

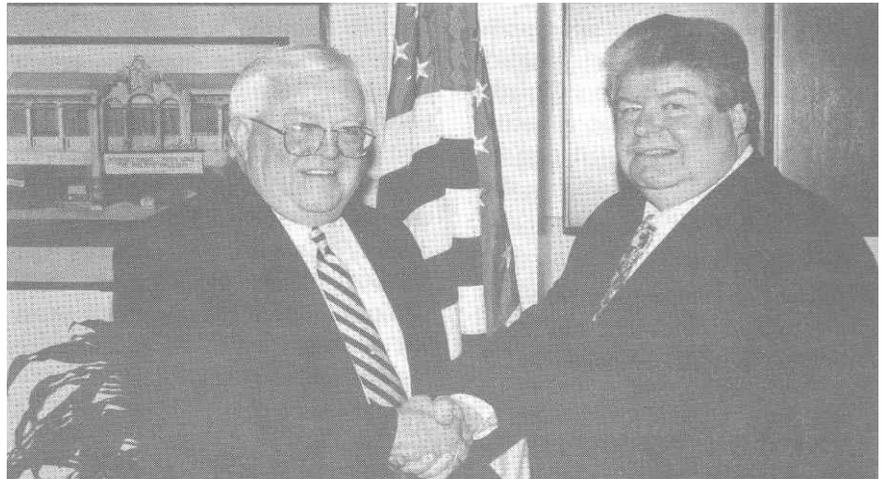
New Jersey State Tax News

Winter 1997

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Director Gardiner Retires



Retiring Director Richard D. Gardiner (left) congratulates Robert K. Thompson on his recent appointment as Acting Director of the New Jersey Division of Taxation.

On November 5, 1997, Richard D. Gardiner, Director, Division of Taxation, announced his retirement from State Government effective December 1, 1997. Dick was a career civil servant who in 1991 retired after 32 years of service. He returned as Director in June of 1994. We all wish Dick well in his future endeavors.

Deputy Director Robert K. Thompson has been named Acting Director. Bob actually returns to that position, having served in this same capacity from February 1994 until Dick's appointment. □

important phone numbers

| | |
|-------------------------|--------------|
| Tax Hotline..... | 609-588-2200 |
| Automated Tax Info..... | 800-323-4400 |
| | 609-588-2525 |
| 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 Refund..... | 609-292-7018 |
| Public Utility Tax..... | 609-633-2576 |

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

State Tax News Celebrates 25th Anniversary

The first edition of the *State Tax News* made its debut in June 1972. Our title became the *New Jersey State Tax News* in November 1978. The newsletter was envisioned as an important source of tax information for both tax practitioners and the general public. Considerable effort has been made over the years to develop a publication which would fulfill one of the Division's chief goals — the public's right to know.

Come visit 1972 with us to see how much you remember from 25 years ago and celebrate our 25th anniversary with us on page 12. □

TeleFile Program Expansion

Due to the success of the 1996 TeleFile program, the Division has expanded its TeleFile program for 1997. New Jersey residents can now TeleFile if their gross income for 1997 is \$150,000 or less and consists only of wages, interest (\$1,000 or less) or dividends (\$1,000 or less). Last year the total income threshold for NJ TeleFile was \$75,000, and taxpayers were limited to \$400 in interest and \$400 in dividends. Raising these income thresholds means that more than 1.3 million New Jersey residents may be eligible to TeleFile their State income tax returns this year.

In addition to increasing the gross income threshold, the Division has purchased additional computer hardware and software and installed additional telephone lines. This expansion will allow the Division to increase the eligible TeleFile population by over

300,000 taxpayers while maintaining the goal of providing 24 hour a day service during the 1997 filing season.

Taxpayers who TeleFiled their NJ returns last year will automatically be mailed 1997 NJ TeleFile booklets. In addition, every 1997 New Jersey resident income tax return booklet (Form NJ-1040-P) will contain a TeleFile worksheet and instructions. The Division encourages all eligible residents to take advantage of NJ TeleFile. It offers New Jersey residents the fastest, easiest and most convenient method of filing their State tax returns. Best of all, refunds are mailed within two weeks.

As a reminder to tax practitioners — you are eligible to TeleFile a New Jersey income tax return for your client provided that you maintain a Power of Attorney Form for your client in your file. If you use your power of attorney to TeleFile for a client, enter the information from the TeleFile worksheet as prompted by the system. At the voice signature prompt, speak the taxpayer's name, state that you have power of attorney for the taxpayer, then give your name and Federal ID#. As with any TeleFile return, the TeleFile worksheet (with confirmation number provided by the TeleFile system included) becomes the taxpayer's proof of filing.

The 1997 TeleFile season begins on Thursday, January 15, 1998 and will continue through midnight Wednesday, April 15, 1998. NJ TeleFile will accept returns 24 hours a day during the filing season. To reach NJ TeleFile call

New Jersey State Tax News

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

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

Division of Taxation Acting Director:
Robert K. Thompson

News Coordinators for This Issue:

| | |
|-------------------------------|-------------------|
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| <i>Compliance</i> | Marita Sciarrotta |
| <i>Criminal Investigation</i> | Cheryl Repici |
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Editor: Linda B. Hickey

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1-888-235-FILE (toll-free from Touch-tone phones within New Jersey only) or 609-588-FILE (from Touch-tone phones anywhere). For more information on NJ TeleFile, call our Tax Hotline at 609-588-2200.

Last year, last minute filers jammed our TeleFile phone lines. We've added lines this year to accommodate the last minute rush, but still suggest that *Telefilers* (and practitioners filing for them) file as early as possible. □

GROSS INCOME TAX

Changes to 1997

Resident Return

Property Tax Deduction/Credit — 1997 marks the second year of the phase in of the property tax deduction/credit benefit available to eligible New Jersey homeowners and tenants. The deduction this year has increased to 75% of property taxes due and paid on the taxpayer's principal residence or \$5,625, whichever is less. For tenants, 18% of rent due and paid during the year is considered property tax. The alternative minimum benefit available to eligible residents is a refundable credit of \$37.50.

Eligible residents who are not required to file an income tax return because their gross income is \$7,500 or less (\$3,750 for married persons filing separate returns) are entitled to the refundable credit *only* if they are at least 65 years of age or are blind or disabled.

The property tax deduction/credit benefit is *in addition* to the homestead rebate which continues to be available to many New Jersey residents.

Obtaining Mailing Envelopes, Payment Vouchers — Both the large envelope designed to accommodate the New Jersey resident income tax return and homestead rebate application (Forms NJ-1040 and HR-1040) and the small window envelope for mailing the payment voucher (Form NJ-1040-V) may be ordered from the Division of Taxation. Blank payment vouchers are also available. To request any of these items, call the Automated Tax Information System at 1-800-323-4400 (Touch-tone phones within New Jersey) or 609-588-2525 (Touch-tone phones anywhere). Supplies are limited, so order early. □

New Processing Equipment

The Division of Revenue is now using automated equipment to process employer withholding returns, sales tax returns and individual estimated payments (Forms NJ-500/NJ-941, NJ-941-W, ST-50/51 and Form NJ-1040-ES). The new mail processors remove the check and return from the envelope mechanically and read identification and tax information by means of imaging technologies. These automated procedures are expected to reduce operating costs and provide faster, more accurate return processing.

Taxpayers are urged to adhere to the following guidelines to ensure that returns and payments can be processed with as little manual intervention as possible.

- **Use preprinted tax returns.** These forms contain valuable information meant to ensure that tax payments are credited to the proper account and tax period.

- **Do not use a facsimile** return printed by a commercial software package. Instead, *transcribe* the tax information from the facsimile onto the preprinted return.
- **Use the correct return form** for the tax and tax period.
- **Send only the return and payment.** Do not include *anything* else in the envelope. If the payment check has a stub, remove it and save it for your files.
- **Use the window envelopes provided.** A year's supply of return envelopes is sent with the preprinted forms.
- **Do not staple** the return and check together.
- **Do not fold** the check or return.
- **Do not tape** the return to the inside of the envelope.
- **Do not send monthly** remittances for gross income tax withholding (Form NJ-500) or sales tax (Form ST-51) if there

continued on page 4

Interest 11.25% for Fourth Quarter

The interest rate assessed on amounts due for the fourth quarter of 1997 is 11.25%.

