New Jersey State Tax news

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Director Thompson Sworn In

Treasurer James A. DiEleuterio, Jr. administers the oath of office to Robert K. Thompson, as Director of the Division of Taxation while Carmela Spedding (center) and the Director's daughter, Rebecca Thompson (right), look on.

New Call Center

In keeping with the Division's overall goal of providing the best possible taxpayer services to both the tax practitioner community and the public at large, the Tax Hotline, now called the New Jersey Taxation Call Center, recently completed the first phase of a major technology upgrade project. This first phase consisted of the acquisition and implementation of a new, state-of-the-art, telephone system. The new system both enhances the Call Center's functionality and increases its capacity to handle telephone inquiries.

The Call Center telephone system now provides callers with a menu

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important phone numbers

Call Center	609-292-6400
Automated Tax Info	800-323-4400
	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
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

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

new call center – from page 1

Taxpayer Services phone agent Carolyn Philhower demonstrates the Division's new Call Center equipment which features many of the latest innovations in both computer and communications technology.

of possible choices. The new menu allows the Call Center to connect a caller with a representative who is the most capable of answering their inquiry. Also, the new system prompts a caller with an account-related inquiry to enter their Social Security Number. This feature allows a representative to access a caller's account as soon as the call is connected. The benefit of this feature is to reduce the amount of time that a caller will have to wait while their account is accessed. Another system feature allows a caller to receive Corporate Public Records general information, a new function of the Division of Taxation. Finally, the new system offers a Spanish speaking caller the opportunity to speak with a representative who can converse fluently in the Spanish language.

The new telephone system increases the number of Call Center representatives by almost 50 percent. This increase will allow the Call Center to answer a larger volume of calls during peak periods. Also, the increased capacity will result in shorter hold times for the majority of callers.

The Call Center technology upgrade is a prime example of the Division of Taxation's commitment to providing top quality taxpayer services to the public. By employing cutting edge technology, the Division continually strives to make compliance with the tax laws of the State of New Jersey as easy and as painless as possible.

You can reach the Call Center by calling its main telephone number, 609-292-6400. ❑

Will this be your last issue of the

New Jersey State Tax News?

See article on page 8 and the subscription renewal form on page 19.

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

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PTR-1 Extension

The filing deadline for the 1998 Property Tax Reimbursement Application, Form PTR-1, has been extended to April 15, 1999. By extending the deadline, every eligible applicant will be given the opportunity to file an application to effectively freeze property taxes at their 1997 level. However, those who file their applications after March 15, 1999 may not receive their checks with the first mailing due to be mailed by July 15, 1999.

For further information, or to obtain an application, call the Property Tax Reimbursement Hotline at 1-800-882-6597. ❑

New Jersey Offers PC Filing

The New Jersey Division of Taxation is proud to announce the introduction of NJ PC File. This newest method to file paperless income tax returns is available free of charge from the Division of Taxation, and allows taxpayers to prepare and file their New Jersey returns from a personal computer. "We anticipate that a majority of resident taxpayers will be able to file their 1998 New Jersey income tax returns with NJ PC File," said State Treasurer James A. DiEleuterio, Jr.

The NJ PC File software is available for downloading from the Division's web site at:
http://www.state.nj.us/treasury/taxation/

To use NJ PC File, taxpayers simply download NJ PC File software from the Division of Taxation's web site and then use their Windows 95/98 based PCs to complete their returns and transmit the information to the Division by modem. Taxpayers can PC File their New Jersey returns 24 hours a day, 7 days a week.

Robert K. Thompson, Division of Taxation Director added, "NJ PC File offers taxpayers another fast, easy and secure "paperless" method for filing their State tax returns. We estimate that as many as three million taxpayers will be able to file online and in most cases, receive their refunds within two weeks."

NJ PC File requires taxpayers to enter their individual PIN number during return preparation. Taxpayers who received a 1998 Form NJ-1040 booklet with their name and address preprinted on the face of the fold-out insert will find their NJ PC File PIN number on the same panel as their preprinted label. Those taxpayers who do not have a preprinted label will still be able to use NJ PC File by entering last year's refund or balance due amount as their PIN number. NJ PC File may only be used to file original 1998 New Jersey Resident Income Tax Returns. Amended returns may not be filed with NJ PC File.

Those who owe tax to New Jersey can still use NJ PC File to prepare and transmit their returns, and then mail their payment to the Division.

Certain taxpayers will not be able to use NJ PC File: part-year residents, nonresidents, those who did not file a 1997 NJ-1040 resident return, those who are claiming a credit for taxes paid to other jurisdictions, those who have business income, or those who have income, losses, deductions or exclusions which require them to include attachments are not eligible. In addition, taxpayers who file a Federal application for automatic extension may not use NJ PC File unless they also file Form NJ-630.

Taxpayers who have questions about NJ PC File can contact the Division's Call Center at 609-292-6400. Information on NJ PC File also appears on the Division of Taxation's home page at:

http://www.state.nj.us/treasury/taxation/
❑

Pay by Credit Card

New Jersey income tax payments can now be made by credit card announced State Treasurer James A. DiEleuterio, Jr. Taxpayers can call 1-888-2PAYTAX, toll free, and use an American Express, MasterCard or Discover/Novus credit card to pay the tax due with a 1998 personal income tax return, or to make a payment of estimated tax for 1999. Payments cannot be made with a Visa card.

"People are using credit cards for most of their financial transactions today, from buying groceries at their local supermarket to making purchases over the Internet," said the Treasurer. "We want to make it possible for them to pay their New Jersey income tax this way too," he explained.

Taxpayers can make payments of 1998 New Jersey income tax, or estimated payments for 1999, whether they file a resident return, Form NJ-1040, nonresident return, Form NJ-1040NR, or fiduciary return, Form NJ-1041. Taxpayers who make their income tax payments by credit card on or before the April 15 due date, but who request an extension of time to file their New Jersey income tax

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pay by credit card – from page 3

return, must still file an extension request with the State.

The credit card payment system can only process tax payments that are under $100,000. Payments of $100,000 or more must be made by check or money order. Taxpayers will be charged a convenience fee, based on the amount of the tax payment, when paying by credit card. The convenience fee ranges from a minimum of $3.00 for any payment under $100, up to $2,200 for tax payments that are $95,000 or over, but less than $100,000.

Taxpayers can pay by credit card no matter how the 1998 return was filed — whether in traditional paper form or using one of New Jersey's "paperless" filing methods. Those taxpayers who have New Jersey tax due and who TeleFile their returns, or those who use either the new NJ PC File software or a commercial software package to prepare and transmit their New Jersey returns, can pay by credit card and eliminate the need to mail anything to the Division of Taxation.

For more information on New Jersey's credit card payment program, taxpayers may contact the Call Center at 609-292-6400. ❑

Year 2000 Update

Y2K is nearly here and while preparations for readiness are underway, managers throughout State Government, are concerned enough to ask "Are we really ready?" This issue is of such magnitude that the Governor's office is overseeing the Year 2000 compliance readiness efforts. Toward that end, the Division has been gathering information to identify which systems or services are at risk and taking the steps necessary to make them compliant.

