

New Jersey State Tax news

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Division Hires New Employees

In September 2012 the Division of Taxation hired almost 140 trainee investigators, auditors, taxpayer service representatives, and special agents. The trainee class also includes a number of current employees who are moving into positions in other areas of the Division. This recent recruitment effort aims to restore the ranks of the Division's professional staff in the wake of the retirements that have occurred at an accelerated pace over the last year.

The trainees have been assigned to Audit Activity, Compliance & Enforcement Activity, Technical Services Activity, Office of Criminal Investigation, Property Administration, and the Office of Counsel Services' Conference & Appeals Branch. Each area is conducting most of the training for its own employees.

The new employees will help the Division improve performance in its core mission areas. Also, the additional staff will enable all Activities to improve service to members of the public, whether individual taxpayers or tax practitioners, and increase tax compliance.

In concrete terms, this means the amount of time it takes the Division to complete audits, resolve protests of audit determinations, issue refunds, and answer inquiries (by phone, e-mail, or in writing)

will be reduced. In addition, improved enforcement of the State's tax laws levels the playing field for businesses and individuals who are meeting their New Jersey tax responsibilities.

For example, the new employees in Compliance Enforcement will first be assigned to established investigation teams to work on routine matters. This will allow experienced staff members to focus on more complex cases, and pursue other initiatives, such as investigations of businesses operating in the underground economy. Meanwhile the new staff will gain knowledge about the work and necessary procedures that will lead them to become well-functioning investigators.

The recruits assigned to the Office of Criminal Investigation include nine special agent trainees, as well as one auditor and one investigator trainee. They will be trained to conduct investigations of financial crimes that have tax compliance implications. In addition, the special agent trainees will attend training at the New Jersey Division of Criminal Justice Academy beginning in January 2013.

With increased professional staffing at the Division, the public can expect to experience greater customer service in all areas. □

Mail Destroyed in Truck Fire

On Tuesday, September 11, 2012, a delivery truck carrying U.S. mail addressed to the New Jersey Division of Taxation was involved in a two-truck collision on the New Jersey Turnpike and caught fire. The contents of the truck were destroyed beyond recognition, with the exception of a small number of certified mail pieces, some of which could be identified as mail intended for Taxation and other State agencies.

Governor Chris Christie ordered State agencies to provide all required assistance to New Jerseyans who may have been affected by the loss of hundreds of pieces of mail that were destroyed by the blaze and firefighting efforts.

The mail that was lost came from ZIP codes starting with 070 to 076, 078, 079, 088 or 089. The letters and parcels were most likely collected September 7 – 10 from street collection boxes in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren counties.

New Jerseyans who believe they may have had letters or packages bound for government offices on the truck should check with the appropriate State agency to determine the status of their filings, payments, and applications.

The Division of Taxation cannot determine which returns, payments, correspondence, or other submissions were destroyed in the fire. Taxpayers who mailed a tax return, payment, or sent other correspondence to the Division of Taxation from North Jersey in early September and who think their mailing

may have been affected by the September 11 mail truck fire should proceed as described below.

Taxpayers can choose to allow more time to see if their original submission is processed, or they can resubmit a duplicate of the mailing immediately. The Division advises taxpayers to allow two bank statement cycles for payments to be processed. However, taxpayers can submit a duplicate payment sooner if they choose. The Division will waive late filing and late payment penalties on filings and payments received on or before October 15, 2012.

Many returns and payments, including estimated payments, can be filed electronically through the Division's Web site at:

- [Estimated Payments – Gross Income Tax \(Individuals, Estates and Trusts\)](#)
- [Estimated Payments – Corporation Business Tax](#)
- [Other Filings and Payments](#)

Taxpayers who decide to stop payment on their original payment check must contact their bank to find out how to place a stop-payment order and the amount of the charges, if any, that would apply.

Anyone who receives a billing notice from the Division of Taxation for late filing and/or payment because of mail destroyed in the fire must respond to the notice in writing to request an abatement of the penalties. Write "September 11 Mail Truck Fire" in the subject line of the response and explain the circumstances. Indicate when and where the original package was mailed and provide any other pertinent details. If a payment check was enclosed with the original

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation
Acting Director: Michael J. Bryan**

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mail destroyed in fire - from page 2

mailing, a copy of that check, if available, should be included with the response. Otherwise, include a copy of the portion of the checkbook or check register that shows the date of the original payment.

