. T/A Foster's Tire RD 3, Box 10, Route 45 Woodstown	10-26-93	Tires & Service for Cars, Trucks and Farm Equipment	Closed

tax briefs - continued from pg.6

will continue to service the machines after that time provided that the customer pays for labor and replacement parts, it is the opinion of the Division that F corporation is doing business in New Jersey and as such would be subject to the corporation business tax. See N.J.A.C. 18:7-1.6 and N.J.A.C 18:7-1.9.

Gross Income Tax

Dividends Paid-Up Life Insurance

- A taxpayer inquired as to whether the dividends received on a paid-up life insurance policy are subject to the New Jersey Gross Income Tax. The Division responded that, for New Jersey gross income tax purposes, dividends on paid-up life insurance policy are considered a return of premiums and are not taxable until they exceed the total premiums or other payments made for the insurance. However, any interest paid on these dividends is subject to tax.

Sales Tax

Crossword Puzzle Magazines

- The Division received an inquiry concerning the sales taxation of cross-

word puzzle publication magazines. Crossword puzzle publications meet the "information" requirements of N.J.A.C. 18:24-1.2 which define exempt periodicals; thus, if all of the other criteria are satisfied (published at least four times a year, generally available for circulation, less than 90% advertising, etc.), retail sales of crossword puzzle magazines qualify for exemption from sales tax.

Sales of Treadmills and Exercise Bicycles

- The sales of treadmills and exercise bicycles are subject to sales tax. Pursuant to N.J.S.A. 54:32B-8.1 of the New Jersey Sales and Use Tax Act (See P.L. 1987, c.383), sales of durable medical equipment are exempt from sales and use tax in this State. Durable medical equipment is defined in the law to mean equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home.

Since treadmills and exercise bicycles are not customarily used to serve a medical purpose and generally are

useful in the absence of illness or injury, the Division takes the position that they do not qualify for exemption, even if the customer provides a prescription from a physician. Under the law, the existence of a prescription does not determine exempt status.

Sale and Installation of Gasoline Service Station Equipment

- The Division recently responded to an inquiry concerning the sale and installation of gasoline service station equipment in New Jersey. The capital improvement rules as found at N.J.S.A. 18:24-5 are used to determine whether the installation of service station equipment results in a capital improvement to real property. The capital improvement exemption is statutory, and applies in these situations.

The permanent installation of underground storage tanks and the associated piping constitutes a capital improvement under N.J.S.A 54:32B-3(b)(2) of the Sales and Use Tax Act. The permanent installation of other property such as pumps, islands, signs, etc. may also result in

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ABT	=	Alcoholic Beverage Tax
ACC	=	Atlantic City Casino Control Commission
ALL	=	All Taxes Administered by the Division
BPPT	=	Business Personal Property Tax
CBT	=	Corporation Business Tax
FBT	=	Financial Business Tax
GIT	=	Gross Income Tax
LPT	=	Local Property Tax
S&U	=	Sales and Use Tax

