

# New Jersey State Tax news

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## Homestead Benefit Applications Mailed

The Division of Taxation mailed 2012 homestead benefit applications to New Jersey homeowners beginning in early October. Below is a schedule of the homeowner benefit application expected delivery dates by county. Homeowners who filed last year's homestead benefit application online and indicated that they wanted to receive this year's application electronically received an email containing instructions for downloading their 2012 application packet. These email notifications were also sent out by county according to the delivery schedule below.

To be eligible for the 2012 homestead benefit, an applicant must be a New Jersey resident who owned and occupied a home in this State that was their principal residence on October 1, 2012, paid property

taxes on that home, and meets certain income limits. For the 2011 homestead benefit, the income limit for homeowners under age 65 and not blind or disabled was \$75,000 (\$150,000 for homeowners age 65 or older or blind or disabled). However, the State Budget (that must be adopted by July 1, 2014) may affect the homestead benefit eligibility and amounts for 2012. Applicants can file an application regardless of their income, but if the amounts exceed the limits determined by the State Budget, the application will be denied.

The amount of the benefit is based on an applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or eligible to claim an exemption as blind or disabled for tax year 2012. Amounts received under the Homestead Benefit Program are in addition to the State's other property tax

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County	Delivery Expected to Begin
Camden, Hudson, Hunterdon, Salem, Somerset	Thursday, Oct. 10
Bergen, Burlington, Cumberland, Warren	Saturday, Oct. 12
Morris, Ocean	Tuesday, Oct. 15
Atlantic, Essex, Monmouth, Sussex	Friday, Oct. 18
Cape May, Union	Saturday, Oct. 19
Gloucester, Mercer, Middlesex, Passaic	Tuesday, Oct. 22

*homestead applications- from pg. 1*

relief programs. The total amount of all property tax relief benefits received (homestead benefit, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant's principal residence for the same year.

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

The filing deadline for 2012 Homestead Benefit Applications has been extended to December 31, 2013. The original filing deadline was November 22, 2013. More information on the homestead benefit, including eligibility requirements is available on the Division of Taxation's [website](#). □

## Tax Rates for Form NJ-1080C

The New Jersey Administrative Code at N.J.A.C. 18:35-5.2 requires income taxation on the New Jersey Income Tax Nonresident Composite Return (Form NJ-1080C) at the highest rate. However, for tax years beginning on or before December 31, 2012, the Division will continue to allow the use of two rates in order to encourage nonresident individuals to elect to participate in a composite return.

Entities preparing and filing the NJ-1080C return for participating

taxpayers with New Jersey sourced income from the entity of less than \$250,000 will apply the 6.37% rate. For participating taxpayers with New Jersey sourced income of \$250,000 or more, entities will apply the highest tax rate, which was 10.75% in 2009 and 8.97% in 2010, 2011, and 2012.

As a result of the review of the composite return policy, the regulation at N.J.A.C. 18:35-5.2 will be enforced for tax years beginning on and after January 1, 2013. Thus, all entity members who elect to participate in the composite return filing will be required to pay tax at the highest rate.

Participation in a composite return is elective. If the nonresident individual does not believe that the benefits derived from the composite return outweigh the additional tax paid, they can file an individual nonresident return, Form NJ-1040NR.

As a result of the enforcement of the regulation, some filing entities may receive a notice for failure to make the required estimated payments. If the filing entity believes the correct estimated payments were remitted using the two-tiered tax rate calculation, they should write to the New Jersey Division of Taxation, ITAB – Composite Return, PO Box 288, Trenton, NJ 08646-0288. □

## Change in Email Policy

New Jersey is committed to protecting the privacy of taxpayers' information. In an effort to protect taxpayers' privacy and comply with State confidentiality laws, the Division of Taxation has changed its policy on the kind of information we

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## New Jersey State Tax news

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

**Division of Taxation  
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*e-mail policy - from page 2*

provide by email. We will no longer provide confidential personal and financial information. This means that we cannot provide any information about the status of income tax refunds, Homestead Benefits or Property Tax Reimbursements by email. No confidential information, such as Social Security or Federal Tax Identification numbers, liability or payment amounts, dates of birth or bank account numbers should be included in email sent to the Division.

Taxpayers who want to discuss confidential information, such as the status of their income tax refund, should call 609-292-6400, write to New Jersey Division of Taxation, PO Box 281, Trenton, NJ 08695-0281, or visit one of our Regional Information Centers. A list of Regional Information Centers is available on our [website](#).

This new policy also extends to email inquiries from tax practitioners. Practitioners can also call 609-292-6400 or inquire about clients' accounts by writing to New Jersey Division of Taxation, PO Box 281, Trenton, NJ 08695-0281. When submitting an account inquiry by mail, the practitioner must include a completed Appointment of Taxpayer Representative (Form [M-5008-R](#)) signed by the taxpayer. □

### **Identity Theft**

Identity theft is one of the fastest-growing crimes in the United States. Most people have heard about identity thieves targeting credit card companies and financial institutions, but criminals are also using personal information to file tax returns and

acquire fraudulent refunds. Often taxpayers don't even realize that their information has been compromised until they receive a notice about their tax account from the Division of Taxation or the IRS.

