

New Jersey State Tax news

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Changes to Rebate Program

The Homestead Property Tax Credit Act was signed into law April 3, 2007. The Act replaced the FAIR Rebate Program and increases the property tax benefit received by many New Jersey homeowners. The Act provides that, for most homeowners, the benefit can be paid as a credit applied to the homeowners' next property tax bill. However, because of unresolved issues with banking and mortgage lending industries, as well as municipalities, all eligible applicants will receive the benefit as a check this year.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2006, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2006 homestead rebate, provided that their gross income for the entire year does not exceed the income limit. The income limit is \$250,000 for homeowners and \$100,000 for tenants.

How to Apply

Homeowners: The 2006 homestead rebate applications were mailed in May to homeowners who were 65 years of age or older or disabled on December 31, 2006. Application packets were mailed beginning in late June to nonsenior, nondisabled homeowners.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or online at: www.state.nj.us/treasury/taxation/ The filing deadline for all homeowners has been extended to October 31, 2007.

Tenants: Applicants who are required to file a 2006 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software) by April 17, 2007. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate is also extended.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until October 31, 2007, to file the tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2006 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until October 31, 2007, to apply.

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Benefit Amounts

Benefit amounts differ for homeowners and tenants, and are determined by income, amount of property taxes (or rent) paid, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: For tax years 2006 and after, homeowners will receive 10%–20% of the first \$10,000 of property taxes paid, depending on their income level:

\$100,000 or less	—	20%
\$100,001 – \$150,000	—	15%
\$150,001 – \$250,000	—	10%

Homeowners who are age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (see above) or the amount by which the property taxes paid exceed 5% of gross income, but within the range specified based on income:

\$70,000 or less	—	\$1200 – \$1000
\$70,001 – \$125,000	—	\$800 – \$600
\$125,001 – \$200,000	—	\$500

In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2006, tenants age 65 or older or disabled will receive rebates ranging from a minimum of \$160 up to a maximum of \$860. Tenants under age 65 and not disabled will receive a minimum of \$80 up to a maximum of \$350.

Rebate Checks

Homeowners: Checks for senior and disabled homeowners who filed by June 1 were mailed on July 31, while checks for those who file between June 1 and October 31 will

be issued as quickly as possible thereafter. Checks for all nonsenior, nondisabled homeowners are scheduled to be mailed in the fall.

Tenants: Checks for tenants, who file their applications with their income tax returns, were also mailed on July 31.

More information on the Homestead Rebate Program is available at: www.state.nj.us/treasury/taxation/homestead/06hrintro.shtml □

SALES AND USE TAX

**Membership Fees/
Parking Charges**

P.L. 2007, c.105, effective July 1, 2007, amends the Sales and Use Tax Act to exempt from sales tax membership fees or dues for access to facilities of a health and fitness, athletic, sporting or shopping club or organization when the charges are made by qualified exempt organizations or New Jersey State or local government entities. All other charges for initiation fees, membership fees or dues for access to facilities of a health and fitness, athletic, sporting or shopping club or organization remain subject to sales tax.

P.L. 2007, c.105, also exempts charges for parking, storing, and garaging a motor vehicle when made by a municipality or county or a municipal or county parking authority. All other charges for parking, storing, or garaging a motor vehicle, other than residential and employee parking, remain subject to tax. The amendment also eliminates the imposition of sales tax on the \$3 parking fee at Atlantic City casino hotels.

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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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For more detailed information about these changes visit the Division's Web site at:

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

For general information about initiation fees, membership fees and dues, see **Tax Note** on this topic.

For general information about parking, storing, or garaging a motor vehicle, see **Tax Note** on this topic. □

SALES AND USE TAX

Newspaper Production Equipment

The sale of machinery, apparatus, or equipment used directly and primarily in the publication of newspapers is exempt from sales tax under N.J.S.A. 54:32B-8.29.

In the last several years, the newspaper industry has undergone many technological advances that affect the application of this exemption. For example, computers and digital imaging have automated the newspaper publishing industry, integrated multiple processes, and replaced the more traditional methods of publishing.

The availability of new technology has necessitated a reevaluation of how the phrase "directly and primarily" applies in the context of newspaper production. In general, "primarily" means used more than 50% of the time in the exempt activity, and "directly" refers to the physical proximity of the machinery, apparatus, or equipment in relation to the physical production of newspapers as a process.

In terms of newspaper production in a digital environment, the physical location of the equipment does not determine exempt status. Equipment that is used directly and primarily in the production process qualifies for the exemption even if it is physically located at a facility other than where the actual printing occurs. For example, the equipment used directly and primarily to coordinate the creation and layout of the newspaper pages may not be at the same location as the actual printing operation. Some small newspaper publishers may even outsource the entire printing process so that none of the printing takes place at their own facility.

