

New Jersey State Tax News

Summer 1997

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TeleFile Program Huge Success

This year, more than 144,000 New Jersey taxpayers filed their New Jersey income tax returns via the Division of Taxation's toll-free TeleFile number. Of the taxpayers who used this convenient filing method, 25% TeleFiled their returns during the last three weeks of the tax season in April. Those who were due refunds had their checks mailed within two weeks of the date they TeleFiled.

During the 1995 filing season New Jersey became just the third State in the nation to offer taxpayers the option of filing their State income tax return by telephone. Of the 247,000 taxpayers (from specified counties in the State) who were pre-selected to participate in the pilot program that first year, 8.9% successfully filed their returns using NJ TeleFile.

For the 1996 tax season, as eight more states joined the growing ranks of those offering TeleFiling as an acceptable filing method for their state's tax return, New Jersey expanded its program, pre-selecting approximately one million residents, from all counties in the State, as potential TeleFile candidates. Candidates were mailed TeleFile packets if their filing history indicated a strong likelihood that they would meet the eligibility requirements. The impressive 14.4% successful filing rate was instru-

mental in earning New Jersey fourth place in terms of number of returns TeleFiled.

"The NJ TeleFile program is a good example of how your tax dollars are working for you," said Richard D. Gardiner, Director of the Division of Taxation. "Our theme, 'We're making tax filing less taxing for you,' certainly proved itself."

The program was not only convenient to use and easy to understand, it allowed last-minute filers to receive their refunds significantly faster. The program is expected to be further expanded next year. □

important phone numbers

Tax Hotline.....	609-588-2200
Automated Tax Info.....	800-323-4400
Speaker Programs.....	609-984-4101
NJ TaxFax.....	609-588-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax.....	609-633-2576
Tax. Registration.....	609-292-1730

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

Resale Exemption for Out-of-State Vendors

The Division of Taxation has changed its policy regarding the use of New Jersey's resale exemption certificates by out-of-State vendors. Those vendors who are registered with their home states but are not required to register with New Jersey and have not registered with this State may now use a New Jersey resale certificate.

Qualified out-of-State vendors may now make tax-exempt purchases in New Jersey of goods and services for resale. The Division of Taxation has developed a new exemption certificate, Form ST-3NR, Resale Certificate for Non-New Jersey Vendors, for use by qualified out-of-State vendors picking up merchandise in New Jersey or drop shipping merchandise to a New Jersey address. In April 1997 the Division sent a notice to all registered vendors announcing the change in policy and enclosed a copy of the new exemption certificate, Form ST-3NR.

When making tax-exempt purchases for resale, qualified out-of-State vendors must present the seller with the following evidence of exemption:

- **Items picked up in New Jersey:** When the purchaser carries the goods away with him from the point of sale, or sends his own vehicle or messenger to pick them up in New Jersey, the *only* acceptable certificate is Form ST-3NR, Resale Certificate for Non-New Jersey Vendors.
- **Items drop shipped to New Jersey:** When the purchaser does not take delivery of the goods in New Jersey, but asks the seller to deliver the mer-

chandise to the purchaser's customer in New Jersey, the acceptable resale certificates for the qualified out-of-State vendor to use are:

1. Purchaser's out-of-State resale certificate; or
2. Multijurisdiction Uniform Sales & Use Tax Certificate published by Multi-State Tax Commission; or
3. New Jersey Form ST-3NR

Businesses that are required to be registered in New Jersey, as well as businesses that have chosen to register in this State even though not required to do so, must use a certificate showing their New Jersey tax registration number when making purchases for resale. Vendors registered in New Jersey may use either the New Jersey Resale Certificate (Form ST-3), or the Multijurisdiction Uniform Sales and Use Tax Certificate published by the Multi-State Tax Commission. □

Division of Revenue Formed

The Governor recently announced the creation of a new Division of Revenue under the New Jersey Department of the Treasury. The Processing Activity and the Tele-collection function of the Compliance Activity, formerly under the Division of Taxation, have been transferred to the Division of Revenue. Data Systems and Telecommunications, formerly part of the Processing Activity, has been renamed the Office of Technical Support to more accurately reflect its responsibilities. It will remain under the Division of Taxation. □

New Jersey State Tax **news**

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Taxpayer Services Branch
Office of Communication
CN 281
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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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Richard D. Gardiner

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tobacco tax - from page 3

Tobacco Tax

Cigars and other tobacco products have lately been enjoying increased popularity among consumers. The Division of Taxation wants to remind both retailers and consumers that tobacco products (other than cigarettes) are subject to New Jersey's Tobacco Products Wholesale Sales and Use Tax.

The following notice, which was recently mailed to distributors, wholesalers and retailers of tobacco products, lists the requirements for collecting and remitting the Tobacco Products Wholesale Sales and Use Tax. The notice also describes the new Tobacco Products Wholesale Sales and Use Tax Resale Certificate, Form TPT-3, which may be used by registered distributors or wholesalers to purchase tobacco products, other than cigarettes, intended for resale.

Notice to Distributors, Wholesalers and Retailers of Tobacco Products

N.J.S.A. 54:40B-1, et seq., imposes a Tobacco Products Wholesale Sales and Use Tax at the rate of 24% on receipts from every sale of tobacco products, other than cigarettes, by a distributor or wholesaler to a retail dealer or consumer. Examples of tobacco products are: cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, tobacco substitutes, and snuff. Cigarettes are exempt from the Tobacco Products Wholesale Sales and Use Tax.

Use Tax

Distributors and wholesalers who also sell tobacco products at retail or otherwise use the tobacco products must pay a compensating use

tax of 24% on the wholesale sales price of the products.

If the distributor or wholesaler has not collected the 24% Tobacco Products Wholesale Sales Tax from the retailer or consumer, the retailer or the consumer who purchased from a distributor or wholesaler is responsible for remitting the compensating use tax of 24% of the price paid or charged directly to the Division of Taxation within 20 days of the date the tax was required to be paid.

Collection of Tax

Distributors and wholesalers are required to:

- collect the tax from the retailer or consumer when they collect the receipts for the products, and
- give the retailer or consumer an invoice, receipt, or other statement on which the tax is separately stated.

IMPORTANT NOTE:

The Tobacco Products Wholesale Sales and Use Tax is a trust tax. This means that the distributor or wholesaler who collects the tax is acting as a trustee for and on behalf of the State of New Jersey. These distributors and wholesalers are, by law, personally responsible for the tax imposed, collected or required to be collected under the Tobacco Products Wholesale Sales and Use Tax Act.

Resale Certificate (Form TPT-3)

The Tobacco Products Wholesale Sales and Use Tax Resale Certificate, Form TPT-3, may be used by registered distributors or wholesalers to purchase tobacco products intended for resale. When purchasing tobacco products, a distributor or wholesaler issues Form TPT-3 to the seller. The completed certificate documents

the fact that the wholesaler or distributor is not subject to Tobacco Products Wholesale Sales and Use Tax on the purchase. The distributor or wholesaler must collect the tax when the tobacco products are sold to a retailer or consumer. Retail dealers may not use Form TPT-3 to purchase tobacco products without paying the Tobacco Products Wholesale Sales and Use Tax.

Registering to Collect the Tax

Every distributor and wholesaler making sales of tobacco products to retail dealers or consumers must register with the Division of Taxation to collect the Tobacco Products Wholesale Sales and Use Tax. Distributors and wholesalers beginning business or opening new places of business are required to file an Application for Registration (Form REG-1) at least 15 days before beginning business.

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Interest 11.25% for Second Quarter

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

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

Effective Date	Interest Rate
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%

Once the application is processed by the Division, the wholesaler or distributor will receive a Certificate of Authority to collect tax. This certificate must be prominently displayed in the wholesaler or distributor's place of business. Duplicate certificates will be provided for additional places of business.

