

# New Jersey State Tax news

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## Homestead Benefits for 2009 on the Way

Most New Jersey homeowners who were eligible and filed for a 2009 homestead benefit received their 2009 benefit as a one-time credit on their May 2011 property tax bill. Revised property tax bills reflecting the credit amount were sent to eligible homeowners in April. Benefits were issued in the form of a check (or direct deposit) during the last week in April 2011 to those homeowners whose principal residence was a unit in a co-op or continuing care retirement community or who indicated when filing that they no longer owned the property that was their principal residence on October 1, 2009. Under the terms of the State Budget, no benefits will be issued to tenants.

To be eligible for a 2009 homestead benefit an applicant must be a New Jersey resident who owned and occupied their principal residence in the State on October 1, 2009, paid property taxes on that home, and who had \$75,000 or less in New Jersey gross income for 2009 (\$150,000 or less for homeowners age 65 or older and/or disabled).

Benefit amounts vary based on the applicant's income, filing status, property taxes, and whether the applicant was age 65 or older or eligible to claim an exemption as blind or disabled for tax year 2009.

The State Budget required that the 2009 benefit be based on 2006 property taxes. For purposes of calculating the 2009 benefit, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2009, are being used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006.

In addition, 2009 benefit amounts, when annualized, will be no greater than those paid for 2006 (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or marital status, or an increase in percentage of ownership.

Homeowners can find out the status of their homestead benefit online at [www.state.nj.us/treasury/taxation/homestead/statusinq.shtml](http://www.state.nj.us/treasury/taxation/homestead/statusinq.shtml)

Additional information about the Homestead Benefit Program, including information on how the benefit is calculated, is available at: [www.state.nj.us/treasury/taxation/2009homesteadinfo.shtml](http://www.state.nj.us/treasury/taxation/2009homesteadinfo.shtml)

Applications for the 2010 Homestead Benefit Program are expected to be mailed in June and homeowners will apply either online or by phone. □

## Office of the Taxpayer Advocate Introduced

New Jersey Treasurer Andrew Sidamon-Eristoff recently announced the creation of the Office of the Taxpayer Advocate (OTA) within the Division of Taxation.

One of the goals of the OTA is more predictable treatment under the tax laws which, according to Governor Chris Christie, “is vital to restoring New Jersey’s image as a home for business growth and investment.” The Governor believes that with the OTA, “we can both bring in revenue and improve New Jersey’s economic climate if we make it less difficult and stressful for taxpayers to navigate the tax system.”

Treasurer Sidamon-Eristoff said that the role of the Taxpayer Advocate is to simplify New Jersey’s tax regulations for the public and to provide help in navigating the tax code. “The No. 1 mission of this experienced team is to resolve tax problems before they cause lasting economic harm. Simplifying tax compliance is a proven way to increase revenue and fairness,” Sidamon-Eristoff said.

Michael J. Bryan, Acting Director of the Division of Taxation, has named Sheri Silverstein as the Taxpayer Advocate. According to Bryan, the role of the OTA will be twofold: to assist taxpayers with State tax problems that, despite their good faith efforts, they have not been able to resolve; and to identify and find ways to resolve systemic problems that affect multiple taxpayers.

The OTA will help taxpayers understand their rights and responsibilities

under the law and help them navigate through the Division so that the right result is reached for both sides.

The OTA is not intended as a substitute for, or to circumvent or replace, established procedures or the formal appeal process. It is only when those procedures don’t work properly that the OTA can intercede. Taxpayers who have tried to resolve their tax problem with the Division on their own but have not been successful can ask the OTA to intercede on their behalf. The OTA will work with appropriate Division personnel and the taxpayer (or their representative) to resolve issues as quickly as possible.

Initially, the OTA will only be assisting taxpayers with problems involving individual gross income tax. The plan is to expand to other tax types as resources become available.

Ms. Silverstein, who has been with the Division for more than 24 years, started her career in Regulatory Services specializing in gross income tax issues. Most recently, she was the Chief of the Division’s Information and Publications Branch. She earned a Bachelor of Arts degree in Business from Rutgers College and a Juris Doctor degree from Rutgers School of Law.

Additional information about the Office of the Taxpayer Advocate, including their case acceptance guidelines, can be found on the Division’s Web site at:

[www.taxpayeradvocate.nj.gov](http://www.taxpayeradvocate.nj.gov)

The Office of the Taxpayer Advocate can be contacted via e-mail at: [nj.taxpayeradvocate@treas.state.nj.us](mailto:nj.taxpayeradvocate@treas.state.nj.us) □

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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.

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## **LOCAL PROPERTY TAX Tax Assessors' Calendar**

### **April 1–**

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities 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 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.
- 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 where assessed values exceed \$1,000,000 to the 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 or late filing 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 person, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

## **Criminal Enforcement**

Criminal enforcement over the past several months included:

- On January 5, 2011, a special agent from the Office of Criminal Investigation (OCI) arrested Anthony Howlen of Beverly, New Jersey, for possession of contraband cigarettes. Based on information from the Trenton Police Department, Howlen was operating from a business on North Broad Street in Trenton. Howlen had four outstanding warrants

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with bail of \$2,005 on non-OCI related issues. Charges for possession and sale of contraband cigarettes resulted in a \$20,000 bail (no 10%).

