

# New Jersey State Tax News

## Vol. 31, No. 4 – Winter 2002

### inside

<i>reck v. director</i> .....	1
<i>what's new for tax year 2002</i> ...	1
<i>partnership fee</i> .....	3
<i>property transfers</i> .....	3
<i>massachusetts amnesty</i> .....	3
<i>interest rate 7.25%</i> .....	4
<i>farmland acreage</i> .....	6
<i>category 07, nonusable sales</i> .....	7
<i>tax assessors' calendar</i> .....	7
<i>criminal enforcement</i> .....	8
<i>tax briefs</i> .....	10
<i>enforcement summary stats</i> ...	10
<i>in our courts</i> .....	12
<i>in our legislature</i> .....	17
<i>tax calendar</i> .....	18
<i>from the director's desk</i> .....	20

### **Reck v. Director**

The New Jersey Supreme Court has affirmed the Appellate Division ruling reported at 345 N.J. Super. 443 (2001) which held that partnership contributions to an I.R.C. section 401(a) Keogh Plan on behalf of partners are not deductible under the New Jersey Gross Income Tax Act.

### **What's New for Tax Year 2002**

There have been some important changes affecting the preparation of New Jersey income tax returns and property tax reimbursement applications for tax year 2002:

- **NJ WebFile** — New Jersey residents who are claiming a credit for taxes paid to another jurisdiction will now be able to use NJ WebFile to file their New Jersey returns since these taxpayers are no longer required to submit copies of their out-of-State income tax return(s) when they file. New Jersey is one of the first states to permit taxpayers claiming this credit to file electronically.

Qualified residents who want to use their computers to file a gross income tax return and/or homestead rebate application can visit [www.njfastfile.com](http://www.njfastfile.com) and link to the Division's secure Internet site to prepare their New Jersey forms free of charge. (**Note:** NJ PC File software is no longer available for the preparation of New Jersey income tax returns.)

- **Proof of Age Now Required in Addition to Proof of Disability** — Proof of age or total and permanent disability must be submitted the first time a taxpayer (or spouse) indicates on the tax return or homestead rebate application that the taxpayer (or spouse) is 65 years of age or older or blind or disabled. The

Division of Taxation has always required taxpayers to submit proof of total and permanent disability the first time they claim this status, but this is the first year proof of age is required. Taxpayers who for the first time this year indicate they are 65 or older or blind or disabled can still file electronically using NJ WebFile, but they may be asked to submit proof of age or disability at a later date.

- **New Jersey Earned Income Tax Credit** — For 2002, the amount of the New Jersey Earned Income Tax Credit has increased to 17.5% of the applicant's Federal earned income credit.
- **Retirement Income Exclusions** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased for 2002.

*continued on page 2*

### **important phone numbers**

<b>Customer Service Ctr</b> .....	<b>609-292-6400</b>
<b>Automated Tax Info</b> .....	<b>1-800-323-4400</b>
.....	<b>609-826-4400</b>
<b>NJ SAVER Hotline</b> .....	<b>609-826-4282</b>
<b>Property Tax Reimbursement Hotline</b> .....	<b>1-800-882-6597</b>
<b>Speaker Programs</b> .....	<b>609-984-4101</b>
<b>NJ TaxFax</b> .....	<b>609-826-4500</b>
<b>Alcoholic Bev. Tax</b> .....	<b>609-984-4121</b>
<b>Corp. Liens, Mergers, Withdrawals &amp; Dissolutions</b> .....	<b>609-292-5323</b>
<b>Director's Office</b> .....	<b>609-292-5185</b>
<b>Inheritance Tax</b> .....	<b>609-292-5033</b>
<b>Local Property Tax</b> .....	<b>609-292-7221</b>
<b>Motor Fuels Tax</b>	
<b>Refund</b> .....	<b>609-292-7018</b>
<b>Public Utility Tax</b> .....	<b>609-633-2576</b>

*what's new for 2002 - from pg. 1*

The exclusion amounts, which vary by filing status, are: \$17,500 (married, filing joint return), \$8,750 (married, filing separate return), and \$13,125 (single, head of household, or qualifying widow(er)).

- **Credit for Taxes Paid to Other Jurisdictions** — New Jersey no longer requires taxpayers who are claiming a credit for taxes paid to another jurisdiction on Schedule A to enclose copies of the tax return(s) they filed with the other jurisdiction(s). Copies of any returns filed with another jurisdiction should be retained in the event the New Jersey return is audited.

- **Taxable Interest Income Documentation** — New Jersey taxpayers must enclose a copy of Federal Schedule B (Form 1040) or Schedule 1 (Form 1040A) with Form NJ-1040 or Form NJ-1040EZ *only* when taxable interest income exceeds \$1,500. (This year the IRS increased from \$400 to \$1,500 the threshold for filing a separate schedule to report Federal interest or dividend income.)

- **Designated Contribution** — In addition to the charitable funds listed on the return, taxpayers may designate a contribution to one of five other funds. The two new funds added for 2002 are: New Jersey AIDS Services Fund (04) and Literacy Volunteers of America – New Jersey Fund (05).

- **Property Tax Relief Programs**

**Homestead Rebate:** The *maximum* rebate amount for tax year 2002 is \$790 for eligible homeowners and tenants who are 65

years of age or older or disabled. (The maximum amount increases each year to reflect changes in the cost of living.)

**Property Tax Reimbursement: Income Limits.** Residents applying for reimbursements for tax year 2002 must have total annual income *less than*:

**2001:** \$38,475 if single, or \$47,177 (combined income) if married, and

**2002:** \$39,475 if single, or \$48,404 (combined income) if married

**Proof of Age or Disability Required.** Those filing reimbursement applications for the first time must now submit proof that they are either age 65 or older, or receiving Federal Social Security disability benefits.

**New Look for Applications.** The eligibility requirements for the Property Tax Reimbursement Program have not changed, but the forms have been revised so that applicants can determine more easily whether or not they have met all the qualifications for the reimbursement. Applicants must now state specifically for *each* of the eligibility requirements (age/disability, residency, ownership, and income) that they have met that particular requirement. An applicant who does not meet *all* the requirements is not eligible for a reimbursement. Applicants must also indicate (a) whether or not they own their home (or share mobile home site fees) with someone other than a spouse, and (b) whether or not their home has more than one dwelling unit. □

## New Jersey State Tax news

is published quarterly by the:

**New Jersey Division of Taxation  
Technical Services  
Information & Publications Branch  
PO Box 281  
Trenton, NJ 08695-0281**

A subscription to the *State Tax News* is free. To be placed on the mailing list, or to notify us of an address change, write to us at the address above or send e-mail to:

**taxation@tax.state.nj.us**

The *State Tax News* is also available on the Division of Taxation's Web site at:

**[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>	Peggy Cook
<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Rosemary Tuthill
<i>Property Admin.</i>	Richard Stier
<i>Technical Services</i>	Allette Wooley
<i>Legislation</i>	Ronald DeMarco

**Contributors:** Carol E. Bell, Nick Catalano, Maryann Cortina, Eric Friedman, Barry Fulmer, Susan J. Kane, Kyle Lake, Denise M. Lambert, Jessica Lana, Elizabeth Lipari, George Lorbeck, Frank Malloy, Patrick J. Ryan, Fred M. Wagner, Patty Wright.

