

New Jersey State Tax news

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State Treasurer Sworn In



Andrew P. Sidamon-Eristoff was nominated by Governor Chris Christie as State Treasurer and assumed the duties of Acting State Treasurer on January 19, 2010. On March 2, 2010, having received Senate confirmation, he was officially sworn in as the Treasurer of the State of New Jersey.

Mr. Sidamon-Eristoff is an accomplished leader in public sector budget, revenue, and tax system administration. Prior to his nomination, from 2003 to 2006, Mr. Sidamon-Eristoff served as Commissioner of the New York State Department of Taxation and Finance, the nation's second-largest state revenue administration.

From 1999 to 2002, he served as New York City Commissioner of Finance and as a three-times elected member of the New York City Council from 1993 to 1999.

Between 2006 and 2008, Mr. Sidamon-Eristoff performed a series of short-term consulting assignments for Chemonics International, an international development consulting firm then executing a business climate reform project in the Republic of Georgia for the United States Agency for International Development.

Mr. Sidamon-Eristoff is currently a member of the Internal Revenue Service's Electronic Tax Administration Advisory Committee and is a former President of the North Eastern States Tax Officials Association and board member of the Federation of Tax Administrators.

Mr. Sidamon-Eristoff earned a bachelor's degree, cum laude, from Princeton University and a juris doctor degree, cum laude, from Georgetown University Law Center. He also earned an Advanced Professional Certificate in Information Technology from New York University.

He is married to the former Catherine E. Baxter and they have three children. □



Tax Expenditure Report

P.L. 2009, c.189, signed into law on January 12, 2010, by Governor Jon Corzine, requires a State tax expenditure report to be included in the Governor’s annual budget message, commencing with the Governor’s FY 2011 budget message.

The statute requires the reporting of all State tax expenditures made in the last completed fiscal year, the current fiscal year, and the fiscal year to which the budget message applies. The subject years for the first report issued on March 1, 2010, are: FY 2009, FY 2010, and FY 2011. This report also complies with the spirit of Governor Chris Christie’s Executive Order No. 8, which was issued on January 20, 2010.

“State tax expenditure” means those revenue losses attributable to provisions of State tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit, preferential tax rate, or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions, or property from the liability which would be presumed to exist without the State tax expenditure.

The March 2010 report presented a summary table of the State tax expenditures, segregated by grant or tax and by category of tax expenditure. The body of the report provides a more detailed explanation of each tax and the tax expenditure(s) available under that levy.

For the purposes of this report, the Division of Taxation considers

“tax expenditures” to be only those provided explicitly under statute, whether under the enabling statute or subsequent provision modifying the original statute. Primarily, those statutory provisions allow for three categories of preferential tax treatment: exemptions, deductions, and credits.

The tax expenditure report was a collaborative venture and represents the work of various units within and outside the Division of Taxation: the Office of Revenue and Economic Analysis, the Regulatory Services Bureau, the Audit and Local Property Tax Branches, the Disclosure Office, and the Office of Legislative Analysis from the Division of Taxation; as well as the Economic Development Authority and the Division of Revenue. John Kelly, Chief of the Office of Legislative Analysis, coordinated the preparation of the first report on behalf of the Division of Taxation, Department of the Treasury.

The March 2010 State tax expenditure report is available on the Division of Taxation’s Web site at: www.state.nj.us/treasury/taxation/pdf/expenditure_report_final.pdf □

SALES AND USE TAX Sales and Use Tax Review Commission

Pursuant to P.L. 1999, c.416, the Sales and Use Tax Review Commission “shall review every bill, joint resolution, or concurrent resolution introduced in either House of the Legislature which constitutes sales and use tax base expansion or reduction legislation” as defined by

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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:** Cheryl Fulmer

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s&u review commission - from page 2

P.L. 1999, c.416, and as determined by the Legislative Budget and Finance Officer pursuant to that Act. The Division of Taxation assists the Commission in the performance of its duties. The Commission may make use of existing studies, data, or other materials in the possession of the Division and may request the assistance and services of the Division's employees.