To meet the challenge of the Y2K problem for the Division's mainframe systems, the Office of Information Technology (OIT), in conjunction with the Division's Office of Technical Support, has been working to make these systems Y2K compliant. Renovations have been made to both our case tracking system, TULIPS, and our Generic Tax System (GENTS).

Testing has also been performed on various Division PCs to determine if the hardware is Y2K compliant. Two tests were done: a real time test to check the transition from 1999 to 2000, and a test to insure that the new date was retained after rebooting. PCs with a 386 processor or below did not pass the transition test, however, all machines passed the reboot test. Through recent PC acquisitions and upgrades to existing PCs, it is anticipated that all PCs within the Division will be Y2K compliant before the end of the year.

Emphasis for now has been placed on the applications designed on standalone PCs or PC-based networks. Each area prepared Assessment Worksheets for applications in their respective areas. These forms supplied information on the operating system, language or database and interfaces specific to an application.

Based upon the scope of work required, systems are being retired, replaced with new software and/or hardware or renovated to achieve Y2K compliance. Applications are being converted or revised by in-house staff responsible for the maintenance of those programs.

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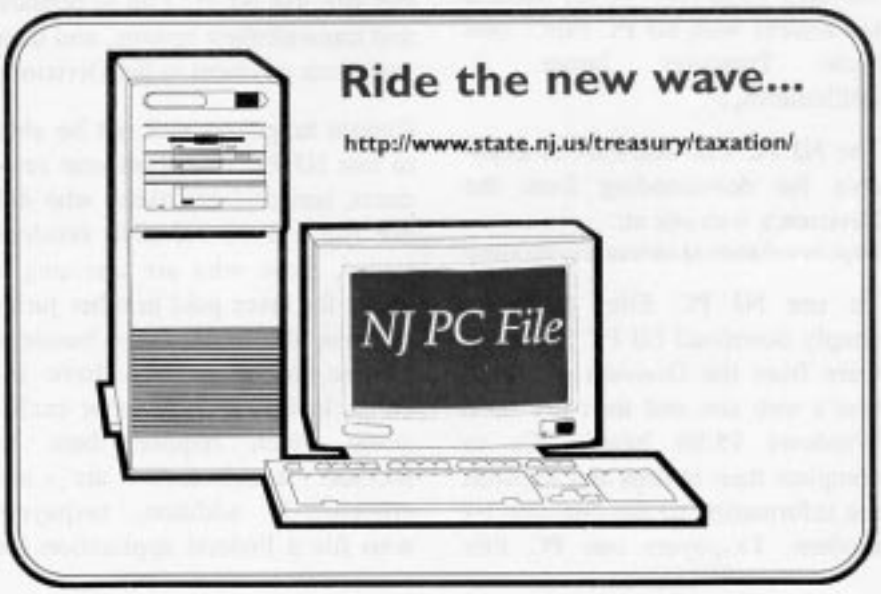

year 2000 update – from page 4

There are estimates that suggest 20% of businesses in America will cease to operate because they were not prepared for Y2K. The Division of Taxation is placing a high priority on ensuring that our tax systems will be fully operational come the year 2000 and beyond. ❑

CORPORATION TAX

Investment Tax Credit

P.L. 1997, c.445, which was signed into law on January 15, 1998, provides a credit against the corporation business tax for certain investments made in small, New Jersey-based, high-technology businesses, and supplements P.L. 1945, c.162 (N.J.S.A. 54:10A-1 et seq.).

A taxpayer shall be allowed a credit against the tax in the amount equal to 10% of the qualified investment made by the taxpayer during each of the three years beginning on or after January 1, 1999, in a small, New Jersey-based, high-technology business, up to a maximum investment made by the taxpayer.

- This credit is taken after all other corporation business tax credits are taken and shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum.
- The credit allowable pursuant to this section shall be applied in the order of the credits' tax years.
- A credit shall not be allowed pursuant to Section 1 of P.L. 1993, c.175 (N.J.S.A. 54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includible in the calculation of a credit allowed under this section.
- Any unused credit may be carried over for fifteen years up to a maximum of $500,000. However, a taxpayer may not carry over any amount of unused credit to a tax year during which a corporate acquisition, with respect to which a taxpayer was a target corporation, occurred or during which the taxpayer was a party to a merger or consolidation.

DEFINITIONS:

Advanced computing means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from handheld calculators to super computers, and peripheral equipment.

Advanced materials means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

Biotechnology means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and subtechnologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

Electronic device technology means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

Environmental technology means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

Medical devices technology means a technology involving any medical equipment or product (other than a pharmaceutical product).

Pilot scale manufacturing means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotech-

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Interest 10.75% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1999 is 10.75%.

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

Effective Date	Interest Rate
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%

investment tax credit – from pg. 5

nology, electronic device technology, environmental technology, and medical device technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if total gross receipts, as calculated pursuant to section 6 of P.L. 1945, c.162 (N.J.S.A. 54:10A-6), from such sales of the product, service or process do not exceed $1,000,000.

Qualified investment means the non-refundable investment, at risk in a small, New Jersey-based, high-technology business, or cash that is transferred to the small, New Jersey-based, high-technology business by a taxpayer that is not a related person of the small, New Jersey-based, high-technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein.

Qualified research expenses means qualified research expenses as defined in section 41 of the Federal Internal Revenue Code of 1986, 26 U.S.C. 41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology.

A taxpayer claiming this credit will need to request and file Form 308 with its Corporation Business Tax Return. ❑

Pay Your NJ Income Taxes By Credit Card

Call:

1-888-2PAYTAX

For more information:

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

or

http://www.state.nj.us/treasury/revenue/

GROSS INCOME TAX

1998 Roth IRA Conversion Election

Taxpayers who converted an existing IRA to a Roth IRA before December 31, 1998 and elected to recognize all the income in 1998 rather than over a four-year period for Federal tax purposes, are not required to make the same election for New Jersey gross income tax purposes. Taxpayers may make a separate election for New Jersey tax purposes and report the income over a four-year period, even though they elect to report all the income in 1998 for Federal tax purposes.

Taxpayers who elect to report the income over a four-year period for Federal tax purposes, however, must also report the income over a four-year period for New Jersey tax purposes. Federal Form 8606 must be attached to the 1998 New Jersey gross income tax return as verification of the Federal election.

If taxpayers qualify under the Federal rules to convert an existing IRA to a Roth IRA, they also qualify for New Jersey income tax purposes. The income limitations imposed at the Federal level are applicable for New Jersey gross income tax purposes.

Example: A taxpayer, in calculating his conversion eligibility, has the following income for 1998, **not** including the Roth IRA conversion:

Federal AGI *(before Conversion)*	
Wages	$ 80,000
Interest	10,000
Capital Gains	12,000
Partnership Loss	(17,000)
Total	$ 85,000

New Jersey Income	
Wages	$ 80,000
Interest	10,000
Capital Gains	12,000
Partnership Loss	-0- *
Total	$ 102,000

* A loss in one category of income cannot offset income in another category for New Jersey gross income tax purposes.