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

| Effective Date | Interest Rate |
|-----------------------|----------------------|
| 1/1/96 | 11.75% |
| 4/1/96 | 11.75% |
| 7/1/96 | 11.75% |
| 10/1/96 | 11.75% |
| 1/1/97 | 11.25% |
| 4/1/97 | 11.25% |
| 7/1/97 | 11.25% |
| 10/1/97 | 11.25% |

processing - from page 3

is no tax due for the period. (A sales tax monthly remittance need not be filed if the amount of sales tax due for the month is \$500 or less. A monthly remittance of tax withheld is required only if the amount due for the month is \$500 or more.) □

SALES AND USE TAX ***Energy Tax Reform***

As reported in the Fall 1997 issue, effective 1/1/98, the recently enacted Energy Tax Reform legislation, P.L. 1997, c.162 repeals the gross receipts and franchise tax on electric, gas and telecommunications utilities and imposes Corporation Business Tax on those utilities and imposes sales tax on natural gas and electricity. The purpose of the legislation is to facilitate the transition to competition among utilities and other energy marketers resulting from the unbundling of energy products and services and a deregulated energy market.

The following are the basic provisions that relate to sales and use tax:

1. Natural Gas and Electricity are defined as tangible property and are subject to tax as such;
2. The service of transporting gas/electricity is a taxable service;
3. Use tax is imposed on both the commodity and the transportation charge;
4. Definition of "vendor" was amended to include energy sellers and transporters;
5. The manufacturing exemption, the farmer's exemption and the research and development exemption do not apply to the purchase of gas and electricity; the exemptions that apply in urban enterprise zones and for exempt entities such as schools, churches, etc. do not apply to the purchase of gas and electricity;
6. The tax is to be *included in the price* of the gas and electricity, as well as in the transportation charge.

In addition, the following information is from the Public Notice, which was published in the *New Jersey Register* on November 17, 1997:

"Take notice that pursuant to P.L. 1997, c.162, certain industrial and commercial purchasers of natural

gas distributed through a pipeline are granted a partial sales and use tax exemption for natural gas purchased between January 1, 1998 and December 31, 2002, inclusive.

"Any industrial or commercial purchaser whose last purchase of delivered natural gas in calendar year 1995 was from a **non-utility** (hereinafter referred to as "non-utility gas"), is deemed to be an eligible person for purposes of the statutory exemption. A **cogeneration facility** which ceased operation in 1996 and subsequently began to purchase non-utility gas is also an eligible person for purposes of the statutory exemption. A **non-utility** is a company that was not subject to the Public Utility Gross Receipts and Franchise Tax as of December 31, 1997, and is hereinafter referred to as a **gas marketer**."

For a complete explanation of the partial exemption and the procedure that must be followed to claim the exemption, please refer to the Division of Taxation's Notice in the November 17, 1997 volume of the *New Jersey Register*, which is also available on the Division's web site at:

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

□

NJ TeleFile The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1997 income tax return/homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-826-4448 (from anywhere).

Full year New Jersey resident during 1997

Not 65 years of age or older as of December 31, 1997

Same filing status as on your 1996 NJ return

Not blind or disabled as of December 31, 1997

Total New Jersey income of \$150,000 or less

Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

SALES AND USE TAX

Uniform Resale Certificate

The Multistate Tax Commission (MTC) has released a revised version of its "Uniform Sales & Use Tax Certificate—Multijurisdiction." The certificate may now be used in a majority of the 46 states with state sales taxes for the purchase — for resale — of tangible personal property and of otherwise taxable services.

The revised certificate now lists New Jersey as one of the states where the certificate is acceptable. The multijurisdiction certificate is valid in New Jersey in the case of a drop shipment (New Jersey registered vendor sells property to out-of-State customer, but delivers to a location in New Jersey, either to the end user or a third party) or when the buyer and seller are both registered with New Jersey for sales tax purposes. Additional information regarding the proper use of resale exemption certificates appeared in the Summer '97 issue of the *New Jersey State Tax News*.

The certificate is available on the Multistate Tax Commission's World Wide Web site at:

<http://www.mtc.gov/txpyrsvs/s&uexemp.pdf>

and on the Division's web site at:

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

The certificate, which may be reproduced, may also be obtained by calling Ms. Ruffin at the MTC at 202-624-8699 or by e-mailing her at **mtc@mtc.gov**. Questions concerning the form may be directed to Michael Mazerov, MTC Director of Information at 202-624-8699 or **mmazerov@mtc.gov**. □

CORPORATION TAX

Corporate Partner Regulation

On September 15, 1997 the Division promulgated a new regulation establishing rules for the taxation of corporate partners. N.J.A.C. 18:7-7.6(a)-(1) enumerates subjectivity requirements and apportionment methods for corporate partners. A brief synopsis of the regulation is as follows:

Subjectivity requirements set forth in N.J.S.A. 54:10A-2 will be satisfied if a foreign corporation is a general partner in a limited or general partnership (or deemed to be a general partner in a limited partnership) doing business in New Jersey. A foreign corporate limited partner of a limited partnership doing business in New Jersey will be subject to taxation if the limited partner is also a general partner of the limited partnership, takes an active part in the control of the partnership business or meets the criteria set forth in N.J.A.C. 18:7-1.9. Also, a membership interest in a limited liability company will satisfy the subjectivity requirements of N.J.S.A. 54:10A-2 if certain criteria set forth in the regulation are met.

For apportionment purposes, when the subject corporation and partnership are not part of a unitary business, separate accounting will determine the corporation's apportioned entire net income. An apportionment factor which includes all partnership attributes (property, payroll and receipts) will be applied to the corporation's distributive share of partnership income and an apportionment factor which includes all corporate attributes will be applied to the corporation's

entire net income (excluding the partnership income). The sum of the two will represent the corporation's apportioned entire net income.

Flow-through apportionment will determine the corporation's entire net income when the corporation's business and the business of the partnership are unitary in nature. Apportionment will be determined by combining the property, payroll and receipts attributable to both the corporate partner and partnership. This combination of corporate and partnership apportionment factors will be applied to the corporation's entire net income, including the distributive share of partnership income, in determining the corporation's apportioned entire net income.

Several examples of the subjectivity requirements and apportionment methods for corporate partners are included in the regulation and should be referred to for further clarification and guidance. The 1997 CBT-100 and CBT-100S include a new schedule (Schedule P-1) where all partnership interests are required to be shown. □

CORPORATION TAX

New Jersey QSSS Requirements

The Small Business Job Protection Act of 1996 changed the Federal tax treatment of S corporations. Under the new law an S corporation will be permitted to own a Qualified Subchapter S Subsidiary (QSSS) and effectively treat the subsidiary as if it were a division. The assets, liabilities, and items of

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qsss requirements - from page 5

income, deduction and credit would flow through to the parent retaining the same character.

As a result of these changes, Federal QSSS's may be recognized accordingly by New Jersey. To obtain recognition as a New Jersey QSSS the revised Form CBT-2553, along with a copy of Federal Form 966, must be filed before the 16th day of the fourth month of the first tax year the election is to take effect. However, the election date has been extended to April 15, 1998, for corporations who wish to conform with the Federal Statute effective date for tax years beginning after December 31, 1996.

To maintain the separate entity principle, every qualified NJ QSSS must file a CBT-100S and pay the minimum tax of \$200. Unless the NJ QSSS formally dissolves or withdraws with the Secretary of State, it will be required to file and pay annually a Corporation Business Tax return and an annual report with the NJ Secretary of State.

