

# New Jersey State Tax news

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## What's New for Tax Year 2009

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

- **Spouses of Military Personnel** — Federal legislation signed into law on November 11, 2009, will affect the New Jersey rules regarding the residency and tax treatment of income of certain spouses of military personnel. For more information, see the [Military Spouses Residency Relief Act](#).
- **Tax Rates Increased on Income Over \$400,000** — The New Jersey gross income tax rates increased to: 8% on income over \$400,000 but not over \$500,000; 10.25% on income over \$500,000 but not over \$1,000,000; and 10.75% for income over \$1,000,000. This is a one-year increase. Tax rates are expected to revert to 2008 rates on January 1, 2010.
- **Property Tax Deduction/Credit Deduction Limitations.** Homeowners under 65 years of age and not blind or disabled whose New Jersey gross income is more than \$250,000 are not eligible for the property tax deduction. In addition, for homeowners under 65 years of age and not blind or disabled whose New Jersey gross income is over \$150,000

but not over \$250,000, the maximum deduction is limited to \$5,000. Homeowners who are not eligible for a deduction because their income is over \$250,000 can receive a property tax credit if they satisfy the other eligibility requirements.

**Schedule 1 Completion.** Two new charts have been added to the tax return instructions to help taxpayers complete Schedule 1. Homeowners will use Chart A - Determining the Property Tax Deduction for Homeowners, and tenants will use Chart B - Determining the Property Tax Deduction for Tenants, to calculate the deduction for Line 2 of Schedule 1.

- **Homeowner/Tenant/Both?** — Taxpayers must indicate at Line 36b, Form NJ-1040, if they were a homeowner, tenant, or both homeowner and tenant during the year.
- **Separate Returns, Same Residence** — Spouses/CU partners who file separate tax returns using the filing status "Married/CU Partner, filing separate return" must fill in the oval at Line 37, Form NJ-1040, if they both occupy the same principal residence.
- **New Jersey Lottery Prizes Over \$10,000 Taxable** — New Jersey Lottery winnings from prize amounts exceeding \$10,000 are taxable for New Jersey gross

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what's new - from page 1

income tax purposes. The individual prize amount, not the total amount of New Jersey Lottery winnings over the year, determines taxability. Taxpayers may deduct gambling losses, including New Jersey Lottery losses, from their winnings that occurred during the same year. For more information, see [New Jersey Lottery Questions and Answers](#).

- **Earned Income Tax Credit** — The amount of the NJEITC will be equal to 25% of the applicant's Federal earned income tax credit.
- **Commuter Transportation Benefits** — The maximum commuter transportation benefit is \$2,540.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate is 3.5% from January 1 to June 30, 2009, and 3.4997% from July 1 to December 31, 2009.
- **Family Leave Insurance** — Beginning January 1, 2009, employers were required to withhold contributions for family leave insurance. The maximum contribution for 2009 was \$26.01. Excess family leave insurance contributions cannot be claimed as a credit on the 2009 Form NJ-1040 or Form NJ-1040NR. Taxpayers who contributed more than the maximum amount must file a refund claim with the Department of Labor and Workforce Development using their Form [UC-9A](#), *Employee's Claim for Refund of Excess Contributions*. For more information, write to: Division of Employer Accounts,

Worker Refund Unit "2009," PO Box 910, Trenton NJ 08625-0910, or call the Department of Labor and Workforce Development at 609-633-6400.

### Property Tax Relief Programs

- **Homestead Rebate Program** — Information about the 2009 Homestead Rebate Program is not yet available.

The 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, 2009. Homeowners and tenants file different applications.

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

**Homeowners** do not use the application in the income tax booklet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone.

Information will be posted to our Web site as it becomes available.

- **2009 Property Tax Reimbursement** — With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying

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

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for reimbursements for tax year 2009, total annual income must be:

**2009:** \$80,000 or less, and

**2008:** \$70,000 or less

These limits apply regardless of marital/civil union status. However, if an applicant's status is married/CU couple, combined income of both spouses/CU partners must be reported.