**Staff:** J. Donald Byrnes, Maria E. Likakis, Howard D. Luse, Terry A. McWilliams, Joanne M. Monte, Sara E. Murphey.

**Editor:** Sheri B. Silverstein

## Partnership Fee

**Prepayment of Filing Fee Not Required With “Final Return” (Form NJ-1065)** — Under the Business Tax Reform Act (P.L. 2002, c.40), effective for tax years beginning on or after January 1, 2002, each entity classified as a partnership for Federal income tax purposes that has any income or losses derived from New Jersey sources and that has more than two owners is required to pay a \$150 filing fee for each owner of an interest in the entity, up to a maximum of \$250,000. Each partnership required to pay a filing fee must also make an installment payment (prepayment) of its filing fee for the succeeding return period. The prepayment is 50% of the filing fee amount required to be paid with the return being filed. Both the filing fee for the tax year and the installment payment are due on or before the 15th day of the fourth month following the close of the return period.

**Exception:** A partnership that indicates it is filing a “Final Return” (Form NJ-1065) is not required to make the 50% installment payment (prepayment) of the partnership filing fee for the next year. In this case the partnership is required to pay only the filing fee for the year of the final return. For example: When a partnership that is required to pay the filing fee for its five partners indicates it is submitting a “Final Return” (Form NJ-1065) for 2002, it must pay a \$750 partnership filing fee for 2002, but it does not have to make the \$375 installment payment for 2003 that would otherwise be required.

**Fee Waived for Small Investment Clubs** — Assessment of the \$150 per owner fee will be waived for members of investment clubs that have less than \$60,000 in combined capital assets. New Jersey Treasurer John McCormac has directed the Division of Taxation to draft regulations exempting the small investment clubs from the fee. The Division will waive the fee where appropriate as if the regulation were already in effect. For more information on the Business Tax Reform Act, see the Summer/Fall issue of the *New Jersey State Tax News*, page 3, or visit the Division of Taxation Web site at: [www.state.nj.us/treasury/taxation/cbtfq.shtml](http://www.state.nj.us/treasury/taxation/cbtfq.shtml) □

## ESTATE TAX

### Property Transfers

R.S. 54:38-6 provides that for decedents dying after December 31, 2001, the New Jersey estate tax is a lien on all property of a decedent as of his or her date of death and that no property owned by a decedent as of his or her date of death may be transferred without the written consent of the Director (commonly known as a “waiver”), or pursuant to such rules as the Director may prescribe.

Forms L-4 (Preliminary Report to Secure Consents to Transfer), L-8 (Affidavit & Self-Executing Waiver), and L-9 (Resident Decedent Affidavit Requesting Real Property Tax Waiver) have been revised. The forms are now used for both the inheritance tax and the estate tax.

The tax waiver form has been revised. One waiver is now issued by the Division which releases both the inheritance tax and the estate tax lien and which permits

the transfer of property for both inheritance and the estate tax purposes.

Pending the approval of pertinent regulations, the following policy has been adopted by the Director:

- **Nonresident Decedents**  
Estate tax waivers are not required in the estates of nonresident decedents. Inheritance tax waivers are required for real property located in New Jersey.
- **Real Property Held as Tenants by the Entirety**  
Real property held by a husband and wife and tenants by the entirety must be transferred without an estate tax waiver in the estate of the spouse dying first.
- **Transfers to Savings Accounts Without an Estate Tax Waiver**
  1. Funds of a decedent on deposit in a checking account in any bank may be transferred to an interest-bearing account in the same bank in the name of the decedent or his estate without obtaining an estate tax waiver.
  2. Funds of a decedent on deposit in an Individual Retirement Account (IRA) or Keogh retirement plan account may be transferred to another account in the same

*continued on page 4*

### Massachusetts Amnesty Extended

The Massachusetts Department of Revenue has authorized an extended two-month amnesty between January 1, 2003, and February 28, 2003. For more information, visit the Massachusetts DOR Web site at:

[www.dor.state.ma.us](http://www.dor.state.ma.us)

*property transfers - from page 3*

bank without obtaining an estate tax waiver.

3. Any certificate of deposit or any type of a preferred account containing funds of a decedent may be transferred to another account in the same bank without obtaining an estate tax waiver.
  4. The transfers permitted in (1) through (3) above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance and Estate Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08646-0249, containing the following information:
    - a) Decedent's name;
    - b) Date of death and domicile;
    - c) Name and address of the executor or administrator of the estate;
    - d) The account number or certificate number sought to be transferred and the balance on deposit or the maturity value as of the date of death.
  5. The bank is required to retain the same control over the substituted account as the original account until the New Jersey inheritance tax and the New Jersey estate tax are provided for and paid.
- **Transfers From One Fiduciary to Another**  
Bonds or stock of a New Jersey corporation or a national bank located in New Jersey, or any money deposited in any trust company, bank, or other institu-

tion in the name of one court-appointed fiduciary as executor, administrator, trustee, or guardian, may, upon the death of such fiduciary, be transferred without an estate tax waiver to, or on the order of, the legally appointed substitute for the deceased fiduciary.

- **Transfer From Joint Fiduciaries to Successors**

Bonds or stock of a New Jersey corporation or a national bank located in New Jersey, or any money deposited in any trust company, bank, or other institution in the names of two or more fiduciaries as executors, administrators, trustees, or guardians may, upon the death of one or more of such fiduciaries, be transferred without an estate tax waiver to, or on the order of, the surviving fiduciary or fiduciaries.

- **Transfer of Partnership Interest**

The written consent of the Director is not required for the transfer of real or personal property, tangible or intangible, owned by a bona fide partnership in which a decedent had an interest.

- **Transfer of Assets Held by a Nonresident Custodian**

An estate tax waiver is not required in order to transfer any assets held by a nonresident custodian on behalf of a resident or nonresident decedent.

- **Transfer of Tangible or Intangible Personal Property**

1. A waiver is not required in order to transfer all other tangible or intangible personal property, including but not limited to:

- a) Wages.
- b) Salaries.
- c) Vacation and sick leave pay.
- d) Payment under pension, profit-sharing, bonus plans, or stock purchase plans.
- e) All automobiles.
- f) Mortgages.
- g) Accounts receivable.
- h) Household goods.
- i) Personal effects.
- j) Funds held in an account in the name of a funeral director in trust for a decedent in accordance with the provisions of N.J.S.A. 2A:102-13 (advance funeral payment).
- k) Funds to a decedent's credit in a credit union plan organized under N.J.S.A. 17:13-26 et seq. in addition to any matching sums paid under any type of credit union plan in the form of life insurance where said matching sum is directed to be paid to a decedent's estate or his or her executor or ad-

*continued on page 5*

### **Interest 7.25%**

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003 will be 7.25%.

The assessed interest rate history is listed below.

<b>Effective Date</b>	<b>Interest Rate</b>
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%
1/1/03	7.25%

*property transfers - from page 4*

ministrator. However, funds held under the Federal Credit Union Act must be reported and a waiver obtained.