The taxpayer in this example qualifies to convert his existing IRA to a Roth IRA since, for Federal income tax purposes, he does not exceed the income limitation of $100,000. The amount of income realized upon conversion is not considered. As the example demonstrates, conversion eligibility for New Jersey gross income tax purposes is based solely upon Federal eligibility, even if 1998 taxable New Jersey income exceeds $100,000. ❑

DIVISION OPERATIONS

New Web Look, Same Location

On February 5, 1999, the New Jersey Division of Taxation unveiled its newly renovated website. The Site has been redesigned to encompass all aspects of the Division, while being web-friendly and enjoyable to use. Changes include the addition of various links within the website. Taxpayers may now view a variety of information, from New Jersey's Statutes and the opinions of New Jersey's courts, to advice on common billing questions and errors with a click of their mouse.

Additionally, the Site now has improved e-mail and an "interactive" organizational chart. In addition to the ability to activate a specific branch or activity for a summary of functions and responsibilities, the improved organizational chart now includes various telephone numbers for Division branches and sections. Also new to the Site is **Hot News**. *Hot News* houses the most current new topics to hit the Division. Currently, *Hot News* is focusing on

- Filing methods (including NJ TeleFile, the new NJ PC File and online filing of Form ST-50); and
- Information on billing notices commonly received by taxpayers.

The most exciting of the Site's new features is a four-path system that guides individuals to the area which best addresses their informational needs. This feature will eliminate the need to scroll through information that might not be of interest to the individual. There is a path for **practitioners**, one for **businesses**, one for **children** and one for **everyone else**. This issue will explore the Practitioners' Path and give a general overview of the menu bar located on the left-hand side of the Web Page. Subsequent issues of the *New Jersey State Tax News* will explore the remaining three paths and offer a more in-depth look at the menu bar.

Practitioners' Path

The Practitioners' Path (or page) is comprised of two menus, *Current Updates* and *Other Information*.

Current Updates — This offers updates on filing methods, new tax information, and current Division programs and notifications. As in *Hot News*, *Current Updates* features information on PC filing, TeleFiling, and filing certain Division forms online, as well as electronic filing. In an effort to help ascertain the most effective and efficient method of filing, various methods and their qualifications are defined. This menu also contains *What's New in Taxes*. Information here is available in table format (sorted by date) for easy reference. Specific columns may be activated for additional information and publications. *Package NJX* and sample bills may be viewed in this menu of the Practitioners' Path. Individuals have the ability to activate an area of the sample bill to receive specific information relating to their selection. Included is the New Jersey Income Tax Resident Notice, Sales and Use Tax Notice, Corporation Business Tax Notice and notices for Gross Income Tax Employer Weekly Remitters.

Other Information — Practitioners may access everything from the Division's Technical Bulletins and publications to a complete listing of regional offices and their telephone numbers. Additionally, links have been provided for easy access to other tax websites, such as the Internal Revenue Service, the Division of Revenue and the Federation of Tax Administrators, which contains direct links to forms for other states.

If you can't find what you need through the Practitioners' Path, simply use the menu bar located on the left-side of the Web Page for easy access to another area of the Division's site. Selecting the New Jersey icon brings you back to the Division's home page. You may also select the Director's welcome from this menu bar. *Tax Forms Now* and *Publications* are shortcuts for ordering and viewing forms and publications. You may also view *Taxation Topics* or *Take the Taxation Tour*. *Unclaimed Property* may be accessed from this menu, as can *Information for Seniors*. Lastly, if you can't locate what you are looking for, *Search Our Site!* Look for the Business Path, the Home Page, the Director's Welcome and tax form information in the next issue. ❑

GROSS INCOME TAX

K-1 Attachment with Returns

Taxpayers with investments in partnerships and S Corporations or with income derived from estates or trusts receive New Jersey K-1s and/or Federal K-1s, reporting amounts of income or loss at year end. In N.J.A.C. 18:35-1.3(g), *Partner filing requirements*, the regulation specifies that copies of K-1s shall be included with the New Jersey individual tax returns.

Following the publication of an article in the fall 1998 issue of the *New Jersey State Tax News* listing K-1s as necessary items to be enclosed when returns are filed, inquiries were received by the Division of Taxation seeking exemption from that requirement. Written permission will not be issued exempting taxpayers from furnishing information required by regulation. If however a taxpayer does not include their K-1s when the return is filed, the return will not be rejected and will be processed.

All supporting information used in the calculation of items of reportable income or used in the substantiation of deductions or exemptions must be kept by the taxpayer should the Division of Taxation subsequently require it during review or audit. The lack of K-1 copies with a submitted return will not be a criteria for the selection of that return for audit. ❑

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Renew Your Subscription Now

DIVISION OPERATIONS

State Tax News — Mailing List Update

All current recipients of the *New Jersey State Tax News* are asked to submit a subscription renewal request to the Division of Taxation so that the mailing list for this publication can be purged of erroneous or obsolete subscriber information. Submitting the renewal request form on page 19 of this issue will aid the Division considerably in its effort to maintain an accurate, up-to-date list.

The Division of Taxation plans to distribute future issues of the *New Jersey State Tax News* by e-mail as well as in print form. If you wish to receive your copy electronically, please enter your e-mail address on the subscription form. Current subscribers who do not return the subscription form by June 1, 1999 will be removed from the mailing list. ❑

GROSS INCOME TAX

Consolidated Filing of GIT-ER and UI/DI

The tax registration files developed for the consolidated filing and remittance of Gross Income Tax Employer Withholdings and Unemployment and Disability Insurance are a combination of existing Department of Labor and Division of Taxation registration files.

An analysis of the Third Quarter of 1998 filings of the consolidated quarterly form NJ-927 (the first reporting period subject to consolidated filing) has revealed that some employers are registered and are filing and remitting under more than one identification number. This is more than likely the result of slight differences in the employer name on the Taxation and Labor registration files, or the use of a suffix on the Federal identification number with Taxation, while Labor does not use suffixes.

The inadvertent filing and remitting under more than one number can result in the receipt by employers of delinquency or deficiency notices for one or the other of the identification numbers, even though the employer has paid what is actually owed.

If an employer has received two NJ-927 coupon books, the Division of Taxation should be advised as soon as possible as to which identification number is correct. This will insure that subsequent returns and payments will be properly credited.

If an employer receives a delinquency or deficiency notice that he suspects may be the result of having more than one identification number, the employer should send a copy of both front and back of any canceled check for which he has not been given proper credit. If the employer is an EFT remitter, he should send the wire number and the date of the wire transfer for any payment for which credit was not properly given. This information should be sent to the address indicated on the notice.

Once all of the employers with multiple registration numbers are identified and the database corrected, this problem should be eliminated. The assistance and cooperation of affected employers and practitioners will not only aid in this process, but speed it up as well. ❑

GROSS INCOME TAX

S.O.I.L.