The Commission's reviews include an analysis of the fiscal impact of any reviewed bill or resolution, any comments upon or recommendations concerning the legislation, and any alternatives to the legislation which the Commission may wish to suggest. It is the responsibility of the Commission's executive secretary to reduce these recommendations to written form.

At the end of each calendar year, the Commission must submit an annual report on its activities to the Legislature. It may also issue periodic reports concerning sales and use tax base expansion or reduction legislation.

The Commission met on March 24, 2010, where it reviewed 59 proposed sales and use tax bills. Eight of the nine sitting commissioners participated in the meeting. The Commission recommended in favor of the enactment of 4 bills and against the enactment of 55 bills. For a full review of the bills and the Commission's analysis visit: www.state.nj.us/treasury/taxation/s_ucommish/commish.shtml

In January 2010, El-Rhonda Williams Alston was appointed by the Deputy Director of the Division of Taxation to serve as the Executive Secretary of the Sales and Use Tax Review Commission. □

INSURANCE PREMIUMS TAX

Dental Service Corporations

N.J.A.C. 54:18A-9(b)3, enacted on June 29, 2009, includes Dental Service Corporations (DSCs) in its definition of "insurance companies" for the calendar year January 1, 2009, through December 31, 2009.

- DSCs are subject to the new group accident and health insurance tax rate of 1.35% plus the additional 0.05% tax dedicated to the Department of Banking and Insurance, for a total tax rate of 1.40%. Premiums and the applicable tax amounts are to be indicated on the "Group Accident and Health" line when filing the tax form and remitting the tax liability, due and payable on March 1, 2010.
- DSCs are to file using the applicable 2009 insurance premiums tax forms: Domestic Companies Other Than Life (DEM) or Foreign or Alien Companies Other Than Life (EM). The forms can

be found on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/prntins.shtml

- An original copy of the return must be filed with the Department of Banking and Insurance at the address indicated on the return.
- DSCs are not required to make prepayments due to the temporary nature of their subjectivity.
- DSCs are permitted to remit their tax payment by check, along with their tax return, regardless of the check amount. They will not be required to remit tax payments over \$10,000 by electronic funds transfer (EFT), due to the temporary nature of their subjectivity. □

LOCAL PROPERTY TAX
Tax Assessors'
Calendar

April 1-

- Deadline for filing appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for non-filing or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the taxpayer or

continued on page 4

Correction

2009 NJ-1040NR Instructions

There is an error on page 7 in the printed version of the 2009 NJ-1040NR nonresident return instructions. The equation that appears under "Line 30 - Total Exemption Amount" is incorrect. It should read:

$$\frac{\text{Total Exemptions}}{12} \times \frac{\text{Mos. NJ Nonresident}}{12} = \text{Line 30}$$

A corrected version of the instructions is available on our Web site at: www.state.nj.us/treasury/taxation/prntgit.shtml



assessors' calendar - from page 3

taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with State Tax Court.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Division of Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Board.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Certification of REAP aid due to each local unit for tax year received by County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.

- Extended deadline for filing assessment appeals to the County Tax Board or State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

- Table of Aggregates completed by County Tax Board from assessor's Tax Duplicates and Taxation Director's certification of 2nd class railroad property.

- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and the clerk of each municipality in the county.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.

- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.

- Repayment of disallowed property tax deduction previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2008 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2009 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The

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small business workshops - from pg. 4
seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal enforcement over the past several months included:

- In November 2009, special agents from the Office of Criminal Investigation responded to the Palisades Interstate Parkway Police Headquarters in Alpine, New Jersey.

