

New Jersey State Tax news

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What's New for Tax Year 2007

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Practitioners' E-File Mandate** — Tax practitioners who prepared 50 or more 2006 New Jersey resident income tax returns must use one of the New Jersey electronic methods (NJ WebFile or NJ E-File) to file all 2007 New Jersey resident income tax returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so. A [list](#) of links to materials relating to this requirement appears on page 7.
- **Earned Income Tax Credit** — Eligibility for the New Jersey Earned Income Tax Credit (NJEITC) has been expanded so that all taxpayers who are eligible and file for a Federal earned income credit can also receive a New Jersey credit in the amount equal to 20% of their Federal benefit. Previously, eligible applicants had to have New Jersey gross income of \$20,000 or less and at least one qualifying child.

For tax year 2008 and thereafter, the percentage used to calculate the NJEITC will increase as follows: For tax year 2008 the amount of the New Jersey credit will be equal to 22.5% of the applicant's Federal earned income credit. The amount will increase to 25% of the Federal earned income credit for tax year 2009 and thereafter.

- **Pension Exclusion Line Moved** — Eligible taxpayers will now claim the New Jersey Pension Exclusion on Line 27a after calculating their total taxable income (before exclusions) on Line 26. This change will make it easier for filers to determine whether or not they meet the income requirement for the Pension and Other Retirement Income Exclusions (total income for the entire year of \$100,000 or less).
- **Credit for Taxes Paid to Other Jurisdictions** — *Jurisdiction Code*. Resident taxpayers who claim a credit for taxes paid to other jurisdictions are now required to enter a two-digit code for the jurisdiction for which they are claiming a credit at Line 39, Form NJ-1040. A list of jurisdiction codes appears in the NJ-1040 instruction booklet.

Philadelphia Wage Tax Rate. The nonresident wage tax rate for 2007 is 3.7557%.

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Property Tax Relief Programs

• **Homestead Rebate Program** — The Homestead Rebate Program provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or tenant on October 1, 2007. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

Tenants who meet the eligibility requirements use the application in the New Jersey income tax return packet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax return packet. Applications for the homeowner rebate are expected to be mailed in the spring, and homeowners will apply either online or by phone. More information will be posted to our Web site as it becomes available.

• **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2007 must have total annual income *less than*:

- 2007:** \$45,135 if single, or \$55,344 (combined income) if married or in a civil union, and
- 2006:** \$43,693 if single, or \$53,576 (combined income) if married.

Benefits available under this program are subject to change.

Civil Unions

• The Civil Union Act (P.L. 2006, c.103) established civil unions in New Jersey for couples of the same sex. Effective for tax years beginning on or after January 1, 2007, partners to a civil union recognized under New Jersey law must file their New Jersey income tax returns and property tax relief program applications using the same filing statuses accorded spouses under New Jersey Gross Income Tax Law.

Package NJX Discontinued

• Package NJX has been discontinued for tax year 2007 and after. Most New Jersey tax forms are available [online](#). □

INHERITANCE/ESTATE TAX **Estate Tax Filing Requirements**

The New Jersey estate tax is based on the credit for state death taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001. The credit calculation includes all of a decedent's property wherever it may be located. The amount of the New Jersey estate tax is the maximum credit that would have been allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, against the Federal estate tax that would have been payable under the provisions of the Internal Revenue Code in effect on December 31, 2001. In determining the New Jersey estate tax, the Federal estate tax that would have been payable in 2001 and not the Federal estate tax that is actually paid must be used.