- On January 10, 2011, the Office of Criminal Investigation (OCI) conducted an inspection of Milagro Grocery, of Irvington, New Jersey, where 7.8 cartons of counterfeit New Jersey-stamped cigarettes and a total of \$1,935 in U.S. currency were seized by OCI. Fredys Rodriguez, t/a Milagro Grocery, was also selling loose cigarettes, which he admitted to buying from an unknown/unidentified male subject who came to his store offering the product. Charges for possession of contraband, no licenses, no invoices, and illegal transactions were filed in Irvington Municipal Court. On February 22, 2011, Rodriguez pled guilty to possession of untaxed cigarettes. The Court imposed a total of \$408 in fines, fees, and costs. The Court forfeited to the State for deposit into the Law Enforcement Forfeiture Fund the \$1,935 seized by OCI.
- On January 14, 2011, Rebecca Cirillo appeared before Judge Richard W. English in Monmouth County Superior Court where she was sentenced to five years for one count of second-degree theft by deception and three years for three counts of third-degree filing of fraudulent returns for tax years 2005, 2006, and 2007. These sentences are to be served concurrently. Cirillo used her position as bookkeeper to embezzle money from her employer, Ansoerge Unlimited, Inc., by writing checks to herself or to "cash." She then

attempted to cover this up by making false entries into QuickBooks, the accounting system used by Ansoerge Unlimited, Inc.

- On February 3, 2011, Ashok C. Patel, on behalf of Cream Ridge Liquors, pled guilty to one count of possession of untaxed goods in Upper Freehold Township Municipal Court. The Court imposed a total of \$658 in fines, fees, and costs. The Court forfeited 3,192 units of untaxed tobacco products to the State. This case resulted from a joint operation with the Office of Criminal Investigation and the Pennsylvania Department of Revenue's Office of Criminal Tax Investigations, where Pennsylvania-based businesses were subject to search warrants and records identified New Jersey customers who did not pay the tobacco products wholesale sales and use tax on the purchases.
- On February 14, 2011, in Camden County Superior Court, James Gillespie, owner of Wellness Enterprises Inc., t/a Excel Medical Transportation Service, pled guilty to second-degree misapplication of entrusted funds and third-degree failure to remit payroll taxes. Gillespie also

signed a consent judgment to pay restitution in the amount of \$582,740.36, including the sum of \$200,205.14 payable to the State. Gillespie's sentencing is scheduled for June 3, 2011.

- On February 14, 2011, in Camden County Superior Court, Susan Gillespie, officer of record for EZ, Inc., d/b/a Big Dog Lawn Care, pled guilty to third-degree failure to remit sales and use tax and signed a consent judgment to pay restitution in the amount of \$40,072.26 to the State. Gillespie entered into the Pretrial Intervention Program and agreed to make monthly payments of \$400.
- On February 17, 2011, in Somerset County, Judge Robert B. Reed sentenced Eric Eugene Criss (a.k.a. Tariq Samaad), of East Orange, Essex County; Trezmyynn Emond Criss, of Phillipsburg, Warren County; and Tia-Staucia Estee (Criss) Perrin, of Allentown and Reading, Pennsylvania. Previously, on January 28, 2011, Judge Reed sentenced codefendants Tonijah Emanuel Criss, of Phillipsburg, Warren County; and Tihee Jabbar Brisbane, of Whippany, Morris County, in the same case.

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

The 1986 Reciprocal Agreement between the State of New Jersey and the State of New York providing Cooperative Tax Administration has ended. As a result, New Jersey vendors participating in the program will no longer file ST-20/21 returns to report New York sales tax, and New York participants will no longer file ST-100.4/101.4/809.4/810.4 forms to report New Jersey sales and use taxes. For more information see:

New Jersey-based vendors: [www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf](http://www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf)

New York State-based vendors: [www.state.nj.us/treasury/taxation/pdf/istinfony.pdf](http://www.state.nj.us/treasury/taxation/pdf/istinfony.pdf)



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Judge Reed sentenced Eric Criss to two consecutive 10-year terms in State prison with five years per term to be served without eligibility for parole for his convictions of second-degree racketeering and second-degree leader of organized crime. Criss was also sentenced to four years, to be served concurrently, for third-degree failure to file income tax return. The actual time he will serve before he is eligible for parole is 10 years. Judge Reed also imposed a fine of \$100,000, the forfeiture of certain assets held by the defendant, and a two-year loss of driving privileges in New Jersey to begin after completion of his sentence.

According to Somerset County Prosecutor, Geoffrey D. Soriano, the 407-count indictment against Eric Criss and the codefendants represented the largest indictment in Somerset County. Soriano

said it was important for law enforcement to target, arrest, and prosecute these defendants because “among other things, these economic crimes impact a large segment of society with the resultant increase in operating costs for banks and the corresponding increase in banking fees for all account holders and bank customers.”

The following law enforcement agencies assisted the Somerset County Prosecutor’s Office during the investigation and prosecution of this case: the Federal Bureau of Investigation, the United States Secret Service, the Office of Criminal Investigation, Pennsylvania State Police, Hunterdon County Prosecutor’s Office, Middlesex County Prosecutor’s Office, Ocean County Prosecutor’s Office, Warren County Prosecutor’s Office, Bedminster Township Police Department, Clark Police Department, Elizabeth Police Department, Phillipsburg Police Department, and Mt. Kisco, New York, Police Department.

contraband cigarettes and untaxed liquor, who had been arrested and charged six times previously by the Office of Criminal Investigation. As a result, the subjects have all been indicted on various contraband cigarette and money laundering counts.

