

New Jersey State Tax NEWS

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Income Tax Rates Reduced

P.L. 1994, c.69, approved July 6, 1994, reduces the New Jersey Gross Income Tax rates for all taxpayers for tax years 1995 and thereafter. When combined with the 5% rate reduction for all rate brackets enacted as P.L. 1994, c.2, this new reduction results in cumulative tax decreases from the 1993 taxable year rates of 15%, 7.5% and 6%, depending on taxable income level.

Cumulative Rate Reduction

For tax year 1994, the New Jersey income tax rates for all taxpayers were reduced by 5%, and the rates have been further reduced for taxable years 1995 and thereafter. The cumulative decreases in the tax rates from their 1993 levels are shown below.

Filing Status: Married, Filing Jointly	
Head of Household*	
Qualifying Widow(er)	
	% Rate Change
Taxable Income	1993-1995
\$0—\$80,000	-15%
\$80,001—\$150,000	-7.5%
Over \$150,000	-6%

Filing Status: Single	
Married, Filing Separately	
and	
Estates and Trusts	

	% Rate Change
Taxable Income	1993-1995
\$0 —\$40,000	-15%
\$40,001 —\$75,000	-7.5%
Over \$75,000	-6%

Withholding Rates

Because of the reduction in tax rates for taxable years beginning on or after January 1, 1995, new withholding tables will be required. Revised withholding tables will be mailed to employers when available.

Estimated Tax Payments

Any individual (resident or nonresident) who expects their New Jersey income tax liability to be more than \$100, after subtracting withholdings and credits, must make New Jersey estimated tax payments using Form NJ-1040-ES. Taxpayers should take the new income tax rates into account when calculating the amount of their estimated tax payments for 1995. Estates and trusts are not required to make New Jersey estimated tax payments.

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important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-588-3179
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323
Corporate Tax Liens .. 609-292-5323
Director's Office 609-292-5185
Inheritance Tax 609-292-5033
..... 609-292-5035
..... 609-292-7147

Local Property Tax 609-292-7221
Motor Fuels Tax Refunds
..... 609-292-7018
Public Utility Tax 609-633-2576
Tax. Registration 609-292-1730

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1995 Tax Rates

For taxpayers whose filing status is Married, filing joint return, Head of Household* or Qualifying Widow(er) the rates are:

Taxable Income	Tax Rate
\$0 - \$20,000	1.7%
\$20,001 - \$50,000	\$340 plus 2.125% of the excess over \$20,000
\$50,001 - \$70,000	\$977.50 plus 2.975% of the excess over \$50,000
\$70,001 - \$80,000	\$1,572.50 plus 4.250% of the excess over \$70,000
\$80,001 - \$150,000	\$1,997.50 plus 6.013% of the excess over \$80,000
Over \$150,000	\$6,206.60 plus 6.580% of the excess over \$150,000

For taxpayers whose filing status is Single or Married, filing separate return and estates and trusts the rates are:

Taxable Income	Tax Rate
\$0 - \$20,000	1.7%
\$20,001 - \$35,000	\$340 plus 2.125% of the excess over \$20,000
\$35,001 - \$40,000	\$658.75 plus 4.250% of the excess over \$35,000
\$40,001 - \$75,000	\$871.25 plus 6.013% of the excess over \$40,000
Over \$75,000	\$2,975.80 plus 6.580% of the excess over \$75,000

*Nonresident aliens who otherwise meet the requirements may file as Head of Household for New Jersey purposes, even though they are unable to claim that status for Federal purposes.

Interest 9% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1994 remains at 9%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/93	11%
4/1/93	11%
7/1/93	9%
10/1/93	9%
1/1/94	9%
4/1/94	9%
7/1/94	9%

New York State Amnesty Program

On September 1, 1994, New York State began a limited three-month amnesty program aimed at specific taxpayers during particular years.

Those who qualify must pay any taxes owed, plus interest, but will be protected from any related criminal prosecution or administrative penalty.

The **income tax** component applies only to nonresidents of New York who have failed to file any required income tax returns for tax years beginning on and after January 1, 1986 and ending before December 31, 1993. Thus, 1992 would be the last

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Division Realignment

Acting Director Richard D. Gardiner has announced a realignment of Division of Taxation personnel. For details, see the Division of Taxation Organizational Chart on the next page. For your convenience, the organizational chart includes a contact phone number with each name.

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**New Jersey Division of Taxation
Taxpayer Services Branch
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Division of Taxation Acting Director:
Richard D. Gardiner

Area News Coordinators:

<i>Audit</i>	Frank Higgins
<i>Compliance</i>	Jim Pronchick
<i>Criminal Investigations</i>	Ronald Rehl
<i>Legislative</i>	John Bodnar
<i>Processing</i>	Glenn Holland
<i>Property Admin.</i>	Gary Amerine
<i>Tax Services</i>	Arthur Guenther
<i>Taxpayer Services</i>	Denis Gallagher

Contributors: Gary Amerine, Joan Bench, John Bodnar, J. Donald Byrnes, Nicholas K. Catalano, Susan Dobay, Renee Franklin, Denis Gallagher, Richard D. Gardiner, Anita Green, Arthur J. Guenther, Denise M. Lambert, Alfred C. Laubsch, Robert E. Lee, Judith A. Lenhardt, George Lorbeck, John M. Metzger, Fred Morgan, Sara E. Murphey, Jack Murray, Cathy Petrino, Ronald Rehl, Holly Ritter, Samuel P. Sciarrotta, Mitchell C. Smith, Selma W. Stein, Robert K. Thompson, Mark Wintermute and Karen Wood.

