

# New Jersey State Tax News

## Vol. 30, No. 4 – Winter 2001

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### **What's New for Tax Year 2001**

The Division of Taxation has added another member to the NJ FastFile family of paperless filing options with the introduction of NJ WebFile, and there have been a number of other legislative and administrative changes affecting the preparation of returns for the 2001 tax year.

- **NJ WebFile** — This new, paperless filing option allows qualified, full-year residents to file their gross income tax returns free of charge directly from the Division's secure Internet site. See page 24 for more on NJ WebFile.
- **Filing Thresholds** — For tax years 2001 and thereafter, taxpayers whose filing status is married, filing joint return, head of household or qualifying widow(er) and have New Jersey gross income of \$20,000 or less (\$10,000 or less for those whose filing status is single or married, filing separately and for estates and trusts) are not subject to New Jersey gross income tax and are not required to file a New Jersey income tax return.
- **New Jersey Earned Income Tax Credit** — For tax year 2001, the New Jersey Earned Income Tax Credit (NJEITC) has increased to 15% of the applicant's Federal earned income credit, up from 10% of the Federal credit in tax year 2000.

The New Jersey credit will increase to 17.5% of the Federal credit amount for 2002 and to 20% of the Federal amount for tax year 2003 and thereafter.

- **Retirement Income Exclusions Increased** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased. The new exclusion amounts are being phased in over a four-year period that began in 2000. For tax year 2001, the maximum exclusion is \$15,000 (filing status married, filing joint return), \$7,500 (filing status married, filing separate return) and \$11,250 (filing status single,

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### **Important Phone Numbers**

Customer Service Ctr	....609-292-6400
Automated Tax Info	.. 1-800-323-4400
	.....609-826-4400
NJ SAVER Hotline	.....609-826-4282
Property Tax Reimbursement Hotline	..... 1-800-882-6597
Speaker Programs	.....609-984-4101
NJ TaxFax	.....609-826-4500
Alcoholic Bev. Tax	.....609-984-4121
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

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head of household, or qualifying widow(er)).

- **Credit for Taxes Paid to Other Jurisdictions** — Effective for tax year 2001, the amount of income subject to tax by New Jersey to be used as the denominator of the credit calculation (Line 2, Schedule A) is the total of all taxable income reported on the return before personal exemptions and other deductions have been subtracted but *after* any pension exclusion and/or other retirement income exclusion has been deducted. This is the amount reported on the New Jersey gross income tax resident return (Form NJ-1040) at Line 29, "New Jersey Gross Income."
- **Military Pensions** — For tax years beginning on or after January 1, 2001, all U.S. military pensions and military survivor's benefits are exempt from New Jersey gross income tax. For tax years 1998 – 2000, only persons 62 years of age or older or disabled were eligible to exclude such payments from reportable income.
- **Social Security Number(s) Must Now be Entered** — Social security number(s) will no longer be printed on any peel-off label provided with a tax return instruction booklet or preprinted postcard. The social security number(s) must be entered in the spaces provided at the top of the return. If the taxpayers' filing status is married, filing joint return, the social security numbers of the spouses should be entered in the same order as the names.

Social security number(s) must be entered on all forms submitted to the Division of Taxation, including those with a pre-printed name and address (e.g., income tax payment voucher, extension application, or declaration of estimated tax voucher).

- **Incorrect Name and Address Labels** — Do not use a mailing label if any of the preprinted information is incorrect. Instead, print or type all the information in the spaces provided at the top of the return.
- **Designated Contribution** — The Organ and Tissue Donor Awareness Education Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new fund, taxpayers must specify the donation amount and enter code 03 on the line entitled "Other Designated Contribution."
- **Direct Deposit for 2D Bar Code Returns** — Individual taxpayers who prepare their returns with Division approved software that uses 2D Bar Coding will be given the option of having their refunds and/or homestead rebates deposited directly into a specified bank account. Previously, only returns filed with one of the NJ FastFile options were eligible to use direct deposit.
- **Property Tax Relief Programs**  
**Homestead Rebate:** The *maximum* homestead rebate for tax year 2001 for qualified homeowners and tenants aged 65 and over or disabled is \$775. The maximum rebate amount was increased from \$500 to \$750 for tax year 2000 (paid in July 2001). The maximum rebate is

## New Jersey State Tax news

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

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 Director:

Robert K. Thompson

### News Coordinators for This Issue:

<i>Audit</i>	Barbara Davidson
<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Rosemary Tuthill
<i>Property Admin.</i>	Gary Amerine
<i>Technical Services</i>	Allette Wooley Ronald DeMarco

**Contributors:** Elizabeth Ashton, Nick Catalano, Maryann Cortina, Susan Dobay, Eric Friedman, Denise M. Lambert, Frank Malloy, John Metzger, Murial Quinn, Michael J. Roach, Patrick J. Ryan, Stephen Sylvester, Carol M. Trovato, Patty Wright.

**Staff:** J. Donald Byrnes, Lauren D. Higgins, Howard D. Luse, Julia G. Matson, Terry A. McWilliams, Joanne M. Monte, Sara E. Murphey.

**Editor:** Sheri B. Silverstein

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adjusted annually to reflect changes in the cost of living.

**NJ SAVER Rebate:** Accelerated phase-in of this program from five years to four will result in payment of the full benefit for tax year 2001, one year sooner than scheduled. The 2001 NJ SAVER Rebate will be paid in September 2002 and will average \$600.

**Property Tax Reimbursement (PTR):** Income limits for the PTR program have increased beginning with applications filed for tax year 2001. The new limits apply to income received for tax years 2000, 2001, and thereafter. Residents applying for a reimbursement for tax year 2001 must have total income *less than:*

- 2000: \$37,174 if single, or \$45,582 (combined income) if married, and
- 2001: \$38,475 if single, or \$47,177 (combined income) if married

The new income limits do not apply to reimbursement applications filed for tax year 2000. That year, single applicants had to have income of less than \$18,151 in 1999 and less than \$18,587 in 2000 to qualify for a reimbursement. Married applicants that year had to have combined income of less than \$22,256 in 1999 and less than \$22,791 in 2000 to qualify. Applicants whose income was above the limits in effect for 2000 cannot amend their applications for that year.

- **Payment by Electronic Check (E-Check)** — Payments of New

Jersey gross income tax (including estimated tax payments) and sales and use tax can be made by e-check from the Division of Taxation's Web site at: [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

Taxpayers who do not have access to the Internet can make e-check payments by calling the Division's Customer Service Center at 609-292-6400.

Employers can pay their withholding liabilities by e-check from the Division of Revenue's Business Gateway Services Web site at: [www.state.nj.us/njbgs/](http://www.state.nj.us/njbgs/)

- **Partnership Returns** — Beginning with tax year 2001, all business entities required to file a New Jersey partnership return (Form NJ-1065) and which consist of ten or more partners or members must file the return electronically. For more information on electronic filing or to obtain electronic payment and filing formats, visit the Division of Revenue's Web site at:

[www.state.nj.us/treasury/revenue/](http://www.state.nj.us/treasury/revenue/) or call the Alternate Filing Branch at: 609-984-7989.

- **CBT Payments Required by Certain Partnerships** — For tax years beginning on or after January 1, 2001, limited liability companies (LLCs) and limited partnerships (LPs) that are classified as partnerships for Federal income tax purposes are obligated to remit New Jersey corporation business tax payments on behalf of any member or partner that is a nonconsenting corporation not exempt from the tax.

A nonconsenting corporation is one that has not provided the

LLC or LP of which it is a member with a statement of consent acknowledging this State's right and jurisdiction to tax and collect the tax on the corporate partner's income allocated to New Jersey. Form NJ-1065 has been updated to accommodate the new requirements.

