

New Jersey State Tax news

A Quarterly Newsletter

ISSN 1073-6808

Volume 32, Number 2
Summer 2003



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NOTICE TO SUBSCRIBERS

This will be the last issue of the *New Jersey State Tax News* to appear in printed form. See "Notice to Subscribers" on page 2 for more information.

New Laws Fund FY 2004 Budget

The following is a general overview of fiscal year 2004 budget related legislation. A more detailed discussion will be included in the fall 2003 issue of the *State Tax News*. Updates will be posted to our Web site as they become available.

Realty Transfer Fee

P.L. 2003, c.113, which takes effect on July 14, 2003, imposes a new, graduated supplemental fee on transfers of realty. The fee is payable by the grantor to the county in which the deed is recorded. The new rates are as follows:

- \$2.00 for every \$500 of consideration not in excess of \$150,000;
- \$3.35 for every \$500 of consideration in excess of \$150,000 but not in excess of \$200,000;
- \$3.90 for every \$500 of consideration in excess of \$200,000.

The new law does not increase the Realty Transfer Fee rates on transfers by senior citizens, blind or disabled persons, or on the transfer of property that is low and moderate income housing.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/transferfees.shtml.

Cigarette Tax

P.L. 2003, c.115 increased the cigarette tax from \$.075 to \$.1025 per cigarette, effective July 1, 2003, resulting in a tax increase of \$.55 per

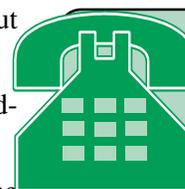
pack and bringing the total levy to \$2.05 per pack of 20. The legislation specifies that an additional amount of the cigarette tax revenue is to be appropriated for health programs each year.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/cignew.shtml.

Hotel/Motel Occupancy Fee

P.L. 2003, c.114 imposes a State hotel and motel occupancy fee. Beginning August 1, 2003, the State will impose a 7% occupancy fee. For fiscal year 2005 and thereafter, a 5% fee will be imposed.

The legislation makes special rate provisions for those municipalities
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important phone numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
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

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that already impose local taxes or fees on hotel/motel occupancies:

- In Atlantic City, where there is currently a combined rate of sales and luxury taxes of 12%, the occupancy fee will be 1%.
- In the Wildwoods, where there is currently a combined rate of sales and local taxes of 9.85%, the occupancy fee will be 3.15%.
- In Newark and Jersey City, where a 6% local hotel tax is currently collected in addition to the 6% sales tax, the occupancy fee will be 1%.

The law authorizes all other municipalities to adopt an ordinance to impose a local tax of up to 1%. The earliest possible effective date for the local tax is September 1, 2003. For fiscal year 2005 and thereafter, when the State occupancy tax is reduced from 7% to 5%, the local tax may be imposed at a rate up to 3%.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/hotelfee.shtml.

Casino Taxes and Fees

P.L. 2003, c.116, effective July 1, 2003, imposes a State tax of 4.25%

on casino licensees on the value of rooms, food, beverages, and entertainment that they give away free or at a reduced price as a “complimentary.” For those “complimentaries” provided at a reduced price, the 4.25% tax is calculated on the value of the room, food, beverage, or entertainment, reduced by any consideration paid by the customer. This tax, payable by the casino licensee, is in addition to any tax due under the Sales and Use Tax Act on receipts from the sale of food, beverages, room occupancies, and entertainment.

In addition, P.L. 2003, c.116 increases the Atlantic City casino hotel parking fee from \$2.00 to \$3.00, imposes a \$3.00 per day fee on each hotel room occupied by a guest in a casino hotel, an 8% gross revenue tax on companies that administer and service multi-progressive casino slot machine systems, and a 7.5% tax on the adjusted net income of casino licensees.

Billboard Advertising Fee

P.L. 2003, c.124 imposes a 6% fee on the gross amount collected by retail sellers for billboard advertising space.

Information is also available on our Web site at: www.state.nj.us/treasury/taxation/outdooradv.shtml.



New Jersey State Tax news

is published quarterly by the:

**New Jersey Division of Taxation
Technical Services
Information & Publications Branch
PO Box 281
Trenton, NJ 08695-0281**

The *State Tax News* is published on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/publnews.shtml

Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

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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Robert K. Thompson

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NOTICE TO SUBSCRIBERS

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More information on *NJ Tax E-News* is available on our Web site at: www.state.nj.us/treasury/taxation/listserv.shtml



NJ Tax E-News Service Launched

Subscribers to *NJ Tax E-News*, the Division of Taxation's new online information service, will have taxation news delivered directly to their electronic mailboxes.

NJ Tax E-News messages will contain news on various topics and/or links to publications and other material recently posted on the Division's Web site. Areas of interest covered by the service currently include: New Jersey income tax, property tax relief programs, and sales tax. Subscribers can also choose to be notified when new or revised publications, including future issues of the *New Jersey State Tax News*, become available online. The service will be expanded to include additional topics in the future.

To subscribe to *NJ Tax E-News* visit: www.state.nj.us/treasury/taxation/listserv.html □

Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003, will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%

Tax Relief for 9/11 Victims

Governor James E. McGreevey signed legislation, P.L. 2003, c.9, on January 27, 2003, that exempts from New Jersey gross income tax the income of those victims who died as a result of the September 11, 2001, terrorist attacks at the World Trade Center and the Pentagon or who were killed when United Airlines Flight 93 crashed in Somerset County, Pennsylvania.

The legislation applies to the tax year 2000 and all later years up to and including the year of death. Generally, the two years for which tax will be forgiven will be 2000 and 2001. Only decedents with a New Jersey gross income tax liability for the qualified years are eligible for income tax relief. Any gross income tax liability eligible for forgiveness that is owed but not paid will be forgiven and payment will be waived. Any gross income tax eligible for forgiveness that is already paid will be refunded.

A claim for refund must be filed within four (4) years after the taxable year in which the victim died. For example, if a calendar year taxpayer died on September 11, 2001, the claim for tax forgiveness must be filed on or before December 31, 2005.

A claim for tax forgiveness must be submitted on Form NJ-0911, "Gross Income Tax Forgiveness for Victims of the September 11, 2001 Terrorist Attacks," and must include proof of death, IRS Form 1310, or a copy of a court certificate showing appointment as personal representative of the decedent.

The Division of Taxation will make every effort to expedite claims for

tax forgiveness. For additional information or assistance, call the Division of Taxation at 609-292-2163 or e-mail us at nj.taxation@treas.state.nj.us To obtain Form NJ-0911, call 609-292-2163 or visit the Division's Web site at <http://www.state.nj.us/treasury/taxation/taxprnt.shtml> □

GROSS INCOME TAX 9/11 Disaster Relief Payments

The September 11th Victim Compensation Fund of 2001 was enacted by the Federal government to provide compensation to any individual who was physically injured and to the families and beneficiaries of any individual who was killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The Victims of Terrorism Tax Relief Act of 2001 provides qualified disaster relief payments to individuals for certain qualified expenses occurring in connection with the terrorist attack such as personal, family, living, or funeral expenses incurred or expenses incurred for the repair or rehabilitation of a personal residence.