2. All property, including property that can be transferred without a waiver, must, nevertheless, be reported on a decedent's return.

- **Blanket Waiver**

1. A banking institution, trust company, or safe deposit company organized under the laws of this State; a national bank operating in this State; a building and loan or savings and loan association organized in this State; a credit union chartered by the United States and operating in this State; or a corporation or person may release, without an estate tax waiver, any amount up to 50 percent of the entire amount of funds on hand to:
  - a) An executor;
  - b) Administrator;
  - c) Legal representative of the decedent;
  - d) Surviving joint tenant;
  - e) Cestui que trust; or
  - f) The estate of a minor where title to said funds are held in the name of a custodian for said minor without the written consent of the Director, upon the application of such proper party to the institution, association, organization, corporation, or person above mentioned.
2. This section applies to each institution, association, organization, corporation, or person listed above with

whom a decedent has any funds on deposit, including certificates of deposit, and is limited to no more than 50 percent of the funds in the entire account, whether such account is held in the decedent's name only or jointly with another, so that where the decedent holds an account jointly, only one-half of the funds may be released, not the half claimed by the joint owner, and an additional half of the funds belonging to the decedent.

3. In addition to the amount permitted to be released by an institution, association, organization, corporation, or person above mentioned, institutions, associations, organizations, corporations, or persons may, without written consent of the Director:
  - a) Pay any and all checks drawn on any account owned by a decedent individually, jointly, or otherwise, when said checks are issued prior to death and presented for payment within 10 days following the decedent's date of death; except that in the event an executor, administrator, or other proper party above mentioned in this section shall apply for a release of 50 percent of the funds on deposit after 10 days from the decedent's death, the institution, association, organization, corporation, or person mentioned in this section holding the funds shall, after having deducted the amount of any checks issued prior to and

presented for payment within

10 days of the decedent's death, release 50 percent of the balance in a decedent's account to the proper party upon application and without the written consent of the Director;

- b) Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey estate taxes and made payable to New Jersey Estate Tax;
- c) Liquidate the loan of any decedent who has pledged the passbook representing a savings account as collateral for a loan, where upon the death of such a decedent the loan is in default and then make 50 percent of the remaining funds available under the blanket waiver; but
4. Securities of a New Jersey corporation registered in the name of a decedent and issued by any bank or savings and loan association situated in this State are not subject to the blanket waiver rule provided for in this section. Therefore, the written consent of the Director must be obtained in order to transfer or release such assets.
5. The Director reserves the right to direct, at any time, that any sum or sums not yet paid over shall be withheld

*continued on page 6*

*property transfers - from page 5*

by the informant pending further order of the Director where that course is deemed imperative to protect the interest of the State.

- **Funds Held in a Banking Institution**

A banking institution, trust company, or safe deposit company organized under the laws of the State of New Jersey; a national bank operating in the State of New Jersey; a building and loan or savings and loan association organized under the laws of the State of New Jersey; a credit union chartered by the United States operating in the State of New Jersey; or a corporation or person may, without an estate tax waiver, release or transfer assets held by a decedent as custodian for a minor pursuant to N.J.S.A. 46:38-1 et seq. or as rental security deposits under the provisions of N.J.S.A. 47:8-19 et seq.

- **Funds Held in Bank Accounts**

Where funds are held on deposit in any bank to the credit of a person and payable on the death of such person to a named beneficiary, upon the death of the named beneficiary, no estate tax waiver is required to transfer or release the funds to such person. However, an estate tax waiver is required to transfer or release such funds to the beneficiary upon the death of the principal.

- **Transfer of Collateral**

A state bank, state banking association, trust company, national bank, national banking

association, safe deposit company, or other institution having in its possession, custody, or control securities or other assets pledged as collateral for a loan of a decedent may, for the purpose of liquidating a loan or other debt due from a resident decedent:

1. Transfer such collateral from the name of the decedent to its own name upon receiving the written consent of the Director; or
2. Sell such collateral to satisfy a loan of a decedent without the written consent of the Director, except that where the collateral pledged consists of the stock of a New Jersey corporation, such stock cannot be transferred on the books of such corporation without the written consent of the Director. If any excess moneys are received from a sale, the written consent of the Director must be obtained before delivery of such excess money to a proper party in interest; or
3. Deliver any collateral to the executor or administrator of a decedent upon the full payment of the loan or debt without the written consent of the Director.

- **Release of Safe Deposit Box Contents**

The contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise, or to which a decedent had access may be released without the written consent of the Director.

□

## **LOCAL PROPERTY TAX**

### ***Farmland Acreage***

A study summarizing data from farmland assessment applications (FA-1) has recently been completed. The report shows that the total acreage devoted to agricultural or horticultural use in 2002 was 1,111,538 acres for the entire State.

The numbers for tax year 2002 reflect a decrease of 38,435 acres from tax year 2001. Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 12.6% or a total of 160,345 acres.

23.13% 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 54.96% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 49.02%; Warren, 48.96%; Gloucester, 33.98%; Sussex, 32.97%; and Mercer, 25.86%.

Copies of the 2002 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**

**Category 07,  
Nonusable Sales**

The *Handbook for New Jersey Assessors* instructs assessors how to deem real estate transactions usable or nonusable for purposes of the Table of Equalized Valuations. It appears that the guideline for using the nonusable 07 category necessitates a bit of attention and clarity. The Local Property section of the Division of Taxation seeks to lend assistance to municipal assessors on how to use this code more accurately and effectively.

The nonusable 07 category represents the sale of a property that has been substantially improved after its assessment, but prior to the date of the current sale. In order to properly utilize this category, it is imperative that assessors state on the SR1-A and SR-6 forms the exact dates of all improvements, the cost of improvements, the building permit number, and the specific actions that have been taken to improve the property. It is important to note that improvements made to the property must considerably enhance the value of the property in order to support a nonusable 07 claim. This category does not refer to “normal dressing-up maintenance and repair,” such as painting, cleaning carpets, or fixing appliances. It refers specifically to *substantial* improvements made to real property. The addition of a bathroom, vinyl siding, a deck, or an enclosed porch are the types of improvements that satisfy the usage of this category. Physical renovations to properties in disrepair also fall within the scope of this code.

Because of the subjective nature of the word “substantial,” property sales must be observed at the individual level. Therefore, assessors have been given the authority to exercise educated discretion when using this category. Still, it must be understood that the word “substantial” represents a measurement that absolutely compels one to believe that the improvement is considerable enough to deem the real estate transaction nonusable for purposes of the sales ratio study.

See *Handbook for New Jersey Assessors*, pages X-21, 22; X-9g; and *Local Property Tax Newsletter*: April 1960, page 4; May-June 1964, page 2; September-October 1973, page 2; May-June 1990, page 2; July-August 1990, page 3.



**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 List 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/improvements, 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–**

- After February 1, the assessor or County Board of Taxation shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.