1993 TAX LAWS

CH.	DATE	TAX*	BILL	SYNOPSIS
10	Jan. 15	S&U	A-1133(1R)	Exempts from sales and use tax coin-paid charges subject to the local calling rate for coin-operated telecommunications devices; provides special tax table.
62	March 4	LPT	S-1264	Extends effect of ordinance adopted under obsolete tax exempt abatement laws.
101	April 3	LPT	A-1637/ S-1411	Permits municipalities a three year spread for impact of increases in tax assessments resulting from revaluation.
108	April 16	GIT	A-1996(2R)	Provides employee tax incentives for ride-sharing programs.
129	June 1	LPT	S-1266(1R)	Increases membership of boards of taxation in certain counties.
143	June 18	GIT	A-1979	Gambling winnings of nonresidents subject to gross income tax.
144	June 21	S&U	A-1625(1R)	Clarifies provision of "New Jersey Urban Enterprise Zones Act."
150	June 24	CBT	S-1320(3R)	Provides employer tax incentives for ride-sharing programs.
159	June 29	ACC	S-1744	Revises Casino Reinvestment Development Authority law, establishes minimum casino parking charges and imposes casino parking fees, and provides for development of hotel rooms.
165	July 1	LPT	A-6/2623 Acs	Requires FY 1993 municipal distribution of unanticipated and retained State public utilities gross receipts and franchise taxes for local property tax relief.
166	July 1	LPT	A-2048	Excludes certain nonprofit health care properties for the elderly from local property taxation.
170	July 7	CBT	S-1784 Sca	Allows corporation business tax credit or property tax offset for certain investments that create new jobs in this State.
171	July 7	CBT	S-1820 Sca	Manufacturing Equipment and Employment Investment Tax Credit Act.
172	July 7	CBT	S-1821	Permits corporations to use Federal modified accelerated depreciation.
173	July 7	CBT	A-273/ 1870 Acs	Provides reduced corporation business tax for electing S corporation.
174	July 7	BPPT	A-1015(2R) Aca	Repeals the "Business Personal Property Tax."
175	July 7	CBT	A-1033 Acs	Provides corporation business tax credit for qualified research expenses in New Jersey.
178	July 9	GIT	A-1071, 2060, 866 Acs(4R)	Requires nonresident payers of gross income tax to compute liability as though residents, then prorate liability by proportion of New Jersey source income to total income.
210	July 30	GIT	S-890 Scs	Provides for the creation of limited liability companies.
216	July 30	ABT	A-2354(3R)	Authorizes operation of brew pubs; dedicates alcoholic beverage tax proceeds to prevention of alcohol and drug abuse.
226	Aug. 6	S&U	S-744(1R)	Limits sales tax on sale of race horses through claiming races.
232	Aug. 6	ABT	S-1979	Concerns administration and enforcement of State taxes paid and collected by alcoholic beverage licensees.
251	Aug. 12	LPT	S-15(2R)	Removes single-use agricultural or horticultural facility from definition of structure in Farmland Assessment Act.
274	Nov. 24	S&U	S-1165(1R)	New registration regulations for businesses.
295	Dec. 22	FBT	A-2989	Repeals "Financial Business Tax."
331	Dec. 23	ALL	A-2176(1R)	Reduces late payment interest rate to prime rate plus 3%.
338	Dec. 27	CBT	S-2047	Exempts corporations licensed as insurance companies under the laws of another state from the corporation business tax.

*See Legend on prior page.

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a capital improvement. Thus, the labor charges relating to such installations are not subject to tax.

Under N.J.S.A. 54:32B-2(e)(2), contractors that install service station equipment are considered the retail purchasers of all materials and supplies that are purchased for incorporation into real property. A supplier should not accept a Resale Certificate (ST-3) for such materials and supplies.

In Our Courts

Corporation Business Tax Contributions to ESOP Not Deductible – *American Telephone & Telegraph Company v. Director, Division of Taxation*, Tax Court of New Jersey, Docket No. 18-02-0034-88-CB, decided December 23, 1993.

AT&T, plaintiff, appealed a Division disallowance of a deduction taken by AT&T on its 1983 return for amounts contributed to its Tax Credit Employee Stock Plan (ESOP).

Plaintiff argued that its contributions to an ESOP were deductible under the I.R.C., that New Jersey's CBT Act permits the deduction of employer contributions to a qualified stock bonus plan, that judicial precedents in a majority of other states permitted the deduction on a state tax return of ESOP contributions electively taken as a tax credit on the taxpayer's Federal return, and that the Director's disallowance constituted an illegally adopted regulation.

The Division responded that AT&T had no authority to take a deduction when calculating its Federal taxable income on its CBT return, that be-

cause plaintiff elected to take a credit for payments made to the ESOP, its Federal taxable income did not reflect a deduction for the amounts of any ESOP contributions, and that it would be inequitable to permit a deduction for ESOP credits for which AT&T is fully reimbursed by Federal tax credits.

The Court rejected AT&T's argument that its ESOP contributions were deductible for purposes of computing its Federal income tax, and determined that court precedents in other states were not applicable. Noting that absent specific statutory provisions taxpayers cannot vary from their Federal elections, the Court held that the Division was authorized to infer that in calculating entire net income under N.J.S.A. 54:10A-4(k)(2)(A), the taxpayer starts with federal taxable income without deductions for contributions to an ESOP. The Court further ruled that whether the ESOP credit was identical to the jobs credit and foreign tax credit was not relevant, and that the disallowance of the deduction did not constitute invalid rule-making requiring the adoption of a regulation.