At trial, Mirosław Sapinski pled guilty to second-degree conspiracy and received a sentence of three years in State prison. Sapinski agreed to forfeit currency and his vehicle that were seized. Grayzna Sapinski was issued pretrial intervention as part of her plea agreement and she also forfeited the cash and vehicle that were seized.

Also at trial, Stanisław Zbronski pled guilty to third-degree conspiracy and spent 295 days in Passaic County Jail. Zbronski was deported to Poland due to his immigration status. Waclaw Jeziorski was issued pretrial intervention and was ordered to perform 100 hours of community service.

This case was prosecuted by the Passaic County Prosecutor’s Office, and for the first time the Racketeer Influenced and Corrupt Organization (RICO) Act was applied to individuals involved in contraband cigarette activity.

- On March 4, 2011, Grayzna Sapinski, Stanisław Zbronski, and Waclaw Jeziorski pled guilty for their involvement in the case of Mirosław Sapinski, et al. The case began with the arrest of Mirosław and Grayzna Sapinski on May 14, 2010, when Virginia-stamped cigarettes, a vehicle, and a large amount of cash were seized from their residence. On September 9, 2010, a Passaic County Grand Jury indicted all four subjects. The investigation was a long-term operation that identified Sapinski, a persistent offender dealing in

- The Office of Criminal Investigation’s Special Frauds Unit prevented the issuance of 1,668 fraudulent refund claims totaling \$3,213,854 for the current fiscal year. In addition, OCI issued assessments based on refunds found to be fraudulently obtained.

## Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2011 – December 31, 2011, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
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%
1/1/11	6.25%



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- The Office of Criminal Investigation (OCI) has been operating a mini-task force led by an OCI investigator along with the City of Elizabeth Police Department. Their actions have resulted in 13 arrests, tens of thousands of dollars in cash seizures, and numerous cartons of counterfeit-stamped cigarettes and untaxed tobacco products being seized for failure to pay State sales taxes on the products or failing to have a legitimate license to sell tobacco products. □

## Tax Briefs

### Corporation Business Tax

**Qualifying Therapeutic Discovery Project Grants** — The Division has received numerous inquiries related to qualifying grants awarded under P.L. 111-148 Section 9023, Qualifying Therapeutic Discovery Project Credit (QTDP), in lieu of the tax credit under the same Section. Taxpayers specifically asked whether the grant would be excluded from the income of a corporation for New Jersey corporation business tax purposes.

Section 9023 of P.L. 111-148, effective May 23, 2010, added Section 48D to the Internal Revenue Code (IRC). IRC Section 48D(f)

(3) provides that a grant made under Section 9023(e) of the Patient Protection and Affordable Care Act (P.L. 111-148) will not be includible in the gross income of the taxpayer. Where the grants are used for an expenditure related to property of a character subject to an allowance for depreciation, the basis of the property must be reduced by the amount of the grant. IRC Section 48D(e)(9) provides for a denial of the double benefit. Furthermore, allowable deductions, including R&D expenses, are to be reduced by the amount of the grant. The QTDP also has recapture provisions where the grant received is either in excess of the qualified investment or is no longer a qualified investment.

Therefore, for New Jersey purposes, assuming the taxpayer received these QTDP grants for qualified projects, the grant will not be reportable as income because New Jersey uses Line 28 of Federal Form 1120 as the starting point for taxable income. N.J.S.A. 54:10A-4(k). Where the taxpayer took the grant, the corporation will be required to report the reduced expenses claimed for Federal purposes and the reduced Federal basis of the property for New Jersey purposes. N.J.S.A. 54:10A-4(k). Any amount triggering the recapture provisions in IRC Section 48D will

be taxable for New Jersey corporation business tax purposes.

The QTDP credit itself is not available on the Corporation Business Tax Return, Form CBT-100, since New Jersey does not recognize the credit.

### Gross Income Tax

**IRC Section 1035 Exchanges** — A taxpayer inquired whether New Jersey follows the Federal income tax treatment of income that is excluded under Section 1035 of the Internal Revenue Code. IRC Section 1035 allows the movement of amounts from certain financial products to certain other financial products without an income tax consequence.

More specifically, a Section 1035 exchange allows “nonqualified” monies from an annuity to be moved to another annuity, from a life insurance policy to another life insurance policy, or from a life insurance policy to an annuity contract. However, an exchange from an annuity to a life insurance policy is *not* a Section 1035 exchange. Therefore, the transaction may have tax consequences for Federal income tax purposes and for New Jersey gross income tax purposes.

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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 2010

Following is a summary of enforcement actions for the quarter ending December 31, 2010.

	Number	Amount
• Bank Levies	1,080	\$ 5,180,614
• Certificates of Debt	3,781	64,538,506
• Seizures	90	847,014
• Auctions	3	30,734



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For New Jersey gross income tax purposes, the method of accounting and the basis of property must be the same as for Federal income tax purposes. N.J.S.A. 54A: 5-1(c) also provides that net gains or net income do not include transactions to the extent to which nonrecognition is allowed for Federal income tax purposes. Therefore, for exchanges such as those described above, the taxpayer is not required to include in New Jersey taxable income any gains or income to the extent that nonrecognition is allowed for Federal income tax purposes.