*assessors' calendar - from pg. 7*

- 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 the 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:

- On June 25, 2002, in Essex County Superior Court, Marcus Solomon of Newark, New Jersey, forfeited to the State \$99,019.60 as part of an agreement to resolve charges of health care claims fraud, Medicaid fraud, misconduct by a corporate official, theft by deception, and filing a false or fraudulent 1999 New Jersey gross income tax return. All of the aforementioned charges, contained in an indictment returned on April 5, 2002, are in connection with the operation of his medical transport business, Solomon's Invalid Coach, Inc. The tax liability arising from the fraudulent 1999 return will be satisfied from the forfeited funds. This was a joint investigation by the Office of Criminal Investigation (OCI) and the New Jersey Division of Criminal Justice-Office of the Insurance Fraud Prosecutor.
- On July 12, 2002, Jeffrey Biggiani, trading as A-AAACE Mechanical, Inc., was sentenced for crimes arising from the collection and failure to file and remit sales tax. Three (3) counts were second degree offenses and a fourth count was a third degree offense. Mr. Biggiani was sentenced to four (4) years probation, fined, and ordered to pay restitution of \$81,344 to be remitted to the State within six months of sentencing. A-AAACE Mechanical, Inc. was ordered to pay fines totaling \$1,155 to be

remitted to the Law Enforcement Fund.

- On July 16, 2002, Thanh C. Voung was found guilty in Belleville Municipal Court of one (1) count of possession of untaxed goods (486 cartons of cigarettes) and one (1) count of failure to maintain records. The subject was sentenced to thirty (30) days in Essex County Jail and was fined. The Judge noted that Mr. Voung was a career criminal offender and warranted incarceration. The subject has prior convictions for distribution of cocaine, shoplifting, and theft.
- On August 9, 2002, in Newark Municipal Court, Antonio M. Gomes entered a plea of guilty on behalf of his corporation, A&A Gomes Construction Corp., to a disorderly person charge of failing to obtain the required Motor Fuels Tax Seller-User of Special Fuels License in connection with the corporation's operation of a diesel fuel bulk storage tank in Newark, and was fined. The subject was brought into compliance as he exhibited to the Court proof that he has now obtained the required license. This complaint was based on a referral from the Motor Fuels section of Audit Services.
- On August 13, 2002, Frank Valentino of Toms River, New Jersey, waived his right to prosecution by indictment and trial by jury and pled guilty to accusations that he failed to pay or turn over collected sales tax and that he falsified or tampered with records in an attempt to

*continued on page 9*



*criminal enforcement - from page 8*

deceive the State of New Jersey. This criminal tax case originated as a referral from Taxation's Field Audit Branch relating to Mr. Valentino's business: Frankie's Auto Body, Inc., of Edison, New Jersey. During the course of a civil field audit, a Taxation auditor requested Frankie's Auto Body, Inc.'s corporate president, Mr. Valentino, to supply documentation in support of his body shop's nontaxable sales. Upon receipt of the requested documentation, the auditor attempted to confirm the validity of these documents. The information she received suggested that the documents supplied by Mr. Valentino had been altered. Based on this, an OCI criminal tax investigation was initiated which ultimately lead to the guilty pleas. The OCI investigation determined that between January 1, 1995, and December 31, 2000, Mr. Valentino, on behalf of Frankie's Auto Body, Inc., acted with intent to defraud the State of New Jersey

in that he collected sales tax which he failed to turn over to the State in an attempt to evade, avoid, or otherwise not make timely payment. It was also determined that he provided false records with the purpose to injure the State of New Jersey. Mr. Valentino provided documents from certain tax-exempt entities, including the Federal Bureau of Investigation, the Government Services Administration and the Middlesex County ARC, in order to lessen the sales tax obligation of his business, knowing that the documents had been altered to contain false information. This case was prosecuted by the New Jersey Division of Criminal Justice.

- On August 15, 2002, Mohamed Chowdhury of Hackensack, New Jersey, was found in possession of 4.1 cartons of untaxed cigarettes when officers of the Hackensack Police Department entered the residence to execute a warrant for the arrest of Mr. Chowdhury's daughter for burglary and theft. OCI

determined, through investigation, that the cigarettes were obtained via a mail order/Internet site: A&B Smoke Shop of Irving, New York. Subsequently, tax charges were filed against Mr. Chowdhury and he pled guilty to possession of contraband cigarettes and was fined.

- On August 16, 2002, a State Grand Jury indicted Carl F. Monto of Toms River, New Jersey, on charges that, as responsible person of Courtesy Truck Stop, Inc., a now defunct truck-stop in Jersey City, he collected and failed to remit \$100,454 in motor fuels tax on the retail sale of diesel fuel from January to September 1997. This was a joint investigation by the Office of Criminal Investigation and the New Jersey State Police-Organized Crime Unit. This matter was presented to the grand jury by the Division of Criminal Justice, who also assisted in obtaining search warrants during the course of the investigation.

*continued on page 10*

# **NJFastFile**

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

*criminal enforcement - from pg. 9*

- On August 28, 2002, a State Grand Jury indicted Drymco, Inc., and responsible corporate officer John Drzymkowski, of Berkeley Heights, New Jersey, on charges that the corporation and Mr. Drzymkowski collected and failed to remit in excess of \$300,000 in petroleum products gross receipts tax on the sale, at wholesale, of diesel fuel from September 1999 to December 2000. This matter was presented to the grand jury by the Division of Criminal Justice.
- On September 6, 2002, in Superior Court, Hudson County, Todd Halpern of Livingston, New Jersey, entered a plea of guilty to a charge of theft by misapplication of \$367,261.51 in New Jersey sales tax payments, years 1999 to 2001, which had been entrusted to him by clients of his tax preparation business. At the same time, Mr. Halpern also entered pleas of guilty to one (1) count of theft by obtaining by deception a bank loan in the amount of \$210,178.57, and one (1) count of theft by converting to his own use \$46,051 in Federal and State personal income tax estimated payments and/or refunds

of a client. At the time of his plea, Mr. Halpern was on probation after having served a 90-day jail sentence for filing a fraudulent 1997 NJ personal income tax return. This case was investigated by the Office of Criminal Investigation with assistance from Taxation's Compliance and Audit Activities, and was prosecuted by the State Attorney General's Office.

- One hundred twenty-six (126) complaints alleging tax evasion were evaluated from July through September 2002 in the Office of Criminal Investigation.

During the same time period, forty-five (45) charges were filed in court on fourteen (14) cases for violation of the Cigarette Tax Act. All fourteen (14) court cases involved contraband cigarettes. □

### **Tax Briefs**

#### **Domestic Security Fee**

**Rental of Ice Cream Trucks** — The Division has been asked whether the Domestic Security Fee applies to the rental of ice cream trucks. The law requires that a motor vehicle rental company pay a fee of \$2.00 to the Division of Taxation for each day of a passenger motor vehicle rental, up to 28 days in duration. A rental agree-

ment by its terms exceeding 28 days in duration would only require payment of 28 days worth of the fee. "Rental company" has been defined as "any individual, business, or other entity or person engaged in the business of renting motor vehicles."

To the extent that a rental company enters into agreements with individuals to rent them ice cream trucks, the company would be liable for payment of the \$2.00 per day fee.