- **Phase-out of CBT on S corporation income** — The tax on the "regular" income of New Jersey S corporations will be gradually eliminated as follows:

1. For S corporations with annual income in excess of \$100,000 the tax rate is reduced to 1.33% for privilege periods ending on or after July 1, 2001, but on or before June 30, 2002, and to 0.67% for privilege periods ending on or after July 1, 2002, but on or before June 30, 2003. For privilege periods ending on or after July 1, 2003, no tax is imposed.
2. For S corporations with annual income of \$100,000 or less, no tax is imposed for privilege periods ending on or after July 1, 2001.

"Regular" income means entire net income allocable to New Jersey that is not subject to Federal income taxation.

- **Minimum Corporation Tax** — For tax periods beginning on and after January 1, 2002, the minimum tax for both domestic and foreign corporations is \$210. For tax periods that begin before January 1, 2002, the minimum tax remains \$200. □

## GROSS INCOME TAX **Claim of Right Refunds**

For Federal purposes, if any taxpayer must return income paid and already included in income, a deduction for this amount in the year of repayment is allowed under the "claim of right doctrine." This doctrine states that if a taxpayer is required to restore amounts which previously have been included in income, the taxpayer is permitted a deduction in the year of repayment. The administration of this deduction in the year of repayment is governed by section 1341 of the Internal Revenue Code. This section provides a taxpayer with two alternate methods of calculating a claim of right adjustment. Under section 1341, the taxpayer may either take the deduction in the year of repayment or treat the amount as if the repayment had been excluded in the year the claim of right income was first reported.

The New Jersey Gross Income Tax Act, however, does not contain provisions similar to IRC section

1341. *Wigton v. Director*, 12 NJ Tax 373 (1992). In *Wigton*, the Tax Court stated, "Federal and state case law interpreting §1341 holds that this section does not result in a reopening of the earlier taxable year. See, e.g., *Skelly Oil, supra*; *North American Oil, supra*; *Kreiss v. New York State Tax Comm'n*, 463 N.E.2d 33 (N.Y. 1984). The prior year is simply used as a means of determining the least amount of tax due under the §1341 recalculation." As such, New Jersey does not permit taxpayers to file an amended return to recover repaid amounts taxed in prior years since the income was received and used under the "claim of right" doctrine. Also, the New Jersey Legislature did not adopt the IRC section 1341 alternative calculation method allowing a taxpayer to compute tax due in the year of repayment using the original payment year as the basis for calculation instead of the repayment year.

For New Jersey purposes, any repayment or deduction may be applied against other income earned in the same category and in the same tax year as the repayment. N.J.S.A. 54A:5-2. If the offset results in a net loss, the taxpayer must report zero income in that category since the New Jersey income tax law in accordance with N.J.S.A. 54A:5-2 provides that taxpayers may offset their losses only against other income earned in the same category and in the same year. In other words, the taxpayer may use the amount of losses incurred during the year to offset other income in the same category on the New Jersey resident income tax return to the extent it gives no taxable income to report to New Jersey. □

## GROSS INCOME TAX **Qualified Conservation Contribution**

The Division recently received inquiries as to the implementation and limits of the *Deduction for qualified conservation contribution*, under new section 54A:3-6 of the Gross Income Tax Act, signed into law as Chapter 372, P.L. 1999 on January 14, 2000.

This amendment to the Gross Income Tax Act allows a deduction against gross income for a qualified conservation contribution, as defined under subsection (h) of section 170 of the Federal Internal Revenue Code of 1986, 26 U.S.C. §170, made by the taxpayer of a qualified interest in property located in this State.

The following inquiries were recently received:

**Q. When does this new amendment take effect?**

**A.** The deduction is allowed for contributions made in tax years beginning on or after January 1, 2000.

**Q. Can I file amended returns to claim this deduction?**

**A.** Amended returns for the tax periods beginning on or after January 1, 2000, can still be filed.

**Q. Is there a limitation on how much I can deduct in any one year?**

**A.** Taxpayers are limited in any one year to the amount they can deduct for Federal tax purposes pursuant to I.R.C. §170.

**Q. If I don't use the full amount of the contribution, can I carry the unused amount forward?**

### **Interest 8%**

The interest rate assessed on amounts due for the period January 1, 2002 – December 31, 2002 will be 8%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%

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**A.** Yes. You can carry the unused amount forward in accordance with the provisions of I.R.C. §170.

**Q.** *Can I take this deduction if I sell the property at a discounted or below market value price?*

**A.** No. This deduction only applies to property that is contributed, not sold. See July 27, 2005, Notice for additional information.

**Q.** *Can an S corporation or a partnership take a deduction for property contributed?*

**A.** No. Partnerships and S corporations are not recognized as “taxpayers” under the Gross Income Tax Act. Only “taxpayers” can claim this deduction.

**Q.** *Can an S corporation or partnership contribute the property and flow the deduction out to its shareholders and partners?*

**A.** No. The Legislature made no provisions in the amendment for S corporations or partnerships to flow this deduction out to their shareholders or partners.

**Q.** *Can nonresidents take this deduction?*

**A.** Yes. Nonresidents are entitled to take this deduction to the extent they contribute property located in this State.

Should you have other questions regarding the *Deduction for qualified conservation contribution*, please write to the Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, New Jersey 08695-0269. □

## **Small Business Workshops**

The New Jersey Division of Taxation and the IRS conduct free workshops designed to help small businesses understand their tax obligations. The seminars are held from 9:00 a.m. to 4:00 p.m. at locations throughout the State. The New Jersey portion of each workshop is presented in the afternoon and covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Employer responsibilities
- Reporting business income
- What is taxable and what is exempt for New Jersey sales tax purposes
- Filing sales and use tax returns

If you are interested in attending one of the sessions listed below, contact the IRS to register: by e-mail (Mittie.B.Grayson@irs.gov), by fax (908-301-2109), or by telephone (908-301-2114).

February 7     Randolph – County College of Morris

March 7         Washington – Warren County Community College

For additional information on these and other specialized workshops, call the Division of Taxation’s Technical Education Unit at: 609-984-4101. □

# **NJFastFile**

**For Information: 1-800-323-4400 or [www.njfastfile.com](http://www.njfastfile.com)**

## LOCAL PROPERTY TAX

### **State Retains Exempt Status**

Recently, several municipal assessors have revoked the exemption from local property tax on State-owned property. Please note that State-owned property remains property tax exempt under N.J.S.A. 54:4-3.3, regardless of how the State may use it. Accordingly, assessors should not remove the exempt status of State-owned/State-used property.

If, however, property owned by the State is leased for private purposes, the tenant's leasehold estate may be assessable pursuant to the Leasehold Taxing Act. See N.J.S.A. 54:4-2.3, et seq. Even in the absence of a lease, where a private entity uses State-owned property for a private purpose, the private entity may be subject to local property tax pursuant to N.J.S.A. 54:4-1.10.

It should also be remembered that if State government acquires property after January 1 from a non-exempt owner, the State is required to pay the property taxes for the remainder of the year. Such property would become exempt January 1 of the year following the date it is acquired, provided the municipal assessor was given notice via certified mail by January 10 of the year following acquisition. An exception is made if property is acquired between January 1 and January 10 of the tax year, and notice is given by January 10 of that same year, then exemption would begin on the date acquired.

A further exception is provided to land valued under the Farmland Assessment Act. Actively farmed agricultural/horticultural land acquired by the State for recreation and conservation use should not be subject to rollback taxes under N.J.S.A. 54:4-23.8 as amended by the Garden State Preservation Trust Act, Chapter 152, P.L. 1999. □

## LOCAL PROPERTY TAX

### **Farmland Acreage**

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that the total acreage devoted to agricultural or horticultural use in 2001 was 1,149,973 acres for the entire State.

The data for tax year 2001 reflect an increase of 3,473 acres from tax year 2000. Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 9.6% or a total of 121,909 acres.