Editor: Linda B. Hickey



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calendar year for which participants can file for amnesty. Excluded is anyone currently under criminal investigation, anyone who has already been contacted by the Tax Department, and anyone who participated in New York's 1985 general Amnesty Program.

Similarly, the **business tax** component applies only to out-of-state businesses that have been doing business in New York and who should have filed returns between 1986 and December 1, 1993. Thus, 1992 would be the last calendar year, and November 1993 the last month for which participants can file for amnesty. Once again, any business under criminal investigation or already contacted by the Tax Department is ineligible.

The **use tax** component of amnesty applies to resident individuals and smaller businesses, those with a New York payroll of less than a million dollars. The Compensating Use Tax is the flip side of the Sales Tax and applies to any taxable goods or services that are brought into, shipped into, or used in New York. For example, the computers, supplies, reference materials, etc. that professionals such as architects, dentists, lawyers, and doctors have shipped into the state without the sales tax being charged are subject to a use tax equal to the sales tax. To qualify for amnesty, any individual or business must not have already filed a sales or use tax return or have been registered for the period in question. Also, they must not be under criminal investigation, nor have already been contacted by the Tax Department. Only use tax liabilities for goods or services brought into or used in New York during the period June 1, 1986, to May 31, 1993, will be covered.

Additional information and amnesty forms can be obtained by writing: Amnesty, New York State Department of Taxation and Finance, Building 8, W. A. Harriman Campus, Albany, NY 12227.

From within New York, You may call 1 800 CALL-TAX (225-5829), and from outside New York 1-518-438-8581.

Contact:

**Karl E. Felsen or
Paul A. Rickard
(518) 457-4242**

Please Note: The City of New York is also conducting a tax amnesty from September 1, 1994 to November 30, 1994. The taxes covered are the commercial rent tax (for periods ending on or before May 31, 1993); the utility tax (for periods ending on or before March 31, 1994); the real property transfer tax (for taxable events occurring before April 1, 1994); and the hotel room occupancy tax (for periods ending on or before February 28, 1994). More information is available from the New York City Department of Finance at (718) 935-6000 or (718) 935-6675.

Appeals of DEP Denials

A taxpayer requested a hearing with the Division regarding the Department of Environmental Protection & Energy's (now the Department of Environmental Protection or DEP) denial of certification of certain machinery as recycling equipment. Because of DEP's action, the taxpayer was precluded from taking a credit on their Corporation Business Tax return under the provisions of N.J.S.A. 54:10A-5.3.

Under Section 5.3, the Director of Taxation cannot act independently of the Commissioner of DEP regarding the allowance of the credit for the acquisition of recycling equipment. N.J.A.C. 18:7-3.18 provides that the tax credit will not be allowed by the Director until the taxpayer receives certification from the Commissioner that the equipment for which the credit is sought is qualified recycling equipment. The certificate must be part of the return claiming the credit.

DEP has established fact finding procedures under N.J.S.A. 52:14B-1 et seq. The Director of Taxation has no role in that process, nor does he have a role in DEP's administrative process in determining whether individual items qualify for certification. It naturally follows that the Director of Taxation would also have no role in the adjudicative process. Since there is no specific action of the Director regarding the certification question, the taxpayer (applicant) does not have a right to a hearing with the Division under the provision of N.J.S.A. 54:49-18, nor does the taxpayer have the right to appeal to the Tax Court of New Jersey (N.J.S.A. 54:10A-19.2).

The Conference and Appeals Branch advised the taxpayer that this matter properly belongs before the Office of Administrative Law according to DEP regulations.

GROSS INCOME TAX Withholding and Employment Contractors

With the change in business operation throughout the country, more

employment contractors - from page 4

businesses are contracting with employment contractors for employees. These individuals remain the employees of the employment contractors. When an employment contractor or labor contractor has employees who perform services in New Jersey, said contractor must withhold New Jersey Gross Income Tax. This requirement includes every employer maintaining an office or transacting business within this State (whether or not a paying agency is maintained within the State) and making a payment of any wages subject to New Jersey Gross Income Tax to a resident or nonresident individual. It also includes any person or organization paying wages to a former employee after termination of employment.

The compensation subject to withholding includes salaries, wages, tips, fees, commissions, bonuses and other remuneration recovered for services rendered: basically anything regarded as "wages" for Federal Income Tax withholding purposes.

CIGARETTE TAX

Update

In order to improve the efficiency of Cigarette Tax audits handled by the Office Audit Branch, the Division is working on a computerized system to maintain all Cigarette Tax returns. This will provide an improved system of internal control and return tracking that will ensure the filing of timely and accurate returns. A future goal of the system will be to provide access for filing returns electronically.