In-State Activities Protected by Interstate Income Act – *Pomco Graphics, Inc. v. Director, Division of Taxation*, Tax Court of New Jersey, Docket No. 04-16-1526-89CB, decided September 1, 1993.

Pomco Graphics, plaintiff, challenged a Division determination declaring it to be subject to the Corporation Business Tax (CBT) for tax years 1979 through to the present. Pomco is a Pennsylvania printing company which did not obtain a Certificate of Authority, but did have a Casino Service Industry (CSI) license.

Pomco sent salespeople into New Jersey to market a variety of printed materials to existing and prospective customers.

The Tax Court held that Pomco's business activities in New Jersey constituted "solicitation of orders" within the meaning of the Federal Interstate Income Act, Pub.L. No. 86-272, 15 U.S.C.A. section 381, and that Pomco was therefore immune from the Corporation Business Tax. The Court rejected the Division's argument that Pomco was selling services not covered by section 381 and held that Pomco was selling tangible personal property as required for protection under section 381.

Local Property Tax Appeal of Property Tax Assessment Requires Payment of Prior Year Taxes – *Rt. 88 Office Assoc. LTD. v. Township of Brick*, 13 NJ Tax 14 (1992).

Mortgagee bank appealed city's tax assessment of mortgaged property. City moved for summary judgment. The Tax Court held that mortgagees possessed sufficient ownership of assessed property to be characterized as "taxpayer" and property could be considered its property so as to allow it to pursue appeal of assessment.

The Court stated that a "Mortgage" is essentially security for payment of debt. Mortgages must be in writing as conveyance of interest in land. N.J.S.A. 25:1-5, sub d. Under common law, a mortgage creates immediate estate in fee simple in mortgagee subject to defeasance by payment of mortgage debt according to

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terms of mortgage; however, right to possession is postponed until default. In law, mortgage conveys legal title to property encumbered. In equity, lien on land is created by mortgage.

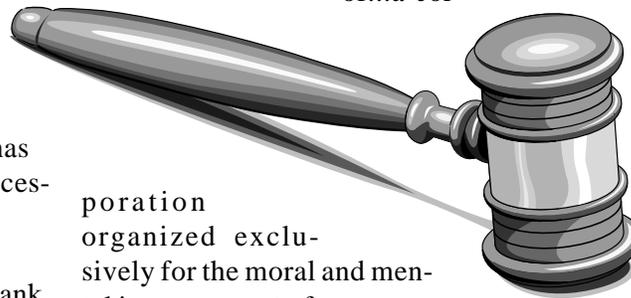
While mortgagor has right of possession of mortgage property until default in mortgage obligation, upon such default mortgagee is entitled to possession of mortgaged premises, which he may acquire either by taking possession of premises peaceably and publicly or by instituting action for possession of land. Mortgagee has right to take such steps as are necessary to protect its security.

The Court held that mortgagee bank, whose mortgage was in default, who had paid real estate taxes, and who sought to protect its security, possessed sufficient ownership of assessed property to be characterized as "taxpayer" and property could be considered its property so as to allow it to pursue appeal of local property tax assessment of mortgaged premises under statute allowing taxpayer feeling aggrieved by assessed valuation of his property to pursue such appeal; mortgagee had substantial interest in property under terms of mortgage.

Exemption Denied – Secondary School Admission Test Board, Inc. vs. Princeton Borough, No. 009456-92 (Tax Court, December 20, 1993).

Secondary School Admission Test Board, Inc. is a nonprofit testing service designed to create and administer a standardized admissions test for secondary schools. Second-

ary School Admission Test Board appealed from the denial of a local property tax exemption for the tax year 1992 for property it owns in the defendant municipality, Princeton Borough. The issues were whether plaintiff's property met the criteria of either of these two provisions in the exemption statute, N.J.S.A. 54:4-3.6: (1) "actually used for colleges, schools, academies or seminaries" and (2) is "actually used in the work of...a cor-



poration organized exclusively for the moral and mental improvement of men, women, and children."

Plaintiff failed to show that it is authorized to carry out the purposes of a "college, school, academy or seminary." Although owned and controlled by educators and educational consultants, it was not owned or controlled by the member schools. Furthering the educational purposes of its member schools simply did not meet the statutory requirement.

