

# New Jersey State Tax News

## Winter 1996

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### TeleFile Program Expands

As part of the Division of Taxation's ongoing efforts to modernize and streamline the tax filing process, the TeleFile program will be expanded Statewide in the 1996 tax season. This expansion will allow more than 1 million residents across the State to file their 1996 New Jersey income tax return by Touch-tone telephone. These residents will be mailed NJ TeleFile packets (in lieu of traditional NJ-1040 packets) in early January 1997.

TeleFile offers New Jersey residents the fastest, easiest and most convenient method of filing their State tax return. The TeleFile process consists of completing a brief worksheet and making a short phone call. The call can be made from any Touch-tone phone within the State, at any time of day. Best of all, the Division of Taxation will mail refund checks for TeleFile returns within two weeks!

Taxpayers will "sign" their return by providing a voice signature (i.e., speak their name and social security number). In addition, the acquisition of new technology will allow NJ TeleFile to accept returns from eligible taxpayers who moved since filing their 1995 New Jersey tax return. These taxpayers will provide their new address during their TeleFile call.

The 1996 TeleFile season will begin on

Wednesday, January 15, 1997 and continue through Tuesday, April 15, 1997. NJ TeleFile will accept returns 24 hours a day during the filing season.

Any taxpayer who does not receive an NJ TeleFile packet may call NJ TeleFile at 888-235-FILE (toll-free), beginning on January 15, 1997, and find out if he/ she is eligible to TeleFile. Eligible callers will be mailed an NJ TeleFile packet upon request. For more information about NJ TeleFile, call the Tax Hotline at 609-588-2200. □

### important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500

Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

## Cooperative Agreement on Domicile

Eleven northeastern states and the District of Columbia have ratified a cooperative agreement concerning the determination of an individual's domicile and/or residency and the multiple taxation of income that often results from conflicting determinations by the various states.

The historic agreement was signed by officials of the 12-member North Eastern States Tax Officials Association (NESTOA) at the group's annual meeting in Newport, Rhode Island.

The accord addresses the problem of the multiple taxation of individuals who are deemed to be domiciliaries of more than one state, and of individuals who are determined to be domiciliaries of one state and statutory residents of another state.

"The basic cause of these problems and disputes over the years has been the fact that different states in the region use different methods and criteria to determine where a person lives for the purposes of taxation," said Richard D. Gardiner, the Director of the New Jersey Division of Taxation and the current president of NESTOA.

"It's often a very subjective judgment call on the part of state tax agencies, and because each state involved makes its own determination, people often end up paying taxes on the exact same income to two or three different states, often without receiving any offset credits from any of them.

"With this historic multi-state agreement, that should change here

in the northeast, and that will be good news for many taxpayers," Gardiner said.

He said the NESTOA members, recognizing both the unfairness of the current situation to individuals and the tax compliance problems it generates, have joined together to formulate a solution which benefits both the individuals and the states.

The NESTOA agreement promotes uniformity among states in terms of tax policy relating to these individuals, and was predicated on three basic goals:

- That individuals should only be deemed to be a domiciliary of one state for any given period;
- That criteria used by the states in determining an individual's domicile should be as uniform as possible; and
- That uniform sourcing rules should be applied by the states to reduce or eliminate multiple state taxation of the same income.

Under the accord, the tax administrators have agreed to incorporate the following concepts in their tax policy relating to affected individuals:

- Apply uniform primary criteria for determining a taxpayer's domicile or residency.
- Implement an informal appeals process which would be available to taxpayers involved in a domicile dispute with multiple member states.
- Apply uniform rules in the sourcing of income and the

calculation of credits for taxes paid to other states.

- Establish a system of intrastate sharing of data and compliance techniques in the area of domicile and statutory residencies.
- Publish an informational pamphlet outlining the agreement and contact persons in each state's tax administration agency.

*continued on page 3*

## New Jersey State Tax News

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**Division of Taxation Director:**  
Richard D. Gardiner

**News Coordinators for This Issue:**

<i>Compliance</i>	Marita Sciarrotta
<i>Criminal Investigation</i>	Susan Kamp
<i>Field Audit</i>	Frank Higgins
<i>Legislative Analysis</i>	Jerry Byrne
<i>Office Audit</i>	Josephine Comfort
<i>Property Admin.</i>	Gary Amerine
<i>Tax Services</i>	Arthur Guenther
<i>Technical Services</i>	Allette Wooley

**Contributors:** Harris Adams, Dorothy M. Aicher, Gary Amerine, Elizabeth S. Ashton, Michelle Dalbo, Susan Dobay, Lee J. Evans, Joseph A. Flynn, Richard Gosline, John Hussey, Denise M. Lambert, Peter Lowicki, Howard Luse, Colleen M. McAllister, John M. Metzger, Joanne M. Monte, Carolyn J. Osowski, S. Curtis Seifert, Jennifer Sliney, Mitchell C. Smith, Carol M. Trovato.

**Editor:** Linda B. Hickey

*domicile agreement - from page 2*

In states in which tax statutes and regulations do not currently permit the adoption of such methods, the tax administrators have agreed to make every reasonable attempt to encourage the necessary legislative or regulatory changes to permit the implementation of the agreement.

The NESTOA member states believe that this agreement addresses a long-standing problem recognized by both taxpayers and the states, and provides for an equitable solution for both, Gardiner said.

NESTOA includes the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware and Maryland and the District of Columbia. □

### ***Attempt to Bribe Division Auditor***

As a result of a criminal investigation undertaken jointly by the Division of Taxation and the Division of Criminal Justice, a Newark tavern owner has been charged with two counts of attempted bribery in connection with a liquor audit of his business.

The tavern owner, Benjamin Hernandez, was arraigned in Superior Court in Essex County on September 24. He was released on his own recognizance, pending action by a State grand jury.

Richard D. Gardiner, Director of the Division of Taxation, explained that on August 29, an auditor assigned to the Division's Field Audit Branch in Elizabeth was conducting an audit at Benji's Place at 439 Central Avenue in Newark as part of the Division's on-going review of liquor licensees throughout the State.

The auditor reported that Hernandez, the owner of the tavern, attempted to give him a \$100 bill. The auditor reported that he told Hernandez he would not take the money, left the bar, and reported the incident to his supervisor.

The Division of Taxation's Internal Security Unit and the Division of Criminal Justice's Corruption Bureau were notified and cooperatively began an investigation.

The following week, at the direction of investigators, the auditor met with Hernandez and accepted \$1,000 in cash as the first installment of a \$2,000 payment to reduce the tax liability. On September 20, the two met again and Hernandez paid the additional \$1,000. He was then arrested.

Gardiner commended the two investigative units and the auditor on their efforts. "This incident reinforces the message that the Division takes these matters very seriously. I'm very proud of the auditor, who did exactly what he was trained to do, and of the investigators who did an excellent job," he said. □

### **GROSS INCOME TAX *Property Tax Deduction/Credit Calculation***

Beginning with tax year 1996, eligible homeowners and tenants who pay property taxes, either directly or through rent, are entitled to either a deduction or a credit on their State income tax return. For the 1996 tax year, eligible residents may deduct 50% of their first \$5,000 of property taxes due and paid or \$2,500, whichever is less. For tenants, 18% of rent paid during the year is considered property taxes paid. As a minimum benefit to taxpayers, the law provides for a refundable credit of \$25.

To be eligible for the property tax deduction or credit:

1. You must have been domiciled and maintained a principal residence as a homeowner or tenant in New Jersey during 1996; and
2. Your principal residence, whether owned or rented, must be subject to local property

*continued on page 4*

### ***Gardiner Elected NESTOA President***

On October 2, 1996, at the 18th Annual Conference of the North Eastern States Tax Officials Association (NESTOA) in Newport, Rhode Island, the Board of Commissioners elected New Jersey Tax Director Richard D. Gardiner as President of the Association for the coming year.

*deduction/credit - from page 3*

taxes, and property taxes must have been paid on that residence either as actual property taxes or through rent; and

- 3. Your rented dwelling must have its own separate kitchen and bath facilities; and
- 4. Your gross income during 1996 must be more than \$7,500 (\$3,750 if your filing status is married, filing separate return) or you or your spouse were 65 years of age or older or blind or

disabled at the end of the tax year.

To determine the amount of your property tax deduction and whether you will receive a greater tax benefit by claiming the property tax deduction or taking the \$25 credit, you should complete Schedule 1 (on Page 3 of Form NJ-1040) unless you claim credit for taxes paid to another jurisdiction. See Example 1 below. If you claim credit for taxes paid to another jurisdiction, complete Schedule A and Worksheet F to make that determination.

Taxpayers who claim a credit for taxes paid to another jurisdiction will complete the newly revised Schedule A to determine the amount of that credit. By utilizing two columns, A and B, the new Schedule A permits taxpayers to calculate a credit for taxes paid to another jurisdiction both with a property tax deduction and also without a property tax deduction. After completing Schedule A, Worksheet F must be completed to determine whether taxpayers will

*continued on page 5*

### EXAMPLE 1

A single taxpayer who lives and works in New Jersey, does not claim credit for taxes paid to another jurisdiction and is eligible for a property tax deduction or credit would complete Schedule 1 as follows:

<b>Schedule 1 – Property Tax Deduction/Credit</b>			
<i>Complete both columns of this schedule to find out whether the Property Tax Deduction or the Property Tax Credit is better for you. Do not complete this schedule if you claim a credit for taxes paid to other jurisdictions. Complete Schedule A.</i>			
1. <b>Property Tax.</b> Enter the property tax you paid in 1996. Renters enter 18% of rent paid in 1996. <b>See instructions.</b>	1.		4,000
2. <b>Property Tax Deduction.</b> Enter 50% of Line 1 (Line 1 x .50) or \$2,500, whichever is less. Also enter this amount on Line 4 below. <b>See instructions.</b>	2.		2,000
3. Taxable Income (Copy from Line 34 of your NJ-1040) .....	3.	25,600	3. 25,600
4. Property Tax Deduction (Copy from Line 2 of this schedule) .....	4.	2,000	4. – 0 –
5. Taxable Income After Property Tax Deduction (Subtract Line 4 from Line 3) .....	5.	23,600	5. 25,600
6. Tax you would pay on Line 5 amount (Go to Tax Tables or Tax Rate Schedules and enter amount) .....	6.	343	6. 378
7. Now, subtract Line 6, Column A from Line 6, Column B and enter the result here .....	7.		35
<b>Is this amount \$25 or more?</b>			
<input checked="" type="checkbox"/> Yes. You receive a greater tax benefit by taking the Property Tax Deduction. Enter the amount on Line 4 of this worksheet on Line 35 of Form NJ-1040. Make no entry on Line 43 of Form NJ-1040 and complete the balance of the return.			
<input type="checkbox"/> No. You receive a greater tax benefit by taking the Property Tax Credit. Enter \$25 on Line 43 of Form NJ-1040. Make no entry on Line 35 of Form NJ-1040 and complete the balance of the return. <b>See instructions.</b>			

Since Line 7 of Schedule 1 is \$25 or more, this taxpayer will receive a greater tax benefit by claiming the property tax deduction on Line 35 of the tax return rather than the credit on Line 43. If the amount of tax reduction on Line 7 of Schedule 1 were less than \$25, the taxpayer would receive a greater tax benefit by taking the property tax credit.