Cigarette Tax returns and schedules have recently been changed. Revised forms have been printed and mailed to all active manufacturers and distributors. The line items are the same as

shown on the old forms but descriptions have been clarified in many cases. The revisions to the Cigarette Tax return include:

—In the Unstamped Cigarette Account, a new line has been added: *Credit: Returns to Manufacturer;*

—In the Stamp Account section, a new line has been added: *Ending Inventory: Damaged, Stolen or Returned Stamps;*

—The Stamp Account section has also been updated to include only those stamps currently available. Meter units have been eliminated from the return;

In addition, the following schedules have been revised:

—Resident Distributor's Cigarette Tax Return; Form CR-1, CR-2 Schedule A, CR-3 Schedule B, CR-4 Schedule C, CR-5 Schedule D, and CR-7 Schedule F.

—Distributor's Monthly Informational and Sales Report; Form CDIS-1, CDIS-2 Schedule S.

—Non-Resident Cigarette Dealer Sales Return; Form CNR-1, CNR-2 Schedule A, CNR-3 Schedule B, and CNR-5 Schedule D.

—Manufacturer's Monthly Report of Special Shipments of Taxable Cigarettes into New Jersey; Form MSS-1.

All Cigarette Tax returns should now be sent to the following address:

State of New Jersey, Division of Taxation, Office Audit-Cigarette Tax, CN 271, Trenton, NJ 08646.

NOTE: This address should only be used for the filing of returns and related correspondence. Matters related to the purchase of Cigarette Tax stamps should be sent to the address that is

currently being used: CN 250.

There has been no change in the procedure for purchasing New Jersey cigarette stamps.

It is no longer necessary to file returns and supporting schedules in duplicate and triplicate. One copy of the return along with supporting schedules will now be accepted by the Division. The revised forms can be obtained by writing to the address shown above.

INHERITANCE/ESTATE TAX ***Frequently Asked Questions***

The Transfer Inheritance and Estate Tax Branch has compiled a list of questions frequently received by the Branch. These questions will be answered in three successive issues of this publication.

1. How Long Does it Take to Process A Return?

Normal processing time for a transfer inheritance tax return that is accepted as filed, is approximately 4 to 6 weeks. When a return is not accepted as filed and is selected for audit, the estate representatives should hear from the Branch in 8 to 10 weeks. The nature of the communication from the Branch will most likely be in the form of a request for additional information which is necessary for completion of the proceeding. Finalization of the process from this point will depend upon the nature and availability of the information and documentation required. If it should become necessary to contact the Branch prior to the times indicated, you may telephone (609) 292-5033, 292-5034, or 292-7147.

2. Why are Waivers Needed?

In order to insure that the taxpayers

frequent questions - from pg. 5

of this State are treated in an equitable manner, the legislature enacted laws that require a consent to transfer (waiver) before a decedent's interest in specifically defined assets may be turned over to the decedent's estate. The institution or corporate entity having control of the asset(s) must have a waiver before releasing these types of assets or be subject to penalty as provided by law. In order to obtain a required waiver, the tax, as estimated by the Branch, must be paid or acceptable provision for payment must be made.

3. Can Waivers be Obtained Prior to the Audit of a Report?

There are several methods of obtaining a consent to transfer (waiver) other than on the basis of a complete inheritance tax return submitted with full payment of tax chargeable.

At any time after filing an inheritance tax return, and prior to the completion of the audit proceeding, estate representatives may request the issuance of some or all of the required waivers. Such a request should explain the unusual or emergency nature of the circumstances prompting the request. Waivers may be issued prior to the audit provided that an appropriate payment on account of estimated taxes has been received and/or waivers are withheld on sufficient other assets to provide for taxes. The Branch will not rely on real estate in determining which waivers, if any, may be issued.

Form L-4 is designed for use when the estate is not in a position to file a complete report with the Branch. The form is completed on the basis of informa-

tion available to estate representatives. It is submitted to the Branch and, if it is deemed warranted, waivers will be issued. The Branch will normally withhold waivers covering sufficient assets to pay expected tax.

Forms L-8 and L-9 are new forms designed to accommodate Class "A" beneficiaries and will be discussed in the next issue of the *New Jersey State Tax News*.

Transfer Inheritance and Estate Tax forms may be obtained from regional offices or by contacting the Transfer Inheritance and Estate Tax Branch at the numbers listed on page 5 or by writing to 50 Barrack Street, CN 249, Trenton, NJ 08646.

LOCAL PROPERTY TAX **Tax Assessors Calendar**

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.

- Omitted Assessment List and duplicate filed with County Tax Board.

November 1-

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

November 15-

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31-

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

Criminal Enforcement

Criminal enforcement actions over the past several months included:

May 10, 1994 - Soni's Gift Shop, of Jackson, NJ, plead guilty in Municipal Court to charges of failing to possess a cigarette license, and possession of cigarettes not bearing the required New Jersey revenue stamps. The subject was fined \$2,225.00.

May 10, 1994 - Crystal Vending Corp., of Elizabeth, NJ, plead guilty



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in Municipal Court to charges of not possessing a cigarette vending machine license, and not having proper identification on a vending machine. The subject was fined \$500.00

May 18, 1994 - Hongan Lai, of Queens, NY, was found guilty in Municipal Court on charges of transporting cigarettes not bearing the required New Jersey revenue stamps. The subject was fined \$520.00, and the vehicle used in the transportation, a 1993 Dodge Shadow, was awarded to the New Jersey Division of Taxation.