The parent corporation must consent to taxation by New Jersey by filing a CBT-100 or CBT-100S which includes the assets, liabilities, income and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent to either consent or file a CBT-100 or CBT-100S for a period will result in the denial of the NJ QSSS status and the subsidiary will be subject to taxation in New Jersey as a C corporation. □

Objections to Plans of Reorganization

Based on the advice of the Office of the Attorney General, the Division has recently instituted new policies with regard to dealing with Plans for Reorganization in Chapter 11 and Chapter 13 insolvency proceedings.

The Division will recommend that the Attorney General file objections to proposed Chapter 13 Plans of Reorganization where there appears to be one or more delinquent Gross Income Tax Returns. On cases where the Plan has been confirmed, but a claim has not yet been filed (yet still prior to the Bar Date), a motion requesting a modification of the Plan will be made to the Court. This new procedure was necessary as the Bankruptcy Courts have prohibited the Division from filing arbitrary Proofs of Claim for non-filers.

All Chapter 11 proposed Plans of Reorganization will be scrutinized to ensure that the Plan contains specific language regarding when payments will be made and the rate of interest provided for during the course of the Plan. Additionally, any Plan that contains provisions that relieve any corporate officers from personal liability for trust fund taxes will be targeted. Since many Chapter 11 Plans contain non-specific language it is expected that the Attorney General will be busy filing Objections to the proposed plans.

Over the past few months a total of one hundred forty-three (143) Objections have been filed. □

GROSS INCOME TAX Common Employer Withholding Errors

With the advent of the revised New Jersey employer withholding remittance and filing format for 1997, the Division has become aware of several common filing and remittance errors:

- Many employers are completing and forwarding quarterly reconciliation returns, NJ-941 or NJ-941-W, with each weekly or monthly withholding remittance. For the second and subsequent payments forwarded this way, the Division's computer system reads these payments and returns as duplicate filings. This not only delays the processing of the payments to the employer's account, but very often results in the generation of erroneous notices of underpayment.
- Some employers are listing the payroll wage amount, instead of the withholding amount as the weekly or monthly liability.
- A number of employers who are required to remit on a weekly basis are remitting the last withholding payment of the quarter with the quarterly reconciliation. The quarterly reconciliation is due the last day of the month following the end of the calendar quarter. However, the last weekly withholding payment is due the Wednesday following the close of the last payroll period for the quarter.

Example: An employer paid wages on Friday, March 28, 1997. The weekly withholding payment was due on Wednesday, April 2, 1997. If the em-

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ployer remitted the withholding payment on April 30, with the quarterly reconciliation, the withholding payment would have been 28 days late.

- Employers who are required to remit weekly must use Form NJ-941-W, the **weekly** filer quarterly reconciliation. The Division is finding that many weekly filers are erroneously using Form NJ-941, the quarterly reconciliation for **monthly** and **quarterly** filers. Since this is the wrong form and the weekly liabilities cannot be entered on this form, the system evenly prorates the reported monthly or quarterly liability to a weekly liability based upon the number of weeks in that month or quarter. This usually results in erroneous interest charges.
- For the payroll periods near the beginning or end of a quarter, many employers are reporting the withholding amount in the wrong quarter. Withholdings should be remitted and reported in the quarter the payroll period ends, and not when the withholdings are due.

Example: An employer paid wages on Friday, April 4, 1997, for the pay period from March 31 through April 4. The withholding liability should have been included as part of the second quarter. If the employer paid wages on Monday, March 31, 1997, for the payroll period March 25 through March 31, the withholdings should have been included as part of the first quarter.

Beginning with tax year 1997, a new notice of underpayment has been put into use for employer withholdings. This new notice details all payments received, the due dates for each withholding remittance, the period to which each payment was applied, the amount of tax on which interest was assessed, and a legend explaining payment codes on the return. The Division is hopeful that the new format and additional information will provide a clearer understanding as to the reason for the notice, and expedite the resolution of any underpayment in dispute. □

GROSS INCOME TAX Forgiveness of Debt Income

After the article on forgiveness of debt income appeared in the Summer 1997 issue of the *State Tax News* several tax practitioners asked for additional information on the subject.

Forgiveness of debt income that passes through to a partner from the discharge or cancellation of partnership indebtedness is taxable as a distributive share item for New Jersey Gross Income Tax purposes. Any distributive share item of income from a partnership represented on the Federal K-1 is taxable to the partner unless the item is specifically exempted by the New Jersey Gross Income Tax law at 54A:6-1 to 6-21.

For Federal tax purposes, under GAAP, if troubled debt restructuring (forgiveness of debt) defined by SFAS 15, para. 2, is settled by an exchange of assets or continued with a modification of terms, an extraordinary gain would be recognized.

The income from forgiveness of debt properly listed as a "1231 gain" or "Other" on the Federal K-1 is classified for New Jersey Gross Income Tax purposes as "Net gains or income from disposition of property" under 54A:5-1c.

Should the forgiveness of debt meet the criteria to be considered as *ordinary* income for Federal tax purposes, the income is "Distributive share of partnership income" for New Jersey Gross Income Tax purposes. □

GROSS INCOME TAX S Corporation Distributions

The reporting and taxing of S corporation distributions to shareholders is governed by N.J.S.A. 54A:5-1f. and 54A:5-14. These rules are the same as for Federal tax reporting purposes, modified as required for New Jersey AAA, E&P and basis differences. Shareholders who receive corporation distributions in transition years and from New Jersey "hybrid" corporations have additional rules which must be considered.

Corporations in a transition period are those corporations going from being a New Jersey C corporation to an electing New Jersey S corporation or vice versa. Distributions declared by a New Jersey C corporation are taxable to the resident shareholders for Gross Income Tax purposes as *Dividends* regardless of the year paid, providing the corporation is not a New Jersey "hybrid" corporation.

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s corp. distributions - from pg. 7

For example:

- X corporation in 1996 is a New Jersey C corporation and a Federal S corporation.
- X corporation makes a New Jersey S election effective 1/1/97.
- X corporation declares a \$1,000 distribution 12/15/96 and pays the distribution on 2/15/97.
- X corporation has \$2,000 in earnings in 1996 and \$3,000 in 1997.
- X corporation has one shareholder who is a New Jersey resident.
- What does the shareholder report on his NJ-1040 in 1996?

The shareholder reports no income from the X corporation on his 1996 NJ-1040. The shareholder is a cash basis taxpayer and does not report the dividend until received.

- X corporation files a 1996 CBT-100 and pays tax at the 9% rate on \$2,000.
- What does the shareholder report on his NJ-1040 in 1997?

The shareholder reports the \$1,000 received from the New Jersey C corporation in February as *Dividends* and their share of the electing New Jersey S corporation's 1997 earnings of \$3,000 as *Net pro rata share of S Corporation Income*.

- X corporation files a 1997 CBT-100S and pays tax at the reduced rate on \$3,000.

“Hybrid” New Jersey corporations are Federal S corporations that have not made the New Jersey S election and are conducting business in and out of New Jersey. For

Corporation Business Tax purposes the corporation is a C corporation. For Gross Income Tax purposes that portion of the corporation's income or loss from within New Jersey is considered C corporation earnings/losses and those earnings and losses from outside New Jersey are S corporation earnings/losses. The income or loss allocation factor used for New Jersey Corporation Business Tax purposes is also used for Gross Income Tax.

The reporting and taxing of distributions received by resident shareholders of a New Jersey “hybrid” corporation are governed by both C corporation and S corporation rules. The distribution must be allocated between the two distinct parts of the corporation. The allocation factor applied to the distribution is that used by the corporation on its CBT-100 tax return.

For example:

- Z corporation in 1996 is a Federal S corporation that has not made the New Jersey S election.
- Z corporation is conducting business in and out of New Jersey.
- Z corporation in 1996 had earnings of \$5,000.
- Z corporation declared and issued distributions of \$3,000 in 1996.
- Z corporation has one shareholder who is a New Jersey resident.
- Z corporation files a 1996 CBT-100 and allocates 50% of its earnings to New Jersey paying tax on \$2,500 at the 9% rate.
- What does the shareholder report on his 1996 NJ-1040?