Remitting the Tax

Distributors and wholesalers are required to file a Tobacco Products Wholesale Sales and Use Tax Return (Form TP-20) and remit the tax on or before the 20th day of the month following the month for which the return is being filed. If any due date falls on a Saturday, Sunday or legal holiday, the return is due on the next business day.

Tobacco Products Wholesale Sales and Use Tax Returns postmarked on or before their due date are considered to be filed on time. Returns postmarked after their due date are considered to be late and are recorded as being filed on the date they were actually received by the Division, not the postmark date. The tax must be paid whether or not the tax has actually been collected from the customer by the time the return is due. Full penalty and interest as provided by the State Tax Uniform Procedure Law, assessed from the due date of the return, will be imposed on a return filed and/or payment made after the due date.

An extension of time to pay the tax due will not be granted under any circumstances.

Record Keeping

Distributors and wholesalers are required to keep records of every charge and of all amounts paid, charged or due and of the tax payable on these amounts. These records include a true copy of each

invoice, receipt, statement or memorandum for all sales of tobacco products. These records must be available for inspection by the Division of Taxation for four years from the date of the transaction.

For more information about the Tobacco Products Wholesale Sales and Use Tax, call the Division's Audit Services Branch at 609-292-7288 or 609-984-7171, or write to:

DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
CN 281
TRENTON NJ 08646-0281 □

New IFTA Rules Clarified

Some New Jersey motor carriers mistakenly stopped paying a State Division of Taxation motor fuels tax following a change in State motor carrier laws.

The Motor Fuels Use Tax Act of 1963, N.J.S.A. 54:39A-1 et seq., imposes a fuel use tax on certain commercial and omnibus vehicles based on the amount of motor fuels used in their operations within New Jersey. This tax, known as the motor carriers tax, has, from its inception, been administered by the Motor Carriers Unit in the Division of Motor Vehicles.

P.L. 1995, c.347, approved January 5, 1996, provided for New Jersey's entry into the International Fuel Tax Agreement (IFTA) and required that the Motor Fuels Use Tax Act of 1963 conform to that agreement. IFTA is designed to simplify over-the-road motor carrier tax reporting. The statute made no changes in the reporting requirements of the separate Motor Fuels Tax administered by the Division of Taxation.

On July 1, 1996, when the Division of Motor Vehicles began operating under IFTA, motor carriers were directed to abandon their old reporting procedures, close their existing accounts and begin reporting "fuel use" on forms IFTA 100 and IFTA 101. But many carriers, including those licensed with the Division of Taxation as seller-users of special motor fuels, misunderstood the IFTA provisions. They believed that they were no longer required to file the Division of Taxation's Seller-User form MFT-10 since to do so would result in double reporting and taxation. The MFT-10 is used to record diesel fuel pumped into vehicles from bulk storage tanks. Seller-User licensees did not initially realize they were to take credit on the IFTA 101 for taxes required to be paid on the MFT-10.

When, in January 1997, the Division of Taxation noted a decrease in MFT-10 filings, it notified all delinquent seller-users about the IFTA law provisions and collected about \$40,000 paid to the Motor Carriers Unit in error.

Motor Carriers that mistakenly paid tax to the Division of Motor Vehicles were instructed to apply for a refund by filing an amended IFTA 100 and 101 form.

Taxpayers classified as Motor Carriers under N.J.S.A. 54:39A and holding IFTA licenses may contact the New Jersey Division of Motor Vehicles, Motor Carriers Unit at 609-633-9400 with questions concerning the IFTA 100 and 101.

Questions concerning the completion of the Motor Fuels Tax Seller-User of Special Fuels Report (Form MFT-10) may be directed to

the Division of Taxation, Excise Tax Group at 609-984-7171. □

Instructions for NJ-1040X Corrected

The 1996 Amended Income Tax Resident Return instructions contain several incorrect references to line numbers on the return form itself (Form NJ-1040X). To remedy the error, an addendum, entitled *1996 Form NJ-1040X Supplement*, has been prepared which provides the correct line number references. The Division will include the supplement with every future mailing of both the amended return instruction booklet and the *1996 Package NJX*.

To order the supplement, call our automated forms request service at 1-800-323-4400 (from Touch-tone phones within New Jersey only).

A complete set of the corrected instructions for Form NJ-1040X is available by:

- Dialing NJ TaxFax from your fax machine's phone at 609-588-4500 or
- Accessing the Division's home page on the World Wide Web at <http://www.state.nj.us/treasury/taxation/>

Interest on Refunds

The Division has received several inquiries concerning the payment of interest on refunds; specifically

when such interest begins to accrue.

In accordance with the Taxpayers' Bill of Rights, overpayments for returns due on or after January 1, 1994 are subject to the payment of interest if not made within six months of the later of the date of filing, date of payment of tax or the due date. In most cases claims are filed containing sufficient information to support both the

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Responding to Division Notices

The Taxpayer Accounting Branch receives many misdirected phone calls and pieces of correspondence, particularly regarding business taxes, which only serve to delay resolution of taxpayers' problems.

In general, correspondence relative to any notice from the Division should be addressed to the CN number listed on the notice to insure that it goes directly to the section responsible for that notice, and to the people most capable of resolving any issues. Phone calls about a notice should be directed to the Division's Tax Hotline, 609-588-2200, or to whichever other number may be listed on the notice.

Taxpayer Accounting is responsible for billings for the **Alcoholic Beverage, Atlantic City Luxury, Business Personal Property, Cape May Tourism, Gross Income** (employer withholdings and individual filings), **Litter, Motor Fuels, Petroleum Products Gross Receipts, Safewater, Salem, Sales and Use, Tobacco Products, and Urban Enterprise Zone** taxes. TPA also handles refund and credit requests for **Cigarette** (distributor), **Gross Income** (employer and individual), **Litter**, and **Spill** taxes.

Taxpayer Accounting also provides a **Tax Practitioner Hotline** for use by practitioners only, if client problems cannot be resolved through normal channels. The Hotline numbers are for personal income tax: **609-633-6657**; for

business taxes: **609-633-6905**.

Some other phone numbers for problems that cannot be resolved through normal channels are as follows:

- Delinquency notices for failure to file a return: **609-984-3377**
- Corporation Business Tax billings: **609-292-5257**
- Corporation Business Tax refund requests: **609-292-2168**
- Interstate Sales Tax: **609-984-0120**
- Refund requests for Atlantic City Luxury, Business Personal Property, Cape May Tourism, Salem, Sales and Use, Tobacco Products, and Urban Enterprise Zone taxes: **609-588-3767**
- Urban Enterprise Zone eligibility requirements or updates: **609-984-6150**
- Alcoholic Beverage Tax refunds: **609-984-4121**
- Refund requests for Motor Fuels or Petroleum Products Gross Receipts taxes: **609-292-7018**

□

interest on refunds - from pg. 5

grounds of the claim and calculation of the refund. However in some cases incomplete claims are filed which lack adequate detail to allow a determination to be made. In these cases, taxpayers are requested to submit all necessary, pertinent information to enable the Division to ascertain the validity of the refund request.

It is the Division's position that if sufficient information is unavailable at the end of six months, such claims will be denied and taxpayers will be provided their administrative appeal rights. □

Advertising "No Sales Tax" Violates NJ Law

Recently, several businesses in New Jersey have been contacted by the Division of Taxation for violating provisions of the New Jersey Sales and Use Tax Act by advertising "No Sales Tax," "Save the Sales Tax," "No One Likes to Pay Sales Tax" or "Tax Amnesty...we will pay the tax for you!" N.J.S.A. 54:32B-14(d) states: "No person required to collect any tax imposed by this act shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not consid-

amusement charge or rent payable by customer, or that he will pay the tax, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer...."