June 9, 1994 - China Chef, Inc., of Secaucus, NJ, plead guilty in Municipal Court to charges of possessing cigarettes not bearing the required New Jersey revenue stamps, and failure to possess a cigarette license. The subject was fined \$1,965.00.

July 7, 1994 - Dipak Shah, an officer of Mili Liquors, Inc., entered a guilty plea to charges of failing to remit Sales Tax collected from customers of this West Caldwell liquor store. Mr. Shah signed a consent judgment and agreement to make restitution of \$72,287.00.

July 20, 1994 - Juice-A-Peel of Staten Island, a South Amboy, NJ company, entered guilty pleas in Municipal Court to charges of failing to have a cigarette tax license and failure to have identification on cigarette vending machines. The subject was fined \$1,305.00.

Enforcement Summary

Civil Collection Actions Quarter Ending - June 30, 1994

Compliance Activity personnel collected a total of \$48.1 million for the

quarter ending June 30, 1994. Following is a summary of enforcement actions.

Certificates of Debt

After demands for payment were unsuccessful, the Division entered 1,443 Certificates of Debt in Superior Court totaling \$38.5 million.

Contact and Demand

Prior to the filing of Certificates of Debt, the Division collected \$43.0 million through normal collection procedures.

Levies

The Division collected \$2.4 million by levying against 454 bank accounts.

Settlements

Another \$2.2 million was collected by closing 179 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

If the liability of the closed business is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the Division can seize the personal assets of the responsible officers where trust fund taxes (Sales Tax and Income Tax Withholding) are involved.

A total of 40 businesses were scheduled for seizure for the quarter ending June 30, 1994. Of these, 25

businesses were actually closed and 15 were left open, resulting in collections of \$500,000. A listing of seized businesses appears on pages 8, 9 and 10.

Tax Briefs

Corporation Business Tax

Taxation of Foreign Airlines and International Shipping Companies

— The Division has modified its position with regard to foreign airlines and international shipping companies that exclude income from Federal taxation pursuant to IRC Section 883 and are therefore not required to file Federal income tax returns. (See State Tax News, Vol. 22, No. 2, Fall 1993.) Foreign carriers' income is deemed to be exempt from the New Jersey Corporation Business Tax.

However, foreign airlines and international shipping companies will be required to file a corporation business tax return (CBT-100) and pay the minimum tax. New Jersey's minimum tax for a foreign corporation is \$50 for all years through 1993. The minimum tax is scheduled to increase to \$100 for 1994 and \$200 for 1995 and subsequent years.

Affected corporations that did not enter into formal closing agreements may apply for refund of any tax paid within the applicable statute of limitations.

Sales Tax

Exempt Organization Purchases

— An organization holding a valid sales tax exempt organization permit in New Jersey may make exempt purchases by issuing to the vendor a valid Exempt Organization Certificate (ST-5) and making payment from the funds of the organization. The organization must be the direct purchaser and payer

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Division of Taxation Seizures (April - June 1994)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened:

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Murtezan Jonuzi T/A Chelsea Pizza II 1735 Atlantic Avenue Atlantic City	5-16-94	Pizza Shop	Reopened 5-18-94
Burlington	The Fabric Center T/A Princeton Design Center 42 Mill Street Mt. Holly	4-6-94	Carpet & Upholstery Store	Reopened 4-11-94
	Robert J. Volpe, II T/A Splash Inground Pool Service, 2439 Route 206 Eastampton	5-17-94	Pool Service & Repair, Retail Pool Supplies	Closed
	Spiros Missovoulos T/A Neptune Pizza 106 E. Main Street Maple Shade	5-26-94	Pizza Shop	Closed
Camden	Sandra Heaps T/A Station Liquors 1848 New White Horse Pike Camden	4-14-94	Liquor Store	Released Keys to Power of Attorney DPC 4-25-94
	William J. Carman T/A Mr. CS Vac & Sew 219 White Horse Pike Audubon	5-4-94	Vacuum Cleaners/ Sewing Machines	Reopened 5-4-94
	Fine Arts Productions, Inc. T/A Red Lion Fine Arts 701 Cooper Road, Suite 11 Voorhees	5-25-94	Retail, Wholesale Home Accessories	Reopened 5-27-94
Cumberland	TISMI, Inc. T/A Lenny D's Harding Highway, Rt. 40 Vineland	5-11-94	Tavern	Closed
Essex	Los Prados Restaurant, Inc. 454-456 Mulberry Street Newark	5-17-94	Restaurant/Tavern	Reopened 5-18-94
	American Blue Chip T/A Ronnie's Bad Girls 511 Frelinghuysen Avenue Newark	5-19-94	Diner	Closed
	Pro Auto Collision, Inc. 37 Park Street Orange	6-8-94	Auto Body Shop	Reopened 6-23-94