For Federal income tax purposes, payments from the September 11th Victim Compensation Fund and qualified disaster relief payments are not considered taxable income of the recipient. More specifically, these payments are not included in taxable income unless the payment is for insurance or other reimbursements for expenses, or income replacement payments, such as payments of lost wages or lost business income.

For New Jersey income tax purposes, qualified disaster relief pay-

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ments are excludable from income to the extent they are excluded from Federal income tax. Any payments that are taxable for Federal income tax purposes, such as payments for wages or lost business income, are taxable for New Jersey purposes in the appropriate category of income.

□

Overview of Estate Tax Revisions

The New Jersey estate tax was revised on July 1, 2002, and made to apply retroactively to decedents dying after December 31, 2001. Prior to its revision, the New Jersey estate tax was a “sponge” or “pickup” tax whose sole purpose was to absorb any credit for state inheritance, estate, succession, or legacy taxes available in the Federal estate tax proceeding. The revised New Jersey estate tax is decoupled from the Federal estate tax.

The New Jersey estate tax is now imposed upon the transfer of the estate of every resident decedent which would have been subject to a Federal estate tax under the provisions of the Internal Revenue Code in effect on December 31, 2001. The tax is, at the election of the person or corporation liable for its payment, either the maximum credit for state inheritance, estate, succession, or legacy taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, or an amount determined pursuant to the Simplified Tax System prescribed by the Director, Division of Taxation.

Numerous inquiries related to the revised New Jersey estate tax and

its filing requirements have been received by the Division.

The following summarizes the filing requirements and important provisions of the revised estate tax:

1. The person or corporation responsible for payment of the tax may choose the Form 706 method or the Simplified Tax System (Alternative) method of filing the New Jersey estate tax return. The Form 706 method is based upon the provisions of the Internal Revenue Code in effect on December 31, 2001 (2001 Federal estate tax return). The Simplified Tax System method is based upon the method which has been prescribed by the Director.

2. A New Jersey estate tax return must be filed if the decedent's gross estate, as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. It must be filed within nine months of the decedent's death (nine months plus 30 days if the Form 706 method is used). Additionally, a copy of any Federal estate tax return filed or required to be filed with the Federal government must be submitted within 30 days of the date it is filed with the Internal Revenue Service, and a copy of any communication received from the Federal government must be submitted to the Division within 30 days of its receipt from the Internal Revenue Service.

3. The New Jersey estate tax is due on the decedent's date of death and must be paid within nine months. Any tax not paid within nine months bears interest at the rate of ten percent (10%) per annum from the expiration of nine months until paid. The Director may extend the time for the filing of the return, but not

for the payment of the tax. Payments are first credited in satisfaction of accrued interest.

4. The Form 706 method requires that the Form IT-Estate be prepared and filed along with a 2001 Federal Form 706 completed in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001. The New Jersey estate tax is based upon the Federal credit for state inheritance, estate, succession, or legacy taxes as it existed on December 31, 2001, and not as it existed on the decedent's date of death.

If a Federal estate tax return has been or will be filed, or is required to be filed with the Internal Revenue Service, any election made by a taxpayer to treat an asset in a particular manner for Federal estate tax purposes must also be made for New Jersey estate tax purposes. A taxpayer may not make one election for Federal purposes and another for State purposes.

5. The Director has prescribed a Simplified Tax System (Alternative) method pursuant to the provisions of the revised statute. This method may only be used in those situations where a Federal estate tax return has not, and will not be filed, nor is a tax return required to be filed with the Internal Revenue Service. The Simplified Tax System is not intended for use in all estates.

The Simplified Tax System requires that a Form IT-Estate be prepared and filed along with a New Jersey Inheritance Tax Return (Form IT-R) completed in accordance with the provisions of the inheritance tax statute in effect on December 31, 2001.

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The taxable value of the estate using the Simplified Tax System (Alternative) method is the net estate as determined and reflected on the New Jersey Inheritance Tax Return (Form IT-R) filed and adjusted to reflect:

- Real and tangible personal property located outside of New Jersey; plus
- The proceeds of life insurance on the decedent's life owned by the decedent (or transferred within three (3) years of his/her death) paid to any beneficiary other than the estate, executor, or administrator; plus
- All transfers made by the decedent within three (3) years of death not included in the net estate as determined and reflected on the New Jersey inheritance tax return; less
- Property passing outright to the decedent's surviving spouse. This deduction does not include QTIP (Qualified Terminable Interest Property) or similar property. QTIP property is property that passes from the decedent and in which the surviving spouse has a qualifying income interest for life. The surviving spouse has a qualifying income interest for life if he/she is entitled to all of the income from the property payable annually or at more frequent intervals, or has a usufruct interest in the property (right to enjoy the property) for life, and during the surviving spouse's lifetime no person has a power to appoint any part of the property to any person other than the surviving spouse. Additionally, the surviving spouse must be a citizen of the United States on the decedent's date of death.

If QTIP property or the surviving spouse's citizenship is a significant factor, consideration should be given to the use of the Form 706 method of filing; less

- Property passing for charitable purposes.

6. The New Jersey estate tax may be reduced by estate, inheritance, succession, or legacy taxes actually paid to any state or territory of the United States or the District of Columbia including inheritance taxes actually paid to this State.

Unlike the prior New Jersey estate tax, the revised estate tax limits the reduction for taxes paid to other jurisdictions to the proportion of the tax otherwise due as the portion of the property taxable in both New Jersey and the foreign jurisdiction bears to the entire estate taxable (gross estate) for New Jersey purposes.

$$\frac{\text{Property Taxed by NJ and Other Jurisdiction}}{\text{Entire NJ Estate Subject to Tax (Gross Estate)}} \times \frac{\text{NJ Estate Tax Otherwise Due}}{\text{NJ Estate Tax Otherwise Due}} = \text{Allowable Reduction}$$

7. Unlike the prior New Jersey estate tax, the revised estate tax is a lien on all the property of a decedent. Additionally, the statute provides that the decedent's property may not be transferred without the written consent of the Director (commonly known as a "waiver"). The tax waiver form has been modified to release both the inheritance and the estate tax lien and permit the transfer of the property listed thereon for both inheritance and the estate tax purposes. Generally, regulations which previously pertained only to inheritance tax waivers have been amended to apply also to es-

state tax waivers. For example, an estate tax waiver is not required for any property which is not subject to the estate tax, nor for any property held as a tenancy by the entirety in the estate of the first spouse to die. Additionally, the blanket waiver rule may be used for estate tax purposes to secure one half (1/2) the funds on deposit on a decedent's date of death in a banking institution.

8. Inheritance and estate tax waivers are now required for life insurance policies, annuity contracts, endowment policies, and supplementary contracts issued to effectuate the distribution of the benefits payable thereunder.

9. Waiver requirements are set forth in the recently adopted inheritance and estate tax regulations beginning at N.J.A.C. 18:26-11.1. Form L-8 may not be used if the taxable estate plus adjusted taxable gifts as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. Form L-9 may not be used if the gross estate as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. In situations where the taxable estate plus adjusted taxable gifts exceeds \$675,000, Form L-4 may be used to request the issuance of waivers prior to the filing of the New Jersey estate tax return, completion of the review of the return filed by the Division, and payment of the tax. When reviewing a request for the early issuance of waivers, the Division will withhold waivers and/or require a payment on account or other security sufficient to insure the payment of the tax and interest for

estate tax revisions - from page 5

which the decedent's estate is ultimately determined to be liable.