*example 2 on page 6*

*deduction/credit - from page 4*

receive a greater benefit from claiming the property tax deduction or taking the property tax credit. See Example 2 on page 6.

Instructions for completing the new schedules and worksheet are contained in the 1996 New Jersey Resident Income Tax Return Instruction Booklet, Form NJ-1040-P.

Eligible taxpayers or their spouses who are 65 years of age or older or blind or disabled at the end of the tax year, and who are not required to file Form NJ-1040 because gross income is \$7,500 or less (\$3,750 if your filing status is married, filing separate return), are entitled to a property tax credit in the amount of \$25 (\$12.50 if your filing status is married, filing separate return). These taxpayers should file a completed Homestead Property Tax Rebate Application, Form HR-1040, and the credit

will automatically be sent with their homestead rebate check. □

**GROSS INCOME TAX**  
**Nonresident**  
**Composite Return**

Proposed regulations eliminate the need for certain nonresidents to file an individual New Jersey nonresident income tax return (Form NJ-1040NR) by offering them the option of filing a Nonresident Composite Return (Form NJ-1080-C). The regulations permit nonresident individual members of professional athletic teams, general partnerships, limited liability partnerships, limited liability companies, New Jersey electing S corporations, and estates and trusts to participate in a composite return.

Under the proposed regulations, beginning with tax year 1996, any of the above entities doing business, conducting activities in New Jersey or having income from or connected with sources within New Jersey may file a composite return on behalf of its qualified nonresident individual members. A nonresident may participate in more than one New Jersey composite return provided they meet the requirements for qualified nonresidents listed below. Nonresidents who are not eligible to participate in the composite return must continue to file a Form NJ-1040NR.

The filing of a composite return will be considered a group of separate returns meeting the individual filing requirements for each qualified electing nonresident participant as required by the New Jersey Gross Income Tax Act. However, the Director reserves the

right to require the filing of an NJ-1040NR by any individual who participates in a composite return.

To qualify, a nonresident must elect to participate in the composite return and satisfy all of the following conditions: the participant must be a nonresident for the entire taxable year; maintain a permanent place of abode outside New Jersey for the entire tax year; file on a calendar year basis (January 1 – December 31); not have New Jersey source income other than what is reported on the NJ-1080-C; waive the right to claim any New Jersey personal exemption, credit or deduction and agree to have the tax calculated directly on this income at the highest tax rate in effect for single taxpayers (currently 6.37%); and complete and deliver to the filing entity Form NJ-1080-E (Election to Participate in a Composite Return) prior to the filing of the composite return.

Election to participate in a composite return must be made annually. This election is binding on the participant's heirs, representatives, assigns, successors, executors and administrators, and is an express consent to personal jurisdiction in New Jersey for New Jersey personal income tax purposes. In addition, the electing participant may not revoke an election to be included in the composite return or make an election to be included in the composite return after April 15 following the close of the tax year.

*continued on page 7*

**Interest 11.75% for Fourth Quarter**

The interest rate assessed on amounts due for the fourth quarter of 1996 is 11.75%.

The assessed interest rate history for the last eight quarters is listed below.

<b>Effective Date</b>	<b>Interest Rate</b>
1/1/95	11.5%
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%

continued from page 4

**EXAMPLE 2**

A single taxpayer who lives in New Jersey and works in another state and is eligible for a property tax deduction or credit would complete Schedule A and Worksheet F as follows:

<b>Schedule A CREDIT FOR INCOME OR WAGE TAXES PAID TO OTHER JURISDICTION</b>		If you are claiming a credit for income taxes paid to more than one jurisdiction, a separate Schedule A must be enclosed for each.				
<b>A COPY OF OTHER STATE OR POLITICAL SUBDIVISION TAX RETURN MUST BE ENCLOSED WITH FORM NJ-1040</b>						
1.	Income actually taxed by other jurisdiction during tax year (indicate name <u>Phila, PA</u> ) (DO NOT combine the same income taxed by more than one jurisdiction) (The amount on Line 1 cannot exceed the amount shown on Line 2)	1.	37,000			
2.	Income subject to tax by New Jersey (From Line 27, Form NJ-1040) .....	2.	38,000			
3.	Maximum Allowable Credit Percentage <u>1 37,000</u> (Divide Line 2 into Line 1) <u>2 38,000</u>	3.	97 %			
<b>IF YOU ARE NOT ELIGIBLE FOR A PROPERTY TAX BENEFIT ONLY COMPLETE COLUMN B.</b>		<b>COLUMN A</b>		<b>COLUMN B</b>		
4.	Taxable Income (after Exemptions and Deductions) from Line 34, Form NJ-1040	4.	37,000	4.	37,000	
5.	Property Tax and Deduction Enter property tax or 18% of rent due and paid in 1996. See instructions page 26. Eligible amount (the lesser of \$2,500 or 50% of Box A) See instructions page 26.	A. 864	5.	432	5.	- 0 -
6.	New Jersey Taxable Income (Line 4 minus Line 5)	6.	36,568	6.	37,000	
7.	Tax on Line 6 amount (From Tax Tables or Tax Rate Schedules)	7.	598	7.	613	
8.	Maximum Allowable Credit (Line 3 times Line 7)	8.	580	8.	595	
9.	Credit for Taxes Paid to Other Jurisdiction (Lesser of Line 8 or actual tax paid)	9.	580	9.	595	
<ul style="list-style-type: none"> <li>♦ If you are not eligible for a property tax benefit, enter the amount from Line 9, Column B, on Line 38, Form NJ-1040. Make no entry on Lines 35 or 43, Form NJ-1040.</li> <li>♦ If you are eligible for a property tax benefit, you must complete Worksheet F on page 27 to determine whether you receive a greater benefit by claiming a property tax deduction or taking the property tax credit.</li> </ul>						

<b>Worksheet F Which Property Tax Benefit to Use</b>					
		<b>COLUMN A</b>		<b>COLUMN B</b>	
1.	Tax. Enter amounts from Line 7, Schedule A, Columns A and B here .....	1.	598	1.	613
2.	Credit for Taxes Paid to Other Jurisdictions. Enter amounts from Line 9, Schedule A, Columns A and B here. If you completed more than one Schedule A, enter the total of all Line 9 amounts (Columns A and B) in the corresponding column.....	2.	580	2.	595
3.	Balance of Tax Due. Subtract Line 2 from Line 1 in each column .....	3.	18	3.	18
4.	Subtract Line 3, Column A from Line 3, Column B and enter result here .....			4.	0
<ul style="list-style-type: none"> <li>♦ If Line 4 is \$25 or more (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse), you receive a greater benefit by taking the property tax deduction. Enter the amount from Line 5, Column A, Schedule A on Line 35, Form NJ-1040; and make no entry on Line 43, Form NJ-1040; and enter the amount from Line 2, Column A above on Line 38, Form NJ-1040.</li> <li>♦ If Line 4 is less than \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse), you receive a greater benefit from the property tax credit. Enter \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse) on Line 43, Form NJ-1040; make no entry on Line 35, Form NJ-1040; and enter the amount from Line 2, Column B on Line 38, Form NJ-1040.</li> <li>♦ If Line 4 is less than \$25 (\$12.50 if filing status is married, filing separate return and you maintain the same residence as your spouse) and you are filing a part-year return, see instructions on page 4.</li> </ul>					

Since Line 4 of Worksheet F is less than \$25, this taxpayer will receive a greater tax benefit by claiming the property tax credit on Line 43 of the tax return rather than the deduction on Line 35 and using the figures in Schedule A, Column B to claim a credit for taxes paid to other jurisdictions. If the amount of tax reduction on Line 4 of Worksheet F were \$25 or more, the taxpayer would receive a greater tax benefit by taking the property tax deduction.

*nr composite return - from page 5*

Written permission from the Division of Taxation to file a composite return will no longer be required. The NJ-1080-C is due on April 15 following the close of the tax year unless a valid extension of time to file is requested using Form NJ-630. An extension of time to file will be granted on a composite basis only. Extension requests must be filed under the filing entity's Federal identification number. Any composite return which is filed on behalf of 25 or more participants must be filed on diskette or by using magnetic media.

Each composite return must include each electing participant's name, social security number, address, share of income derived from or connected with New Jersey sources, gross income tax attributable to the participant's share of New Jersey source income, and a copy of the applicable schedule (NJK-1, NJ-K-1, K-1 or W-2). In addition, the return must include the name, address and social security number of all members who are not participating in the composite return. □

## **CORPORATION TAX** ***S Corporation Reform***

On August 20, 1996, the Small Business Job Protection Act of 1996 was signed into law by President Clinton. As a result of this legislation, several changes have been made to the rules which

must be followed by S corporations. The majority of these changes apply to tax years beginning after December 31, 1996. Highlights of these changes are stated below.