23.9% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use and Bergen County has less than 1,000 acres. Conversely, Salem with 57.2% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Warren 50.1%; Hunterdon 50%; Gloucester 38.7%; Sussex 33.6%; and Mercer 28.9%.

Copies of the 2001 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

## LOCAL PROPERTY TAX

### **F.E.A.C. Adopts Values for 2002**

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 27, 2001, at the Phillip Alampi Laboratory in West Trenton to adopt a range of values for each of the several classifications of land in agricultural or horticultural use by county. In addition, the F.E.A.C. establishes values for income imputed to land used for grazing.

The thirty-eighth Report of the Committee, showing the value ranges adopted, is mailed to municipal assessors and county boards of taxation in early October of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its productivity and its agricultural or horticultural use rather than its market value.

The farmland values adopted by the committee for 2002 increased in 15 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20.00 to \$60.00 per acre when compared to 2001 values. □

**LOCAL PROPERTY TAX**

**Assessor Continuing Education**

This is just a reminder that the Assessor Recertification Law, Chapter 278, P.L. 1999, now requires that to remain certified, tax assessors and all CTA holders must complete fifty (50) continuing education credit hours over the initial five-year renewal period which began July 2000 for all certifications in place on or before that date. Assessors who fail to meet continuing education requirements will be removed from office.

After the initial five-year period, renewal will be required every three years, by obtaining thirty (30) continuing education credit hours over three years. On average, this means assessors will be required to complete 10 hours of training each year. Again, one continuing education credit hour means 50 minutes of classroom or lecture time.

To report a new address so you can receive all mailings on this subject, call Mary Ann Miller at 609-292-7813. □

**LOCAL PROPERTY TAX**

**Update on PAMS**

At this point most of the PAMS (Property Assessment and Management System) committees have completed their work. At the time this article was written, the State was in the process of creating a Request for Proposal (RFP) to solicit bids from software vendors in the local property assessment business. For more information about

the PAMS project, see page 6 of the Winter 2000 issue of the *New Jersey State Tax News*.

**LOCAL PROPERTY TAX**

**Deductions Certified**

The 2001 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses, and veterans was delivered to the State Treasurer on September 17, 2001.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2001.

The total amount of property tax deductions for senior and disabled persons and surviving spouses for

2001 was \$27,228,655. That amount represents a decrease of 5.6% from 2000.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2001 was 104,147. When compared to tax year 2000, the number of deductions decreased 7.2%.

The amount of veterans' deductions for tax year 2000 was \$33,275,446. The amount of veterans' deductions for 2001 was \$50,040,770. That amount represents an increase of 50%. The large increase is due to the fact that for tax year 2001 the veterans' deduction increased from \$100 to \$150 per deduction. The veterans' deduction will increase in \$50 increments in each of the next 2 years until it reaches \$250.

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**Pay NJ Taxes By Credit Card\***



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<http://www.state.nj.us/treasury/revenue/> **OR** <http://www.state.nj.us/treasury/taxation/>  
 \* Fee of 2.5% of tax payment applies.

*deductions certified - from page 7*

The total number of veterans' deductions for 2001 was 330,528. When compared to tax year 2000, the number of deductions decreased 2%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

## ***New Employees***

During the spring of 2001, the Division of Taxation conducted a comprehensive recruiting drive to fill Auditor-Accountant Trainee, Investigator Trainee, and Tax Representative Trainee positions across the Division. The result? The Division hired more than one hundred and fifty new employees in what was the most successful recruiting effort in the history of New Jersey State Government.

All of the men and women hired are college graduates and most were from the graduating class of 2001. With the average age of a Division employee inching towards 50, these young professionals will be the future of the Division of Taxation. These new employees have been assigned among 5 of the Division's Activities, with 75 going to Audit, 34 to Compliance, 13 to Technical Services, 25 to Property Administration, and 4 to Technical Support.

Each Activity will train and develop their new employees over the course of the next year. For example, all of the trainees assigned to Local Property Branch of the Property Administration Activity are currently being given in-

house training in property tax administration. Several have been enrolled in training courses for tax assessors at Rutgers University. □

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

### **January 1-**

- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

### **January 10 (before)-**

- Taxpayer to give assessor notice of depreciation to structure

occurring after Oct. 1 and before Jan. 1.

### **January 10-**

- Copies of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms JDC-1 and JDC-2, assessed value of new construction im-

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## ***Workforce New Jersey Public Information Network***

[www.WNJPIN.net](http://www.WNJPIN.net)

Did you know that the Workforce New Jersey Public Information Network (WNJPIN) Web site ([www.wnjp.net](http://www.wnjp.net)) allows New Jersey employers to post their job openings as well as search for prospective employees? This service is free of charge and provides a way for job seekers and employers to come together in a mutually beneficial environment. There are currently over 3 million job seekers registered nationwide, and it is likely that this database of resumes will help employers fill whatever job openings they have, whether they're looking for clerical help or a nuclear engineer.

The WNJPIN Web site also has a wealth of information about various programs and services that are available to employers. Some of the programs that employers can access information about are: Wage and Hour Compliance, Labor Market Information, a listing of Business Associations, and Workers' Compensation, among many others. The WNJPIN is an excellent starting point for all your questions about the labor market.



*assessors' calendar - from page 8*

provements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.

- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

**January 25-**

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

**February 1 (prior)-**

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

**February 1-**

- Whenever an assessor fails, for any reason, to mail or otherwise deliver a notification of assessment on or before this date, taxpayer or taxing district will have 45 days from the date of the bulk mailing of notification of assessment to file appeal.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

**February 10-**

- Certification, by assessor, filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, of the date the

bulk mailing of notifications of assessment completed.

**February 15 (on or before)-**

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

**March 1-**

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, Director, Local Government Services, and post a copy at the courthouse.

**March 10 (before)-**

- Equalization table hearings completed by County Tax Board.

**March 10-**

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

**Criminal Enforcement**

Criminal Enforcement over the past several months included:

- In response to the New Jersey Department of Health & Senior Services, Division of Addiction Services, a draft on the issue of "loosies" (loose cigarettes sold outside of a normal pack) was prepared. This document, which explains the current law on "loosies," was forwarded to

Addiction Services for eventual distribution to local health officials.

- On June 26, 2001, Spyridon H. Gizas of Dover, New Jersey, pled guilty to maintaining an illegal gambling resort and possession of over 100 cartons of untaxed cigarettes. Mr. Gizas was the target of a joint investigation between the Office of Criminal Investigation (OCI) and the New Jersey State Police Organized Crime Unit investigation in Morris County. The Court imposed 18 months probation, 100 days of community service, forfeiture of \$282 in cash and the 141.5 cartons of cigarettes to the State, as well as court costs and fines.
- On June 27, 2001, an ongoing investigation culminated in the arrest of Asif Hafeez. He was arrested in Matawan, New Jersey, as he was making a delivery of 280 cartons of counterfeit New Jersey stamped cigarettes to a local Krauszer's store. The manager, Mitesh J. Shah, was also arrested for possession and sale of counterfeit cigarettes and was able to post bail of \$16,000. Mr. Hafeez failed to post bail of \$20,000 and was remanded to the Monmouth County jail. Shortly thereafter, a search warrant was executed on Mr. Hafeez's residence in Millstone, New Jersey. Evidence was found alleging that he was involved in the import of unstamped cigarettes to the State of New Jersey and that he was involved in the manufacture and affixing of counterfeit tax stamps for New Jersey as well as for the states of Minne-

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sota, Oregon, New York State, and New York City. A total of 39.4 cartons of contraband cigarettes and 29,793 counterfeit stamps (NYC/S, OR, MN, NJ) were seized along with various computer equipment and other documentary evidence.