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County	Name/Address	Seizure Date	Business Type	Status
Mercer	Hoaglands Landscape & Garden Center, Inc. 201 Hughes Ave. Trenton	4-27-94	Landscaper, Sales of Plants and Flowers	Closed
Middlesex	John K. Bostick T/A Bostick's Auto Body 909 Middlesex Ave. Metuchen	6-8-94	Auto Repair/Body Shop	Reopened 6-10-94
Monmouth	Furiatos, Inc. T/A Dom's Liquors 215 Third Ave. Long Branch	4-7-94	Liquor Store	Closed
	William B. Nunn W.B. Contracting, Inc. 5010 Industrial Road Wall Twp.	5-23-94	Removal & Installation of Underground Tanks and Gas Delivery Machines	Opened (Vehicles Seized)
	188 Westwood, Inc. T/A Chubb's Pub 188 Westwood Ave. Long Branch	6-2-94	Bar/Restaurant	Reopened 6-2-94
Morris	Skat, Inc. T/A Skats 75 Maple Ave. Rockaway	5-3-94	Bar & Restaurant	Closed
	Jepco, Inc. T/A Rockaway Auto Body 311 W. Main Street Building A Rockaway	5-11-94	Auto Body Repair Shop	Closed
	Danjill Video, Inc. T/A Video Wiz 59A North Beverwyck Road Lake Hiawatha	5-18-94	Small Video Store	Closed
	The Bingham Cochran Co., Inc., T/A Manker Florist 19-1 Waverly Lane Madison	6-9-94	Florist	Closed
Ocean	DSKR Enterprises, Inc. T/A Bamber Village Store 2700 Lacey Road Forked River	6-1-94	Country Store	Closed
	Victor R. DiGandi T/A Vic's Original Barnegat Deli 59 Rosehill Drive Barnegat	6-14-94	Deli	Reopened 6-16-94

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County	Name/Address	Seizure Date	Business Type	Status
Ocean	AGC Enterprises T/A Antonio's 1635 Bay Ave. Point Pleasant	6-14-94	Pizza Restaurant with Dining Room	Reopened 6-14-94
Somerset	Del Val Decorators, Inc. 446 Route 206 Bedminster	4-27-94	Interior Decorating	Reopened 5-3-94
Union	Importex Commercial Luso T/A American Corp. 540 Spring Street Elizabeth	6-15-94	Car Sales	Reopened 6-20-94

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of record. Any bill, invoice or receipt given by the vendor must show the organization, and not any individual member of the organization, as purchaser.

Payment must be made from funds drawn from the account of the organization. The vendor, subject to the "good faith" requirements specified on the back of the ST-5 form, may assume, unless he has reason to know otherwise, that a payment, accompanied by a valid ST-5 made in the form of cash, cashier's check, bank check or money order and purported to be organizational funds by the purchaser, is organizational funds and acceptable for a tax exempt purchase.

A payment made by an organization member's personal check or an organization member's personal credit card or by cash, known by the vendor not to be organizational funds, even when accompanied by a valid ST-5 certificate, is not acceptable for a tax exempt purchase.

Heating Oil Tank Repair — The New Jersey Sales and Use Tax Act provides an exemption for maintaining, servicing or repairing a residential heating system unit, N.J.S.A. 54:32B-

3(b)(4). This exemption would apply to services performed on the oil burner as well as the oil tank, since both are integral parts of the residential heating system. There is no exemption available when such services are performed on commercial heating systems.

Promotional Items — The Division replied to an inquiry concerning the sale of promotional packs of crayons and markers to a manufacturer that intended to include them in its products. At issue was whether the manufacturer could purchase the crayons and markers with a Resale Certificate (ST-3).

The promotional items do not qualify for the resale exemption because they are not being sold as such or converted into or as a component part of a product produced for sale by the purchaser under N.J.S.A. 54:32B-2(e)(1)(A). However, the New Jersey Sales and Use Tax Act provides an exemption for sales of advertising or promotional materials which are ultimately delivered to out-of-state recipients. See N.J.S.A. 54:32B-8.39. If the manufacturer takes delivery in New Jersey, it may issue an Exempt Use Certificate (ST-4) to exempt the purchase of the promotional items. The manu-

facturer would be required to submit 6% New Jersey use tax on that portion of the promotional items purchase receipt that relates to in-state use of the crayons and markers.

In Our Courts

Gross Income Tax

Filing joint return as husband and wife — *New Jersey Superior Court, Appellate Division; Rinier et al. v. New Jersey*, A-1871-92T3; decided May 4, 1994. On appeal from the Tax Court of New Jersey.

The plaintiffs filed a declaratory judgment action claiming that provisions of the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 to 54A:10-12, violate their Federal equal protection and due process rights by requiring them to file a joint state income tax return if they file a joint Federal return.

The Superior Court held that the New Jersey Gross Income Tax, which requires a married couple that files a joint Federal income tax return to file a State income tax return and thus subjects their aggregate income to a higher statutory tax rate than that applicable to married couples filing sepa-

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rately, is not an unconstitutional denial of equal protection since the requirement is reasonably related to legitimate governmental purposes (facilitating uniformity in revenue-collecting procedures between the State and Federal government and auditing of State and Federal returns) and because taxpayers can choose to avoid the higher State tax rate by filing separately for Federal tax purposes.

Local Property Tax

Federal law preempts New Jersey Statute – Superior Court Appellate Division; New Jersey Transit Corporation v. Borough of Somerville, A-6210-92T3; opinion decided May 11, 1994.