Benefits available under this program are subject to change.

- **2010 Property Tax Reimbursement** — Recent legislation (P.L. 2009, c.129) modified the residency requirements for reimbursement recipients who lose their eligibility temporarily when they move to a new home. The legislation shortens to two full years the period of time these residents must occupy their new home before they can again qualify to resume applying for the property tax reimbursement.

**The new residency rules do not apply to 2009 applications.** They take effect for the first time with 2010 applications (to be filed in 2011). □

**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.

Nine persons passed the September 26, 2009, C.T.A. exam. They are as follows:

**Cape May County:** William F. Crowther, Middle Township.

**Cumberland County:** Les M. Meehan, Fairfield Township.

**Gloucester County:** Charles M. Horan, Wenonah Borough.

**Mercer County:** Lorraine M. Jones, Robbinsville Township.

**Middlesex County:** Michael E. Lachs, East Brunswick Township.

**Monmouth County:** Scott M. Kineavy, Tinton Falls Borough.

**Morris County:** Ryan R. Smith, Butler Borough.

**Ocean County:** Geraldine Ambrosio, Toms River Township; Brenda A. Tutela, Toms River Township.

The next C.T.A. examination is scheduled for March 27, 2010. The deadline to file applications for this exam is February 25, 2010. The filing fee is \$10. If you have any questions regarding this exam, please contact

Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site under "Assessor - Continuing Education and Recertification" at: [www.state.nj.us/treasury/taxation/lpt/localtax.shtml](http://www.state.nj.us/treasury/taxation/lpt/localtax.shtml) □

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

**January 1–**

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of 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 Statements 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.

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**Correction**

**2009 NJ-1040NR Instructions**

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

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

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



assessors' calendar - from page 3

- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- 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 office hours and appointment availability given to County Tax Administrator and posted in the municipal building.

**February 1 (before)-**

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

**February 1-**

- Form EA-4 (part A) for properties under Chapter 441 tax agreements

to be completed by assessor and forwarded to County Tax Administrator.

- 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 1 (after)-**

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

**February 10-**

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

of the date the 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-**

- Recipients of a property tax deduction for tax year 2009 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2009 income and anticipated income for 2010.
- County Tax Administrator to submit equalization table to: County Tax Board; each assessor; Division of Taxation; two copies to 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. □

**Practitioners' E-File Mandate**

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

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

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

**Criminal Enforcement**

Criminal enforcement over the past several months included:

- On July 17, 2009, Carol Lynn Palma, former Cliffside Park Deputy Clerk, was sentenced to five years in prison for her crimes. On April 17, 2009, suspended Cliffside Park Deputy Clerk, Carol Lynn Palma, was found

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*criminal enforcement - from page 4*

guilty on the following charges: third-degree failure to pay taxes when due (N.J.S.A. 54:52-9), third-degree filing or preparing false or fraudulent returns (N.J.S.A. 54:52-10), third-degree theft by failure to make required disposition of property (2C:20-9), and second-degree official misconduct (2C:30-2). This was the culmination of an extensive investigation conducted by the Bergen County Prosecutor's Office and the Office of Criminal Investigation. By way of criminal complaints, the Bergen County Prosecutor's Office charged that the defendant entered into a scheme whereby school board funds that should have been used for the education of children were instead diverted to Palma for election services. Invoices for these payments were virtually nonexistent. Vouchers for these payments were improper and the payments were not approved by

the Cliffside Park Board of Education. The six-count indictment against Palma charged that she submitted false purchase order(s), known as vouchers, for payment and illegally received and kept Board of Education funds which she was not entitled to receive. The indictment also charged that Palma filed false or fraudulent New Jersey State income tax returns for several years by failing to include these payments from Board of Education funds as income on her tax returns and that she failed to pay taxes due thereon.