- A notice to all New Jersey cigarette distributors and wholesalers was disseminated by the Director advising them of the method used by operatives relative to laundering counterfeit stamped cigarettes for refund through legitimate distributors. Suggestions for detecting future scams, such as more detailed examination of returned stock and matching serial numbers, were provided in the notice. The Office of Criminal Investigation has received several inquiries regarding the notice.
- On July 6, 2001, Vincent Stewart of Camden was sentenced to a five-year term of probation and ordered to complete 500 hours of community service as a result of his guilty plea to an accusation involving conspiracy to commit theft by deception and false swearing. An investigation had revealed that Mr. Stewart was engaged in the practice of preparing fraudulent New Jersey homestead rebate applications for residents of Camden County for a ten-dollar fee. The investigation identified approximately 1,500 fraudulent homestead rebate applications that were attributed to Mr. Stewart. A joint investigation with the New Jersey State Police and the Division of Criminal Justice was initiated to address Mr. Stewart's activities.
- The investigation, including the use of New Jersey State Police personnel in an undercover capacity, resulted in the arrest of Mr. Stewart and his subsequent prosecution.
- On July 11, 2001, a Monmouth County grand jury returned a sixteen (16) count indictment against Michael Rosenstein, t/a Autoland Wholesale, of Neptune, New Jersey, for violations of New Jersey tax statutes. The indictment charges failure to file a sales tax return, filing false and fraudulent quarterly sales tax returns, and failure to turn over collected sales taxes. This investigation determined that the subject business had charged and collected, but failed to report and turn over, sales tax monies to the State of New Jersey for the period between April 1, 1996, and March 31, 2000.
- On July 12, 2001, in Carteret Municipal Court, summons complaints for disorderly persons offenses were signed against Roger Toth, responsible person of diesel wholesaler Rolyn Enterprises Corporation, who failed to file three (3) Petroleum Products Gross Receipts Tax (PPGRT) Returns and ten (10) Motor Fuels Tax-Seller/User (MFT-SU) Returns, failed to remit monies due, failed to keep records required by motor fuels tax law, and failed to file an application for reinstatement of corporate charter when directed to do so by a Division of Taxation representative. This case was the result of a referral from Investigations Branch-Shore Regional Office.
- On July 13, 2001, David B. Cohen, an accountant from Cherry Hill, New Jersey, was sentenced to a twelve (12) year term of incarceration in State prison as a result of his guilty plea to misapplication of entrusted property and failure to turn over taxes withheld. He was sentenced to concurrent prison terms of eight (8) years and four (4) years respectively, on the aforementioned charges, and an additional four (4) year consecutive sentence for failure to file his New Jersey gross income tax returns for two (2) years. In addition, he was ordered to make restitution of \$632,000 to his victims. Mr. Cohen was the President of Payroll Masters, Inc., a payroll service company that failed to turn over State and Federal employee withholdings and payroll taxes. During the course of the investigation, Mr. Cohen continued to frequent expensive restaurants and Atlantic City casinos where he lost \$127,000. The Camden County Prosecutor's Office was the lead investigative agency and presented the case for prosecution.
- On July 18, 2001, in Hazlet Municipal Court, a summons complaint for a disorderly persons offense was signed against Glen Helfrich, responsible person of school bus operator R. Helfrich & Sons Corporation, who failed to file eleven (11) motor fuels tax returns and remit the appropriate motor fuels tax due. This case was the result of a referral from Taxation's Audit Services Branch-Motor Fuels Group.

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- On August 6, 2001, Keith A. Edwards, trading as Omacees of Passaic, New Jersey, was arrested by the Office of Criminal Investigation when he took possession of 117 cartons of unstamped cigarettes shipped via UPS from Lou Ann's Smoke Shop (which is located on an Indian Reservation in New York State) to his grocery store. OCI also seized an additional 21.7 cartons of unstamped cigarettes already available for sale in the store's cigarette rack or found in and about the premises. Additional evidence of previous purchases from Lou Ann's Smoke Shop by Mr. Edwards was also found. This case is the result of a cooperative effort between the United Parcel Service as well as Commerce Bank security personnel who recognized unusual activity related to Mr. Edwards' personal checking account.
- On August 8, 2001, in Hudson County Superior Court, George J. Halpern of Short Hills, New Jersey, stipulated that he was in violation of the terms of the three-year probation which he had entered into in July 2000 as a result of his plea of guilty to one count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer for numerous individuals and small businesses. Mr. Halpern stipulated that between July 2000 and August 2001, he had violated the provision of his probation which prohibited him from acting as a tax preparer except under the supervision of another person responsible for his work. Mr. Halpern has two prior convictions for Federal tax evasion in addition to this conviction. In a related proceeding on the same date, Halpern's son, Todd P. Halpern, of Livingston, New Jersey, stipulated that he was in violation of the terms of a program of Pre-Trial Intervention (PTI) into which he had been admitted on July 21, 2000, as a result of his guilty plea to one count of filing a fraudulent 1997 New Jersey personal income tax return. Todd Halpern also stipulated that he was in violation of a provision which prohibited him from acting as a tax preparer except under the supervision of another person responsible for the accuracy of his work. Both Halperns are scheduled to be sentenced on the underlying guilty pleas in the fall of 2001.
- An investigator from the Office of Criminal Investigation was subpoenaed by the U.S. Attorney in Laredo, Texas, to testify as an expert witness in the case of the *U.S. v. Jamie Rodriguez*. Mr. Rodriguez had been arrested at the Laredo, Texas, border crossing into the U.S. in possession of 494,460 counterfeit New Jersey cigarette tax

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stamps. The Court found Rodriguez guilty of smuggling the counterfeit New Jersey stamps (government financial documents) into the U.S. and giving false statement to the FBI. He was remanded to the custody of the U.S. Marshall for the District to await sentencing.

- On August 8, 2001, Leonard Brooks, the President of Holiday Excursions Incorporated, pled guilty to charges of theft by deception and failure to turn over taxes withheld. Mr. Brooks, formerly known as Leonard Valdez, operated a travel agency from several locations in Camden County during the years 1995 through 1999. During this time, Mr. Brooks failed to remit New Jersey gross income tax withheld from employee wages. Mr. Brooks made full restitution prior to the plea. On September 21, 2001, Mr. Brooks was sentenced in Camden County to a term of three (3) years probation. This investigation and prosecution was a joint endeavor with members of the Camden County Prosecutor's Office.

- On August 13, 2001, Annie M. McCoy and Christine M. Stubbs, both of Bridgeton, New Jersey, pled guilty to charges of falsifying records and theft by deception. Both individuals were involved in the preparation of fraudulent New Jersey homestead rebate applications and the subsequent receipt of fraudulent homestead rebates. On September 20, 2001, Christine M. Stubbs was sentenced in Cumberland County to a term of 18 months probation and ordered to make restitution of \$700. Prior to sentencing, Ms. Stubbs had made restitution of \$2,300. An additional condition of her sentencing was that she testifies truthfully against others who are the subject of an ongoing investigation with the Prosecutor's Office. This investigation and prosecution was a joint endeavor with members of the Cumberland County Prosecutor's Office.
- On September 21, 2001, in Superior Court, Monmouth County, Sergei Tsesarenko of Freehold, New Jersey, completed payment of \$139,836.19 in restitution and was sentenced

to three (3) years probation as a result of his guilty plea of October 7, 1999, to the charge of misapplication of entrusted funds (tax on diesel fuel) at his gas station in Freehold during the period July 1995 through September 1997. This case was a joint investigation with the Monmouth County Prosecutor's Office, who represented the State in judicial proceedings.