**Keogh Plan Contributions Made by a Sole Proprietorship** — A taxpayer inquired about the New Jersey gross income tax treatment of contributions to a Keogh Plan made by a sole proprietorship where the business has no “employees.”

New Jersey law allows only a few deductions, such as for exemptions, certain medical expenses, alimony

and separate maintenance payments, property taxes (or rent constituting property taxes) paid on a homestead, and qualified conservation contributions. Generally, deductions that are adjustments on the Federal return, such as the Federal adjustments for moving expenses, IRA contributions, and Keogh Plan contributions, are *not* deductible for gross income tax purposes.

Consequently, contributions to a Keogh Plan made by a sole proprietorship are currently taxable under New Jersey law, and the business owner’s contributions for his or her own Keogh Plan are not deductible as ordinary business expenses. For more information see “[Exemptions and Deductions](#)” in the instructions for Form NJ-1040.

**Tax on Gain From Sale of Real Property** — The Division has received inquiries about whether or not New Jersey imposes an “exit tax.” There is no tax imposed simply because an owner of New Jersey real property has moved or is moving out

of New Jersey; rather, such an owner may be subject to gross income tax if the New Jersey real property is sold at a gain.

As a result of P.L. 2004, c.55 (N.J.S.A. 54A:8-8 et seq.), effective August 1, 2004, New Jersey requires “nonresidents” who are individuals, estates, or trusts to pay an estimated tax as withholding on the income from the sale of New Jersey real property. The estimated tax withholding requirement is an enforcement tool to enable the Division to collect tax from nonresident sellers and is imposed on the sale of New Jersey real property when the deed is recorded. It is simply another withholding procedure to ensure payment of a possible tax liability. Again, it is not a tax for leaving the State. Therefore, it is a misnomer to describe the nonresident estimated tax requirement as an exit tax.

The Division has also taken the position that for the purposes of the law, a nonresident includes a seller who is simultaneously moving out of New Jersey at the time of closing. Without this withholding procedure the State would have considerable difficulty collecting tax from nonresidents. It should be noted that both residents and nonresidents are subject to the same gross income tax on gain from the sale of New Jersey real property, subject to certain exemptions and exclusions.

**Litter Control Fee Nexus for Requirement to Pay Litter Control Fee** — A business located outside New Jersey inquired about the nexus criteria used for determining whether a business is required to pay the litter control fee. More specifically, the business

## Pay NJ Taxes Electronically

### Electronic Check (E-Check)

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

**Make a payment directly from your bank account**

**Credit Card\***

**1-800-2PAYTAX**

[www.officialpayments.com](http://www.officialpayments.com)

\* Fee of 2.49% of tax payment applies.

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inquired whether having sales people working in New Jersey would, by itself, be sufficient nexus to require payment of the fee.

The litter control fee is imposed by N.J.S.A. 13:1E-216.4a. The fee imposition sentence begins as follows:

There is imposed upon each person engaged in business in the State as a manufacturer, wholesaler, or distributor of litter-generating products a user fee of 3/100 of 1% (.0003) on sales of those products within the State, and each person engaged in business in the State as a retailer of litter-generating products a user fee of 2.25/100 of 1% (.000225) on sales of those products within the State, except any retailer with less than \$500,000.00 in annual retail sales of litter-generating products is exempt....

The litter control fee regulations, N.J.A.C. 18:38-1.3, provide a pertinent definition as follows:

“Engaged in business in the State” means the participation in any commercial activities in New Jersey with the object of gain, benefit or advantage to the feepayer or to another person or class, directly or indirectly.

The Division explained that the nexus criteria provided in the pertinent laws are broad. Therefore, if a business located outside New Jersey has sales agents working in New Jersey, the business has nexus and is required to pay the litter control fee, which is imposed on sales of litter-generating products within or into New Jersey.

## Sales and Use Tax

***Rental of Storage Units to Tenants by Apartment Complex*** — A taxpayer inquired whether an apartment complex is considered “engaged in the business” of furnishing space for storage if they only rent storage units to tenants.

The Division responded that effective October 1, 2006, the Sales and Use Tax Act was amended to impose tax on the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage. N.J.S.A. 54:32B-3(b)(3). “Space for storage” means secure areas, such as rooms, units, compartments, or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free access within reasonable business hours, or upon reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hangar.

The phrase “... by a person engaged in the business of furnishing space for such storage” means that the seller of the storage space must actually be in the business of furnishing space for such storage. Since the apartment only rents storage space to tenants, the apartment is not “engaged in the business” of furnishing space for storage as N.J.S.A. 54:32B-3(b)(3) requires. Thus, charges to a tenant to rent a storage unit in the apartment complex are not subject to tax as it is a charge which is incidental to the lease or ownership of real property.

However, if members of the public can rent space for storage at the apartment complex without being

a tenant at the complex, then the apartment complex owner is deemed to be “engaged in the business,” and the charge for the rental of storage space is subject to tax for both tenants and nontenants of the apartment building.