Plaintiff did not meet the second provision in that its aim to provide "effective and practical uniform admissions test programs for secondary schools" and "to carry on research in such matters" was decided to be secondary to the purpose and use intended in the provision.

In a strong argument to the contrary, plaintiff relied on *Bloomfield vs. The Academy of Medicine*, 47 N.J. 358 (1966). Here the exemption was granted to an organization of physi-

cians and dentists which operated a medical library and sponsored symposia on medical issues, both open to and attended by the general public. Although plaintiff also conducts seminars and training institutes for educators in secondary school admissions, these functions were insufficient to meet the "organized exclusively for the moral and mental improvement of men, women and children" specification in the statute.

Therefore, the court upheld the decision of the Mercer County Board of Taxation's denial of exemption for the 1992 tax year since plaintiff did not qualify under either provision.

Anchor Stores in Shopping Malls – Mays Center Associates Corp. v. Rockaway Township, No. 14-35-7875-91D and 14-35-0-5016-92D, November 15, 1993.

Because of the uncertain nature of the comparative sales information and the fact that the sales are of vacant department store buildings which after sale had to be renovated and refitted to the needs of the purchaser, the sales comparison approach used by the taxpayer department store is unreliable; also, because the subject location and physical condition and quality of the taxpayer's building is substantially superior to that of the five rental properties used by the taxpayer, the income approach is also unreliable; since the value of the land, building and improvements are stipulated, the cost approach is a more reliable

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valuation and the taxing district's 10% depreciation is found to be reasonable (there is no justification for 57.5% depreciation for a newly renovated building and a resulting value for the property that is less than the land value plus the renovation cost).

Since anchor stores are essential to the development of a shopping center and they often obtain concessions from developers, there may be an allocation of cost or transfer of value from the anchor stores to the mall stores which might justify assessing anchor stores, not at their cost approach value, but at a lower figure that reflects the transfer or allocation of value.

Freeze Act Reassessments – Tax Court, *Ennis v. Alexandria Township*, No. 10-01-11781-91S, November 12, 1993. DDS No. 35-5-2170.

The Tax Court held that the term "revaluation" in the Freeze Act, N.J.S.A. 54:51A-8, encompasses the term "reassessment" and, therefore, the Freeze Act does not apply where the taxing district has completed and adopted either a revaluation or a reassessment program approved by the county board of taxation of which the taxpayer has notice.

Vacation Residences for Use by Missionaries Not Entitled to Exemption – *City of Ventnor City v. Interdenominational Foreign Missionary Society of New Jersey, Inc.*, No. 01-22-00004-4-92, Tax Court, December 1, 1993.

In this case, Ventnor City, dissatisfied with Atlantic County Board of Taxation's judgment granting tax exemption to four properties owned by International Foreign Missionary So-

ciety of New Jersey, Inc., IFMS, a nonprofit medical mission, appealed to the Tax Court.

IFMS was organized for general and medical missionary purposes, an educational purpose, and to perform benevolent and charitable activities. However, its Certificate of Incorporation states in part: "the purpose for which this corporation is formed is to establish and maintain homes or residences...for the free use of missionaries on temporary leave of absence from their work." The Chairman of the Admissions Committee of IFMS testified that IFMS was involved in no charitable or religious activities but only owned the subject properties which were used by other charitable and religious organizations.

The subject properties have a unique tax history with Ventnor City. From 1922 to 1990, the property owners enjoyed tax exemption. In 1966, Ventnor City contested the exemption. IFMS was granted a stipulation which was later followed by an "arrangement" where annual contributions for services rendered were made by the property owner to the city. IFMS contended that the city was bound to continue granting tax exempt status as IFMS had prior exempt status. The court held that each annual assessment of property for tax purposes is separate and distinct from the assessment for any other year.

Defendant then tried to prove how IFMS satisfied the moral and mental improvement and the charitable purposes provisions of N.J.S.A. 54:4-3.6. The court found that a corporation organized for the purpose of providing residences for people on temporary leave from their work cannot be said to be organized exclu-

sively for exempt purposes.

It stated further: "People on leave from their work are not performing their work, and hence are not engaging in any religious or charitable activities or in any activities for the moral and mental improvement of men, women and children."