- One hundred twenty-eight (128) complaints alleging tax evasion were evaluated in the Office of Criminal Investigation from July through September 2001.
- During the same period, sixty-five (65) charges were filed in court on sixteen (16) cases for violation of the Cigarette Tax Act, including possession of 1,813.4 cartons of contraband cigarettes valued at \$70,030.45, and resulting in fifteen (15) arrests. Of the 1,813.4 cartons of contraband cigarettes seized, 358.2 cartons (20%) had counterfeit New Jersey tax stamps affixed to the packs. □

## **Enforcement Summary Statistics**

### **Third Quarter 2001**

Following is a summary of enforcement actions for the quarter ending September 30, 2001.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	1,911	• Seizures	39
Total Amount	\$33,731,925.75	• Auctions	2
• Jeopardy Assessments	311	• Referrals to the Attorney General's Office	703

For more detailed enforcement information, visit our Web site at:  
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## Tax Briefs

### Corporation Business Tax

**Entity Classification** — A taxpayer inquired whether a Delaware general partnership can make an election to be taxed as a New Jersey S corporation.

The New Jersey Corporation Business Tax Act is a nondiscriminating franchise tax. *Garfield Trust Co. v. Director, Div. of Taxation*, 102 N.J. 420, 508 A. 2d 1104 (1986), app. dismissed 479 U.S. 925 (1986). The definition of “corporation” as contained in that Act provides:

“Corporation” shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument. N.J.S.A. 54:10A-4(c).

This definition is independent from the definition under IRC 7701 and regulations thereunder, which deals with entity classification for Federal purposes.

The applicable non-tax corporate, administrative provisions are to be found in the New Jersey Business Corporation Act. The public records filing requirement for corporations is derived from N.J.S.A. 14A:13-3 which prohibits a foreign corporation from doing business in New Jersey until it has procured a certificate of authority to do so, and N.J.S.A. 14A:13-4 which details the requisites for obtaining such a certificate of authority. The effect of obtaining a certificate of authority is set forth in N.J.S.A. 14A:13-5. Large, bold print on page 20 of the *New Jersey Complete Business Registration*

*Package* (Form NJ REG – Rev. 3/01) specifically states that the public records filing does not pertain to partnerships.

Under the New Jersey Gross Income Tax Act a Delaware general partnership is subject to the New Jersey gross income tax as a partnership. Such an entity selection by the organizers would fit the statutory definition of partnership in N.J.S.A. 54A:1-2h.

Section N.J.S.A. 54A:2-3, at the time of enactment in 1976, was intended as an aid in entity classification for certain associations having corporate characteristics and taxable under the New Jersey Corporation Business Tax Act. At that time corporate characteristics included: limited liability for corporate debt; free transferability of corporate ownership interests; centralized management; and continuity of life. Entities that had at least three of these four characteristics were considered corporations for Federal purposes prior to 1997. At that time, due to the enactment of Federal “check the box” regulations, certain organizations were automatically classified as corporations. In that sense, 54A:2-3 is obsolescent with regard to partnerships that make a “check in the box” selection for tax treatment as a corporation. The context of this statute was intended to apply to entities which fit the corporate entity classification under the old four-prong test. Again, the universe that N.J.A.C. 18:35-1.3(a) was intended to apply to did not include entities that would have been classified as corporations under the pre-1997 four-prong test and which would constitute corporations under the CBT definition

of corporations at N.J.S.A. 54:10A-4(c).

Accordingly, in a situation where a general partnership organized in Delaware has partners that are revocable grantor trusts whose owners are individuals domiciled outside of New Jersey, such entity must file the NJ-1065 partnership return. The ultimate partners would be subject to New Jersey gross income tax as nonresident individuals. Accordingly, a New Jersey S election would be unnecessary for the entity to receive “pass through” status in New Jersey.

### Motor Fuels Tax

**Retail Sales of Motor Fuel (Licensing)** — For the purposes of the New Jersey Motor Fuels Tax Act, N.J.S.A. 54:39-1 et seq. and the Act to Regulate the Retail Sale of Motor Fuels, N.J.S.A. 56:6-1 et seq., a car rental agency that fuels its rental cars from a fixed location prior to renting them to its customers is not considered to be a motor fuel retail sales establishment subject to applicable licensing requirements.

If, however, the rental agency provides fuel to employees or others in addition to fueling its rental vehicles, it is considered to be a motor fuels retail dealer subject to licensing and applicable fair trade laws.

### Sales and Use Tax

**Admission to Swimming Pools and Parking** — The Division responded to an inquiry regarding whether sales tax is due on admission to swimming pool facilities and fees for parking.

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“There is imposed and there shall be paid a tax of 6% upon: ...Any admission charge, where such admission charge is in excess of \$0.75 to or for the use of any place of amusement in the State, ...*except* charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools.” N.J.S.A. 54:32B-3 and N.J.S.A. 54:32B-3(e).

Admission to or use of a swimming pool is not taxed under the Sales and Use Tax Act.

Under the Sales and Use Tax Act, parking could only be taxed under N.J.S.A. 54:32B-3(b)(3) as a storage charge. However, a parking space is not storage because storage implies that the service provider is actually performing the service of safekeeping the goods with respect to a period of non-use. This is different than the expectation of immediate use, where the property is kept in a state of

readiness and is available and accessible by the owner. Therefore, since a parked car is not considered to be in storage under the statute, parking fees are not subject to tax.

***Sales of Advertising Material in New Jersey*** — The purpose of N.J.S.A. 54:32B-8.39 is to provide the purchaser of advertising or promotional material in New Jersey (whether or not the tangible personal property was purchased outside New Jersey and then delivered to the purchaser in New Jersey) with an exemption from sales and/or use tax in this State for any portion of such property ultimately delivered to other persons free of charge for use or consumption outside New Jersey through either the services of a direct mail house located in New Jersey or by other means.

However, the exemption from sales tax provided by N.J.S.A. 54:32B-8.10 of the Sales and Use Tax Act is unaffected. Thus, a purchaser of advertising material

or other tangible personal property in New Jersey who specifies delivery of such property in bulk by its vendor to a location outside New Jersey is also not liable for sales tax in New Jersey. Delivery in this case must be made by the vendor to the purchaser outside the State by means of a common carrier, parcel post, or the United States mail.

Where the purchaser of advertising or promotional material takes delivery of such property in this State, he may issue the vendor an Exempt Use Certificate (Form ST-4) in lieu of sales tax on the receipts from the sale in this State. The purchaser is then liable for use tax on that portion of the advertising material delivered to recipients in New Jersey or otherwise used or consumed by him in New Jersey.

Where the purchaser of advertising or promotional material takes delivery of such property in this State from a vendor who is also providing a direct mail service for the purchaser in this State, the purchaser may issue an Exempt Use Certificate (Form ST-4) to the vendor in lieu of sales tax on that portion of the property which the vendor will deliver to recipients outside New Jersey. The vendor in this case must impose the sales tax on that portion of the advertising material delivered to recipients in New Jersey and also impose sales tax on the direct mail service charge.

***Aircraft Repair Charges*** — As amended by P.L. 1999, c.246, effective January 1, 2000, the sales tax exemption for sales of aircraft

## TAXATION REGIONAL OFFICES

New Jersey Division of Taxation Regional Offices provide individual assistance at locations throughout the State. Normal hours of operation\* are 8:30 a.m. to 4:30 p.m., Monday through Friday. Offices are closed weekends and holidays.

<b>Asbury Park</b>	630 Bangs Avenue
<b>Camden</b>	Suite 200, One Port Center, 2 Riverside Drive
<b>Fair Lawn</b>	2208 Route 208 South
<b>Newark</b>	124 Halsey Street, 2nd floor
<b>Northfield</b>	1915-A New Road (Route 9)
<b>Somerville</b>	75 Veterans Memorial Drive East, Suite 103
<b>Trenton</b>	Taxation Building, 50 Barrack Street, 1st floor lobby

\*Offices will be open for extended hours during the week prior to the April 15, 2002 deadline for filing 2001 income tax returns.

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and repairs thereto provided in N.J.S.A. 54:32B-8.35 now extends to: "repairs on aircraft having a maximum certified takeoff weight, as contained in the certificate type issued by the Federal Aviation Administration, of 6,000 pounds or more, including machinery or equipment to be installed on such aircraft and replacement parts therefor."

The "maximum gross takeoff weight" is made up of the weight of the aircraft plus what it carries. (It is heavier than the maximum gross landing weight, because by the time a plane lands, it has burned fuel and therefore weighs less.) This weight will be shown in the flight manual that every aircraft must carry. The FAA issues "type certificates" to the manufacturer specifying what gross takeoff weight is allowed for the particular type certificate. This allowable weight is the original certified weight. The weight referred to in the statute is the original gross takeoff weight in the specifications that the FAA gave to the aircraft manufacturer.

If a customer's aircraft meets the statutory criteria for exemption under N.J.S.A. 54:32B-8.35(b), the customer should present the repair shop with a properly completed Exempt Use Certificate (ST-4).

#### ***Federal Telecommunications***

***Taxes*** — Receipts from the sale of intrastate or interstate telecommunications charged to an address within New Jersey are subject to New Jersey sales tax. N.J.S.A. 54:32B-3(f). Interstate telecommunications include international telecommunications. N.J.S.A. 54:32B-2(dd). The definition of "receipt"

does not allow for a deduction of expenses in an otherwise taxable transaction. The Federal Universal Service Assessment is imposed on telecommunications carriers to subsidize telecommunications services to low income and rural areas. Although the assessment is imposed on the carrier, it can be passed on to the customer in connection with a telecommunications service charge. The Presubscribed Interexchange Carrier Charge (PICC) is a fee that the local telephone company charges the long distance carrier for the right to use the lines. Since the Universal Service Assessment and the PICC are expenses incurred by the carrier in connection with providing telecommunications services, when passed along to the customer, they are part of the taxable receipt which is subject to sales tax. In contrast, the Federal excise tax on telecommunications is imposed directly on the customer, and is merely collected by the carrier. 26 U.S.C.A. 4251. Accordingly, since the Federal excise tax is directly imposed on the customer, it is not subject to New Jersey sales tax.

***Flag Exemption*** — Sales of flags of the United States of America or of the State of New Jersey are exempt from New Jersey sales and use tax.

This exemption is limited to sales of actual *flags*. It does not apply to representations of flags or to merchandise with a flag theme. The following are all examples of taxable items: framed prints of the United States flag; windsocks with a flag theme; flag stickers; flag pins, tie tacks, and other jewelry; tote bags imprinted with an image of the flag; dolls, teddy bears, Santa Claus figurines carrying a miniature flag; red, white, and blue ribbons; and wooden flag plaques. However, because there is a separate statutory exemption for clothing, sales of T-shirts, hats, neck scarves, socks, and other clothing items decorated with flag prints or flag embroideries are, of course, not subject to New Jersey sales tax.

If a vendor sells the actual flag banners, the pole, and the finial separately, the exemption applies only to the sale of the flag banner itself. Sales of the various pieces of hardware sold separately are subject to tax. However, if a complete flag is sold as part of a ready-to-assemble kit, including, for example, the banner, post, finial and cord, the lump sum charged for the kit will be viewed as a charge for an exempt flag and will therefore be exempt from sales and use tax.

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If a flag is being sold as an antique or collectible, however, and the price charged reflects its historic and collectible value, the transaction will not be deemed a sale of an exempt "flag." For example, a battle flag flown during the War of 1812, which is sold for several thousand dollars, is deemed to be a taxable item.

Sales of flags of other nations, of the United Nations, or of other states are not exempt from New Jersey tax. The statutory exemption from New Jersey sales and use tax is limited to sales of the official flags of the United States of America and the State of New Jersey only.

**Interior Decorator Services** — The Division views separately stated interior design or decorator services as professional or personal service transactions which are exempt from sales tax under N.J.S.A. 54:32B-2(e)(4)(A). If the service provider also sells tangible property to the customer, such charges are subject to tax under N.J.S.A. 54:32B-3(a).

The definition of "receipt" does not allow a deduction for expenses of the seller. N.J.S.A. 54:32B-2(d). Thus, expenses incurred in connection with the taxable sale of property (e.g., procurement fees) are also subject to tax. Expenses that directly relate to separately stated and nontaxable design/consulting services are not subject to tax. Separately stated charges for the storage and installation of tangible property are subject to tax under N.J.S.A. 54:32B-3(b)(3) and 3(b)(2), respectively.

**Interoffice Wrapping Supplies** —

The Division received an inquiry concerning the sales and use tax treatment of wrapping materials used to package patient specimens for transport by the taxpayer from medical service providers to the taxpayer's testing laboratory.

The Division pointed out that the Tax Court of New Jersey provided guidance on the wrapping supplies exemption in *Global Terminal v. Taxation Division Director*, 9 N.J. Tax 152 (1987). See N.J.S.A. 54:32B-8.15. The issue in that case was whether Global's purchase of chocking materials used for packing cargo containers while in transit was entitled to the exemption. Global packed and loaded the ships, but did not provide the actual transportation service.

The Court held that Global was entitled to purchase wrapping supplies (the first transaction) tax free because such supplies were used in a second and separate transaction, the stevedoring services it provided to the customer. The Court stated that N.J.S.A. 54:32B-8.15 complements N.J.S.A. 54:32B-8.11, which exempts transportation services, and expresses a legislative intent to exempt both the wrapping supplies used incidentally to the delivery of personal property and the charges for the transportation service in which the supplies were used.

In view of the Court's decision in *Global Terminal*, the Division no longer requires that the purchaser of exempt wrapping supplies use them in a "sale" transaction. That is, the N.J.S.A. 54:32B-8.15 ex-

emption may be claimed even if the purchaser of the supplies is not selling the property that is being delivered, as long as the items are used in an identifiable transaction with another party, e.g. boxes purchased by a moving company for use in moving its customer, and plastic garment bags purchased by a dry cleaner for use in wrapping its customer's cleaned garments. Wrapping supplies purchased for internal use by a business to move property from one location to another are not considered eligible for this exemption because there is no separate delivery transaction with another party.

**Lease Fees** — In New Jersey, the tax is imposed on the lessor at the inception of the lease and is based on either the purchase price of the property acquired for lease or the total of the lease payments attributed to the lease of such property. N.J.S.A. 54:32B-2(bb). If the lease payment method is elected by the lessor, tax is due on any charges made by the lessor that relate to the lease or the use of the vehicle by the lessee.

The following fees are subject to tax as charges directly attributed to the lease or the use of the property which are disclosed to the lessee in the lease contract:

- Early termination fee
- Excess mileage fee
- Excess wear and tear fee
- Vehicle disposition fee
- Reconditioning/repair fee. □



## ***In Our Courts***

### **Administration**

**Standard for Court to Hear Motion for Reconsideration – *Stephen Little Trucking and Stephen Little v. Director, Division of Taxation***, decided July 9, 2001; Tax Court No. 005828-1999.

Plaintiffs sought reconsideration of the Court's previous written opinion by essentially reiterating the arguments that were raised, considered, and rejected.

The Court denied the motion by ruling that plaintiffs failed to demonstrate either that the Court erred or that the opinion was arbitrary, capricious, or unreasonable. Consequently, the Court declined to readdress plaintiff's contentions.

### **Gross Income Tax**

**Interest Deduction - Acquisition Indebtedness to Purchase S Corporation Stock – *Sidman v. Director, Division of Taxation***, decided June 28, 2001; Appellate Division No. A-5591-99T5.

Plaintiff-shareholder purchased additional interests in an S corporation from other shareholders so that he controlled a majority of the corporate shares. Plaintiff's acquisition was financed with a personal note that provided for equal payments that included interest at eight percent. The Division disallowed plaintiff's reporting the interest as a deduction from his S corporation pro rata share of income.

The Court held that a shareholder's interest payments to other shareholders for their S corporation stock was not deductible from his pro rata share because there was no authority to permit such a deduction. The statute's plain language did not specifically provide for an interest deduction on personal loans in this situation. Turning to Federal tax law, the Court distinguished an Internal Revenue Service notice that permitted S corporation shareholders to deduct interest in debt-financed acquisitions by stating that neither the statute nor the legislative his-

tory reference the application of Federal principles to this issue. Furthermore, the legislative history revealed that the Legislature purposely placed a tax on gross income to limit deductions in order to avoid a perceived unfairness in the Federal system. In discussing *Dantzler*, where the Tax Court ruled that a partner could deduct interest connected to the acquisition of a partnership interest, the Court stated that the Gross Income Tax Act need not treat partnerships and S corporations alike as they are not identical entities. Moreover, unlike partnerships, S corporations have a separate and distinct legal identity apart from their shareholders.

**Reporting of S Corporation's Sale – *Miller v. Director, Division of Taxation***, decided August 20, 2001; Tax Court No. 004040-2000.

In 1996, plaintiff was the principal shareholder of a subchapter S corporation that sold virtually all of its assets. This significant asset sale was not in the ordinary course of

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the S corporation's trade or business. Thereafter, the S corporation was liquidated and paid plaintiff a liquidating dividend that included the proceeds of the asset sale.

New Jersey's NJ-K-1 provides only one line for reporting S corporation income titled the pro rata share of subchapter S income. Therefore, on plaintiff's Schedule NJ-K-1, the S corporation reported that plaintiff's distributive share was the total of the net gain on the asset sale and the income from operations. On plaintiff's New Jersey gross income tax return, plaintiff bifurcated that figure reporting the income from operations of the S corporation as plaintiff's pro rata share of S corporation income and the asset sale as a capital gain from which plaintiff deducted his stock basis in the S corporation as well as his losses from other investments. Pursuant to an audit of plaintiff, the Division combined the S corporation's gain from the asset sale with its income from operations to report it solely in the category of pro rata share of S corporation income. As a result of the audit reclassification, the Division did not allow a deduction for his basis in the S corporation stock and his losses from other investments.

The Court held that the S corporation's sale of corporate assets was reportable by plaintiff as a gain on the disposition of property because income earned outside of the ordinary course of trade or business retains its character when passed through to the S corporation shareholders. Moreover, the Court ruled that the pro rata share of S corporation income is income from the ordinary trade or business of the

corporation. In support of its holding, the Court first looked to the legislative history and found that it was not the Legislature's intent to aggregate all categories of S corporation income under the pro rata share category. The Court noted that the Federal Schedule K-1 provides lines for separate items of income that are reported on separate lines of the Federal income tax return such that plaintiff's Federal Schedule K-1 properly reported the S corporation income from operations as a separate and distinct category from the net gain on the sale of the S corporation assets. The Court added that the fact that the corporation liquidated and paid a liquidating dividend was further support for the characterization of this transaction as a gain on the sale of property.

In addition, the Court held that the plaintiff was entitled to deduct his basis in the S corporation stock from the passed through proceeds of the S corporation's sale of assets. The Court reasoned that this result was warranted because taxing the gross proceeds would be inconsistent with the New Jersey gross income tax's taxation of net gains and would be illogical with the *Koch* holding that forbid taxation on the return of capital. An appeal has been filed by the New Jersey Division of Taxation.

**Six-Year Statute of Limitations/ Death Benefits – *Joyce H. Eiszner v. Director, Division of Taxation***, decided July 19, 2001; Appellate Division No. A-3339-99T2.

#### ***Death Benefits***

At the time of plaintiff's husband's death, husband was a New Jersey (NJ) resident who was employed in NJ by CPC International, Inc.

(CPC). CPC provided performance plans to its current employees that consisted of stock and stock options that were contingently granted. However, if an ex-employee died, retired, became disabled, or left by reason of voluntary separation, the board of directors had discretion as to whether a payment would be made. Immediately after plaintiff's husband's death in September 1990, the board of directors authorized payment to her husband's estate. The payment was not distributed until 1992 and transferred to the husband's revocable trust, an NJ resident trust. The trust distributed these monies to plaintiff.

The Tax Court held that the payment was not a death benefit because death did not trigger the payment. The Tax Court found that the CPC Plan made payments as a result of participation in the Plan and not necessarily because of death as other employment-terminating factors, disability, retirement, and voluntary separation, might also result in a payment. Therefore, the Tax Court ruled that the payment was a performance award attributable to the deceased employee's former services. It thus constituted deferred compensation under an incentive compensation plan and it is includable in the plaintiff's gross income. On appeal, the Appellate Division agreed with the Tax Court. The Appellate Division added that to accept plaintiff's argument that the payment was a death benefit would allow business individuals to time discretionary payments at death to avoid taxation.

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### **Six-Year Statute of Limitations**

Both the husband's estate and trust each filed a 1992 gross income tax fiduciary return in 1993. The estate return included the CPC payment received under the performance plan and described it as shares and performance award. The return for the estate identified that the total amount was distributed to the beneficiary trust and listed plaintiff's address, social security number, and her status as an NJ nonresident. The trust return reported the entire income from the estate and noted the distribution of that amount to the plaintiff as beneficiary.

As plaintiff relocated her residence to Illinois in July 1991, she filed a 1992 NJ gross income tax nonresident return seeking a refund of first quarter estimated tax payments inadvertently paid to NJ. Attached to the NJ return was her 1992 Illinois individual tax return with the "Supplement to Illinois" 1992 Federal Form 1040, U.S. individual income tax return. Although the NJ return reported the net amount of CPC's payment to her husband under "Amount of Gross Income Everywhere," it did not explain the nature and source of the income, it reported no income from NJ sources as well as no NJ tax due, and the NJ estate and trust fiduciary returns were not attached. Approximately four years after plaintiff's filing of her 1992 NJ nonresident return, the Director sent a Notice of Deficiency for the amount of tax owing on the CPC Performance Plan payment.

Utilizing a common sense approach to determine whether

plaintiff's NJ return's disclosure provided a 'clue' as to the nature of the income omission, the Tax Court held that the Director's assessment was not time-barred by the three-year statute of limitations because plaintiff's NJ nonresident and the attached Illinois and Federal returns' disclosure of the source or nature of the income was inadequate to apprise the Director that the income was NJ sourced. The Division had six years in which to assess additional tax under N.J.S.A. 54A:9-4(d). The Tax Court noted that the required Schedule E was not submitted to the Division along with the Federal return and that the Schedule E would have identified the source of the funds. Furthermore, the Court ruled that the Director has no duty to cross reference different returns filed by different entities not attached to plaintiff's individual return. The Appellate Division agreed finding it significant that plaintiff's NJ return did not identify the income as from an NJ source.

**Sales and Use Tax**  
**Sales of Materials and Supplies to Contractors – *Stephen Little Trucking and Stephen Little v. Director, Division of Taxation***, decided May 29, 2001; Tax Court No. 005828-1999.

Plaintiff was engaged in the business of selling sand, gravel, mulch, and similar materials to contractors. Although plaintiff concedes that these sales were taxable, plaintiff neither collected sales tax nor obtained direct payment certificates because he claims he is not a person required to collect tax from contractors.

The Court found that there are two statutory provisions that address this issue. First, the relevant section of N.J.S.A. 54:32B-2(w) defines a person required to collect tax as every vendor of tangible personalty. One exception to the definition is that vendors selling supplies and materials to contractors are not deemed to be a person required to collect tax and the contractor is required to pay the tax directly to the Director. The pertinent part of the second section, N.J.S.A. 54:32B-12(b), provides that in order to prevent the evasion of tax there is a presumption that all receipts from retail sales of tangible personalty are subject to tax until the contrary is established by the person required to collect the tax or the customer. Additionally, this section allows the Director to authorize contractors to pay the tax directly to the Director and thereby waive the vendor's obligation to collect tax where the contractor has been issued a direct payment permit.

