

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

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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.

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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



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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](#).



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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.

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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%

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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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		



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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.

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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.

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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

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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.

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

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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