If a taxpayer suspects that their identity has been used fraudulently or believes that they're at risk due to a lost or stolen wallet or questionable credit card activity or credit report, the taxpayer should file an Identity Theft Declaration, [Form IDT-100](#), so the Division of Taxation can take immediate steps to mark the tax account and identify any questionable activity.

When filing Form IDT-100 taxpayers must include the following:

- Statement explaining the problem and how the taxpayer became aware of it; and
- Copy of a government issued ID such as a driver's license, U.S. passport, U.S. military ID card, or other valid ID issued by a State or Federal agency; and
- Address verification for the tax year(s) in question such as a copy of a utility bill, lease agreement, or bank statement; and
- Copy of any notice received from the New Jersey Division of Taxation, if applicable.

Identity theft may affect a taxpayer's current, past, or future tax records and the Division is committed to identifying and stopping tax identity theft wherever possible.

Affected taxpayers also need to take steps with the IRS to safeguard their Federal tax records. Information is available online at [www.IRS.gov](http://www.IRS.gov).

Additional identity theft resources are available on the Division's [website](#). Taxpayers can also contact the Customer Service Center at 609-292-6400 for assistance. □

### **Taxation Plans to CATCH Tax Cheats**

Do you know of a person or business that is not paying their fair share of New Jersey taxes? Reporting to the Division is now faster, easier, and more convenient. The Division's CATCH (Citizens Against Tax Cheats) Program's new online form, available 24 hours a day, 7 days a week, allows taxpayers to report possible tax avoidance issues electronically. The Division forwards reports that have merit to the appropriate Branch within Taxation or to another State agency for follow-up. The referrals often lead to the discovery of unreported tax liabilities and collection of unremitted payments.

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### **Interest 6.25%**

The interest rate assessed on amounts due for the period January 1, 2014 – December 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

*CATCH tax cheats - from page 3*

Examples of businesses or individuals who may be in violation of New Jersey tax laws include:

- Retailers who do not charge sales tax when they should;
- Employers who do not withhold payroll taxes;
- Businesses that neither charge the required taxes nor pay their business and personal taxes; and
- Individuals who are dishonest in completing their New Jersey tax returns or do not file at all.

Each year millions of New Jersey tax dollars remain uncollected. To help identify and locate tax avoiders, the Division encourages citizens to submit the CATCH Program's [online form](#) to report businesses or individuals who may be cheating on their New Jersey taxes. Citizens can also mail information about the suspected individual or business to the New Jersey Division of Taxation, PO Box 195, Trenton, NJ 08695-0195, or call the Division's Customer Service Center at 609-292-6400. The report should contain as much of the following information as possible about the suspected tax cheat:

- Name, address, and telephone number.
- Social Security Number or Taxpayer Identification Number.
- Tax(es) and tax year(s) involved.
- Other information regarding the complaint.

Complainants should also include their email address and phone number for follow-up purposes, but they do not have to give their name. All information provided remains confidential. □

## **LOCAL PROPERTY TAX**

### **Tax Assessors' Calendar**

#### **October 1 (on or before)–**

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

#### **October 1–**

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

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

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### **Update:**

#### **NJ/NY Cooperative Interstate Tax Program**

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from pg. 4

property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.

**November 1 (on or before)–**

For Monmouth County, see *Monmouth County Demonstration Program* [below](#).

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.

**November 15–**

For Monmouth County, see *Monmouth County Demonstration Program* [below](#).

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

**December 1 (prior to)–**

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

**December 1 (on or before)–**

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.
- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

**December 20 (on or before)–**

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

**December 31 (on or before)–**

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

**Monmouth County Demonstration Program**

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by

using technology-driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

**November 1–**

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).
- Revaluation assessment notices mailed by assessor in towns undergoing revaluation (pretax year).

**November 15–**

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

**Criminal Enforcement**

Criminal enforcement over the past several months included:

- On May 6, 2013, U.S. Magistrate Judge Madeline Cox Arleo sentenced singer Lauryn Hill to three months in Federal prison for failing to pay income taxes. In the hours before sentencing, Hill paid more than \$970,000 in back taxes and penalties to the Federal government and the State of New Jersey. Ms. Hill was ordered to report to prison on July 8, 2013.
- In early May, the Office of Criminal Investigation (OCI), Excise

**Public Auction Information**

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



*criminal enforcement - from pg. 5*

Tax Branch, and Division of Revenue assisted Wawa, Inc. with a corporate restructuring, which included an issuance of a cigarette distributor license to their newly formed company, Wawa Procurement, Inc. Though the process was partially handled as a new license, the corporate officers and performance bond were the same, allowing the Division to consider the transaction a transfer as well. Because of these factors, Wawa was granted permission to use their remaining cigarette tax stamps purchased with the former license while ordering new stamps with the new license. As Wawa is a major cigarette retailer, this prevented a brief interruption of revenue for both the State and the company.