***Sale of Wig to Member of Particular Religious Community*** — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to the sale of a wig to a member of a particular religious community.

The Division responded that the Sales and Use Tax Act contains an exemption for “clothing,” for human use, which means all human-wearing apparel suitable for general use. N.J.S.A. 54:32B-8.4. However, the exemption does not apply to clothing accessories. “Clothing accessories” means incidental items worn on the person or in conjunction with clothing. N.J.S.A. 54:32B-8.4; N.J.A.C. 18:24-6.2. Wigs are considered clothing accessories and thus are subject to tax. N.J.S.A. 54:32B-3(a). □

## In Our Courts

### Gross Income Tax

**S Corporation Shareholder Deductions** – *Schulmann, Daniel et al. v. Director, Division of Taxation*, decided November 9, 2010; Tax Court Docket No. 007221-2005.

Daniel Schulmann, known as Tiger Schulmann, owns, operates, and franchises karate schools. Schulmann is a 100% shareholder in some of his karate schools and a controlling shareholder in all of the schools. Schulmann encouraged the instructors at his schools to open new schools and thereupon Schulmann

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would pay these instructors a commission or referral fee for operating a Tiger Schulmann Karate School. Schulmann would place all the income he received from his karate schools as either a 100% shareholder or controlling shareholder into a bank account from which he would write checks for commissions/referral fees to the instructors who opened new schools.

On his New Jersey gross income tax returns for tax years 2000–2002, Schulmann took the deductions for commissions/referral fees that he made to individuals who ran his karate schools as a deduction to net pro rata share of S corporation income. The auditor had denied the losses since they were not valid expenses of an S corporation.

Judge Narayanan stated:

For each tax year 2000 to 2002, the Director issued a notice of deficiency for GIT against Schulmann denying an offset of the commissions against the passed through S corporation income. The Director explained that the commissions “paid by Schulmann to the various Karate schools” were “[p]ersonal expenses” and hence “not deductible.” An offset was denied because “[a]lthough the expenses are related from the S Corporations, they were not incurred by the S corporation.” The denial of this deduction resulted in an increase to Schulmann’s passed through pro-rata share of S corporation income. This in turn led to an assessment of additional GIT (plus interest and penalties).

After an administrative conference, the Director issued a final determination upholding the audit. The Director reasoned that a deduction for commissions would ordinarily constitute an acceptable corporate business expense however, since they were paid by Schulmann and not the S corporations, such a deduction could not be used by Schulmann to offset the passed through S corporation income. Having made a business decision to choose a corporate form of business undertaking, a taxpayer could not avoid the corporate form when the same resulted in unfavorable tax consequences.

Thus, the issue before the court is whether Schulmann’s payment of commissions from his pro-rata share of S corporation income from the various karate schools, allows him to offset or reduce such income because the commissions were the contractual obligations of the corporate school/UAK/TSK. Schulmann contends he must be allowed to do so because (a) he is a 100% shareholder of UAK/TSK, thus, he and the corporation are one and the same, or (b) he made the payments on behalf of the corporate entities, thus, they qualify

as business expenses, entitled to a deduction.

Judge Narayanan stated in her decision that Schulmann could not take an S corporation deduction for the commission/referral fees because S corporations and partnerships are different entities. While partners are taxed as if they are sole proprietors, an S corporation has a separate and distinct legal identity. Therefore, an expense that may be allowed for a partner in a partnership may not be allowed for a shareholder in an S corporation. If Schulmann were to take a deduction for the commissions/referral fee payments in the category net profits from business, then net pro rata share of S corporation income could not be reduced due to the disallowance of intercategory netting.

The New Jersey Gross Income Tax Act is not patterned after the Internal Revenue Code (IRC) and deductions allowable Federally are not automatically allowable for New Jersey gross income tax purposes. Even if the Federal income tax principles on ordinary and necessary business expenses as mentioned in IRC 1366 were applicable to the Gross Income Tax Act, a deduction for commission/referral fees is not allowed at the individual level; and in this case Judge Narayanan stated:

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Schulmann did not have a business or sole proprietorship which is separate or independent from that of the karate schools.... Rather he seeks (to) ignore the corporate form of business specifically undertaken to operate the karate schools, and in order to justify a deduction under N.J.S.A. 54A:5-1(b), have this court treat those corporate schools as his sole proprietorship. This result is impermissible.

### Sales and Use Tax

**Justiciable Controversy** – *Labor Ready Northeast, Inc. v. Director, Division of Taxation*, decided January 4, 2011; Tax Court Docket No. 000359-2010.

The Tax Court denied the plaintiff's motion for summary judgment and the Director's cross-motion. The Court found that declaratory relief is appropriate because the Director's notice created a justiciable controversy between the parties. However, the Court found that such relief was inappropriate in this case because material facts need to be established as to the nature of Labor

Ready's business activities after the 2008 calendar year.

Labor Ready moved for summary judgment seeking declaratory relief from the Director's notice that Labor Ready's business activities would generally be subject to sales and use tax unless Labor Ready received sales tax exemption certificates or the services were nontaxable or nonenumerated. Labor Ready claimed it provides temporary labor service, which is not an enumerated category of service subject to sales and use tax. The Director opposed and cross-moved for summary judgment on grounds that: (a) the complaint was premature since the Director has neither audited nor issued a final appealable determination against Labor Ready; (b) if the notice to Labor Ready is deemed a determination by the Director, then Labor Ready's complaint is untimely since it was not filed within 90 days of the date of the notice; (c) the facts of Labor Ready's business activities need to be fully established, therefore a summary judgment in its favor is inappropriate; and (d) based upon facts gathered in a prior litigation on an identical issue, Labor Ready provides taxable services, therefore

the Director's summary judgment motion should be granted.

