

# New Jersey State Tax news

Volume 36, Number 3  
Fall 2007

A Quarterly Newsletter

ISSN 1073-6808



## inside

<i>property tax relief checks</i> .....	1
<i>PAMS implementation</i> .....	1
<i>estate tax</i> .....	2
<i>small business workshops</i> .....	2
<i>streamlined sales tax</i> .....	3
<i>tax assessors' calendar</i> .....	3
<i>interest rate 11.25%</i> .....	4
<i>criminal enforcement</i> .....	4
<i>tax briefs</i> .....	5
<i>sales tax information</i> .....	8
<i>enforcement summary stats</i> .....	10
<i>in our courts</i> .....	11
<i>in our legislature</i> .....	13
<i>tax calendar</i> .....	13
<i>important phone numbers</i> .....	14

## 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](http://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.

*continued on page 2*



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](http://www.state.nj.us/treasury/taxation/pamsvol/pams.shtml)

For questions, contact Dana Max at [dana.max@treas.state.nj.us](mailto: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/](http://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](http://www.state.nj.us/treasury/taxation/smallbus.shtml) □

## ***New Jersey State Tax*** ***news***

is published quarterly by the:

**New Jersey Division of Taxation  
Technical Services  
Information & Publications Branch  
PO Box 281  
Trenton, NJ 08695-0281**

The *State Tax News* is published on the Division of Taxation's Web site at:

[www.state.nj.us/treasury/taxation/publnews.shtml](http://www.state.nj.us/treasury/taxation/publnews.shtml)

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:**

Maureen Adams

**News Coordinators for This Issue:**

<i>Audit</i>	Peggy Cook
<i>Compliance</i>	Marita Sciarrotta
<i>Crim. Investigation</i>	Lee Roach
<i>Property Admin.</i>	Holly Reinson
<i>Legislation</i>	John Kelly

**Contributors:** Pamela Allen, Beth E. Berniker, William G. Bittner, Diane Bryer, Thaedra Chebra, Eric Friedmann, Barry Fulmer, Susan C. Greitz, Elizabeth J. Lipari, Dana Max, John M. Metzger, Trygve Myklebust, Michael Mullane, Maryanna Paolinie, Anthony Roccia, and Fred Wagner.

**Staff:** J. Donald Byrnes, Lauren D. Higgins, Terry A. McWilliams, Sara E. Murphey, Erin J. Toth, Kelly J. Warboys.

**Editor:** Sheri B. Silverstein



**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](http://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.

*continued on page 4*



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.

*continued on page 6*



## tax briefs - from page 5

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



*tax briefs - from page 6*

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

*continued on page 8*

tax briefs - from page 7

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

*continued on page 9*

## 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](#)



tax briefs - from page 8

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

*continued on page 10*



tax briefs - from page 9

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](http://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](http://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.,

*continued on page 11*

## 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/jdgdisc1.shtml](http://www.state.nj.us/treasury/taxation/jdgdisc1.shtml)

*tax briefs - from page 10*

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.

*continued on page 12*

*in our courts - from page 11*

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. □

**New Jersey tax forms at your fingertips!**  
From your fax machine's phone, dial

**609-826-4500**

**NJ TaxFax**

**NJ Tax Forms & Publications**  
**24 Hours – 7 Days a Week**





## 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](#)

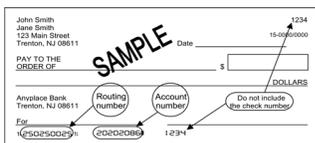
- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2007](#)      [2008](#) □

## Pay NJ Taxes Electronically

### Electronic Check (E-Check)

[www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation)



Make a payment directly from your bank account

### Credit Card\*

1-800-2PAYTAX

[www.officialpayments.com](http://www.officialpayments.com)



\* Fee of 2.49% of tax payment applies.



*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 ..... 609-292-7221
- Motor Fuels Tax  
Refunds ..... 609-588-3688
- Public Utility Tax ..... 609-584-4337