- On August 5, 2009, Joseph Soccodato, a New Jersey resident and president of JVS Landscaping Company, tendered a guilty plea to a one-count accusation charging third-degree failure to remit New Jersey sales taxes, a violation pursuant to N.J.S.A. 54:52-9, and agreed to pay \$270,000 in back sales taxes. JVS, a landscaping business located in Westwood, also performed exterior residential holiday decoration services and snow removal. Mr. Soccodato paid the New Jersey Division of Taxation \$100,000 in a partial payment of sales tax owed from 1999 to 2006. The defendant is expected to tender another \$50,000 at the time of sentencing and enter into a consent judgment for the remaining balance.
- On August 26, 2009, a 75-count indictment was handed up in Bergen County resulting in the arrest of 27 individuals for various offenses related to leading organized crime, racketeering, money laundering, uttering forged instruments, filing fraudulent income tax returns, failing to

pay sales tax, stealing individual's identity, tampering with public records, filing fraudulent documents with the Motor Vehicle Commission, and engaging in corporate misconduct. The investigation began in March 2008 and initially focused on Ilya Igdalev, the owner and president of two wholesale car dealerships: Gemp, LLC and Best Buy Car Company. On Friday, June 27, 2008, detectives executed six search warrants related to the case. These search warrants were executed on the business of Gemp, LLC, located at 60 Railroad Avenue, Hasbrouck Heights, New Jersey; and the residence of its owner, Ilya Igdalev, 216 10th Street, Cresskill, New Jersey. As a result of the search warrants and related investigation, approximately \$750,000 in illegal proceeds and 28 high-end vehicles were seized. Igdalev also stole nearly \$100,000 in sales tax monies owed to the State of New Jersey. Igdalev masked his actual transaction between Gemp, LLC and the customer by issuing the customer a fictitious bill of sale from a Minnesota-based car dealership named Auto Point located at 9130 Olson Memorial Highway, Golden Valley, Minnesota. The fictitious bill of sale made the transaction falsely appear to be from Auto Point, an out-of-State car dealership, and no sales tax was required to be remitted from the out-of-State dealership to the State of New Jersey. The New Jersey resident customer, not the out-of-State auto dealership, would be required to satisfy the New Jersey sales tax obligations. Nonetheless, Igdalev did

### **Interest 6.25%**

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

The assessed interest rate history is listed below.

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



*criminal enforcement - from pg. 5*

collect the sales tax owed on the automobile transactions directly from his New Jersey resident customers and kept the tax despite his legal obligation to turn it over to the New Jersey Division of Taxation.

- On October 6, 2009, Jerry Smith of Sparta, New Jersey, pled guilty to second-degree misapplication of entrusted property and third-degree failure to pay New Jersey income taxes in Morris County Superior Court. Smith was treasurer of the Pleasant Hill Cemetery Association and a member of its board of trustees for more than 20 years. As treasurer, Smith had control of Pleasant Hill's finances and bookkeeping, including custody and control of income from plot sales and burials. In February 2008, the cemetery's superintendent found discrepancies in financial reports prepared by Smith and reported them to the board of trustees. The charges stem from a joint investigation by the Division of Criminal Justice and the Division of Taxation. In pleading guilty, Smith admitted that between January 2000 and February 2008, he misappropriated \$611,590 in cemetery association funds, which he used for his personal benefit. Smith

further admitted that in filing joint personal income tax returns with the State of New Jersey for himself and his wife for the years 2000 through 2008, he failed to report the misappropriated funds as income, resulting in the couple's failure to pay \$25,304 in taxes owed. Under the plea agreement, the State will recommend that Smith be sentenced to seven years in State prison. He must also pay restitution of \$607,590 to the Pleasant Hill Cemetery Association, representing the amount stolen less \$4,000 he previously repaid, and \$42,021 to the Division of Taxation, representing the taxes owed plus fines and penalties.