Ultimately, the Court ruled that the need to establish material facts was overriding and the matter will go to trial.

**Lack of Urban Enterprise Zone Certification** – *River Front Recycling and Aggregate, LLC v. Director, Division of Taxation*, decided December 16, 2010; Tax Court Docket No. 001393-2009.

The Tax Court granted the Director's motion for summary judgment and denied the plaintiff's cross-motion. The Director's refund denial was upheld.

Plaintiff is located in an urban enterprise zone. When applying for a Certificate of Authority to collect sales and use tax at a reduced rate due to its location in the urban enterprise zone, the applicant mistakenly checked a box which indicated that it did not operate a retail location within the zone. The record contained a letter from the local urban enterprise zone office which indicated that the application was approved and was being forwarded to the Division for final approval and issuance of a Certificate of Authority for sales and use tax. Plaintiff never received a certificate and never made inquiries as to why it was not issued. Plaintiff subsequently filed another application and was issued a certificate as of the date of the correct application.

Plaintiff failed to file monthly urban enterprise zone returns (or any sales and use tax returns) for almost two years until the Division filed judgments and initiated collection on the business accounts and the personal

### **Practitioners' E-File Mandate**

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2009 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2010 New Jersey resident income tax returns electronically. Under proposed regulations, any tax practitioner who reasonably expects to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

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](mailto:nj.taxation@treas.state.nj.us)

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accounts of the business principals. At that time, the principals paid the estimates, and in the months that followed, filed the missing reports. Plaintiff then filed a claim for refund on the basis of its claim that it was entitled to collect sales and use tax at the reduced rate for the periods at issue. The Division denied that portion of the refund claim, but did refund that portion of the tax paid on the estimated liability which exceeded the actual liability as filed.

Although Judge DeAlmeida found no dispute that plaintiff met the qualifications for urban enterprise zone certification, he was nonetheless unmoved by plaintiff's arguments that it substantially complied with the requirements of the Urban Enterprise Zone Act and the Sales and Use Tax Act under the facts of this case. The Judge rejected the substantial compliance argument with particular focus on the fact that plaintiff never filed and paid sales and use tax during the period in question and, although it was notified that its application was pending final approval, it never followed up and never received a Certificate of Authority for the period at issue. □

## ***In Our Legislature***

### **Casino Taxes and Fees**

***Division of Taxation to Administer and Collect Casino Taxes and Fees*** — P.L. 2011, c.19, signed into law on February 1, 2011, and effective immediately, provides for an orderly transition of responsibilities and functions from the Casino Control Commission to the Division of Gaming Enforcement by May 1, 2011.

The Division of Taxation now administers and collects several taxes that were previously administered and collected by the New Jersey Casino Control Commission. These taxes include the gross revenue tax, the casino hotel room fee, and the multi-casino progressive slot machine revenue tax.

The gross revenue tax is an 8% tax on the gross revenues of a casino licensee as defined by Section 24 of this law. N.J.S.A. 5:12-144. The casino hotel room fee is a \$3-per-day fee on each hotel room in a casino hotel facility that is occupied by a guest. N.J.S.A. 5:12-145.8. The multi-casino progressive slot machine revenue tax is an 8% tax on the casino service industry multi-casino progressive slot machine revenue. N.J.S.A. 5:12-148.2.

Taxpayers that were required to file and remit tax returns under the prior version of the Casino Control Act must now file tax returns and make payment to the Division of Taxation. This requirement is applicable to returns for the above-listed taxes that are due after April 30, 2011.

### **Corporation Business Tax**

***Benefit Corporations*** — P.L. 2011, c.30, signed into law on March 1, 2011, and effective immediately, amends and/or supplements the New Jersey Business Corporation Act (N.J.S.A. 14A:1-1, et seq.) by

providing for the creation of a benefit corporation, which is a corporation organized and subject to the provisions of the New Jersey Business Corporation Act. The purpose of a benefit corporation is to create a "general public benefit," defined as a material positive impact on society and the environment through activities that promote some combination of specific public benefits.

These benefit corporations are subject to corporation business tax since they are formed under N.J.S.A. 14A:1-1, et seq. (as opposed to N.J.S.A. 15A:1-1, et seq., the New Jersey Nonprofit Corporation Act). Finally, the benefit corporations must file a benefit report with the Department of the Treasury through the Division of Revenue.

### **Miscellaneous**

***Business Retention and Relocation Assistance Grant Program Broadened*** — P.L. 2010, c.123, signed into law on January 6, 2011, broadens the availability and revises the terms of financial assistance under New Jersey's Business Retention and Relocation Assistance Grant (BRRAG) Program. This program, administered by the New Jersey Economic Development Authority (NJEDA), helps businesses preserve jobs, expand operations, and reinvest in the State through the award of tax

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## ***Current Amnesty Program***

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

MI

May 15 – June 30

[www.michigan.gov/taxes/](http://www.michigan.gov/taxes/)



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credits against corporation business tax and various taxes on insurers. The amount of the credits awarded is based upon the business's investment or its expansion or preservation of jobs in the State.