Officers of the Palisades Interstate Parkway Police Department (PIPPD) had stopped a commercial vehicle (which is not allowed on the Palisades Interstate Parkway) and found the occupants in possession of 2,400 cartons of Native American/Mohawk-manufactured cigarettes which were being transported from the Mohawk reservation at the Canadian border to a reservation on Long Island, New York. Charges were for fourth-degree possession of contraband cigarettes, third-degree failure to keep records with intent to evade and avoid, fourth-degree doing business requiring licensure without first having obtained license, third-degree possession/transportation of cigarettes not part of the master settlement agreement, disorderly persons charge of transportation of untaxed cigarettes, and disorderly persons charge of no consumer license. Both subjects were arrested by a special agent of the Office of Criminal Investigation, processed at the PIPPD, and remanded to the Bergen County Jail in lieu of \$57,000 bail each, no 10% (surety bond only).

- In December 2009, Jerry Smith of Sparta, New Jersey, was sentenced to seven years in State prison by Superior Court Judge Salem Vincent Ahto in Morris County. Smith pled guilty on October 6, 2009, to an accusation charging him with second-degree misapplication of entrusted property and third-degree failure to pay New Jersey income taxes. Smith was treasurer of the Pleasant Hill Cemetery Association and a member of its board of trustees for more than 20 years.

As treasurer, Smith had control of Pleasant Hill's finances and bookkeeping, including custody and control of income from plot sales and burials. In February 2008, the cemetery's superintendent found discrepancies in financial reports prepared by Smith and reported them to the board of trustees. The charges stem from a joint investigation by the Division of Criminal Justice and the Division of Taxation. In pleading guilty, Smith admitted that between January 2000 and February 2008 he misappropriated \$611,590 in cemetery association funds, which he used for his personal benefit. Smith further admitted that in filing joint personal income tax returns with the State of New Jersey for himself and his wife for the years 2000 through 2008 he failed to report the misappropriated funds as income, resulting in the couple's failure to pay \$25,304 in taxes owed. Under the plea agreement, Smith executed consent orders to pay restitution of \$607,590 to the Pleasant Hill Cemetery Association, representing the amount stolen less \$4,000 he previously repaid, and \$42,021 to the Division of Taxation, representing the taxes owed plus fines and penalties. The judge ordered Smith to continue to make restitution payments from his fixed income while in prison.

- On January 6, 2010, before Superior Court Judge Francis R. Hodgson in Ocean County, James Hankins, Jr. was sentenced to a 20-year prison term with a 10-year parole ineligibility based on his October 13, 2009, guilty plea to one count of financial

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2010 – December 31, 2010, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%



criminal enforcement - from pg. 5

facilitation of a criminal activity, commonly known as money laundering, one count of failing to file a tax return, and one count of failure to pay taxes on the proceeds. Investors, primarily in Ocean and Monmouth County, gave Hankins almost \$18 million with which Hankins said that he would purchase interests in life insurance policies of terminally ill individuals. No policies were ever purchased. Instead, Hankins operated a typical Ponzi scheme by paying returns to some investors in order to entice others to invest. Hankins funded his lavish lifestyle, returning only \$11.7 million to the victims. Hankins, a New Jersey resident, failed to file tax returns and pay taxes on his income for tax years 2004, 2005, 2006, and 2007. Hankins' liability for taxes due to the New Jersey Division of Taxation totaled \$571,202.79 for the years in question, not including penalties and interest.

- During the period of January 2009 through December 2009, the Division of Taxation's Office of Criminal Investigation prevented the payment of 2,742 fraudulent refunds, totaling \$5,266,103. The methods employed to save

the Treasury of the State of New Jersey from being defrauded are threefold. First, losses are prevented by earmarking accounts with a fraud indicator, essentially causing refunds to be denied. Secondly, through a twice-weekly manual review, refund checks are pulled prior to mailing and/or payment is stopped on checks already issued. Lastly, working in conjunction with the Division of Revenue, returns are manually identified as fraudulent prior to processing. These manual efforts extend beyond the scope of automatic system checks already in place. □

Tax Briefs

Corporation Business Tax

New Jersey Economic Development Authority Grants — Grants made under the Business Employment Incentive Program Act, N.J.S.A. 34:1B-124 et seq., are calculated pursuant to N.J.S.A. 34:1B-129. If a grant is made to a C corporation, the grant is deemed taxable income. The grant would be considered a New Jersey source receipt for apportionment purposes. If a grant is received by a conduit-type entity such as a partnership, limited liability corporation electing to be treated

as a partnership, or subchapter S corporation, the grant is to be apportioned as taxable income among the persons to whom the income or profit of the partnership, limited liability corporation, subchapter S corporation, or other entity is distributed, in the same proportion as the income or profit is distributed.