The shareholder reports their *Net pro rata share of S Corporation Income* not allocated to New Jersey for CBT purposes, \$2,500.

The distribution of \$3,000 is reported and taxed as follows:

1. The distribution is allocated between the C and S portions of the “hybrid” corporation using the allocation factor (50%) used for CBT purposes — \$1,500 to the C corporation part and \$1,500 to the S corporation part.
2. The \$1,500 received from the C corporation part is a dividend and reported and taxed in accordance with N.J.S.A. 54A:5-1f, *Dividends*. All \$1,500 is taxable as *Dividends*.
3. The \$1,500 received from the S corporation part is a distribution and reported and taxed in accordance with N.J.S.A. 54A:5-1f and 54A:5-14.

To the extent 54A:5-14 excludes such distributions from taxation they are not reported on the shareholder's NJ-1040. The \$1,500 received from the S corporation part is not taxable in that the shareholder has \$2,500 in *Net pro rata share of S Corporation Income*. □

DIVISION HOME PAGE

Inheritance & Estate Tax Forms

New Jersey Transfer Inheritance and New Jersey Estate Tax forms may now be downloaded from the Internet at:

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

Booklets of forms and instructions to be used in reporting a decedent's estate for Transfer Inheritance and/or New Jersey Estate

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Tax purposes are included in their entirety – IT-R for estates of resident decedents and IT-NR for estates of nonresident decedents. These two booklets contain all of the forms, schedules, instructions, and rates necessary to prepare New Jersey Transfer Inheritance and New Jersey Estate Tax Returns. However, in addition to the complete booklets, two commonly used forms have been broken out for individual access. These are the self-executing waiver, Form L-8, and Form L-9, which is a request for a waiver. These forms are for use in estates of resident decedents under circumstances more fully described below.

Form L-8 is actually a waiver which is self-executing. It is for Class “A” beneficiaries in the estate of a resident decedent and may be used in the case of a surviving spouse of a decedent dying on or after July 1, 1985 and for any other Class “A” beneficiary of a decedent dying on or after January 1, 1988. More detailed instructions and qualifications are contained in the body of the Form L-8.

Form L-9, unlike the Form L-8, is simply a request for a real property waiver in the estate of a resident decedent. It may be used to transfer real property standing in the name of a decedent alone to a surviving spouse, in the estate of a decedent dying on or after January 1, 1985. Form L-9 may be used for other Class “A” beneficiaries in estates of decedents dying on or after July 1, 1988 and the decedent’s interest in the real estate was in the name of the decedent alone or with any other Class “A” beneficiary. Detailed

instructions are included in the body of the Form L-9.

Form L-9 may be used only when all beneficiaries are Class “A,” there is no tax, and the only reason to file a return would be for the purpose of obtaining a waiver for real estate.

A copy of the will, if decedent died testate, and any codicils and/or deeds of trust must be submitted with the form or a waiver will not be issued.

As always, should there be need for further information or assistance, you may call the Taxpayer Information Section of the Inheritance Tax Branch directly at 609-292-5033, 292-5035, 292-7147 and 777-4559. □

DIVISION HOME PAGE ***Motor Fuel License***

As of August 15, 1997, all New Jersey Motor Fuel Tax License information will be available to you through the Internet.

The information that will be available will be current information. All new licenses issued, all licenses canceled, and any license which may be revoked by the Division will be posted to the Internet on a monthly basis.

The Division’s Internet address is:
<http://www.state.nj.us/treasury/taxation/>
□

Deferred Payments

The *Taxpayers’ Bill of Rights*, Chapter 175, Public Law 1992, provides the Director of the Division of Taxation the authority to enter into payment agreements with taxpayers. Payment

agreements extend the time a taxpayer has to pay a liability and covers the unpaid tax, any penalty owed and interest. Taxpayers need to be aware that interest continues to accrue on the unpaid balance until their liability is paid in full. Requests for payment plans are reviewed on a case by case basis. Taxpayers who are approved for a payment plan sign an agreement that spells out the length of the plan, the monthly payment amount, payment due date, and that all current taxes will be filed and paid as they come due. Additionally, as part of the Payment Plan process, it is the Division’s policy to file a Certificate of Debt in New Jersey Superior Court to protect the interest of the State and to add a five percent Cost of Collections (5% of the payment plan amount) to cover the additional administrative burden of monitoring payment plans. Taxpayers who default on their payment agreements are subject to further collection action. Generally, defaulted taxpayers are referred to one of the Division’s Field Investigation offices for execution on the Certificate of Debt previously filed against the taxpayer’s liability. □

Joint Account Levies

Many questions arise from taxpayers when a joint bank account is levied. Pursuant to N.J.S.A. 17:16I-8 (amended in 1995), all the funds in a joint account are subject to a levy against one of the named holders of the account. Therefore, if only one party is the judgment debtor, the Division may levy upon 100% of the funds in

continued on page 10

joint account levies - from pg. 9

that account. The statute states:

“Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. The following payments from a multiple-party account by the financial institution, including payment of the entire account balance, are deemed authorized by all parties to, and any other person with an interest in, the multiple-party account, without any duty on the part of the financial institution to consider the net contributions of the parties to the account:

- (a) Payments, on request, to any one or more of the parties;
- (b) Payments pursuant to any statutory or common law right of set-off, levy, attachment or other valid legal process or court order, relating to the interest of any one or more of the parties; and
- (c) Payments, on request, to a trustee in bankruptcy, receiver in any state or federal insolvency proceeding, or other duly authorized insolvency representative of any one or more of the parties.

A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.”

If the judgment debtor has access to all funds in the account, the Division may levy against the entire account. □

SALES AND USE TAX

Alcoholic Beverages & Nonprofits

Effective July 1, 1990 all sales of alcoholic beverages are subject to retail sales tax. Not-for-profit organizations are not exempt from sales and use tax on alcoholic beverages sold or given away. Prior to July 1, 1990 all sales of alcoholic beverages were exempt from the retail sales tax. However, they were subject to the Alcoholic Beverage Wholesale Sales Tax Act. The wholesale tax expired as of July 1, 1992.

Sales tax is imposed on all sales of alcoholic beverages. Use tax is imposed on all alcoholic beverages given away to club members and guests. Use tax is also imposed on alcoholic beverages donated to organizations for fund raising functions.

Sales tax is based on the total receipts received by the club. Sales tax is submitted either monthly or quarterly. Monthly returns (ST-51) are due only if the organization collects sales tax of more than \$500. If monthly collections are \$500 or less, sales tax can be reported on the quarterly return (ST-50). All returns are due on the 20th of the following month.

Use tax (6%) is based on the purchase price of the alcoholic beverages given away or donated. This is reported on Line 5 of the Quarterly Sales & Use Tax Return. □

LOCAL PROPERTY TAX

Reorganization of Activity

Assistant Director, Stephen M. Sylvester recently wrote “I would

like to take this opportunity to advise anyone with an interest in local property administration of the reorganization of the local property activity within the Division of Taxation. This reorganization shifts existing personnel and resources to more effectively accomplish the mission of local property, that is, the uniform and equitable administration of local property tax statutes.

“Local Assessment Compliance Section, under the direction of Jim Coll, has responsibility for railroad valuation, tax maps, and assessment compliance at the local level. Harris Adams will continue to direct the Policy and Planning Section in legislative and regulatory issues, farmland assessment, and general administrative activities. This section will become more proactive in the areas of revaluations/reassessments, and in statute administration at the county tax board level. The Field Assistance Section, directed by George Lorbeck, will continue to ensure the integrity of the Director’s Table. Field personnel have been reassigned to the Division’s regional offices and will be making greater use of technology in the review of sales. Also, a Technical Support Group has been created to be proactive in education and training, as well as providing expertise in MOD IV and local property systems issues.