The acronym SOIL stands for **S**et **O**ff of **I**ndividual **L**iability. The SOIL statute permits the New Jersey Division of Taxation to use State income tax refunds and homestead rebates to pay down debts owed by citizens to various governmental agencies. Persons who may have their refunds or rebates "set off" are notified by mail in the spring of the year. They have a 35 day period in which to protest the debt with the agency to which it is owed. The notification contains instructions on what procedure to follow and includes the name and the telephone number for the agency. Persons receiving SOIL notices should not call the Division of Taxation about a debt owed to another agency; only the agency certifying the indebtedness can correct any errors or omissions. ❑

Release of Lien

In most real estate transactions, lien searches are performed by title companies and/or the lending institutions themselves, prior to the authorization for the conveyance of title. At times, there are not sufficient funds available from the sale to satisfy all liens, creditors and applicable transfer fees. Normally at that point the taxpayer and/or his authorized representatives begin the arduous task of contacting lien holders for possible settlement for a lesser amount or requesting the lien be released from that parcel of land being transferred only, but remain a lien on the debtor and any other property that they may own.

When there are liens filed by the Division of Taxation and contact is made, all too often the submitted request lacks the required information utilized in considering the request for a Release of Lien, thereby resulting in unnecessary delays in making a determination.

Before a determination can be made the following information and supporting documentation is needed:

1. A copy of the Agreement of Sale.
2. A metes and bounds description of the property to be sold and the complete address; namely the street name and number, city, state and county.
3. A copy of the proposed Closing Statement and/or an itemization of the disbursement of the total sales price.
4. A list of all encumbrances on the property. For each encumbrance, indicate:
   a. Name and address of the secured parties
   b. Description of the encumbrance
   c. Date of the agreement
   d. Date and place recorded, if any
   e. Original amount borrowed and rate of interest
   f. Itemization of current balance due
   g. Family relationship and/or affiliation between the seller and secured parties, if any
5. A certified appraisal of the property being sold and certified appraisals of any remaining property owned by the seller. These appraisals must be made by a person licensed to make such appraisals in New Jersey (if available).
6. All tax returns which are presently delinquent and all returns which become due between the date of inquiry and anticipated date of closing, whether paid or not, must be submitted.
7. The proposed consideration to be rendered the Division for a Release of Lien.
8. A written proposal, explaining in detail, the seller's plan to liquidate the balance of the outstanding tax liabilities which are due and owing.
9. Any other information that is deemed relevant to the request for Release of Lien.
10. Name, address and phone number of seller's attorney or authorized representative.

It should be noted that this is the minimum required information and based on the facts presented, additional data may be requested before a decision can be rendered. ❑

CORPORATION TAX

Warehouse Project

The Corporation Business Tax Act imposes a franchise tax on corporations for the privilege of having or exercising a corporate charter, doing business, employing or *owning capital or property*, or maintaining an office in New Jersey.

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warehouse project - from page 9

The Special Projects Unit of Field Investigations is collaborating with the Division's Nexus group on a warehouse project. Many out-of-State corporations own property stored in New Jersey warehouses. Since these businesses own tangible personal property in New Jersey, they are subject to New Jersey Corporation Business Tax. The Special Projects Investigators are seeking proof of registration from warehouse tenants. Those that are not properly registered with the Division of Revenue are being assessed for Corporation Business Tax for each year they have stored property in this State.

Any corporation seeking voluntary compliance should write to:

NEW JERSEY DIVISION OF TAXATION
SPECIAL PROJECTS UNIT
ATTN: THOMAS MACDONALD,
REGIONAL SUPERVISOR
PO BOX 245
TRENTON NJ 08646-0245 ❑

Small Business Workshops

The New Jersey Division of Taxation, in conjunction with the Internal Revenue Service, conducts free workshops several times each year at various locations around the State. The objective of these seminars is to help small businesses learn about their tax obligations.

Spring 1999
Tentative Workshop Schedule

April 30	Newark
May 7	Camden
May 21	New Brunswick
June 4	Atlantic City
June 11	Trenton
June 25	Paterson

Topics covered in the workshops include: a discussion of the different types of business ownership and the tax obligations of each; procedures for registering a business with the State of New Jersey; employer responsibilities; reporting business income; and collecting and remitting sales and use tax.

Workshops run from 9:00 a.m. to 4:00 p.m. The Division of Taxation's presentation is given in the afternoon. To learn more about Small Business Workshops, or to sign up for one of the spring sessions, call the Internal Revenue Service at: 1-800-829-1040 or the Division of Taxation's Call Center at: 609-292-6400. ❑

Cigarettes/Tobacco Purchased Outside New Jersey

With the increase of New Jersey cigarette tax more consumers are turning to out-of-State or to mail order for their purchases. The New Jersey Cigarette Tax Act, N.J.S.A. 54:40A-20, imposes a tax on the sale, possession for sale, use, consumption or storage for use of all cigarettes within the State of New Jersey. The New Jersey cigarette tax rate effective January 1, 1998 is $0.04 per cigarette or $0.80 per pack.

When a consumer purchases cigarettes out-of-State or through mail order, the cigarette tax along with the 6% New Jersey sales tax becomes due. The New Jersey Cigarette Tax Act does not allow credit for taxes paid to another state. In addition to cigarettes, cigars and bulk tobacco are also taxable under the Tobacco Products Wholesale Sales and Use Tax Act. The rate of tax on tobacco products is 48% of the invoiced price.

The Federal Government requires any entity or persons shipping cigarettes in interstate commerce to file a monthly report of all cigarette shipments with the receiving state's tax administrator. This requirement is known as the Jenkins Act. When this information is received, the New Jersey Division of Taxation will assess the consumer the cigarette tax, the New Jersey use tax and/or interest or penalty. ❑

Correction

An error appears on the sample W-2 Form in the article entitled "NJ Information on Form W-2" which appeared on page 9 of the winter 1998 issue of the *New Jersey State Tax News*. The employee contribution amounts shown for New Jersey Unemployment Insurance/Health Care Subsidy Fund/ Workforce Development Partnership Fund (UI/HC/ WD) and Disability Insurance (DI) shown in Box 14 were listed in reverse order. The correct maximum employee contribution to UI/HC/WD for 1998 is $82.03 and the correct maximum employee contribution to DI for 1998 is $96.50. These figures represent the *maximum* employee contributions to these funds for 1998. Not all employees will have contributed the maximum amount. This same error appears in the sample W-2 Form printed in the 1998 New Jersey Resident Return instruction booklet (Form NJ-1040-P) and 1998 Nonresident Return instruction booklet (Form NJ-1040NR-P).