This article supercedes a prior *State Tax News* article on this topic (*State Tax News*, Spring 2003, Volume 32, Number 1, page 7).

Gross Income Tax

Treatment of Guaranteed Payments — The Division received a letter from a taxpayer representing a partnership concerning the gross income tax treatment of partnership guaranteed payments and whether those payments are subject to withholding when received by nonresident partners and considered wages for purposes of the Business Allocation Schedule, [NJ-NR-A](#).

The partnership asked whether the guaranteed payments paid by the partnership should be treated as payroll for purposes of completing the business allocation schedule. The Division of Taxation answered that the guaranteed payments are not included in the payroll allocation factor because the payments

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Public Auction Information

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

Enforcement Summary Statistics Fourth Quarter 2009

Following is a summary of enforcement actions for the quarter ending December 31, 2009.

• Bank Levies	920	• Seizures	81
• Certificates of Debt:		• Auctions	9
Total Number	4,608		
Total Amount	\$47,459,023		



tax briefs - from page 6

are not treated as wages or salaries. The Division confirmed that the partnership was correct in its conclusion that guaranteed payments are not included in the payroll fraction on the NJ-NR-A or Schedule J for allocation purposes.

Guaranteed payments must be reported as distributive share of partnership income. N.J.A.C. 18:35-1.3(d)(3). However, if the guaranteed payments are paid to a retired partner who is receiving the payment pursuant to a retirement agreement or pension plan (in connection with a period of service to the partnership), the partner should report these guaranteed payments as pension income. N.J.A.C. 18:35-1.3(d)(3).

If a partnership has some or all of its income allocated to New Jersey, then the partnership must meet its nonresident partner tax payment requirements. Guaranteed payments

made to nonresident partners are subject to tax as distributive share of partnership income.

2010 Conversion of a Traditional IRA to a Roth IRA — A taxpayer wrote to the Division of Taxation with a question related to the Federal Tax Increase Prevention and Reconciliation Act of 2005. The Federal law contains a provision that allows taxpayers, if they convert a traditional IRA to a Roth IRA in 2010, to spread the income (from the “distribution” from the traditional IRA) over a two-year period for Federal income tax purposes. The taxpayer inquired whether this treatment of the “conversion” income would apply for purposes of New Jersey gross income tax.

New Jersey conforms to the Federal Tax Increase Prevention and Reconciliation Act of 2005 provision regarding the reporting of a distribution from an IRA which the taxpayer converts into a Roth IRA in 2010. The taxpayer may choose

to include the distribution in taxable income in 2010 or in equal amounts in 2011 and 2012. Taxpayers and tax practitioners should use the Division’s publication, **GIT-2, IRA Withdrawals**, to calculate the portion of the IRA distribution that is taxable for gross income tax purposes.

Sales and Use Tax
Molds and Dies Used in Manufacturing — The Division received an inquiry from a mold and tool shop concerning the taxability of custom molds and dies used in the manufacturing process.

The Sales and Use Tax Act provides an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). The exemption also includes parts with a useful life of greater than one year. A “part” is an “item used as a replacement for any portion of a machine and which is attached or affixed to the machine of which it is a part permanently or during periods of usage. A part cannot accomplish the work for which it was designed independent of the machine of which it is intended to be a component.” N.J.A.C. 18:24-4.2.

Molds and dies are considered a part of exempt manufacturing equipment. Thus, if the molds and dies have a useful life of greater than one year, they are entitled to the exemption. Useful life can often be determined by the accounting treatment afforded the property. In order to document this exemption, an Exempt Use Certificate (Form ST-4) must be provided by the purchaser. □

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In Our Courts

Corporation Business Tax

Nexus: Doing Business – *Praxair Technology, Inc. v. Director, Division of Taxation*, (A-91/92-08), decided December 15, 2009.