“This reorganization, together with the assistance of county tax board commissioners, county tax administrators, and assessors, is expected to improve our administration of statutes and regulations so that the local property taxpayer is better served.

continued on page 11

reorganization - from page 10

“In closing, I would like to thank the county tax boards for their years of cooperation with our field staff, the assessors for their diligence in a difficult field, and the employees of Local Property for their dedication. I look forward to working with all of you in meeting the challenges ahead.” □

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.
- Appeal time, where assessor fails to notify taxpayer of current 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:

- On July 7, 1997, James Zahl of Holmdel entered a plea of not guilty to an accusation charging him with misapplication of entrusted property consisting of \$38,206.45 in sales tax collected by Zahl’s corporations, North Wood Outings Ltd. and Hazienda Evergreen, and not remitted to the State from October 1, 1990, to December 31, 1993. Zahl waived his right to have the case presented to a grand jury. He has applied for admittance into the Pre-Trial Intervention Program. This case was investigated by the Office of Criminal Investigation and is being prosecuted by the State Attorney General’s Office.
- New Jersey Division of Taxation agents uncovered 99 tax violations during a two-day sweep of 61 retail establishments selling cigarettes and motor fuels in the cities of Ventnor, Margate and Longport. On Tuesday, July 15, and Wednesday, July 16, 1997, Division staff from the Field Audit Branch, Investigations Branch and the Office of Criminal Investigation conducted the sweep. The purpose of the inspections was to ensure compliance with licensing and registration requirements of New Jersey’s Cigarette Tax, Tobacco Products Wholesale Sales and Use Tax, Motor Fuels Tax and Sales and Use Tax laws. The Division has been conducting organized sweeps of

continued on page 13

'72 – A Year to Remember vs. '97

- | | |
|---|---|
| <ul style="list-style-type: none"> • Bread — 30¢ a loaf • The Division of Taxation opened a taxpayer information facility at its Barrack Street Lobby along with six other field offices • Butter — 89¢ a pound • State sales tax rate — 5% • Lamb chops — \$2.00 a pound; pork chops — \$1.40 a pound; • The State Assembly voted down the recommendation for a personal State income tax • <i>The New York Times</i> advertised a job for an accountant paying \$15,000/yr • Legislation was passed increasing rates for the alcoholic beverage, cigarette, corporation net income, emergency transportation and motor fuels taxes • New York's 110-story World Trade Center opened • First-class postal rate — 8¢ an ounce • Revenues collected for the fiscal year reached a new high of \$1.4 billion, an increase of \$119.3 million or 9.1% over the previous fiscal year | <ul style="list-style-type: none"> • Bread — \$1.29 a loaf • Although some locations have changed, the Division continues to operate the Barrack Street Lobby along with six other field offices • Butter — \$2.69 a pound • State sales tax rate — 6% • Lamb chops — \$3.29 a pound; pork chops — \$2.89 a pound; • State income tax introduced in 1976 remains in effect today at graduated rates of 1.4% - 6.37% • <i>The New York Times</i> advertised a job for a senior accountant paying low to mid \$30k and good benefits • Legislation was passed reducing the tax rate for New Jersey S corporations; the second phase of the property tax deduction/credit went into effect and the NJ Better Educational Savings Trust Program was established • New Jersey Performing Arts Center opened in Newark • First-class postal rate — 32¢ an ounce • Revenues collected for the fiscal year were \$14.9 billion, an increase of \$315 million or 2.1% over the previous fiscal year |
|---|---|

How do you remember the Division

What has changed since then?

What do you think has been the most



Who Was Who in '72

Governor — William T. Cahill

State Treasurer — Joseph M. McCrane, Jr.

Director — Sidney Glaser *

Deputy Director — J. Robert Murphy

Superintendent, Administrative Activity — Augustus J. Costigan

Superintendent, Collection & Enforcement Activity — Robert J. Costigan *

Superintendent, Audit Activity — Edward S. Landerkin

Asst. Superintendent, Collection & Enforcement Activity — John R. Baldwin *

Asst. Superintendent, Audit Activity — Harold Leib *

Chief, Processing Branch — Richard D. Gardiner *

* Pictured at left

Division Employees Reminisce — A group of Division employees with 25 or more years of service was asked to give us some insight on what they remember about the Division as it was 25 years ago. Here is what they said:

in 1972?

- We were still adjusting to the growing pains from merging Bureaus and still in transition organizationally from a tax bureau alignment to the functional organization that has developed today.
- The Division operations were basically manual (non-computerized) for all tax administration functions.
- Governor Cahill's Tax Policy Commission had just completed a two year study of the tax system and had issued a five volume report for reforming the entire State tax structure. The Division, which assisted the Commission during the study, was called upon to draft sixty-two bills based upon the Commission's recommendations.

- Much more is accomplished today with fewer employees because of advanced technology and the higher level of understanding of what we do and how we do it.
- The need for information and the technology to supply it has transformed the Division into a highly automated and productive agency.
- Efficiency has increased due to combining collection on all taxes through field office collection activities and filing judgments for multiple taxes.
- Change in the locations and management of tax records.

significant event within the Division in the last 25 years?

- Our growth from intrastate tax issues to northeast regional issues and national concerns.
- The introduction of computers back in 1985.
- The implementation of image processing.
- The Gross Income Tax Act was enacted. The impact of the new program upon the Division was dramatic. Substantial resources were needed to administer the income tax law and the new homestead rebate program.
- Reliance on technology and reorganization. We are more accessible now.

criminal enforcement - from page 11

downtown business districts, malls, flea markets, expos, and crafts, antique and collectible shows. However, this is the second operation that the Division has conducted that focused on the sale of cigarettes. The first such operation took place in the city of Elizabeth in February 1997.

- On August 13, 1997, Michael Eliasof of Mahwah was sentenced in Superior Court, Passaic County. Eliasof previously pleaded guilty to charges that he withheld from his employees' pay but failed to remit \$40,904.38 in gross income tax. Since entering his plea, he has made restitution of \$1,700. Eliasof was sentenced to 48 months probation and ordered to make restitution in the amount of \$39,204.38 to the State of New Jersey.
- Four of twelve original individuals indicted on March 7, 1996, who were alleged to have affiliations with the Genovese crime family and were indicted at the time for racketeering, conspiracy, criminal usury, promoting gambling, possession of gambling records and tax evasion were sentenced. William Cappiello of Long Branch, who pleaded to one count of racketeering and one count of liability for the conduct of another/complicity, was sentenced to six years in prison and fined \$5,000. Andre Domando of Nutley, who pleaded to one count of racketeering, was sentenced to seven years in prison and fined \$1,000. Anthony Gulla of West Caldwell, who pleaded to one count of racketeering, was sentenced to seven years in prison and fined \$2,500. Allan Pilione of Clifton, who pleaded to one count of racketeering, was sentenced to seven years in prison and fined \$2,500.
- On September 12, 1997, in Superior Court, Camden County, Patricia Rouse of Runnemede, was sentenced to 60 months probation and ordered to pay restitution of \$2,000 in tax, penalty and interest to the State. Rouse pled guilty in July to filing a fraudulent 1994 New Jersey income tax return, which failed to report \$24,425 in illegal income that she embezzled from her employer. She also pleaded guilty to the embezzlement, which totaled \$77,000, and was ordered to make full restitution to the victim of the embezzlement. This case was investigated jointly by the New Jersey Division of Taxation, Office of Criminal Investigation, and the Camden County Prosecutor's Office.
- On September 8, 1997, Benjamin Hernandez was sentenced in Essex County Superior Court to three years in prison and ordered to pay any taxes due to the State. Hernandez, a Newark bar owner, paid \$2,000 in bribes to a former Division of Taxation Auditor to reduce his liability in a liquor project audit. In September 1996, Hernandez was arrested after an investigation by the Office of Criminal Investigation and Internal Security Unit and the New Jersey State Police/Criminal Justice Corruption Unit. In July 1997, Hernandez pleaded guilty to one count of bribery.
- During the month of September, the Office of Criminal Investigation prevented the mailing of three fraudulent personal income tax refunds in the amount of \$3,765.32. Three aliases were used in filing 1996 returns. This investigation is the result of a continuing cooperative effort between the states and the U.S. Postal Authorities.
- Fifteen guilty pleas for twelve cases were entered in municipal courts throughout the State during this reporting period by individuals and businesses for noncompliance with the cigarette tax law. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$6,545 and the awarding of 1,812.8 cartons of cigarettes, valued at \$36,256 to the State. In addition to the cigarettes being forfeited to the State, a 1991 Dodge van, valued at \$11,000 was forfeited to the State.
- A total of twenty-eight charges were filed in municipal court for eleven cases. Twenty-one charges were for violations of the cigarette tax law, which includes transporting, possessing, no invoices and no consumer's license. Five of eleven cases resulted in the seizure of 6,610.5 cartons of contraband cigarettes, valued at \$132,210. □

Enforcement Summary

Civil Collection Actions Quarter Ending - September 30, 1997

Following is a summary of enforcement actions for the quarter ending September 30, 1997.