In addition, computer equipment is likely to have dual uses, some "direct and primary" and some administrative. One factor that may be used to evaluate whether the purchase of a particular piece of equipment is exempt is the presence of software on the equipment which is used in the page layout process. The presence of such software creates a rebuttable presumption that the computer equipment is used directly and primarily in the production process; however, this presumption will be overcome if the equipment's actual use in the workplace indicates a nonexempt use more than 50% of the time. For example, if a computer that is used in a business office where its operator does a variety of tasks related to the conduct of business, including page composition, is used only 30% of the time for production purposes, it does not qualify for exemption. □

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 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 □

LOCAL PROPERTY TAX

PAMS Countdown to Implementation

With the first implementation of New Jersey's new Property Assessment Management System (PAMS) only months away, the project team continues testing and is beginning to focus on activities to prepare the three early implementation counties for cutover to the new system. The counties will go live on a staggered schedule beginning in October as follows:

- October** – Hunterdon County
- November** – Camden County
- December** – Salem County

Project activities in recent months have included installing computer servers at the Office of Information Technology's facility, meeting with vendors to discuss interfaces with



PAMS countdown - from page 3

the new system, and testing business functions or procedures used to perform specific tasks in an office, such as appraising low-income housing or creating a lien certificate.

The latest edition of the quarterly PAMS newsletter, *Update*, is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml

For questions, contact Dana Max at dana.max@treas.state.nj.us or 609-292-8311. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1-

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2008 together with a notice that the completed form must be filed with the assessor by August 1, 2007, in order to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

August 1-

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2008.

August 5-

- All SR-1A forms showing information to be used in compiling 2007 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15-

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25-

- Completion of State Equalization Table by Director, Division of Taxation.

September 1-

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) with respect to tax year 2008 with the assessor for taxing district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2008 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On February 21, 2007, the Office of Criminal Investigation (OCI) conducted a joint investigation with the Little Falls Police

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Interest 11.25%

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



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Department. Acting on a citizen complaint regarding the purchase of unstamped cigarettes at Deepali & Pinku, Inc., trading as Valley Spa, located at 61 E. Main Street in Little Falls, 192.5 cartons of cigarettes were seized, 40.3 of which bore counterfeit New Jersey tax stamps. The owner, Daxesh Parikh, was charged with numerous offenses, the most serious being the third-degree crime of possessing 2,000 or more cigarettes with counterfeit tax stamps.

- On March 26, 2007, a Clifton woman, Rosa M. Castro, 51, and her boyfriend, Rafael E. Ramos, 50, were indicted on charges that they stole more than \$16,000 by filing fraudulent State tax returns. They were indicted by a State Grand Jury on third-degree charges of theft by deception, money laundering, and conspiracy. It is alleged that Castro and Ramos filed 46 fraudulent New Jersey gross income tax returns between March and December 2006, consequently receiving and depositing 22 refund checks from the Division of Taxation totaling \$15,209 and 4 homestead rebate checks totaling \$865. Castro, who offered tax return preparation services to others, allegedly used the names of 13 different clients without their permission to prepare the fraudulent returns for tax years 2000 through 2005. All of the returns listed the defendants' home address. At the time of the alleged misconduct, Rosa M. Castro was on parole from State prison in connection with a prior fraud conviction involving more than 1,400 false State tax returns.

Castro pled guilty in 2002 to a Federal charge of aiding in the preparation of a false Federal income tax return and received three years' probation. In June 2004 she pled guilty to a second-degree charge of theft by deception brought by the Division of Criminal Justice for filing 1,448 fraudulent tax returns with the State of New Jersey. She was sentenced to five years in State prison but was released on parole in October 2005.

On April 17, 2007, Castro was returned to custody and on May 9, 2007, the New Jersey State Parole Board-Adult Panel revoked her parole and ordered Castro to serve the balance of her prison term (10 months, 17 days). Accordingly, she will serve a prison sentence until March 4, 2008, for the 2004 conviction. The disposition of the current charges is still pending.

- On March 30, 2007, Joan Orlando, 60, of Brick, was sentenced to five years in prison and ordered to make restitution for stealing \$738,163 from St. Benedict Roman Catholic Church. She was arrested in 2005 and pled guilty in January 2007 to theft by deception and failure to pay taxes. During a four-year period Orlando, with sole control of the books as a financial administrator at the Holmdel church, padded her \$47,000 salary to support her compulsive gambling addiction. In charge of payroll at the church, Orlando, who worked in the parish office for six and a half years, submitted paycheck amounts for church employees to Automatic Data Processing Inc. of Roseland, which produced the checks. From January 2001 to

June 2005, she inflated the amount of money she was to receive in her paycheck for each pay period. Joan Orlando's husband, Richard, who is accused of receiving nearly \$300,000 in cash and checks from his wife's bank account between 2003 and 2005, is scheduled to go to trial.