In a unanimous decision, the New Jersey Supreme Court reversed the Appellate Division, holding that an out-of-State taxpayer was subject to New Jersey's corporation business tax for the years 1994–1996, prior to the 1996 addition of an example to the regulation at N.J.A.C. 18:7-19.

Plaintiff Praxair Technology, Inc. (Praxair) is a Delaware corporation based in Connecticut that exists solely to own and license patents

to corporate affiliates. Praxair's corporate parent manufactures and sells industrial gases throughout the United States, including New Jersey. From 1994 through 1999, Praxair's parent used Praxair's intellectual property in its New Jersey manufacturing facilities and paid licensing fees to Praxair for that use. During that period, Praxair did not file New Jersey corporation business tax returns or pay any New Jersey corporation business taxes.

The Director issued a notice of assessment to Praxair finding it subject to corporation business tax for the years 1994–1999, together with interest and late filing penalties. Following the completion of the

informal administrative conference, the Director issued Praxair a final determination upholding the initial notice of assessment for corporation business tax and imposing additional interest and penalties.

One of the issues before the Tax Court was the assessment of corporation business tax for the years 1994–1996, under N.J.S.A. 54:10A-1, in light of the 1996 addition of an example to N.J.A.C. 18:7-19. The 1996 example stated that a foreign corporation that receives fees for licensing trademarks to New Jersey companies for use in New Jersey is subject to the corporation business tax. Praxair argued that the example expanded the Director's taxing power while the Director argued that the example represented no change in tax policy or obligations. The Tax Court rejected Praxair's claim that the Director's adoption of the 1996 example to N.J.A.C. 18:7-19 expanded the Director's taxing power and found Praxair liable for the corporation business tax.

Praxair appealed and the Appellate Division reversed. The panel found that the Tax Court erred in deciding Praxair's pre-1996 tax liability because it had given insufficient regard to the impact of the 1996 changes to the regulation.

The Director's petition for certification was granted by the Supreme Court along with Praxair's cross-petition. In reversing the Appellate Division's decision, the Supreme Court held that both Praxair's argument and the Appellate Division's reasoning were premised on an incorrect assumption that tax liability can somehow flow from the adoption of or amendment to a

Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

in our courts - from page 8

regulation. Praxair's activities were sufficient to constitute doing business in New Jersey for corporation business tax purposes both before and after the example was added.

NOTE: This matter has been remanded to the Appellate Division for review of plaintiff's challenges to the imposition of the late filing and post-tax amnesty penalties under N.J.S.A. 54:49-4 and N.J.S.A. 54:53-18(b), respectively.

Gross Income Tax

Alimony Income – *Goldrick, Nancy L. v. Director, Division of Taxation*, New Jersey Supreme Court C-115 September Term 2009, decided November 10, 2009.

On July 13, 2009, the Superior Court, Appellate Division, affirmed Judge Hayser's Tax Court decision, which granted the Division's summary judgment motion in this matter, stating:

In any event, the issue in this appeal is not whether an agreement to pay alimony post-mortem would be enforceable, but rather whether the Director of the Division of Taxation can treat payments that the parties to a divorce have themselves characterized as "alimony" as alimony for tax purposes even though those payments are required to continue even if one of the parties dies. We are satisfied that it was well within the Director's broad discretionary authority in the administration of the Gross Income Tax Act to treat such payments as "alimony" within the intent of N.J.S.A. 54A:5-1(n).

On November 10, 2009, the New Jersey Supreme Court denied the plaintiff's petition for certification.

Statute of Limitations – *Aboaba, Akintade and Daunis v. Director, Division of Taxation*, Docket No. 002022-2009, decided November 6, 2009.

The taxpayer was assessed for tax years 2004, 2005, and 2006 for under-reporting wage income.

Almost 219 days after the auditor had issued the notices of deficiency, the taxpayer filed a complaint in Tax Court.