- On October 7, 2009, Namrata Patel of Lodi, New Jersey, pled guilty to charges related to her possession of untaxed cigarettes, which she was found selling from her vehicle. At the time of her arrest, June 2009, Office of Criminal Investigation agents seized \$3,700 in United States currency that was found in the vehicle and those funds were forfeited to the State per court order. The Woodbridge Municipal Court also imposed \$2,500 in fines, fees, and costs.
- On October 13, 2009, James Hankins Jr. pled guilty before

Superior Court Judge Francis R. Hodgson in Monmouth County to two counts of financial facilitation of a criminal activity and one count each of failing to file a tax return and failure to pay taxes on the proceeds. Investors, primarily in Ocean and Monmouth County, were bilked out of more than \$6 million from the \$18 million Ponzi scheme operated by Hankins. Hankins will be required to make restitution to his victims.

- On October 13, 2009, Tejinder Singh t/a Rising Sun Petroleum of Salem, New Jersey, pled guilty to a third-degree charge of counterfeiting cigarette tax stamps. He was sentenced to three years' supervised probation and the Court imposed \$5,000 in fines, fees, and costs. This investigation included the possession of sheets of counterfeit stamps as well as counterfeit-stamped product.
- On October 29, 2009, Yi Yong Zheng t/a New Hong Kong Restaurant of Jersey City, New Jersey, pled guilty to counts of possession of untaxed cigarettes, selling loose cigarettes, and failure to examine/return. Jersey City Municipal Court imposed a total of \$2,974 in fines, fees, and penalties. This is the second offense for this subject.

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### **Public Auction Information**

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[Auctions](#)." Select the name of the business for details about that auction.

### **Enforcement Summary Statistics Third Quarter 2009**

Following is a summary of enforcement actions for the quarter ending September 30, 2009.

• Bank Levies	426	• Seizures	26
• Certificates of Debt:		• Auctions	1
Total Number	965		
Total Amount	\$25,817,110		



*criminal enforcement - from page 6*

- On November 9, 2009, Sing Pun t/a Chuan Xing Kitchen, Inc. of Jersey City, New Jersey, was found guilty of possession of contraband cigarettes. The Jersey City Municipal Court imposed a total of \$2,341 in fines, fees, and penalties. This subject is a second offender.
- On November 13, 2009, Raj Kumar of South Plainfield, New Jersey, pled guilty to an accusation in the Middlesex Superior Court for third-degree possession of counterfeit-stamped cigarettes. Defendant must serve probation and was assessed a total of \$3,877.50 as a civil penalty for failure to examine.
- On November 13, 2009, Sai Fang Liao t/a New Golden Dragon of Jersey City, New Jersey, was

found guilty as a second offender in Jersey City Court. The Court imposed \$2,893.75 in fines, fees, and costs for possession of un-taxed goods (cigarettes & tobacco products). □

### **Tax Briefs**

**Corporation Business Tax Nonprofit Corporation and IRS Form 990** — An accountant wrote to the Division on behalf of a nonprofit corporation. The nonprofit annually files a Federal Form 990 with the Internal Revenue Service (IRS). The accountant asked whether a copy of the Federal Form 990, or an equivalent State tax (or information) return, must be filed with the Division of Taxation.

The Division responded that there is no requirement to file a copy of the Federal Form 990, or an equivalent

State tax (or information) return, with the Division of Taxation, assuming that the entity is truly organized and operated as a nonprofit entity.

The Division explained that the State of New Jersey does not have an “income tax” on “unrelated business income” like that imposed at the Federal tax level. Therefore, the Division of Taxation does not have a need for details on such income.

Certain charitable entities are required to register and file a copy of Federal Form 990 with the New Jersey Charities Registration Section, Consumer Affairs, Department of Law and Public Safety. For further information on the requirements of that office, visit their Web site at: [www.njconsumeraffairs.gov/ocp/charities.htm](http://www.njconsumeraffairs.gov/ocp/charities.htm) or call the Charities Registration Section at 973-504-6215.

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



#### **NJWebFile**

Use your computer to file your return. Visit [www.njfastfile.com](http://www.njfastfile.com) to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.



#### **NJE-File**

Use tax software or ask your tax preparer. See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.



