

# New Jersey State Tax news

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## State Treasurer Sworn In



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

## Homestead Benefit Filing Under Way

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

indicated that they wanted to receive future applications electronically.

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

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

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*homestead benefit - from page 1*

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

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

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

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

## Correction

### 2014 Homestead Benefit Worksheet

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

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

## LOCAL PROPERTY TAX

### Revaluation Initiative

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

## LOCAL PROPERTY TAX

### Tax Assessors' Calendar

#### Oct. 1 (on or before)–

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

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## New Jersey State Tax news

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

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assessors' calendar - from page 2

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

**Oct. 1–**

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

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

**Oct. 1 (after)–**

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

**Oct. 25 (on or before)–**

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

**Nov. 1 (on or before)–**

For Monmouth County, see *Monmouth County Assessment*

*Demonstration Program* below.

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

**Nov. 15–**

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

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

**Dec. 1 (prior to)–**

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

**Dec. 1 (on or before)–**

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

**Interest 6.25%**

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

The assessed interest rate history is listed below.

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



assessors' calendar - from pg. 3

**Dec. 20 (on or before)–**

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

**Dec. 31 (on or before)–**

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

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

**Monmouth County Assessment Demonstration Program**

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

**Nov. 1 (on or near)–**

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

**Nov. 1–**

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

**Nov. 15–**

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

**Nov. 25 (on, before or after)–**

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

**End of November–**

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

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

**Criminal Enforcement**

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

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**Current Amnesty Programs**

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

Pennsylvania      4/21/17 – 6/19/17      [www.revenue.pa.gov/taxamnesty](http://www.revenue.pa.gov/taxamnesty)



*criminal enforcement - from page 4*

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

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

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

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

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

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

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## **Enforcement Summary Statistics** *Third Quarter 2016*

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

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

*criminal enforcement - from pg. 5*

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

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

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

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

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

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

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

## **Tax Briefs**

### **Gross Income Tax**

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

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

## **Public Auction Information**

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



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

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

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

**Litter Control Fee**

***Related-Company Transactions*** —

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

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

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

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

**Sales and Use Tax**

***Exempt Organizations: Occasional Fundraising Sales*** —

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

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

***Eyelash Extension Services*** —

A salon owner inquired if charges for eyelash extension services

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

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

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

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

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

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



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

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

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

not directly pay them for the work performed.

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

## In Our Courts

### Administration

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

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

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

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

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

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

### Gross Income Tax

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

## Pay NJ Taxes Electronically

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

### Electronic Check (E-Check)

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

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





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

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

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

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

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

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

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

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

challenging and denying a claim for the NJEITC.

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

## ***In Our Legislature*** **Multiple Taxes**

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

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

### Tax Calendar

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

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

[2016](#)     [2017](#)

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

[2016](#)     [2017](#)

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

[2016](#)     [2017](#) □



*important  
phone  
numbers*

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