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

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estate tax filing - from page 2

N.J.S.A. 54:38-7 requires that a copy of any estate tax return filed with the Federal government for the year of a decedent's death must be filed with the Division of Taxation. Additionally, the statute requires that when the Form 706 Method is used, a 2001 Federal Form 706 must be completed and filed with the Division. The 2001 Federal estate tax return and instructions are available on the Division's Web site at: www.state.nj.us/treasury/taxation/prntinh.shtml

As an alternative to filing a 2001 Federal estate tax return (Form 706 Method) the New Jersey Simplified Tax System may be used in certain cases. The Simplified Tax System is not designed for use in all situations. It cannot be used in cases where a Federal tax return is filed or required to be filed with the Internal Revenue Service. The Simplified Tax System may be used only in situations where it produces a tax liability similar to the tax liability produced using the Form 706 Method. The purpose of the Simplified Tax System is to enable a taxpayer to calculate the amount of tax notwithstanding the lack or paucity of information for compliance due to such factors as the absence of an estate valuation made for Federal estate tax purposes or the absence of a measure of the impact of gifts made during the lifetime of a decedent.

The tax as computed is reduced by the portion of the tax that is attributable to property located outside New Jersey. This generally includes real and tangible personal property located in another jurisdiction. Intangible personal property is normally deemed for tax purposes

to be located in New Jersey regardless of where it is actually located.

$$\frac{\text{Gross Value of Out-of-State Property}}{\text{NJ Gross Estate Wherever Located}} \times \frac{\text{Tax Due on Entire Gross Estate Wherever Located}}{\text{NJ Gross Estate Wherever Located}} = \text{Reduction}$$

□

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eleven persons passed the September 29, 2007, C.T.A. exam. They are:

Burlington County: James C. Rhoads, Moorestown Township.

Cape May County: Jennifer M. Dowe, Lower Township; Michelle H. Johnson, North Wildwood City.

Gloucester County: John L. Clements III, Washington Township.

Hunterdon County: Craig R. Brotons, Clinton Town.

Middlesex County: Rocco DeFranco, Old Bridge Township; Brenda L. Issacs, New Brunswick City; Tricia A. Mercado-Spano, Helmetta Borough.

Monmouth County: Michael D. Mirne, Marlboro Township.

Ocean County: Craig A. Enz, Jackson Township.

Sussex County: Mary Louise Hennighan, Newton Town.

The next examination is scheduled for March 29, 2008. The deadline to file applications for this exam is February 28, 2008. The filing fee is \$10. If you have any questions regarding this exam, please contact Anna Auletta-Smielek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

January 1–

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of each Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.



assessors' calendar - from page 3

- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.
- "U.E.Z. Exemption Report" and "Five-Year Limited Exemption Report" filed with County Tax Board by assessor.

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 Tax Board 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' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year's property tax deduction by collector.

February 10-

- Certification of bulk mailing of notifications of assessment by assessor filed with County Tax Board. If bulk mailing completed by County Tax Board, certification filed with the County Tax Administrator "within 10 days" of the date bulk mailing was completed.

February 15 (on or before)-

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

March 1-

- Post-Tax Year Statement, Form 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, Division of 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; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On June 8, 2007, Bao T. Van pled guilty to possession of contraband cigarettes and failure to obtain a cigarette license. This plea resulted from the May 7 seizure of 90.9 cartons of contraband cigarettes found at a business located at 2844 Kennedy Boulevard in Jersey City, New Jersey, during a compliance inspection. Of the total seized, 36.2 cartons were counterfeit-stamped cigarettes. It was also discovered that the business's cigarette license had expired. Van was fined a total of \$2,928.50.
- On August 13, 2007, a Monmouth County Grand Jury returned a 21-count indictment charging Marie L. Carty, 63; her daughter, Lauren M. Carty Reid, 30; and son-in-law, Christopher Reid, 38, of Little Silver, with failure to pay taxes and failure to file taxes, third-degree crimes, in addition to multiple counts of second-degree theft by deception, theft by failure to make required disposition, conspiracy,

Interest 10.50%

The interest rate assessed on amounts due for the period January 1, 2008 – December 31, 2008, will be 10.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%



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misconduct by a corporate official, misapplication of entrusted property, third-degree theft by deception, receiving stolen property, bad checks and fraudulent use of a credit card, and fourth-degree making a false statement in procuring the issuance of a credit card. The investigation was initiated by the Monmouth County Prosecutor's Office concerning the alleged misappropriation of funds in the amount of \$972,724.45 belonging to the Wellington Place Condominium Association located in Aberdeen, New Jersey.