- On April 2, 2007, Mack Barden, 58, of Paterson, was sentenced to five years in State prison for stealing \$210,035 by fraudulently obtaining hundreds of New Jersey tax refund and homestead rebate checks. Barden pled guilty on January 18, 2007, to second-degree theft by deception, a charge contained in a State Grand Jury indictment obtained by the Division of Criminal Justice in July 2006. As part of the plea agreement, Barden agreed to make full restitution to the New Jersey Division of Taxation. The investigation by OCI revealed that Barden, a truck driver who earned additional income by preparing tax returns, submitted hundreds of fraudulent New Jersey gross income tax returns and homestead rebate applications between 1997 and 2005 using false names and social security numbers. Barden submitted altered W-2 forms with the tax returns, including forms from his tax preparation clients.
- On April 25, 2007, a search warrant and arrest warrants were executed at the residence of Jimmy and Jennifer Pham regarding allegations of tax evasion and structuring. The Phams accumulated sizeable liquid assets, but their reported gross income deemed it unlikely that their accumulation

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of assets was through the savings of a portion of their income. The IRS had seized certificates of deposit totaling \$300,000 and the New Jersey State Police confiscated \$200,000 in jewelry found during the search. The Phams claimed that the accumulation of money was from gambling winnings which they had previously secured in safes in their house and later decided to deposit in banks. The Phams stated they were making the deposits in amounts less than \$10,000 in order to avoid the need for the banks to file a Currency Transaction Report. Jimmy and Jennifer Pham were charged with financial facilitation and filing false and fraudulent tax returns for tax years 2005 and 2006. This is a joint investigation with the Financial Investigation Unit of the New Jersey Division of Gaming Enforcement and the IRS.

- On April 27, 2007, Lisa A. Gordon of Little Egg Harbor was sentenced to prison for theft of movable property and failure to file a New Jersey gross income tax return for tax year 2000. Gordon was sentenced to four years in State prison and ordered to make restitution to the Jewish Community Center, her former employer. In June 2005 a Monmouth County Grand Jury handed up a seven-count indictment of Lisa Gordon and her husband, Christopher, charging that they embezzled more than \$400,000 from the Jewish Community Center in Ocean Township. The investigation established that the Gordons used these funds to gamble in Atlantic City in addition to purchasing automobiles

and property. On July 14, 2006, Lisa A. Gordon pled guilty to the second-degree crime of theft of movable property and one count of failure to file a New Jersey gross income tax return. As part of the plea agreement the remaining charges against Lisa Gordon and all charges against her husband were dismissed at the time of sentencing. This was a joint investigation with the Monmouth County Prosecutor's Office.

- On May 8, 2007, Terry Tolbert was indicted in Union County Superior Court on charges of selling cigarettes without the required revenue stamp and possession of 2,000 or more cigarettes with counterfeit tax stamps. This indictment is the result of action taken on November 30, 2006, when Terry Tolbert and Ryan Mills were arrested for the possession, sale, and transportation of cigarettes bearing counterfeit tax stamps in Roselle, New Jersey. Ryan Mills pled guilty in Union County Superior Court and is awaiting sentencing. Terry Tolbert's case is pending trial. The arrests were the result of a six-month investigation conducted by OCI special agents of illegitimate cigarette wholesalers under the names C&M Tobacco and Tobacco Express.
- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$10,799,292 during the current fiscal year. In addition, the Office of Criminal Investigation continues to diligently issue assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

Termination of New Jersey S Corporation Status — A corporation that has elected and been accepted as a New Jersey S corporation remains a New Jersey S corporation as long as it is a Federal S corporation, unless it revokes its New Jersey status before the end of the first tax year. To revoke an election, a letter of revocation must be filed. The letter must be signed by all shareholders holding more than 50% of the outstanding shares of stock on the day of the revocation, and a copy of the original election form must be enclosed. The letter of revocation must be filed on or before the last day of the first tax year of the election. N.J.A.C. 18:7-20.1(f).

To terminate New Jersey S corporation status after the first year, a corporation must terminate its Federal S corporation status. An S corporation cannot end its New Jersey S corporation status without first terminating its Federal S corporation status. The corporation must then reregister with the State as a C corporation.

Multiple Taxes

Breast, Chin, and Other Implants — Several inquiries have been received regarding the taxability of breast implants under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., the Cosmetic Medical Procedures Gross Receipts Tax Act, N.J.S.A. 54:32E-1, or both.

The sale or use of breast implants is not subject to sales and use tax. Breast implants, chin implants, cheek implants, and similar bodily implants are deemed to be "prosthetic devices" and are therefore

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exempt from sales and use tax pursuant to N.J.S.A. 54:32B-8.1. Neither the medical services provider who purchases the implants from a supplier nor the patient who has them surgically implanted should pay sales tax or use tax on the implants.

If the medical services provider bills the patient for the implants in addition to billing for the medical services, then under certain circumstances the implants may be subject to cosmetic medical procedures gross receipts tax (CMPGRT), payable by the patient. If the procedure is a “cosmetic medical procedure,” i.e., a medical procedure performed in order to improve the patient’s appearance, but without significantly serving the purpose of preventing or treating disease, improving functioning of the body, or correcting or minimizing abnormalities caused by birth or developmental defects, trauma, or disease, then charges for the medical service are subject to the CMPGRT, payable by the patient and collected by the medical services provider. In that case, charges for any goods or facility occupancies required for the procedure and billed to the patient are also subject to the CMPGRT. For example, if a patient undergoes a breast augmentation procedure for purely aesthetic reasons, charges for the procedure as well as any additional charges for necessary room occupancies, implants, or other tangible personal property will be subject to the CMPGRT. However, if the procedure is reconstructive surgery performed to repair or correct abnormalities resulting from disease

or trauma (including prior surgeries) or congenital or developmental defects, then neither the medical services nor the implants and other goods will be subject to CMPGRT.

Partnerships

Partnership Filing Fee — Under N.J.S.A. 54A:8-6, a partnership filing fee is imposed on partnerships that have income (or loss) derived from New Jersey sources and that have more than two owners. The filing fee is \$150 for each owner up to a maximum of \$250,000. The filing fee is due on or before the 15th day of the fourth month following the close of each privilege period. An installment payment equal to 50% of the filing fee is also required at the same time.

A partnership may not be required to pay the filing fee if there is no New Jersey source income. To qualify for this exception, all operations and facilities must be located outside New Jersey. However, if the partnership has New Jersey source income, expenses, deductions, or losses it will not qualify for this exception. For example, a partnership that owns raw land in New Jersey on which it pays property taxes does not qualify for exemption because the property taxes constitute New Jersey expenses. On the other hand, fees paid by the partnership for a New Jersey checking account or to a New Jersey accounting firm are not considered New Jersey source expenses for purposes of determining liability for the filing fee. Similarly, the fee paid for simply filing the annual report in New Jersey will not be considered a New Jersey source expense for purposes of measuring filing fee liability.

If the partnership derives no income (or expenses) from New Jersey sources as described above, it would not be required to submit the \$150 per member filing fee. However, the partnership would still be responsible for filing a New Jersey partnership return (Form NJ-1065) if it had a New Jersey resident partner.

The partnership filing fee must be paid by the original due date of the partnership return. There is no extension for payment of the filing fee, even if the partnership has an extension for the filing of the partnership return. A prepayment of 50% of the next year’s filing fee must also be made with the fee for the current year. No other installment payments are required for the partnership filing fee.

The filing fee cannot be prorated for partners who own an interest for only a portion of the year. Similarly, the fee cannot be prorated if the partnership was in existence for only part of the tax year for which Form NJ-1065 is due. If a partnership dissolves before the end of a tax year, the 50% prepayment of the \$150 per partner filing fee for the next year is not required.

For additional guidance on the imposition of the partnership filing fee, see N.J.A.C. 18:35-11.1–11.6 and **TB-55**, *Partnership Filing Fee and Nonresident Partner Tax*.

Sales and Use Tax

Coin-Operated Laundromat — The sales tax exemption for laundering, dry cleaning, tailoring, weaving, and pressing is limited specifically to providing these services for clothing. N.J.S.A. 54:32B-3(b)(2)(iv).

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When performed on nonclothing items, the services are subject to tax.

It is the Division's position that the operator of a coin-operated laundromat is permitted to make a basic presumption based on the traditional nature of the business that customers are using the coin-operated laundry machines to launder clothing. Therefore, receipts for the use of coin-operated washing machines and dryers at a self-service laundromat are not subject to sales tax.

Investigation and Security Services Sourcing — P.L. 2006, c.44, imposes tax on "Investigation and Security Services." See N.J.S.A. 54:32B-3(b)11.

The law defines "Investigation and Security Services" as:

1. Investigation and detective services, including detective agencies and private investigators, and fingerprint, polygraph, missing person tracing and skip tracing services;
2. Security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services;
3. Armored car services; and
4. Security systems services, including security, burglar, and fire alarm installation, repair or monitoring services. N.J.S.A. 54:32B-2(xx).

Investigation and detective services are sourced for sales tax purposes where the customer makes first use of the service. First use of these services is deemed to be where the

investigative report is delivered. N.J.S.A. 54:32B-3.1.

Security guard and patrol services are also sourced based on where the customer makes first use of the service. N.J.S.A. 54:32B-3.1. Since security guard and patrol services are specific to an actual location, they are sourced based on the location of the property being guarded. Thus, security guard and patrol services performed at a location in New Jersey are subject to tax.

Armored car service is subject to sales tax if performed entirely within New Jersey. If the service is not performed entirely within this State, then the service is sourced to the customer's location. Thus, if the customer's location is in New Jersey, regardless of whether goods are picked up or delivered to that location, the service is subject to sales tax.

Limousine Services — Sales tax is imposed on the sale, except for resale, of "transportation services originating in this state and provided by a limousine operator, as permitted by law, except such services provided in connection with funeral services." N.J.S.A. 54:32B-3(b)(13).

Sales tax will be imposed on limousine service that both begins and ends in the State of New Jersey, (i.e., the trip begins with pickup of passenger(s) in New Jersey and ends with the discharge of passenger(s) within New Jersey) and takes place entirely within the State of New Jersey. If a customer is picked up in New Jersey and delivered to a location outside this State, that service will not be taxable. If a customer is picked up outside of New Jersey and delivered to a location in this State, that service will also not be taxable.

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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](#)



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For example, a passenger contracts with a limousine operator to provide him with round-trip service from his home in Cherry Hill, New Jersey to a hospital in Philadelphia, Pennsylvania. The passenger is picked up in the morning and taken to the hospital. Then, several hours later the passenger is picked up from the hospital and taken back to Cherry Hill. The services provided are not taxable. The morning service is not taxable because it ends outside New Jersey, and the afternoon service is not taxable because it originates outside New Jersey.

Trucks and Trailers Used in Film or Video Production — Receipts from sales of tangible personal property and the installation, maintenance, or servicing of tangible personal property for use or consumption directly and primarily in the production of film or video for sale are exempt from New Jersey sales tax.

The exemption applies to motor vehicles; replacement parts, without regard to useful life; tools; and supplies. Thus, the rental of trucks and trailers that are used directly and primarily in the production of film or video for sale are exempt from New Jersey sales tax. The exemption does not apply to tangible personal property that is used incidentally to the production of film or video.

The definition of a film or video is set forth at N.J.S.A. 54:32B-8.49(c) which states that “. . . ‘film or video’ means motion pictures including feature films, shorts and documentaries, television films or episodes, similar film and video productions whether for broadcast, cable, closed circuit or unit distribution and whether in the form of film, tape, or other analog or digital medium, but does not include any film or video that is produced by or on behalf of a corporation or other person for its own internal use for advertising, educational, training, or similar purposes.” □

In Our Courts

Administration

Jurisdiction – *Harry’s Lobster House Corporation v. Director, Division of Taxation*, decided June 5, 2006; Tax Court No. 004978-2004.

Plaintiff (Harry’s) filed a timely complaint in response to the Division’s final determination which concluded that Harry’s filed an untimely protest of the Division’s notice of assessment. There was no indication that this complaint was ever served on the Division. The Court found that Harry’s filed an untimely protest with the Division and that it did not appeal the notice of assessment with the Tax Court.

Harry’s further alleged that the complaint should not be dismissed because representatives of the Division met with Harry’s after the issuance of the final determination as well as after the filing of Harry’s complaint and reached an agreement to reaudit the tax years at issue. Harry’s alleges that the Division

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IRS Stakeholder Liaison presents:



National Phone Forum

IRS e-file – How to Get Started

Date: September 19th, 2007

Cost: FREE

Location: The convenience of your home or office

More information is available at: www.state.nj.us/treasury/taxation/pdf/irsefile.pdf



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cannot renege on the agreement because it relied on this agreement and spent substantial money to prepare for the reaudit.

The only remaining issue was whether the Division had any authority to reach an agreement to revoke or modify the original assessment following the filing of the complaint. For purposes of this motion, the Court assumed that the Division agreed to redetermine Harry's tax liability for the period related to the notice of assessment based upon Harry's subsequent period records.

The Court found that the Division has limited authority to redetermine sales tax, gross income tax withholding, and litter tax liabilities after the assessment has become fixed and final. The authority extends to cases dealing with compromises and closing agreements. Prior to the case's being referred to the Attorney General for defense, the Division may compromise a civil liability where there is doubt as to collectability. The Attorney General's opinion must be obtained before any compromise involving unpaid tax of \$5,000 or more may be accepted. A closing agreement must be requested before the case is

filed with the Tax Court. In both instances, the law requires that administrative action commence before litigation commences. Therefore, the Division would have had no authority to enter into an agreement as the complaint was already filed and no valid compromise or closing agreement could have been entered into. The Court held that it lacked jurisdiction to hear the case and therefore granted the Division's motion to dismiss the complaint.

Harry's appealed this decision to the Appellate Division.

Cash Audits

Mark-Up Methodology – Yilmaz, Inc. v. Director, Division of Taxation, decided February 2, 2007; Appellate Division No. A-0080-05T5.

The Appellate Division framed the issue as the standard of proof needed to overcome the presumed correctness of the Division's State tax assessment regarding the audit of a cash business involving factual issues and the Division's methodology. The Appellate Division noted that the Tax Court previously held that in order to overcome the Division's presumption of correctness of assessment there must be cogent evidence that is definite, positive, and certain in quality and quantity.

The Appellate Division affirmed the Tax Court.

Mark-Up Methodology – Yilmaz, Inc. v. Director, Division of Taxation, decided May 29, 2007; Supreme Court of New Jersey No. C-995 September Term 2006; 60,791.

The New Jersey Supreme Court denied Yilmaz, Inc.'s petition for certification.

Corporation Business Tax Basis for Depreciation of Transferred Assets – Clorox Products Manufacturing Corporation v. Director, Division of Taxation

– *Clorox Products Manufacturing Corporation v. Director, Division of Taxation*, decided November 29, 2006; Tax Court No. 007867-2004.

The Clorox Company (Parent Corporation) transferred its manufacturing operations and assets to plaintiff (Clorox) in July 1996 in exchange for 100% of Clorox's stock pursuant to a transaction that qualified as tax-free under Internal Revenue Code Section 351. The transferred assets consisted of uncoupled property, property originally placed in service during a time period when the New Jersey Corporation Business Tax Act (CBT) required the use of straight-line depreciation and did not permit the accelerated depreciation methods available to corporations under the

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**Enforcement Summary Statistics
First Quarter 2007**

Following is a summary of enforcement actions for the quarter ending March 31, 2007.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	4,032	• Seizures	107
Total Amount	\$58,058,207	• Auctions	6
• Jeopardy Assessments	178	• Referrals to the Attorney General's Office	463

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc.html



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Federal Internal Revenue Code (IRC).

Prior to the transfer, Parent Corporation depreciated the transferred assets using the straight-line method for CBT purposes and under an accelerated depreciation method for Federal purposes. On its CBT returns, Clorox used the Parent Corporation's CBT carryover basis and depreciated the assets using the straight-line method. The Division determined that Clorox should have used the Parent Corporation's IRC carryover depreciable basis per its regulations. N.J.A.C. 18:7-5.2(a)(2)(v) provides as follows:

Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Federal Internal Revenue Code, there shall be allowed as a deduction any excess or there must be restored as an item of income any deficiency of depreciation disallowed under (a)1x above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

The Court ruled that the Parent Corporation's transfer to Clorox was a physical disposal of recovery property under the regulations. However, the Court found nothing in the regulation that required the Parent Corporation to take an adjusting

depreciation deduction for the property it transferred to Clorox in 1996, which Parent Corporation did not take, and for which Clorox would have a reduced CBT carryover basis. The plain language of the regulation does not require the adjusting depreciation deduction but merely allows for the deduction in the year of the transfer. As Parent Corporation chose not to take the excess depreciation deduction, the Court found nothing within the regulation that precluded Clorox from using the Parent Corporation's higher depreciable basis.

The Division appealed this decision.

**Gross Income Tax
Timeliness of Complaint** – *Szymczak v. Director, Division of Taxation*, decided April 30, 2007; Docket No. 005768-2006.

In this case, the Director moved to dismiss the complaint because it was filed after the expiration of the statutory 90-day appeal period.

A final determination was mailed to the plaintiff on March 10, 2006. Plaintiff had 90 days to file an appeal with the Tax Court. N.J.S.A. 54A:9-10.

R. 8:4-2(b) provides, "If a notice of an action is mailed the time period within which a complaint for review

may be filed shall be extended pursuant to R.1:3-3." R. 1:3-3 provides, "When service of a notice or paper is made by ordinary mail, and a rule of court order allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period." Thus plaintiff had until June 12, 2006, to file her complaint (June 11, 2006, was 93 days from March 10, 2006, but June 11 was a Sunday). However, plaintiff did not file a complaint with the Tax Court until June 21, 2006.

In his decision Judge Small opined:

While plaintiff argues that denying her right to an appeal would be unconscionable, the Tax Court has no authority to relax the statute of limitations. It appears that the plaintiff relied on her accountant to file a timely appeal on her behalf ... She must look to the accountant to compensate her for any loss she may have suffered because of his actions or must assume the consequences of her own actions or failure to act. The State is entitled to exert its defense that the court lacks jurisdiction. The court may not relax a statutory limitations

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Current Amnesty Programs

Iowa 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.

IA Sept. 4 – Oct. 31 www.iowataxamnesty.gov/

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period. The State does not act as a malpractice insurer for professionals. To the extent that the plaintiff has a meritorious claim and she was precluded from raising it..., she must look to him (CPA), and not the State, for relief. A motion to dismiss on subject matter jurisdictional grounds can never be waived.

Judge Small went on to say, "As plaintiff's complaint was not timely filed, her complaint must be dismissed. The Director's motion to dismiss for lack of jurisdiction is granted." □

In Our Legislature **Administration**

Changes in Tax Debt Collection and Compliance Procedures — P.L. 2007, c.100, enacted June 28, 2007, effective immediately, but with the provision applicable to bulk sales not operative until August 1, 2007, makes several changes in tax compliance procedures in order to enhance tax collection and increase revenue.

Tax Clearance Program for Certain Business Assistance and Incentives — P.L. 2007, c.101, enacted June 28, 2007, effective immediately, and operative July 1,

2007, establishes a tax clearance certificate requirement for awards of certain monetary and financial incentives offered to businesses by State departments, agencies, instrumentalities, and independent authorities. The Act prescribes that as a precondition for obtaining an award of business assistance or incentives, such as grants, loans, and other financial assistance (but not including tax credits or tax exemptions), the applicant must obtain a tax clearance certificate from the Division of Taxation showing that it has filed its required tax returns, and paid any taxes, fees, or penalties and interest due.

Gross Income Tax

Earned Income Tax Credit — P.L. 2007, c.109, enacted June 28, 2007, effective immediately, and applicable to tax years beginning on or after January 1, 2007, expands the eligibility for the New Jersey earned income tax credit and enhances the benefit amount. The Act extends eligibility for the State credit to any individual who is eligible for a Federal earned income tax credit.

Penalties for Misclassifying Construction Workers as Independent Contractors — P.L. 2007, c.114, enacted July 13, 2007, and effective immediately, establishes penalties for employers who misclassify construction work employees as "independent contractors," thereby

affecting their rights and obligations under laws affecting State and Federal income tax withholding, social security, unemployment and disability benefits, workers' compensation, and other benefits. The Act makes it a criminal offense for an employer (or its agent, officer, foreman, employee) to misclassify a construction work employee, with the degree of the offense ranging from disorderly persons offense to second degree, depending on the intent and on the monetary value of the work contract. In addition, such misclassification may be subject to administrative penalties and civil penalties imposed by the Commissioner of Labor and Workforce Development, including suspension of registration, stop-work orders, and fines.

The Act creates a presumption that, for purposes of the Gross Income Tax Act and certain State benefit laws, workers who are remunerated by an employer for services performed in improving real property are deemed to be "employees" unless they meet all the criteria of a three-pronged test set forth in P.L. 2007, C.114 establishing that the worker is an independent contractor.

Local Property Tax

Uniform Shared Services and Consolidation Act and Other Reforms — P.L. 2007, c.63, signed into law on April 3, 2007, enacted several portions of a large package of reform proposals. Many of the provisions of the Act were designed to encourage fiscal savings among local units of government through a system of shared services. Other provisions promote openness and ease of public access to information regarding the budgeting processes for municipalities and public school systems.

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The Act also expands the authority of executive county superintendents (superintendents of schools). The Act indirectly affects local property taxation.

Short-Term Property Tax Abatement for Certain Reconstructed Homes — P.L. 2007, c.90, enacted May 6, 2007, and effective immediately, allows short-term property tax relief for a five-year period for owners of residential property located in a redevelopment area that has been rebuilt or renovated by certain volunteer labor after being destroyed or damaged by fire. The Act enables municipalities to enact an ordinance granting a five-year exemption from property tax on the value of the improvements made in such situations.

Short-Term Property Tax Abatement for Certain Homes Altered to Accommodate Disabilities — P.L. 2007, c.91, enacted May 6, 2007, and effective immediately, permits municipalities to allow a five-year property tax abatement for certain improvements made on single-family dwellings located in an area declared in need of redevelopment, if half of the occupants of the dwelling qualify for a Federal income tax credit because of permanent and total disability. The tax relief, which will allow the improved property to be assessed based on its value before the renovations or reconstruction, will apply if the improvements were made in order to accommodate the occupants' physical disabilities and the work was done by volunteer labor satisfying certain statutory criteria.

Miscellaneous

Reduced Cigarette Ignition Propensity and Firefighter Protection Act — P.L. 2007, c.86, enacted May 4, 2007, and effective June 1, 2008, sets various requirements to ensure that cigarettes sold in the State satisfy fire safety standards. It also provides that in the regular course of its inspections of cigarette dealers, the Division of Taxation may inspect cigarettes to determine whether they are marked as required by this Act. If they are not, the Director, Division of Taxation, shall notify the Director, Division of Fire Safety, Department of Community Affairs, notwithstanding the confidentiality provision (N.J.S.A. 54:50-8) of the State Tax Uniform Procedure Law.

Revisions of Neighborhood Revitalization State Tax Credit — P.L. 2007, c.89, enacted May 6, 2007, and effective immediately, increases the amount of State tax credits granted to businesses providing funding to qualified neighborhood revitalization projects.

Set-Off of Certain Debts Against Lottery Winnings —

P.L. 2007, c.106, enacted June 28, 2007, and effective immediately, provides that child support debts, debts to State government institutions and agencies, such as the Victims of Crime Compensation Board, and certain other debts shall be offset by the Department of Treasury against State lottery prizes greater than \$600. (This Act does not directly affect taxation.)

Multiple Taxes

Liability of Fiduciary Agents for Certain Taxes — P.L. 2007, c.102, enacted June 28, 2007, effective immediately, and operative on October 1, 2007, imposes personal liability on certain individuals and entities that, as the State's fiduciary agents, are required to collect and remit Cape May County tourism sales tax, N.J.S.A. 40:54D-4; Atlantic City luxury tax, N.J.S.A. 40:48-8.15 et seq.; hotel and motel occupancy fee, N.J.S.A. 54:32D-1;

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Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Date: 12/24/07

PAY TO THE ORDER OF: \$ 15,000.00 DOLLARS

Anyplace Bank
Trenton, NJ 08611

For: (Routing) (Account) (Do not include this check number)

⑆02020202⑆ ⑆02020202⑆ 1234

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.49% of tax payment applies.

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9-1-1 system and emergency response fee, N.J.S.A. 54:17C-18; and cosmetic medical procedures gross receipts tax, N.J.S.A. 54:32E-1.

Property Tax Relief Programs

Homestead Credit Program — P.L. 2007, c.62, enacted April 3, 2007, establishes a system of homestead credits for homeowners, replacing the current homestead rebate program. The credit program provides taxpayers with benefits calculated as a percentage of the property tax (up to a maximum of \$10,000 tax) that they paid during the previous year. The percentages used to calculate this benefit are based on income levels, with higher percentage benefits allowed for the lower income levels, and with no benefit allowed for those whose income exceeds \$250,000. For seniors and residents who are blind or disabled, the Act either retains the current calculation of property tax rebates (the amount by which property taxes paid exceed 5% of gross income with specified maximum and minimum rebate amounts) or applies the new percentage of property taxes formula, whichever provides a greater benefit.

The homestead credit provisions will begin to apply to claims for rebates and credits for property tax paid for tax year 2006.

The Act also imposes a 4% property tax levy cap on school districts and county and local governments, subject to limited exceptions and adjustments. The tax levy cap provisions will apply to budget years beginning on or after July 1, 2007, but not to years beginning after June 30, 2012.

Sales and Use Tax

Seven-Year Exemption Period From Certain Taxes on Energy for Certain Manufacturers — P.L. 2007, c.94, enacted May 10, 2007, and effective immediately, provides an exemption from sales tax imposed on energy and utility services and from the transitional energy facility assessment unit rate surcharge. This exemption is to be applied only to a manufacturing facility producing products using recycled materials and satisfying several precise and complex criteria (currently applicable only to one manufacturing facility in the State). The Act provides that the exemption is in effect for seven years, and during that time the economic effect of allowing the facility's exemption will be reviewed annually.

Exemption for Certain Membership Fees and Municipal and County Parking — P.L. 2007, c.105, enacted June 28, 2007, and effective July 1, 2007, carves out certain exceptions to two new impositions of sales tax that were part of the expansion of sales and use tax under P.L. 2006, c.44, effective October 1, 2006.

The Act amends N.J.S.A. 54:32B-3(h), which imposes sales tax on fees and dues for use of the facilities of health and fitness, athletic, sporting, and shopping clubs and organizations. The amendment exempts such fees and dues if the club or organization is either an exempt private organization or an exempt public entity pursuant to N.J.S.A. 54:32B-9.

The Act also amends N.J.S.A. 54:32B-3(i) which imposes tax on receipts for parking or garaging a motor vehicle, with certain exceptions. The amendment carved out additional exceptions for municipal parking and garaging, even when not "metered," and certain parking fees at Atlantic City casinos. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) 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.

[2007](#) [2008](#)

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

[2007](#) [2008](#)

- **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.

[2007](#) [2008](#) □



*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 Tenants 609-292-6400
- 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
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-984-4123
- Corp. Liens, Mergers, Withdrawals
& Dissolutions 609-292-5323
- Director's Office 609-292-5185
- Inheritance Tax 609-292-5033
- Local Property Tax 609-292-7221
- Motor Fuels Tax
Refunds 609-292-7018
- Public Utility Tax 609-633-2576