[www.njfastfile.com](http://www.njfastfile.com)

**NJFastFile**  
the way to a faster refund.

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Nonprofit corporations formed in New Jersey must file an annual report with the Division of Revenue to properly preserve their status as a corporation. The annual report must be filed online at: [www.nj.gov/treasury/revenue/dcr/programs/ann\\_rpt.html](http://www.nj.gov/treasury/revenue/dcr/programs/ann_rpt.html)

### Gross Income Tax

#### **Charitable Remainder Trusts** —

A taxpayer wrote to the Division questioning the gross income tax treatment of a Charitable Remainder Trust (CRT) as described in the Division's Technical Bulletin [TB-64](#), Charitable Remainder Trusts. The Division responded that it has been the Division of Taxation's long-standing policy that income that is not distributed and which is

not deemed to be permanently and irrevocably set aside or credited to a charitable beneficiary is taxable income to the trust.

Technical Bulletin TB-64 was written as clarification, not to set forth any new policy regarding the New Jersey income taxation of CRTs. New Jersey's position on the income taxation of CRTs has been available since the inception of the income tax.

#### **Civil Union Couples and Filing Status** —

The Division received an inquiry concerning the gross income tax filing status for a same-sex couple for tax year 2007. In 2002, the couple had entered into a civil union under Vermont's then-existing civil union law. In 2004, the couple registered as domestic partners under the

New Jersey Domestic Partnership Act, P.L. 2003, c.246, which was signed into law and took effect on July 10, 2004.

The Division's publication [GIT-4](#), *Filing Status*, states:

If you were a member of a domestic partnership registered in New Jersey, you are not considered to be married or a partner in a civil union and you may not use the filing statuses "Married/CU couple, filing joint return" or "Married/CU partner, filing separate return."

However, the New Jersey Civil Union Act, which took effect on February 19, 2007, states that:

A civil union relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the civil union relationship was created, shall be valid in this State.

The Office of the Attorney General has reviewed the applicability of the Civil Union Act to those couples who may fall within these out-of-State relationships, regardless of the actual terminology used. It issued an opinion on February 16, 2007, stating that:

[G]overnment-sanctioned, same-sex relationships validly established under the laws of other States and foreign nations will be valid in New Jersey beginning on February 19, 2007.... The name of the relationship selected by other jurisdictions, however, will not control its treatment under New Jersey law. Rather it is the

## Sales Tax Information

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

[Streamlined Sales and Use Tax](#)

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

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

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

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

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

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

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nature of the rights conferred by another jurisdiction that will determine how a relationship will be treated under New Jersey law.

Also, the opinion specifically states that same-sex civil unions established under the laws of Vermont will be valid in New Jersey and treated as civil unions in New Jersey.

Accordingly, the Division advised the same-sex couple that they must file as married/CU couple, filing joint return or married/CU partner, filing separate return for tax year 2007. The GIT-4 publication language quoted above will be changed to clarify that where a same-sex couple had been registered under New Jersey's domestic partnership law and in addition, had entered into a "civil union-like" relationship conferred by another jurisdiction, that couple must file their New Jersey gross income tax return using the joint or separate filing statuses for married/CU couples for the tax year in which that relationship was established (but not earlier than tax year 2007, which was the year the New Jersey Civil Union Act took effect).

**Discharge of Indebtedness and IRC Section 108(i)** — A taxpayer inquired about the New Jersey gross income tax treatment of Federal IRC Section 108(i) as enacted under the American Recovery and Reinvestment Tax Act. IRC Section 108(i) allows corporate taxpayers (including pass-through entities such as partnerships and subchapter S corporations) engaged in the conduct of a trade or business to defer the recognition of income from the discharge of indebtedness for Federal income tax purposes.

For New Jersey gross income tax purposes, the New Jersey Tax Court in *Weintraub v. Director, Division of Taxation*, 19 N.J. Tax 65 (2000) held that income from the discharge of business or personal indebtedness is not taxable for New Jersey gross income tax purposes. Additionally, N.J.S.A. 54A:8-3(c) states that a taxpayer's accounting method under the Gross Income Tax Act shall be the same as the accounting method for Federal income tax purposes. Therefore, taxpayers should not report income from IRC Section 108(i) discharge of indebtedness on the New Jersey gross income tax return for any tax year.