The maximum number of eligible shareholders of an S corporation has been increased from 35 to 75. Also, a qualified retirement plan trust or 501(c)(3) charitable organization may be an S corporation shareholder.

After 1996, certain financial institutions may elect to become S corporations. An S corporation may now own a controlling interest in a C corporation; however, it may not file a consolidated return with its affiliates. Also, an S corporation may own 100% of the stock of a qualified S subsidiary.

For tax years beginning after December 31, 1996, basis adjustments for distributions during the year are made before applying the loss limitation for the year. Distributions reduce the adjusted basis for determining the allowable loss, but the loss does not reduce the adjusted basis for purposes of fixing the tax status of distributions.

Changes made to the Federal S legislation as a result of the Small Business Job Protection Act will impact New Jersey's tax treatment of S corporations for both Corporation Business Tax and Gross Income Tax purposes. Such changes are currently under review by the Division and as further information is developed, it will be published in subsequent issues of the *New Jersey State Tax News*. □

## **GROSS INCOME TAX** ***Head of Household Filing Status***

At N.J.S.A. 54A:8-3.1 subsec. b. and c., the law discusses taxpayers filing New Jersey returns with the same filing status as they do for their Federal returns. If no Federal return is filed, the New Jersey taxpayer would use the same filing status they would have used if they had filed a Federal return.

For the "head of household" filing status to be used on the Federal return, the individual must not "be married" at the year end, not be a "surviving spouse" and furnish, by more than 50%, the cost of maintaining his/her home as the principal place of abode for a dependent child, grandchild, or other dependent listed in the Internal Revenue Code, for more than 50% of the year.

In a discussion of "certain married individuals living apart," the Internal Revenue Code indicates that an individual shall be considered as "not married" if the taxpayer's spouse was not a member of the household during the last six months of the tax year.

If a taxpayer:

1. Did not file a joint return with their spouse;
2. Did maintain a home for more than half the year that was the principal residence for the qualifying dependent(s);
3. Did solely support the qualifying dependent(s), thus furnishing more than 50% of their support; and

*continued on page 8*

*head of household - from page 7*

4. Did not have the spouse living in the home during the last 6 months of the tax year;

the taxpayer qualifies to file the New Jersey return using the "head of household" filing status even though still married. □

### **GROSS INCOME TAX** ***Estate or Trust*** ***Income***

Taxpayers have inquired about the proper return line on which to report income from an estate or trust and proper calculation of the amount of income from the estate included on the line.

Some of the specifically enumerated items of taxable income indicated in the statute are not given separate lines on the NJ-1040 return. The "Other" line was provided for the reporting of:

1. Amounts received as Prizes and Awards.
2. Scholarships and Fellowships which are not excluded by statutory provisions.
3. Rental value of a residence paid by an employer to provide a home.
4. Income in Respect of a Decedent.
5. Net gains or income derived through Estates and Trusts.

All of the income amounts from each of the five above are added together and entered on the "Other" line of the return. If any of the five is a loss, the loss can not be used to reduce any other income which will be included in

the "Other" line total or any other income line found on the rest of the return.

The taxpayer receiving income from an estate and/or trust will calculate the income to be included on his return by using the information on the Federal K-1 furnished to him as a beneficiary. The income reported from estates and/or trusts is a net figure derived from the items listed on the Federal K-1. Interest, dividends, capital gains, business or partnership income, etc. shown on the K-1 will be netted together before the income is reported as "Other" income.

If any individual had the right to receive income that a deceased person would have received had he lived, and the income was not included on the decedent's final return, the recipient must report the income on his own return as income in respect of a decedent, an inclusion on the "Other" line.

Instructions for the 1994 and 1995 NJ-1040 returns had instructed taxpayers to report the income from estates and/or trusts on multiple return lines. For 1996, the Form NJ-1040 instructions advise taxpayers to include the net income from estates and/or trusts as "Other" income. □

### **GROSS INCOME TAX** ***1996 Package NJX***

On September 24, 1996, subscribers to the 1995 version of *Package NJX* were mailed the order form for the *1996 Package NJX*. This year's edition will be printed in loose-leaf format, hole punched to fit into a standard 3-ring binder. The price of the publication remains \$7.00 per copy.

*Package NJX* binders are also available at \$7.00 each. Prices include shipping and handling. If you haven't yet ordered the *1996 Package NJX* and/or *NJX* binder, and wish to do so, complete the order blank in this issue, and send it with your payment to:

**NEW JERSEY DIVISION OF TAXATION**  
**PACKAGE NJX**  
**CN 286**  
**TRENTON NJ 08646-0286**

Be sure the amount remitted is sufficient to cover the item(s) selected. The *Package NJX* binders do not include the loose-leaf *1996 Package NJX* contents, which must be ordered separately. A *1996 Package NJX* order form can be found on page 27. □

### **SALES AND USE TAX** ***Agreement with*** ***U.S. Customs*** ***Service***

The New Jersey Division of Taxation working in cooperation with the Federation of Tax Administrators has recently signed an information sharing agreement with the United States Custom Service. The Division receives a quarterly extract from the Custom Service's Automated Commercial System providing information on goods entering the United States where the final destination is New Jersey.

This data will be used to identify unpaid sales, use and excise taxes and to identify individuals and businesses who are doing business in New Jersey and should be on our tax rolls remitting income taxes.

*continued on page 9*

The Division has already tested the validity of the provided informa-

*us customs agreement - from page 8*

tion by identifying and assessing the tax due from individuals who have incurred and did not voluntarily remit their use tax liability on property purchased overseas. Currently, the Division's Revenue Project Group is expanding its efforts from testing to full utilization of the exchanged information. □

**SALES AND USE TAX**

**Telephone Answering Service**

On July 1, 1990, telecommunication services became subject to New Jersey sales and use tax. Telecommunications is defined in the law as "the act or privilege of originating or *receiving messages* or information through the use of any kind of one-way or two-way communication, including but not limited to: voice, video..." N.J.S.A. 54:32B(cc). (Emphasis added.) This definition was included in a Special Notice to registered vendors which was sent in July 1990.

The Division has consistently held that telephone answering services are included within the definition of telecommunications and thus, are subject to tax under N.J.S.A. 54:32B-3(f). See P.L. 1990, c.40. Only telecommunication services rendered with respect to a service address in New Jersey are taxed.

For example, sales tax is not imposed on receipts from telephone answering services for a telephone located in another state. □

**INHERITANCE/ESTATE TAX**  
**Nonresident Ratio Tax**

As noted by the article entitled *Nonresident Inheritance Tax* in the Winter 1995 issue, if the estate of a nonresident decedent is subject to the nonresident ratio tax, the representatives have the choice of two methods of reporting the estate and computing the tax. An estate is subject to the ratio tax if it contains New Jersey real or tangible personal property passing by will, trust agreement or intestate law, with the exception of property that is specifically devised. The two ratio methods available to the estate are the "flat tax affidavit" ratio method and the "full disclosure" ratio method.

Under either method, the amount of tax due is computed by multiplying the amount of tax that would be assessed, had the decedent been a New Jersey resident and all of his property was located here, by the "ratio" that the New Jersey taxable property bears to the total estate, thus, the State of New Jersey receives a percentage of the tax that a resident return would generate. The difference between

the two methods is that under the "flat tax affidavit" method the elements of the equation are based on the gross estate while under the "full disclosure" method they are based on the net estate.

If the "flat tax affidavit" method is elected, the estate is reported by means of an affidavit complemented by the first page (IT-NR Page 1) of the Inheritance Tax Non-Resident Return. Because this method is based upon the decedent's gross estate, there is no necessity to report debts and expenses nor are they allowed. Statutory rates and exemptions are utilized in computing the "Tax on Entire Estate" element of the equation, however. The elements of the "ratio" are the gross New Jersey estate (numerator) and the gross entire estate (denominator). The equation for this method is as follows:

$$\frac{\text{NJ Real and Tangible Personal Property}}{\text{Entire Estate}} \times \frac{\text{Tax on Entire Estate}}{\text{Entire Estate}} = \text{Tax Due}$$

When utilizing the "flat tax affidavit" method only the New Jersey taxable property, net of  
*continued on page 10*  
liens, need be disclosed in detail. While the total value of the gross estate wherever situate must be disclosed, the advantage to using this method is that the individual

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- # Full year New Jersey resident during 1996
- # Same filing status as on your 1995 NJ return
- # Not 65 years of age or older as of December 31, 1996
- # Not blind or disabled as of December 31, 1996
- # Only income from wages, interest, and/or dividends
- # Total income of \$75,000, or less

*nonresident ratio tax - from pg. 9*

assets comprising the gross estate need not be itemized and consequently, the cost of preparing this form of return will be less than the alternative "full disclosure" method.

In contrast, the "full disclosure" method requires a detailed disclosure of all of the estate's assets, debts, and expenses. The estate is reported on Form IT-NR, Inheritance Tax Non-Resident Return, and itemized in the applicable schedules. The difference between this method and the "flat tax affidavit" method is that all of the allowable debts and expenses, wherever incurred, are deductible in computing the net estate wherever situate upon which the "Tax on Net Estate" element of the equation is computed. The net estate wherever situate is the denominator element of the "ratio" under the "full disclosure" method.

Some expenses are particularly important in reducing the estate's tax liability under the "full disclosure" method, specifically, counsel fees, executor's or administrator's commissions, and administrative expenses. These expenses are prorated and deducted directly from the New Jersey taxable property. The amount of these directly deductible expenses is determined according to the proportion that the gross New Jersey property bears to the entire gross estate. Subtracting this prorated share results in the net New Jersey element (numerator) of the "ratio." The "full disclosure" method usually results in a lesser tax than the "flat tax affidavit" method. The equation for this method is as follows:

$$\frac{\text{NJ Real and Tangible Personal Property}}{\text{Net Estate}} \times \frac{\text{Tax on Net Estate}}{\text{Estate}} = \text{Tax Due}$$

Certain characteristics of an estate will favor the choice of the "full disclosure" method over the "flat-tax affidavit" method. Generally, for those estates in which the New Jersey taxable property constitutes a relatively large percentage of the total value of the estate, the "full disclosure" method is indicated. The "full disclosure" method is also generally indicated for those estates with relatively large debts and expenses; especially those proratable expenses discussed above. Any tax savings to be realized by using the "full disclosure" method may then be weighed against the additional expense of preparing that form of return as the criterion for selecting either method.