Questions related to the revised New Jersey estate tax may be forwarded to:

NJ DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
INHERITANCE AND ESTATE TAX
ATTENTION: ESTATE TAX SECTION
PO BOX 249
TRENTON, NEW JERSEY 08695-0249

Additional information may also be obtained by calling 609-292-5033.

□

Inheritance Tax Deductions

N.J.S.A. 54:34-5 provides that the inheritance tax is to be computed on the clear market value of property transferred and that in determining the clear market value only certain deductions are permitted. N.J.S.A. 54:34-5(c) provides that the ordinary expenses of administration including the ordinary fees allowed executors and administrators are allowable deductions. N.J.A.C. 18:26-7.1 provides that no deductions are allowable against any property which is exempt or not subject to the inheritance tax.

The Division's long-standing administrative construction of N.J.S.A. 54:34-5(c) has been that administrator or executor commissions are allowable on the fair market value of real property owned by a decedent less any outstanding mortgage balance. The Division reasoned that as a mortgage is deductible from the corpus of an estate the mortgage amount is exempt property against which deductions are not allowed under N.J.A.C. 18:26-7.1.

However, in the case of *Estate of Lillian Becker v. Director, Division of Taxation*, No. 4875-2001, decided December 17, 2002, the Tax Court determined that the allowable deduction for an administrator's commission for New Jersey inheritance tax purposes must be calculated as a percentage of the gross fair market value of the real property owned by the decedent, not the value of the property less the outstanding mortgage payable at the time the administrator sold the property. The Court found that the statute and regulations indicated that all allowable deductions should be made from the gross value of any property so long as the property as a whole was not exempt or otherwise not subject to the inheritance tax. Therefore, the Division will no longer require the exclusion of an outstanding mortgage in determining the base amount from which an administrator's fees will be calculated.

On March 24, 2003, Governor McGreevey signed Public Law 2003, chapter 33, which permits fiduciaries to employ and compensate accountants from fiduciary funds for services rendered to an estate. Fees incurred in the preparation of accountings do not reduce the commissions due a fiduciary so long as the accountings are not a usual, customary, or routine service provided by the fiduciary in light of the nature and skills of the fiduciary. Factors considered in evaluating the actions of a fiduciary include the size and complexity of the fiduciary fund, the length of time for which an accounting is rendered, and the increased risk and responsibilities imposed on fiduciaries as a result of revisions to laws affecting fiduciaries.

The Division's long-standing policy regarding the allowance of accounting fees as an inheritance tax deduc-

tion complies with the recently enacted legislation. The reasonable and ordinary fees of Certified Public Accountants and Public Accountants are allowed for the preparation of an inheritance tax return and for other professional services rendered to the executor or administrator of an estate. Accounting fees incurred for services of a nature that could have been performed by the executor or administrator are not allowed as a deduction. □

Shorter Wait Time for New Protests

The Conference and Appeals Branch has implemented procedures designed to increase responsiveness to taxpayers' requests for conferences and final determinations. Taxpayers who are appealing decisions made by the Division of Taxation now have a shorter wait time for conferences and receive decisions faster once the conference is held. This is a result of new and improved administrative procedures and a decrease in the number of cases pending because of those settled during the recent Tax Amnesty.

In-Depth Review of Incoming Protests. An intensive review of the incoming protests is now undertaken and more comprehensive information is requested from the taxpayer at that time. This helps both the taxpayer and the conferee assigned to the case to be better prepared for the conference, and the review and discussion process may even eliminate the need for an in-person conference.

Perfecting Protests. Where issues are black and white, and the taxpayer has adequately documented

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their protest, every attempt is made to resolve matters quickly, often by way of a telephone conference.

Expedited Conferences. When a protest has received a full review and/or the protest has been perfected, there may still remain a need to have an in-person conference. “Conferences on demand” (taxpayer initiated) or “conferences on short notice” (Division initiated) provide a taxpayer who is ready to meet, or has no additional proofs to present, with an opportunity to be heard. Decisions in these types of situations are typically issued within days of the conference.

These procedures reduce the wait times for taxpayers and allow conferees to focus on cases with more complex legal, auditing, and accounting issues. □

Business Tax Reform Changes

The New Jersey Division of Taxation is modifying its administrative practice with respect to implementation of the Business Tax Reform Act (P.L. 2002, c.40) in three instances. These may be found in rules proposed in the *New Jersey Register*, April 7, 2003, at N.J.A.C. 18:7-5.18(a)(1), N.J.A.C. 18:7-17.6, and N.J.A.C. 18:7-8.7. The changes are retroactive and apply to taxpayers with privilege periods beginning on and after January 1, 2002. It is anticipated that, upon adoption of these rules, the changes made will be reflected in the adoption notice as changes not detrimental to the public.

First, a lower threshold is being introduced for a taxpayer to qualify for

an interest expense deduction. An exception to the interest deduction addback, N.J.A.C. 18:7-5.18(a)(1), is being revised to reflect that a related party need not actually pay a tax to a jurisdiction in a single entity state in order for the exception to apply. The related member must simply include the interest income in the calculation of its income subject to tax for the exception to apply. If the interest paid is subject to a tax regardless of whether a tax is actually paid by the entity receiving the income, then the payor of the interest may qualify for the exception and be eligible to deduct its interest expense.

Similarly, and consistent with the principle, N.J.A.C. 18:7-8.7 will be revised to reflect the Division’s position regarding the throw-out rule. Where a corporate taxpayer that is subject to tax but pays no tax to a tax jurisdiction, the numerator of that tax jurisdiction’s receipts fraction would not be subject to New Jersey’s throw-out provision (unless it is as a result of that state’s throw-back provision). The only requirement is that the taxpayer must actually be subject to tax in that taxing state’s jurisdiction and file a return. The throw-out rule applies to single entity taxing jurisdictions as well as postapportionment combination states. The rule also permits the throwout of receipts to preapportionment combination states. Receipts from preapportionment combination states are still required to be thrown out from the denominator of the New Jersey receipts fraction.

Finally, N.J.A.C. 18:7-17.6 will be liberalized to permit partnerships with New Jersey sourced income to make estimated payments on behalf

of nonresident, non-corporate partners that elect to participate in the partnership’s composite return. This revision will allow nonresident, noncorporate partners participating in a composite return to avoid the economic effects of payment of estimated tax while having taxes remitted on the partnership level for the same period. Under the new methodology, if a composite return is filed and the estimated payments associated with it are made on a timely, quarterly basis, then the partnership itself will not be responsible for remitting a tax at the close of the tax period with its Form NJ-1065 with respect to the New Jersey sourced income of those foreign, noncorporate partners participating in the partnership’s composite return whose estimates were paid quarterly. □

GROSS INCOME TAX

Credit for Camden Homebuyers

P.L. 2002, c.43, as amended by P.L. 2002, c.108, created a nonrefundable gross income tax credit of up to \$5,000 for individuals or married couples who purchase and occupy, or plan to occupy within one year, residential property in Camden City. The taxpayer must occupy the property, within one year of purchase, as the taxpayer’s principal residence. The law establishing the credit defines residential property as land, a dwelling house, or a condominium unit. A taxpayer is disqualified from eligibility if the taxpayer, or his or her current spouse, if any, has previously owned residential property and occupied it as a principal residence.