- On May 24, 2013, Craig L. Trabucco agreed to a consent judgment for four counts of failure to file New Jersey State income tax returns for tax years 2007–2010. On June 20, 2013, Mr. Trabucco was sentenced to five years’ probation, to run concurrently, and was ordered to pay restitution of \$128,140.83. Helen M. Trabucco entered the Pre-Trial Intervention Program. This case originated from an investigation of Mr. Trabucco by the New Jersey State Police Cargo Theft Unit and encompassed tax years 2003–2010.
- At the request of the Atlantic City Tourism District, OCI conducted law enforcement operations there, which were coordinated with the Atlantic City Police Department and New Jersey Division of Consumer Affairs. They conducted inspections of 36 businesses and seized contraband from 12

locations. There were 39.4 cartons of contraband cigarettes seized along with 11,332 untaxed cigars, 131 “loosies” cigarettes, 42 packages of pipe tobacco, 13 cans of chewing tobacco, 23 hookah packages, 428 cans of Indian chewing tobacco, 476 counterfeit DVDs, \$28,035 in U.S. currency, and numerous invoices of cigarette and tobacco products purchased. A DVR security surveillance system, 18 Family First cards, and an ATM machine with a printout of receipts totaling \$30,730 in U.S. currency were also seized.

- An 18-month joint investigation conducted by the Monmouth County Prosecutor’s Office, along with various State agencies including the Department of the Treasury, Office of Criminal Investigation, culminated on June 24, 2013, with the execution of search and arrest warrants, arrest of 22 individuals, seizure of a dozen vehicles and more than \$500,000 in cash, and the freezing of financial accounts used to facilitate criminal activities, including money laundering and the

sale and distribution of marijuana and prescription drugs.

- On July 5, 2013, Anthony Foti Jr. of Ogdensburg, New York, pled guilty to the charge of failure to remit sales and use taxes while owner of Wheels Are Us Auto Sales. Mr. Foti failed to remit \$37,211 in sales tax collected from his customers. A consent judgment was entered in favor of the Division of Taxation for \$60,610.12.
- On July 25, 2013, OCI received a check from the U.S. Department of Justice in the amount of \$500,105 as the result of a successful joint investigation between the U.S. Department of Justice; Bureau of Alcohol, Tobacco, Firearms and Explosives; North Carolina Department of Revenue; and OCI. The check represents the amount of tax that would have been due to the State of New Jersey on contraband cigarettes sold in the course of the joint investigation. Omar Nijim was sentenced on December 13, 2011, to 33 months in prison. On January 12, 2012, Emad Hasan Tawiq Wshah and

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## **Enforcement Summary Statistics** **Third Quarter 2013**

Following is a summary of enforcement actions for the quarter ending September 30, 2013.

	<b>Number</b>	<b>Amount</b>
• Bank Levies	941	\$ 5,206,618
• Certificates of Debt	3,800	54,570,757
• Seizures	112	803,173
• Auctions	5	117,846
• Warrants of Satisfaction	3,951	



criminal enforcement - from pg. 6

Nabil Nafiz Mustafa received sentences of 26 and 20 months, respectively. The defendants are jointly and severally liable for payment of restitution. All the defendants remain incarcerated.

□

## Tax Briefs

### Gross Income Tax

**Qualified Conservation Contribution Deduction for Business Entities** – The Division published guidance in the **Winter 2001** (Vol. 30, No. 4) issue of the *State Tax News* regarding the qualified conservation contribution deduction pursuant to N.J.S.A. 54A:3-6. The article stated that “The Legislature made no provisions in the amendment for S corporations or partnerships to flow this deduction out to their shareholders or partners.”

This statement was not meant to prohibit eligible partnerships or S corporations from taking the qualified conservation contribution deduction as a charitable deduction at the entity level, thereby reducing the individual taxpayer’s distributive share of partnership income or net pro rata share of S corporation income in accordance with *Sabino v. Director, Division of Taxation*, 296 N.J. Super 269, 686 A.2d 1197 (Appellate Division 1996) and *Adler v. Director, Division of Taxation*, 20 N.J. Tax 537 (Tax 2003).

The individual taxpayer may not take the qualified conservation contribution deduction again on his or her personal income tax return as doing so would result in a double benefit.

### Sales and Use Tax

**Fund for Ill Child and Exempt Organization Status** – A taxpayer asked the Division whether a fund established for the benefit of a child recently diagnosed with a serious illness could obtain status as an organization exempt from sales and use tax.

The Division responded that a fund established to benefit one particular individual or family does not qualify as a nonprofit organization exempt from sales and use tax. See N.J.S.A. 54:32B-9(b) and N.J.A.C. 18:24-9.6.

Persons involved in fundraising activities in New Jersey should contact the New Jersey Office of Charities Registration at 973-504-6215 to ensure that their activities are in compliance with State requirements.