The worksheets provided with the Form IT-NR booklet can be used to compute the tax under both methods. Each worksheet eliminates the need to complete a return prior to figuring the tax for that particular method. The use of said worksheets enables the estate representatives to determine rather quickly which method better suits their situation.

As noted in the first paragraph, there is an exception to the ratio tax method of filing — that exception being New Jersey real and tangible personal property which is specifically devised. The method used in computing the tax under this situation is the "direct tax" method. The tax is computed only on the asset specifically devised, not on the entire or net estates as was done in the other methods. There are no ratios or

formulas involved. The tax arrived at for each asset so devised is the amount due the State of New Jersey. For example, the tax on a parcel of real estate, with a fair market value of \$100,000 after mortgages and liens, specifically devised to a brother (Class "C" beneficiary) of the decedent, is determined as follows:

\$ 100,000	Value of Devise
<u>— 25,000</u>	Class "C" Exemption
75,000	Taxable Amount
<u>— x 11%</u>	Tax Rate for Class "C" Beneficiaries
<u><u>\$ 8,250</u></u>	Tax Due the State of New Jersey

In addition to specifically devised property, New Jersey real or tangible personal property which passes to a surviving joint tenant, transfers made in contemplation of death within three years of decedent's death and transfers intended to take effect at or after death are taxed under the "direct tax" method. □

**CONFERENCE AND APPEALS**  
**Samuel Sciarrotta**  
**Retires**

Samuel P. Sciarrotta, Chief of the Conference and Appeals Branch, Technical Services, retired on November 30, 1996 with over 31 years of State service. Beginning with his initial assignment with Inheritance Tax in 1965 through his appointment to Chief of the Conference and Appeals Branch in 1991, Sam served the Division in many capacities. He supervised a number of teams including the first Income Tax Hotline. Sam was Assistant Chief of both the Office Audit and Audit Adjustment Branches and Chief of the Office Audit and Field Audit Branches prior to heading the Conferences and Appeals Branch.

Sam has been instrumental in many important initiatives in the Division. Congratulations to Sam and good luck to him and his family. □

**LOCAL PROPERTY TAX**  
**Audits Yield Over**  
**\$400,000**

Municipalities throughout New Jersey were audited by Property Administration field representatives for compliance with the \$50 Veterans' Property Tax Deduction (N.J.S.A. 54:4-8.10) and the \$250 Senior Citizens, Disabled Persons, and Surviving Spouses Real Property Tax Deduction (N.J.S.A. 54:4-8.40) Programs.

Full reimbursement for these property tax deductions is made to the municipalities every year by the State via revenue sharing. In 1996, a total of \$36,036,483 was refunded to the local taxing districts for the senior citizens, disabled, and widows/widowers

deductions and \$18,076,310 was refunded for the veterans' deductions.

As a result of the recent audits, \$408,995 was credited on the certification report submitted to the State Treasurer in September 1996. □

**LOCAL PROPERTY TAX**  
**Changes to Mod IV**  
**Program**

Revised Mod IV Programs were distributed to all State certified data processing centers in early October 1996 to accommodate changes resulting from P.L. 1991, c.441, Five-year Property Tax Exemption and Abatement Law.

Seven additional limited exemption and abatement codes and an audit trail program were created which required new data entry procedures and the deletion and reentry of all limited exemptions and abatements.

Mod IV changes have also been made to accommodate R.S.54:4-3.139, the Urban Enterprise Zone Residential Tax Abatement Law, and R.S. 54:4-3.150, the Environmental Opportunity Zone Act. □

**LOCAL PROPERTY TAX**  
**F.E.A.C. Adopts**  
**Values for 1997**

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 28, 1996 at the Philip Alampi Laboratory in West Trenton to adopt productivity assessment values for land receiving farmland assessment in 1997. The committee also adopted imputed grazing values in compliance with Chapter 276, P.L. 1995. The thirty-third Report of the Committee (showing the value ranges

adopted) is mailed to municipal tax assessors and county boards of taxation by October 1 of each pretax year. Land qualifying for farmland assessment must be assessed in accordance with its agricultural or horticultural use rather than its true or market value.

The farmland productivity values adopted by the Committee for the 1997 tax year increased in 16 of the 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20 to \$40 per acre when compared to 1996 values. Overall net farm income of land in agricultural and horticultural use in New Jersey is estimated to have increased approximately 8.3% over the prior year. □

**LOCAL PROPERTY TAX**  
**Farmland Acreage**

A report summarizing data from farmland assessment applications

*continued on page 12*

**Electronic Filing**

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

The New Jersey Division of Taxation accepts electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588- 2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

(Form FA-1) has recently been

*farmland acreage - from page 11*

completed. The study shows that total acreage devoted to agricultural or horticultural use in 1995 was 1,191,984 acres for the entire State.

Although qualified acres increased by 14,565 acres over 1994, since 1983, (the year in which the highest acreage qualified) the amount of qualified farm acreage has declined 6.3% or a total of 80,002 acres.

24.80% 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. Conversely, Salem, with 57.2%, has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 53.3%; Warren, 50.5%; Gloucester, 39.7%; Sussex 35.3% and Mercer, 32.7%. □

### LOCAL PROPERTY TAX **Ivan Haftkowycz Retires**

Congratulations to Ivan Haftkowycz, Chief of Engineering, Tax Maps/Railroad Section, Local Property Branch, Property Administration, who retired October 1, 1996 after more than 36 years of State service.

Ivan has worked extensively as an appraiser of railroad property and in the oversight of municipal tax maps for compliance with regulatory specifications and revaluation standards. Ivan's expertise in the area of mapping is acknowledged and over the years he has served on various tax map panels.

We extend our best wishes to Ivan and his family, for health and happiness now as he retires and for many years to come. □

### LOCAL PROPERTY TAX **Reimbursements Certified**

The 1996 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1996.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1996.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1996 was \$36,036,483. That amount represents a decrease of 3.4% from 1995.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1996 was 142,745. When compared to tax year 1995 the number of deductions decreased 4.0%.

The total amount of veterans deductions for 1996 was \$18,076,310. That amount represents a decrease of 2.0% from 1995.

The total number of veterans deductions for 1996 was 361,526. When compared to tax year 1995 the number of deductions decreased 2.2%. □

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

#### January 1-

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.

#### January 10-

- Notice of material depreciation to structure occurring after Oct. 1 and before Jan. 1, given to assessor by taxpayer.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- One copy of each Farmland Assessment application, FA-1, forwarded to Property Administration by tax assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Statement of estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

#### February 1-

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

*continued on page 13*

- Appeal time, where assessor fails to notify taxpayer of cur-

*tax assessors' calendar - from page 12*

rent assessment and preceding year's taxes, or change in assessment, extended by County Tax Board for any taxpayer aggrieved by the assessed valuation of his property or of other property in the county.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Schedule of office hours for assessors summarized by County Tax Administrator and furnished to Director, Division of Taxation.

**March 1-**

- Post-Tax Year Statement, PD5, 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, and post a copy at the court house.

**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 Director, Taxation, and to Tax Court. □

**Criminal Enforcement**

Criminal Enforcement over the past several months included:

- William J. Becker of Haddonfield pled guilty in Superior Court on September 16, 1996 to two counts relating to income tax evasion. As a result of his filing a false and fraudulent 1990 NJ income tax return and failing to file a 1994 income tax return, Becker under reported tax in the amount of \$3,175. The unreported income was derived from the sale of automobiles whose titles had been illegally obtained from his employer, a used car dealer in Pennsauken, New Jersey. Becker also pled guilty to one count of theft by deception, relating to his fraudulently obtaining the titles to the vehicles he sold. This case was investigated jointly by the Division's Office of Criminal Investigation and the Camden County Prosecutor's Office.
- On September 16, 1996 Christopher Grungo pled guilty in Mercer County Superior Court to one count of racketeering. The theft resulted from the failure to remit \$158,843 of Petroleum Products Gross Receipts Tax which had been collected from customers

buying diesel fuel between October 1992 through June 1993. Grungo established a business using the name of a fictitious person. He then collected the tax after purchasing the fuel from suppliers tax-free by using fraudulent documents.

On September 20, 1996, Grungo's niece, Brenda Grungo, a co-defendant, also pled guilty to the same charge. Of eight other co-defendants indicted with the Grungos, one has already pled guilty and seven are currently scheduled for trial. This case was investigated jointly by the Division's Office of Criminal Investigation and the Division of Criminal Justice-Environmental Crimes Bureau.

- The investment fraud trial of Michael Immordino began in Mercer County Superior Court on September 18, 1996. Immordino, who was previously indicted on multiple counts, including 10 counts for NJ income tax evasion, has now pled guilty. He operated numerous real estate corporations and used \$2 million of investors' funds for his personal use. The case was developed through a joint investigation with the Mercer County Prosecutor's Office.
- A \$50,000 partial payment was received from Larry Ansell and Michael Gohar, the president and former co-president of Emerald Hotels Management Co., Inc. for back taxes owed to the State. The pair originally owed approximately \$1.14 million in taxes of which \$450,000 had previously been paid. As part of

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*criminal enforcement - from pg. 13*

the February 7, 1996 guilty plea, an additional \$100,000 must be paid by the sentencing date on November 22, 1996. Additional information regarding this case may be found in the Summer and Fall 1996 issues of the *New Jersey State Tax News*.

- Afzal M. Sheikh, president of Ehsan Corp. which trades as Torelli's Deli & Liquors in Jersey City, New Jersey pled guilty in Hudson County Superior Court to one count of misapplication of entrusted property. Sheikh had collected \$45,000 in sales tax between August 1990 and September 1994, on retail sales of alcoholic beverages and other items sold at the deli which he operated with his wife. He failed, however, to remit the tax to the Division.