- On August 29, 2007, Charles Hines of South Toms River, New Jersey, pled guilty to possession of untaxed cigarettes and failure to obtain a consumer's license. Earlier, on January 9, 2007, the

Office of Criminal Investigation took possession of 53 cartons of Delaware-stamped cigarettes from Hines, who purchased the cigarettes from a Delaware retail business and, as a service to New Jersey site coworkers, was selling them to the coworkers for the price paid. He was fined a total of \$684.

- On September 12, 2007, Peter Zarycki, 41, of Forked River, pled guilty to two counts of failure to file a tax return and failure to pay tax in addition to ten counts of official misconduct. This plea came as a result of a 12-count indictment handed up in February 2007. Peter Zarycki, a 17-year veteran of the Ocean County Department of Corrections, was charged with official misconduct in connection with the 2005 disappearance of \$78,145 in funds found to be missing from inmate

bail accounts. This is a joint investigation with the Ocean County Prosecutor's Office. The prosecutor expects that Peter Zarycki will do jail time.

- On September 20, 2007, Thuy Mai t/a L & T Liquors of Jersey City, New Jersey, pled guilty to possession of untaxed cigarettes and was fined \$1,155 in the Jersey City Municipal Court. A total of 65.8 cartons of contraband cigarettes were seized. The subject was also assessed a \$1,645 civil penalty for unlawful contraband possession. A total of \$2,800 was paid by the subject.
- Fugitive Paul Sarris, formerly of Jersey City, was taken into custody in New York on September 28, 2007. He was arrested as a result of domestic violence

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How to Get Your NJ Income Tax Refund **FASTER!**

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www.njfastfile.com

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charges and has waived extradition. Sarris will eventually be brought to New Jersey and arraigned in a homestead rebate theft case. He has been at large since being indicted in February 2007 and was thought to be out of the country.

Sarris was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are Paul Sarris, 50; Achilles "Butz" Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito "Angelo" A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal \$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks.

The investigation revealed that Matilda Amante Ramos ran a travel agency while all of the other defendants operated their own financial service companies offering tax preparation services. Between August 2001 and September 2003, the six defendants allegedly filed 745 false homestead rebate applications with the State of New Jersey, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City. The defendants allegedly filed the applications using names and social security numbers obtained from tax preparation clients without permission. The

defendants allegedly laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses.

State investigators from the Division of Criminal Justice – Major Financial Crimes Bureau, assisted by agents from the U.S. Social Security Administration and the Jersey City Police Department, arrested Matilda Amante Ramos, Aristides Amante, and Angelo Amante in Jersey City and Aloysius M. Amante in Somerville. All four have entered plea agreements and await sentencing. Achilles "Butz" Amante remains at large and is believed to be out of the country. This was a joint investigation with the Division of Criminal Justice.

- On October 12, 2007, D. Manasher, President of Star Global Financial Incorporated, was admitted to a Pre-Trial Intervention Program (PTI) under the condition that he continues to make timely payments for past sales tax liabilities owed to the State of New Jersey. As part of the agreement, Manasher is required to make 12 monthly installments to satisfy the outstanding liability. On August 14, 2007, Manasher pled guilty to one count of theft by failure to make a required disposition of property received in the amount of \$8,106.04 in regards to New Jersey sales tax. Manasher also pled guilty to one count of failure to file corporation business tax returns for tax years 2003 through 2005. Star Global Financial Incorporated is a used car dealer located in Jersey

City, New Jersey. This business utilizes the Web site eBay Motors to generate a large portion of their vehicle sales. This matter was a joint investigation with the New Jersey State Police Cyber Crimes Unit and the New Jersey Division of Taxation's Office of Criminal Investigation.