Judge Hayser stated:

It is well established that the law frowns upon those who sleep on their rights. Statutes of limitations are intended to run against those who are neglectful of their rights, and...fail to use reasonable and proper diligence in the enforcement thereof. The public policy considerations behind statutes of limitations are perhaps most pertinent to tax matters. This is because strict conformity with such statutory deadlines provides finality and predictability of revenue to state and local governments. Consequently, failure to file a timely appeal is a fatal jurisdictional

defect, and if a plaintiff does not file within the requisite statutory period, that plaintiff is proscribed from an appeal in the Tax Court and from any judicial review of the Director's decision.

Judge Hayser concluded:

When the taxpayers failed to file timely, the Division of Taxation was entitled to assume that its assessment was final. It is not within the court's power to relax the statutory time limitations of N.J.S.A. 54:49-18(a) or N.J.S.A. 54A:9-10. Even in the face of possible recalcitrance, denial of future consideration, or silence by the Division after April 2008, the taxpayers cannot be relieved of their duty to file a timely appeal in the Tax Court. Moreover, there is nothing in the record which would allow the court to toll the 90 day period to which these statutes apply.

Judge Hayser granted the Division's motion to dismiss.

Insurance Premiums Tax

Constitutionality – *Horizon Blue Cross Blue Shield v. State of New Jersey, et al.*, Docket No. 007354-2005, decided December 15, 2009.

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in our courts - from page 9

This case involves the constitutionality surrounding the enactment of P.L. 2005, c.128, which amended the insurance premiums tax with respect to "Health Service Corporations."

Assembly Bill No. 4401 was signed into law July 2, 2005, after hearings and approval by the Legislature. A4401 amended N.J.S.A. 54:18A-6 only to remove Health Service Corporations from the preferential tax (cap) treatment of insurance premiums granted by statute. A4401 did not amend: (1) the filing or payment dates for insurance premiums tax (IPT) set forth in Title 54 or (2) the provisions of Title 54 governing taxpayer challenges to taxes; granting refunds to taxpayers, with interest; or staying collection action while a taxpayer's case is pending in our courts.

On July 6, 2005, less than one full week after A4401 was enacted, Horizon filed a complaint contesting the legislation on numerous constitutional grounds.

Horizon challenged the constitutionality of the Premium Tax Cap Statute as amended due to alleged violations of the Equal Protection Clause and Due Process Clauses of the Fourteenth Amendment of the United States Constitution, and

Article 1, Section 1, of the Constitution of the State of New Jersey. Furthermore, Horizon felt they were being singled out by this legislation in further violation of the United States Constitution.

On December 15, 2009, the constitutionality of the Premium Tax Cap Statute as amended was upheld in an opinion by Judge Bianco, who stated:

For the foregoing reasons the court finds the Premium Tax Cap Statute is constitutional as amended. The statute is reasonably related to a legitimate government purpose and there is a rational basis for A4401. Accordingly the Director's motion for summary judgment is granted and Horizon's motion for summary judgment is denied.

Horizon has filed an appeal.

Local Property Tax Property Tax Exemption – *Lighthouse Mission for Evangelism, Inc. v. Long Branch City.*

While plaintiff Lighthouse Mission was also involved in related Federal litigation concerning zoning use, the issue discussed here is whether the plaintiff was entitled to exemption from local property

taxes under N.J.S.A. 54:4-3.6 for tax year 2005.

In order for property to be eligible for exemption under N.J.S.A. 54:4-3.6: (1) the entity claiming exemption must be organized exclusively for religious purposes, including religious worship, or charitable purposes; (2) the property must be actually used for the tax-exempt purpose; and (3) the property and the charitable or religious organization using the property may not be conducted for profit. See *Roman Catholic Archdiocese of Newark v. City of East Orange*. Additionally, the entity claiming exemption must own the property for which the exemption is claimed.