**Partnership Contribution to Pension Plan** — The Division received an inquiry from an accountant asking about the gross income tax treatment of contributions made by the partnership to a pension plan. More specifically, the pension contributions in question were made on behalf of the partners, not "employees" of the partnership.

The Division replied that the contributions are included in the distributive share of partnership income and not deductible by the partnership unless the amounts are a contribution to a qualified 401(k) plan. Therefore, to determine the correct treatment of pension contributions for the partners, the accountant or tax practitioner must have knowledge

of the Federal IRC section under which the plan was formed.

If the plan was formed as a Section 401(a) "Keogh" pension plan, the contribution amounts for the partners cannot be deducted and must be included in distributive share of partnership income. In other words, for calculating the amount to enter on any gross income tax return lines, there can be no deduction for the partners' Keogh plan contributions.

On the other hand, if the plan was formed as a Section 401(k) pension plan, the contribution amounts for the partners are deductible for gross income tax purposes, up to the limits that are deductible for Federal income tax purposes. (See N.J.S.A. 54A:6-21.) For purposes of completing New Jersey gross income tax returns, the 401(k) contributions are entered on the line for "Partner's 401(k) Contribution" in Part II of Schedule NJK-1, which is a subtraction taken for determining the distributive share of partnership income amount to transfer to the partnership income line on the individual's gross income tax return.

For more information on the correct tax treatment of contributions for "employees" (nonpartners), see the employers' instruction booklet (Form NJ-WT) available on the

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Division's Web site at: [www.state.nj.us/treasury/taxation/prntempl.shtml](http://www.state.nj.us/treasury/taxation/prntempl.shtml)

## Sales and Use Tax

**Installation of Garage Door Openers** — The Division received an inquiry from a garage door business regarding the sales tax treatment of the installation of a new garage door opener system. The Division responded by explaining that the service of installing a new garage door opener system is exempt from sales tax as an exempt capital improvement service.

The Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to tax. N.J.S.A. 54:32B-3(b)(4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property on real property is subject to tax. N.J.S.A. 54:32B-3(b)(4).

A "capital improvement" occurs when equipment is permanently affixed to real property (land or buildings) and becomes a permanent part of the real property. To qualify as a capital improvement, the installation must increase the capital value of the

property or significantly increase the useful life of the property.

If the work performed on the real property results in an exempt capital improvement, the installer does not collect sales tax on the labor as long as the customer provides the installer with a properly completed Certificate of Exempt Capital Improvement (Form ST-8). Also, if the business installs a new garage door opener system as a replacement of an old or defective system, this installation also qualifies as an exempt capital improvement.

The garage door opener system being installed is tangible personal property that is subject to sales tax when purchased from the supplier whether by the installer or by the property owner. The installer is a contractor and must pay sales or use tax when purchasing equipment to be installed on the real property. The installer may not charge the property owner sales tax on the cost of the equipment. If the property owner purchases the garage door opener directly from the supplier, the property owner must pay the sales tax on the equipment. □

## In Our Courts

**Gross Income Tax  
Retroactive Application of Rate  
Change** – *Demuth v. Director,  
Division of Taxation*, New Jersey

Superior Court, Appellate Division, decided October 28, 2009.

In June 2004, the New Jersey Legislature amended N.J.S.A. 54A:2-1 to increase the tax rate from 6.37% to 8.97% on gross income of \$500,000 or more and retroactively applied the rate to January 1, 2004. In May 2004, Mr. Demuth made three separate stock sales that resulted in a net gain of \$3,269,288.