The Superior Court held that the Tax Court was correct in finding that N.J.S.A. 2A:14-1.2, which establishes a ten-year limitations period for actions commenced by the State and its agencies, does not apply to property tax appeals; nevertheless, plaintiff, which owns and operates a commuter rail line, is entitled to the retroactive tax exemption in 45 U.S.C.A. 581(c)(5); to the extent that N.J.S.A. 54:3-21 bars such a claim, it must yield to principles of preemption.

Surviving Spouses of Nonresident Disabled Veterans – Phyllis Garma v. Township of Lakewood, Tax Court of New Jersey, 15-15-11786-91S; decided March 22, 1994.

Taxpayer sought, via the New Jersey Tax Court, local property tax exemption on her single family residence as the surviving spouse of an honorably discharged 100% permanently disabled U.S. Army war veteran under N.J.S.A.54:4-3.30 and Article 8, Section 1, Paragraph 3 of the State Constitution. Ocean County Tax Board

had affirmed Lakewood Township's denial of the exemption on the basis that the veteran was not a New Jersey resident at the time of his death. Both the deceased veteran and his widow had been past residents of this State, but had relinquished domicile when they moved to Florida. The appellant's husband died while they were Florida residents. At his death, neither owned property in New Jersey. Except for the issue of residency, all other eligibility criteria for exemption were met and the facts of the case were not disputed.

Plaintiff's appeal to the Tax Court was based on three arguments: 1. that she was a victim of discrimination, 2. that she was denied equal protection and "the right of migration" guaranteed under the United States Constitution, and 3. that she was entitled to retroactive reimbursement of all property taxes previously paid on the residence. The taxpayer requested that the Court declare both the New Jersey statute and constitutional provision in violation of the 14th Amendment because they required the veteran's state residency and citizenship for spousal exemption, and declare New Jersey's scheme of tax exemption in violation of Article 4 of the Privileges and Immunities Clause of the U.S. Constitution.

Regarding the charge of denial of equal protection and class discrimination, the taxpayer contended that N.J.S.A.54:4-3.30 contained a "fixed date" or "fixed event" residence requirement which unlawfully divided veterans' surviving spouses into two classes: resident surviving spouses living in New Jersey when their spouse died and who qualified, and resident surviving spouses who established New Jersey residence after their spouse's death who did not.

Cited in support was a decision in which a New Mexico statute granting exemption only to Vietnam veterans residing in the state prior to a fixed date while denying later resident Vietnam vets was struck down by the United States Supreme Court. The Court reasoned that the legislation did not simply distinguish between resident and nonresident veterans but rather favored established residents over new residents, and that new residents cannot be discriminated against solely on the basis of the date they arrived in the state. A similar U.S. Supreme Court ruling of the state of Alaska's distribution to its citizens varying amounts of dividends based on years of residence as unconstitutional was also offered as evidence.

The Equal Protection Clause of the 14th Amendment does not require that all persons be treated alike; it requires that similar persons be treated similarly, and that people of different circumstances be treated differently. Alleged equal protection violations are divided into three categories: 1. fundamental rights, e.g., voting or suspect class (e.g., race); 2. semi-suspect class, e.g., gender; 3. all other cases; and are tested at three levels of scrutiny based on the nature of the violation. Generally, a tax statute will survive scrutiny under the equal protection clause if the distinctions or classifications made reflect a legitimate government purpose, bear a reasonable relationship to that purpose and are uniformly applied.

Although this case involved a class of veterans vs. a class of New Jersey resident veterans, the disputed statute was found to be constitutional. The U.S. Supreme Court has held that "legislatures have especially

in our courts - continued from pg. 11

broad latitude in creating classifications and distinctions in tax statutes." Further a class of veterans doesn't result in "invidious or irrational" distinctions among a state's residents, a suspect or semi-suspect class, nor affect fundamental rights and therefore need only satisfy the rationally based legitimate state purpose criteria to comply with the equal protection clause. A bona fide residence requirement furthers a legitimate state purpose to assure that benefits provided for residents are enjoyed only by residents. In this case the taxpayer was not a member of the class of persons intended to receive the exemption under N.J.S.A.54:4-3.30, that is resident surviving spouses of resident veterans. Thus, ironically the denial of her exemption was equal protection since she could not be treated in the same manner as qualified class members. Also, the residence requirement was not fixed-date or durational as the taxpayer argued, but a rational bona fide residence requirement in which the State benefited its resident veterans equally, limited not by length of residence but by actual residence. The appellant's disqualification was not based on her recent arrival or period of residence. She did not qualify because her husband did not qualify. No surviving spouse of a nonresident vet who takes up residence in New Jersey is entitled to exemption.

The taxpayer did not request that the exemption be broadened to include her although the Court inferred this to be her intent. Had the law been found unconstitutional, no one would have been entitled to exemption under the existing statute. To extend the exemption to create a new class of surviving spouses was deemed contrary to the intent of the State

constitutional amendment granting the exemption. The denial was upheld and the complaint dismissed.

Veterans' Organization Not Exempt from Real Property Tax – *The John Dolak Home Association, Inc. v. Borough of Alpha*, Superior Court of New Jersey, Appellate Division, on appeal from Tax Court of New Jersey, A-5027-92T3; decided June 23, 1994.