**Purchases of Gym Equipment by a Health Club** – A taxpayer who operates a health club and collects sales tax from members on charges for membership fees inquired as to whether he must pay sales or use tax on purchases of gym equipment to be used by the members.

The Sales and Use Tax Act imposes tax on “charges in the nature of initiation fees, membership fees or

dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in this State, except for membership in a club or organization whose members are predominantly age 18 or under.” N.J.S.A. 54:32B-3(h). In addition, the Act imposes tax on sales of tangible personal property unless a valid exemption exists. N.J.S.A. 54:32B-3(a). Therefore, purchases of treadmills and other gym equipment by a health club or gym are subject to tax.

Because sales tax is a transactional tax, the fact that a taxpayer is required to collect sales tax from members on charges for membership fees has no effect on its obligation to pay sales tax on purchases of gym equipment. These are two separate transactions and tax is imposed under different sections of the law and on different taxpayers. □

## In Our Courts

**Corporation Business Tax Regulation Subsequent to Division Notice** – *Shree Ram Investments, Inc. v. Director, Division of Taxation*, decided August 9, 2013, Appellate Division, Docket No. A-0600-11T4.

In May 2001, Shree Ram Investments, Inc. (SRI) filed an election to be treated as an S corporation in New Jersey. The Division returned

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## Current Amnesty Programs

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

Arkansas

9/01/13 – 12/31/13

<http://www.sos.arkansas.gov/BCS/Pages/FTAmnesty.aspx>

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the election form to SRI because it had not registered as a New Jersey or foreign corporation and stated that SRI could apply for S corporation status once it had registered. SRI registered and obtained its certificate of authority but did not refile its S corporation election. Regardless, SRI filed its New Jersey returns as an S corporation commencing in 2001 and through 2005.

In March 2006, the Division issued a notice of deficiency for tax years 2003 and 2004. In May 2006, SRI filed its S corporation election with the Division and requested retroactive S corporation status. The Division granted S corporation status as of January 1, 2006, but denied retroactive status and sent a notice to SRI. The notice included information about the taxpayer's protest and appeal rights, the option for filing a Claim for Refund of Paid Audit Assessment, Form A-1730, and the requirements therefor.

In February 2007, SRI paid the deficiency less the penalties that the Division had abated at the taxpayer's request. Thereafter, SRI filed Form A-1730 contending that it had filed an S corporation election in May 2001. In June 2007, the Division denied the refund claim on the grounds that the entire assessment had not been paid because the penalties were abated and that SRI neither timely protested nor appealed its initial May 2001 denial of S corporation election status.

On September 4, 2007, the Division proposed a regulation to authorize retroactive S corporation status. On September 24, 2007, SRI filed a complaint with the Tax Court

challenging the denial of the refund. The proposed retroactive S corporation status regulation was adopted and became effective as of January 7, 2008 (N.J.A.C. 18:7-20.3).

The Tax Court granted summary judgment to the Division on the same basis that the Division denied the Form A-1730 refund claim. The Court added that the denial was proper because there was neither a statute nor regulation authorizing retroactive S corporation elections at the time.

SRI appealed to the Appellate Division on the grounds that it was entitled to retroactive S corporation status based on the regulation that was adopted after they appealed the case to Tax Court. The Appellate Division found that this issue was not properly before the Court because the Division did not first address this claim. The Appellate Division stated: "We are not aware of any authority for a court to determine, in the first instance, whether a taxpayer is entitled to a benefit available pursuant to a newly-adopted regulation before the taxpayer has sought that benefit in the Division." Therefore, the Appellate Division did not consider N.J.A.C. 18:7-20.3 and affirmed the Tax Court's opinion.

**Gross Income Tax**  
**S Corporation Accumulated Adjustment Account** – *Cohen, Morris et al. v. Director, Division of Taxation*, decided May 23, 2013, Tax Court, Docket No. 003854-2009.

Morris Cohen (Cohen) was a New Jersey resident who was a 25% shareholder in an S corporation known as Conway Stores. During tax year 2003, Cohen received a distribution of \$554,292 from

Conway Stores that he did not report as taxable because he maintained a positive balance in the Accumulated Adjustment Account (AAA) that was in excess of the distribution. During an audit, the Division determined that this distribution was a taxable dividend pursuant to N.J.S.A. 54A:5-14 because the AAA contained a negative balance at the time of the distribution.

At issue was whether the New Jersey AAA should be reduced by losses of the S corporation when the losses are not allowed for New Jersey gross income tax purposes. The Division determined that the AAA balance was negative \$356,395, whereas Cohen claimed that the AAA balance was a positive \$575,988. The difference resulted from Cohen's having used a beginning balance in 1998 (negative \$1,073,648) that was different from the 1997 ending balance (negative \$2,006,031). This difference of \$932,383 resulted in a positive \$575,988 AAA balance for tax year 2003 prior to the distribution. The Tax Court decided that the Division's calculation was correct because Cohen did not carry the 1997 ending balance forward to the 1998 beginning balance and provided no proofs as to the discrepancy.