As part of the plea agreement, Sheikh was to pay \$22,500 in tax before his October 4, 1996 sentencing date and make restitution of the remaining tax plus penalty and interest during the period of his probation. A payment of \$45,000 has been received and applied to the outstanding liability. Ehsan Corp. is also obligated to pay the State Division of Alcoholic Beverage Control a fine of up to 20% of

the tax liability or \$9,000. In return for this plea, the NJ Division of Criminal Justice has agreed not to seek incarceration of him nor to prosecute his wife in connection with this case.

- On July 24, 1996, Melvin Shaw pled guilty to failing to remit \$36,000 of collected sales tax and to several counts of theft involving investment fraud. Shaw, who was doing business as Shaw Motor Sport, had been indicted on February 23, 1995. As part of the plea agreement, he will be sentenced to 10 years imprisonment, five years of which is for the tax count. The exact amount of the restitution will be determined prior to the October 11, 1996 sentencing date. The case was conducted with the Camden County Prosecutor's Office.

to eight counts of failing to file New Jersey income tax returns and pay tax on unreported income, was sentenced to seven years of imprisonment for embezzlement and four years of imprisonment for each tax count. The sentences on the tax counts are to run concurrent with the embezzlement charge. Szymanski will sign a consent judgment for \$21,938, the amount of tax, penalty and interest owed at the time of sentencing. Restitution payments will begin after his release from prison.

- Fourteen guilty pleas were entered in municipal courts throughout the State during this period by individuals and businesses for noncompliance with the cigarette tax law. In four additional cases, businesses who pled not guilty to selling cigarettes without a license and possessing untaxed cigarettes were also found guilty. These 18 cases resulted in the imposition of fines and penalties totaling \$20,172. A 1988 Chevrolet van valued at \$7,000 and 3,426.1 cartons of seized cigarettes with a value of \$61,675 were also awarded to the State.

In addition, charges were filed for violations including transporting untaxed cigarettes, selling cigarettes without a license, and failing to maintain records in municipal court for 14 cases. The value of the assets seized for these cases exceeded \$59,750. □

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COMPLIANCE ACTIVITY  
CN 245  
TRENTON NJ 08646-0245**

- Vincent Szymanski of Bayonne, who had previously pled guilty

## **Enforcement Summary**

### **Civil Collection Actions Quarter Ending - September 30, 1996**

Following is a summary of enforcement actions for the quarter ending September 30, 1996.

#### **Certificates of Debt**

During the quarter ended September 30, 1996, the Division filed 2,165 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$26.3 million.

#### **Levies**

\$170,504 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

#### **Jeopardy Assessments**

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-state businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at

public auction and the proceeds used to satisfy the tax debt.

For the quarter ending September 30, 1996, \$258,067 was collected from jeopardy assessments, and the assets of three businesses, including motor vehicles, were seized.

#### **Seizures**

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending September 30, 1996, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on page 17.

#### **Auctions**

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending September 30, 1996, six auctions were held by the Division. A listing follows on page 18.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes,

but is not limited to, sales tax, withholding tax and motor fuels tax. □

## **Tax Briefs**

### **Corporation Business Tax**

**Forgiveness of Debt** — The Division received an inquiry regarding the forgiveness of corporation debt of a corporation that is an S corporation for Federal purposes and a regular corporation for New Jersey purposes. Since the Company was insolvent at the time of discharge, the amount of debt which would otherwise have been included in income was excluded for Federal purposes (IRC Section 108). Federal law also requires a reduction in certain tax attributes, in this case specifically the net operating loss. IRC section 108(b)(2)(A).

It is the position of the Division that income from cancellation of debt is excludable from New Jersey corporation business tax to the same extent that it is excludable for Federal purposes.

The New Jersey net operating loss deduction is calculated independently of the Federal tax attributes (N.J.S.A. 54:10A-4(k)(6)), and at the present time there is no provision to reduce tax attributes connected with discharge of indebtedness. Thus, New Jersey would not require the corporation to reduce New Jersey net operating loss with respect to discharge of indebtedness for corporation business tax purposes.

### **IC-DISC Unable to Elect New Jersey S Corporation Status** —

*continued on page 16*

The Division responded to an

*tax briefs - from page 15*

inquiry as to whether an Interest Charge Domestic International Sales Corporation (IC-DISC) may make a valid election to become a New Jersey S corporation.

The New Jersey statutes provide that a "New Jersey S corporation" means a corporation that is an S corporation which made a valid election pursuant to N.J.S.A. 54:10A-5.22 and which has been an S corporation continuously since the effective date of the valid election made pursuant to N.J.S.A. 54:10A-5.22. (See N.J.S.A. 54A:5-10). "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the Federal Internal Revenue Code of 1986, 26 U.S.C. §1361.

Under present law, a prerequisite for a taxpayer to be a New Jersey S corporation is that it also be a Federal S corporation at all times since the effective date of its valid election to be a New Jersey S corporation. Accordingly, under the statutory framework adopted in New Jersey an IC-DISC is unable to elect to be a New Jersey S corporation, since it is not a Federal S corporation.

#### ***New Jobs Investment Tax Credit***

— Assume that a corporation having employees in New York and Philadelphia plans to relocate these employees to an office in New Jersey. Under the applicable statute a taxpayer that is not a small business must create 50 new jobs to get a credit of 0.5% of the amount of its qualified investment as a credit for Corporation Business Tax purposes. Thus, a \$1.5 million investment would

produce a credit of \$7,500 against CBT liability.

Section 54:10A-5.5 of the New Jobs Investment Tax Credit Act provides that the term " 'New Employee' means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer's business enterprise in this State prior to the date on which the taxpayer's qualified investment is placed in service or use in this State provided that... c. the individual is not an individual who worked for the taxpayer during the six month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State;...."

Thus, to qualify, the new employee must be a domiciliary and resident of New Jersey *hired* to fill a new job in this State which did not exist prior to the qualified investment being made provided that the person was not an old employee who worked for the taxpayer less than six months before the qualified investment was made and was rehired during the six month period after the investment was made.

The question presented under this definition is whether an employee living in New Jersey who worked in Philadelphia for the taxpayer and was relocated to the taxpayer's new facility in New Brunswick would qualify as a "new employee" for purposes of the credit (The fact that the employee pays gross income tax to New Jersey under

the Reciprocal Agreement on wages earned in Pennsylvania is not relevant legally or economically since the goal is economic growth rather than State revenue growth).

It is the position of the Division that this employee would *not* qualify because, although the employee is a resident of New Jersey filling a job in this State which did not previously exist in the taxpayer's business enterprise in this State, the employee was already working for the employer and, therefore, was not "hired" (as the statute requires) to fill a job in this State.

#### ***New York State Surcharges*** —

The State of New Jersey calculates its corporate taxable income on entire net income allocated to the State. Entire net income for New Jersey purposes is defined as "total net income from all sources... deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax...." N.J.S.A. 54:10A-4(k). This is summarized in the New Jersey regulations which state that the starting point for determining New Jersey entire net income is Federal taxable income, which is "taxable income before net operating loss deduction and special deductions...." N.J.A.C. 18:7-5.2(a).

*continued on page 19*

**Division of Taxation Seizures  
(July – September 1996)**

**Note:** Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

<b>County</b>	<b>Name/Address</b>	<b>Seizure Date</b>	<b>Business Type</b>	<b>Status</b>
Camden	Hoerst, Steven t/a Hoerst Landscaping Voorhees	07-10-96	Landscaping	Motor vehicles & equipment seized
	Little Spot Tavern Somerdale	09-11-96	Tavern	Closed; liquor license seized
	GaTano's Deli Stratford	09-10-96	Deli	Closed
	De Ja Vu Cafe Camden	09-26-96	Bar	Liquor license seized
	E&P Red Carpet Lounge Camden	09-26-96	Bar	Liquor license seized
Cumberland	Double Features/Games-To-Go Vineland	08-07-96	Video	Reopened
Gloucester	A-1 Accurate Oil Service Pitman	07-09-96	NA	Motor vehicles seized
Hudson	Mid Island Art Expo of NJ, Inc. t/a Art Expo Jersey City	07-12-96	Framing, Art Work	Closed
	Frankie's Tavern Jersey City	08-29-96	Tavern	Liquor license seized
Hunterdon	La Piazza Cafe Clinton	09-06-96	Restaurant	Closed
Mercer	Sbarro's Famous Hot Dogs Trenton	08-26-96	Luncheonette	Closed
	West End Liquors Trenton	08-21-96	Liquor store	Closed; liquor license seized
	Doug's Blue Max Trenton	09-19-96	Tavern	Closed; liquor license seized
	Golden Coach Diner East Windsor	09-06-96	Diner	Closed; liquor license seized
	Scott's Tavern Trenton	09-19-96	Tavern	Closed; liquor license seized
Middlesex	Whitson Int'l Inc. t/a Captain Sid Perth Amboy	07-18-96	Deli & Grocery	Closed
	Croat and Nap, Inc. Englishtown	07-23-96	Warehouse	Open

*continued on page 18*

*taxation seizures - continued from page 17*

<b>County</b>	<b>Name/Address</b>	<b>Seizure Date</b>	<b>Business Type</b>	<b>Status</b>
Middlesex	Dakota Office Systems, Inc. Avenel	07-30-96	Office equipment sales & service	Closed
	J & D Office Machines, Inc. Avenel	07-30-96	Office equipment sales & service	Closed
	Center Bar and Pizzeria Woodbridge	08-21-96	Tavern/Pizzeria	Closed; liquor license seized
	XTC South Amboy	09-06-96	Tavern/Nightclub	Liquor license seized
	Jim Amick Trucking South Plainfield	09-04-96	Lawn mower repair shop	Closed
Monmouth	Paynter, Maribeth t/a Planet Poodle, Wall	07-25-96	Pet grooming	Reopened
	Kellers Auto Electric Asbury Park	09-17-96	Repair shop	Closed
	Glory's Christian Gallery Neptune	09-11-96	Book store	Motor vehicle seized
Morris	Winston's Family Tree, Inc. Morristown	07-29-96	NA	Liquor license seized (business already closed)
Ocean	C&K Texaco Brick	08-14-96	Gas and automotive service station	Closed
Union	Infodata Corp. Kenilworth	07-31-96	Computer sales & service	Closed

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***Division of Taxation Auctions  
(July – September 1996)***

<b>County</b>	<b>Name/Address</b>	<b>Auction Date</b>	<b>Business Type</b>	<b>Assets Auctioned</b>
Bergen	Heljim, Inc. t/a Midland Pub and Liquors Garfield	07-29-96	Bar	Liquor license
	Castrillion Corporation Cliffside Park	07-29-96	Deli	Liquor license
	Janiec, Andrew t/a Andrew's Tavern Wallington	07-25-96	Bar	Liquor license
	Ralphson Corporation t/a Arlington Lanes North Arlington	07-29-96	Bar	Liquor license
Middlesex	Willie's Inc. Perth Amboy	07-29-96	Bar	Liquor license
	Melnizek, Frances t/a Fran's Sail Inn Carteret	07-31-96	Bar/Restaurant	Liquor license business contents

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Once Federal taxable income is determined, New Jersey requires that specific modifications be made to arrive at New Jersey entire net income. N.J.A.C. 18:7-5.2(a)(1) and (2).