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1998 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
3	3/20/98	***Sale of a Principal Residence*** — Conforms New Jersey law to Federal law with respect to the treatment of gains derived from the sale of a principal residence occurring after May 6, 1997. Qualified taxpayers, regardless of age, can now exclude up to $250,000 of such gains ($500,000 on certain joint returns). The taxpayer must have owned and used the residence as his (and/or her) principal residence for periods totaling two or more years during the five-year period ending on the date of the sale.	GIT	A-1296 (1R)
33	6/30/98	***Business Employment Incentive Program (Amendment)*** — Enhances the availability of program grants for certain partnerships and limited liability companies by permitting grants authorized under the program to be determined based upon the withholding or estimated tax payments of partners and members of limited liability companies as well as upon the withholdings of employees.	MIS	S-1002 (2R)
39	6/30/98	***Sale of State Tax Indebtedness*** — Authorizes the New Jersey State Treasurer to sell all rights, title and interest in any State tax indebtedness and lien represented by a certificate of debt, except in such instances where the taxpayer can provide clear and convincing evidence that the underlying indebtedness is not fixed, has not been finally determined by the Division of Taxation or is subject to protest or appeal.	ALL	A-1996 (1R)
40	6/30/98	***ICF-MR Assessment*** — Provides for an annual assessment at the rate of 5.8% on the gross revenue of every intermediate care facility for the mentally retarded (ICF-MR) in New Jersey. Proceeds will be used to reduce the number of disabled persons awaiting placement in a community residence or program.	MIS	A-2141
49	7/4/98	***Veteran's Tax Deduction*** — Extends certain benefits, including the annual $50 veteran's deduction, to certain participants in Operation "Restore Hope" (Somalia) or Operations "Joint Endeavor" and "Joint Guard" (Bosnia and Herzegovina). This legislation became effective upon enactment.	LPT	S-1155 (1R)
57	7/24/98	***Roth IRAs*** — Amends and supplements N.J.S.A. 54A:5-1 to provide an exclusion from New Jersey gross income tax for certain qualified distributions from Roth IRAs and to allow four-year reporting of certain taxable distributions. The act brings New Jersey's tax treatment of Roth IRAs into conformity with the Federal tax treatment received by such accounts.	GIT	S-840 (Corrected Copy)
79	8/14/98	***Single Member Limited Liability Companies*** — Provides for single member limited liability companies and allows such companies to be treated as sole proprietorships for State income tax purposes provided the company is not classified otherwise for Federal income tax purposes.	GIT	SCS for S-378 (1R)

continued

1998 TAX LAWS (*continued*)

CH.	DATE	SYNOPSIS	TAX*	BILL
99	9/4/98	***Direct-Mail Advertising Services*** — Amends the New Jersey Sales and Use Tax Act to more accurately describe the kinds of direct-mail advertising services that are subject to sales and use tax. The general and indistinct term "advertising services" is replaced with the more precise phrase "direct-mail advertising processing services in connection with distribution of advertising or promotional material" to recipients in New Jersey.	S&U	A-1903 (1R)
106	9/14/98	Enacts various recommendations of the Tax Advisory Group established by the State Treasurer to study State tax issues. 1. ***Deficiency Assessments.*** Allows certain taxpayers who have paid assessed deficiencies to file refund claims. 2. ***Hedge Funds.*** Nonresidents are no longer required to include in income from New Jersey sources gains or losses resulting from the trading activities of certain private investment partnerships ("hedge funds"). 3. ***Penalty Rules.*** For return periods beginning on or after January 1, 1999: (a) the penalty for failure to file a tax return is based on the amount of tax underpaid rather than on the entire tax liability; and (b) the corporation business tax underpayment penalty is capped at 25% of the amount underpaid. 4. ***Gross Income Tax Estimated Payments.*** For return periods beginning on or after January 1, 1999: (a) raises from $100 to $400 the tax threshold above which quarterly estimated tax payments are required; (b) requires certain estates and trusts to make estimated tax payments; and (c) modifies the method by which the penalty for underpayment of estimated tax is determined. 5. ***Corporation Business Tax Estimated Payments.*** For return periods beginning on or after January 1, 1999, modifies the method by which the penalty for underpayment of estimated tax is determined.	MIS	A-1730 (1R)
113	10/20/98	***Holocaust Restitution*** — Provides that compensation received by victims of the Nazi Holocaust as reparations or restitution, and any accrued interest on such amounts, shall not be counted as income for New Jersey gross income tax purposes or for the purpose of determining eligibility for the Pharmaceutical Assistance to the Aged Program (PAAD).	GIT	A-1981 (1R)
114	10/28/98	***Exemption for Municipal Electric Utilities*** — Exempts certain sales by municipal electric utilities from sales tax and from the corporation business tax.	S&U/ CBT	A-262 (3R)

continued

1998 TAX LAWS (*continued*)

CH.	DATE	SYNOPSIS	TAX*	BILL
115	10/28/98	***Special Improvement Districts*** — Authorizes municipalities to establish "special improvement districts" to revitalize downtown areas; provides $5 million to establish a downtown business improvement revolving loan fund; and provides technical assistance for projects from the Department of Community Affairs.	MIS	A-747 (2R)
118	11/9/98	***Charity Shops*** — Allows certain charitable and public safety organizations to make tax exempt sales of donated property at shops where substantially all of the work is done by volunteers and where substantially all of the merchandise being sold has been received by the exempt organization as gifts or contributions.	S&U	S-158 (1R)
	11/3/98	**Constitutional Amendment** — Amends Article VIII, Section II of the State Constitution as approved by the electorate on November 3, 1998. The amendment provides that $98 million from State sales and use tax revenues shall be dedicated in each of the ten fiscal years commencing July 1, 1999, for the acquisition and development of lands for recreation and conservation purposes; for the preservation of farmland; and for historic preservation.	S&U	SCS for SCR 66

*Legend for 1998 Tax Laws

ABT	= Alcoholic Beverage Tax	LIT	= Litter Control Tax
ACC	= Atlantic City Casino Control Commission	LPT	= Local Property Tax
ALL	= All Taxes Administered by the Division	MFT	= Motor Fuels Tax
CBT	= Corporation Business Tax	MIS	= Miscellaneous
CIG	= Cigarette Tax	PUT	= Public Utility Taxes
CMC	= Cape May County Tourism Sales Tax	SCC	= Spill Compensation & Control Tax
FBT	= Financial Business Tax	S&U	= Sales and Use Tax
GIT	= Gross Income Tax	TPT	= Tobacco Products Tax
IPT	= Insurance Premiums Tax		

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LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over $750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over $10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1–

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders by County Tax Board.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over $10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15–

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. ❑

Criminal Enforcement

Criminal Enforcement over the past several months included:

- As part of the continuing Motor Fuels Compliance Project, on October 14, 1998 OCI, in conjunction with State Police, executed a search warrant at the business location of Naum Raichel, owner of Gas R Us Inc., t/a Delta Gas, a truckstop in Elizabeth, New Jersey. This search warrant resulted in the seizure of evidence which then resulted in the arrest of Raichel by the State Police. He was charged with misapplication of $75,600 in motor fuel (diesel) tax for 1997 and 1998, and related charges, and was released on $20,000 bail.
- On October 22, 1998 Mario Rivellini of Clifton, NJ entered a guilty plea in Kearny Municipal Court to violating the municipal general ordinance for failing to file sales and use tax returns for January through May 1998. This was in connection with the operation of M & R Cleaning Services Inc., a commercial cleaning company. Rivellini was fined $330 and will be assessed civil penalty and interest. This case was investigated jointly by OCI and the Police Division of the Waterfront Commission of New York Harbor.