**Rental of Utility Trailers** — The Division answered an inquiry concerning whether a rental company that rents out utility trailers as opposed to trailers connected to a tractor, must pay the fee. The law defines "rental motor vehicle" as "a passenger automobile, truck or semitrailer that is rented without a driver and used in the transportation of persons or property other than commercial freight."

The Division of Taxation has adopted the same definition of the term "semitrailer" as set forth in administrative regulations governing sales and use tax procedures for implementation of the domestic security fee. That definition states that a "semitrailer" "means every

*continued on page 11*

## **Enforcement Summary Statistics**

### **Third Quarter 2002**

Following is a summary of enforcement actions for the quarter ending September 30, 2002.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	1,738	• Seizures	18
Total Amount	\$35,634,768	• Auctions	5
• Jeopardy Assessments	231	• Referrals to the Attorney General's Office	215

For more detailed enforcement information, visit our Web site at: [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

*tax briefs - from page 10*

vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.” N.J.A.C. 18:24-7.18(f). Utility trailers fall within this definition.

### **Gross Income Tax**

**Setoff** — The Division responded to an inquiry regarding the setoff of a 2001 homestead rebate.

N.J.S.A. 54A:9-8.1 of the New Jersey Gross Income Tax Act provides for the setoff of a homestead rebate against indebtedness to any agency or institution of State Government. The setoff authority also applies to gross income tax refunds, the earned income tax credit, and the NJ SAVER rebate. Under N.J.A.C. 18:35-10.5 the debtor must contact the claimant State agency regarding resolution of the proposed setoff. The setoff notice sent by the Division of Revenue to the debtor identifies that agency and gives the debtor contact information. No actual set-off will occur until the Division of Revenue receives a certification from the claimant agency that the debt is final. N.J.A.C. 18:35-10.9. At that time the debtor will be notified in writing of the setoff and receive an accounting of the action. N.J.A.C. 18:35-10.10.

Finally, N.J.S.A. 54A:9-8.2 allows an apportionment of any setoff in the case of a debtor filing a joint income tax return or rebate application. In accordance with N.J.A.C. 18:35-10.7 a nondebtor who is a joint recipient of a rebate or refund has standing to establish

that fact. If the claimant agency finds that an apportionment should be made with respect to a joint entitlement, it will be presumed that each party is entitled to one-half of the rebate or refund.

**Withholding on Employee Stock Purchase Plans** — IRS Notice 2001-72 states that an employer has no Federal income tax withholding obligation when an individual exercises an incentive stock option (ISO) or an option granted under an employee stock purchase plan (ESPP) since no income is recognized at the time of the exercise. The notice explains the reason for this rule is that to satisfy the income tax withholding deposit requirements on a timely basis would be burdensome to former employers and the former employees may not have sufficient cash compensation from which to fund the withholding. The employee is still subject to the Federal income tax on this compensation at the time of the sale of the stock.

Stock options are taxable for New Jersey gross income tax purposes under N.J.S.A. 54A:5-1(c). N.J.S.A. 54A:5-1(c) requires that stock options be reported as compensation in the same manner and in the same period as prescribed for Federal purposes. Additionally, the taxpayer’s accounting method must be the same for New Jersey gross income tax purposes as it is for Federal purposes. N.J.S.A. 54A:8-3(c).

Taxpayers having no New Jersey income tax withholding and who can reasonably expect their tax liability to be greater than \$400 must pay the income tax as they earn or receive income throughout the year by estimated tax payments.

For more information see Tax Topic Bulletin GIT-8, *Estimating Income Taxes*, and Publication NJ-WT, *Gross Income Tax Instruction Booklet for Employers, Payors of Pension and Annuity Income and Payors of Gambling Winnings*.

Both are available on the Division’s Web site at:

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

### **Sales and Use Tax**

**Delaware Retail Gross Receipts Tax** — A taxpayer’s sales and use tax liability in New Jersey is not reduced by the amount of gross receipts tax paid to Delaware on a purchase made in that state. Credit is only available for sales tax properly paid to the state in which the items were manufactured, purchased, or shipped. For sales tax purposes, reciprocity means that New Jersey will allow a credit up to the amount paid to the other state provided such other state allows a similar credit for sales tax paid to this State. See N.J.S.A. 54:32B-11(6). If the state of purchase has a sales tax rate equal to or greater than New Jersey’s 6% tax rate, the taxpayer would not owe any use tax. If the state in which a purchase is made has a lower rate than New Jersey, use tax is due for the difference between the rate paid and 6%. Generally, if tax was legally due and paid to another state and that state has reciprocity with New Jersey, credit can be taken. See N.J.S.A. 54:32B-11(6). Since Delaware does not impose a retail sales tax, there is no reciprocity with New Jersey for sales tax purposes.

*continued on page 12*

*tax briefs - from page 11*

**Sales of Limousines** — The New Jersey Sales and Use Tax Act was recently amended to provide an exemption for the purchase, rental, or lease of a limousine to a person licensed by the New Jersey Division of Motor Vehicles to operate a limousine service. N.J.S.A. 54:32B-8.52. A licensee must obtain a certificate of compliance from the municipality where the licensee resides. N.J.S.A. 48:16-17. The sales and use tax exemption also applies to charges for repair services to limousines, including replacement parts.

A “limousine” is defined as (1) a motor vehicle registered under the provisions of N.J.S.A. 39:3-19.5, or registered as a limousine under the laws of another state; and (2) used exclusively in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis, that is not conducted on a regular route and with a seating capacity of no more than 14 passengers, excluding the driver. N.J.S.A. 54:32B-8.52.

Vehicles such as taxicabs, hotel or airport shuttles, buses used solely to transport children or teachers to and from school, and vehicles owned and operated by a business for its own purposes are not considered limousines. In order to document the applicability of the exemption for the purchase of the limousine, the customer must provide a copy of their license to operate a limousine service and the vehicle must be registered as a limousine *at the time of closing the sale transaction*. An Exempt Use Certificate (ST-4) must also be

provided to the motor vehicle dealer.

**Out-of-State Disposal of Excess Advertising and Promotional Material** — Recently, the Division was asked to consider the use tax implications of a specific factual situation concerning direct-mail processing services and the use of advertising and promotional material under the following circumstances:

Company A is a New Jersey-based entity engaged in direct-mail processing services. Company A enters into a contract to provide direct-mail processing services for Company B, its client. Company B purchases advertising and promotional material from out-of-State printers who have no nexus with New Jersey. The printers deliver the material directly to a New Jersey warehouse that Company A owns. Pursuant to the contract, Company A processes the advertising and promotional material that is intended for distribution to both out-of-State and in-State recipients from its New Jersey warehouse. Due to various uncertainties, the amount of advertising and promotional material that is held in the New Jersey warehouse exceeds the amount that was initially intended for distribution. The excess advertising and promotional material will not be distributed at all, but will instead be disposed of as scrap.

The sale of advertising material is subject to tax as tangible personal property under N.J.S.A. 54:32B-3(a). However, the Sales and Use Tax Act provides an exemption for advertising or promotional material which is ultimately distributed to out-of-State recipients. N.J.S.A.

54:32B-8.39. Taking into consideration the exemption for advertising material distributed out-of-State, the Division made the following determination with respect to the disposal of advertising material: When advertising or promotional material is no longer held or intended for distribution to either in-State or out-of-State recipients, but is instead removed from a New Jersey storage facility and taken outside of the State for disposal as scrap or waste, use tax will not be imposed pursuant to N.J.S.A. 54:32B-6. This treatment is consistent with the statutory intention to exempt such advertising and promotional material when delivered outside New Jersey. □

## **In Our Courts**

**Gross Income Tax Partnership Versus Rental Income** – *Joseph DiBianca, et al, v. Director, Division of Taxation*, decided October 26, 2001; Tax Court No. 004391-00.

On its 1996 New Jersey gross income tax return, plaintiff reported \$27,179 as net income from rents by netting a loss from residential real property reported on the Federal income tax return, Schedule E, with net rental income passed through from four partnerships as reported on the K-1 and NJK-1. The Director asserted a deficiency on the basis that the Schedule E \$12,411 loss from residential realty (N.J.S.A. 54A:5-1d) could not offset plaintiff's \$39,590 distributive share of partnership income (N.J.S.A. 54A:5-1k) pursuant to N.J.S.A. 54A:5-2, which prohibits the netting of intercategory income and losses.

*continued on page 13*

*in our courts - from page 12*

Plaintiff relied upon the regulations. The Court reviewed the regulations and found that partnerships were required to determine their net profits from business in the same manner as an individual taxpayer would. As to rental income, the regulations state that where rental income is not received in the ordinary course of the conduct of a trade or business, the income shall be reported under subsection 5-1d. Conversely, to be included in a taxpayer's net profits from business, rental income must be received in the ordinary course of the conduct of a trade or business of leasing property. Moreover, the regulations provide that a taxpayer is not deemed to be engaged in the conduct of a trade or business of leasing property unless substantial services are rendered in connection with the leasing properties.

Opining that the concept of ordinary business operations was relevant in construing the regulations, the Court relied on the New Jersey Supreme Court's opinion in *Smith*. There the Court determined that it was the Legislature's intent that the category "net profits from business" include income that would be categorized separately where it was not earned in the ordinary course of business; otherwise, the category net profits from business would virtually become a nullity. However, *Smith* stated that if the dividend and gain income represented income from passive partnership investments, then the income would have been reportable under their respective separate categories of income. After reviewing the categories of expenses reported on the partnerships' Federal Form 8825 such as

floral supplies, maintenance and cleaning, commissions, insurance, legal and other professional fees, repairs, taxes, utilities, landscaping, snow removal, lawn care, and elevator maintenance, the Court ruled that the partnerships were actively operating the properties.

Turning to what constitutes a substantial service, the Court found that the regulations do not define the term. However, the regulations do state that the activity of net leasing a property does not constitute the conduct of a trade or business unless taxpayer is in the trade or business of dealing with such property and the property constitutes inventory or stock in trade of the partner. The Court determined that this language was incorporated as a result of the Appellate Division's ruling in

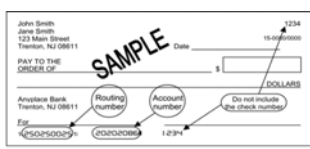
*Newark Building Associates* where it was determined that the partnership's passive activities of filing documents required by law, accepting net rents, depositing the rents in its bank account, making payments to the mortgagee, and distributing the net proceeds to the partners was a net lease situation and did not constitute a business under the Unincorporated Business Tax Act. There the Appellate Division described the partnership activities as merely serving to maintain its existence as a partnership because the accounting, legal, and other partnership supervisory acts were performed by its attorneys for a stated annual fee plus disbursement for accounting fees.

*continued on page 14*

## Pay NJ Taxes Electronically

### Electronic Check (E-Check)

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







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

- Personal and Fiduciary Income Tax and Estimated Payments
- Sales and Use Tax
- Gross Income Tax Withholding and UI/DI Contributions
- Domestic Security Fee

### Credit Card\*

1-800-2PAYTAX      [www.officialpayments.com](http://www.officialpayments.com)

- Personal and Fiduciary Income Tax and Estimated Payments
- Sales and Use Tax
- Gross Income Tax Withholding and UI/DI Contributions
- Domestic Security Fee
- Deficiency payments

\* Fee of 2.5% of tax payment applies.

*in our courts - from page 13*

Applying *Newark Building Associates* to the instant case, the Court ruled that the items of partnership expenses indicated a level of activity and services significantly in excess of those performed there. Applying *Smith* to the regulations, the Court held that the partnerships were involved in the active ordinary business operations of the buildings and that those operations constituted substantial services. The Court noted that it was the ordinary business operations of the partnerships to own and provide the necessary services to operate the buildings even though services constituted less than 35 hours per week. The Court stated that the focus was on whether the partnership, not the partner, is involved in the ordinary business operations. Therefore, the Court upheld the Division's assessment.

Plaintiff alternatively argued that the Division's remedy is against the partnership because they issued the NJK-1, not against the partner who compiled or filed returns in accordance with the NJK-1. The Court ruled that although the partners' NJK-1 forms were issued by the partnerships, this did not insulate the partners from tax liability even though tax return instructions state that income should be reported in accordance with the NJK-1. The Court ruled that the partner is responsible for proper and accurate reporting. The Court reasoned that otherwise partners could control their gross income tax liability by controlling the information reported in the NJK-1s that are thereafter issued to themselves.

**Reporting of S Corporation's Sale of Assets and Subsequent Liquidation** – *George K. Miller, Jr., and Debra Miller v. Director, New Jersey Division of Taxation*, decided June 17, 2002; Appellate Division No. A-658-01T2.

Miller was the principal shareholder of a Federal and New Jersey subchapter S corporation. In 1996, the corporation sold virtually all of its assets to an unrelated corporation for about \$5 million. Later, in that same tax year, the corporation paid a liquidating dividend to Miller that consisted primarily of the proceeds of the sale.

For New Jersey tax reporting purposes, Miller calculated his income by deducting his Federal basis in the stock from the Federal calculated amount of the liquidated dividend, the property distribution from the stock sale. Miller reported this amount as a gain under N.J.S.A. 54A:5-1c after netting it with other personal capital transactions, mostly losses.

The Division first computed the corporation's gain on its sale of assets as Miller's pro rata share of subchapter S income pursuant to N.J.S.A. 54A:5-1p. Consequently, this amount of gain was also added to Miller's basis in his corporate stock. Secondly, the liquidating payment was considered to be a sale of subchapter S stock in accordance with subsection 5-1c. This resulted in a loss primarily due to the increase in basis from the asset sale. As each of the above transactions resulted in separate categories of income and loss, the Division did not net the income derived from subsection 5-1p with the subsection 5-1c loss

in accordance with N.J.S.A. 54A:5-2, which taxes income on a category-by-category basis and prohibits the netting of income and losses.