Long Branch alleged that the Lighthouse Mission's claim in the Federal litigation that it was not allowed to use said property as a church constitutes an admission that it is not qualified for the exemption based on religious use. Long Branch states that the Lighthouse Mission failed to satisfy a vast majority of elements required by N.J.S.A. 54:4-3.6. Long Branch reiterates that the property was not used for charitable purposes, but instead as a residence for Kevin Brown, Lighthouse Mission's pastor and president, and by Reverend Brown in conjunction with for-profit activities he conducted for his own benefit. Defendant also maintains that, at the valuation date, October 1, 2004, the name of the owner of record of the subject property differed from the name of the plaintiff and that plaintiff therefore did not own the subject property as required by N.J.S.A. 54:4-3.6.

Lighthouse agrees that it was illegally barred from using the property

Current Amnesty Programs

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

- PA April 26 – June 18 www.revenue.state.pa.us/
- Philadelphia, PA May 3 – June 25 www.phila.gov/revenue/

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for purposes of religious assembly; however, the property was used for other charitable and religious purposes. Lighthouse also suggests it was illegally denied permission to use the property as a church under the prior ordinance, and that if defendant granted the application prior to the adoption of a redevelopment plan, the church use would have been permitted. The plaintiff admits that the property was used in part as Reverend Brown's residence, which under N.J.S.A. 54:4-3.6 is a valid exempt use as it relates to parsonages. It further states that all of the activities conducted by Reverend Brown at the property were in concordance with the plaintiff's religious and charitable purposes, and that with the exception of commercial space leased by it to a third party, which it concedes is not eligible for exemption, all of the remaining subject property is used for the intended purposes.

New Jersey Tax Court Judge Gail Menyuk agreed that although careless record keeping had created confusion as to title, the subject property was owned by the plaintiff. She also concluded Lighthouse was organized for religious/charitable purposes. However, Lighthouse Mission was ineligible to receive the exemption as both a parsonage and a charitable/religious organization. Judge Menyuk states that Lighthouse Mission failed to establish what part of the property was actually used for religious/charitable purposes, and it appeared that the purpose of the property was profit bearing. Also, since the property did not qualify as an exempted church there could be no exempt parsonage (*Mestivta Ohr*

Torah of Lakewood v. Township of Lakewood). □

In Our Legislature

Local Property Tax

Farmland Assessment Act Provides Preferential Treatment for Biomass, Solar, or Wind Energy Generation Facilities — P.L. 2009, c.213, signed into law on January 16, 2010, is effective immediately. However the provisions governing application for consideration for farmland assessment treatment are effective for tax years commencing after the date of enactment.

The Act supplements P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.), the Farmland Assessment Act. This law allows any person who owns preserved farmland to construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm to generate power or heat and to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose.

These uses now qualify for the preferential tax treatment provided under the Farmland Assessment Act.

Miscellaneous

Proof of Business Registration Changes and Bid Language Requirements — P.L. 2009, c.315, signed into law on January 18, 2010, and effective immediately, requires the Department of the Treasury to provide each contracting agency with appropriate language reflecting the obligations of contractors and subcontractors to be included in any contract document, bid specification, request for proposal, or

other documents notifying potential contractors of contract opportunities with a contracting agency.

This law revises the requirement for a bidder to provide proof of business registration to a local contracting agency prior to the awarding of a contract, purchase order, or other contracting document. At the sole option of the contracting agency, the bidder may provide proof by presenting sufficient information for the contracting agency to verify registration of the bidder, or that of listed subcontractors, through a computerized system maintained by the State. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) for businesses and individuals:

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

[2009](#) [2010](#)

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

[2009](#) [2010](#)

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

[2009](#) [2010](#)



important phone numbers

Customer Service Ctr.... 609-292-6400
 Automated Tax Info ...1-800-323-4400
609-826-4400
 Homestead Rebate Hotline
 for Homeowners..... 1-888-238-1233
 Homestead Rebate Hotline
 for Tenants1-888-213-8623
 Property Tax Reimbursement
 Hotline.....1-800-882-6597
 Earned Income Tax Credit
 Information..... 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
 System1-877-829-2866
 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-633-7068
 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..... 609-633-0013