Phrases such as "No Sales Tax" suggest to the public that the product or sale is exempt from tax. These phrases cannot be used. Businesses who state or imply taxable items may be purchased tax-free may be subject to prosecution under N.J.S.A. 54:52-6 of the State Tax Uniform Procedure Law. □

COMPLIANCE Chapter XI Debtors in Default

A joint project was launched in March by the Division's Special Procedures Branch and Investigations Branch personnel to identify Chapter XI Bankruptcy Debtors-In-Possession who are in default to the Division of Taxation.

The project will be a two-pronged effort. Debtors who are found to be in default of their Confirmed Plan of Arrangement will be pursued by Special Procedures via remedies available through the

Bankruptcy Courts as well as the filing of Certificates of Debt in the Superior Court of New Jersey.

Investigations personnel will focus

Investigators canvassing the Sail Expo held at the Atlantic City Convention Center in January discovered a vendor actively selling merchandise while displaying this sign at his booth.

Over \$14,000 was collected from this business through a jeopardy assessment made for failure to file and pay New Jersey Sales Tax.

curring additional liabilities subsequent to the confirmation of its Plan of Arrangement, as well as those debtors who have been found to be dismissed or discharged with regard to their Chapter XI filing. Since these liabilities are outside of the plan and not subject to the automatic stay, Investigations will proceed as usual with the filing of Certificates of Debt and any other collection measures necessary to collect the indebtedness.

In either scenario, the Certificates of Debt will be filed against the debtor(s), and in the case of a corporation, Certificates of Debt will be filed against any and all responsible corporate officers personally, for "Trust Fund" taxes.

Prior to the launching of this project, a random selection process resulted in the issuance of 213 Notices of Demand For Payment for liabilities totaling \$16,461,005 and the filing of 91 Certificates of Debt for \$13,825,887. □

COMPLIANCE Disorderly Person Charges Filed

The Division is authorized to file disorderly persons charges against people who write bad checks to the Division, or who fail to register or file with Taxation or pay taxes due. Charges are filed in Trenton Municipal Court and when defendants fail to appear, bench warrants are issued for their arrest. One Mendham, New Jersey taxpayer surrendered to Taxation and was placed under arrest in February. Another was arrested in March at his Maplewood home. Both posted bail and were released.

WHY PAY TAXES?

*****Ships to All
States Outside CT

TAX FREE!

ered as an element in the price,

on those debtors who have in-

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disorderly person charges – from pg. 6
During the quarter ending March 31, 1997, seven people pleaded guilty to disorderly persons charges for bad checks. Three additional persons pled guilty to charges of failure to file returns and pay sales tax. Over \$103,500 is being recovered from these taxpayers who collectively paid over \$6,200 in court costs and fines. □

SALES AND USE TAX ***U.S. Government*** ***I.M.P.A.C. Visa*** ***Cards***

Certain employees of the executive branch of the Federal government are authorized to make official government purchases of supplies and services using a special Visa credit card (I.M.P.A.C. card, for International Merchant Purchase Authorization Card). Receipts from sales paid for by means of an I.M.P.A.C. card are exempt from New Jersey sales tax since the U.S. Government, through its employee/agent, is recognized as the direct purchaser of the goods and/or services procured.

These unique cards are valid only when used for official government purchases under \$25,000. Each card bears the Great Seal of the United States in the front upper left corner and contains the words "United States of America I.M.P.A.C. for official use only" along with the name of the Federal employee authorized to use the card. The face of the card is embossed to imprint "U.S. Govt. Tax Exempt" on the transaction charge slip which will provide the necessary documentation (in lieu of a purchase order or exemption certificate) that the purchase was exempt from tax.

The Social Security Administration, which utilizes the I.M.P.A.C. card, recently notified the Division of Taxation that it has also embossed the agency's tax identification number on the card to make it easier for merchants to accept the card for tax exempt purchases.

The I.M.P.A.C. Visa credit card has been approved by the Division of Taxation for use in New Jersey since 1989 and remains the only credit card approved for use by Federal employees to make tax-exempt purchases in this State. □

CONFERENCE & APPEALS ***Stay of Collection*** ***During Appeal***

Both before and after the Taxpayers' Bill of Rights (July 1, 1993), the Director of the Division of Taxation has had the right to pursue collection or otherwise secure protested tax liabilities while a finding or assessment was being protested to the Director. The Taxpayers' Bill of Rights did however impose certain restrictions on the Director as to when security could be required.

Basically, the Taxpayers' Bill of Rights added the following provision to the statutory provisions dealing with protests against findings or assessments (N.J.S.A. 54:49-18): "b. Except in the case of an arbitrary assessment pursuant to R.S. 54:49-5 or R.S. 54:49-7, no security shall be required for an amount in controversy of less than \$10,000. Contested assessments of \$10,000 or more shall not require security unless the director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer."

The Conference and Appeals Branch has added to its protest review process a procedure which will identify taxpayers that will be required to provide security in order to stay the collection process. The Director shall immediately stay all collection activity relative to the protested tax liability upon the furnishing of the security required.

Consistent with the relevant statutes and regulations (N.J.A.C. 18:1-1.8), the Conference and Appeals Branch will contact affected taxpayers and/or their representatives in writing advising them that the Director of the Division of Taxation requests:

- (1) That the taxpayer pay to the Division of Taxation the tax, penalty and/or interest assessed; or
- (2) Furnish the Division with a Surety Bond subject to the approval of the Director; or
- (3) Furnish the Division with a Letter of Credit subject to the approval of the Director.

Who Will Be Contacted?

Security shall be required in the case of a protest to the Director of any liability consisting in whole or in part of arbitrary or estimated assessments.

Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is substantial risk of the taxpayer's failure or inability to pay a liability, based upon the compliance history and financial condition of the taxpayer.

"Compliance History" is deter-

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stay of collection - from pg. 7

mined based upon any and all information obtained and/or maintained by the Director with respect to any State tax accounts of the taxpayer, including, but not limited to, information that the taxpayer has under reported or failed to report income.

“Financial Condition” is determined based upon any and all information that has a potential impact on the taxpayer’s ability to pay the assessed taxes.

No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

What Happens If A Taxpayer Fails to Comply?

Absent payment or the requested security, *no stay of collection is in effect*. Therefore, if a taxpayer has been asked to pay and/or furnish security, and fails to do so within the thirty days provided, a Certificate of Debt will be filed against the taxpayer in the Superior Court of New Jersey pursuant to N.J.S.A. 54:49-12. Concurrently, a “Finding of Responsible Person” will be initiated, as appropriate, in cases involving trust fund taxes.

The same security rules apply to complaints filed with the Tax Court of New Jersey as apply to protests filed with the Conference and Appeals Branch. □

CORPORATION TAX

Corporate Services Audit Groups

In an effort to improve taxpayer service, the Corporate Services Audit Group of the Office Audit Branch has recently been realigned

to form two groups. The first group, Corporate Services Audit Group A, will be responsible for Dissolutions, Withdrawals and Reauthorizations.

The second group, Corporate Services Audit B, is responsible for the Reinstatement of Corporate Charters voided by the Secretary of State. Jointly, the groups will share responsibility for the issuance of Certificates of Tax Lien Searches.