One specific addition to Federal taxable income in determining New Jersey's taxable income is the addition of any taxes paid to individual states or the United States based on "or measured by profits or income, or business presence or business activity...." N.J.S.A. 54:10A-4(k)(2)(C); N.J.A.C. 18:7-5.2(a)(1)(i and iv). See also Instructions to the 1995 New Jersey Corporation Business Tax Return, Schedule A, Line 31.

The tax surcharge imposed under NY Law Section 209-A and the temporary metropolitan transportation business tax surcharge imposed by NY Law Section 209-B are to be considered taxes "on or measured by business presence or business activity" within the meaning of N.J.S.A. 54:10A-4(k)(2)(C) which was intended to be broadly applicable. Entire net income for New Jersey purposes shall therefore be determined without the exclusion, deduction or credit of such taxes and such taxes should, therefore, be added back if they had been taken in arriving at a deduction in Line 28, Schedule A. These taxes are substantially derivative from, and related to, the State income (or franchise) tax of New York and are considered to be measured by business presence or business activity in New York. It may be noted that such taxes would also be included in the credit calculation pursuant to

N.J.A.C. 18:7-8.3 for income duplicated in another state, for example.

### **Gross Income Tax**

#### ***Assignment of Lottery Winnings***

— Lottery winnings from the New Jersey lottery are exempt from taxation under the Gross Income Tax Act. N.J.S.A. 54A:6-11. However, if a New Jersey lottery winner sells the right to collect the winnings, the money received from the assignee is not "lottery winnings" and is not deemed to be "from the New Jersey lottery." Therefore the proceeds from the assignment of the right to collect lottery winnings are not exempt under N.J.S.A. 54A:6-11.

The right to collect lottery winnings is an intangible asset. When a taxpayer sells this right, the payment is deemed to be income from the sale or disposition of intangible property, which is taxable pursuant to N.J.S.A. 54A:5-1(c).

#### ***Spousal Liability For Tax After Divorce***

— Under New Jersey and Federal law, a divorce agreement, or any like contract, will not relieve a taxpayer from a tax obligation. According to both state and Federal law, when a husband and wife file a joint tax return, they are each jointly and severally liable for paying taxes due. N.J.S.A. 54A:8-4; 26 U.S.C. 6013(d)(3). This means that each spouse continues to be responsible for remittance of the entire tax until it is paid, regardless of any third party contracts or agreements entered into by either spouse. States cannot sustain the added responsibility of tracking and enforcing third party contracts in order to receive remittance of tax.

Pursuant to state and Federal statutes, case law and policy concerns on the issue, a divorce agreement and a tax obligation represent two distinct contracts or transactions. If called upon to pay a state and/or Federal tax balance due the spouse is liable to pay the tax and subsequently enforce his or her legal rights set forth by the divorce agreement and seek indemnity. In all, a divorce agreement does not discharge the obligation for remittance of either state or Federal taxes.

### **Local Property Tax**

#### ***Mobile Home Service Fee***

— Municipalities are authorized by N.J.S.A. 54:4-1.6 to impose an annual municipal service fee on manufactured homes installed in mobile home parks within their boundaries. There is an exemption from the fee for "trailers" provided at N.J.S.A. 54:4-1.8. Definitions for "manufactured home" and "trailer" are provided at N.J.S.A. 54:4-1.4d and m. The distinction of whether the home is a trailer or a manufactured home would therefore appear to be relevant to the determination of whether the home is subject to the fee.

There is no exemption from the municipal service fee of N.J.S.A. 54:4-1.6 for veterans. There is an exemption from real property taxation for property owned by veterans associations under N.J.S.A. 54:4-3.25, and veterans receive a deduction from property tax of \$50.00 under N.J.S.A. 54:4-8.11.

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### **Sales and Use Tax**

***American Indian Sales*** — The Division received an inquiry as to whether American Indians selling

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taxable items at a "pow-pow" in New Jersey are exempt from collecting or paying New Jersey sales tax.

There is no automatic sales tax exemption for American Indians under the Sales and Use Tax Act. American Indian vendors from outside New Jersey who sell goods at the pow-pow are treated the same as any other vendors who come into New Jersey to sell at craft shows, seasonal carnivals and other special events. Similarly, shoppers at the pow-pow are subject to New Jersey sales tax on their purchases of taxable items, unless a specific statutory exemption applies (e.g. resale, exempt organization).

Based on Federal case law, however, a state may not enforce taxes whose legal incidence falls upon an Indian tribe itself or on enrolled members of a tribe purchasing items within the tribe's reservation land or other lands held in trust for the tribe. A state may nevertheless require American Indian vendors to collect and remit state sales tax on taxable sales to nonmembers of the tribe on Indian land, provided that the burdens of collection and remittance are not excessive. For example, when a festival and craft sale is held on the Rankokus Reservation in Burlington County, enrolled members of the Powhatan Renape Nation are exempt from sales tax on their purchases. However, outsiders and Indians who are not enrolled members of that tribe are subject to the tax. The State may require vendors at the festival (including tribe members) to collect and remit sales tax on their sales to all purchasers except enrolled members of the Powhatan

Renape Nation. If the State does not require the Indian vendors to collect and remit tax, the non-exempt purchasers are nevertheless subject to the compensating use tax imposed by N.J.S.A. 54:32B-6 of the Sales and Use Tax Act.

**Beauty Salon Sales** — Charges for haircuts, relaxers, perms, texturizers, shampoo/blow dry/curl, coloring and eyebrow arching are exempt from sales tax as personal service transactions. N.J.S.A. 54:32B-2(e)(4)(A). The salon must pay sales or use tax on purchase of products, equipment and supplies used to perform these services. If the salon sells goods at retail, a Resale Certificate (Form ST-3) may be used to purchase such items, and tax must be collected at the retail sale level. All hair care products and supplies are subject to sales tax in New Jersey.

**Hair Growth Product** — The Division advised a taxpayer that the over-the-counter sale of Rogaine® is subject to sales tax. Rogaine® does not qualify as a drug because it is not sold for the relief of pain, ailments, distresses or disorders of the human body within the meaning of N.J.S.A. 54:32B-8.1. The law does not exempt items that are principally used for cosmetic purposes.

**Hospital Cafeteria Sales** — The sales and use tax regulations, at N.J.A.C. 18:24-12.6(b), provide

as follows: "Sales of food, drink or service to employees through a cafeteria on an employer's premises are subject to the sales tax, except as provided in N.J.A.C. 18:24-14.3(a)6."

The exception provided in N.J.A.C. 18:24-14.3(a)6 is for "Meals sold in a cafeteria used exclusively by hospital employees." If a hospital cafeteria is open to the public, sales of food and drink to both hospital employees and visitors are subject to sales tax.

**Military Motor Vehicle Sales** — Military personnel who are residents of other states, but who are currently residing in New Jersey during military duty, are treated as residents for sales tax purposes when they purchase or register a motor vehicle here. N.J.A.C. 18:24-7.8(b)5. They are required to pay 6% sales tax when they purchase a vehicle from a dealer in New Jersey, or when they register a vehicle in New Jersey, after purchasing it under circumstances in which no New Jersey use tax was collected. (Note: These soldiers are treated as residents for sales tax purposes, even if they are nonresidents for income tax or other purposes.)

A New Jersey domiciliary living outside this State will be required to pay 6% use tax when he moves back to this State with a vehicle that was purchased elsewhere. The 6% tax must be paid when the vehicle is registered. If the returning resident used the vehicle elsewhere for more than six months, the 6% use tax should be calculated on the current fair mar-

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ket value of the vehicle, rather than on its original purchase price. If the vehicle is new (six months or less since purchase as new), the 6% tax is due on the purchase price. N.J.S.A. 54:32B-7(b)(1). This assumes that no sales or use tax was paid in the state of purchase without the right of credit or refund. New Jersey's credit for sales and use tax paid in another jurisdiction does not extend to foreign nations. N.J.S.A. 54:32B-11.

If a soldier who is not domiciled in New Jersey moves to New Jersey with a vehicle that he has already owned and used elsewhere, no sales tax will be due when he registers the vehicle in New Jersey. N.J.S.A. 54:32B-11. If that nondomiciliary purchased a car in a foreign country, had it titled and took possession of it there, and then has it shipped to his new home in New Jersey, he will not owe New Jersey sales tax on the car. However, if he purchased it in a foreign country, and has it shipped to the United States, where it is transported to a New Jersey dealer, who then has it titled in the soldier's name, then the purchase of the car is treated as a New Jersey transaction. The soldier will owe 6% New Jersey sales tax on the new car, as would any New Jersey resident. If the soldier is not going to be stationed in New Jersey or live here and is merely taking delivery of the vehicle in this State, he may qualify for exemption from tax under N.J.S.A. 54:32B-10 of the Sales and Use Tax Act.