- On October 18, 2007, Anant Patel, 46, former consultant to Jersey Central Power & Light (JCP&L), pled guilty in connection with a theft of \$11.5 million from a State energy rebate program. Patel pled guilty to charges of second-degree money laundering and second-degree theft. Under the plea agreement, the State will recommend a 15-year prison sentence for Patel. The State is seeking full restitution, and Patel will pay \$775,000 in restitution at the time of sentencing. The investigation revealed that Patel conspired with two other men to obtain \$11.5 million in payments for bogus or inflated applications under the New Jersey SmartStart Buildings Program, which offers rebates to companies that install more efficient lighting or HVAC systems. Patel was hired by JCP&L as a consultant to inspect and verify installation work under the program. In pleading guilty, Patel admitted that he signed off on work that was never performed and also created a number of bogus contracting and consulting companies to submit false invoices under the program. He admitted he laundered fraudulent rebate checks using a number of bank accounts. The investigation revealed that Patel conspired with Harold Stamateris, 47, of Basking Ridge, who managed the

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rebate program for JCP&L and was responsible for approving rebate applications. Stamateris pled guilty on February 6, 2007, to first-degree conspiracy, admitting he knowingly signed off on the fraudulent rebates. He faces a State prison sentence of 10 to 20 years. The State is seeking full restitution, and Stamateris will pay \$2,200,000 in restitution at the time of sentencing. Patel and Stamateris carried out the fraudulent scheme with an electrical contractor, William D. Eaton Jr., 56, of Caldwell, who fatally shot himself on January 30, 2007, after his arrest in this case. The case was referred to the Division of Criminal Justice by JCP&L's internal audit group. The case was investigated by the Division of Criminal Justice – Major Financial Crimes Bureau and the Office of Criminal Investigation with assistance from JCP&L auditors.

- On October 29, 2007, special agents of the Office of Criminal Investigation arrested Hazem Abuali of Philadelphia, Pennsylvania, an unlicensed distributor, at a North Jersey location and charged him with various offenses, including possession and transportation of contraband cigarettes. Confiscated at the time of arrest were cigarettes, cigars, and currency. On November 15, 2007, Hazem Abuali pled guilty in Union City Municipal Court to possession of contraband cigarettes (N.J.S.A. 54:52-18), transportation of contraband cigarettes (N.J.S.A. 54:40A-32), failure upon delivery to examine and

return cigarettes not bearing the required New Jersey revenue stamp (N.J.S.A. 54:40A-25), and liability for the tobacco products wholesale sales and use tax (N.J.S.A. 54:40B-5). Also, the currency was forfeited to the State of New Jersey.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$2,918,952 for the period of July 2007 through mid-November 2007. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Corporation Business Tax

CBT-100 Meal and Entertainment Expenses — Expenses for meals and entertainment are deductible on the New Jersey corporation business tax return, Form CBT-100, for a C corporation to the extent that these expenses are deductible on Federal

Form 1120. The New Jersey CBT-100 is linked to items above Line 28 on the Federal return.

New Jersey has no specific provision relating to meal and entertainment expenses. Since the New Jersey CBT-100 is linked to Lines 1 to 28 of the Federal return, and taxpayers must use the same method of accounting for State tax purposes as for Federal tax purposes, any Federal deduction limitations will also be recognized by New Jersey. N.J.S.A. 54:10A-4(k); N.J.A.C. 18:7-5.1(b).

Entries made on Form CBT-100, Schedule A, Line 33(b) represent other adjustments that are made to Federal taxable income in order to determine New Jersey taxable income. Certain deductions made for Federal purposes in calculating net income must be added back to compute entire net income for New Jersey purposes. Federal deductions that are added back are described in N.J.A.C. 18:7-5.2.

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 50 or more 2006 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2007 New Jersey resident income tax returns electronically. More information is available at:

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

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



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Gross Receipts for Minimum Tax

— The Division was asked the following question:

“With regard to the increased New Jersey corporation minimum tax, if a New Jersey corporation ships most of its products to companies in other states, must those sales be included as New Jersey gross receipts for calculating the minimum tax or can they be excluded for calculating the minimum tax? The corporation is not registered in any other state because all shipments are by common carrier. The instructions in the CBT book do not explain what is New Jersey gross receipts and what is not.”