The Court held that plaintiff had an obligation to collect sales tax because plaintiff did not collect direct payment certificates from the contractors. Furthermore, the Court ruled that a contractor's difficulty in obtaining a direct payment permit would not be a basis for not collecting sales tax. The Court cited the simultaneous amendments to both sections, legislative intent, the Director's regulations, and the object and policy concerns of the Sales and Use Tax Act, such as effectively collecting and preventing evasion of taxes, in support of its ruling.

*continued on page 20*

*in our courts - from page 19*

Over plaintiff's objections that sections 2(w) and 12(b) are independent of each other, the Court ruled that those sections were, in fact, complementary. The legislative history revealed that 1968 legislation amended both sections so that vendors were relieved from the responsibility of collecting sales tax on sales to contractors in section 2(w) and at the same time legislation added to section 12(b) permitted the authorization of direct tax payments to contractors. If the sections were read independently, the Court determined that the vendor would have no obligation to collect tax on a sale to an unidentified contractor and the Division would be handicapped in identifying the contractor and collecting the tax. The Court also found that the Director's regulations provide that a contractor must pay sales tax at the time of the materials' and supplies' purchase except where the contractor issues a direct payment certificate and then the vendor is not required to collect sales tax. (See N.J.A.C. 18:24-5). □

## ***In Our Legislature***

### **Local Property Tax**

***Property Tax Reimbursement*** — P.L. 2001, c.251 (signed into law on October 30, 2001) increases the income eligibility requirements for base year 2000 to \$37,174 for single applicants and to \$45,582 (combined income) for married couples. The new income limits will be subject to a cost-of-living

adjustment based on the corresponding adjustment in the annual maximum social security benefit. Chapter 251 took effect immediately and applies retroactively to base year determinations for tax year 2000 and thereafter. The new income limits will affect only property tax reimbursement applications for tax year 2001 and thereafter.

### **Miscellaneous**

***September 11 Terrorist Attacks*** — P.L. 2001, c.248 (signed into law on October 4, 2001) establishes the "New Jersey Terrorism Victims' Assistance Act of 2001" which authorizes the Governor to expedite, by waiving certain administrative requirements, the payment of State benefits or the provision of assistance under State programs to victims and families of victims of the September 11, 2001, terrorist attacks on the United States; and to extend, without interest or penalty, deadlines for certain filings with, and payments to, State agencies. The legislation also allows governing bodies of municipalities to waive interest on delinquent obligations for those who suffered personal or business losses as a result of the attacks. This legislation took effect upon enactment and expired on December 31, 2001.

***Individual Development Accounts*** — P.L. 2001, c.93 (signed into law on May 10, 2001) establishes the New Jersey Individual Development Account Program within the Department of Community Affairs and appropriates \$2 million to cre-

ate an Individual Development Account Fund. The fund will be used to provide grants to community based organizations to implement the program and to provide a State match of \$1 for every \$1 of earned income deposited into an individual development account by a participant, up to a maximum of \$1,500 per calendar year. Persons eligible to participate in the program must be adults with an annual household gross income that does not exceed 200% of the official poverty level. Funds accumulated in an individual development account may be withdrawn by the account holder, with the approval of the community based organization, for three purposes only: qualified post-secondary educational expenses, qualified acquisition costs of a primary residence, or qualified business capitalization expenses.

Monies deposited into or withdrawn from an individual development account, including interest from the account, are exempt from New Jersey gross income tax. In addition, the monies deposited in an individual development account and the interest income shall not be taken into account in determining eligibility for, or the amount of, assistance under State and Federal means-tested programs. The legislation took effect November 6, 2001, except for the section pertaining to the development of necessary regulations, which took effect immediately. □

# tax calendar

## january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2			1	2	3	4	5
0	6	7	8	9	10	11	12
0	13	14	15	16	17	18	19
2	20	21	22	23	24	25	26
	27	28	29	30	31		

### January 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

### January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

### January 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax**—Monthly export report

### January 22 - continued

- MFT-60 Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- SCC-6 Spill Compensation and Control Tax**—Public storage facility operator return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

### January 25

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

### January 30

- NJ-927 & NJ-927-W Gross Income Tax**—Employer's quarterly report
- NJ-927-H Gross Income Tax**—Domestic employer's annual report
- GCC-1 Motor Fuels Tax**—Carrier's monthly report

continued

# february

2  
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2

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

## February 11

- CWIP-1,2 Cigarette Tax—**  
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**  
Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**  
Wholesaler's monthly report of non-New Jersey stamped cigarettes

## February 15

- CBT-100 Corporation Business Tax—**Annual return for accounting period ending October 31
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—**Employer's monthly remittance

## February 20

- CR-1 & CNR-1 Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—**Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—**Monthly export report

## February 20 - continued

- MFT-60 Motor Fuels Tax—**Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—**Monthly return
- SCC-6 Spill Compensation and Control Tax—**Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—**Monthly return
- ST-51 Sales and Use Tax—**Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
- ST-350 Cape May County Tourism Sales Tax—**Monthly return
- ST-451 Sales and Use Tax—**Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—**Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return

## February 25

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

## February 28

- NJ-W-3 Gross Income Tax—**Annual reconciliation of tax withheld
- GCC-1 Motor Fuels Tax—**Carrier's monthly report

*continued*

# march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2						1	2
0	3	4	5	6	7	8	9
0	10	11 ☐	12	13	14	15 ☐	16
2	17	18	19	20 ☐	21	22	23
	24 31	25 ☐	26	27	28	29	30

## March 11

- CWIP-1,2 Cigarette Tax—**  
Wholesaler's informational report
- CDIS-1,2 Cigarette Tax—**  
Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax—**  
Wholesaler's monthly report of non-New Jersey stamped cigarettes

## March 15

- CBT-100 Corporation Business Tax—**Annual return for accounting period ending November 30
- CBT-150 Corporation Business Tax—**Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year
- NJ-500 Gross Income Tax—**Employer's monthly remittance

## March 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—** Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller- user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—** Monthly export report

## March 20 - continued

- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—** Monthly return
- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—** Monthly return
- ST-51 Sales and Use Tax—** Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—** Monthly return
- ST-350 Cape May County Tourism Sales Tax—** Monthly return
- ST-451 Sales and Use Tax—Salem County—** Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—** Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

## March 25

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

*continued*

## *from the director's desk*

If you've been waiting for a new and exciting way to file your 2001 New Jersey income tax return, your wait is over. With NJ WebFile, our latest NJ FastFile option, you can file your income tax return from our secure web site. No software to download, no forms to mail.

Did you know that if you file your return using one of our NJ FastFile options, you'll get your refund in about two weeks? Or, better yet, you can request that your refund and/or homestead rebate check be deposited directly into your bank account so you'll have access to your money that much faster. Owe us money this year? No problem. You can file your return now, and pay what you owe by electronic check or by credit card, and you have until the due date to pay.

For more information about the eligibility requirements for any of the NJ FastFile options, visit [www.njfastfile.com](http://www.njfastfile.com) or call 1-800-323-4400. Whether it's NJ WebFile, NJ TeleFile, NJ PC File or NJ ELF, you'll find that it's easier and less taxing than you might think to file your NJ income taxes.

A handwritten signature in black ink that reads "Robert F. Thompson". The signature is written in a cursive style with a large, prominent initial "R".



## Embedded Secure Document

The file <http://www.state.nj.us/treasury/taxation/pdf/easement.pdf> is a secure document that has been embedded in this document. Double click the pushpin to view.