**Use Tax Notification** — The Division of Taxation supports the

efforts of a coalition of state and local government organizations and retail associations that recently filed a petition urging the Federal Trade Commission to use its rule-making authority to require direct marketing companies to disclose to consumers information relating to use tax obligations on interstate consumer purchases.

The practice of not informing consumers of their obligation to pay use taxes on out-of-state purchases creates problems for both consumers and the "main street" businesses located in our State. Under current law, out-of-state direct marketers that are not required to be registered as vendors with the New Jersey Division of Taxation are not collecting use taxes from New Jersey customers. Nevertheless, customers who take delivery of taxable merchandise in New Jersey remain personally obligated to pay use tax directly to the State. The direct marketers' failure to make their customers aware that they may be required to pay use taxes when they make mail-order purchases, or any suggestion by direct marketers that there is no tax required on these purchases, reflects poor business judgment and confuses consumers.

When a consumer fails to pay use tax on mail order purchases, the Division of Taxation will later assess the consumer for these taxes, and will also impose interest and penalty charges. For many consumers, this creates an unanticipated financial burden, as well as personal embarrassment. It also makes them angry that the tax was not collected at the point of sale.

Especially in the case of major purchases, the direct marketer may undermine consumers' "good will."

Some consumers' belief that there is no tax obligation on mail-order purchases creates an unfair competitive advantage for out-of-state retailers. Consumers incorrectly assume that prices charged by out-of-state marketers are lower than those charged by local, "main street" retailers, who are required by law to collect and remit the sales tax. This gives consumers an incentive to favor out-of-state retailers over local retailers when making purchasing decisions. When local retailers lose business to direct marketers because of unfair competition, local retailing suffers and local employment declines. The erosion of this vital business sector and the ensuing job losses undermine economic development in our State.

The New Jersey Division of Taxation is unable to compel firms that do not have "nexus" with New Jersey to collect and remit these legally owed taxes. It is estimated that the avoidance of sales tax collection by out-of-state mail-order companies is costing the State approximately \$150,000,000 in lost revenues each year. Our inability to collect these sales taxes deprives our state government of revenues that would otherwise serve public purposes.

Direct marketing companies should be prevented from confusing the public about customers' obligation to pay use tax on their purchases. In order to achieve these results, we agree with the filers of the petition that any company which does not collect taxes on sales to out-of-state customers should be required to provide a written disclosure that such taxes exist and that con-

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sumers may be personally required under their state law to pay these taxes to their state governments. □

## **In Our Courts**

### **Corporation Business Tax**

***Subsidiary's Gain Subject to Tax***  
– *General Building Products Corporation, Successor by Merger to Dee Wood Industries, Inc. v. Director, Division of Taxation*, 15 N.J. Tax 213 (App. Div. 1995).

The Appellate Court affirmed the Tax Court decision that a subsidiary's gain is taxable under the Corporation Business Tax Act. Corporation A sold all of the stock of its New Jersey subsidiary to plaintiff for \$16,800,000 and made a Federal IRC §338(h)(10) election to avoid double taxation on the merger. By making the §338(h)(10) election, Company A's sale of the subsidiary stock is treated as if the subsidiary sold the stock directly to the buyer. This effectively allows the subsidiary to recognize the appreciation of its assets and pay taxes on the appreciation, while Company A transfers the stock to the buyer but does not recognize any gain in doing so. Company A and the subsidiary file for a "short year" which ends on the selling date.

New Jersey, however, does not recognize consolidated returns under the Corporation Business Tax Act, and pursuant to N.J.A.C. §18:7-11.15(b), those who file a consolidated return under Federal

law are required to file in New Jersey as if their Federal return had been a separate return. The appellant raises on appeal that N.J.A.C. §18:7-11.15(d) and (e) which recognize an I.R.C.

§338(h)(10) election are inconsistent with N.J.S.A. 54:10A-4k.

The Appellate Division affirmed the judgement of the Tax Court substantially for the reason set forth in Judge Rimm's published opinion reported at 14 N.J. Tax 232 (Tax Ct. 1994).

Note: The Division's administrative regulations dealing with non-recognition of gain by a selling parent in an I.R.C. §338(h)(10) transaction have been updated. See adoption notice at 28 N.J.R. 3810 (August 5, 1996) and summary of proposed change at 28 N.J.R. 2515 (May 20, 1996). As noted in the *Register*, the change has no effect upon the treatment of the tax return of the target in an I.R.C. §338(h)(10) transaction. The regulation applicable to the target was upheld in the *General Building* opinion.

### **Inheritance/Estate Tax**

***Timely Filing of Complaint*** – *Gifford v. Director, Div. of Taxation*, 15 N.J. Tax 51 (Tax Court, decided June 7, 1995).

This is the first case that has come before the Tax Court regarding the timely filing of a complaint arguing against an assessment of a transfer inheritance tax. Under N.J.S.A. 54:34-1 (transfers taxable) and N.J.S.A. 54:34-2 (rates of taxation) a transfer inheritance tax was imposed following the receipt of a U.S. Gift Tax Return. The return showed that decedent, plaintiff's father, transferred 10,000 shares of stock to plaintiff and her husband.

On March 5, 1992, the Transfer Inheritance Tax Branch notified plaintiff that, in addition to the tax itself, plaintiff had 90 days to file a protest or request a hearing in

accordance with N.J.A.C. 18:26-12.9. Plaintiff didn't file a formal complaint until May 17, 1994, over two years and several correspondences later. The Division moved to have the complaint dismissed.

Before the Tax Court, plaintiff argued that the 90 day period should not have started on March 5, 1992 but on March 14, 1994. Plaintiff contended that the initial letter sent by the Division did not inform plaintiff that the tax assessment was a final decision. The taxpayer was led to believe, the plaintiff reasoned, that the matter would remain open until additional information was obtained by the Division.

Plaintiff also argued that under N.J.S.A. 54:35-10, she had three years from the date of the payment of the tax to file a refund claim.

The Tax Court rejected plaintiff's arguments and dismissed the complaint. Citing N.J.S.A. 54:51A-18, the Court pointed out the express authorization for the Division to calculate the limitation period. By this, the Court determined that the time for appeal expired on June 6, 1992. The Tax Court said that the Director's assessment became a final determination once the 90 day protest period had passed. The Court warned that otherwise, by plaintiff's argument, a taxpayer could control the appeal time, which would then frustrate the legislative purpose of any statute of limitations.

The Court said in response to plaintiff's second argument that N.J.S.A. 54:35-10 is a refund statute which only applies when taxes are miscalculated by the tax-

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payer. The Court reasoned that a longer time period to request a refund is justified for it would naturally take longer for a taxpayer to realize his or her own miscalculations.

## **Local Property Tax**

**Business Retention Act – General Motors Corporation v. City of Linden**, Docket Nos. A-3694-95T3 and A-3695-95T3 (Appellate Division, decided July 26, 1996).

The Appellate Division reversed the Tax Court's decision in favor of General Motors Corporation on its consolidated complaints regarding local property tax assessments and counterclaims by the City of Linden.

The lower court had granted the city's motion for partial summary judgment that N.J.S.A. 54:4-1b is unconstitutional. It declared void on its face the language added by L.1992, c.24, §3 (Business Retention Act), which excludes personal property affixed to real property or appurtenant to real property from the definition of taxable real property when that personal property is machinery, apparatus or equipment "used or held for use in business," which is not a "structure" or equipment whose purpose is to support shelter or enclose persons or property. The Tax Court ruled that this provision violated on its face the "uniformity clause" of the New Jersey Constitution, Art. VIII, sec. 1, par. 1(a), which mandates that all real property must be assessed and taxed locally according to the same standard of value, and that real property must be assessed for taxation under general laws and by uniform rules.

The Appellate Division discussed the history and policy behind legislation designed to remove much of business personal property from local property taxation by narrowly defining "fixtures." As the court noted, this has been done in order to create an economic climate attractive to business.

In an opinion by Pressler, the Appellate Division reversed the decision below, concluding that the Business Retention Act does not violate the state constitution's uniformity clause because the subject of the provision is personal property, not real property. Therefore only the general equal protection test of reasonableness of classification applied.

The judgment below was reversed and the matter was remanded to the Tax Court for reconsideration of the assessments. The Supreme Court granted the City of Linden's petition for a motion of leave to appeal on October 1, 1996.

**Denial of Parsonage Exemption – Ehrlich, Richard J. & Devorah H., Plaintiffs, v. Passaic City, Defendant**, Decided August 11, 1995; Tax Court of New Jersey; Pizzuto, J.T.C.; Docket Nos. 16-07-0201-91 & 16-07-13129-91.

Rabbi and his spouse, as owners and occupants of their one-family dwelling, appealed Passaic City assessor's denial of their real estate tax exemption claim and contested the 1990 and 1991 assessments, affirmed by Passaic County Tax Board, to the Tax Court of New Jersey. Exemption had been claimed under N.J.S.A. 54:4-3.6 which, in part, excludes from property taxation "buildings, not exceeding two, actually occupied as a parsonage by the officiating

clergymen of any religious corporation of this State...."

Taxing district's denial of parsonage exemption was based on the fact that the dwelling was not owned by a religious corporation for which the rabbi officiated, but rather by the rabbi and his wife as individuals. Homeowners argued that corporate ownership was not an absolute prerequisite and that the residence should be exempted as long as all other eligibility criteria were met.

Tax Court affirmed the denial of the exemption and held that N.J.S.A. 54:4-3.6 is limited to and exclusively concerned with institutional uses of property both owned and used by nonprofit organizations.