Correspondence for either group may be addressed to:

NEW JERSEY DIVISION OF TAXATION
DOCUMENT CONTROL CENTER
CORPORATE SERVICES AUDIT GROUP
(A OR B)
77 CARROLL STREET
CN 277
TRENTON NJ 08646

The Corporate Services Audit Groups may also be contacted by telephone at the following numbers:

Corporate Services Audit Group A:
609-292-5323

Corporate Services Audit Group B:
609-984-6366

Applications and forms for either group can be ordered through your fax machine by calling the Division’s TaxFax System at 609-588-4500. □

GROSS INCOME TAX ***Self-Charged Interest***

Recently, a practitioner posed this question:

A New Jersey resident shareholder in a New Jersey electing S corporation had a \$100,000 pro rata share S corporation loss for tax year 1995. The New Jersey resi-

dent is a 100% shareholder. The shareholder also had \$10,000 of “self-charged interest.” The practitioner wishes to include the “self-charged interest” on the Schedule K of the CBT-100S thus having the effect of netting the interest against the pro rata share S corporation loss of \$100,000.

Self-charged interest occurs when the taxpayer makes a loan to the S corporation. The S corporation then generates a 1099 to the shareholder for the interest payable on the loan. The interest for Federal tax purposes is not treated as portfolio interest income as listed on the 1120S K-1, but rather is reported as “taxable interest income” on the taxpayer’s Federal 1040 return. The self-charged interest may be used for Federal tax purposes to offset the passed-through interest expense of the S corporation (reported on Schedule A of the taxpayer’s Federal 1040 return) that is passed through to him.

Self-charged interest is taxable for New Jersey Gross Income Tax purposes to the individual making the loan. It is personal interest income earned from a loan to a corporation by an individual, who incidentally is a shareholder in the corporation. It is reported on the NJ-1040 as “Taxable interest income.”

The self-charged interest is not includible on Schedule K of the CBT-100S. Interest reported on Schedule K, Part 2, line 2 c., represents interest earned by the S corporation as a business entity.

The corporation should report the self-charged interest to the shareholder on Part V of Schedule NJK-1, “Interest paid to share-

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self-charged interest - from page 8 holder (per 1099-INT)." □

GROSS INCOME TAX
Forgiveness of Debt Income

Forgiveness of debt income that passes through to a partner from the discharge or cancellation of partnership indebtedness is taxable as "Distributive Share of Partnership Income" for New Jersey gross income tax purposes. See *Koch v. Director*, 15 N.J. Tax 387 (1995).

However, if the taxpayer makes an election under Federal Code Section 108 (b) (5) and 108 (c) and files Federal Form 982, the taxpayer may exclude the forgiveness of debt income from their Federal 1040 return in exchange for reducing their basis in depreciable real property.

Since for New Jersey purposes the basis of the property must be the same as for Federal income tax purposes, the forgiveness of debt income not recognized for Federal income tax would also be excluded from New Jersey gross income tax. Law: R.S. 54A:5-1c. □

INHERITANCE/ESTATE TAX
Common Filing Mistakes

"What are the most common mistakes made in filing transfer inheritance tax and New Jersey estate tax returns?"

This question is frequently asked of the Transfer Inheritance and Estate Tax Branch representatives at various functions throughout the State.

Common errors parallel those associated with the preparation of tax returns for other taxes administered by New Jersey, other states and the Federal Government. These include errors such as:

1. Failure to sign the return.
2. Failure to enclose required documents.
3. Failure to include the proper social security or other identifying number on the return.
4. Failure to prepare or include all required schedules.
5. Failure to include proper payment.
6. Mathematical errors.

In addition to these and other frequent errors made in the preparation of tax returns, there are many that are unique to the preparation of the New Jersey transfer inheritance tax and New Jersey estate tax returns.

1. Absence of Notarization. The transfer inheritance tax return is an affidavit and requires that the signature of the individual authorized to represent the estate and file a return must be notarized or acknowledged by an individual who is authorized to make such acknowledgments.
2. Incorrect Social Security Numbers. The social security number of the decedent is required on all returns as opposed to the social security number of the individual beneficiary or representative of the estate.
3. Absence of Required Attachments.
 - a. A copy of decedent's most recent full year Federal Form 1040.
 - b. A plain copy of the decedent's last will and testament.

- c. A copy of any Trust Agreements.
- d. A copy of "Buy-Sell Agreements" and other data required by regulation in regard to "Closely held corporations," partnerships, etc.

In addition to the various proofs and documentation required by statute and/or regulation, supporting evidence and explanation for any item or claim being reported should be enclosed with the return. When sufficient information is submitted with the return, it permits the Division to make necessary determinations in a more timely fashion. This is, of course, beneficial to the Division as well as to the representatives of the estate. When obviously necessary information must be requested by or expanded upon by the Division, it can only result in a processing delay and, consequently, a delay in the finalization and distribution of the estate.

Some common errors that are unique to the preparation of New Jersey estate tax returns include:

1. Failure to submit a copy of the Federal Form 706, as required by statute.
2. Failure to submit copies of the closing letter and other pertinent correspondence received from the Federal authorities.
3. Failure to take the "Credit for State Death Taxes" in the Federal proceeding thereby choosing to pay the Federal government instead of the State. This is a serious error since the New Jersey estate tax is not optional on the part of the taxpayer. It is due to the State of New Jersey regardless of

whether or not the estate utilizes the credit. This tax is based upon the amount of the credit "ALLOWABLE" as opposed to the amount taken or paid. □

LOCAL PROPERTY TAX **Property Record Card Policy Reminder**

Assessors are reminded the Local Property Tax Branch recommends a policy of openness regarding public requests for property data, including the Property Record Card, for those taxpayers seeking information that pertains to their own property. The positive results of providing a copy of the card could be increased accuracy of information in the assessor's files and greater taxpayer confidence in the assessment process. It is also not in the public interest that reasonable access to SR-1A forms in the assessor's office be denied. □

LOCAL PROPERTY TAX **Forms Available on Home Page**

Recently, the following Local Property Tax forms became available on the Division of Taxation's World Wide Web Home Page. Our address is:

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

- Property Tax Deduction Claim by Veteran or Surviving Spouse of Veteran or Serviceperson
- Claim for Real Property Tax Deduction on Dwelling House of Qualified NJ Resident Senior Citizen, Disabled Person, or Surviving Spouse
- Claim for Property Tax Exemption on Dwelling House of Disabled Veteran or Surviving

Spouse of Disabled Veteran or Serviceperson

- Petition of Appeal
- Added/Omitted Petition of Appeal
- Application for Real Property Abatement for Residential Property in an Urban Enterprise Zone
- Application for Real Property Exemption for Certain Contaminated Real Property. □

LOCAL PROPERTY TAX **Assessor Appointments**

Municipalities, when seeking to fill a vacant assessor's position, should seek input from the County Tax Administrator as well as the Division of Taxation. The Tax Administrator and the Division of Taxation can provide information regarding an individual's employment as an assessor in other districts throughout the State. Input from State and County officials who are actively engaged in the administration of the property tax can be a valuable asset to the municipality in making an informed decision. □

LOCAL PROPERTY TAX **Tax Assessors' Calendar**

July 1–

- 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 magnetic tape.

- Assessor to mail form to claim a continuance of valuation under the Farmland Assessment Act for the tax year 1998 together with a notice that the completed form must be filed with the assessor by August 1, 1997 to each taxpayer whose land was assessed for tax year 1997 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 assessor to have land assessed under Farmland Assessment Act.

August 5–

- All SR-1A forms showing information to be used in compiling the 1997 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 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, death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns of local ex-

continued on page 11
change telephone, telegraph and

assessors' calendar - from page 10

messenger systems companies, with respect to tax year 1998 and thereafter, are required to be filed with the assessor for the taxing district in which the said property is located.

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.