The court determined that for IFMS to promote the welfare of its members was benevolent not charitable. Also, IFMS did not meet the "reasonably necessary" test used in determining whether property is "actually and exclusively used" for a tax exempt purpose as in the statute.

In Our Legislature **Alcoholic Beverage Tax**

Promotion of More Effective Production and Sales for Small Producers of Home-Grown Products – P.L. 1993, c.372 (signed into law on January 10, 1994) changes the laws governing New Jersey farm wineries. Under the current law, farm wineries in New Jersey may hold a special license to sell their wines for consumption off the premises at two locations in addition to the farm winery. This bill increases the number of non-farm outlets to five and permits the sale of wines for consumption on the premises.

The bill also permits two or more farm or plenary winery licensees to own a one-per-county salesroom which may offer wines from any farm winery in the State for consumption on or off the licensed premises. The bill also clarifies that "product" means any wine that is produced, blended, fortified or

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treated by the plenary winery licensee on its licensed premises situated in this State; and to "grandfather" those plenary winery licensees who would not meet this change in the definition.

This bill is effective immediately.

Corporation Business Tax

Corporations Licensed as Insurance Companies – P.L. 1993, c.338 (signed into law on December 27, 1993) clarifies that corporations which are licensed as insurance companies under the laws of another state, including eligible surplus lines insurers, are exempt from taxation under the Corporation Business Tax Act (1945). It is retroactive to taxable calendar or fiscal accounting years commencing after December 31, 1960. The current exemption for insurance companies under the Corporation Business Tax Act (1945) was intended to apply to all insurance companies doing any kind of business in this State.

This bill is effective immediately.

Financial Business Tax

Repeal – P.L. 1993, c.295 (signed into law on December 22, 1993) repeals the Financial Business Tax Law (1946), effective January 1, 1994.

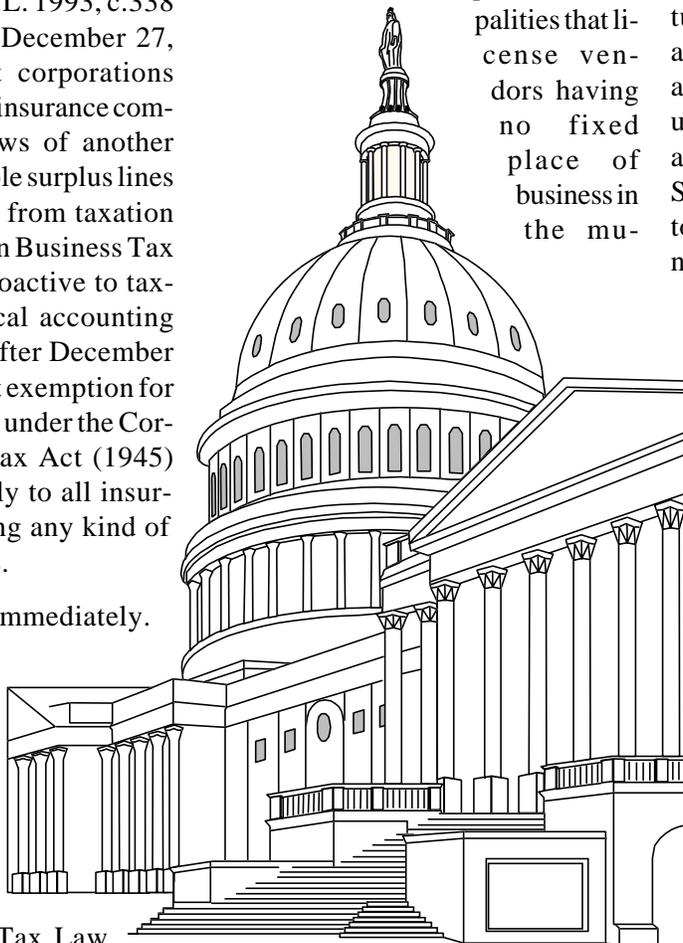
Sales Tax

New Registration Regulations for Businesses – P.L. 1993, c.274 (signed into law on November 24, 1993) requires that a person file a certificate of registration with the Division of Taxation at least *15 business days before commencing business or*

opening a new place of business in this State. This requirement applies both to persons who have a regular place of business in this State, as well as to those who do not.