Mr. Demuth filed his 2004 New Jersey gross income tax return in April of 2005 reporting the income from the stock sales and determined the tax at the new rate of 8.97%. In August 2006, Mr. Demuth amended his 2004 New Jersey gross income tax return. On the amended return, Mr. Demuth determined the tax on the stock transactions at the 6.37% rate. He believed that the new tax rate could not be retroactively applied and requested a refund. The refund was denied and the denial was upheld in Tax Court. Mr. Demuth relied on the New Jersey Supreme Court decision in *Oberhand v. Director, Division of Taxation*, *supra*, 193 N.J. at 573 citing "manifest injustice." The New Jersey Superior Court, Appellate Division, upheld the Tax Court decision and differentiated Mr. Demuth's case from *Oberhand* by stating:

That matter involved decedents who had structured their estate plans on the basis of the tax law then in effect. Subsequently, the law changed in a manner which created a tax liability where previously none had existed. In *Oberhand*, no tax would have been due but for the amendment. Here, plaintiff's sales of this stock were always taxable events.

## Current Amnesty Programs

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

PA April 26 – June 18 [www.revenue.state.pa.us/](http://www.revenue.state.pa.us/) ("Hot Topics")

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**Sales and Use Tax**

**Sales Tax Refund** – *Home Depot, U.S.A. Inc., v. Director, Division of Taxation*, New Jersey Superior Court, Appellate Division, decided on October 27, 2009.

The taxpayer appealed from a summary judgment dismissal by the New Jersey Tax Court challenging the denial of a refund claim for sales tax paid on uncollectible credit card purchases. The taxpayer is a “conduit for credit card applications and the collecting and remitting of New Jersey sales tax.” For the involved period, the taxpayer made a business decision to outsource its accounts receivable to three finance companies. The taxpayer paid service fees under agreements with these finance companies which included projected bad debt loss incurred by the finance companies. This element was not identified in any of the agreements nor was there any evidence identifying or allocating part of the service fee to any other cost or item.

The Appellate Division confirmed the Tax Court’s denial of their sales tax refund claim on the basis that the claim was barred under the provisions of N.J.A.C. 18:24-23.2(a) (2), the “regulation that denies any refund of sales tax where a vendor has collected from a customer an amount at least equal to the amount of sales tax paid.” Further, it was stated that the taxpayer’s “proofs did not establish that it suffered any losses on credit card transactions due to bad debts as a result of its payment of unidentified and unallocated service fees to the finance companies.”

It was further found that the taxpayer recovered from the finance companies an amount more than sufficient to pay the sales tax during the refund period. Therefore, even if the customer eventually defaulted on the credit card obligation the taxpayer received the same payment in conjunction with the transaction and paid the same service fee to the finance companies. □

**In Our Legislature**

**Gross Income Tax**

**New Jersey Lung Cancer Research Fund** — P.L. 2009, c.172, signed into law on January 11, 2010, establishes the New Jersey Lung Cancer Research Fund and allows voluntary contributions to the fund by taxpayers on State gross income tax returns. Monies in the fund will be appropriated annually to the State Commission on Cancer Research.

This charitable check-off will be available to taxpayers wishing to donate to the fund for tax year 2011 and thereafter.

**Employer Licenses can be Suspended or Revoked for Repeated Violations of State Wage, Benefit, and Tax Laws** — P.L. 2009, c.194 was signed into law on January 14, 2010, and takes effect on the 180th day after enactment.

This law significantly expands the powers of the Commissioner of the Department of Labor and Workforce Development, allowing the suspension or revocation of certain licenses held by employers for failure to adhere to State wage, benefit, and tax laws, including violations of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). The Act defines “license” to mean any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State.

In addition, the new law provides that the Commissioner may suspend or revoke the licenses of clients of employee leasing companies.

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## 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**

**Credit Card\***

**1-800-2PAYTAX**

[www.officialpayments.com](http://www.officialpayments.com)

\* Fee of 2.49% of tax payment applies.

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## **Local Property Tax**

***Gloucester County Property Assessment Pilot Program*** — P.L. 2009, c.118, signed into law on October 1, 2009, and effective immediately, establishes a pilot program in Gloucester County for the transfer of the municipal property assessment function to a county assessor. This Act requires the appointment of a county assessor over a three-year period. In addition, transfer of the assessment function requires the revaluation of all municipalities within the county to ensure uniformity of assessment throughout the county-wide assessment district.