The Court determined that the 2003 AAA ending balance was a negative amount and that the entire distribution was a taxable dividend pursuant to N.J.S.A. 54A:5-14.

Cohen has appealed this decision to the Appellate Division.

**Settlement Payments, Refunds, and Claim of Right Doctrine** – *Joseph J. Murphy and Diane Fitzmyer-Murphy v. Director, Division of Taxation*, decided

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June 12, 2013, Appellate Division, Docket No. A-0111-12T3.

Mr. Murphy was an officer and employee of Refco, Inc. (Refco). On their 2005 New Jersey gross income tax return, Form NJ-1040, the Murphys reported capital gain income from the sale of a portion of his stock interest in Refco in the amount of \$4,142,000 and dividend income of \$381,558 from the public sale of Refco stock.

Refco later filed a voluntary petition for bankruptcy. In 2008 Mr. Murphy paid \$10 million to the bankruptcy trustee and the Federal government to settle any fraudulent and preferential transfers and forfeiture action claims against him.

In June 2009, the Murphys amended their 2005 NJ-1040 by filing an NJ-1040-X to report a change in income related to sale of the Refco stock. The Murphys claimed that the \$10 million payment represented repayment of 2005 reported income and sought a tax refund. The Division denied the refund request and advised that any deductions associated with repayment had to be claimed in the year of repayment.

The Murphys filed a complaint in Tax Court. The Court decided that the Murphys were not entitled to a refund because they properly included the income on the 2005 return

(the year in which it was received), and there were no inaccuracies in the original filings. The Murphys appealed this decision claiming that the Tax Court erroneously relied on the Federal claim of right doctrine and that their amended return properly reported a change in income.

The Appellate Division opined that the sole issue was whether the Murphys' refund request was based on an error in the original income reported or an error in the calculation of taxes paid on their 2005 NJ-1040. Noting that the \$10 million settlement was far in excess of the 2005 reported capital gain income involving Refco, the Appellate Division found that it was impossible to determine from the evidence presented whether the settlement related to the income activity reported in 2005 or any amount thereof. Furthermore, there was no legal authority presented to support the argument that a settlement was a decision to forfeit any portion of income. Therefore, the Appellate Division affirmed the Tax Court concluding that the 2008 settlement payment was not a basis to recalculate their 2005 taxable income.

**Nonbusiness Bad Debt** – *Harlan W. Waksal and Carol Waksal v. Director, Division of Taxation*, decided August 13, 2013, New Jersey Supreme Court, Docket No. A-103-11.

In 2002, Harlan Waksal loaned his brother \$14.7 million and executed

a promissory note. When it became clear by early 2005 that the brother would not be able to make any payments on the loan, the plaintiffs (Waksals) reported a short-term capital loss from the loan on their 2004 Federal income tax return. On their 2004 New Jersey gross income tax return, the Waksals reported a loss from “the sale, exchange or other disposition of property” and used that loss to offset capital gains realized from other property. Pursuant to an audit, the Division denied the loss and issued a notice of deficiency for gross income tax in the amount of \$1.3 million plus interest and penalties.

The Waksals appealed to the Tax Court. The Tax Court held that the failure to repay the loan did not constitute a “sale, exchange, or other disposition of property” within the meaning of the New Jersey Gross Income Tax Act and upheld the deficiency assessment. The Appellate Division affirmed.

The New Jersey Supreme Court also affirmed, finding that regardless of their Federal tax reporting, the worthless nonbusiness debt is not a “sale, exchange or other disposition of property” for New Jersey gross income tax purposes. The Court observed that the New Jersey Gross Income Tax Act does not incorporate every provision of the Internal Revenue Code and, in fact, there is no New Jersey provision authorizing a deduction for worthless nonbusiness debt. The Court also found that neither the New Jersey Gross Income Tax Act nor the New Jersey Supreme Court’s holding in *Koch*, 157 N.J. 1 (1999), concerning “federal methods of accounting,” required application

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of Federal loss provisions to the nonbusiness bad debt at issue.

**Local Property Tax Assessment Appeal and Chapter 91 Request** – *Paramus Associates, LLP/Home Depot, USA, Inc., v. Borough of Paramus*, decided August 2, 2013, New Jersey Tax Court, Docket No. 002755-2012.

The plaintiff, Paramus Associates, LLP/Home Depot, USA, Inc., disputed the municipal assessor's dismissal complaint for failure to comply with Chapter 91. Paramus Associates, LLP, owned property listed as Block 5201, Lot 3 and Lot 8 on the tax map of the Borough of Paramus. Lot 8 is the site of the retail store and Lot 3 contains the adjacent parking lot and access road. A single lease agreement between Paramus Associates, LLP, and Home Depot USA, Inc., was used to govern the property, which consisted of both of these lots. On October 1, 2011, the assessor mailed two Chapter 91 requests for income and expense information. Paramus Associates, LLP, completed only one request form which included information for both lots and submitted it to the assessor's office for review.