The bill also provides for improved enforcement of Sales Tax collection by vendors, especially those who do not have a regular place of business in the State.

In addition, this bill requires municipalities that license vendors having no fixed place of business in the mu-



nicipality to require submission of a copy of a valid New Jersey Certificate of Authority to collect Sales Tax as a condition of the issuance of a license.

This bill is effective immediately. However, the new registration requirement is effective on the first

day of the third month following enactment (February 1, 1994).

50% Sales and Use Tax Exemption for Certain Counties – P.L. 1993, c.373 (signed into law on January 10, 1994) provides a 50% sales and use tax exemption, except for motor vehicles, alcoholic beverages and cigarettes, in certain counties in the State which contain an entrance to an interstate bridge or tunnel connecting New Jersey with a state that does not impose a sales and use tax or imposes a sales and use tax at a rate at least five percentage points lower than the rate in this State. This exemption applies only to vendors operating places of business at which items are regularly

exhibited and offered for retail sale and which are not utilized primarily for the purpose of catalogue or mail order sales. The State Treasurer shall annually designate the county or counties in which this exemption applies.

This bill will become effective on July 1, 1994.

State Tax Uniform Procedure

Technical Revision – P.L. 1993, c.331 (signed into law on December 23, 1993) reduces the interest rate on late payments of tax from the prime rate plus five percentage points to the prime rate plus three percentage points and specifies the method for the calculation of the interest rates of the tax laws.

This bill is a technical revision, correcting an interest rate that was omitted from P.L. 1992, c.175, the

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Taxpayers' Bill of Rights. That law made various tax administration provisions uniform for the taxes collected by the Division of Taxation, including the rates of interest charged for deficiencies and paid on refunded overpayments of tax. This bill brings the treatment of late payments of tax into conformity with the treatment of assessed deficiencies under the State Tax Uniform Procedure Law. This bill clarifies the calculation of the assessment and compounding of penalty interest and the interest to be paid on refunds of overpayments and makes technical changes to legal references recently included in the State Tax Uniform Procedure Law by the Taxpayers' Bill of Rights.

This bill is effective immediately, with most provisions retroactive to July 1, 1993.

Urban Enterprise Zones

Additional Zones Named – P.L. 1993, c. 367 (signed into law on January 5, 1994) amends the New Jersey Urban Enterprise Zone Act to allow for the designation of 10 additional enterprise zones from among those areas of qualifying municipalities determined to be eligible. This increases from 10 to 20 the number of zones that can exist at any one time. At least 6 of the 10 additional enterprise zones authorized are to be located in counties in which enterprise zones have not previously been designated. The seven municipalities within these six designated enterprise zones may be entitled to an exemption to the extent of 50% of the tax imposed under the "Sales and Use Tax Act."

Under the bill, new enterprise zones will be established in Perth Amboy, Passaic, Paterson, Phillipsburg, Lakewood and Asbury Park-Long Branch.

This bill becomes effective on April 1, 1994.

Business Tax Workshops

The New Jersey Division of Taxation and the Internal Revenue Service continue to present Small Business Tax Workshops at locations throughout the State. These seminars are designed to acquaint new entrepreneurs with information on registration, employer responsibilities, sales tax, filing procedures and other tax topics.

To attend a workshop, complete the postcard found in the New Jersey Tax Registration Booklet (Publication REG-P) and send it to the New Jersey Division of Taxation, Taxpayer Services Branch, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269. You will receive a reservation form from the IRS listing the dates and locations on the current workshop schedule. You may also request a reservation form by calling the New Jersey Tax Hotline at (609) 588-2200, or the IRS at 1-800-829-1040.

The Spring Schedule for the joint workshops is:

Date	Location Area
April 28	Monmouth County
May 6	Camden County
May 12	Middlesex County
June 2	Monmouth County

New Jersey Tax Assistance

The New Jersey Division of Taxation offers the public a variety of assistance that may be accessed by calling New Jersey Tax Talk at 1-800-323-4400 (Touch-tone phones from within New Jersey only).