The Act eliminates the requirement that the amount of an individual grant of tax credits is limited to no more than 80 percent of projected State tax revenues from the retained full-time jobs.

The current annual cap of \$20 million on the issuance of BRRAG credits is converted to a cap on the total amount of such credits that may be applied against tax liability in a fiscal year. Also, a new annual cap of \$10 million is imposed on the total value of credits that a single business may apply against liability in a fiscal year.

The value of BRRAG credits for a business retaining more than 250 jobs is increased by authorizing awards in multiples of up to six times the current rate of \$1,500 per employee, with the size of the multiple depending on the number of retained jobs. The bill requires such multiple-rate awards to be taken in equal amounts over the appropriate number of years.

The law now requires that, as a precondition for the business's ability to apply the credits against tax liability, the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits. The class of businesses to which, as a "designated industry," consideration may be given in determining the amount of a BRRAG award is broadened to include not only high technology businesses, but any business deemed

desirable by the NJEDA to be maintained in the State.

Based upon this certification, the NJEDA issues a certificate indicating the amount of credits that the business may use in a tax period. If a business fails to meet its jobs retention commitment, its credit award is reduced proportionately and it forfeits the unused credits.

The statute now authorizes the sale of BRRAG tax credits between "affiliated" businesses, and a requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program is repealed.

### **Local Property Tax**

**Urban Gardens** — P.L. 2011, c.35, signed into law on March 1, 2011, and effective immediately, encourages nonprofit corporations and associations to help transform vacant properties located in older urban areas into gardens for growing fresh fruits and vegetables. Existing provisions of law authorize municipalities and counties to lease or sell public property not needed for a public use to nonprofit entities for them to perform specified laudatory public purposes thereon. This law affects lands in cities of the first, second, third, and fourth classes.

The cultivation and sale of fresh fruits and vegetables is now among the purposes for which municipalities may lease or sell public land for nominal consideration. Previously, the law allowed for the long-term lease of excess public land, but not the sale thereof, to nonprofits for gardening purposes. Now, the transformation of excess vacant public lands into urban farms is a public purpose and the law affords these

lands exemptions from property taxation.

**Dedicated Library Purposes Tax** — P.L. 2011, c.38, signed into law on March 21, 2011, and effective immediately, requires municipalities in which a free public library is located or that belong to a joint municipal library to provide for a dedicated library purposes tax on the property tax bill.

Specifically, a municipality must pay over to the library or the joint municipal library funds due to the library on a quarterly basis. The law further assures that there will be no net impact on a municipality's nonlibrary purposes adjusted tax levy for the purposes of the cap law. The Director, Division of Local Government Services, Department of Community Affairs is now required to proportionately decrease the adjusted tax levy of affected municipalities to ensure that any statutorily required municipal support of free public libraries is exempt from the calculation of a municipality's adjusted tax levy for the purposes of the 2% levy cap.

The Division is required to segregate the municipal library tax on the local property tax bill/abstract of ratables. All system-related changes will be performed by the Office of Information Technology.

### **Sales and Use Tax**

**UEZ Point of Purchase Exemption** — P.L. 2011, c.28, signed into law on March 1, 2011, applies to sales or services made or rendered on or after April 1, 2011. The law amends section 20 of P.L. 1983, c.303 (N.J.S.A. 52:27H-79) and allows all qualified urban enterprise zone

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(UEZ) businesses to be eligible to receive the sales tax exemption at the point of purchase regardless of annual gross receipts. Previously, P.L. 2006, c.34, (amended by P.L. 2007, c.328 and P.L. 2008, c.118) restricted the point-of-purchase exemption from sales and use tax on eligible purchases made by certain small qualified businesses for exclusive use or consumption of such business in the enterprise zone. Larger UEZ businesses had to pay sales tax at the time of purchase and then file for refunds.

***Streamlined Sales and Use Tax Agreement Technical Changes*** — P.L. 2011, c.49, was signed into law on April 8, 2011, and became effective immediately, except for sections 1 through 15, that became operative on May 1, 2011. The law makes various technical changes in sales tax law to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA), which was adopted by New Jersey in 2005.

For purposes of compliance, the bill removes the current definition of, and eliminates references to, “digital property” under sales tax law and replaces it with “specified digital product,” the defined term for electronically transferred digital products under the SSUTA. This change technically modifies but does not substantively affect the taxability of digitally downloaded music, movies, books, and certain other goods currently subject to sales and use tax.

To conform the State’s current tax treatment of digital goods within the parameters of the defined term under the Agreement, the law makes certain other ancillary

changes that were required in addition to the adoption of the new SSUTA definition. Specifically, it (1) revises the definition of “retail sale” to reiterate that sales of specified digital products are only taxable to end users (sales for resale are excluded from tax); (2) specifies that a digital code which provides a purchaser the right to obtain the product is treated as a specified digital product for purposes of taxation; (3) stipulates that specified digital products are subject to tax regardless of whether the sale of the product is for permanent or less than permanent use and regardless of whether continued payment for the product is required; and (4) carves out a specific statutory exemption for all video programming services, including video-on-demand television services, and broadcasting services, including content to provide such services, to ensure that sales of those services are not taxable as specified digital products. The former digital property definition excluded these services; therefore, this exemption is necessary to maintain treatment under prior law.