The Division replied that the statute defines “gross receipts” for calculating the new minimum tax by reference to “gross receipts as defined in the Alternative Minimum Assessment” at N.J.S.A. 54:10A-5a. The definition excludes receipts from sales to points outside the State. Therefore, those sales do not

have to be included in the New Jersey gross receipts for calculating the minimum tax.

Minimum Tax — Legislation that was enacted in July 2006 made adjustments to the New Jersey minimum tax under the Corporation Business Tax Act. For privilege periods beginning January 1, 2006, and thereafter, the determination of minimum tax has changed. Generally, minimum tax is determined on a graduated basis based on New Jersey gross receipts as shown below. New Jersey gross receipts and minimum tax may be computed on Schedule A-GR. N.J.S.A. 54:10A-5(e).

New Jersey Gross Receipts	Minimum Tax
Less than \$100,000	\$ 500
\$100,000 or more, but less than \$250,000	750
\$250,000 or more, but less than \$500,000	1,000
\$500,000 or more, but less than \$1,000,000	1,500
\$1,000,000 or more	2,000

Taxpayers that are part of an affiliated group that has a total combined payroll of \$5,000,000 or more continue to pay a minimum tax of \$2,000 regardless of the amount of New Jersey gross receipts.

NOL Suspension — Due to the suspension of the net operating loss (NOL) carryover for privilege periods beginning in 2002 and 2003, taxpayers could not use unexpired NOL amounts until privilege periods beginning in 2004 and 2005. A limited NOL deduction was allowed in 2004 and 2005 for the privilege period in an amount that reduced entire net income by up to 50%. (P.L. 2004, c.47). Any NOL deduction disallowed due to this prohibition could be extended by two years. N.J.A.C. 18:7-5.17. Losses that could not be used against income that occurred in 2002 and 2003 would carry over until 2004. In other words, an NOL due to expire in 2002 and 2003 would be carried over to 2004 if it could not be used in 2002 or 2003.

Domestic Security Fee

Complimentary Motor Vehicle Rentals

— The Division responded to an inquiry concerning the Domestic Security Fee on motor vehicle rentals. When a “loaner” vehicle is given to a customer while the customer’s vehicle is with the dealer for warranty service, there is no liability for the \$5-per-day fee, as long as there is no user charge and/or charge for vehicle insurance, cost of registration, and similar expenses.

N.J.A.C. 18:40-1.6 states:

Motor vehicles loaned by a motor vehicle dealer to customers under a warranty, service or similar agreement

Sales Tax Information

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

[Streamlined Sales and Use Tax](#)

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

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

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

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

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or contract, for any kind of consideration, whether or not through a third party, and regardless of which party pays the consideration, are considered motor vehicles for rental and, as such, are subject to the fee imposed by the Domestic Security Fee law.

Example 1: A motor vehicle dealer provides a loaner vehicle at “no cost” to a customer, but the agreement between the dealer and the customer requires payment for mileage and provides an option for the purchase of insurance by the customer. Charges for mileage, insurance waiver/damage liability all are common elements of a rental agreement. Accordingly, where such items are charged, the agreement is rental in nature, and the dealership would be responsible for the [\$2.00] \$5.00 per day fee. Multiple day usage under the same agreement terms would result in a multiple day liability for the fee.

Gross Income Tax

Civil Union Joint Filing — Civil union couples have the right to a joint filing status under New Jersey Gross Income Tax Law that can be exercised in 2008 for tax year 2007, just as married couples do. The Civil Union Act, P.L. 2006, c.103, section 4, gives partners in civil union couples “all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage,” and section 5n of the Act specifically

requires equal State tax treatment for same and opposite sex couples.

In certain other states that use a Federal adjusted gross income tax model (AGI) for income tax purposes, married same sex and civil union couples may calculate Federal AGI using a “pro forma” Federal return as though the couple had filed married jointly for Federal income tax purposes. New Jersey, however, does not import an adjusted gross income tax figure from the Federal income tax returns, so a taxpayer’s Federal AGI has no bearing on the preparation of their New Jersey gross income tax return. Civil union couples file their New Jersey returns the same way as married couples, reporting their income either jointly or separately. Civil union partners must use the same filing statuses that are available to spouses; they cannot use the filing status “single,” even if they do so for Federal purposes.