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2009 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	1/27/09	Clarifies that certain sports and entertainment projects are devoted to an essential public and governmental use and purpose and are exempt from property tax.	LPT	S-1604(1R)
21	3/17/09	Establishes a 45-day State tax amnesty period for outstanding liabilities due between January 1, 2002, and February 1, 2009.	MISC	A-3819(1R)
69	6/29/09	Temporarily increases income tax rates for taxpayers with income exceeding \$400,000, temporarily adjusts property tax deduction for certain taxpayers with income exceeding \$150,000, and taxes New Jersey lottery prizes exceeding \$10,000.	GIT	A-4102(1R)
70	6/29/09	Increases cigarette tax rate from \$2.575 to \$2.70 per pack of 20 cigarettes and dedicates additional revenue to the Health Care Subsidy Fund.	CIG	A-4103 (Corrected Copy)
71	6/29/09	Increases tax rates on liquor to \$5.50 a gallon; still wines, vermouth, sparkling wines to \$0.875 a gallon; and hard cider to \$0.15 a gallon, and dedicates additional revenue to the Health Care Subsidy Fund.	ABT	A-4104(1R)
72	6/29/09	Provides one-year extension of 4% surcharge on corporation business tax liability and decouples corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.	CBT	A-4105
75	6/29/09	Modifies the tax treatment of certain lines of insurance and dedicates certain additional revenues to the Health Care Subsidy Fund for FY 2010.	IPT	A-4108(2R)
90	7/28/09	The New Jersey Economic Stimulus Act of 2009 is an omnibus bill designed to reinvigorate New Jersey's economy.	MISC	ACS (Corrected Copy) for A-4048
118	8/18/09	Establishes pilot program in Gloucester County for the transfer of the municipal property assessment function to the county.	LPT	S-2356(2R)
120	8/18/09	Extends Neighborhood Revitalization Tax Credit Program eligibility to areas located in municipalities adjacent to neighborhoods that currently qualify and that share similar socioeconomic characteristics.	MISC	A-2623(1R)
124	9/8/09	Establishes the Community Food Pantry Fund and the Cat and Dog Spay/Neuter Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	A-2513(2R)
172	1/11/10	Establishes the New Jersey Lung Cancer Research Fund and provides for voluntary contributions by taxpayers on gross income tax returns.	GIT	S-2502(1R)

2009 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
189	1/12/10	Requires that a State tax expenditure report be included in the Governor's annual budget message.	MISC	A-2139
194	1/14/10	Expands the powers of the Commissioner of Labor and Workforce Development to suspend or revoke the licenses of employers for failure to adhere to State wage, benefit, and tax laws.	GIT	SCS for S-2773(2R)
213	1/16/10	Allows any person who owns preserved farmland to construct, install, and operate biomass, solar, or wind energy generation facilities, structures, and equipment on the farm to generate power or heat and to make improvements to buildings or structures on the land for that purpose. These uses now qualify for the preferential tax treatment provided under the Farmland Assessment Act.	LPT	SS for S-1538(1R)
240	1/16/10	Clarifies the meaning of "contiguous property" for purposes of Section 26 of the Sales and Use Tax Act and removes certain limitations on the exemption from sales and use tax for natural gas and utility service used for cogeneration.	S&U	ACS for A-3339/3439(1R)
251	1/16/10	Revises procedure for reassessment of certain real property by assessor and appeal of assessment by certain property taxpayers.	LPT	A-4313(1R)
256	1/17/10	Establishes forest stewardship and forest certification programs in the Department of Environmental Protection and expands the Farmland Assessment Act of 1964 to provide differential property tax assessment to owners of forest land who implement an approved forest stewardship plan.	LPT	SCS for S-713(1R)
315	1/18/10	Revises requirement for bidder to provide proof of business registration to local contracting agency prior to the awarding of a contract.	MISC	A-557(2R) (Corrected Copy)

2009 TAX LAWS *(continued)*

***Legend for 2009 Tax Laws**

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax