

New Jersey State Tax news

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inside

<i>michael bryan named acting director</i>	1
<i>director's advisory council to be formed</i>	2
<i>tax assessors' calendar</i>	2
<i>correction: 2009 nj-1040nr instructions</i>	3
<i>small business workshops</i>	3
<i>tax briefs</i>	4
<i>practitioners' e-file mandate</i>	4
<i>interest rate 6.25%</i>	5
<i>public auction information</i>	6
<i>enforcement summary stats</i>	6
<i>in our courts</i>	6
<i>sales tax information</i>	8
<i>current amnesty programs</i>	10
<i>in our legislature</i>	11
<i>tax calendar</i>	13
<i>important phone numbers</i>	13

Michael Bryan Named Acting Director

New Jersey Treasurer Andrew Sidamon-Eristoff appointed Michael J. Bryan as the new Acting Director of the Division of Taxation.

Mr. Bryan took the oath of office for the position on July 12, 2010, in the Treasurer's Office at the State House and assumed responsibility for managing a staff of 1,300 employees who administer 40 taxes and fees and provide information and assistance to members of the public on tax questions. In the fiscal year ended June 30, 2009, the Division collected \$24.8 billion in tax revenues for the State of New Jersey.

Mr. Bryan is a tax and accounting professional with more than 20 years of private and public sector experience. Most recently, he served as senior director in the tax department at Comcast Corporation in Philadelphia. In that capacity he managed all tax controversy issues for the communications and entertainment company as well as its centralized records management.

"Mike brings a broad and deep background in tax, audit, and accounting matters to the Division along with strong managerial experience. We are pleased that New Jersey will benefit from the services of a professional of his caliber," Sidamon-Eristoff said.

"His experience in handling tax and audit issues both from the government and private client perspective will be particularly valuable as he manages the Division's interactions with taxpayers.

"Mike also has a strong interest in how tax agencies deal with the public," Sidamon-Eristoff added, "and I believe he is the right person to lead the Division as we seek to enhance the communications and support it provides to taxpayers to help them fulfill their legal responsibilities."

Mr. Bryan will serve on an acting basis pending the advice and consent of the New Jersey Senate.

He began his tax career in 1987 as a revenue agent conducting field examinations for the Internal Revenue Service in Philadelphia. He then joined Coopers & Lybrand as an associate and assisted clients with tax and audit matters. His career at Comcast began in 1994 when he joined the company to manage tax examinations.

He is a Certified Public Accountant and earned a Bachelor of Science degree in accounting from Drexel University and a Master of Science degree in taxation from Temple University.

Mr. Bryan is a lifelong resident of New Jersey. He currently resides in Haddonfield with his wife Rebecca and their two children. □



Director's Advisory Council to be Formed

The Division of Taxation is proud to announce the formation of the Tax Director's Advisory Council (the "Council" or "TDAC"). The purpose of the Council will be:

1. To provide a public forum for communication between New Jersey's Tax Director and representatives of the public interested in New Jersey tax policy, and
2. To provide ideas, input, and perspective to the New Jersey Tax Director, assisting him in developing tax policy and identifying improvements in the administration of New Jersey's taxes and to offer constructive observations regarding current or proposed New Jersey tax policies.

Applicants must have a strong tax or business background, excellent communication skills, practical tax administration experience and knowledge, and the ability to interact in a diversified environment. In addition, applicants should describe and document their qualifications for membership, including the applicant's past and current affiliations and dealings with a particular tax segment of the community that he/she wishes to represent on the council.

The TDAC is comprised of no more than fifteen (15) members. It is important that the TDAC represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection will be based on the applicant's qualifications and areas of expertise. To be fully considered,

an applicant's background should include several of the following:

- Application of tax law expertise to resolve complex tax issues;
- Development and implementation of customer service initiatives and tools;
- Systems management and improvement, and change management;
- Establishment of successful strategic partnerships; and,
- Demonstrable ability to examine situations from a "macro" perspective.

Anyone interested in becoming a member of the Council should review the [Charter](#) and submit a completed [application](#) by September 15, 2010. Applicants will be notified shortly thereafter regarding their appointment to the Council.

Applications should be postmarked, faxed, or e-mailed on or before September 15, 2010. Applications should be sent to: Division of Taxation, P.O. Box 240, Trenton, NJ 08695 or faxed to 609-984-2061 or e-mailed to NJTax.Advisory.Council@treas.state.nj.us

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 to hear and determine appeals.

continued on page 3

New Jersey State Tax news

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

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

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tax assessors' calendar - from page 2

- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions 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 2011 together with a notice that the completed form must be filed with assessor by August 1, 2010, 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 2011.

August 5–

- All SR-1A forms showing sales transactions to be used in

compiling 2011 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation.

August 25–

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

September 1–

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2011 with the assessor for taxing district in which property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2011 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 files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders.

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland

Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation

October 1–

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

October 25 (on or before)–

- Added assessments certified for fire districts on Form CNC-3. □

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:

continued on page 4

Correction

2009 NJ-1040NR Instructions

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

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

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

small bus. workshops - from pg. 3

- 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 □

Tax Briefs

Gross Income Tax

Contributions to Health Savings Accounts — An employer inquired if contributions to health savings accounts are included as taxable income.

The Division replied that the New Jersey Gross Income Tax Act does not allow any deduction for contributions made to a health savings account, which refers to an account established under IRC §223. Therefore, any contributions made by an employer or employee to a health savings account under IRC §223 are includible in gross income subject to

tax, including for purposes of withholding tax.

NOTE: Contributions to a *health* savings account must be distinguished from contributions made to a *medical* savings account established under IRC §220. Under N.J.S.A. 54A:3-4(a), qualified contributions to a medical savings account established under IRC §220 are excludable from income subject to gross income tax, provided all IRC limitations and requirements are satisfied, which generally dictate that the account must have been established prior to 2008.

Treatment of Nonwage Income Under Military Spouses Residency Relief Act — A spouse of a member of the military inquired about the treatment of nonwage income under the Federal Military Spouses Residency Relief Act.

The Federal Military Spouses Residency Relief Act is effective for the 2009 income tax year and thereafter. The Act allows a military servicemember's nonmilitary spouse to keep a tax domicile throughout the marriage and while moving from

state to state, as long as the spouse moves into a state to be with a servicemember who is in the state on military orders. The spouse (treated as a nonresident of New Jersey under the pertinent laws) inquired whether the Federal protections apply to income earned from a business carried on within New Jersey.

The Division responded by explaining that the Federal protection applies to earned income that is salaries, wages, tips, professional fees, and other compensation received for personal services. The Division informed the nonresident spouse that income from New Jersey sources such as income or gain from property located in the state, or income from a business, trade, or profession carried on in the state, does not qualify for Federal relief and is subject to New Jersey gross income tax.

Litter Control Fee

Trade Books and Textbooks Not Subject to Litter Control Fee — The Division received a letter regarding the applicability of the litter control fee to the business's sales of trade and textbooks. According to the bookseller, the industry term "trade book" refers to any book other than one commonly referred to as a "textbook."

The law defining litter-generating products provides for 15 litter-generating product categories, including "paper products and household paper." Years ago, the Division had taken the position that books fall within the litter-generating product list as "paper products and household paper."

The Division later modified that position pursuant to the Tax Court's

Practitioners' E-File Mandate

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

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

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



tax briefs - from page 4

disposition in *Random House, Inc. v. Director, Division of Taxation*, 22 N.J. Tax 485 (Tax Court 2005), affirmed 23 N.J. Tax 291 (Superior Court Appellate Division 2006). In that case, the Court determined that books did not fall within the scope of “litter-generating products.”

The regulation currently defines the category “paper products and household paper” to include “all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers, magazines, books and roll stock produced by paper product manufacturers and wood pulp, sold as such.” N.J.A.C. 18:38-3.1. (emphasis added)

The bookseller was advised that it need not include its sales of trade and textbooks in its gross receipts of litter-generating products for purposes of the litter control fee. Also,

receipts from sales of newspapers and magazines are not subject to the fee. N.J.A.C. 18:38-3.1. On the other hand, other publications and paper products, such as brochures, maps, stationery, and journals (and any other “litter-generating products”) sold by booksellers are subject to the fee.

Sales and Use Tax

Campground Site Fee — The Division received an inquiry concerning whether the operator of a campground must charge sales tax on the fee charged for a camper to use a campground site.

The Division replied that this fee is not subject to sales tax. The Division considers the transaction to be the rental of real property. The charge for using a campground site is not treated as “rent for...occupancy of a room or rooms in a hotel.” Therefore, the charge is not subject to sales tax or to the State occupancy fee or the municipal occupancy tax.

Certificate of Authority Requirements at a Flea Market — The operator of a flea market wrote to the Division with questions concerning a Certificate of Authority to collect sales tax. The Division responded by explaining that the sellers of taxable merchandise, prepared foods, or services, etc. at a flea market must have a New Jersey Certificate of Authority to collect sales tax.

The Division of Taxation advises the operators of flea markets to make sure that every seller having taxable transactions at the flea market has a New Jersey Certificate of Authority to collect sales tax. The operator of the flea market can accept a certificate that has the first six digits replaced (xxx-xxx-123/000) because the Division of Revenue now sends

the certificates in that format for privacy reasons. The Certificate of Authority issued to a seller (concessionaire) is required to be displayed at the table, stand, motor vehicle, or other merchandising device used at their business location. These certificates are non-assignable and nontransferable.

Further information for flea market operators and sellers is found in publication ANJ-15, *Flea Markets and New Jersey Sales Tax*, available on the Division of Taxation’s Web site at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj15.pdf

Leased Property Relocated Outside New Jersey — The Division responded to an inquiry regarding the application of the New Jersey Sales and Use Tax Act to a lease transaction for property leased in New Jersey. The lease in question is a lease for one year, for which the lessor must charge sales tax at the beginning of the lease based on the total of the periodic payments due (or based on the original purchase price of the property). See N.J.S.A. 54:32B-7(d).

If the property originally leased in New Jersey is permanently relocated to another state before the expiration of the lease, the lessee is entitled to a partial refund of the amount of sales tax paid. The partial refund is based on the sales tax allocable to the portion of the lease or rental that remains in effect after the property is removed from New Jersey. N.J.S.A. 54:32B-7(d).

For motor vehicle leases or rentals which require periodic payments by the lessee, each periodic payment is sourced to the primary property location. The “primary property

continued on page 6

Interest 6.25%

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

The assessed interest rate history is listed below.

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



tax briefs - from page 5

location” is the address provided by the lessee and maintained in the lessor’s ordinary business records, provided that the address is used in good faith. N.J.S.A. 54:32B-3.1(c).

The Division’s policy, based on the sourcing rules, is to permit a partial refund if the vehicle’s primary property location is no longer in New Jersey.

The lessee may request a refund from the State of New Jersey by filing Form A-3730, Claim for Refund. The application for a refund must be filed within four years from the date of payment of the sales tax. The form is available on the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/other_forms/sales/a3730.pdf

For filing the refund claim, the lessee must provide documentation of payment of sales tax and documentation demonstrating that the primary property location of the vehicle is now outside of the State (e.g., copy of the registration of the vehicle with New York or another state).

For more information, visit the Division’s Web site at: www.state.nj.us/treasury/taxation/pdf/ssutlease.pdf □

In Our Courts

Administration

Notification – *Damon Dash v. Director, Division of Taxation*, Docket No. 015538-2009, decided April 6, 2010.

Judge Narayanan granted the Director’s motion to dismiss the complaint.

Damon Dash maintained that the assessment underlying the Certificate of Debt (COD) should be reviewed by the Court because his accountant and tax preparer never forwarded him the Director’s assessment notices.

Judge Narayanan stated:

Even if Dash’s assertion of the accountant’s failure to forward him the Notices of Deficiency is true, this unfortunate circumstance was not caused by, and thus, cannot be attributed to the Director. The Director reasonably, and as permitted by the statute, used Dash’s last known address on his last filed GIT return to mail the notices of deficiency, which address was that of Dash’s tax preparer. Unless notified or directed otherwise, the Director cannot speculate or envision a breakdown in business/professional

relations or lack of communications between Dash and his accountant, and be therefore required to investigate Dash’s address each time before mailing the Notices of Deficiency. Nothing was provided to the court to establish that the Director was given specific instructions/notice either to not use the accountant’s address or to use some other address.

The court cannot undo the assessment underlying the COD docketed for tax years 2000-2002. See R. 8:3-5(b)(2), (a “challenge to a tax assessment” contained in the COD “may be reviewed [by the Tax Court] only if the applicable period for filing a complaint to challenge this assessment had not previously expired”). See also, *Kowasaki v. Director, Division of Taxation*, 13 N.J. Tax 160 (Tax 1993) (noting that the COD is a collection mechanism only, and does not provide an independent basis to challenge the Director’s tax assessment if the time for such challenge has expired).

continued on page 7

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 First Quarter 2010

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

• Bank Levies	1,102	• Seizures	64
• Certificates of Debt:		• Auctions	4
Total Number	4,944		
Total Amount	\$62,624,812		



in our courts - from page 6

Corporation Business Tax

IRS Adjustment – General Motors Acceptance Corporation v. Director, Division of Taxation, Docket No. 010743-2007, decided February 18, 2010.

On September 14, 2001, General Motors Acceptance Corporation (GMAC) filed its 2000 corporation business tax return. On the return, GMAC reported a 50% dividend exclusion for dividends attributable to its subsidiary, Opel.

The Internal Revenue Service audited GMAC’s 2000 return and assessed income adjustments. On November 7, 2005, GMAC timely submitted to the Division of Taxation its report of the Federal audit which increased its New Jersey tax liability. In addition to the Federal audit report, GMAC also submitted that it was entitled to a 100% dividends received exclusion from Opel rather than the 50% exclusion it originally reported. Essentially, GMAC realized that it erred

when it originally filed because its percentage of ownership of Opel qualified for a 100% dividend exclusion rather than a 50% exclusion.

The Division denied the request for 100% dividend exclusion because both the statute of limitations had expired and GMAC was not entitled to an offset on this assessment resulting from the Federal audit change.

Judge Bianco concluded:

GMAC is only entitled to an offset during ‘the time in which a deficiency assessment of that tax may be made.’ N.J.S.A. 54:49-16(b). GMAC is not entitled to an offset because either the Director’s ability to make a deficiency assessment is barred by N.J.S.A. 54:49-6(b) or GMAC’s claim does not relate to a change or correction by the Commissioner, as required by N.J.S.A. 54:10A-13. Nor is GMAC entitled to an offset under the doctrine of recoupment because there were two taxable events.

Nexus – Telebright Corporation, Inc. v. Director, Division of Taxation, Docket No. 011066-2008, decided March 24, 2010.

Telebright Corporation, Inc., is a software company having its principal place of business in Maryland. It does not maintain an office nor does it solicit sales in New Jersey.

In 2001, Telebright hired Ms. Thirumalai to develop and write software code. At the time, Ms. Thirumalai lived in Maryland. In 2004, she moved to New Jersey and Telebright retained her as a salaried employee, where she worked from home. Telebright withheld and remitted New Jersey gross income tax from her salary. Ms. Thirumalai received and performed her work assignments at her New Jersey home via computer and telephone.

The Court concluded that a “foreign corporation that regularly and consistently permits its employee to work each business day at a New Jersey residence is doing business in this State and must file Corporation Business Tax returns.” The Court found that Telebright satisfied factors one, three, and four of the “doing business” regulation N.J.A.C. 18:7-1.9(a). Further, the Court found that Telebright’s constitutional claims were unavailing.

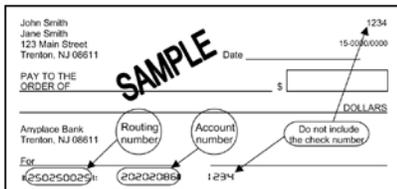
Gross Income Tax Deduction From Wages – Kit Ching Ng v. Director, Division of Taxation, Docket No. 000007-2009, decided March 22, 2010.

Judge Narayanan granted the Director’s summary judgment motion and dismissed the plaintiff’s complaint.

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* Fee of 2.49% of tax payment applies.

in our courts - from page 7

Plaintiff, Ms. Ng, is a New Jersey resident. She is a registered securities representative. For tax year 2006, Ms. Ng was an employee of Morgan Stanley. On her New Jersey income tax return she reported an amount less than what was listed on the W-2 she received from Morgan Stanley.

In an explanation attached to her return, Ms. Ng stated that she deducted from her Morgan Stanley wages the amount of the annual consulting fee she had paid her former boss at Morgan Stanley. After her former boss retired, Ms. Ng took over and began managing her customer stock portfolio accounts in November 1999. Ms. Ng and the former boss had “reached an agreement” whereby

she undertook to pay the former boss an annual consulting fee based on her gross commissions. According to Ms. Ng, this fee reduced her gross income as “an expense directly related to her earning of commissions,” rather than an unreimbursed employee expense; therefore, she deducted the amount of the consulting fee from the wages reported on her income tax return.

Judge Narayanan opined:

The Director’s regulations reflect the above stated statutory scheme, in that income earned by an employee from his or her employment cannot be offset by any deductions. Thus, N.J.A.C. 18:35-1.2(a) states that an employee “shall

not deduct from gross income any costs and expenses incurred in connection with such employment. N.J.A.C. 18:35-1.2(b) elaborates this principle by reiterating that “all earnings in connection with employment” including commissions, must be reported only under the wage income category (N.J.S.A. 54A:5-1(a)) and “in no case” can the same be reported as “net profits from business” under N.J.S.A. 54A:5-1(b).

Ng does not contend that she is entitled to deduct the consulting fees paid to her former boss because she is engaged in an independent securities trading business (whether as a sole proprietor or otherwise). Rather, she seeks to deduct these fees from her commissions earned as an employee of Morgan Stanley. However, such a deduction is impermissible pursuant to N.J.S.A. 54A:5-1(a), the implementing regulations, and precedent in this connection.

Local Property Tax

Dismissal of an Appeal by County Tax Board – Arnold Lee Austin v. Township of Pemberton, Docket No. 014022-2009; ***Ana Ramirez v. Township of Pemberton***, Docket No. 014024-2009; ***Sultan Muhammed v. Township of Pemberton***, Docket No. 014026-2009. Formal opinion dated April 28, 2010.

In these consolidated cases, the Tax Court of New Jersey determined that a taxpayer’s testimony before a County Board of Taxation regarding the taxpayer’s recent purchase

Sales Tax Information

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

[Streamlined Sales and Use Tax](#)

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

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

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

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

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

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

continued on page 9



in our courts - from page 8

of his or her residence, including the characteristics of the property, the circumstances surrounding the purchase, and the purchase price, constitutes sufficient evidence to preclude dismissal of the taxpayer's appeal for lack of prosecution. As a result of this holding, the defendant Township of Pemberton's motions pursuant to N.J.S.A. 54:51A-1(c)(2) to dismiss the complaints in these matters for failure to prosecute before the Burlington County Board of Taxation were denied.

The three plaintiffs, Mr. Arnold Austin, Ms. Ana Ramirez, and Mr. Sultan Muhammed, filed timely appeals of the assessments of their respective properties with the Burlington County Board of Taxation. All plaintiffs were represented by the same legal counsel.

The first to testify before the County Tax Board was Mr. Austin. He purchased his residence about 15 months prior to the October 1, 2008, relevant property valuation date. Mr. Austin described the physical condition of his property, the circumstances surrounding the purchase, and the purchase price. In addition, Mr. Austin testified that the property is affected by loud noise from Fort Dix, a neighboring military base, information not known to him prior to the closing on his purchase. He offered the view that this evidence was relevant to the fair market value of the property on October 1, 2008. According to the plaintiffs' uncontested submissions, after hearing Mr. Austin's testimony the Burlington County Tax Administrator stated "no comps equals no evidence" and advised the County Tax Board to dismiss the appeal. In response to a question posed by the County

Tax Administrator, Mr. Muhammed and Ms. Ramirez maintained they planned to rely entirely on testimony of the type given by the first taxpayer, Mr. Austin, without providing comparable sales or an expert witness. Thereafter, the County Tax Board refused to hear any testimony from these taxpayers.

On June 12, 2009, the County Tax Board entered judgments dismissing all three of the plaintiffs' appeals for failure to prosecute. The plaintiffs filed timely complaints with the Tax Court challenging the County Tax Board's judgments. The Township of Pemberton moved to dismiss the complaints pursuant to N.J.S.A. 54:51A-1(c)(2) because the County Tax Board had dismissed the three matters for failure to prosecute.

The Tax Court concluded that where a taxpayer or counsel appears at a County Tax Board hearing, the appeal is properly dismissed for lack of prosecution only if the taxpayer or counsel fails to produce "some evidence" of the value of the subject property. The distinction between a failure to produce sufficient evidence and a failure to prosecute is significant. Dismissal of an appeal by a County Tax Board where the taxpayer produces some, but insufficient, evidence of value will not preclude further review by the Tax Court. However, in *Pipquarryco, Inc. v. Borough of Hamburg*, 15 N.J.

Tax 413 (Tax 1996) the Court held that dismissal of an appeal because a taxpayer has not produced even some evidence of value before a County Tax Board equates to a dismissal for failure to prosecute and deprives the Tax Court of jurisdiction.

The Tax Court is vested with the power to determine, *de novo*, whether there has been a failure to prosecute before the County Tax Board within the intendment of N.J.S.A. 54:51A-1(c)(2) and whether dismissal for lack of prosecution by a County Tax Board was warranted.

The Tax Court concurred with the analyses in *VSH Realty, Inc. v. Township of Harding*, 291 N.J. Super. 295, 15 N.J. Tax 653 (Appellate Division 1996) and *Ganifas Trust v. City of Wildwood*, 15 N.J. Tax 722 (Appellate Division 1996). It was with these positive and negative precedents the Tax Court concluded that Mr. Austin satisfied the "some evidence" standard established in N.J.A.C. 18:12A-1.9(e) when he offered testimony regarding the circumstances of his purchase of the subject property, the purchase price, and the property's characteristics. In reaching this decision, the Tax Court was guided by the Appellate Division's opinion in *Passarella v. Township of Wall*, 22 N.J. Tax 600

continued on page 10

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in our courts - from page 9

(Appellate Division 2004). In that case, the Tax Court granted the municipality’s motion to dismiss at the close of the plaintiff’s case, where the only evidence produced was the testimony of an expert appraiser regarding the taxpayer’s purchase of the subject property a year and a half prior to the relevant valuation date. The Appellate Division reversed, stating it is well established that the price established by an arms-length sale of a property is probative of its fair market value. The Appellate Division held the taxpayer presented sufficient evidence that true value was equal to purchase price.

In light of that holding, the Tax Court concluded that Mr. Austin presented some evidence of value when he testified regarding his purchase of the subject property. While the plaintiff’s testimony may have been, in the County Tax Board’s view, insufficient for a determination of value, that fact was not relevant to the outcome. Mr. Austin’s decision to rely on his own testimony without obtaining an expert appraisal does not amount to a failure to prosecute his appeal. The Tax Court maintained that Mr. Austin appeared at the hearing with counsel and made

a good faith effort to explain why he believed the assessment on his property was incorrect and that he did not act in a deliberate and contumacious manner or make a sham appearance before the County Tax Board.

Whether ultimately successful or not, testimony of the type presented by Mr. Austin would satisfy the “some evidence” standard of N.J.A.C. 18:12A-1.9(e) and preclude a finding of failure to prosecute. The type of testimony these taxpayers intended to offer would have satisfied the “some evidence” standard sufficient to avoid dismissal for lack of prosecution had they been permitted to proceed by the County Tax Board. Since Ms. Ramirez and Mr. Muhammed were not permitted to present any evidence before the County Tax Board, dismissal of their appeals for lack of prosecution was not warranted and cannot be sustained.

The Tax Court was aware of the high caseload and short statutory time frame for resolving appeals at County Tax Boards. It was the opinion of the Court that all facets of the tax administration system, including the Tax Court and the County Tax Boards, cannot lose sight of the fact that these venues exist to provide taxpayers and taxing

districts with a meaningful forum for the principled resolution of tax disputes.

Sales and Use Tax

Jurisdiction – *Scott Frybarger, t/a Titan Power Equipment, Inc. v. New Jersey Department of Treasury*, Docket No. A-2410-08T3, decided April 20, 2010.

This case was heard in the New Jersey Superior Court, Appellate Division on appeal from the New Jersey Superior Court, Law Division.

The Director had previously prevailed in court decisions from the United States Federal District Court and the New Jersey Superior Court, Law Division on this matter.

Mr. Frybarger, a resident from Florida, sent a tractor-trailer full of construction equipment to New Jersey to be sold. Mr. Frybarger hired individuals from Ohio to drive around New Jersey construction sites and sell the merchandise. The individuals from Ohio were responsible for picking the equipment up from a New Jersey site and driving the equipment to prospective customers located in New Jersey. Once a construction site foreman saw equipment that he was interested in, the Ohio driver would make a phone call to Mr. Frybarger who would finalize the deal. Sales tax had not been remitted on these transactions.

Mr. Frybarger’s appeal alleged constitutional violations by the defendant, including illegal search and seizure, confiscation of property, infringement of right to interstate travel, and invasion of privacy.

The New Jersey Superior Court, Appellate Division ruling stated:

continued on page 11

Current Amnesty Programs

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

FL	July 1 – Sept. 30	http://dor.myflorida.com/dor/
NM	June 7 – Sept. 30	www.taxrelief.newmexico.gov
NV	July 1 – Sept. 30	http://tax.state.nv.us
Washington, D.C.	Aug. 2 – Sept. 30	http://dctaxamnesty.com/



in our courts - from page 10

Here, a sales tax obligation was triggered by the sale of plaintiff's equipment in New Jersey. "The combination of physical presence in New Jersey and transfer of possession [of the equipment] in New Jersey is sufficient to impose on [plaintiff] an obligation to collect the sales and use tax in a two-party transaction." *Steelcase, Inc. v. Director, Division of Taxation*.

Even if, as plaintiff suggests, the subcontractors made each sale, plaintiff remains liable for the collection and turnover of sales taxes, as "the same principles that govern two-party transactions also apply to three-party transactions." *Ibid.* As the vendor and owner of the seized equipment, plaintiff became liable for incurred taxes when equipment was transferred in New Jersey upon his approval for each sale. Therefore, plaintiff retains the obligation to collect the sales or use tax for all transactions that are not otherwise qualified exempt sales.

We reject as unfounded plaintiff's contentions that defendant's seizure of his property violated his constitutional rights "protected by 42 U.S.C.A. Section 1983".... Plaintiff's claim that defendant performed an unlawful warrantless search and seizure and assertion of a right to jury trial are without merit and do not warrant extensive discussion. R. 2:11-3(e)(1)(E).... Our review discerns no "fraudulent

representation" by defendant or its investigators in exercising its authorized power to issue a warrant of execution for jeopardy assessment of delinquent taxes, pursuant to N.J.S.A. 54:32B-22 and N.J.S.A. 54:49-13a.... With regard to the confiscation of plaintiff's property in partial satisfaction of the assessment, no Fourth Amendment protections, made applicable to the states by the Fourteenth Amendment were infringed.... The open seizure of plaintiff's trailer and its contents were within the scope of defendant's statutory authority and violated no protected privacy interest.... We conclude plaintiff's failure to comply with the jurisdictional prerequisites to having tax matters heard is a fatal flaw barring his requested relief. □

In Our Legislature **Alcoholic Beverage Tax**

Renewal of Lapsed Alcoholic Beverage Retail Licenses — P.L. 2010, c.14, signed into law on May 6, 2010, and effective immediately, extends the time period for renewal of lapsed alcoholic beverage retail licenses by permitting an issuing authority to issue a new retail license to a licensee who did not file a timely renewal application but files an application for a new license within one year after the expiration of the license renewal period. New license issuance is permissible subject to certain determinations by the Director of the Division of Alcoholic Beverage Control. The licensee would be required to pay the municipal and State renewal fees for the year

for which a timely renewal application was not filed.

The licensee must file the request no later than one year after the expiration of the license renewal period for the license which was not renewed in a timely manner. A filing fee of \$100 is payable to the Director for each license term.

A new license issued pursuant to this bill would be assigned the same license number as the lapsed license.

The Act establishes a grandfather clause for those licensees whose licenses expired within the five-year period immediately preceding the date of this law's enactment if the licensee applies for the new license within six months of the effective date of the new law and pays the municipal and State renewal fees for each year for which a timely renewal application was not filed.

Corporation Business Tax ***Temporary Reduction of the Tax Benefit Certificate Transfer Program and the Film and Digital Media Tax Credits*** — P.L. 2010,

c.20, signed into law on June 30, 2010, and effective immediately, temporarily reduces the annual cap imposed on the corporation business tax benefit certificate transfer program available to certain technology and biotechnology companies. It also temporarily suspends the tax credits provided for qualified film and qualified digital media content production expenses under the corporation business tax and gross income tax.

The new law reduces the annual cap imposed on the corporation business tax benefit certificate transfer program for new or expanding

in our legislature - from page 11

emerging technology and biotechnology companies in New Jersey from the current \$60 million-per-year limitation to \$30 million in fiscal year 2011.

It proportionally reduces the current set-aside for innovation zone-located companies under the program from \$10 million per year to \$5 million during the same period of time. The change in the annual limitation and the modification to the set-aside apply to the surrender of transferable tax benefits in fiscal year 2011.

The Act also temporarily suspends the corporation business tax and gross income tax credits for qualified film production expenses and the corporation business tax credit for qualified digital media content production expenses by effectively reducing the existing annual tax credit caps from \$10 million per year for film and \$5 million per year for digital media content to \$0 for film and digital media content in fiscal year 2011. The law provides that the temporary suspension of tax credits applies to the authorization of new credits and the application of previously authorized credits in the upcoming fiscal year. It does not affect the carryover of unused film and digital media tax credits previously allowed or which may be allowed following the suspension.

Finally, the Act requires the State Treasurer to prepare and file a report regarding the effectiveness of the tax benefit certificate transfer program and the film and digital media tax credits in meeting their statutory goals and objectives.

Gross Income Tax

Reduction in Earned Income Tax Credit—P.L. 2010, c.27, was signed into law on June 30, 2010, and is effective immediately. It applies to taxable years beginning on or after January 1, 2010.

Commencing with tax year 2010 and thereafter, the Act reduces the benefit amount provided under the New Jersey earned income tax credit (EITC) program as a percentage of the Federal earned income credit. Previously, the EITC program provided a refundable credit for New Jersey income tax purposes equal to 25% of the Federal earned income credit. The new law reduces the New Jersey credit to 20% of the Federal benefit.

Temporary Reduction of the Tax Benefit Certificate Transfer Program and the Film and Digital Media Tax Credits— See Corporation Business Tax.

Miscellaneous

Modification to the New Jersey Economic Stimulus Act of 2009—P.L. 2010, c.10, which was signed into law on May 5, 2010, modifies provisions of the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c.90). The Act is effective immediately; however, section 1 and sections 3 through 9 are retroactive to July 28, 2009 (the date of enactment of P.L. 2009, c.90), and section 2 applies to applications submitted for the 2010 technology business tax certificate transfer program.

The Act revises the definition of “biotechnology company” to clarify that only a company sufficiently involved in biotechnology may participate in the program. Eligible companies must have fewer than 225 employees in the United States as of

June 30 and as of the date of the exchange of the tax benefit certificate. Additional employee thresholds must also be met.

The Act added to the definition of “qualifying economic redevelopment and growth grant incentive area” in section 3 of P.L. 2009, c.90 (C. 52:27D-489c). It means Planning Area One (Metropolitan), Planning Area Two (Suburban), or a center as designated by the State Planning Commission; a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c.111 (C.13:18A-1 et seq.); a transit village, as determined by the Commissioner of Transportation; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission Action.

The Act also ensures that ordinances that are authorized to be adopted pursuant to the New Jersey Economic Stimulus Act of 2009 (which would include those required under the Economic Redevelopment and Growth Grant Program provisions) will not be subject to delays from public referendum challenges in those municipalities in which general initiative and referendum is authorized. The statutes contain other provisions to ensure that certain types of ordinances are not subject to public changes through initiative and referendum and ordinances adopted for the purpose of providing economic stimulus require swift implementation and should not be impeded through the referendum process.

continued on page 13



in our legislature - from page 12

Motor Fuel Tax

Motor Fuel Tax Act — P.L. 2010, c.22, was signed into law on June 30, 2010. The Act is effective immediately; however, sections 1 through 21, 29 through 49, and 53 through 56 will remain inoperative until October 1, 2010.

The Act modernizes the system for assessing the taxes on highway motor vehicles. Those taxes are principally dedicated by the New Jersey Constitution to the costs of the State transportation system.

The law changes the point of taxation of diesel fuel from the retail level to the level at which it is removed from the bulk fuel storage and distribution system of refineries, pipelines, ships, and barges at a terminal. It also changes the point of taxation of gasoline from the distributor level to the terminal level.

The Act includes requirements for transporting and labeling dyed fuel, and penalties for mishandling dyed (tax-exempt) fuel and for using dyed fuel in highway vehicles. The law also authorizes the co-collection of petroleum products gross receipts tax with the motor fuel taxes when feasible. □

Tax Calendar

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

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

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

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

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

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

[2009](#) [2010](#) □



*important
phone
numbers*

Customer Service Ctr.... 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
 Homestead Rebate Hotline
 for Homeowners..... 1-888-238-1233
 Homestead Rebate Hotline
 for 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
 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-633-7068
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions..... 609-292-5323
 Director’s Office 609-292-5185
 Inheritance Tax..... 609-292-5033
 Local Property Tax..... 609-292-7974
 Motor Fuels Tax
 Refunds 609-633-8878
 Public Utility Tax..... 609-633-0013