For additional information on implementation of the Civil Union Act, see www.state.nj.us/treasury/taxation/civilunionact.shtml

Partnership Filing Fee

Hedge Funds — If a partnership has hedge fund status, a filing fee is due for nonresident individual, trust, or estate partners, unless all operations and facilities are located outside

New Jersey and the non-resident partners have no contact with New Jersey.

For hedge fund status, the partnership’s only activities may be the purchase, holding, and sale of intangible personal property, such as securities or commodities (defined in 26 U.S.C. 475(c)(2) and (e)(2)), and such intangible personal property may not be held for sale to customers. The activities of “purchase, holding, and sale” include activities incidental thereto giving rise to income, including commitment fees, breakup fees, and income from securities lending.

The requirement that certain partnerships must pay a \$150 per partner filing fee is set forth at N.J.S.A. 54A:8-6(b)(2)(A), which states: “Each entity classified as a partnership for federal income tax purposes,... having any income derived from New Jersey sources, including but not limited to a partnership, a limited liability partnership, or a limited liability company, that has more than two owners shall at the prescribed time for making the return required under this subsection make a payment of a filing fee of \$150 for each owner of an interest in the entity, up to a maximum of \$250,000....”

The definition of a partnership that is subject to the \$150 per partner

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filing fee is set forth at N.J.A.C. 18:35-11.1, which states: "Partnership means any entity classified as a partnership for federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive non-taxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds."

The definition of income is set forth at N.J.A.C. 18:35-11.1, which states: "Income means income, loss, gain, or expense."

Therefore, since partnerships subject to the \$150 filing fee include hedge funds and qualified investment partnerships, these partnerships are subject to the fee if they derive income from New Jersey sources.

For example, a hedge fund derives income from New Jersey sources when the partnership pays a New

Jersey fund manager a fee to manage the fund (expense), the hedge fund is located in New Jersey and distributes income to shareholders (income), or the hedge fund is located in New Jersey and reports a loss to shareholders (loss).

Therefore, a partnership that only holds stock and other intangibles is subject to the \$150 per partner filing fee unless all operations and facilities are located outside New Jersey and the nonresident partners have no contact with New Jersey.

Sales and Use Tax
Software Maintenance on Electronically Delivered Software —

The Division responded to an inquiry regarding the application of the New Jersey Sales and Use Tax Act to software maintenance on an initial software purchase that was electronically delivered. The software maintenance is an annual renewal contract, which includes technical support as well as upgrades for the software that would also be received electronically.

Effective October 1, 2006, the exemption for prewritten computer software delivered electronically is only available to electronically

delivered computer software that is used *directly and exclusively* in the conduct of the purchaser's business, trade, or occupation. N.J.S.A. 54:32B-8.56. Thus, electronically delivered computer software sold to businesses is exempt from tax. Software upgrades are also exempt under this "business use" exemption.

In addition, effective October 1, 2006, electronically delivered software is defined and taxed as "tangible personal property." The law imposes tax on maintaining, servicing, or repairing tangible personal property. Since electronically delivered prewritten computer software is tangible personal property, services performed on the software, even if performed remotely, are taxable because electronically delivered software is taxed as tangible personal property. Note that the repair and maintenance services are taxable even if the "business use" exemption is applicable to the purchase of the software. If the seller bills the exempt software upgrades and the taxable repair and maintenance services together as one lump sum, the entire amount is taxable. □

Enforcement Summary Statistics
Third Quarter 2007

Following is a summary of enforcement actions for the quarter ending September 30, 2007.

• Bank Levies	1,522	• Jeopardy Seizures	0
• Certificates of Debt:		• Seizures	120
Total Number	3,611	• Auctions	4
Total Amount	\$57,640,451.39	• Referrals to the Attorney General's Office	759
• Jeopardy Assessments	121		

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



In Our Courts

Administration

Jurisdiction – *Harry’s Lobster House Corporation v. Director, Division of Taxation*, decided June 14, 2007; Appellate Division No. A-5569-05T2.