Taxpayers who have additional questions can call the Division's Customer Service Center at 609-292-6400 or [e-mail](#) the Division.

Governor Christie ordered State commissioners and agency heads to post information on their Web sites explaining how affected citizens can obtain assistance with issues resulting from the destruction of mail in the September 11 truck fire.

To find an agency's Web site, go to the [Governor's Web site](#) and click on the link at the top that says "**Departments/Agencies,**" and then choose the appropriate agency's link. Information is also available by calling the Governor's Constituent Relations Office at 609-777-2500. □

Practitioner Institutes

The New Jersey Division of Taxation, the Internal Revenue Service, and the New Jersey Association of Public Accountants (NJAPA) invite all New Jersey tax practitioners to attend this year's Tax Practitioner Institutes. These institutes are being cosponsored by the cooperating colleges and a portion of the registration fee is donated to the college's scholarship fund.

Topics for the one-day institutes will include new legislation and an overview of tax law changes for both New Jersey and Federal taxes. Registration desks will open at 8:00 a.m. Each session begins at 8:30 a.m., includes lunch, and concludes at 4:30 p.m. Please contact the individual coordinator listed below if you would like registration information or details about the location, including parking facilities and directions. □

Intangible Asset Nexus Initiative

Recognizing that there are companies that have nexus with New Jersey as a result of having derived income from the use of intangible assets in this State that have not fulfilled their tax filing responsibilities, the Division of Taxation will be offering a limited voluntary disclosure initiative.

Beginning on September 15, 2012, and running through January 15, 2013, companies that own intangible assets and derived income from the use of those assets in New Jersey will have the opportunity to come forward and voluntarily comply with their corporation business tax filing requirements. In addition to the standard procedures and requirements for [voluntary disclosure agreements \(VDAs\) for business taxes](#) the following principles will apply:

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2012 TAX PRACTITIONER INSTITUTES SCHEDULE

Date	Location	Contact for Registration
October 25 (Thursday)	Montclair University	Ray Peche 973-790-1181 or Rpeche729@verizon.net
October 27 (Saturday)	County College of Morris	Frank Kopicki 973-827-2793 or Kopic2@embarqmail.com
October 30 (Tuesday)	Middlesex County College	Burt Zocks 732-738-0770 or blzocks@verizon.net
November 2 (Friday)	Gloucester County College	LeRoy Thumlert 856-589-7272 or rthump@aol.com
November 8 (Thursday)	Mercer County Community College	John Duffy 609-586-1990 or jackduffy929@aol.com
November 15 (Thursday)	Georgian Court University	Anthony Morro 732-919-1380 or ammorro_paea@yahoo.com
November 16 (Friday)	Kean University	Alice Weinstein 973-379-3275 or alvid@aol.com

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- The lookback period will be limited to the periods beginning after December 31, 2003, or the date business commenced, whichever is later. Returns for prior periods will not be required.
- The taxpayer must file all required returns and remit payment of the full tax liability reported within 90 (ninety) days of the execution of its VDA.
- The Division will waive all penalties except that a 5% amnesty penalty will be assessed for all returns due prior to February 1, 2009.
- The taxpayer will remit payment of interest and the amnesty penalty within 30 (thirty) days of assessment.
- The Division will consider discretionary throwout relief by averaging a throwout receipts fraction with a nonthrowout receipts fraction.
- Operating companies or those companies that have paid royalties

and added same back to their New Jersey entire net income may submit amended returns for any period for which the statute of limitations remains open in order to claim an exception to the add back.

- All returns will be subject to routine audit with respect to issues not specifically covered in the VDA.
- Any settlement with respect to the throwout issue will be binding on the taxpayer and the Division. The taxpayer may not file a claim for refund in the event that the application of any future Court decisions would suggest a different result.
- If the disclosure candidate does not wish to settle the throwout issue, the Division will hold the issue for a future determination. The Division would conduct an audit on the returns filed under the disclosure agreement to make the required throwout determination.

Requests for disclosure or questions should be submitted to Nicholas J.

Solimando, Auditor, in writing at New Jersey Division of Taxation, Office Audit Branch, P.O. Box 269, Trenton, New Jersey 08695-0269, by phone at 609-633-7837, by fax at 609-633-2681, or by [e-mail](#). Questions may also be addressed to Lee Evans, Chief, Office Audit Branch, by phone at 609-292-5927 or [e-mail](#). □

LOCAL PROPERTY TAX**Tax Assessors' Calendar****October 1 (on or before)–**

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

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with

Update:**NJ/NY Cooperative Interstate Tax Program**

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



assessors' calendar - from page 4

Property Administration and the County Tax Board.

- Exempt real property sold to nonexempt owner or real property improved after October 1 and before January 1 assessed as of the first day of the month following completion or sale.
- True taxable value of an improvement, conversion, or construction of property that has applied for exemption and/or abatement determined by assessor.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected

to be granted, etc. certified by assessor.

November 1–

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

November 15–

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

December 1 (prior to)–

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

December 1 (on or before)–

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

bills for the omitted assessments, whichever is later.

December 20–

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

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2013 must be filed with assessor during the pretax year, thereafter with collector during the tax year.
- Last date for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions for 2012 to be filed with collector. □

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2012 – December 31, 2012, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%

Criminal Enforcement

Criminal enforcement over the past several months included:

- On March 16, 2012, Jimmy Tovar entered a guilty plea with the New Jersey Superior Court, Middlesex County. A Deputy Attorney General of the Office of the Insurance Fraud Prosecutor (OFIP) prosecuted the case, which included charges of conspiracy, acting as a runner, and failure to file New Jersey income tax returns. The tax charges levied against him related to \$50,500 of income derived in

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2010 working as a “runner” for Dr. Scott Greenberg. There are other “runners” identified in the main case who are to be charged in the same manner. On May 14, 2012, Tovar was sentenced to three years in State prison by Superior Court Judge Bradley J. Ferencz in Middlesex County. Tovar has been in custody since his arrest in July 2011. He executed a consent judgment for \$1,854.70 in back taxes owed from the money he made from his “running” activities in 2010. Tovar’s sentence was based on his March 16 guilty plea to the charges of conspiracy to commit running activity, acting as a runner, and failure to file a tax return, all in the third degree. Tovar admitted that in 2010 he was paid \$50,500 for soliciting people following automobile accidents for treatment at Central Jersey Chiropractic and Rehabilitation Centres, which is owned by Dr. Greenberg. Tovar failed to file a New Jersey income tax return in 2010 to report this income.

- The Office of Criminal Investigation (OCI) conducted sweeps in the City of Asbury Park and

Neptune Township. Of the 20 businesses inspected, 16 had violations, including business entities that have never been registered. Some press inquiries resulted, and the Treasurer’s Public Information Office addressed those inquiries. Contraband cigarettes and tobacco were seized as well. Various weapons were also seized and turned over to local police departments for action.

- Jesse Watkins, of New York, was sentenced in U.S. District Court as a result of his arrest in a joint investigation with OCI and the Federal Bureau of Investigation in 2010. The subject was sentenced to one day of imprisonment, three years’ Federal probation, and ordered to pay restitution to the State of New Jersey in the amount of \$3,105,285 for conspiracy to traffic contraband cigarettes. James Brown, a coconspirator of Watkins, was sentenced to six months in the custody of the Federal Bureau of Prisons and ordered to pay restitution to the State of New Jersey in the amount of \$190,410. Xavier Ray, the third conspirator in this case, was sentenced to a term of 37 months in the custody of the Federal Bureau of Prisons and ordered to pay

restitution to the State of New Jersey in the amount of \$1,778,775. For all parties involved, the sentences ordered a total restitution of \$5,074,470 (cigarette tax) and a total of 43 months and 1 day of incarceration.

- OCI participated in the Atlantic City Tourism Zone initiative with the Department of Law and Public Safety’s Division of Consumer Affairs (DCA). OCI made a number of arrests and 11 different seizures during the operation. At that time, Charles Giblin, Special Agent in Charge, met with the Acting Director of the DCA on various issues and potential conflicts, in particular the motor fuels enforcement initiative. OCI anticipates that this will lead to future endeavors with DCA. Part of that discussion covered the exchange of information that could result in license suppression for individuals and businesses who are not tax compliant but who have a professional license with DCA. The need for cooperation with other civil agencies became apparent when OCI conducted the Asbury Park initiative and found, for example, barbershops, which fall under DCA jurisdiction, that were not tax compliant. Expanding that relationship is a priority for OCI as it benefits not only criminal enforcement efforts but also voluntary compliance.
- On June 27, 2012, Dwayne Spears, of Monmouth County, pled guilty to participating in a scheme in which a State corrections officer, a leader of the Nine Trey Gangsters set of the Bloods gang, and members of the Lucchese organized crime family

Enforcement Summary Statistics Second Quarter 2012

Following is a summary of enforcement actions for the quarter ending June 30, 2012.

	Number	Amount
• Bank Levies	1,043	\$ 3,689,367
• Certificates of Debt	3,946	50,485,270
• Seizures	122	996,910
• Auctions	8	195,701
• Warrants of Satisfaction	4,652	

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smuggled drugs and cell phones into East Jersey State Prison. Spears pled guilty to a charge of second-degree racketeering before Superior Court Judge Thomas V. Manahan in Morris County. Under the plea agreement, the State will recommend that Spears be sentenced to five years in State prison. The guilty plea stems from Operation Heat, an investigation by the Division of Criminal Justice Gangs and Organized Crime Bureau that led to the arrest and indictment of those involved in the smuggling scheme as well as numerous members of the New York-based Lucchese organized crime family. As a result of Operation Heat, the Division of Criminal Justice indicted two ruling members of the Lucchese crime family and 32 other members and associates, including the alleged current and former top New Jersey capos, Ralph V. Perna and Nicodemo Scarfo Jr., on first-degree charges of racketeering and predicate offenses on May 14, 2010. The prison smuggling scheme allegedly involved Spears' brother, inmate Edwin B. Spears, and Michael T. Bruinton, a corrections officer at East Jersey State Prison. It is charged that Edwin Spears, who holds a leadership position as a "five-star

general" in the Nine Trey Gangsters, formed an alliance in the smuggling operation with Joseph M. Perna, a member of the Lucchese crime family, and Michael A. Cetta, a Bonnano crime family associate linked to the Lucchese crime family through marriage.

- On June 28, 2012, in Mercer County Superior Court, Adeebowale Sheba pled guilty to two counts of second-degree theft by deception, and Johnson Coker pled guilty to second-degree conspiracy and third-degree receipt of stolen property. The two men, along with two others charged in December 2009, were involved in a scheme to fraudulently obtain at least 585 State income tax refund checks totaling \$435,577. Sentencing for Sheba and Coker was scheduled for September 26, 2012. The investigation began when auditors from the Division of Taxation's Office of Criminal Investigation detected numerous refund checks payable to multiple taxpayers that were coendorsed with the same name. The income tax returns associated with the refund checks had similar taxpayer information, including filing status as head of household, one or two dependent children, wages ranging from \$7,000 to \$16,500 with no payroll tax withholdings, and business losses reported on an accompanying Federal Schedule C. Wages were reported on identical Form W-2s, apparently produced from the same software package. In all instances, the taxpayers completed the Earned Income Tax Credit Schedule with income levels that qualified for the earned income tax credit. Division of Taxation auditors expanded the scope of their review

by identifying and investigating checks that were coendorsed with different names but fit the suspicious pattern. This case was referred to the Division of Criminal Justice.

- OCI Investigators have visited or made contact with 113 licensed New Jersey cigarette wholesalers. Though most were inspected for reporting and record keeping requirements, some locations did not have correct business addresses, some were out of business, and a few had personal and/or business problems that prevented them from meeting with investigators. OCI will revisit the wholesalers once their issues are resolved. The project, intended to gauge through unannounced inspections wholesalers' voluntary compliance with requirements under both the New Jersey Cigarette Tax Act and New Jersey Administrative Code, was very successful. OCI found the majority of license holders were compliant. Some fell short and were provided a brief opportunity to resolve any issues. Those who were unable to do so will be criminally charged. This project was intended to increase proper reporting and ensure that wholesalers were reminded of the requirements of the Tobacco Products Wholesale Sales and Use Tax Act. It also cross references licensee identifiers.
- After years of shipping untaxed mail-ordered cigarettes directly to New Jersey residents, Grand River Enterprises, the maker of Seneca brands, will comply with the Prevent All Cigarette Trafficking Act by shipping and selling

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "**Auctions.**" Select the name of the business for details about that auction.



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their cigarettes into New Jersey through legitimate industry channels. Grand River Enterprises, an Ontario, Canada-based business, has made their brands Master Settlement Agreement (MSA) compliant by registering them with the New Jersey Office of the Attorney General as a nonparticipating manufacturer. They have partnered with a Florida-based company, Canadian Agricultural Depot LLC (CAD), who will serve as both licensed New Jersey manufacturer/importer and New Jersey nonresident distributor (stamper) for the cigarettes. CAD has also secured a Carlstadt, New Jersey-based business, Nash Distributors Inc., to be their primary New Jersey cigarette wholesaler. CAD will receive cigarettes from Canada, affix New Jersey tax stamps, and ship them via common carrier to Nash Distributors Inc., a long established beer distributor, which will test the New Jersey market with the Grand River Enterprises

cigarette brands. Should they find this business beneficial, they plan to apply for their own distributor license and take over the stamping function from CAD. CAD will then serve solely as an importer/licensed cigarette manufacturer. Canadian Agricultural Depot LLC has recently been issued a New Jersey nonresident cigarette distributor license. Nash Distributors will soon be issued a New Jersey cigarette wholesale license. This initiative was a cooperative effort between OCI and the Excise Tax Branch, which protects the State's "due diligence" requirements under the MSA. □

Internal Revenue Code Section 41 expires for the 2012 tax year.

The Division responded that N.J.S.A. 54:10A-5.24(a) provides for a corporation business tax research and development tax credit. The credit is equal to 10% of the excess of qualified research expenses for the fiscal or calendar accounting year over a base amount and 10% of the basic research payments determined in accordance with Section 41 of the Internal Revenue Code of 1986, as in effect on June 30, 1992. N.J.S.A. 54:10A-5.24(a)(2) provides, in pertinent part: "... subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply." The Division interprets this language to mean that the New Jersey research and development tax credit is independent of the Federal research and development tax credit.

Therefore, the New Jersey research and development tax credit will continue, regardless of a lapse in the Federal research and development credit. The New Jersey research and development tax credit for 2012 will be calculated according to the instructions on Form 306, New Jersey Corporation Business Tax Research and Development Tax Credit.

Tax Briefs

Corporation Business Tax Research and Development Tax Credit — A taxpayer corporation inquired as to whether the New Jersey corporation business tax research and development tax credit will be allowed if the Federal research and development tax credit described in

Gross Income Tax

New Jersey Mentor/Foster Parents Program — A taxpayer inquired about whether a stipend received from the New Jersey Mentor/Foster Parents Program is taxable for New Jersey gross income tax purposes.

The New Jersey Mentor/Foster Parents Program was founded in 1990 to help children and adolescents in need and adults with intellectual and developmental disabilities find supportive, loving home environments

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

Select "Electronic Services" to make a payment directly from your bank account (E-Check) or to pay by credit card.



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where they can thrive. The program provides a stipend to qualified mentor/foster parents that varies based on the condition and the needs of the individual(s) supported.

For Federal income tax purposes, payments received from a state, political subdivision, or a foster care placement agency for providing care to qualified foster individuals in the taxpayer's home are not taxable. However, taxpayers must include payments received for the care of more than five individuals age 19 or older and certain difficulty-of-care payments in their income.

The New Jersey Gross Income Tax Act does not have any specific provisions that would exclude the Mentor/Foster Parents Program stipend from income. However, to the extent that the stipend is for the support of qualified foster individuals, taxpayers may exclude the payments from New Jersey gross income if it is excluded from Federal income. Any such payment that is taxable for Federal income tax purposes will also be taxable for New Jersey gross income tax purposes.

If a mentor/foster parent receives taxable payments, the payor agency will issue a Form W-2 or 1099-MISC to both the mentor/foster parent and the IRS and the recipient must report the income on their tax return. In addition, if the payments amount to \$1,000 or more, the agency must provide a copy to the Division of Taxation.

Sales and Use Tax

Brake Cleaning Kits, Fuel Injection Kits, Throttle Body Kits, and Power Steering Kits Purchased by Automobile Dealerships and Repair Shops — A taxpayer inquired

as to whether the purchase of brake cleaning kits, fuel injection kits, throttle body kits, and power steering kits by automobile dealerships and repair shops qualify as a sale for resale. The taxpayer stated that the kits are comprised of fluids that are used in the process of cleaning or flushing various areas of a vehicle, which are taxable services. All the fluids included in the kits are listed individually and taxed on the invoice provided to the consumer.

The Division responded that purchases of supplies that are used by a dealership or repair shop to perform a service and that do not become a component part of the vehicle are subject to sales tax. There are no provisions in the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) which would allow a repair shop to use a resale certificate to purchase supplies to be used or consumed to provide a service. The fact that the supplies used to perform the taxable service are separately stated on the invoice to the customer does not make them nontaxable when purchased by the dealership or repair shop.

Kits used to clean or flush various areas of a vehicle do not become a component part of the vehicle. They are, therefore, supplies that are consumed and used by the dealership or repair shop. Thus, the kits do not qualify for the resale exemption and are taxable when purchased by the dealership or repair shop.

Search Engine Optimization Services — A taxpayer inquired whether charges for search engine optimization services are subject to sales and use tax. The taxpayer described search engine optimization services as the process of improving the visibility of a Web site or a Web page in a search engine's natural (organic or

algorithmic) search results.

In general, the earlier (or higher ranked on the search results page) and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. Search engine optimization services may target different types of searches, including image search, local search, video search, academic search, news search, and industry-specific vertical search.

The Division responded that under the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) the receipts from the sales of a service are not subject to sales and use tax unless specifically enumerated as taxable in the Act.

Because the sales of search engine optimization services are not specifically enumerated in the Act, such sales are not subject to the sales and use tax. □

In Our Courts

Corporation Business Tax

Nexus – Telebright Corporation, Inc. v. Director, Division of Taxation, decided March 2, 2012; Superior Court of New Jersey Appellate Division, Docket No. A-5096-09T2-2012.

This case presented an issue of first impression concerning whether a Delaware corporation that had offices in Maryland is subject to the New Jersey Corporation Business Tax Act where it employs a resident who telecommutes from her New Jersey home via telephone and computer. This employee developed and wrote software code that became part of a Web application provided by Telebright to its customers.

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The Appellate Division affirmed the Tax Court's holding that "a foreign corporation that regularly and consistently permits one of its employees to telecommute full-time from her New Jersey residence is doing business in New Jersey, is subject to the New Jersey Corporation Business Tax Act (CBT Act), N.J.S.A. 54:10A-1 to -41, and must file New Jersey Corporation Business Tax returns."

Addressing whether Telebright is doing business in New Jersey, the Appellate Division agreed with the Tax Court and added that when Telebright's New Jersey employee creates computer code that becomes part of Telebright's Web-based service, that is no different than when a foreign manufacturer employs someone to fabricate parts in New Jersey for products that will be assembled elsewhere. See N.J.A.C. 18:7-1.9(a)1.

Telebright claimed that its limited activities in New Jersey should not subject it to the CBT Act because this would violate the Due Process and Commerce Clauses of the United States Constitution. The Appellate Division stated that taxing a business because it employs one person who performs work on a full-time basis in New Jersey does not violate the Due Process Clause.

The Appellate Division found that Telebright had sufficient contacts with New Jersey, as the New Jersey employee is entitled to all the legal protections New Jersey provides to its residents, and that Telebright, provided it files a Notice of Business Activities Report, may file suit in New Jersey courts to enforce its employment contract with the New Jersey employee. Furthermore, the CBT Act does not violate the Commerce Clause physical presence requirements because the employee worked for Telebright from her New Jersey home office.

Property Tax Relief Programs Multi-Unit Dwelling – *Robert G. Howard v. Director, Division of Taxation*, decided April 11, 2012; Tax Court of New Jersey, Docket No. 015539-2009 and 020955-2010.

In this case, Judge Nugent affirmed the Division's reduction of Mr. Howard's property tax reimbursement for years 2006–2009.

The Property Tax Reimbursement (Senior Freeze) Program was enacted in 1997. The legislative purpose was set forth as follows:

The homestead property tax reimbursement is intended to further the State's interest in maintaining a diverse population through the preservation, continuity and stability

of its low-income senior and disabled homeowners, who have contributed to the fabric, social structure and finances of New Jersey communities, by affording protection to those homeowners who may otherwise be forced to move out of the State due to increasing property taxes.