New Jersey Tax Talk:

- *Recorded tax information* on many topics including:
 - Gross Income Tax
 - Sales Tax
 - Notices of Delinquency and Adjustment
 - Business Registration
 - Homestead Rebate
 - Benefits for Seniors
 - Property and Inheritance Taxes
 - Form Requests
 - Addresses of State Tax Offices
 - Taxpayers' Bill of Rights
- *Order forms and publications*, including the following Tax Topic Bulletins:
 - GIT-1** Pensions and Annuities
 - GIT-2** IRA Withdrawals
 - GIT-3** Credit for Taxes Paid to Other Jurisdictions
 - GIT-4** Filing Status
 - GIT-5** Exempt Obligations
 - GIT-6** Part-year Residents
 - GIT-7** Military Personnel
 - GIT-8** Estimating Your New Jersey Tax
- *Information on 1993 New Jersey Income Tax Refunds from ARIS* (Automated Refund Inquiry System). You may call ARIS Monday through Friday from 8:00 a.m. to 7:00 p.m. and 9:00 a.m. to 3:00 p.m. on Saturdays. You will need to have the social security number (yours or your spouse's, whichever appears first on the return) and the exact amount of your refund (no cents).

State Tax Regional Offices

The New Jersey Division of Taxation has eight regional offices located throughout the State. These offices are staffed by Taxpayer Services personnel who are there to assist taxpayers with billing notices and unresolved problems.

The offices are well stocked with informational materials such as brochures and Tax Topic Bulletins. The public may also obtain New Jersey tax forms at the offices. A new entrepreneur may register a business. The Trenton office, located in the lobby of the Taxation Building, is the *only*

regional office which will accept payments for New Jersey taxes.

Certain offices are being relocated. We will announce the new locations when they occur. Remember, for a list of our current Regional Office locations, call Tax Talk at 1-800-323-4400 (Touch-tone phones from within New Jersey only).

New Column

We are happy to announce a new feature, *From the Director's Desk*, will appear in the *New Jersey State Tax News* beginning with this issue. This column will include items that the Director would like to call to your

attention, like new information and events, and technical clarifications on New Jersey taxes.

We will also be pleased to provide answers to interesting and unusual State tax questions. Of course, this column will not be a forum to resolve specific tax problems, but rather a place to exchange ideas and information.

We will not be able to return your letters, and we reserve the right to print answers to questions which we believe our readers will find most useful. We welcome your participation. Mail your letters to the address that appears in the column.

from the director's desk

Late Breaking News

Minimum Income Threshold

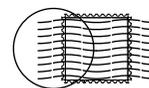
On March 16, 1994, Governor Whitman signed into law P.L. 1994, c.8, which increases the minimum taxable income for Gross Income Tax. For single individuals, estates and trusts, and married couples filing jointly, the income threshold is increased from \$3,000 to \$7,500. For married persons filing separately, the threshold is increased from \$1,500 to \$3,750. This law is effective for 1994 and subsequent tax years.

Reduced Sales Tax in Salem County

Effective July 1, 1994, businesses located in Salem County may collect sales and use tax at a 50% reduction on most retail sales. Under P.L. 1993, c.373, Salem County is the only county in New Jersey currently designated for this sales tax reduction. Detailed information is being sent to county vendors.

Send your questions to:

From the Director's Desk
New Jersey State Tax News
NJ Division of Taxation
CN 281
Trenton, NJ 08646-0281





april 1994

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

April 11

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

April 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending December 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

April 15 - continued

- NJ-500 Gross Income Tax**—Employer's semi-monthly return
- NJ-1040 Gross Income Tax**—Resident return for calendar filers
- NJ-1040NR Gross Income Tax**—Nonresident return for calendar filers
- NJ-1041 Gross Income Tax**—Fiduciary return for calendar filers

April 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers,

continued

continued

April 20 - continued

- representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

April 25

- PPT-40 Petroleum Products Gross Receipts Tax**—Quarterly rtn.

may 1994

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
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29	30	31				

May 2

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

May 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

May 16

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending January 31
- CBT-150 Corporation Business Tax**—Installment payment of esti-

continued

May 16 - continued

- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

May 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

continued

May 20 - continued

- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

May 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

May 31

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

june 1994

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5	6	7	8	9	10 	11
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19	20 	21	22	23	24	25
26	27 	28	29	30 		

June 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

June 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending February 28
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

*continued***June 20**

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

*continued***June 20 - continued**

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

June 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

June 30

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

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