The credit is available for any qualifying purchase made after July 1,

credit for homebuyers - from pg. 7

2002. A qualifying taxpayer may be eligible for the credit for the year of purchase and for the next four years if the taxpayer continues to occupy the property as the taxpayer's principal residence. A taxpayer must repay any tax credits if he or she fails to occupy the property within one year of purchase or if the taxpayer ceases to occupy the property as the principal residence within ten years of purchasing or first occupying the property, whichever is later.

To receive the credit, qualifying taxpayers must complete the Municipal Rehabilitation and Economic Recovery Tax Credit Application. The Division of Taxation will be mailing the application form to purchasers of Camden property who may qualify for the credit. □

Mergers and Tax Clearance

If the surviving or resulting business of a merger is not a registered or authorized domestic or foreign business entity, a Tax Clearance Certificate for each participating corporation must be obtained and attached to the merger filing submitted to the Business Services Bureau in the Division of Revenue.

Each corporation participating in such a merger obtains a Tax Clearance Certificate from the Division of Taxation for a \$25 fee using forms A-5052-TC, Estimated Summary Tax Return, and A-5088-TC, Application for Tax Clearance. The surviving unauthorized foreign corporation receives a "nonassessment" Tax Clearance Certificate. □

SALES AND USE TAX

Vendors Can Pay Tax for Customers

Recently enacted legislation (P.L. 2003, c.42) authorizes most New Jersey retail vendors to advertise that the vendor will pay the 6% New Jersey sales tax for the customer in particular transactions. This is a change from prior law, which prohibited vendors from advertising in this way. Sellers of natural gas, electricity, and utility services are *not* authorized to advertise in such a manner.

In order to take advantage of the new law, the vendor must meet the following conditions:

1. The advertisement **must** indicate that the vendor is paying the tax for the customer and cannot imply that the sale is not subject to tax;
2. If the customer receives a sales receipt, invoice, or other written statement of the transaction, it **must** indicate that the 6% New Jersey sales tax is being paid by the vendor; and
3. The vendor **must** pay the tax as trustee for the State and is liable for the tax in the same manner as if it were collected from the customer.

The tax is to be reported and remitted as "sales tax," not as "use tax" because the vendor is assuming the obligation to pay the sales tax for the customer. All sales where the vendor pays the tax under these conditions must be included in the vendor's gross receipts and the tax must be remitted accordingly. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

July 1–

- Where the County Board of Taxation cannot hear and determine all of the appeals within the prescribed time, board may apply to the Director of Taxation for extension within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail form (FA-1) to claim a continuance under the Farmland Assessment Act for the tax year 2004 together with a notice that the completed form must be filed with the assessor by August 1, 2003, to each taxpayer whose land was assessed for tax year 2003 under the Act.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file an application (Form FA-1) with the

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This will be the last issue of the *New Jersey State Tax News* to appear in printed form. See "Notice to Subscribers" on page 2 for more information.



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assessor to have land assessed under Farmland Assessment Act for tax year 2004.

August 5–

- All SR-1A forms showing information to be used in compiling the 2003 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2004, to be filed with the assessor for the taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2004, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13–

- Table of Aggregates transmitted within three days to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation. ☐

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 4, 2003, in Superior Court – Monmouth County, Larry E. Barasch of Marlboro, who is the former owner and president of the now-defunct Great Feeling Spas, Inc., a spa and hot tub re-

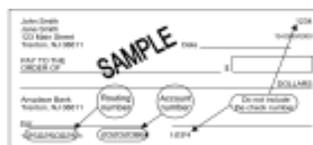
tailer that operated in Marlboro from 1994 to 2002, was found guilty by a jury, at the conclusion of a four-week trial, of theft of \$187,742.46 in sales tax which Barasch had collected from his retail customers in 2001 and failed to remit to the State. Barasch had also been charged with theft from his customers of \$395,000 in deposits paid for goods which were never delivered, but he was found not guilty of the second charge. On July 10, 2003, Barasch was ordered to make restitution of the tax to the State, and was sentenced to five years imprisonment. The sentencing judge denied the request of Barasch's attorney that Barasch be freed on

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* Fee of 2.5% of tax payment applies.

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bail pending appeal, and the defendant was immediately turned over to the State Department of Corrections for transportation to a prison facility. The verdict and sentence clearly illustrate that retail vendors act in a fiduciary capacity on behalf of the State in the collection of and accounting for sales tax from customers, and that this tax money cannot be diverted to fund business expenses. New Jersey law specifically provides that it is a crime to fail to file a return or pay over a tax with the intent to not make timely payment of that tax. At sentencing, the judge noted that with respect to the sales tax funds, Barasch "...didn't pay them when they were due and owing, and didn't pay them in the proper form." This investigation was conducted jointly with the Monmouth County Prosecutor's Office, with significant assistance from Taxation's Field Investigation Branch, Jersey Shore Regional Office. The Monmouth County Prosecutor's Office represented the State at trial.

- On January 6, 2003, Shravan Baile of Staten Island, New York,

entered a guilty plea on behalf of Best Liquors of Lakewood, Inc. to one (1) count of an indictment relating to the failure to turn over sales tax as required by law. Mr. Baile, Best Liquors of Lakewood, Inc., and Best Liquors of Lakehurst, Inc. had been indicted by a State Grand Jury on eight (8) counts relating to his failure to turn over \$54,194 in sales tax collected during the years 1997 and 1998. The investigation determined that Best Liquors of Lakewood collected and failed to remit \$29,093 in sales tax monies, and Best Liquors of Lakehurst collected and failed to remit \$25,101 in sales tax monies. Under the terms of the plea agreement, Mr. Baile will make full restitution of the sales tax collected and not remitted on or before sentencing. This case was referred to the Office of Criminal Investigation (OCI) from Audit Activity and was jointly investigated with the New Jersey State Police Alcoholic Beverage Control Enforcement Unit and was prosecuted by the State Attorney General's Office.

- On January 8, 2003, in Belvidere, New Jersey, Arminder Singh,

whose last known address was in Hasbrouck Heights, New Jersey, was indicted by a Warren County Grand Jury on three (3) second-degree counts, i.e., collecting and failing to turn over more than \$75,000 tax, misapplication of entrusted property, and failure to make required disposition of property received, resulting from his collecting and failing to remit over \$75,000 in motor fuels tax on the retail sale of diesel fuel at a truckstop he operated in White Township, New Jersey, under the names HP Oil, Inc. and Rockaway Fuel Corp. from September 2000 to June 2001. He was also indicted on ten (10) third-degree counts of writing bad checks to his fuel suppliers. Mr. Singh is currently a fugitive whose whereabouts is unknown. This case was investigated by the Office of Criminal Investigation and presented to the Grand Jury by the Warren County Prosecutor's Office.