The Tax Court ruled for Miller. Although the Appellate Division concurred with the Tax Court's rejection of the Division's interpretation of the Gross Income Tax Act, it reversed and remanded the case because it disagreed with the Tax Court's solution. The Appellate Division found that the Division's methodology was supported by the Gross Income Tax Act's literal language, but that the result is to tax the return of capital, which is inconsistent with the legislative intent of subsection 5-1c and the New Jersey Supreme Court's opinion in *Koch*. However, the Appellate Division also disagreed with the Tax Court's determination that subsection 5-1p did not include S corporation income outside of the ordinary trade or business and disagreed with the Tax Court, allowing Miller to deduct his Federal basis, rather than his New Jersey adjusted basis, to determine the amount of gain. The Appellate Division reasoned that if the Legislature had anticipated the facts in *Miller*, then it believed the Legislature would have provided that the two transactions be treated as a sale of stock to a third party with gain or loss being calculated under subsection 5-1c.

**Reporting of S Corporation's Sale of Assets and Subsequent Liquidation** – *Joel and Judith Mandelbaum v. Director, Division of Taxation*, decided May 17, 2002; Tax Court No. 004227-2000.

*continued on page 15*

*in our courts - from page 14*

Mandelbaum was a shareholder of Dalcomp, a Federal and New Jersey subchapter S corporation. In 1995, he and all the other shareholders sold all of their stock to Thompson Municipal Services. Later in that year, Thompson and the former Dalcomp shareholders filed an Internal Revenue Code section 338(h)(10) election, essentially a deemed sale of assets followed by a deemed liquidating distribution, with the Internal Revenue Service. On his 1995 gross income tax return, Mandelbaum reported the transaction as gain or income from the disposition of property after subtracting his stock basis. Mandelbaum later amended his 1995 gross income tax return, reporting the transaction as his net pro rata share of S corporation income after subtracting the cost of his stock. Also, Mandelbaum elected the installment method of reporting the income.

The Division disallowed the deduction for the stock basis from his S corporation income, disallowed the use of the installment method, and decided that the amount of his S corporation income was his proportionate stock ownership share of the corporation's net gain from the deemed sale of assets. The Division deter-

mined that the deemed liquidation resulted in an N.J.S.A. 54A:5-1c loss to Mandelbaum and that the loss could not be netted with the N.J.S.A. 54A:5-1p S corporation income due to the nonnetting of intercategory income and losses rule under N.J.S.A. 54A:5-2.

The Court ruled that the I.R.C. 338(h)(10) election is not applicable to a New Jersey S corporation because there is no statute, interpretative regulation, or other formal promulgation interpreting or referring to the Gross Income Tax Act with respect to I.R.C. 338(h)(10) elections. The Court reasoned that a New Jersey taxpayer reading the Gross Income Tax Act provisions and the regulations thereunder would not be on notice that an I.R.C. 338(h)(10) election subjected him to any tax liability under the Gross Income Tax Act. The Court also refused to impute the Corporation Business Tax Act and regulations thereunder referring to the 338(h)(10) election to an S corporation shareholder as the acts are not in *par materia*. Due to the Division's inability to use I.R.C. 338(h)(10), the Court held that the transaction must be treated as a sale of stock and that the net gain, proceeds of the sale less adjusted basis, be taxed as a disposition of property under subsection 5-1c.

Alternatively, the Court stated that even if the Gross Income Tax Act applied to the I.R.C. 338(h)(10) election, the stock's basis would be deductible in determining gain or loss under subsection 5-1c in accordance with the Tax Court's previous holding in *Miller*. Finally, the Court ruled that the installment method of reporting is applicable to subsection 5-1c income.

### **Litter Control Tax**

**Litter-Generating Products –**  
*Feesers, Inc. t/a Feesers Foods v. Director, Division of Taxation*, decided June 20, 2002; Tax Court No. 004185-2001.

Feesers is a Pennsylvania wholesale food distributor that sells food products in New Jersey to various institutions including nursing homes, hospitals, and universities. Most of the food products are sold in "large, institutional type," disposable packages and containers. These products include salad dressing, barbecue sauce, muffin, cake, and brownie mixes, shortening, ice cream, flour, beans, chili, salsa, cereal, and pasta. Feesers alleged that the food is prepared at the facility and consumed on premises by residents or invitees and is not intended for resale.

The Division assessed Feesers litter control tax on its New Jersey sales pursuant to the Clean Communities and Recycling Act. Although Feesers concedes that its food products meet the definition of one of the items enumerated in the statute as being subject to tax as a litter-generating product, Feesers claims that its food products are exempt from the litter control tax because its food products are prepared

*continued on page 16*

---

## **Got a phone?**

File your New Jersey resident income tax return by telephone with

**NJ TeleFile**

**1-888-235-FILE (3453)**

Available 24 Hours a day – 7 Days a Week



*in our courts - from page 15*

for on-premises consumption and the tax is not intended to target institutional food type packages and containers as they are not the types of products "that would...be found on public highways."

The Court stated that the litter tax is levied on the litter-generating products of manufacturers, wholesalers, and retailers of litter-generating products. The Court found that the Tax Court had previously ruled that litter-generating products that satisfy any one of the following three tests are subject to tax: (1) goods that are produced, distributed, or purchased in disposable containers, packages, or wrappings; or (2) goods that are commonly discarded in public places even though they are not usually sold in packages, containers, or wrappings; or (3) goods that are unsightly or unsanitary in nature, commonly thrown, dropped, discarded, placed, or deposited by a person on either public property or on private property that is not owned by the person. (See *United Jersey Bank*).

The Court ruled that Feesers' products clearly satisfied the first test; therefore, it was irrelevant whether the products would be commonly discarded in public places such as the public highway pursuant to the second test because the tests are in the disjunctive. As to whether the litter-generating products were exempt because they were sold for on-premises consumption, the Court found that it was unnecessary to decide whether there is an exemption for retailers that sell food for on-premises consumption because the retailer's transactions with its customers could not be imputed to Feesers' sales to the retailer. Finally, the Court looked at the

exemptions to the litter control tax and found that Feesers did not qualify for an exemption.

### **Local Property Tax**

**Exemption Status** – *Center For Molecular Medicine and Immunology v. Township of Belleville*, decided May 2, 2001; Tax Court No. 000767-1998; 000580-99.

The question before the New Jersey Tax Court was property tax exempt status for the years 1998 and 1999 for the Center for Molecular Medicine and Immunology, a 501(c)(3) nonprofit entity that conducts cancer research. The disputed property, renamed the Garden State Cancer Center (GSCC), was previously exempt from local property taxes as a county-owned geriatric facility under N.J.S.A. 54:4-3.3 until 1997 when it was transferred from the county to the Essex County Improvement Authority and from the ECIA to the taxpayer. The taxpayer then began a five-phase plan to rehabilitate the deteriorated building.

The first issue was property ownership, county vs. taxpayer (GSCC) and whether exemption should be permitted under N.J.S.A. 54:4-3.3 or N.J.S.A. 54:4-3.6. The two statutes are mutually exclusive. Within the deeds were two sets of reverter clauses that would transfer the property back to the county "by vesting the county with a fee simple absolute interest after a term of 25 years." The taxpayer's present interest was non-freehold and likened to a leasehold with no ownership rights. Because the deeds only granted the taxpayer an interest for a term of 25 years, the taxpayer was essentially leasing the facility and the county retains ownership. Thus, the Court

found that the GSCC was owned by the county and subject to exemption under N.J.S.A. 54:4-3.3.

Another issue requires the plaintiff to prove that the use of the property was for a public purpose which was to be carried out within a reasonable period of time. Public purpose is defined by the courts as "an activity which serves to benefit the community as a whole and which at the same time is directly related to functions of government." N.J.S.A. 52:9U-2 states that the New Jersey Legislature deems cancer research a sufficient public purpose. Being that the taxpayer's primary function was cancer research and has received Federal funding for this research, the GSCC was clearly used for public purposes. The Court also maintained that the broadly defined police power granted to local governments enables them to regulate for the health and safety of the persons within their borders. This is a public purpose.

The remaining issue concerned that portion of the GSCC that was not currently being used. Under N.J.S.A. 54:4-3.3, the property must be wholly taxed or wholly exempt. A five-phase plan was incorporated to complete work on these sections in a reasonable amount of time and these sections were scheduled for public use so that the entire property was deemed intended for public purpose.

For reasons stated, the taxpayer qualifies for property tax exemption under N.J.S.A. 54:4-3.3 for the tax years 1998 through 1999. No analysis under N.J.S.A. 54:4-3.6 is required.

*continued on page 17*



*in our courts - from page 16*

## Sales & Use Tax

**Prototypes of Point-of-Purchase Displays** – *Urso & Brown, Inc., Predecessor to Al Gar/The Display Connection, Inc. v. Director, New Jersey Division of Taxation*, decided July 8, 2002; Appellate Division No. A-3356-00T2.

As reported in the Summer 2001 *State Tax News*, the Tax Court previously held that Urso & Brown's prototype purchases of point-of-purchase displays, merchandising models used by vendors to market goods to consumers, were subject to either sales tax under N.J.S.A. 54:32B-3(b)(1) or use tax per N.J.S.A. 54:32B-6(C) because the displays constituted tangible personal property upon which fabrication services were performed. The Tax Court ruled that the purchases did not qualify for the (1) N.J.S.A. 54:32B-2(e)(4)(A) exclusion as professional or personal services, (2) N.J.S.A. 54:32B-8.14 research and development exemption, or (3) N.J.S.A. 54:32B-8.14 exemption as being used directly and primarily in production.

The Appellate Division affirmed the Tax Court without discussion of the above issues in a written opinion because it ruled that Urso & Brown's arguments lacked merit. □

## In Our Legislature

### Gross Income Tax

**Exemption from New Jersey Gross Income Tax** — P.L. 2003, c.9 (signed into law on January 27, 2003) exempts from New Jersey gross income tax the income of

victims who died in the September 11, 2001, terrorist attacks against the United States.

This act took effect immediately and applies to taxable years ending before, on, or after September 11, 2001.

### Litter Control Fee

**Clean Communities and Recycling Grant Act** — P.L. 2002, c.128 (signed into law on December 20, 2002) imposes a litter control fee on the gross receipts from sales of litter-generating products within or into New Jersey by manufacturers, wholesalers, distributors, and retailers of such products. The act also revises the Clean Communities Program and makes recycling grants available to counties and municipalities.

The litter control fee replaces the former litter control tax, which expired on December 31, 2000. The rates at which the new user fee is imposed and the categories of litter-generating products to which the fee applies are the same as the rates and litter-generating product categories that were subject to the prior litter control tax. However, Chapter 128 exempts retailers with less than \$500,000 in annual retail sales of litter-generating products from the fee (the prior tax had a \$250,000 retailer sales exclusion).

The new litter control fee exempts restaurants if more than 50% of their food and beverage sales are for on-premises consumption (restaurants with 50% or more of sales of food and beverages for off-premises consumption are subject to the litter control fee). Also exempt are paper product

sales of roll stock produced by paper product manufacturers and wood pulp.

The litter control fee for each calendar year is due on or before March 15th of the following year. The fee applies retroactively to the year beginning January 1, 2002. There was no tax or fee due on the gross receipts from sales of litter-generating products for calendar year 2001.

### Miscellaneous

**Camden Revitalization** — P.L. 2002, c.108 (signed into law on December 4, 2002) amends and clarifies the "Municipal Rehabilitation and Economic Recovery Act" (P.L. 2002, c.43) to ensure an accurate expression of legislative intent. Chapter 43 is currently the subject of litigation contending that it is improper.

As a result, the Legislature has imposed certain criteria limiting the application of Chapter 43 to municipalities that have been or may be subject to oversight by both a financial review board and the Local Finance Board, and which receive at least 55 percent of their budgets from State appropriations, now or in the future.

Chapter 108 clarifies and reaffirms that other similarly situated municipalities may meet the criteria of a qualified municipality. It also establishes a process for determining appropriations and allocations of monies to municipalities other than Camden that meet the definition of a qualified municipality. Chapter 108 took effect immediately and is retroactive to June 30, 2002. □

# 2003 tax calendar

*January*

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	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 21

- 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 sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- 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 terminal information 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 and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

## January 27

- 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

## January 31

- DSF-100 Domestic Security Fee**—Quarterly return

*February*

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 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

## February 18

- 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

**February 20 - continued**

- 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 sold or used
- MFT-14 Motor Fuels Tax**—Monthly export report
- 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 terminal information return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- 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 remittance
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales and Use 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

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
<i>March</i>	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	29
	30	31					

**March 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

**March 17**

- 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
- LF-5 Litter Control Fee**—Annual return
- PTR-1,2 Property Tax Reimbursement**—Application

**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 sold or used

**MFT-14**

**Motor Fuels Tax**—Monthly export report

**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 terminal information return

**ST-21**

**New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance

**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 remittance

**TP-20**

**Tobacco Products Wholesale Sales and Use Tax**—Monthly return

**UZ-50**

**Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

**March 25**

**PPT-41**

**Petroleum Products Gross Receipts Tax**—Monthly return

**March 31**

**GCC-1**

**Motor Fuels Tax**—Carrier's monthly report

## *from the director's desk*

If you haven't filed your 2002 New Jersey income tax return yet, say "Goodbye" to paper and file electronically this year. Whether it's NJ TeleFile, NJ WebFile, or NJ ELF, filing this way is fast, secure, and less "taxing" than completing a paper return. Just ask one of the more than 750,000 taxpayers who used one of these alternative filing methods last year.

There is less chance of error when you file electronically because the programs take you through the return line by line, prompt you for information, and perform the necessary calculations for you. You'll get your refund faster, too, when you use one of the three NJ FastFile options because electronic returns can be processed more quickly. And, you can make the entire process paper-free by choosing to have your income tax refund or homestead rebate (or both) deposited directly into your bank account. You won't have to wait for a check to arrive in the mail and you'll have access to your money that much faster. Owe us money? You can file your return now, and pay what you owe by electronic check or credit card — 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. So file by phone or by computer, or ask your tax preparer about filing electronically — you'll get your New Jersey income tax refund faster.

A handwritten signature in cursive script that reads "Robert F. Thompson". The signature is written in black ink and is positioned in the lower right quadrant of the page.