The John Dolak Home Association, a veterans' organization affiliated with the American Legion, appealed the New Jersey Tax Court's denial of its request for real property tax exemption. The Tax Court ruled that the Association's property was not actually used for charitable purposes as under N.J.S.A.54:4-3.6, nor was it a bona fide national war veterans' organization under N.J.S.A.54:4-3.25 because it was established after the statutory deadline for formation and its membership was open to non-veterans. Consequently, it did not qualify for exemption. The Superior Court concurred and affirmed the Tax Court's judgment.

To receive exemption for charitable cause under N.J.S.A.54:4-3.6 the claimant must be organized exclusively for the moral and mental improvement of men, women and children; the property must be actually used for tax-exempt purpose; and the operation and use of the property must not be conducted for profit. A claimant who fails to satisfy any one of these three criteria is disqualified.

The by-laws of the J. Dolak Association stipulated that the Home was to be used at all times for the moral and mental improvement of men, women and children and its membership. The goals of the Association as stated in the by-laws were to promote community involvement, good citizenship, a rapport between veterans and non-veter-

ans, and to help the distressed, sick, needy children and destitute of the area.

The Home Association as a service organization sent food baskets to the poor; donated to an emergency squad, a high school athletic program, the Vietnam Memorial in Washington; financed the construction of a swimming pool for Borough children; built a pavilion and rest rooms and planted trees at a public park; sponsored children's athletic events; funded a public school youth program; bought insurance for Borough's baseball teams and raised money for the American Legion.

The property, 4 lots and a structure which was formerly a hotel, was used for American Legion meetings and fund raisers. Class reunions, social affairs, and J.D. Home Association meetings were also held there, as well as occasional activities for nearby hospitalized veterans. However, the Home Association also conducted a non advertised "by word of mouth" catering business from the premises. Proceeds from the business were used for building maintenance, taxes, insurance, trash removal and paying waitresses, cooks and janitorial workers. Several association officers received salaries. Surplus funds went into a general fund. In 1991 and 1992, \$226,104 and \$233,000 respectively was earned through catering. For 1990 tax year, a net surplus of \$12,500 was donated to charity. For tax year 1991, a net loss of \$7,000 was indicated. Per the Association, their year's end goal was to have a zero balance not a profit.

The decision of the Superior Court hinged on the second criterion or test of eligibility, i.e., the actual use of the property. While occasional or inci-

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in our courts - continued from pg. 12

dental fund raising did not preclude exemption, a substantial, independent and permanent endeavor designed to make profit, even for beneficent purposes, did. Prior case law had determined that where property was used for commercial enterprise, the fact that all profits were devoted to charity did not justify granting an exemption. On that basis, in keeping with strict construction of exemption statutes, the Tax Court's denial was upheld.

The Home Association did not seek exemption on its status as a fraternal organization under N.J.S.A. 54:4-3.26, nor did the Court address this issue. An attempt by the Association to have the assessment reduced was dismissed.

Sales and Use Tax

Use Tax on Catalogs Shipped into the State – *Superior Court, Appellate Division; Comfortably Yours, Inc. v. Director, Division of Taxation*, A-1115-92T1; decided April 22, 1994. On appeal from the Tax Court, 12 N.J. Tax 570 (Tax 1992).

Comfortably Yours, Inc. (CYI), a New Jersey vendor involved in retail mail-order sales, appealed from a use-tax deficiency assessed by the Director, Division of Taxation, and upheld by the Tax Court. The deficiency represented the tax on the cost of producing and distributing promotional catalogs at the direction of CYI by out-of-state printing contractors who shipped the catalogs by mail to customers in New Jersey.

CYI contended that the Tax Court erred in determining that the production and distribution of its promotional catalogs constitute a use within the meaning of N.J.S.A. 54:32B-2(h) and in declaring that the imposition of the tax is not a violation of the commerce clause of the U.S. Const., art. I section 8, cl. 3.

The Tax Court decision was affirmed substantially for the reasons expressed in its opinion.

Thus, the production and distribution of promotional catalogs by an out-of-state contractor at the direction of a New Jersey corporation and the mailing of those catalogs to New Jersey consumers constitute a use within the meaning of N.J.S.A. 54:32B-2(h) subjecting the New Jersey corporation to the imposition of a use tax.

In Our Legislature

Gross Income Tax

Tax Rate Decrease — P.L. 1994, c.69 (signed into law on July 6, 1994) reduces the gross income tax rates. Combined with P.L. 1994, c.2, results in cumulative reduction for married persons filing jointly, head of household or surviving spouse of: 15% (\$0-\$80,000); 7.5% (\$80,000 - \$150,000) and 6% (over \$150,000). Reduction for single individuals or married persons filing separately is: 15% (\$0-\$40,000); 7.5% (\$40,000-\$75,000) and 6% (over \$75,000).

This bill is effective for tax years 1995 and thereafter.

Setoff of Individual Liability

New Jersey DMV Merit Rating Plan — P.L. 1994, c.64 (signed into law on June 30, 1994) provides for enhanced surcharge collection methods to be used by the Division of Motor Vehicles. Setoff of Individual Liability Program will be utilized to deduct unpaid debts from income tax refunds and homestead rebates, and docketed judgments to collect delinquent surcharges.