The law also provides a separate statutory exemption for specified digital products that are accessed but not delivered electronically to the consumer. Previously, New Jersey excluded from tax digital property that was temporarily streamed or uploaded to a consumer to access certain digital content. However, “specified digital products” includes electronically transferred digital audio-visual works, digital audio works, and digital books, where “transferred electronically” means obtained by the purchaser by means other than tangible storage media. Since “transferred electronically” includes instances where

specified digital products are streamed or uploaded, the exemption ensures that access alone is not used to determine the taxability of specified digital products. This exemption is necessary to maintain treatment under prior law.

New compliance provisions incorporate SSUTA provisions that relieve certain sellers from liability due to changes in the sales and use tax rate. The Director of the Division of Taxation may not hold a seller liable for failure to collect tax that may be due at a new tax rate if the director provides less than 30 days between the date a change in rate is enacted and the date that change takes effect. However, the relief from liability is limited and further described in the new statute.

The law makes technical changes and clarifications to the tax by removing remaining references to the previously defined term “vendor,” replacing them with “seller,” and removing charges for installation as part of the enumerated charges included in the definition of “sales price.”

The elimination of installation charges from the definition of “sales price” clarifies the imposition of tax on charges for installation. A separate statutory provision specifies that installation charges are an enumerated service subject to the sales and use tax regardless of how “sales price” is defined. This revision is necessary to clarify treatment of installation charges, which have always been statutorily subject to tax.

**NOTE:** This bill represents the fifth time the State has amended the Sales and Use Tax Act to comply with the SSUTA. □



## Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2010 (January 1, 2010 – December 31, 2010) and tax year 2011 (January 1, 2011 – December 31, 2011) 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.

[2010](#)    [2011](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2010](#)    [2011](#)

- 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.

[2010](#)    [2011](#)    □



### *important phone numbers*

**Customer Service Ctr.... 609-292-6400**  
**Automated Tax Info ...1-800-323-4400**  
 ..... 609-826-4400  
**Homestead Benefit Hotline**  
 for Homeowners..... 1-888-238-1233  
**Homestead Benefit Hotline**  
 for Tenants .....1-888-213-8623  
**Property Tax Reimbursement**  
**Hotline.....1-800-882-6597**  
**Earned Income Tax Credit**  
**Information..... 609-292-6400**  
**NJ TaxFax ..... 609-826-4500**  
**Business Paperless Telefiling**  
**System .....1-877-829-2866**  
**Alcoholic Bev. Tax ..... 609-633-7068**  
**Corp. Liens, Mergers, Withdrawals**  
**& Dissolutions..... 609-292-5323**  
**Director’s Office ..... 609-292-5185**  
**Inheritance Tax..... 609-292-5033**  
**Local Property Tax..... 609-292-7974**  
**Motor Fuels Tax**  
**Refunds ..... 609-633-8878**  
**Public Utility Tax..... 609-633-0013**

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## 2010 TAX LAWS

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10	5/5/10	Modifies provisions of the New Jersey Economic Stimulus Act of 2009.	MIS	S-920(3R)
14	5/6/10	Extends the time period for renewal of lapsed alcoholic beverage retail licenses.	ABT	S-828
20	6/29/10	Provides temporary reduction of annual cap on corporation business tax benefit certificate transfer program for certain technology and biotechnology companies and temporarily suspends certain tax credits for certain film and digital media content production expenses.	CBT/ GIT	A-3011 (Corrected Copy)
22	6/30/10	Repeals prior motor fuels tax legislation and makes changes in the licensing requirements for the motor fuel taxes as well as the requirements for the reporting, imposition, and collection of the taxes.	MFT	A-3014
27	6/29/10	Reduces the benefit under the New Jersey earned income tax credit program from 25 percent of the Federal credit amount to 20 percent beginning in tax year 2010.	GIT	A-3016 (Corrected Copy)
51	8/17/10	The Fort Monmouth Economic Revitalization Authority Act creates a new redevelopment agency, requires the New Jersey Economic Development Authority to engage in new duties, and creates several special-purpose districts.	S&U	S-917(2R)
55	8/18/10	Requires every municipality imposing the occupancy tax to provide a list of hotels and motels in the municipality to the State Treasurer, who must provide to the municipality a list of hotels and motels that submitted occupancy tax. The bill also makes unpaid occupancy tax a municipal lien on the real property of the hotel or motel.	HMO	S-1828
57	8/19/10	The Offshore Wind Economic Development Act establishes an offshore wind renewable energy certificate program and authorizes the New Jersey Economic Development Authority to provide tax credits for qualified wind energy facilities in wind energy zones.	CBT	S-2036(2R)
79	10/1/10	Amends the Motor Fuel Tax Act to defer implementation for three months and makes technical corrections.	MFT	S-2289
123	1/6/11	Broadens the availability and revises the terms of financial assistance under the Business Retention and Relocation Assistance Grant (BRRAG) Program and repeals the requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the program.	MIS	S-2370(2R)

## 2010 TAX LAWS *(continued)*

### **\*Legend for 2010 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 Fuel 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