A letter dated September 11, 2012, which was sent to the tenant, Home Depot, USA, Inc., gives a description of how the property was combined. The letter stated:

In 2004 we combined the lots and in accordance with the approvals from the Town, the Home Depot Bath and Tile building that was previously subject to a separate lease were demolished on Lot 3. Also at that time an extension to the

existing Home Depot was built on lot 8. Accordingly we now have one lease for the building which is on lot 8. Lot 3 is only a parking lot and access road into the property. The income and expense report filed with the Town reflects all of our income on both lots 3 & 8.

The Borough of Paramus objected to the letter suggesting that it was inaccurate because Paramus Associates, LLP/Home Depot, USA, Inc., had not submitted yearly expense information. The Borough of Paramus urged the Court to recognize that the single lease agreement did not excuse Paramus Associates, LLP/Home Depot, USA, Inc.'s failure to respond to the Chapter 91 request for Lot 3. The Borough of Paramus argued that, given these circumstances, two things must be reported:

1. Income received from a single tenant to account for value of the improved land (Lot 8); and
2. Income received from the parking area (Lot 3), regardless of the fact that such income may be subsumed within Lot 8.

Using N.J.S.A. 54:4-34, the Borough of Paramus concluded that due to absent reported income for each lot, the taxpayer's appeal is subject to dismissal because the information was not accurate or timely.

Paramus Associates, LLP/Home Depot, USA, Inc., opposed this motion saying that dismissal of the present appeal was not necessary. They contended that there was indeed timely, relevant income information presented for both lots in one document. Furthermore, the two tax parcels were so intertwined as one financial unit that it was virtually

impossible to determine the specific income and expenses per parcel. Paramus Associates, LLP/Home Depot, USA, Inc., also stated that it received two redundant requests for the same income and expense information. The plaintiff argued that the request was ambiguous and there was no documentation to clarify that both requests were to be completed and sent back, thereby making the Chapter 91 request deficient.

The issue before the Court was whether a taxpayer that receives two Chapter 91 requests for two separate lots governed by a single lease agreement has failed or refused to respond pursuant to N.J.S.A. 54:4-34 having submitted income and expense information for both tax parcels in the form of a single response.

The defendant's motion was denied. The Court found that the plaintiffs did not ignore the assessor's information request, but provided a timely, sufficient response in sending the Lot 8 form. The Court also found that the Borough of Paramus sent identical forms for both lots but did not fashion the request for Lot 3 in language directed towards the parking lot and access road. In fact, it noted that the form specifically excludes consideration of the parking lot, and if there is room for reasonable doubt as to whether an owner of an income-producing property can understand an assessor's request to include specific information, the benefit of the doubt goes to the property owner. It is also noted that a property owner who receives a Chapter 91 request that is ambiguous may not have its appeal dismissed for failure to respond in a timely manner to such a request.

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**Property Tax Relief Programs Homestead Rebate Ownership Percentage** – *Marcelino v. Director, Division of Taxation*, decided June 19, 2013, Tax Court, Docket No. 017330-2012.

Mr. and Mrs. Marcelino originally owned their home as tenants by the entirety. A few years before their 2007 divorce they changed the deed to Jovencio D. Marcelino and Celia Marcelino as tenants in common. The judgment of divorce stated that Mr. Marcelino shall continue to reside in the residence and be solely liable for the expenses related to the home, including the payment of property taxes, and that Mr. Marcelino can take credit for all taxes and expenses on his Federal and State income tax returns. The judgment also stated: “The parties acknowledge and agree that they shall share equally (50%/50%) the net proceeds from the sale of the marital residence.”

Mr. Marcelino filed his 2008 homestead benefit application indicating that he owned 100% of the property. He thought that because his divorce judgment stated that he was able to take credit on his New Jersey gross income tax return for all property taxes paid, he was entitled to claim that he was the sole owner of the home.

The Court ruled that even though Mr. Marcelino was responsible for paying 100% of the property taxes under the terms of the divorce, he was not entitled to claim 100% ownership of the property. N.J.S.A. 54:4-8.59(a) specifically states that:

If title to a homestead is held by more than one individual as joint tenants or tenants in

common, each individual shall be allowed a homestead rebate or credit pursuant to this section only in relation to the individual’s proportionate share of the property taxes assessed and levied against the homestead.

Under the terms of the divorce decree, Mr. Marcelino owned 50% of the home; therefore, his homestead benefit must be based on 50% ownership of the property and calculated on 50% of the property taxes paid. □

## ***In Our Legislature***

**Admissions Surcharge**  
**Surcharge on Certain Admission Charges** — P.L. 2013, c.84, signed into law on July 17, 2013, and effective immediately, revises the permitted amount of the surcharge on admission charges at certain major places of amusement. The surcharge is now set at an amount up to 5% of the admission charge, allowing authorized municipalities to collect a surcharge that is less than 5% of the admission charge. The law applies to places of amusement, as defined under the Sales and Use Tax Act, at which admission charges are regularly paid and which seat at least 10,000 patrons. The surcharge may not be imposed at motion picture theaters, amusement parks, or places of amusement owned by, or located on property owned by, the State or an independent State authority.

**Alcoholic Beverage Tax**  
**Craft Distillery License** — P.L. 2013, c.92, signed into law on August 7, 2013, and effective on the first day of the fourth month after enactment (December 1, 2013), creates a craft distillery license.

Subject to rules and regulations, the holder of a craft distillery license is

entitled to manufacture up to 20,000 gallons of distilled alcoholic beverages per year and to make certain sales. The holder of this license cannot sell food or operate a restaurant on the licensed premises. A holder of this license who certifies that not less than 51% of the raw materials used in the production of distilled alcoholic beverages are grown in this State or purchased from providers located in this State may, consistent with all applicable Federal laws and regulations, label these distilled alcoholic beverages as “New Jersey Distilled.”

**Cigarette Tax**  
**Unstamped and Counterfeit Cigarettes and Cigarette Smuggling Penalties** — P.L. 2013, c.145, signed into law on August 19, 2013, and effective immediately, increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling. The law also establishes as a crime of the third degree importing, selling or distributing, transporting or possessing with intent to sell counterfeit cigarettes. Civil penalties for specified offenses are doubled and certain maximum county jail terms are doubled.

The law requires the Director of the Division of Taxation to publish monthly reports on the Division’s website that list the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.

**Corporation Business Tax**  
**Credits for Payments to Interns** — P.L. 2013, c.60, signed into law on June 6, 2013, and effective immediately, requires that the Commissioner of the Department of

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Labor and Workforce Development undertake a review of corporation business tax and gross income tax credit programs for payments to interns and report any findings and recommendations directly to the Governor no later than 12 months from the date of enactment. Specifically, the Commissioner must examine the impact of, and make recommendations on, tax credit programs for interns as they pertain to increasing long-term employment for future college graduates.

**Motor Vehicle and Motorbus Services** — P.L. 2013, c.98, signed into law on August 7, 2013, effective immediately, and applicable to privilege periods beginning on or after January 1, 2013, prohibits the imposition of the corporation business tax on foreign (out-of-State) corporations that would otherwise be subject to the tax, if their only contact with the State of New Jersey is carrying passengers into the State in a motor vehicle or motorbus operated over the public highways,

delivering those passengers to a destination in the State, and returning those passengers to a location outside the State.

**Gross Income Tax**

**Credits for Payments to Interns** — See Corporation Business Tax.

**Neighborhood Revitalization Tax Credit** — P.L. 2013, c.61, signed into law on June 6, 2013, effective immediately, and applicable to tax years beginning on or after January 1, 2012, expands the availability of the Neighborhood Revitalization State Tax Credit to include gross income taxpayers. A business entity that contributes financial assistance to a nonprofit sponsor may be granted a tax credit certificate that may be applied against tax liability on business income. The tax credits may be granted in an amount up to 100% of the approved assistance provided to a nonprofit organization to implement a qualified project that is part of an approved neighborhood preservation and revitalization plan. Per taxable year, the credit allowed to a business entity may not exceed

\$1 million or the total amount of tax otherwise due. Additionally, the credit may not exceed statutory limits established under the particular tax for which it is claimed.

The credit may be claimed by gross income taxpayers for tax years beginning on or after January 1, 2012; however, N.J.S.A. 52:27D-492e sets forth that the Commissioner of the Department of Community Affairs must specifically issue a certificate and the tax credit must be claimed for that tax year, effectively guaranteeing that no gross income tax credit can be claimed prior to tax year 2013. The available credit shall be a percentage of the taxpayer's gross income tax liability equal to the percentage of the taxpayer's gross income (before exclusions or deductions) attributable to the business through which the qualified project funding was provided. The credit cannot exceed the taxpayer's total liability for that year.

**Charitable Contributions and New Jersey Domicile** — P.L. 2013, c.73, signed into law on June 27, 2013, and effective immediately, specifies that, for New Jersey gross income tax purposes, donors' contributions to charities are not a factor in determining where a person is domiciled for the purpose of defining tax residency.

**Local Property Tax Real Property Assessment County Demonstration Program** — P.L. 2013, c.15, signed into law on January 25, 2013, and effective immediately, creates a real property assessment demonstration program. The current system is in place for all counties except Gloucester. Not more than four counties may participate in the program as demonstration

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counties. There are strict criteria that a county must meet and information a county must provide to the Director of the Division of Local Government Services in the Department of Community Affairs (DLGS) and to the Director of the Division of Taxation in order to implement the program as a demonstration county.

The demonstration program is a collaborative effort between the county tax board and municipal assessors to address the issues of cost effectiveness and the accurate process of assessment.

The demonstration program is based on the utilization by all of a demonstration county's municipalities of the same property assessment software. All future revaluations and reassessments of real property by municipalities in a demonstration county will be performed on the county system, and the system will also be used for other assessment-based functions. The county board of taxation in a demonstration county will absorb the cost of assessment data conversion through assessment appeal filing fees collected by the board.

On October 1, 2013, the demonstration counties are to begin the demonstration program under a plan developed by each county's tax administrator, approved by each county's board of taxation, and submitted to both the Director of the Division of Taxation and the Director of the DLGS not less than 60 days prior to October 1.

***Farmland Assessment Act Revisions*** — P.L. 2013, c.43, signed into law on April 15, 2013, and effective for tax years 2015 and after, makes

various revisions to the Farmland Assessment Act of 1964.

The law increases the minimum gross sales and payments standard for typical agricultural or horticultural lands to qualify for farmland assessment on the first five acres of land from the current \$500 to \$1,000. This change does not apply to woodland managed under a woodland management plan, which will continue to qualify for farmland assessment with minimum gross sales and payments of \$500, nor does it apply to land subject to a forest stewardship plan, which has no minimum income qualifying standard for farmland assessment. The State Farmland Evaluation Committee now must review these minimums every three years or sooner and adopt regulations to raise the amount of those minimums to levels the committee determines appropriate.

The new law establishes a civil penalty of up to \$5,000 for a gross and intentional misrepresentation on an application to qualify for farmland assessment. The penalties collected are to be divided equally between the municipality or county and the State and dedicated to administering and enforcing the Farmland Assessment Act of 1964.

New, stringent standards to qualify for farmland assessment are now codified, and the State Board of Agriculture and the Department of Agriculture are to develop guidelines describing generally accepted agricultural and horticultural practices. These guidelines are to be distributed to, and may be used by, municipal and county tax assessors, county tax administrators, and other appropriate local government officials to assist them in

determining whether land may be deemed to be in agricultural use, horticultural use, or actively devoted to agricultural or horticultural use pursuant to the Farmland Assessment Act of 1964.

The Division of Taxation, after consultation with the State Board of Agriculture, must include with each farmland assessment application a letter or other document explaining any changes to the law, rules, regulations, and guidelines for farmland assessment that have occurred in the prior tax year and which take effect in the tax year for which the application is being submitted. A landowner whose farm management unit is less than seven acres in size is now required to submit with the application a narrative and a sketch relating to the agricultural or horticultural uses on the farm management unit, including information on the number of acres that will be actively devoted to such uses. The Division, in conjunction with the Department of Agriculture, is also required to offer, at such time intervals as may be established by the Division but at least biennially, a continuing education course to municipal and county tax assessors, county tax administrators, and other appropriate local government officials explaining the guidelines. Effective January 1, 2018, in any county or municipality in which farmland-assessed properties are located, the assessor, as a condition of relicensing, must provide proof of having taken the continuing education course at least once in the prior three years.

Multiagency consultation in the disciplines of woodland management or forest stewardship is also required. In addition, the State Farmland

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Evaluation Advisory Committee (see N.J.S.A. 54:4-23.20), whose membership is comprised of the Director of the Division of Taxation; the Dean of the College of Agriculture, Rutgers, The State University of New Jersey; and the Secretary of Agriculture, will have enhanced administrative responsibilities in the valuation of land devoted to agricultural or horticultural use as a result of this law.

**Miscellaneous**

**Trustee’s Discretionary Authority Concerning Income Tax Liability** — P.L. 2013, c.55, signed into law on May 9, 2013, effective immediately, and applicable to any trust created on or after the effective date, specifies that the trustee’s discretion to pay taxes of the trust creator should not be considered the kind of right that would make the assets of the trust subject to the claims of the creditors of the trust’s creator.

The trust creator is not considered to have the right to receive income or principal of the trust solely because the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator is entitled to reach any trust property based on the discretionary powers of the trustee. □

**Tax Calendar**

The following links provide access to calendars listing filing and payment dates for tax year 2013 (January 1, 2013 – December 31, 2013) and tax year 2014 (January 1, 2014 – December 31, 2014) for businesses and individuals:

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

[2013](#)      [2014](#)

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

[2013](#)      [2014](#)

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

[2013](#)      [2014](#)      □



*important  
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numbers*

Customer Service Ctr.... 609-292-6400  
Automated Tax Info ...1-800-323-4400  
..... 609-826-4400  
Homestead Benefit Hotline  
for Homeowners..... 1-888-238-1233  
Property Tax Reimbursement  
Hotline.....1-800-882-6597  
Earned Income Tax Credit  
Information..... 609-292-6400  
NJ TaxFax ..... 609-826-4500  
Business Paperless Telefiling  
System ..... 609-341-4800  
Alcoholic Bev. Tax ..... 609-633-7068  
Corp. Liens, Mergers, Withdrawals  
& Dissolutions..... 609-292-5323  
Director’s Office ..... 609-292-6400  
Inheritance Tax..... 609-292-5033  
Local Property Tax..... 609-292-7974  
Motor Fuels Tax  
Refunds ..... 609-633-8878  
Public Utility Tax..... 609-633-2634