Merit Rating Plan surcharges are levied on persons convicted of drunk driving and other vehicular offenses pursuant to P.L. 1983, c.65 (C.17:29A-

33 et al.). This law dedicates surcharge revenue, net of collection expenses, for deposit in the New Jersey Automobile Insurance Guaranty Fund for the repayment of debt incurred by insurance pools of high risk drivers.

The Division of Motor Vehicles (DMV) has the authority to suspend the driver's licenses of offenders who fail to pay their surcharge assessments. However, experience has demonstrated that this sanction is not adequate to compel the collection of these surcharge debts. This bill is intended to provide the Director of DMV with additional and more effective remedies to collect this debt.

To afford greater flexibility and convenience to those assessed, this bill also removes indigency as a condition for paying off surcharges in installments, and increases the number of allowable installment payments from 10 to 12 per year. The bill also authorizes the DMV to accept credit card payments.

This bill is effective immediately.

Attention NJX Subscribers

If you subscribe to New Jersey's *Package NJX* and your name and/or address has changed (or will change by November 15, 1994), please contact the Division to insure that you receive the 1994 edition. Contact the Division at the address indicated in *Obtaining New Jersey Tax Forms* below.

Obtaining New Jersey Tax Forms

In anticipation of the upcoming tax season, please note the various methods for obtaining forms from the Division.

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- Orders for forms can be placed by calling the Division's toll free number 1 (800) 323-4400, 24 hours a day;
- Request a copy of the New Jersey *Package NJX* which contains the most commonly used tax forms by writing to: New Jersey Division of Taxation, OCE, 50 Barrack St, CN 286, Trenton, NJ, 08646-0286, Attn: NJX;
- Anyone with a fax machine can call our NJ TaxFax service at (609) 588-4500. This service is also available 24 hours a day and can be utilized by anyone with a telephone attached to their fax machine. NJ TaxFax contains many of the most commonly requested forms; a list

of the available forms can be obtained directly from the service. (NJ TaxFax users are cautioned that the Division of Taxation will not accept returns filed on fax paper. Forms received by fax must be photocopied before they are filed with the Division.)

Need a Mentor?

The New Jersey Department of Commerce and Economic Development has the next best thing, "MENTOR Magazine." *MENTOR* is a quarterly publication that assists entrepreneurs. It provides information concerning marketing, government procurement, business planning, loan assistance, and other topics essential to running a successful business. *MENTOR* also has a Calendar of Events which features

workshops, conferences, and seminars devoted to the needs of New Jersey companies. Approximately 200 of these functions, supported by diverse organizations are listed in every *MENTOR*.

MENTOR was developed by the New Jersey Division of Development for Small Businesses and Women and Minority Businesses (SWMB) located within Commerce. This free magazine is one of the technical services that SWMB provides to the small business community. In order to receive a subscription, please mail your request to:

Renee Franklin
MENTOR Editor
 SWMB Division
 CN-835
 Trenton, NJ 08625-0835

tax calendar

october

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1							1
9	2	3	4	5	6	7	8
9	9	10	11	12	13	14	15
4	16	17	18	19	20	21	22
	23	24	25	26	27	28	29
	30	31					

October 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

October 17

- CBT-100** Corporation Business Tax—Annual return for accounting period ending June 30

continued

October 17 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's semi-monthly, monthly and quarterly returns

October 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5

- Spill Compensation and Control Tax**—Monthly return
- New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

continued

October 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

October 31

- NJ-500** Gross Income Tax—Employer's semi-monthly return



november

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	28	29	30				

November 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

November 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending July 31
- CBT-150 Corporation Business Tax**—Installment payment of

continued

November 15 - continued

- NJ-500** estimated tax for 4th, 6th, 9th or 12th month of current tax year
Gross Income Tax—Employer's semi-monthly and monthly returns

November 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

November 21 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

November 25

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

November 30

- NJ-500 Gross Income Tax**—Employer's semi-monthly return

december

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
1 9 9 4					1	2	3
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	25	26	27	28	29	30	31

December 12

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

December 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending August 31

continued

December 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's semi-monthly and monthly returns

December 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

December 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

December 27

- PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

from the director's desk

Filing Homestead Rebate Applications in Two States

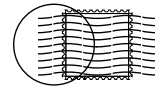
What are the tax implications of a taxpayer filing Homestead Property Tax Rebate Applications with both New Jersey and another state? If a taxpayer claims a homestead rebate in two states (for example, New Jersey and Florida), the Division of Taxation, at the discretion of the Director, is allowed to exchange information with the taxing officials of the other state, provided the other state grants like privileges to this State and the information is used for tax purposes only (N.J.S.A. 54:50-9). In addition to repaying the rebate, the taxpayer can be charged with a disorderly persons offense. Under N.J.S.A. 54:52-6, it is a disorderly persons offense to file or give information "required by any State tax law" which is false. Providing false information to hinder an audit is also subject to criminal penalty. A disorderly persons offense carries a fine of \$1,000 and a jail term of up to 6 months.

On-line Services

Are subscription fees for on-line computer bulletin board service which offers general information, on-line games, "E" mail and other similar services subject to sales tax?

No. Subscription fees for computer bulletin boards are not subject to New Jersey sales tax.

NJ Tax Question? Send your questions to:



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