The Tax Court granted the Division’s motion to dismiss the complaint of Harry’s Lobster House Corporation (Harry’s) because it lacked jurisdiction to consider the merits of the complaint. Harry’s alleged that the complaint should not be dismissed because representatives of the Division met with Harry’s after the issuance of the final determination as well as after the filing of Harry’s complaint and reached an agreement to reaudit the tax years at issue. Harry’s contended that the Division could not renege on the agreement because it relied on this agreement and spent substantial money to prepare for the reaudit.

The Tax Court concluded that, notwithstanding a purported agreement by Division representatives to reconsider this assessment, any such agreement was unauthorized and was not binding on the Division. The Appellate Division affirmed for the reasons set forth in Judge Menyuk’s opinion at 23 N.J. Tax 149 (2006). The New Jersey Supreme Court denied Harry’s petition for certification. (September Term 2007; 61,364)

Cash Audits

Audit Methodology – *Lane Trading Co. v. Director, Division of Taxation*, decided August 3, 2007; Tax Court No. 005189-2004.

Plaintiff (Lane) owns and operates an adult bookstore. It sells and rents videos, books, magazines, and novelties. Lane also operates video

viewing booths and rents rooms to female independent contractors for “fantasy performances.”

An audit disclosed that Lane did not retain copies of sales invoices or cash register tapes. However, it did have a summarized sales journal for two of the years at issue. Lane claims that all of its records were destroyed in a fire at a rented storage unit. The auditor used an alternate audit methodology as Lane’s books and records were inadequate to conduct the audit. This resulted in an audit assessment which Lane protested.

The final determination made adjustments to the audit determination of sales tax and corporation business tax liabilities. Lane appealed the final determination to the Tax Court challenging the reasonableness of the method of calculating the corporation business and sales tax assessments. The Court found that Lane had not provided any evidence indicating that the Division’s

assessment was incorrect. Therefore, the Court concluded that the Division’s use of the limited available data as well as its methodology was entirely reasonable under the circumstances.

Gross Income Tax

Alimony and Credit for Taxes Paid to Other Jurisdictions – *Cino v. Director, Division of Taxation*, decided November 2, 2007; Docket No. 008453-06.

In a summary judgment motion hearing on Friday, November 2, 2007, Judge Pizzuto granted the Director’s motion for summary judgment.

This matter involved another challenge to alimony and the credit for taxes paid to other jurisdictions. Judge Pizzuto held this case was controlled by *Ambrose v. Director*, 198 N.J. Super. 546, 487, A.2d 174 (1985).

Judge Pizzuto quoted from his decision in *Adelhock, Croce and Croce*

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v. Clerk of Bergen County and Director, 2006 N.J. TaxLEXIS 15, (November 2006):

As a general rule, duplicate taxation of the same property in different forms, if in accordance with statute, is not invalid. See *Old Dominion C.M. & S. Co. v. State Bd. Taxes*, 91 N.J.L. 173, 178-179 (E. & A. 1917); *Jersey City Gaslight Co. v. Jersey City*, 46 N.J.L. 194, 196 (E. & A. 1884); *Gritzmacher v. Taxation Div. Director*, 2 N.J. Tax 489, 492 (1981). See also *In re Estate of Romnes*, 79 N.J. 139, 164 (Handler, J., dissenting).

Here, there is no double taxation as the transfer tax is imposed pursuant to the Act upon separate owners on distinct transfers at different times. Indeed, even if this were deemed to be double taxation, the Legislature may constitutionally impose a duplicate tax, although courts generally endeavor to avoid such a statutory construction where the legislative intent is questionable. The language of N.J.S.A. 46:8D-2, however, is clear as to imposition of the transfer taxes. Even if it were deemed to produce true duplicate taxation, the Legislature's constitutional power to enact such a statute must be recognized. See *Old Dominion*, 91 N.J.L. at 178-179; *Jersey City Gaslight*, 46 N.J.L. at 196. [*Drew Associates of N.J., L.P. v. Travisano*, 235 N.J. Super. 194, 205-206 (App. Div. 1989), aff'd in pertinent part 122 N.J. 249, 268 (1991).]