The Act requires the Local Unit Alignment, Reorganization, and Consolidation Commission to study this pilot program and, in consultation with the Director of the Division of Taxation, issue a report no later than February 1 of the sixth year of the pilot program.

Hiring preference criteria are provided with regard to deputy assessor positions from the ranks of currently serving municipal tax assessors or deputy tax assessors.

All current or pending assessment and abatement programs and agreements under the Long Term Tax Exemption Law, P.L. 1991, c.431 (N.J.S.A. 40A:20-1 et seq.), and the Five-Year Exemption and Abatement Law, P.L. 1991, c.441 (N.J.S.A. 40A:21-1 et seq.), remain in effect in the pilot county.

***Reassessment of Certain Real Property by Assessor and Appeal of Assessment by Certain Property Taxpayers*** — P.L. 2009, c.251, signed into law on January 16, 2010, and effective immediately,

eliminates parts of the notice and approval requirements that a tax assessor must satisfy. The Act increases the statutory threshold for bringing a property tax appeal directly to Tax Court from an assessed value of \$750,000 to an assessed value of at least \$1,000,000. The Act would also modify the reporting requirements and criteria the assessor must provide to the Division of Taxation and eliminates the 45-day time frame by which the County Board of Taxation or the Division of Taxation must approve the compliance plan.

***Forest Stewardship Plan*** — P.L. 2009, c.256 was signed into law on January 17, 2010. This Act directs the Department of Environmental Protection (DEP) to establish a forest stewardship program for owners of forest land. The Act further directs the DEP to establish a forest certification program and a cost share incentive program, to be known as the New Jersey Forest Stewardship Incentive Program.

The Act limits local government's ability to enact any ordinance, rule, or resolution as appropriate that conflicts with, prevents, or impedes the implementation of a forest stewardship plan. Also, the Farmland Assessment Act of 1964 is now expanded to provide differential property tax assessment to owners of forest land who implement an approved forest stewardship plan.

## **Miscellaneous**

***State Tax Expenditure Report*** — P.L. 2009, c.189, signed into law on January 13, 2010, requires that the Governor's annual budget message include a State tax expenditure report.

State tax "expenditure" means those revenue losses attributable to

provisions of State tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit, preferential tax rate, or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions, or property from the liability which would be presumed to exist without the State tax expenditure.

The Division of Taxation is required to advise and assist the Governor in the preparation of the State tax expenditure report.

## **Sales and Use Tax**

***Natural Gas and Utility Service Used For Cogeneration*** — P.L. 2009, c.240, signed into law on January 16, 2010, and effective immediately, clarifies the meaning of "contiguous property" for the purposes of Section 26 of the Sales and Use Tax Act, P.L. 1997, c.162 (N.J.S.A. 54:32B-8.46). This new law removes certain limitations on the exemption from the tax imposed under the Sales and Use Tax Act for natural gas and utility service used for cogeneration. □

## **Tax Calendar**

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

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not

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listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2009](#)    [2010](#)

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

[2009](#)    [2010](#)

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

[2009](#)    [2010](#)   



*important  
phone  
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- ..... 609-826-4400
- Homestead Rebate Hotline
- for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline
- for Tenants .....1-888-213-8623
- Property Tax Reimbursement
- Hotline.....1-800-882-6597
- Earned Income Tax Credit
- Information..... 609-292-6400
- NJ TaxFax ..... 609-826-4500
- Business Paperless Telefiling
- System .....1-877-829-2866
- Speaker Programs ..... 609-984-4101
- Alcoholic Bev. Tax ..... 609-633-7068
- Corp. Liens, Mergers, Withdrawals
- & Dissolutions..... 609-292-5323
- Director’s Office ..... 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
- Refunds ..... 609-633-8878
- Public Utility Tax..... 609-633-0013