- OCI has completed a three-year investigation of the tax preparation firm run by George Halpern and his son, Todd. The investigation was opened as a result of information received from

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Enforcement Summary Statistics

First Quarter 2003

Following is a summary of enforcement actions for the quarter ending March 31, 2003.

• Certificates of Debt:		• Jeopardy Seizures	5
Total Number	2,989	• Seizures	31
Total Amount	\$36,677,519	• Auctions	1
• Jeopardy Assessments	249	• Referrals to the Attorney General's Office	434

For more detailed enforcement information, visit our Web site at:

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

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Taxation's Audit and Compliance Activities, whose personnel had documented a pattern of incompetent and possibly illegal actions by the Halperns in their preparation of tax returns for their clients and in their dealings on behalf of their clients with the Division of Taxation. Our investigation resulted in guilty pleas by both George and Todd Halpern in 2000 to charges of filing fraudulent tax returns. Both defendants were sentenced to probation and prohibited from operating an accounting or tax preparation business. Continued investigation, however, revealed that both defendants continued to engage in the preparation of tax returns in violation of the court's orders. Subsequently, in 2001 George Halpern was sentenced to 364 days in jail and Todd Halpern to a 90-day jail term. The Halperns entered into the work release program. OCI investigation determined that they continued to engage in the tax preparation business while on work release. The court then revoked their work release and they were remanded to jail full time. Further investigation determined that Todd Halpern had not only been improperly servicing and representing his clients, he also engaged in systematic theft from his clients on a large scale. On September 6, 2002, Todd Halpern entered a plea of guilty to a charge of theft by misapplication of \$367,261 in New Jersey sales tax payments, which had been entrusted to him by 70 small businesses who had been clients of Halpern's tax preparation business. Halpern also pled guilty to

theft in excess of \$45,000 in personal income tax estimated payments. Halpern made full restitution payments in excess of \$400,000. Halpern was sentenced to five years imprisonment for the above offenses. This case was prosecuted by the State Attorney General's Office.

- One hundred thirty-seven (137) complaints alleging tax evasion were evaluated from January through March 2003 in the Office of Criminal Investigation.
- During the same period, sixty-three (63) charges were filed in court on twenty-three (23) cases for violation of the Cigarette Tax Act. Of the twenty-three cases, four (4) cases involved counterfeit tax stamp investigations and nineteen (19) arrests were made. □

Tax Briefs

Corporation Business Tax

Alternative Minimum Assessment

— Corporations subject to the corporation business tax are required to compute the alternative minimum assessment and pay the greater of the CBT or the AMA.

The method of computation for the alternative minimum assessment is left to the discretion of the taxpayer. A taxpayer shall, for the first privilege period for which it is required to compute the alternative minimum assessment, elect the gross profits method or the gross receipts method. This computation method must then be used by the taxpayer for the computation of the alternative minimum assessment for that privilege period and for the next succeeding four privilege periods.

The taxpayer may change its election at any time after the initial five privilege periods. However, when a taxpayer elects to change the method of computation of the alternative minimum assessment, the new method must be used for the privilege period for which the change is effective and for the next succeeding four privilege periods.

Gross Income Tax

Employee Purchases Under Commuter Choice Program

— In regard to commuter transportation benefits provided under N.J.S.A. 54A:6-23, the Division responded to an inquiry regarding whether the TRIP (Transportation Reimbursement Incentive Program) spending account that allows employees to set aside pretax dollars for the cost of qualified public transportation and parking expenses is subject to tax under the New Jersey Gross Income Tax Act.

The requirements of employer-provided commuter transportation benefits that can be excluded from New Jersey gross income tax are set forth in N.J.S.A. 54A:6-23. However, the exclusion is provided in addition to, and not in lieu of, any compensation otherwise payable to the employee. The New Jersey Gross Income Tax Act only provides an exclusion for employer-provided commuter transportation benefits. Commuter transportation expenses are not excluded from income when purchased by the employee.

Because the TRIP plan is provided by the employees for their own benefit, contributions are subject to New Jersey gross income tax. Income received as compensation for commuting to work will not be taxed

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as long as the employer provides the funds and the compensation is within the limits of N.J.S.A. 54:A-6.23.

Hedge Fund Partner Withholding

— A taxpayer inquired about the responsibilities of hedge fund partnerships under P.L. 2002, c.40, the New Jersey Business Tax Reform Act of 2002.

Under the New Jersey Business Tax Reform Act of 2002, partnerships meeting “hedge fund” status under N.J.S.A. 54A:5-8(c) are not required to remit tax payments on the intangible income of nonresident, noncorporate partners if the nonresident, noncorporate partners of hedge funds are not required to include any gains or losses resulting from trading activities in their income.

Also, as provided under the Act, the \$150 per partner filing fee assessed on partnerships with more than two partners and having income or loss derived from New Jersey sources is applicable to all New Jersey hedge fund partnerships if they are classified as partnerships for Federal income tax purposes.

Partnership Guaranteed Payments

— The Division responded to an inquiry regarding the treatment of a Maryland resident who is a guaranteed-income partner of a New

Jersey partnership. It was stated that the partnership has its main office in New Jersey, but it also has offices in New York, Connecticut, Pennsylvania, Delaware, and Maryland. The taxpayer, who is a resident of Maryland and a guaranteed-income partner of the partnership, does not perform any services for the partnership in New Jersey, or any other state, other than Maryland.

Guaranteed payments must be reported as distributive share of partnership income, with the exception of guaranteed payments received by a retired partner who receives such payments as a result of a period of service to the partnership pursuant to a retirement agreement or pension plan. N.J.A.C. 18:35-1.3(c)(2). Where the partnership’s activity is carried on within and outside New Jersey, the taxpayer’s distribution is subject to allocation pursuant to N.J.A.C. 18:35-1.3(c)(3)(iii), which states that: “Where a partnership’s activity is carried on both within and outside New Jersey, the portion of the partnership’s income, gains, expenses or losses attributable to sources within New Jersey shall, except as provided in (c)3iv below, be determined by use of the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), as prepared by the partnership. Failure to provide such schedule may result in

allocation of all income to New Jersey.”

Litter Control Fee

Principal Activity Test for Restaurant Sales

— The Division received an inquiry regarding the recently enacted litter control fee from an operator of concession stands at ballparks, stadiums, and concert halls in New Jersey. The Division responded that the litter control fee is imposed on the gross receipts from wholesale sales and retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of such litter-generating products. “Retailer” means every person engaged in the business of exchanging goods for cash or barter or any consideration on the presumption that the purchaser of such goods has acquired the same for ultimate consumption or use. “Retailer” includes the owner or operator of a take-out or drive-through restaurant, the principal activity of which consists of selling any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. “Retailer” does not include (1) the owner or operator of a restaurant with less than ten percent (10%) in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or (2) the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises. “Principal Activity” means more than fifty percent (50%) of the restaurant’s food and beverage sales.

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The business operates concession stands at ballparks, stadiums, and convention or concert halls. It was stated that these establishments are not open to the general public, but rather open to event ticket holders only. As food and beverages are prepared and served on premises, these establishments are deemed to be restaurants for purposes of the litter control fee. As such, the percentage of gross receipts derived from eat-in versus take-out food sales must be examined to determine whether these restaurants are “retailers” as described above. The location and nature of the restaurants require consumption to take place within the facilities in which they are situated. This is determined to be “on-premises” consumption for litter control fee purposes. Since the businesses’ sales of food and beverages are more than 50% for on-premises consumption, the restaurants are excluded as “retailers” and not subject to the fee for that calendar year.

Seller of Service Not Paper Products — An inquiry was received as to whether a “broker of printed forms for various printing plants” is subject to the litter control fee. The litter control fee is imposed on the gross receipts derived from wholesale and retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of such litter-generating products. Litter-generating products include all “paper products.”

If this business acts only as a broker, never taking title to the printed materials, it has no gross receipts

from the sale of litter-generating products. Rather, it collects only a fee or commission on the service of brokering the deal. Therefore, the business is not subject to the fee. If, however, the business possesses any ownership rights to the paper products and cannot be viewed strictly as a broker, but as seller of tangible property, the business would be subject to the fee.

For further information, please see the Division’s Web site for the Litter Control Fee Guidelines at www.state.nj.us/treasury/taxation and click on “Tax Topics,” or contact Regulatory Services at 609-292-5994.

Sales and Use Tax

Construction Site Cleaning Services — The Division responded to a letter regarding the taxability of construction site cleaning services. Construction site cleaning services were described as the cleaning of newly constructed homes or the cleaning of homes under construction, but between construction phases (e.g., after sheetrock has been installed but before the flooring is installed).

“Maintaining, servicing or repairing real property...” is subject to sales tax pursuant to N.J.S.A. 54:32B-3(b)(4). As the construction site cleaning services described above fall within the scope of the above-stated provision, they are taxable. Taxable services purchased by a contractor are subject to tax unless they are performed exclusively in the fulfillment of a contract with an exempt organization. N.J.A.C. 18:24-5.5.

Although new construction generally qualifies for sales tax exemption under N.J.S.A. 54:32B-3(2)(v)

as it results in a capital improvement, the capital improvement exemption does not reach those services performed for the construction trade that are merely related to the installation of property that becomes an improvement to real property. Taxable services which are performed for a construction contractor in connection with a capital improvement, but which would not alone result in a capital improvement, are subject to tax upon purchase by the contractor. N.J.A.C. 18:24-5.5.

Therefore, the use of a Resale Certificate (Form ST-3) by a developer or ground contractor is not appropriate in these situations. The construction site cleaning service provider must collect sales tax from the contractor purchasing its services.

Marketing Survey Reports — Whether or not the sale of a market research report is subject to tax depends on whether the research is syndicated or customized. Syndicated research is generally based on information that is received from two primary sources: point-of-sale data from retailers, and information in consumer surveys compiled by the marketing company. Essentially, all of the clients receive the same report. The reports contain no information that is specific to particular clients and are available for purchase by any

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NOTICE TO SUBSCRIBERS

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subscriber. Many, but not all, of a marketing company's clients may receive individualized consulting services. These services are not separately stated but are included in the client's bill for the syndicated research.

Customized research involves the individualized analysis of the point-of-sale and panelist data or specific research studies. These reports are only provided to a requesting client, and the marketing company is generally prohibited from disclosing the results to any other clients. Most clients also receive individualized consulting services which are not separately stated but included in the client's bill for customized research.

In New Jersey, the sale of a customized report is treated as the sale of a professional service which is not subject to tax. Such a service involves the production of a report containing information specific to a particular taxpayer. However, the sale of a report which is not customized for a particular purchaser, but rather is provided to a number of customers without any modification, such as a syndicated report, is treated as the sale of tangible property which is taxable under N.J.S.A. 54:32B-3(a). When such reports are delivered to a customer in New Jersey either in hard copy, CD-ROM, or by other tangible means, the transaction is subject to sales tax. If the information is transmitted solely in electronic form, the transaction is for intangible property which is not taxable under New Jersey law.

Medical Testing — The Division responded to an inquiry regarding the application of the New Jersey

Sales and Use Tax Act to a business which performs medical testing services for doctors. The inquirer stated that the taxpayer "brings the equipment to a doctor's office with a technician. The technician performs the test with the doctor present. There is a fee paid by the doctor for the use of the machine and technician."

On these facts, it does not appear that this is a true rental transaction because the doctor does not have possession or control of the equipment. Under the Sales and Use Tax Act, a "rental" is defined as a short-term transaction with an original contract term of no more than 28 days. The fee paid by the doctor in this instance is exempt from tax as a professional testing service. N.J.S.A. 54:32B-2(e)(4)(A). The business that performs the test must pay tax on the purchase of the test equipment since the business is considered the end user of the property.

Telecommunications Sourcing Act — The New Jersey Sales and Use Tax Act was recently amended to bring existing provisions on mobile telecommunications services into compliance with the Federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. §124 (Public Law 106-252), referred to as MTSA. The amendments to the Sales and Use Tax Act became effective for customer bills issued after August 1, 2002. The MTSA enacted a uniform method for sourcing mobile telecommunications services for sales tax purposes.

The new legislation changes the way mobile telecommunications services are taxed by sourcing all calls to a place of primary use, re-

gardless of origination or termination of the service or the intrastate character of the call. The new method assumes that all wireless calls are made at the customer's residential or business street address, whichever is the place of primary use, and allows taxing jurisdictions to tax all the calls charged to that place of primary use. No other state can tax the mobile calls, even if the call originates or terminates in that state.

Thus, if the caller resides in New Jersey, all cellular calls, regardless of where they are made or where the person called is located, will be subject to 6% New Jersey sales tax.

Universal Service Assessment — Effective January 1, 1998, the Federal Communications Commission imposed the Universal Assessment on telecommunications carriers in order to fund the Government's Universal Service Program, which subsidized telecommunications services to low-income and rural communities as well as schools, libraries, and healthcare facilities. The telecommunications company passes this cost on to its customers as part of the monthly bill for service.

The New Jersey Sales and Use Tax Regulations provide that excise taxes which are imposed on vendors, such as the Universal Service Assessment, are included in the receipt on which sales tax is computed. N.J.A.C. 18:24-1.4(b). Since telecommunications services, including cellular, are subject to New Jersey sales tax, the Universal Service Assessment is also subject to State sales tax. □

In Our Courts

Corporation Business Tax

Regular Place of Business – *River Systems, Inc. v. Director, Division of Taxation; Rubachem International, LTD. v. Director, Division of Taxation; and Rubachem, Inc. v. Director, Division of Taxation*, decided March 14, 2003; Appellate Division No. A-2741-01T3.

The Appellate Division affirmed the Tax Court's holding for the Division for substantially the reasons in the Tax Court opinion that was summarized in the *New Jersey State Tax News*, Volume 31, Numbers 2/3, Summer/Fall 2002, page 31. Previously, the Tax Court held that taxpayers did not maintain a regular place of business outside New Jersey because the New York business office and employees belonged to a separate, related company.

Local Property Tax

Exemption Status – *City of Long Branch v. Ohel Yaacob Congregation*, decided January 21, 2003; Tax Court No. 002643-2001.

Plaintiff City of Long Branch appeals a judgment of the Monmouth County Board of Taxation applicable to tax year 2001 which exempts property used to house visiting rabbis and other clergy and also to store books and furniture. Defendant Ohel Yaacob Congregation claims that the property is entitled to exemption pursuant to N.J.S.A. 54:4-3.6 because it is a parsonage or, alternatively, because it is a building actually used in the work of an association or corporation organized exclusively for religious purposes.

The Congregation first claims that the subject property is a parsonage

and exempt under N.J.S.A. 54:4-3.6, which states that the property eligible for exemption includes "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State...." The subject property was purchased for the purpose of housing visiting clergy. While the Congregation ordinarily consists of 60 to 80 families, the summer influx of an additional 400 to 500 families requires that additional clergy serve the synagogue. The Court found that visiting clergy did not fit within the definition of "officiating clergyman," which has been defined as "a settled or incumbent pastor or minister, that is, a pastor installed over a parish, church or congregation." The Court also found that the property was not used as a parsonage meaning a residence or home and not just a hotel room or other temporary housing. Therefore, the property was not eligible for exemption as a parsonage.

This leads to the issue of whether or not a parsonage is the only type of residential property owned by a religious organization which is eligible for exemption, or does the specific exemption for parsonages preclude qualification for exemption of other categories of residential property used for religious purposes? There is no evidence that the Legislature ever intended for parsonages to be included in the general category of property used for religious purposes. Parsonages have always been treated separately and as a historical matter have not been regarded as property used for religious purposes. The Court found that although a residential property not amounting to a parsonage may be exempt as used for religious pur-

poses, a residence principally used as a parsonage is not eligible for the same exemption and is limited to the express provisions for parsonages.

The Court, citing *City of Long Branch v. Monmouth Medical Center*, 138 N.J. Super. 524 (App. Div. 1976), aff'd, 73 N.J. 179 (1977), applied a test of "reasonable necessity": the exemption claimant must demonstrate a compelling need for the services performed by the resident of the property for which exemption is claimed and also that those services are integral with the exemption functions of the entity. The Court found that the subject building used for the housing of the visiting clergy is necessary for the proper and efficient operation of the Congregation during summer months and is not a mere convenience. Furthermore, the visiting clergy make it possible to accommodate the enlarged membership during the summer, and it is that membership which provides much of the financial support for the year-round operation of the Congregation.

Finally, the Congregation claims exemption because the property was used for storage of religious books and furniture. The Court, citing *Roman Catholic Archdiocese of Newark v. East Orange City*, 17 N.J. Tax 298, 313-315 (Tax 1998), aff'd, 18 N.J. Tax 649 (App. Div. 2000), concluded that "the storage of documents and artifacts of a religious nature or related to the operation of the church should be deemed a religious purpose consistent with the exemption granted by the statute."

Because the Court found that the housing of visiting clergy was a use

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of the subject property for religious purposes, and because the use of an otherwise qualified property for the storage of books and personal property used in the operation of the religious organization is consistent with the exemption of property used for religious purposes, the Court affirmed the judgment of the Monmouth County Board of Taxation, citing that the subject property was actually and exclusively used for religious purposes.

Note: N.J.S.A. 54:4-3.6 was amended by P.L. 2001, c.18, to delete the word "exclusively," from the religious property exemption when referring to use.

Property Tax Relief Programs
NJ SAVER Rebate: Untimely Filing – *David Curzie v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005346-2002.

Plaintiff received the 2000 NJ SAVER rebate application but thought it pertained to his income taxes and therefore placed it with his other income tax documentation. After relatives mentioned that he should be receiving his rebate soon, plaintiff became concerned. Plaintiff alleges that he called the Division and was told to file the application regardless of its timeliness. Thereafter, plaintiff filed the 2000 application on January 25, 2002.

The Tax Court affirmed the Division's denial of plaintiff's rebate for failure to timely file after finding that the rebate application was due on or before October 22, 2001. Turning to plaintiff's argument that rather than being denied the entire

rebate he should either be fined or at least entitled to a partial rebate, the Tax Court denied this request explaining that the rebate was all or nothing as there were no relief provisions for untimely filers.

NJ SAVER Rebate: Untimely Filing – *Adam Ress v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005242-2002.

Plaintiff received his 1999 and 2000 NJ SAVER rebate applications but thought they pertained to his income taxes and therefore kept them with other income tax documentation that would later be provided to his tax preparer. The tax preparer of his 2000 income tax return apparently did not consider the application. Plaintiff hired a new tax preparer for his 2001 income tax return who saw the 1999 and 2000 applications and inquired as to whether plaintiff filed for the rebates. Thereafter, plaintiff filed his 1999 and 2000 NJ SAVER rebate applications on January 10, 2002.

Finding that the 2000 rebate application was due on or before October 22, 2001, the Tax Court affirmed the Division's denial of plaintiff's 2000 rebate for failure to file timely. Also, the Tax Court found the 1999 rebate application to be untimely filed as it was due August 31, 2000.

NJ SAVER Rebate: Untimely Filing – *Gail Zeyack v. Director, Division of Taxation*, decided December 9, 2002; Tax Court No. 005345-2002.

Plaintiff filed her 2000 NJ SAVER rebate application on December 26, 2001, which was past the October 22, 2001, deadline. Plaintiff testified that the application was filed

late because she had a very bad year causing her to be depressed and overwhelmed. Plaintiff's father suffered a stroke, lost his speech, and then passed away in January 2000. As the only child, she administered her father's funeral arrangements. Plaintiff had to take care of her mother, who had rheumatoid arthritis and could not be left alone. Plaintiff was not working due to disability and received disability payments from February 11, 2000, to July 28, 2000. Plaintiff lost her job, suffered from and was treated for back pain, took medication for pain and for depression, and was in the process of being divorced. Plaintiff's doctor provided a letter requesting that plaintiff be allowed to file the application late because she was unable to file timely due to a medical condition.

The Court pointed out that the rebate application was due on or before October 22, 2001, and that the information plaintiff provided pertained to the calendar year 2000, not to 2001. Plaintiff then testified that her mother was in and out of the hospital six times in 2001, her mother was given six months to live, and that her mother died in May 2001. As to her divorce proceedings, plaintiff testified that a guardian had to be appointed for her in July 2001. Defendant noted that plaintiff filed her income tax returns timely for tax years 2000 and 2001; however, plaintiff stated that was due to her husband's help because they were filing jointly.

Although the Court sympathized with plaintiff's medical conditions as well as the events occurring in plaintiff's life and accepted that plaintiff had an illness, the Court stressed that plaintiff did not prove

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why she was unable to file the application timely. The Court noted that plaintiff filed her income tax returns timely and took care of her day-to-day business. The Court found that the physician's note was general and insufficient, it did not state the time period she was sick or the extent of her disability, and did not state why she was unable to file the application. Consequently, the Court ruled that plaintiff provided no evidence that showed that she was physically or mentally unable to file the application in a timely manner. Also, the Court referred to the case of *Hovland* where the Tax Court held that plaintiff had good cause to file the 1982 homestead rebate late because plaintiff was diagnosed with spinal cancer in November 1982, hospitalized until early January 1983, bedridden until January 18, 1983, and filed his rebate application within a reasonable time on January 21, 1983, four days after the January 17, 1983, deadline.

Sales and Use Tax

Regular Place of Business – *Lucisano Brothers, Inc. v. Director, Division of Taxation*, decided January 24, 2003; Appellate Division No. A-6466-00T5.

The Appellate Division affirmed the Tax Court's holding for the Division, which principally relied on the reasoning of *Stephen Little Trucking* that was summarized in the *New Jersey State Tax News*, Volume 30, Number 4, Winter 2001, page 19, stating that the statutory analysis was well-founded and the achieved result was substantially correct.

Lucisano is a Pennsylvania building supply company that sold and delivered building materials to New Jersey contractors and subcontractors

without collecting sales tax because it argued that pursuant to N.J.S.A. 54:32B-2(w) it was not a person required to collect sales tax. The Tax Court reasoned that N.J.S.A. 54:32B-2(w) must be read in harmony with the simultaneously adopted provisions contained in N.J.S.A. 54:32B-12(b) that place the obligation to collect tax from the contractor on the vendor unless the contractor obtained a direct pay permit. The Appellate Division also gave deference to the regulations that interpret the statutes to reach the same result. □

In Our Legislature

Sales and Use Tax

Payments of Sales Tax by Vendors — P.L. 2003, c.42 (signed into law on April 14, 2003) permits certain vendors of goods and services to advertise that they will pay New Jersey sales tax for their customers. The legislation requires that the advertisement must indicate that the vendor will pay the tax for the customer and it will not indicate or imply that the sale or charge is exempt from taxation. Any sales slip, invoice, receipt, or statement given to the customer must state that the tax will be paid by the vendor; and the vendor must pay the amount of tax due as trustee for and on account of the State. Vendors must remit the tax due on the retail sales or service receipts to the State in the same manner as tax collected from a customer. This act took effect immediately.

Legislation Not Previously Reported:

Public Utility Taxes
Energy Tax Receipts Property Tax Relief Fund Distribution Date Changed — P.L. 2002, c.3 (signed into law on March 18, 2002) extends

by 15 days (from on or before June 30 to on or before July 15) the time for distribution of a portion of the State aid paid from the Energy Tax Receipts Property Tax Relief Fund to municipalities operating on a calendar year basis for funds distributed after January 1, 2002 . This act took effect immediately.

Miscellaneous

Brownfield and Contaminated Site Redevelopment Reimbursement Program — P.L. 2002, c.87 (signed into law on October 22, 2002) amends the Brownfield and Contaminated Site Remediation Act to expand the redevelopment reimbursement program under which the State and a redeveloper may enter into an agreement to reimburse the developer of a brownfield site for up to 75 percent of the costs of remediating the site. Reimbursement payments are made from revenues derived from new State taxes generated from the redevelopment of the site. Chapter 87 broadens the category of redevelopers eligible for participation in the program to include developers of residential property, allowing them to receive reimbursement upon completion of the construction of one or more new residences. It also expands the list of taxes that may be considered in estimating the amount of new State revenue to be derived from the redevelopment project. This act took effect immediately. □

NOTICE TO SUBSCRIBERS
This will be the last issue of the *New Jersey State Tax News* to appear in printed form. See "Notice to Subscribers" on page 2 for more information.

2003 tax calendar

July

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	31		

July 10

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

July 15

- NJ SAVER Rebate**—Application
- CBT-100 Corporation Business Tax**—Annual return for accounting period ending March 31
- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th, or 12th month of current tax year

July 21

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- 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 sold or used
- GA-1X Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14 Motor Fuels Tax—Monthly export report

MFT-60 Motor Fuels Tax—Monthly storage facility operator report

SCC-5 Spill Compensation and Control Tax—Monthly return

SCC-6 Spill Compensation and Control Tax—Public storage terminal information 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 and Use Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

July 30

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

GCC-1 Motor Fuels Tax—Carrier's monthly report

July 31

DSF-100 Domestic Security Fee—Quarterly return

August

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
31						

August 11

- CWIP-1,2 Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2 Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1 Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

August 15

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

August 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- 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 sold or used



- GA-1X** **Motor Fuels Tax**—Importer's monthly report of gallons of fuel imported
- MFT-10** **Motor Fuels Tax**—Monthly report by seller-user of special fuels sold or used
- MFT-14** **Motor Fuels Tax**—Monthly export report
- MFT-60** **Motor Fuels Tax**—Monthly storage facility operator report
- SCC-5** **Spill Compensation and Control Tax**—Monthly return
- SCC-6** **Spill Compensation and Control Tax**—Public storage terminal information return
- ST-21** **New Jersey/New York Combined State Sales and Use Tax**—Monthly remittance
- 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 remittance
- TP-20** **Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50** **Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax**—Monthly return

August 25

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

September

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				

September 2

- GCC-1** **Motor Fuels Tax**—Carrier's monthly report

September 10

- CWIP-1,2** **Cigarette Tax**—Wholesaler's informational report
- CDIS-1,2** **Cigarette Tax**—Distributor's informational and sales report
- CR-1 & CNR-1** **Cigarette Tax**—Wholesaler's monthly report of non-New Jersey stamped cigarettes

September 15

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

September 22

- CR-1 & CNR-1** **Cigarette Tax**—Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1** **Cigarette Tax**—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

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 sold or used

GA-1X

Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10

Motor Fuels Tax—Monthly report by seller-user of special fuels sold or used

MFT-14

Motor Fuels Tax—Monthly export report

MFT-60

Motor Fuels Tax—Monthly storage facility operator report

SCC-5

Spill Compensation and Control Tax—Monthly return

SCC-6

Spill Compensation and Control Tax—Public storage terminal information return

ST-21

New Jersey/New York Combined State Sales and Use Tax—Monthly remittance

ST-51

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ST-250

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September 25

PPT-41

Petroleum Products Gross Receipts Tax—Monthly return

September 30

GCC-1

Motor Fuels Tax—Carrier's monthly report

from the director's desk

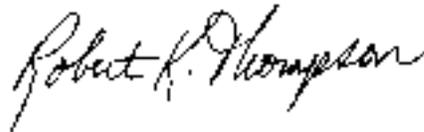
ST-50/ST-51 Filing Going Paperless

The Division of Taxation will be moving to a totally paperless filing and payment system for New Jersey sales and use tax over the next year. Filing Sales and Use Tax Returns (Form ST-50) and Monthly Remittances (Form ST-51) will become faster, easier, and more accurate. We also expect paperless filing and payment to reduce processing errors and costs.

In addition to the Sales and Use Tax Internet Filing we already offer, we will soon be providing a Sales and Use Tax telephone filing service. The transition to paperless filing will take place in phases so that vendors will be able to try our Internet and "telefile" systems before paper returns are eliminated.

In the coming months, the Division of Taxation will be sending information about the new paperless filing requirements to all vendors who are registered to collect and remit New Jersey sales and use tax. If you haven't already used Internet filing, just log on to our Web site at www.state.nj.us/treasury/taxation/online.shtml, fill out a sales and use tax return, hit "Submit" and the return is filed. Payments can also be made online.

And, while you are on our Web site, we invite you to join our e-mail subscription service, *NJ Tax E-News* (www.state.nj.us/treasury/taxation/listservice.shtml), to receive sales and use tax filing news and information via e-mail.



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