The Court's decision was predicated upon an analysis of the statute's construction — the historical changes made to textual content and grammatical structure since its origin in 1918, particularly for the following provisions, "...provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit..." and "The foregoing exemption shall apply only where

the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed...." For example, that an earlier wording of 3.6 required corporate ownership for each of the eleven categories of exempt

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property and specifically stated that a parsonage must be owned by a religious corporation helps to confirm the correctness of applying the general condition of corporate ownership in the current statute's second sentence to all the exempt property it addresses. The Court concluded that the deletion of the 1919 specific ownership requirement, the 1937 sentence division and the 1962 plural to singular changes did not prevent "other requirements of the second sentence," from limiting the parsonage exemption.

Prior cases also cited by the Court as helpful in reaching its determination were *Jersey City v. New Jersey Baptist Convention*, 18 N.J. Misc. 209, 12 A.2d 150 (State Bd. of Tax App. 1940), where exemption was denied because legal ownership vested in a supervisory entity rather than pastor's congregation. And *Jabert Operating Corp. v. Newark*, 16 N.J. Super. 505 (App. Div. 1952), where exemption required holding of legal title by nonprofit entity using property for specified use.

**Improper Bidding Process in Bulk Sale of Tax Sale Certificates** – *Errico v. City of Jersey City et al.*, Appellate Division, decided May 30, 1996. The Appellate Division affirmed a Law Division decision on an improper bidding process involving the bulk sale of tax sale certificates.

Jersey City adopted a resolution authorizing the bulk sale of 102 tax sale certificates with a face value at approximately \$4,400,000. Some of the properties involved were environmentally contaminated and

had a face value less than the amount of the tax lien.

Bidders were required to submit (1) a cash payment of at least 17.5 percent of the total lien amount, (2) a note for the remainder of the bid and (3) a price for the repurchase of the note. The total bid value being the cash payment plus the purchase price.

Plaintiff, Anthony D. Errico, submitted a bid including \$88,000 as the note repurchase price. This price fell significantly below the \$135,000 minimum (2.5 percent of the total lien amount, plus \$25,000) as required by the city ordinance.

The City Council voted to accept a bid from Remediation Financial, Inc., whose bid included a purchase price of \$135,000. Contending that he was the highest bidder, plaintiff filed suit seeking an order that Jersey City rescind the sale to Remediation.

The Law Division issued an oral opinion holding that Errico's bid was nonconforming. More importantly, the Court held that the bidding process altogether was an improper attempt to circumvent the requirement of N.J.S.A. 54:5-113.1(b), which states that tax sale certificates may not be sold for less than 70 percent of their face value.

The Law Division also pointed out Jersey City's motivation for circumventing N.J.S.A. 54:5-113.1. The contamination of some of the land in question convinced Jersey City that no bidder would pay either the face value of the liens or even bid the minimum 70 percent requirement. By including the cash payment with the purchase price as the total bid value, the ordinance allowed the bids on their face to exceed the 70 percent requirement

thus qualifying under N.J.S.A. 54:5-113.1.

The Appellate Division affirmed the Law Division's decision with added comments. N.J.S.A. 54:5-114.1 and 54:5-114.2, as the Appellate Division pointed out, offer larger discounts to address situations such as this. However, Jersey City did not elect to use N.J.S.A. 54:5-114.1 or 54:5-114.2 because they do not authorize the bulk sale of tax certificates. The Appellate Division said that the inadequacy of N.J.S.A. 54:5-114.1 and 54:5-114.2 did not justify the measures taken that resulted in circumventing N.J.S.A. 54:5-113.1. Such inadequacy, the Appellate Division concluded, should be handled by the Legislature.

### **Miscellaneous**

**Taxpayers' Bill of Rights Violation** – *Ravindra and Suras Vora v. Director, Division of Taxation*, decided June 5, 1996.

In this case, the Tax Court considered whether defendant violated plaintiffs' rights under the Taxpayers' Bill of Rights when settling a tax deficiency issue. The deficiency resulted from the defendant's application under N.J.S.A. 54A:5-1(c), which provides that in calculating the gain or loss realized upon the sale of property, the Federal income tax basis shall be used; thus making plaintiffs responsible for tax on the gains realized from the sale of depreciable real property. Plaintiffs and defendant disagree over the use of the statute.

Plaintiffs contended that the statute did not apply. They reasoned that using the depreciation deductions allowable for Federal income tax

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to reduce the basis for gross income tax is incorrect because by the prohibition under New Jersey law against the netting of inter-category gains and losses (N.J.S.A. 54A:5-2) plaintiffs derived no tax benefit from the depreciation deductions.

Citing *Vasudev v. Taxation Div. Director*, 13 N.J. Tax 223 (Tax 1993) and *Spinella v. Director, Div. of Taxation*, 13 N.J. Tax 305 (Tax 1993), the Court stated that it has specifically held that the tax benefit rule does not apply to the New Jersey gross income tax and therefore the statute applies.

Upholding the deficiency determination made by the defendant, the Court moved on to decide if the plaintiffs' rights, under the Taxpayers' Bill of Rights, were violated. The initial deficiency notice for \$484 was sent by the Division to plaintiffs on April 13, 1994. After several correspondences, including a check for \$25 sent by plaintiffs, a hearing was requested by plaintiffs on June 1, 1994. The hearing was never granted.

The Division then sent plaintiffs a Notice of Adjustment on June 6, stating that they had overpaid their taxes by \$25 and that they were due a refund. Then on June 7, the Division sent plaintiffs another letter including *Spinella v. Director*, to explain the Division's position with regard to plaintiffs' protest.

The Division sent plaintiffs a "Final Determination" on July 15, 1994 reaffirming the deficiency and indicating the amount owed was \$531.72. Plaintiffs filed an appeal on September 14, 1994. After

another notice from Division sent on September 21 indicated the amount owed had increased to \$592.34, plaintiffs sent a check for \$551.66 to the Deputy Attorney General assigned to the case with no indication that they were abandoning the appeal. Counsel then sent forms to plaintiffs so they could withdraw their complaint. Plaintiffs did not respond, even after several phone calls and follow up letters by counsel.

Plaintiffs contended that they sent the check in order to stop the accrual of interest; their want for an appeal did not change. Plaintiffs also put forward that they believed counsel's phone calls and sending of the withdrawal forms were attempts to coerce them to withdraw the complaint.

The Court held that the Division's conduct was in violation of plaintiffs' rights under N.J.S.A. 54:49-18, which requires the Director to grant a requested hearing if the taxpayer files a written protest. The Court concluded that the June 6 letter gave erroneous advice and that by not rectifying the error on the June 7 letter, the Division created confusion and gave mixed signals to plaintiffs. The Court affirmed the deficiency and directed the interest between June 6 and July 15 refunded to plaintiffs.

**Sales and Use Tax**  
**Refinishing Hardwood Floors Taxable** — *Joseph Newman v. Director, Division of Taxation*, Superior Court of New Jersey, Appellate Division, decided September 21, 1995.

The Appellate Division affirmed an assessment of sales tax on the refinishing of hardwood floors un-

der N.J.S.A. 54:32B-3(b)(4), as "servicing...real property," and rejected the appellant's argument that the service was exempt under N.J.S.A. 54:32B-3(b)(2)(v) as the installation of property which constituted a capital improvement or addition to real property. □

## ***In Our Legislature***

### **Local Property Tax**

**Veterans' Organizations and Tax Exempt Status** — P.L. 1996, c.82 (signed into law on July 25, 1996) permits war veterans' organizations to conduct certain income-producing activities and retain property tax exempt status. This bill was designed to preserve the tax exempt status of veterans' organizations, even if these entities use their property for an income-producing purpose on a auxiliary basis, if all net proceeds from such auxiliary activities are utilized in furtherance of the purpose of the organization or for other charitable purposes. This legislation is effective immediately and retroactive to January 1, 1994. □

# tax calendar

## january

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

### January 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

### January 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending September 30

*continued*

### January 15 - continued

- 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, manufacturers, representatives and consumers
- 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
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return

*continued*

### January 21 - continued

- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

### January 27

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

### January 31

- NJ-941 & NJ-941-W Gross Income Tax**—Employer's quarterly return

## february

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

### February 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

### February 18

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending October 31

*continued*

### February 18 - continued

- 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, manufacturers, representatives and consumers
- 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
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

*continued*

### February 20 - continued

- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return
- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

### February 25

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

# march

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

## March 10

- CWIP-1 Cigarette Tax**—Informational report by wholesalers
- CWIP-2 Cigarette Tax**—Informational report by wholesalers

## March 17

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30  
*continued*

## March 17 - continued

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

## March 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- 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
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return  
*continued*

## March 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

## March 25

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

(Detach here and mail)

## 1996 Package NJX Order Form

(For office use only)

\_\_\_\_\_ 1996 PACKAGE NJX @ \$7.00 EACH.....\$ \_\_\_\_\_  
(No. of copies)

\_\_\_\_\_ NJX 3-RING BINDER @ \$7.00 EACH (Shipped separately).....\$ \_\_\_\_\_  
(No. of binders)

TOTAL AMOUNT ENCLOSED.....\$ \_\_\_\_\_

Make your check or money order payable to: **State of New Jersey - NJX.**

Name \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
 City, State \_\_\_\_\_ Zip Code \_\_\_\_\_

## *from the director's desk*

### **Special Message to Tax Practitioners**

The Division would like to thank all of the tax practitioners who assisted us last season by following our new procedures for submitting resident returns. Division staff saw many examples of notices to clients explaining why their returns, W-2s, etc. were not stapled. You can help us again this year by doing the following:

- Do not staple, tape, paper clip or use any other fastening device to attach enclosures to Form NJ-1040.
- Use only blue or black ink when completing forms.
- Mail returns and enclosures (flat, not folded) in 9" x 12" envelopes (whenever possible).
- Use the correct envelope/address. This year all New Jersey income tax return instruction booklets include a payment voucher and corresponding envelope. Another envelope for mailing returns is also provided. This envelope has perforated labels on its flap. Be sure to use the correct label.
- Send 8½" x 11" copies of W-2s rather than the form itself (whenever possible). You may photocopy multiple W-2s (if space permits) on an 8½" x 11" sheet.
- **MAKE NO ENTRY** on unused lines or any line where the amount to be reported is zero or less.

We appreciate your continued cooperation.