Mr. Howard resided in a two-family home with his daughter. For the years 2006–2009 Mr. Howard claimed that even though the building was a two-family dwelling, he occupied the entire building as his principal residence and therefore should be entitled to a property tax reimbursement utilizing 100% of the property taxes levied against the property.

The Director determined that as the property was a multi-unit dwelling, Mr. Howard occupied 50% of the home as his principal residence and not the 100% as he was claiming. The property tax reimbursement would be based on 50% of the property tax levied against the property.

Judge Nugent found that the plain language of the statute is sufficient to resolve the issue. The Director's determination to reduce the plaintiff's property tax reimbursement to 50% of the total available to him based on a finding that the plaintiff owns a two-family dwelling and occupies 50% of the property as his principal residence, was affirmed.

Sales and Use Tax

Untimely Filing – *Glenn B. Slater (S.S. Clinton) v. Director, Division of Taxation*, decided December 22, 2011; New Jersey Tax Court, Docket No. 011825-2008.

Current Amnesty Programs

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

KY	10/1/12 – 11/30/12	http://www.amnesty.ky.gov/
RI	9/2/12 – 11/15/12	http://www.taxamnesty.ri.gov/

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On February 11, 1997, the Director issued a Notice of Responsible Person Status to Mr. Glenn Slater, holding him liable for sales and use tax in the amount of \$61,382.46 from the audit of S.S. Clinton, Inc. (S.S. Clinton) t/a Pioneer Tavern. The notice was mailed to the taxpayer's last known address and signed for by "J. Slater." On September 9, 1999, Mr. Slater filed a petition for Chapter 11 bankruptcy with the United States Bankruptcy Court for the District of New Jersey. On August 1, 2000, the Director, as a creditor, filed proof of claims in the bankruptcy proceedings totaling \$218,722.35 representing tax liability due and owing from Mr. Slater's business, S.S. Clinton. The Director's proof of claim was filed beyond the 180-day statute of limitations. On February 20, 2001, Mr. Slater filed a motion with the Bankruptcy Court to expunge the claims of the Director. Mr. Slater's motion was granted and the order specifically provides that the claims of the Director are "completely expunged as being untimely." The Bankruptcy Court dismissed Mr. Slater's bankruptcy petition on April 2, 2002.

More than six years later, on or about October 22, 2008, Mr. Slater filed a complaint in Tax Court seeking a refund of \$535,000 which the taxpayer characterized as follows: \$260,000 in funds taken from the taxpayer, \$75,000 loss on the auction of the liquor license, and \$200,000 loss on the equity of the bar. Mr. Slater filed a motion for summary judgment to compel the Division to refund the amount sought by the taxpayer. The Division opposed the taxpayer's motion and filed a motion to dismiss for untimely filing.

The Tax Court ruled that regardless of the Bankruptcy Court's order expunging the Director's claims, and irrespective of whether those claims are or are not dischargeable under the applicable law, the expungement order was vacated and issue of dischargeability was therefore rendered moot when Mr. Slater's bankruptcy proceeding was dismissed on April 2, 2002. The effect of the dismissal of Mr. Slater's bankruptcy proceeding is that the Director's assessment against Mr. Slater was neither expunged nor discharged by the Bankruptcy Court.

The Tax Court further found that the taxpayer has not properly filed for a sales tax refund, and that if the taxpayer now files for a sales tax refund, the request will be well outside the statute of limitations.

The Tax Court denied the taxpayer's motion for summary judgment and ruled in favor of the Director on the motion to dismiss based on untimely filing. The Court noted under the applicable statute of limitations governing protests and complaints contesting actions of the Director, the taxpayer did not file a timely appeal of the February 11, 1997, notice issued by the Director. The tax liability assessed against Mr. Slater is deemed fixed and final, and Mr. Slater's complaint is dismissed with prejudice. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2011 (January 1, 2011 – December 31, 2011) and tax year 2012 (January 1, 2012 – December 31, 2012) for businesses and individuals:

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

[2012](#) [2013](#)

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

[2012](#) [2013](#)

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

[2012](#) [2013](#) □

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- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline**
- for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement**
- Hotline.....1-800-882-6597
- Earned Income Tax Credit**
- Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling**
- System1-877-829-2866
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director's Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax**
- Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634