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criminal enforcement – from pg. 11

- On November 6, 1998 Warren Kaye, a Pennsylvania resident and former officer of a defunct New Jersey corporation, was sentenced before the Honorable Ronald B. Sokalski, J.S.C. in Passaic County. Mr. Kaye was sentenced to five years probation and $60,000 in restitution as a result of guilty pleas to one count of theft by failure to make required disposition of property and one count of failure to withhold taxes. The offenses stemmed from Mr. Kaye's conduct while an officer of General Machine & Instrument Co. Inc. in Wayne, NJ and involved the failure to remit New Jersey gross income tax withholdings and unemployment insurance withholdings as required by law. Richard L. Pessolano was sentenced on December 15, 1998 also before the Honorable Ronald B. Sokalski, J.S.C. Mr. Pessolano, of Sparta, another former officer of this defunct New Jersey corporation, was sentenced to eight years of incarceration and restitution in the amount of $140,268.89 for failure to remit New Jersey gross income tax withholdings and New Jersey unemployment and disability insurance monies that had been withheld from the employees of General Machine and Instrument Co., Inc.

- Allenex Inc. t/a Allenwood Exxon pleaded guilty to four counts of receiving rebates relative to the purchase of cigarettes from a NJ licensed distributor, F. A. Davis & Sons of Baltimore, MD. The fines and costs imposed were $5,080. Other charges relative to failure to register for the Tobacco Products Tax and failure to file Motor Fuels returns resulted in guilty pleas as well.

- F. A. Davis & Sons pled guilty to a total of 11 counts of providing rebates in violation of the Unfair Cigarette Sales Act. Maximum fines for each count were imposed by the courts totaling $12,705. This case was the result of OCI's investigation wherein F. A. Davis & Sons Inc. was found to be giving their retail customers an illegal rebate of 60 cents per carton by way of checks delivered by their salespersons.

- On November 28, 1998 Inspectors of the U.S. Customs Service at the Mexico/Laredo Texas Border Station found a female Mexican national crossing into the United States in possession of 86,100 counterfeit NJ cigarette tax stamps. The stamps were seized and the woman was detained and identified. The averted loss of revenue was $68,880. This investigation is continuing.

- On December 4, 1998 Marijit Singh M.D., of Mahwah, was sentenced to five years probation in Bergen County Superior Court for failure to pay New Jersey income tax for 1995. Dr. Singh's probation is to run concurrently with five years probation for theft of $900,000 from his patients and associates in an investment fraud scheme. Singh was ordered to make restitution of $140,536 to the State in income tax, penalty and interest for tax years 1992 through 1995.

- On December 9, 1998 Hamdan A. Awawdeh of Bronx, NY was arrested by the Jackson Twp.

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Enforcement Summary Statistics

Fourth Quarter 1998

Following is a summary of enforcement actions for the quarter ending December 31, 1998.

• Certificates of Debt:		• Jeopardy Seizures	107
Total Number	2,322	• Seizures	27
Total Amount	$54,967,062	• Auctions	7
• Jeopardy Assessments	185	• Referrals to the Attorney General's Office	901

For more detailed enforcement information, see our Home Page at: **http://www.state.nj.us/treasury/taxation/**

criminal enforcement – from page 12

Police for transporting 502 cartons of contraband cigarettes. Additional charges filed by OCI included possession of contraband cigarettes and two other disorderly persons offenses. Based on information gathered by OCI Special Agents during the debriefing of Mr. Awawdeh, the special agents proceeded to an address in North Bergen, NJ. That investigation resulted in the arrest of Muhammad Abughannam by OCI Special Agents for possession of contraband cigarettes which included over 10 cartons of counterfeit stamped cigarettes (a 3rd degree crime). The subject is the owner of Halal Meat Market on Bergenline Avenue North Bergen, NJ. Judge Falcone, J.M.C. set bail at $10,000. Three indictable charges and two disorderly persons offenses have been filed by OCI. Abughannam was arraigned in the Hudson County Central Judicial Procession Court. This matter is awaiting grand jury proceedings.

- On December 11, 1998 Jeffrey A. Tyson of Plainsboro was indicted by a State grand jury on four counts of failure to file New Jersey gross income tax returns for the years of 1993, 1994, 1995 and 1996.

- On December 15, 1998 Luis Chavez of Elizabeth, NJ entered a guilty plea in Union County Superior Court to one count of misapplication of $69,000 in sales tax he had collected at his liquor store, Elizabeth Ave. Wines & Liquors Inc., from 1990 to 1994. Chavez faces a maximum sentence of five years in prison, a fine of $15,000 and restitution of $98,000 in tax, penalty and interest when sentenced on April 1, 1999. This case was investigated by OCI and prosecuted by the Attorney General's Office.

- OCI Special Agents arrested Abdalla A. Dabbas of Paterson for transporting and possession of 148.0 cartons of contraband cigarettes purchased in North Carolina. This arrest was made possible based on information developed by OCI's utilization of a confidential informant as well as the surveillance of Dabbas's Paterson home. Mr. Dabbas was arraigned in the Passaic County Superior Court.

- On January 13, 1999, Anagnostis Inc. corporate principal Pete Anagnostis was arrested by the Philadelphia Police Department in response to a Governor's Arrest warrant issued to the Commonwealth of Pennsylvania by the State of New Jersey. Anagnostis was then transported to the Camden County Jail and bail of $100,000 was set with no 10% factor. In lieu of the bail amount, it appears that Anagnostis will remain incarcerated at least until the February 8 arraignment. Anagnostis was indicted by a State grand jury on or about August 8, 1998 on charges of failing to remit sales taxes collected in the amount of $262,537 for the period of July 1990 through June 1994. This case was investigated jointly by OCI and the Division of Criminal Justice.

- Ninety-seven charges were filed in municipal court on 25 cases for violating the cigarette tax law including possession of 2,981.9 cartons of contraband cigarettes, valued at $74,547.50. ❑

Tax Briefs

Corporation Business Tax

S Corporation Extension of Time to File — New Jersey corporation business tax law does not provide for the granting of administrative extensions for filing returns. Accordingly, the taxpayer may obtain a normal six-month extension by filing Form NJ-200T and paying the applicable tax on or before the 15th day of the fourth month after the close of the period. At the end of the period Form CBT-100S would be due. If additional data is needed to modify that return, the changes can be made after that by means of filing an amended return. The revenue stream of the State must be predictable, and therefore the State filing requirements are independent of any discretion that may be exercised at the Federal level.

Litter Control Tax

Sales Within the State are Subject to Tax — The litter tax is imposed on "sales within the State" which are "in the case of manufacturers, wholesalers and distributors, all sales of products for use and consumption within the State. It shall be presumed that all sales of manufacturers, wholesalers and distributors sold within the State are for use and consumption within the State unless the taxpayer shows that the products are shipped out-of-state for out-of-State use."

continued on page 14

tax briefs – from page 13

N.J.S.A. 13:1E-94j. Based on this statute, taxpayers can exclude from the tax all of their sales of litter-generating products shipped out-of-State. However, the Division does not allow a taxpayer to exclude sales of its litter-generating products in the State to a New Jersey manufacturer who subsequently sells his products outside the State. The Division does not attempt to collect a tax on taxpayer sales out-of-State that ultimately are sold by subsequent sellers back into New Jersey.

Sales and Use Tax

Purchase of Game Birds for Hunting — For sales tax purposes, a hunting preserve is not considered a reseller of the birds that it stocks for hunters; rather the preserve is the retail purchaser of the birds and must pay tax on those used for hunting purposes. If some birds are instead sold to another bulk purchaser, the hunting preserve must collect tax unless a valid exemption can be claimed by the purchaser, such as sale for resale supported by the issuance of a Resale Certificate (Form ST-3), or unless the birds are delivered to the purchaser out-of-State. The hunting preserve may apply for a refund of the tax paid on birds that were purchased for use on the preserve but subsequently sold as such or delivered to a purchaser outside the State.

Sales of Prewritten Software — The sale of canned software or updates in some tangible, corporeal form (e.g., disc) is subject to sales tax as the sale of tangible personal property. N.J.S.A. 54:32B-3(a). However, the sale of software or updates is not taxable if it is transmitted electronically or downloaded by the customer. If a customer who purchases software in *intangible* form is provided with a manual at no extra charge, the customer is not liable for tax if a reasonable, objective observer would view the purchase of the downloaded software as the true object of the transaction. However, the software seller who provides the manual will be obligated to pay sales or use tax on the manual. N.J.S.A. 54:32B-6. If instead the customer is specifically charged for the manual, then that portion of the transaction is deemed to be the retail sale of a manual, which is taxable. N.J.S.A. 54:32B-3(a).

Commercial Heating and Air Conditioning System Adjustments — N.J.S.A. 54:32B-3(b)(4) of the Sales and Use Tax Act imposes sales tax on receipts from services related to maintaining, repairing or servicing real property. (N.J.S.A. 54:32B-3(b)(2) applies tax on the same basis to services rendered with respect to personal property.) The Division is of the opinion that testing and balancing by adjustment of commercial heating and air conditioning systems falls within the meaning of maintaining or servicing property. Thus, receipts from such services are subject to sales tax when the service is performed in New Jersey.

Repair and Testing Services — The service of installing and repairing equipment is subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(2) if the repaired item is picked up or delivered at a New Jersey location. It is not taxable if delivered outside the State. Testing alone, without performing a repair, is deemed to be an exempt professional or personal service. N.J.S.A. 54:32B-2(e)(4)(A). The repair business is liable for sales or use tax on its purchase of tools and shop supplies used in performing repairs, installation, and testing.

Long Term Lease of Temporary Fencing — A taxpayer questioned the Division's assessment in a case where the taxpayer is in the business of renting/providing temporary fencing erected around construction sites in this State.

The facts are that the taxpayer quotes his customers a single charge. This charge is based on the height and the number of feet of fence required. This charge is for a period up to one year. This single charge includes both the erecting and dismantling of the fence by the taxpayer. After the one year period, the customer is charged a monthly amount.

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tax briefs – from page 14

The true object of the transaction under these facts is the use of a temporary fence on a long term lease basis. Since the initial term of the rental is for a period more than 28 days, the transaction is defined as a lease in accordance with N.J.S.A. 54:32B-2(aa). "Lease" means the possession or control of tangible personal property by an agreement, not transferring sole title, as may be evidenced by a contract, contracts, or by implication from other circumstances including course of dealing or usage of trade or course of performance, for a period of more than 28 days.

Accordingly, the tax is due from the lessor, on either (1) the amount of the lessor's purchase price of the property used as a temporary fence or (2) the amount of the total lease payments attributable to the lease of such property. N.J.S.A. 54:32B-2(bb).

Further, since the taxpayer does not lease fences without erection and dismantling of the fence, these functions are considered incidental to the lease of the fence (*Modern Handling Equipment of New Jersey, Inc. v. Director, Division of Taxation*, decided April 6, 1998; Tax Court No. 000151-97).

Additional charges invoiced by the lessor to the lessee for the repair of damaged fence would be subject to tax under N.J.S.A. 54:32B-2(b)(2) of the law. ❑

In Our Courts

Gross Income Tax

Basis for Sale of Partnership Interest – *Koch, v. Director, Division of Taxation,* decided January 14, 1999; Supreme Court of New Jersey; No. A-135 September Term 1997.

The appeal involved the tax treatment under the New Jersey Gross Income Tax Act (the Act) of the taxpayer's gain realized from the sale of his partnership interest. The question was whether the cost basis of that interest should be the purchase price or the Federal adjusted basis (purchase price less losses deducted on Federal income tax returns). The deducted losses provided the taxpayer with a Federal income tax benefit. However, because the losses were not deductible on the taxpayer's New Jersey gross income tax returns, they provided no tax benefit under the Act.

Koch filed a complaint with the Tax Court, asserting that the Act does not require a taxpayer to reduce the basis of his partnership interest by losses that are not deductible under the Act. The Tax Court disagreed and concluded that, in determining gain or loss under the Act, adjusted basis for Federal income tax purposes must be used and no exception is permitted even where the taxpayer was unable to deduct partnership losses. *Koch v. Director, Div. Of Taxation,* 15 N.J. Tax 387, 395 (Tax Ct. 1995). The Appellate Division affirmed in an unpublished, *per curiam* opinion substantially for the reasons stated by the Tax Court.

The Supreme Court granted certification. The Supreme Court held that in calculating taxable income from the disposition of property under the Act, the basis cannot be the Federal adjusted basis where that basis has been reduced by losses that are not deductible under the Act. Any income tax imposed on an amount greater than the taxpayer's economic gain (in this instance, sale price less purchase price) represents a tax on a return of capital, a result not intended by the Legislature.

The Supreme Court stated that the Division's position ignores the Federal accounting and nonrecognition provisions of section 5-1c of the Gross Income Tax Act. By including reference to Federal methods of accounting or nonrecognition provisions of the Internal Revenue Code, the Legislature explicitly intended to incorporate Federal income tax concepts. Further, Koch's calculation of gain conforms to section 5-1c's directive to use methods of accounting allowed for Federal income tax purposes to determine gain or loss for New Jersey gross income tax purposes. Under the Federal method of accounting, losses not passed through to a partner would not reduce the partner's basis, and gain would be determined simply by computing the difference between a partner's cost basis (unreduced by partnership losses) and proceeds received from the sale. Accordingly, the accounting method allowed for Federal income tax purposes does not require the use of Koch's Federal adjusted basis to compute his gain.

continued on page 16

in our courts – from page 15

Miscellaneous

Private Debt Collection Agencies – *Lonky v. Municipal Tax Collection Bureau Inc. and New Jersey State Department of Treasury, Division of Taxation,* decided October 16, 1998; Appellate Division; No. A-0512-97T3.

In 1992, the State enacted legislation enabling the Division to hire private agents to discover tax obligations and collect payments from taxpayers. (See N.J.S.A. 54:49-12.1 to .5) Thereafter, the Division contracted with the Municipal Tax Collection Bureau Inc. (MTB) where MTB would identify and collect taxes from non-reporting taxpayers and be remunerated pursuant to a contingent fee arrangement.

MTB identified plaintiff, who was neither registered for New Jersey taxes nor filed New Jersey tax returns, as a person with potential tax liability after it discovered information that plaintiff owned and sold commercial property in New Jersey. Subsequently, plaintiff filed a complaint claiming the Division's contract with MTB was unconstitutional and invalid. The trial court's decision granted summary judgement in favor of MTB and the Division. Plaintiff appealed.

The Appellate Court affirmed the trial court's decision. Furthermore, the Court noted that (1) statutory authority exists for MTB's debt collection practices, (2) MTB has no authority to and does not assess taxes, and (3) the legislature did not expressly prohibit the Division from entering into contingent fee arrangements with private tax collectors. The Court concluded that there was "no overriding public policy or legislative prescriptions that would render the contract with MTB invalid, particularly given the express statutory authority therefor and the substantive and procedural controls imposed by the Division."

Reclaiming Mistaken Refunds – *Playmates Toys, Inc., v. Director, Division of Taxation,* decided December 8, 1998; Appellate Division; No. A-170-97T5.

Plaintiff filed a refund claim for time periods that were barred by the statute of limitations. However, the Division mistakenly granted the refund. Realizing its mistake, the Division issued a final determination directing plaintiff to return the erroneous refund from which plaintiff appealed. The Tax Court ruled that plaintiff must return the money because the issuance of the refund was not tantamount to the Division's waiver of its ability to recoup the overpayment. Plaintiff appealed.

The Appellate Court held that although the Division has no express statutory power, it does have a common law inherent power to recoup mistaken disbursements. In support of its holding, the Court cited non-tax cases where courts had upheld the government agency's inherent power to correct its mistakes.

Sales and Use Tax

Bulk Sale Provision – *M.S. Appliance Service, Inc. v. Director, Division of Taxation,* decided September 25, 1998; Tax Court; No. 3646-97.

On or about July 1, 1994, plaintiff purchased from Mr. Service, Inc. (hereinafter Mr. Service) its appliance repair business for $193,000. The purchase consisted of the trade name, customer lists, and fixed assets, but not the inventory. At the time of the sale, Mr. Service owed the Division sales tax in excess of $240,000 plus interest and penalty. Neither party notified the Division of this sale.

While the Division was investigating whether Mr. Service's assets would satisfy its outstanding sales tax liability, it discovered that the business was sold to plaintiff. Thereafter, the Division notified plaintiff that it was liable for $193,000 of Mr. Service's sales tax liabilities pursuant to N.J.S.A. 54:32B-22(c). This provision requires a purchaser to notify the Division, at least ten days prior to taking possession, of the purchase of all or any part of the business assets, other than in the ordinary course of business, from a person required to collect tax. Where the purchaser fails to comply with this notice requirement, the purchaser is held personally liable for the seller's sales tax liabilities.

Plaintiff challenged the applicability of N.J.S.A. 54:32B-22(c) on the grounds that it did not purchase the merchandise or inventory. The Court ruled that the statute requires a sale of either part or all of a business or a substantial portion of assets. Therefore, the sale was held to clearly fall within the statute because plaintiff purchased the business.

continued on page 17

in our courts – from page 16

Refund Claims – *Amplicon, Inc., v. Director Division of Taxation,* decided September 18, 1998; Tax Court; No. 000413-98.

Pursuant to an audit, the Division issued a notice of assessment informing plaintiff that it owed sales and use tax. Plaintiff protested the assessment and presented documentation requesting an $87,646 reduction in tax. Per its June 28, 1995 notice, the Division granted the entire requested reduction and recomputed the remaining sales and use tax liability. Plaintiff paid the assessment by check dated July 18, 1995. Subsequently, in a letter dated May 30, 1997, plaintiff filed a refund claim for a portion of the sales and use tax paid by the July 18, 1995 check. The Director denied the refund claim on the grounds that it was untimely filed.

The sole issue in front of the Court was whether plaintiff may seek a refund of assessed taxes more than ninety days after the taxes were assessed and paid without protesting the assessment. The Court's analysis of the statutes revealed an apparent conflict between N.J.S.A. 54:32B-20(a), which permits a taxpayer to file a refund claim within four years from the payment of tax, and N.J.S.A. 54:32B-19 and 54:3B-21, which grants the taxpayer ninety days from the date of the Division's assessment to request a hearing or file an appeal to Tax Court. The Court found that N.J.S.A. 54:32B-20(b) resolved this apparent conflict by stating that the four year refund claim period does not apply to the situation where payments were made pursuant to an assessment and the taxpayer had a hearing or failed to file for a hearing or appeal. Therefore, the Court held that the four year period for filing a refund claim is inapplicable in the instant case and upheld the Director's decision that plaintiff's claim for refund was out-of-time. The Court noted that audits would never close if extended statute of limitations were permitted in cases like this as there could be repeated and endless attempts to seek refunds. ❑

In Our Legislature

Gross Income Tax

Contribution Checkoff Amounts — P.L. 1999, c.153 (signed into law on January 12, 1999) increases the amounts specified for contribution to special funds made through checkoffs on New Jersey individual gross income tax returns from "$5, $10 or other" to "$10, $20 or other." The statute also changes the name of the "Battleship New Jersey Memorial Fund" to the "U.S.S. New Jersey Educational Museum Fund." The new law applies to tax years beginning on or after January 1, 2000.

Checkoff for Drug Abuse Education Fund — P.L. 1999, c.12 (signed into law on January 25, 1999) establishes the Drug Abuse Education Fund into which each taxpayer shall have the opportunity to contribute by indicating on his or her New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in this special fund.

All contributions to this fund will be appropriated to the Department of Education for distribution to non-governmental entities operating in the public interest that, utilizing law enforcement personnel, provide drug abuse education programs on a State-wide basis, such as, but not limited to, Project DARE (Drug Abuse Resistance Education).

This act took effect immediately, but remained inoperative until enactment of P.L. 1999, c.21. The legislation applies to tax years beginning on or after January 1, 2000.

Coded Designations for Contribution Checkoffs — P.L. 1999, c.21 (signed into law on February 8, 1999) allows for the use of coded designations on the gross income tax return form to indicate to taxpayers their statutorily authorized options for making contributions to charitable funds. The legislation applies to tax years beginning on or after January 1, 2000. ❑

tax calendar

april

1999

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

April 12

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

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

April 15

CBT-100/ CBT-100S **Corporation Business Tax**—Annual return for accounting period ending December 31

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

HR-1040 **Homestead Property Tax Rebate**—Application

continued

April 15 - continued

NJ-1040 **Gross Income Tax**—Resident return for calendar year filers

NJ-1040NR **Gross Income Tax**—Nonresident return for calendar year filers

NJ-1041 **Gross Income Tax**—Fiduciary return for calendar year filers

NJ-1065 **Gross Income Tax**—Partnership return for calendar year filers

NJ-1040ES **Gross Income Tax**—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 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

April 20 - continued

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

April 26

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

April 30

NJ-927 & NJ-927-W **Gross Income Tax**—Employer's quarterly report

may

1999

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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30	31					

May 10

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

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

May 17

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

continued

May 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

May 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

May 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

May 25

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

june

1999

SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
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20	21	22	23	24	25	26
27	28	29	30			

June 10

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

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

June 15

CBT-100 **Corporation Business Tax**—Annual return for accounting period ending February 28

continued

June 15 - 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

June 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

continued

June 21 - 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

June 25

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

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