Certificates of Debt

During the quarter ended September 30, 1997, the Division filed 4,079 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$45.9 million.

Levies

\$52,833 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, 1997, \$293,167 was collected from jeopardy assessments.

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, 1997, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 18.

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, 1997, seven auctions were held by the Division. A listing follows on page 20.

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.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending September 30, 1997, 974 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$3.5 million in revenue during the third quarter of 1997.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$107.5 million from holders of the various types of licenses subject to audit and collected \$98.7 million. The Division of Taxation expects to collect a total of \$150 million during the three-year program.

During the quarter ending September 30, 1997, 177 notifications of liquor license transfer were received by the Division's Bulk Sales section. Twenty-three (23) audits relating to this project and previously requested were com-

pleted; assessments from those audits totaled \$1.2 million. □

Tax Briefs

Corporation Business Tax

Deduction of Charitable Contributions — In general, Line 28 of the CBT-100 should reflect the amount of income shown on Federal Form 1120, Line 28, since N.J.S.A. 54:10A-4(k) provides that “the amount of a taxpayer’s entire net income shall be 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.” There is no provision of New Jersey law that would allow further use of unused charitable deductions below Line 28. Therefore, the corporate taxpayer is not permitted to deduct additional charitable deductions, unused for Federal purposes in the current year, on the New Jersey CBT-100 below Line 28.

Gross Income Tax

Income Tax Liability of a Minor — A taxpayer asked the State tax consequences of establishing an account in a mutual fund for a minor daughter under her name and social security number.

Every individual in New Jersey with income is subject to the gross income tax, regardless of age. The daughter’s account would be subject to the gross income tax. However, if her total income is less than \$7,500, she would not be required to file or pay tax under current law. If her income exceeds \$7,500, an income tax return must

be filed on her behalf by her fiduciary or other person charged with her care. The gross income tax statutes and regulations would apply to her in the same manner as to any other taxpayer.

Litter Control Tax

Advertising Space — The Division received a letter inquiring as to a company’s subjectivity to the litter control tax.

They advised that they are in the business of selling advertising to business people which is to be published in telephone directories. The published directories are distributed, free of charge, to business firms and residents in New Jersey communities. The directories are produced and distributed by outside contracting vendors.

The Clean Communities and Recycling Act levies a litter control tax on all manufacturers, wholesalers, distributors and retailers engaged in business in New Jersey on the gross receipts from sales of litter generating products within or into the State. N.J.S.A. 13:1E-99.1a.

Litter generating products are defined in the law, at N.J.S.A. 13:1E-94e, to include the following 15 categories of products:

1. Beer and other malt beverages;
2. Cigarettes and tobacco products;
3. Cleaning agents and toiletries;
4. Distilled spirits;
5. Food for human or pet consumption;
6. Glass containers sold as such;
7. Groceries;
8. Metal containers sold as such;
9. Motor vehicle tires;

10. Newsprint and magazine paper stock;
11. Nondrug drugstore sundry products;
12. Paper products and household paper;
13. Plastic or fiber containers made of synthetic material and sold as such;
14. Soft drinks and carbonated waters; and
15. Wine.

The tax does not apply to sales of services.

A company solely engaged in making sales of advertising space as described in the letter and not selling any tangible personal property which falls within one of the enumerated categories is not subject to the litter control tax.

Sales and Use Tax

Sales Tax Due on an Accrual Basis — The Division received a request for permission to remit sales tax on a cash, instead of an accrual, basis.

The Division explained that in New Jersey vendors do not have the option of remitting sales tax on a cash basis. Vendors are required to file returns and remit sales tax on an accrual basis. The tax is due for the period when the sale took place, i.e. when the goods were transferred to the customer or the services were rendered, even if the customer has not yet been billed, or failed to pay in full. The accrual method of remitting sales tax is implicit in the definition of “sale” as taking place when goods are transferred to the purchaser or services are rendered, N.J.S.A. 54:32B-2(f), and in the provision

continued on page 16

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governing the filing of returns by vendors, N.J.S.A. 54:32b-17. It is further clarified in the Division's regulations on bad debts, N.J.A.C. 18:24-23.1 *et seq.*

Book and Periodical Rentals —

The Division received an inquiry regarding the sales tax collection obligations of a store operating a private library service. The taxpayer explained that the business will provide books, magazines, comics and other reading material to its customers in two ways. Customers may take an item out for several days, for a rental charge. They may also read materials inside the store. In that case, they will be charged based on the quantity and type of materials that they select to read in the store.

Charges for taking out books or for reading them in the store will be taxable as receipts for the "sale" of taxable tangible personal property. N.J.S.A. 54:32B-3(a). For purposes of the Sales and Use Tax Act, a "sale" includes any transfer of title *or possession* for consideration. N.J.S.A. 54:32B-2(f). It therefore encompasses both the "rental" of books that are taken home for a few days for a rental charge and the "license to use" books that are read in the store, for a charge based on the materials

selected. *Ibid.*

Newspapers, magazines and periodicals, however, are exempt from sales and use tax. N.J.S.A. 54:32B-8.5. Therefore, charges for taking out or using materials that qualify as newspapers, magazines or periodicals (N.J.A.C. 18:24-1.2 and 1.3) are not subject to tax.

Manufacturer's Rebate —

The Division received a request for information regarding the sales tax treatment of a manufacturer's rebate. The taxpayers stated that when they purchased a new motor vehicle, they were charged sales tax on the full price, even though they would be receiving a \$1,500 rebate from General Motors. They questioned whether the tax should have been calculated instead on the purchase price *minus* the expected rebate.

The Division explained that the dealer is correct in collecting sales tax on the full retail price of the car before the rebate. Sales tax must be charged on the total "receipt" from a retail sale, i.e. the actual amount of the sales price payable to the retailer. See N.J.S.A. 54:32B-2(d). If a retailer chose to sell an item at a discounted price, the customer should be charged tax on the discounted price payable to the retailer, not on the original price before reductions. The reduced

price is the "receipt" on which the 6% sales tax is calculated.

However, when a customer pays a full price, but is then reimbursed *by the manufacturer* for part of that price, in the form of a manufacturer's rebate, the tax is due on the full price originally payable to the retailer. This is because the retailer is receiving the full price, and sales tax is calculated on the total "receipt" payable to the *retailer*. Similarly, if a customer pays the retailer a reduced price by using a *manufacturer's* coupon or by relying on a rebate that the *manufacturer* will send to the retailer as part of the customer's payment, the customer will owe tax on the full price. The "receipt" payable to the retailer will be the total of the reduced price payable by the customer plus the amount that the retailer will receive from the manufacturer (measured by the face value of the coupon or rebate). Sales tax is calculated on that total "receipt," not just on the portion of the receipt paid by the customer.

Spill Compensation and Control Tax

Cap Computation Revised — The following Notice was sent to all Spill Compensation and Control Tax registrants:

Cap Revision

An amendment to the Spill Compensation and Control Act was signed into law effective June 27, 1997. P.L. 1997, c.134 affects only Spill Compensation and Control taxpayers who had more than one major facility in 1986 and had a tax liability in 1986. Such taxpayers have qualified for a "Cap" on their spill tax payments in each

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subsequent tax year of no more than 125% of their 1986 spill tax liability.

P.L. 1997, c.134 provides for a cap computation revision which states, "In computing 125% of the tax due and payable by the taxpayer during the 1986 tax year, for taxes due after January 1, 1996 from an owner or operator of one or more major facilities who has continuously since 1986 filed a combined tax return for more than one major facility but who prior to January 1, 1996 has closed one or more of those major facilities, a taxpayer shall include 1986 taxes arising from major facilities which (1) caused the taxpayer to incur a tax liability in 1986, and (2) continue to cause the taxpayer to incur a tax liability during the current tax year."

This special cap provision is limited only to taxpayers who:

1. Continuously filed spill tax returns since 1986; and
2. Filed a combined return for more than one major facility in 1986; and
3. Have closed one or more of those major facilities prior to January 1, 1996.

Such taxpayers should, for taxes due on and after January 1, 1996, compute their cap in any tax year at 125% of their 1986 taxes only from major facilities they operated in 1986 and currently continue to operate. They should not include in their 1986 tax base taxes attributable to facilities they discontinued operating subsequent to 1986.

Elemental Phosphorus

P.L. 1997, c.134 also amends the tax rate applicable to transfers of substances which are or contain *elemental phosphorus*. Such transfers are taxed, effective June 27, 1997, at a rate of \$0.015 per barrel of the hazardous substance. Also, for transfers which are or contain elemental phosphorus, in computing the 125% of the taxes due and payable by the taxpayer during the *1986 tax year*, a capped taxpayer shall calculate the tax at \$0.015 per barrel.

Metals and Gas

Spill tax registrants should also take note that, due to amended Department of Environmental Protection rules, effective October 7, 1996, the following substances shall not be considered hazardous substances:

1. *Metals* in either their pure elemental form or alloyed, in solid pieces with at least one dimensional measurement equal to or exceeding 100 micrometers (0.004 inches) or chemically bonded to an inert substrate.
2. Any *flammable or inert gas* on the List of Hazardous Substances designated by an asterisk.

Additional Information

Any capped taxpayers seeking a refund for taxes overpaid since January 1, 1996 due to P.L. 1997, c.134 or any taxpayer seeking a refund due to the payment of taxes, since October 7, 1996, on solid metals or designated flammable or inert gas substances must submit a Claim for Refund form. Requests for forms, Lists of Hazardous Substances or additional clarification of these changes should be directed to: **Tax Services Branch,**

**Division of Taxation,
P.O. Box 269, Trenton,
NJ 08646-0269; Telephone: 609-
292-5994.**

Urban Enterprise Zone

Employee Tax Credit — The definition of "full-time" employee for purposes of the UEZ employee tax credit (Form 300) means an employee who works at least 30 hours per week. Note that the Labor Department Annual Certification and Calculation of Employer Unemployment Tax Rebate describes a full-time employee as a 30 hour per week employee. The Division has agreed to define full-time employee as an employee who works at least 30 hours per week. This allows for consistency with the Labor Department definition. The other elements of the definition of full-time employee at N.J.S.A. 52:27-78 and N.J.A.C. 18:7-15.4(e) and (f) remain applicable. □

In Our Courts

Local Property Tax

Superintendent's Residence Denied Exemption — *Pompton Lakes Senior Citizens Housing Corp., Plaintiff, v. Borough of Pompton Lakes, Defendant*, 16 N.J. Tax 331 (Tax Ct. 1997).

The State Tax Court denied a "charitable purposes" real estate tax exemption per N.J.S.A. 54:4-3.6 on the superintendent's residence in a low income senior citizen housing complex where the

Division of Taxation Seizures (July – September 1997)

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.

| County | Name/Address | Seizure Date | Business Type | Status |
|---------------|---|---------------------|------------------------------------|-----------------------|
| Atlantic | Kelly's Grille and Tavern t/a South Beach 9300 Amherst Ave. Margate | 8/22/97 | Bar/nightclub | Closed |
| | Joseph R. Lazarus Northfield | 9/8/97 | N/A | Vehicle released |
| | Jo Jo's Tavern 263 S. New York Rd. Galloway | 9/25/97 | Tavern | Closed |
| Bergen | 356 Bergen Blvd. Corp. t/a The Loft 356 Bergen Blvd. Fairview | 7/25/97 | Bar/restaurant | Liquor license seized |
| Camden | ALSSIP, Inc. t/a Leo's 4th Street Cafe 1901 S. 4th St. Camden | 7/25/97 | Bar | Liquor license seized |
| | Matthew S. Weber t/a Dr. Scrub Maintenance Corp. 1 Nashua Dr. Sicklerville | 8/26/97 | Janitorial service | Vehicle seized |
| | AKME Enterprises t/a Scopello's Pizza 1661 Blackwood-Clementon Rd. Blackwood | 9/14/97 | Pizzeria | Closed |
| Cape May | Heaven Cent, Inc. t/a Rainbow Shops Boardwalk North Wildwood | 7/2/97 | Gift/souvenir shop | Closed |
| | Heaven Cent, Inc. t/a Rainbow Shops Pier C North Wildwood | 7/2/97 | Three gift/souvenir shops | Closed |
| Essex | 373 Wines and Liquors 373 W. Market St. Newark | 8/5/97 | Liquor store | Closed |
| | C & D Supermarket 910 18th Ave. Newark | 9/4/97 | Convenience store/ liquor store | Liquor license seized |
| Hudson | Central Stationery 628 Newark Ave. Jersey City | 7/22/97 | Stationery/cigar store | Reopened |
| | Your Place Liquors 2815 Bergenline Ave. Union City | 8/8/97 | Liquor store | Liquor license seized |
| | T. J. Hill Advertising 3323 Paterson Plank Rd. North Bergen | 9/12/97 | Advertising agency | Closed |

continued on page 19

taxation seizures - from page 18

| County | Name/Address | Seizure Date | Business Type | Status |
|---------------|--|---------------------|---------------------------------------|-----------------------|
| | Rockwell Kitchen Cabinet Wholesale 3323 Paterson Plank Rd. North Bergen | 9/12/97 | Cabinetry shop | Closed |
| Middlesex | J. & E. Guiang Old Bridge | 7/9/97 | N/A | Vehicle released |
| Monmouth | Anthony Lodato t/a Cabinet Carpentry Designers, Inc. 63 Shark River Rd. Neptune | 7/8/97 | Builder | Vehicle released |
| | Cinwood Corp. t/a Woody's Service Center 570 Joline Ave. Long Branch | 7/18/97 | Service station | Reopened |
| | Dom's Liquor and Beverage t/a The Highland Inn 49 Carr Ave. Keansburg | 9/4/97 | Bar/restaurant | Liquor license seized |
| | Loyal Order of Moose/Bayshore Lodge 603 Mayne & Myrtle Aves. Keansburg | 9/4/97 | Social club/fraternal organization | Liquor license seized |
| | James P. D'Amore Freehold | 9/8/97 | N/A | Stock seized |
| | The Crawford Group 12 Monmouth St. Red Bank | 9/23/97 | Jewelry retail and manufacturer | Reopened |
| Ocean | BPOE Lodge 42 4th Ave. Lakewood | 7/2/97 | Social club | Liquor license seized |
| | 105 River Ave. Corp. t/a Paterson's Sunset Cabin 105 River Ave. Lakewood | 9/4/97 | Restaurant/bar | Liquor license seized |
| Passaic | Inca Liquors 59 Carroll St. Paterson | 7/29/97 | Bar | Liquor license seized |
| | Quarmot & Sons, Inc. t/a Q & S Convenience Store 766 Hamburg Tpk. Pompton Lakes | 9/8/97 | Deli/liquor store | Closed |
| Union | Brandee & the J's, Inc. t/a Kelly's Transit Tap Room 16 W. Grand St. Elizabeth | 9/4/97 | Tavern | Liquor license seized |
| | 23 East Avenue Corp. t/a Demsey's 23 East Ave. Elizabeth | 9/4/97 | Tavern | Liquor license seized |

Division of Taxation Auctions (July – September 1997)

| County | Name/Address | Auction Date | Business Type | Assets Auctioned |
|---------------|--|---------------------|----------------------|---|
| Camden | Mena, Inc. t/a Berlin True Value Liquors 251 S. White Horse Pk. Berlin | 7/16/97 | Liquor store | Liquor license |
| Gloucester | Michelina, Inc. t/a Domenico's Pizza 931 Red Bank Ave. West Deptford | 7/15/97 | Pizzeria | Restaurant equipment |
| Mercer | Herzon D. Miller t/a H & M Auto Sales 620 Calhoun St. Trenton | 7/12/97 | Auto dealership | Three vehicles auctioned; one vehicle released |
| | Herzon D. Miller t/a H & M Auto Sales 620 Calhoun St. Trenton | 7/12/97 | Auto dealership | One vehicle |
| Monmouth | Dapper Duck, Inc. t/a Harborside Inn 42 First Ave. Atlantic Highlands | 7/7/97 | Bar/restaurant | Liquor license; alcohol; bar and restaurant supplies |
| Union | James C. Yelverton t/a Jim's Wine and Liquor 408 Jefferson Ave. Elizabeth | 7/28/97 | Package goods store | Liquor license |
| | 23 East Avenue Corp. t/a Demsey's 23 East Ave. Elizabeth | 9/24/97 | Tavern | Liquor license |

in our courts - from page 17

complex qualified for abatement and paid in lieu of taxes for municipal services under N.J.S.A. 40A:20-1 *et seq.*, the Long Term Tax Exemption Law and N.J.S.A. 55:14K-37 *et seq.*, the Housing and Mortgage Finance Agency Tax Exemption Law. Both the superintendent's residence and the housing complex were owned by a nonprofit corporation formed as provided by N.J.S.A. title 15A.

The superintendent was a full-time resident responsible for overseeing all custodial, maintenance and grounds workers for the 100 unit

complex and for providing emergency access to police and first aid squads when needed. Each apartment's alarm system was also wired to the superintendent's residence.

Under N.J.S.A. 54:4-3.6, residential property owned and used by otherwise exempt charitable, religious or hospital organizations can be exempt only derivatively through those organizations. The two-fold test established in *Clinton Twp. v. Camp Brett-Endeavor* requires that a residence be predominantly used as an integral part of the exempt organization's operations rather than as a convenience

to the occupant and that it be reasonably necessary for the proper and efficient operation of the exempt organization. Despite the fact that the housing complex had not applied for or received the necessary exemption under 3.6, the housing corporation contended that the residence fulfilled a charitable purpose and met both test criteria in *Camp Brett-Endeavor*.

Denying the exemption, Tax Court conceded that the superintendent's residence was an integral part of the housing complex's operation and reasonably necessary for its efficient operation. However,

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although the housing corporation's purposes were commendable and the apartment complex filled a significant need for housing, the exclusive charitable organization and use requirements of 3.6 were not met. According to the Court, the corporation's purpose "to plan, sponsor, construct, operate, maintain...housing projects for the senior citizens of Pompton Lakes on a non-profit basis" did not express, contemplate or require charitable purpose. Its non-profit and Federal tax exempt status also did not guarantee charitable purpose. Neither was the housing complex put to charitable use because it did not relieve government of the burden of subsidizing tenants and rents were equal to or slightly higher than fair market rent. In *Salt & Light Co., Inc. v. Mount Holly Twp.*, it was ruled that receipt of government funds did not disqualify a charitable entity from exemption as long as it at least partly relieved a burden on government. This housing corporation subsidized no rents.

Because the housing complex did not qualify for charitable exemption under N.J.S.A. 54:4-3.6, the superintendent's residence cannot qualify on a derivative basis. □

In Our Legislature

Gross Income Tax

Extension for Armed Forces Personnel in Qualified Hazardous Duty Area — P.L. 1997, c.207 (signed into law on August 14, 1997) provides for an extension of time to file and pay gross income tax and certain other relief provisions for individuals in the Armed Forces who may be serving in an area designated a "qualified

hazardous duty area" by Federal statute. This legislation affects New Jersey residents currently serving in Bosnia and Herzegovina, Croatia and Macedonia. The act is effective immediately and applies to taxable years beginning on or after January 1, 1996.

Set-Off of Individual Liability for Debt Owed to Violent Crimes Compensation Board — P.L. 1997, c.226 (signed into law on August 25, 1997) provides for the set-off against and collection from an individual's State gross income tax refund and/or homestead property tax rebate of any debt the individual owes to the Violent Crimes Compensation Board for assessments or restitution ordered to be paid by the individual to the board for compensation of victims of crimes and their families. This act takes effect immediately.

New Jersey Better Educational Savings Trust Program Established — P.L. 1997, c.237 (signed into law on September 2, 1997) establishes a college savings plan known as the New Jersey Better Savings Trust Program in the Higher Education Assistance Authority. The program will provide a mechanism to allow families to plan ahead for the costs associated with college attendance and to save funds to meet those future costs. The program will be administered by the Office of Student Assistance. Earnings on and distributions from New Jersey Better Educational Savings Trust Program accounts are exempt from New Jersey gross income tax. This act takes effect immediately.

Miscellaneous

Uniform Enforcement of Foreign Judgments Act — P.L. 1997, c.204 (signed into law on August 14,

1997) provides for the filing of foreign judgments with the Clerk of the Superior Court of New Jersey. Under this act, a foreign judgment means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State. The clerk shall treat the foreign judgment in the same manner as a judgment of the Superior Court of New Jersey. This legislation takes effect immediately.

Trust Powers of Certain Not-for-Profit Corporations — P.L. 1997, c.245 (signed into law on September 9, 1997) amends a provision of the Banking Act of 1948 administered by the Department of Banking and Insurance. It allows qualified non-profit corporations to perform certain functions presently reserved to banks. In particular, the bill allows educational institutions to act as trustee of funds in which the institutions have an interest. Subsection (d) provides that qualified corporations and qualified educational institutions shall be subject to any regulations adopted by the Commissioner of Banking and Insurance and subject to examination by the Department of Banking and Insurance to ensure compliance with those regulations. This act takes effect immediately but the amendments to subsection (d) shall remain inoperative until 180 days after enactment. □

tax calendar

january

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

January 12

- 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
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 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

continued

January 20 - continued

- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return
- ST-50 Sales and Use Tax**—Quarterly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-450 Sales and Use Tax—Salem County**—Quarterly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

January 26

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

february

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

February 2

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

February 10

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

February 17

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

February 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, 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

continued

February 20 - continued

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

February 25

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

march

| | SUN. | MON. | TUE. | WED. | THU. | FRI. | SAT. |
|---|------|------|------|------|------|------|------|
| 1 | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 9 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 9 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 8 | 22 | 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 16

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

continued

March 16 - 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

continued

March 20 - continued

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

March 25

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

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from the director's desk

Special Message to Tax Practitioners

The Division urges all tax practitioners to continue to follow these procedures for submitting resident returns:

- **NEW – Filling in the Ovals.** This year ovals have replaced check-boxes on the tax return and homestead rebate application. When completing forms, fill in the applicable ovals completely. This will ensure that the form is scanned successfully.
- Do not staple, tape, paper clip or use any other fastening device to attach enclosures to Form NJ-1040, or to attach the return pages together.
- Mail returns and enclosures (flat, not folded) in 9" x 12" envelopes (whenever possible).
- 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.
- Use the correct envelope/address. Use the small window envelope to mail the payment voucher with any balance of tax due. Please do not send a payment in the envelope with the return.
- **FILE ONLY ORIGINAL FORMS.** Do not submit *copies* of the resident return and rebate application form.
- Use only blue or black ink when completing forms.
- **MAKE NO ENTRY** on unused lines or any line where the amount to be reported is zero or less. (Exception: If no use tax is due, enter "0.00" on Line 40.)

Thank you for your continued cooperation.