The quote by the Court underscored the general rule that double taxation is not prohibited by statute. The credit for taxes paid to another jurisdiction was not intended to do away with double taxation, but to provide limits to double taxation.

Sales Tax

Servicing and Maintenance – Disposal Systems, Inc. v. Director, Division of Taxation, decided August 16, 2007; Tax Court No. 000061-07.

Disposal Systems, Inc. (Disposal) is in the business of servicing, replacing, and removing underground tanks and disposing of the waste. The Division issued an assessment under the Sales and Use Tax Act for failure to collect and remit tax to the Division.

The Court determined that Disposal's services were not exempt as capital improvements under N.J.S.A. 54:32B-3(b)(2)(v) because they were services and maintenance of properties and did not constitute an addition or capital improvement to property.

The Court decided that the services did not constitute a resale under N.J.S.A. 54:32B-3(b) because Disposal was the original vendor of its services and was not reselling them.

The Court found that the services were not exempt as a transportation service under N.J.S.A. 54:32B-8.11 because Disposal is not in the business of transporting persons or property.

Finally, the Court responded to Disposal's allegation that a New Jersey State employee fabricated the signature on two extensions to audit, concluding that no credible evidence was presented to give substance to

Disposal's allegations. Therefore, the Court granted the Division's motion for summary judgment. □

In Our Legislature

Multiple Taxes

Disclosure Requirements Imposed on Recipients of Development Subsidies — P.L. 2007, c.200, enacted on November 2, 2007, and effective immediately, but with its key provisions inoperative until April 30, 2008, requires corporations that receive development subsidies, including tax incentives from a State agency, instrumentality, or authority, to submit annual reports for five years disclosing certain information about their officers and detailing their progress in creating jobs. It also requires applicants for such development subsidies to disclose information about the corporation, previous development subsidies sought or received, and to detail their employment expansion goals.

Miscellaneous

Prohibition of Certain Regulation of Voice Over Internet Protocol and Internet Protocol-Enabled Services — P.L. 2007, c.195, enacted on October 26, 2007, and effective immediately, prohibits the State, State public entities, and political subdivisions of the State from enacting, adopting, or enforcing any laws, ordinances, regulations, orders, or other standards or provisions that have the effect of regulating the rates, terms, or conditions of voice over Internet protocol (VoIP) or Internet protocol-enabled (IP-enabled) services. This law does not, however, affect the application of criminal or other statutes that apply

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generally to the conduct of business in the State, consumer protection, or unfair or deceptive trade practices; the authority to enforce the requirements of Federal law regarding collection of enhanced 9-1-1 fees, telecommunications relay service fees, or Federal Universal Service Fund fees on VoIP or IP-enabled services; the authority to set requirements for providing cable service or operating a cable television system pursuant to 47 U.S.C. §521 or N.J.S.A. 48:5A-1 et seq.; the authority to manage use of public rights of way; or the authority of the Board of Public Utilities to regulate circuit switched local exchange access service. □

Tax Calendar

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

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

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

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

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

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

[2007](#) [2008](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
 Homestead Rebate Hotline
 for Homeowners ... 1-888-238-1233
 Homestead Rebate Hotline
 for Tenants 609-292-6400
 Property Tax Reimbursement
 Hotline 1-800-882-6597
 Earned Income Tax Credit
 Information 609-292-6400
 NJ TaxFax 609-826-4500
 Business Paperless Telefiling
 System 1-877-829-2866
 Speaker Programs 609-984-4101
 Alcoholic Bev. Tax 609-588-3932
 Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323
 Director’s Office 609-292-5185
 Inheritance Tax 609-292-5033
 Local Property Tax 609-292-7974
 Motor Fuels Tax
 Refunds 609-588-3688
 Public Utility Tax 609-584-4337