September 15-

- Assessor to file statement of taxable value of State-owned real property with Director, Division of Taxation. □

**LOCAL PROPERTY TAX
County Tax Board
Members Confirmed**

The Senate has confirmed 15 appointments made by Governor Whitman of members to county boards of taxation. Names of the individuals and the dates of confirmation follow:

Bergen County	
John Dilascio	6/27/96
Burlington County	
Earl D. Emmons	6/13/96
Cape May County	
Richard Lynch	10/24/96
Cumberland County	
A. William Biondi	6/13/96
Gloucester County	
Rudolph L. Marcucci (deceased)	6/13/96
Hudson County	
Vincent Cuseglio	10/24/96
Robert G. Doria	10/24/96
Hunterdon County	
Joann R. Boehm	7/25/96
Mercer County	

Richard J. Carabelli, Jr.	6/13/96
Norbert E. Donelly	12/19/96

Ocean County

Lucille C. Foley	5/16/96
John A. Coan, Jr.	12/19/96

Salem County

Robert J. Buechler, III	6/13/96
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Somerset County

William L. Linville	12/19/96
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Sussex County

Constance Flanagan	6/27/96
□	

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On January 17, 1997, Valji Mori, owner of Ray's Deli, who previously pled guilty to bribery and tax evasion, appeared before a Hudson County Superior Court Judge. Mori was sentenced to four years in prison and assessed fines and penalties totaling \$12,600. In addition to the fines and penalties, Mori paid \$75,000 in taxes to the State. This case resulted from an investigation worked jointly with OCI/Internal Security and the Division of Criminal Justice, where Mori paid an undercover Internal Security Investigator \$2,000 to reduce his \$100,000 liability by half.
- On February 7, 1997, Darlene Johnson-Hendryx, of Trenton, pled guilty to a charge of failing to file a 1995 New Jersey Gross Income Tax Return. Trenton Municipal Court Judge Garcia imposed fines and costs totaling \$1,155 and five years probation.
- On February 14, 1997, Kenneth Augustine of Holland, Pennsylvania, was indicted by a Mercer County Grand Jury on seven counts of fraud and theft. Six

counts involved failing to file New Jersey Nonresident Income Tax Returns for tax years 1992, 1993 and 1994 and failing to pay income tax on income in excess of \$190,000 he allegedly stole from Veterinary Learning Systems during the same period of time. This investigation was conducted jointly with the Mercer County Prosecutor's Office.

- On February 18, 1997, Chris Alevras was indicted by a Federal Grand Jury on 38 counts of mail, wire and bank fraud and filing false New Jersey Income Tax Returns. The Federal indictment alleges that Mr. Alevras realized in excess of \$800,000 in income from the frauds. Our State investigation has identified New Jersey Income Tax refunds that Mr. Alevras may have fraudulently obtained that totaled in excess of \$100,000. The Office of Criminal Investigation has been cooperating with the Federal government with regard to the Federal case. The State investigation is continuing.
- On February 19, 1997, Boris Surgent of Gibbsboro, New Jersey, pled guilty in Superior Court Camden County, to failing to file New Jersey State Income Tax Returns for tax years 1988, 1989, 1990 and 1991, with the intent to evade personal income tax on \$240,824 in fees that had been paid by customers to Surgent's commercial loan and brokerage firm, the Adams Group International, Inc. in Voorhees, New Jersey. Surgent also pled guilty to five counts of theft by deception relating to his conversion of the funds to his

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criminal enforcement - from pg. 11

personal use. The defendant is facing a possible prison sentence of 25 years and \$207,500 in fines. This case was investigated jointly with the Camden County Prosecutor's Office.

- On February 21, 1997, Paul McDaniel of West Chester, Pennsylvania, a waste oil dealer, was sentenced to three years probation and a fine of \$500 for failing to file a Petroleum Products Gross Receipts Tax Return. McDaniel was indicted on March 9, 1995 along with nine other defendants on 18 counts of conspiracy, racketeering, theft, misapplication of entrusted property, and failing to turn over tax in connection with a conspiracy to commit the theft of \$159,000 in New Jersey Petroleum Products Gross Receipts Tax and \$798,000 in Federal Motor Fuels Excise Tax, and various environmental offenses involving hazardous waste oil, between September 1992 and June 1993. This case was investigated jointly with the New Jersey Division of Criminal Justice as part of "Operation Boilermaker." Two other defendants have pled guilty in "Operation Boilermaker" and seven others are awaiting trial.
- On February 25 and 26, 1997, the Division of Taxation conducted 200 inspections in the City of Elizabeth to ensure compliance with licensing and registration requirements of New Jersey's Cigarette Tax, Tobacco Products Wholesale Sales and Use Tax, Motor Fuels Tax and Sales and Use Tax

laws. Of the 200 stores visited, 13% were not registered for Sales and Use Tax, 2% did not possess a Motor Fuel Tax License and 20% did not possess a Retail Cigarette Tax License. Only one store was found without New Jersey tax stamps on their cigarettes. These cigarettes were seized. This operation was the first of its kind as it focused on businesses selling cigarettes. However, the Division has been conducting organized sweeps of downtown business districts, malls, flea markets, expos, and crafts, antiques and collectibles shows. This particular project was an education and informational effort both for the Division and for the merchants we spoke to. We have a responsibility to the honest taxpayers of New Jersey to ensure that our tax laws are enforced.

- On February 27, 1997, Edmund Damiano of Verona, New Jersey, the former operator of the now defunct Auto 2000 Chrysler, Plymouth, Dodge dealership in Newton, New Jersey, was found guilty on 44 separate charges of fraud relating to the operation of that dealership. The charges included multiple counts of misapplication of entrusted property, theft by deception, misconduct by a corporate official, failure to file tax returns and failure to turn over Sales Tax in the amount of \$90,776.
- On March 4, 1997, Howard Levy, of Metuchen, New Jersey, entered into the Pre-Trial Intervention program and was ordered to pay restitution to the Division of Taxation in the amount of \$7,500. Levy was indicted by a Monmouth County Grand Jury on July 12, 1995, on

five counts relating to the evasion of New Jersey taxes. The indictment included failure to file New Jersey Corporation Business Tax Returns, failure to turn over Sales Tax, filing false and fraudulent Sales Tax Returns and misapplication of entrusted funds.

- Eighteen guilty pleas were entered in municipal courts throughout the State during this reporting period by individuals and businesses for noncompliance with the cigarette tax law. In addition, two cases were admitted to the Pre-Trial Intervention Program. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$13,755 and the awarding of 3,216 cartons of cigarettes, valued at nearly \$64,338, to the State.
- Charges were filed for violations of transporting, possessing, and selling untaxed cigarettes as well as licensing violations in municipal court for seven cases. A total of 4,784 cartons of cigarettes were seized along with a 1991 Dodge van and a 1992 Ford Crown Victoria. The value of the assets seized for these cases totaled \$117,680. □

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1997

Following is a summary of enforcement actions for the quarter ending March 31, 1997.

Certificates of Debt

During the quarter ended

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March 31, 1997, the Division filed 3,049 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$33.5 million.

Levies

\$44,329.59 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

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

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

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending March 31, 1997, \$123,404 was collected from jeopardy assessments, and the assets of three businesses were seized.

Seizures

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

For the quarter ending March 31, 1997, property of 40 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 15-17.

Auctions

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

During the quarter ending March 31, 1997, two auctions were held by the Division. A listing follows on page 17.

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

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending March 31, 1997, 705 such cases

were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$493,077 in revenue during the first quarter of 1997 and \$2,624,830 throughout the first nine months of this fiscal year from cases like these.

Liquor License Program

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

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has collected more than \$77 million from holders of the various types of licenses subject to audit. Richard D. Gardiner, Division of Taxation Director said he expects to collect a total of \$150 million during the three-year program.

During the quarter ending March 31, 1997, 176 notifications of liquor license transfer were received by the Division's Bulk Sales section. Thirty-one (31) audits relating to this project and previously requested were completed; assessments from these audits totaled \$839,384. □

Tax Briefs

Fair Act Attorney Fee

Termination — An attorney in New Jersey wrote to the Division

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enforcement - from page 13

of Taxation requesting information as to whether the annual Fair Act attorney fee liability of \$100.00 expired in 1996 or whether it will be in effect for 1997 and subsequent years.

The Division responded that the 1996 attorney fee payment was the final payment required by law. The Fair Act (P.L. 1990, c.8) authorized seven years of attorney fee imposition beginning in 1990 and terminating in 1996.

All attorneys practicing in New Jersey who have a bona fide office in New Jersey should contact the Division to review whether any delinquencies exist for them for any of the seven years the Fair Act attorney fee was in existence. The attorneys should call the Tax Services Branch of the Division of Taxation at (609) 292-5994 or write to:

TAX SERVICES BRANCH
DIVISION OF TAXATION
50 BARRACK STREET
CN 269
TRENTON NJ 08646-0269

Gross Income Tax

Income from Intangibles — The Division responded to an inquiry regarding the taxation of nonresidents or nonresident estates on income from bank accounts, securities, or other intangibles in New Jersey.

Income from intangible personal property maintained within the State of New Jersey is *not taxable* to nonresidents or nonresident estates under the gross income tax. Income from intangibles is only taxable to nonresidents if such intangible personal property is employed in a trade, profession, occupation or business carried on in New Jersey. N.J.S.A. 54A:5-8. The maintenance of a brokerage account or bank account in New Jersey by a nonresident does not create an income tax liability in New Jersey.

Nonresident Athletes or Performers — Nonresident performers are subject to the gross income tax on all income derived from sources within this State. Income is deemed to be derived from New Jersey sources to the extent that it is earned, received or acquired in connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or from intangible personal property employed in a trade, profession, occupation or business carried on in this State. Where the nonresident has income from services performed partly within and partly outside the State an allocation must be made for those services rendered in New Jersey.

Nonresident performers are subject to tax on all compensation earned for the rendition of personal services performed in this State.

N.J.S.A. 54A:5-8(2). The amount of compensation attributable to services within New Jersey is that proportion of the total compensation which the total number of working days within New Jersey bears to the total number of working days.

If the nonresident performers are incorporated, their personal service corporation is required to file a New Jersey corporate business tax

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Division of Taxation Seizures (January – March 1997)

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

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Jack's Electrical Service 537 Sunrise Ave. Somers Point	3/25/97	Electrical contractor	Closed
Bergen	Diamante, Inc. 565 Gorge Rd. Cliffside Park	2/6/97	Restaurant	Liquor license seized
	Forhez, Jeffrey t/a Status Auto Body 317 Franklin Tpk. Allendale	2/28/97	Auto body shop	Closed
	Dynasty Oriental Rugs 52 W. Railroad Ave. Tenafly	3/5/97	Rug store	Reopened
	Neighborhood Greenery 124 Woodward Ave. Rutherford	3/18/97	Florist/greenhouse	Closed
Burlington	RMDD Corp. d/b/a Big J's Deli 185 Route 70 Medford	1/28/97	Deli	Closed
Camden	South Jersey Restaurant Ventures LLC d/b/a J. Bodine's Road House Grill 595 Route 73 North Berlin	1/8/97	Restaurant	Liquor license seized
	Concetta Andriani 209 Tavistock Cherry Hill	1/16/97	N/A	Motor vehicle seized
	Manito, Inc. d/b/a Ristorante 73 Winslow Twp.	1/24/97	Restaurant	Liquor license seized
	Vanann, Inc. t/a Auto Doctor Repairs, Inc. 146 W. White Horse Pike Berlin	3/5/97	Auto repair shop	Reopened
	Cans and Bottles Inc. t/a Carol's 2007 Admiral Wilson Blvd. Camden	3/24/97	Bar	Liquor license seized Cash register levy
Cape May	Jim's Auto Body 512 West Taylor Ave. Wildwood	1/23/97	Auto repair shop	Reopened
	Villas Auto Mall Miami and Bayshore Rds. Villas	1/28/97	Auto dealer	Closed
	Lin-Tee, Inc. t/a Season's Restaurant 222 E. Schellenger Ave. Wildwood	2/28/97	Restaurant	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
Essex	David Gary Ltd. 391 Millburn Ave. Millburn	3/14/97	Art gallery	Reopened
	Don Costa Lounge 118 Fleming Ave. Newark	3/19/97	Bar	Reopened Liquor license seized
	Coblentz, Malcolm 18 Curtiss Place Maplewood	3/27/97	N/A	Two vehicles seized
Hudson	Siba, Inc. t/a Sidney's 415 N. 4th St. Harrison	2/10/97	Tavern	Closed Liquor license and vehicle seized
	Walls Tavern t/a Roost III 1500 43rd St. North Bergen	2/25/97	Tavern	Liquor license seized
	Shin's Market t/a Cresnet Deli 553 Communipaw Ave. Jersey City	3/5/97	Liquor store/deli	Reopened
	69 Kennedy Boulevard, Inc. t/a Foley's Westside Tavern 69 Kennedy Blvd. Bayonne	3/5/97	Bar	Closed
	El Pavo Nightclub 1313 Summit Ave. Union City	3/11/97	Nightclub	Liquor license seized
	Hardy's Liquor and Deli 551 Ocean Ave. Jersey City	3/26/97	Liquor store and deli	Liquor license seized
	Mercer	Candlelight Lounge 24 Passaic St. Trenton	1/29/97	Bar/restaurant
Middlesex	Ozmam Corp. t/a Virgo's Rte. 130 and Davidson Mill Rd. North Brunswick	2/6/97	Go-go bar	Closed
	Hornack Enterprises 9 Bernath St. Carteret	2/26/97	Auto service and repairs	Two vehicles seized
	Edison Glass Co. 417 New Brunswick Ave. Edison	2/27/97	Glass company	Closed Vehicle seized
	18 Restaurant, Inc. t/a Trattoria Moderna 593 Rt. 18 North East Brunswick	3/4/97	Restaurant	Reopened
	Holley, John & Barbara 32 Davis Ave. Piscataway	3/11/97	N/A	Vehicle seized

continued on page 17

taxation seizures - continued from page 16

County	Name/Address	Seizure Date	Business Type	Status
Monmouth	HV In The House Productions, Inc. d/b/a HV In The House 3320 Highway 66 Neptune	1/29/97	Restaurant	Liquor license not renewed
	Trader Jack's 280 Ocean Ave. Sea Bright	2/25/97	Restaurant	Liquor license seized
	Paul's Lock and Safe 558 Park Ave. Freehold	3/19/97	Locksmith	Reopened
	Sean's Place, Inc. t/a Main Street Tavern 220-222 Main St. Keansburg	3/25/97	Bar	Liquor license seized
Ocean	Stromberg, Barbara 35 5th St. Barnegat	2/7/97	N/A	Boat seized
Passaic	GEJ, Inc. d/b/a Cozy Corner 136 Lake Ave. Clifton	1/17/97	Bar	Liquor license seized
	Park 15 Wines and Liquors 15 Park Ave. Paterson	1/24/97	Liquor store	Liquor license seized
	Parada, Inc. t/a Charles Bar & Liquor 57 Mill St. Paterson	3/11/97	Liquor store/bar	Liquor license seized
Salem	Mowers Plus 266 N. Virginia Ave. Carney's Point	2/6/97	Lawn mowers/plows sales and service	Reopened
Somerset	Quintec Corp. Stryker Ln. Hillsborough	2/4/97	Water treatment company	Closed
	Red Door Grille 500 West Camplain Rd. Manville	3/6/97	Restaurant	Reopened Liquor license seized

***Division of Taxation Auctions
(January – March 1997)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Hudson	Freddie's Lounge 103-105 Monticello Ave. Jersey City	3/19/97	Bar	Business contents
Warren	Oxford House Inn 31 Wall St. Oxford	1/15/97	Tavern	Liquor license

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return in any year in which he or she performs in this State as they would be deemed to be doing business in New Jersey. The performance fee paid to the corporation would be a New Jersey allocable receipt to be included in the receipts portion of the allocation factor when determining the corporation's New Jersey income. The performer would then be required to allocate to New Jersey the portion of his or her salary paid as a result of services rendered in this State and pay gross income tax on that amount.

The New Jersey source income of a nonresident professional athlete includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which the number of duty days spent within New Jersey rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without New Jersey during the taxable year. "Duty days" means all days during the taxable year from the beginning of the team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

Sales and Use Tax

Ice Skating — Charges for admission to a skating rink for purposes of skating, or otherwise engaging in activities on the ice, are not taxable. The admission to sporting facilities for participation sports is specifically exempt under the Sales and Use Tax Act. N.J.S.A. 54:32B-3(e)(1). Therefore, free admissions for the use of the skating rink are also not subject to sales or use tax.

Charges for admission to the rink to watch a show or exhibition are, however, subject to sales tax. N.J.S.A. 54:32B-3(e)(1). However, if the rink gives some audience members free admission to a show, the rink will not owe use tax on the value of those admissions.

Rental of skates is taxable as the retail sale (including rental) of taxable tangible personal property. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f). Ice skates are considered sporting equipment, and are not exempt from sales tax as ordinary footwear. N.J.A.C. 18:24-6.4. Because the rental of skates is taxable, if a rink provides complimentary rental to a customer, the rink will owe use tax on the value of the rental. N.J.S.A. 54:32B-6.

Carnival Ride Purchase — The Division received an inquiry as to whether a business that provides amusement rides for carnivals must pay sales or use tax when it purchases ride apparatus that is permanently mounted to a trailer. Both the ride apparatus and any labor charges for installing it are taxable. N.J.S.A. 54:32B-3(b)(1) and (2). Although the ride experience may be sold, the ride apparatus itself is not resold. Therefore,

Electronic Filing

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

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

For additional information, call New Jersey's Tax Hotline at 609-588-2200 or write New Jersey Division of Revenue, ELF, CN 191, Trenton, NJ 08646-0191

is not exempt as a purchase for resale. N.J.S.A. 54:32B-2(e)(i)(A). *Mariner's Landing v. Director, Division of Taxation*, 11 N.J. Tax 215, 229-230 (Tax Ct. 1989).

If the business purchased the ride apparatus and installation services out-of-State and paid sales tax to another jurisdiction, without any right to a refund, it will be given credit for the sales tax paid to another jurisdiction *up to* 6%. However, if no tax was paid to New Jersey or to another jurisdiction, or if the sales tax paid to another jurisdiction was less than 6%, the purchaser will need to pay compensating use tax to New Jersey when the rides are delivered to or used in New Jersey. N.J.S.A. 54:32B-6; N.J.S.A. 54:32B-2(y).

Clowns, Magicians and Dancers

— In response to a recent inquiry, the Division advised that charges for entertainment made by persons performing as clowns, magicians, dancers and children's characters, where the performers go to the customer's house, are not subject to tax. Charges for admission to a facility where entertainment is provided would be taxable as an admission to or for the use of a place of amusement. N.J.S.A. 54:32B-3(e)(i).

Prepaid Calling Cards — The Division takes the position that the retail sale of prepaid telephone calling cards is not subject to tax; the purchaser is buying the intangible right to X number of minutes of telephone calls, which may or may not be subject to New Jersey tax as a telecommunications service. The tax is imposed once the card is used to make calls that are subject to New Jersey tax. The New Jersey Sales and Use Tax Act imposes tax on intrastate, inter-

the purchase of the ride apparatus

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state, and international calls charged to a service address in New Jersey. N.J.S.A. 54:32B-3(f).

Since the tax is imposed when the card is used to make a call subject to New Jersey tax, the company that is actually providing the telecommunications service is responsible for *collecting* or paying any tax that may be due. The sponsor of the calling card or wholesaler is treated as the consumer of all calls that are transmitted through the switch. Thus, the sponsor or wholesaler should pay any applicable tax to the service provider based on their per unit cost, not the retail rate. □

In Our Courts

Corporation Business Tax Offset of Overpayment against Deficiencies of Merged Corporations Denied – *Sea-Land Service Inc. v. Director, Division of Taxation*, decided September 27, 1996; Tax Court of New Jersey; 16 N.J. Tax 132.

Sea-Land Service, Inc., plaintiff, was the wholly-owned subsidiary of Sea-Land Corporation (Parent), and the parent of its own wholly-owned subsidiary, Reynolds Leasing Corporation (RLC). Sea-Land Corporation and Reynolds Leasing Corporation were each merged into Sea-Land Service, Inc. Sea-Land Service, Inc. became liable for tax deficiencies of Sea-Land Corporation and Reynolds Leasing Corporation as a result of the mergers. The Division also determined that plaintiff had a pre-merger overpayment which exceeded the tax liabilities of the merged corporations which were paid by plaintiff.

Plaintiff and the Director agreed that plaintiff was out of time under N.J.S.A. 54:49-14 for a refund of the overpayment. However, plaintiff argued that the tax liabilities of the merged corporations should have been offset against plaintiff's overpayment pursuant to N.J.S.A. 54:49-16. Under N.J.S.A. 54:49-16, an offset is permitted where an audit finds an erroneous overpayment of a tax, a deficiency was assessed against the taxpayer for the same audit period, and both the deficiency assessment and the overpayment arise under the same State tax.

The sole issue, according to the Court, was whether plaintiff was the same taxpayer involved for the purpose of offsetting the tax deficiencies with plaintiff's overpayment. The Court held that the three corporations, plaintiff, parent, and RLC were separate entities at the time when the deficiencies arose and the overpayment was made. Plaintiff could not now claim that its current status as a single entity was retroactive to that time. Business Corporation Law provision N.J.S.A. 14A:10-6, requiring a successor corporation to possess the rights and privileges of merged corporations, was held to have no bearing on the tax laws. The Court held that the deficiencies of the other two entities could not be offset against the plaintiff's overpayment, and granted summary judgment on behalf of the Director.

Gross Income Tax Determination of New Partnership Income – *Sabino v. Director, Division of Taxation*, 296 N.J. Super. 269 (App. Div. 1996).

The Appellate Division reversed a Tax Court decision, published at 14 N.J. Tax 501 (Tax Ct. 1995), regarding the kinds of costs and

expenses that are deductible for purposes of determining net partnership income. N.J.S.A. 54A:5-1b allows net income of a business to be determined "after provision for all costs and expenses incurred in the conduct thereof...."

The lower court, relying on *Smith v. Director, Division of Taxation*, 108 N.J. 19 (1987), ruled that deductible expenses included, literally *all* and any costs and expenses, provided that they were incurred in the conduct of the partnership's business. Concluding that the Tax Court had misconstrued *Smith*, the Appellate Division determined that, in arriving at a partnership's net income, only costs and expenses incurred *in the ordinary course of its business* are to be applied against income earned in the ordinary courses of its business.

The Appellate Division remanded the case to the Tax Court for determination of whether deductible "ordinary" business expenses are limited to ordinary and *necessary* business expenses and whether the amended regulations drafted by the Division are appropriate. Noting that N.J.S.A. 54A:5-1a allows net income to be determined "in accordance with the method of accounting allowed for federal income tax purposes," it declined to rule directly on the complicated questions involving the extent to which the Division can rely on federal taxing principles. It commented that this issue should be resolved by the lower court.

Local Property Tax Training Facility Denied Exemption – *N.J. Carpenters Apprenticeship Training and Education*

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Fund v. Borough of Kenilworth, decided December 17, 1996; N.J. Supreme Court.

The N.J. Supreme Court denied a \$2.8 million training facility for apprentice carpenters a real estate tax exemption as a nonprofit school under N.J.S.A. 54:4-3.6. The High Court in reversing the exempt determination of the Appellate Division N.J. Superior Court affirmed the N.J. Tax Court's disallowance and that of Union County Tax Board and Kenilworth Borough assessor.

Owned and operated by the federally tax exempt N.J. Carpenters Apprentice Training and Education Fund, the training center offered no academic courses and was not accredited; its program was, however, overseen by the U.S. Department of Labor. Apprentices who attended the training facility were taken into local unions and graduates were certified as journeymen carpenters. Apprentices who didn't achieve proficiency in a skill were not passed on to the next level of carpentry and were not eligible for pay raises.

The State Supreme Court reasoned that the legislative intent of 54:4-3.6's specific wording "school, academy, college or seminary" was a narrower interpretation of school as a primary or secondary school and the disputed training facility was not within that narrower meaning. A broader definition of school as all learning institutions which would have included the training center would have made the statute's specificity superfluous.

The Court in examining the Fund's board of trustees found that, al-

though they had an independent fiduciary duty to promote the school's educational purposes, they were appointed by the construction industry's employers and unions and served at their will. The trust Fund was formed in 1969 by the N.J. State Council of Carpenters, the Building Contractors Association of N.J., other employers in the construction industry obliged per their collective bargaining agreements to contribute to the Fund, and the Fund trustees.

The Court also reviewed the financing of the Apprentice Training and Education Fund and concluded that the revenues generated were not related to educational costs but were based on a mandatory percentage of union employee wages. Assets totaled \$9,684,000 and \$5,000,000 in cash and marketable securities. While the assets were not to be distributed to the union or employers neither were they to be used for any purposes other than apprentice training and education.

The Court in its analysis often drew parallels to the case of *Textile Research Institute v. Township of Princeton*, 35 N.J. 218 (1961), in which a nonprofit research organization for the textile industry providing laboratory instruction to doctoral students many of whom were later employed by that industry was denied property tax exemption.

In ruling against exemption the Court held that the apprentice training facility benefited a particular profit-making sector of the economy, i.e., the construction industry, by providing more skilled workers to building companies and more members to labor unions,

rather than benefiting the general public.

Sales Ratio Challenge – *Bellemead Development Corp., Plaintiff, v. Roseland Boro., Director, Taxation Division, et al., Defendants*, decided March 25, 1997; Tax Court of N.J.; Docket No. 000431-97.

Corporate taxpayer challenged the Director, Division of Taxation's omission of what it felt was a usable sale for the assessment-sales ratio study from which the State school aid ratio and tax year 1997 Chapter 123 ratio for Roseland Borough was developed. The taxpayer did not request a direct review of its 1997 property assessment.

The singular issue was whether the taxpayer could obtain relief via a change in the composition of the ratio in a local property tax plenary proceeding prior to and independent of a tax appeal.

Citing prior case law, the Tax Court noted that Chapter 123 ratios create such a strong presumption of the taxing districts' common levels of assessment as to be conclusive in all but the most egregious circumstances. Absent proof of error, use of other than the Director's ratios violated statute.

The Court further noted, however, that a taxpayer has a constitutional right to timely appeal where erroneous data has "substantially skewed" a Chapter 123 ratio.

In this case, the taxpayer sought to have the Court amend the Chapter 123 ratio for all assessment appeals of the Borough across the board. Rather, when correcting an error the Court does not revise the
continued on page 21
average ratio but only applies the

in our courts - from page 20

amended ratio to the taxpayer's assessment to determine his discrimination relief. In this way, other taxpayers may contest other sales and establish their own ratios under which they may obtain value reduction.

The Tax Court held that it had no authority in a plenary proceeding to change either the school aid or Chapter 123 ratio and dismissed the taxpayer's request.

Horse-Farm Amendments — *William & Frances Brousseau, Plaintiffs v. Millstone Township, Defendant*, decided March 10, 1997; Tax Court of New Jersey; Docket No. 008450-95.

At issue before the N.J. Tax Court was the proper interpretation of the Farmland Assessment Act's (N.J.S.A. 54:4-23.1 et seq.) "horse-farm amendments," L. 1995, c.276. The taxpayers' 12.06 acres had been denied farmland assessment for tax year 1995 by Millstone Township assessor solely by reason of "noncontiguity" based on the recent changes to the Act. Monmouth County Tax Board had affirmed the denial on appeal. The disputed property consisted of 2.06 acres of appurtenant woodland, 8 acres of permanent pasture for grazing horses and 2 acres of training area with a riding rink, dressage area and 6-stall barn.

Prior to the 1995 statutory amendments, grazing livestock without breeding them for sale was not a qualifying agricultural use, nor were boarding, rehabilitating or training livestock considered farming.

The horse-farm revisions expanded the definition of agricultural use to include grazing of livestock alone

as an acceptable farm use as well as their training, boarding and rehabilitation.

The amendments also permitted "fees received for boarding, rehabilitating or training any livestock where the land under the boarding, rehabilitating or training facilities is contiguous" to other qualified farmland to be used to fulfill the minimum income requirements.

In denying the farm assessment for noncontiguity, the municipality contended that the taxpayers' entire 12.06 acres had to be contiguous to other qualified farmland in order to obtain the land value reduction provided under the Act as amended.

The taxpayers argued that the legislative intent of the amendments was to provide property tax relief to owners of horse farms, not to require land used in horse farming to be contiguous to additional (5) acres devoted to other agricultural or horticultural uses. They also argued that under the new amendments the 8 acres of grazing land was independently eligible for farmland assessment while the 2 acre training and boarding area qualified as contiguous to it. The 2.06 acres was stipulated to be appurtenant woodland dependent upon the qualification of the other 10 acres.

The Court decided in favor of the taxpayers giving the plain meaning of the statute weight. In doing so the Court reviewed both the legislative history of the statutory amendments in terms of the intent of their several revisions and their grammatical construction. □

In Our Legislature

Corporation Business Tax

Rates Changed for New Jersey S Corporations — P.L. 1997, c.40 (signed into law on March 27, 1997) reduces the tax rate for New Jersey S corporations to 2%, or 0.5% for S corporations with annual net income of \$100,000 or less. The change is effective for accounting years ending on or after July 1, 1998.

Insurance Premiums Tax

Procedures for Collecting and Distributing the Tax on Fire Insurance Premiums Revised — P.L. 1997, c.41 (signed into law on March 27, 1997) revises procedures for the collection and distribution of funds by the New Jersey State Firemen's Association. The legislation takes effect July 1, 1997.

Local Property Tax

Administrative Responsibilities for the Veterans'/Senior Citizens' and Disabled Persons' Property Tax Deductions Changed — P.L. 1997, c.30 (signed into law on March 7, 1997) eliminates the provisions of P.L. 1995 c.259 which require the Division of Taxation annually to furnish each municipality with a supply of application forms for the veterans' property tax deduction as well as the senior citizen, disabled person and surviving spouse property tax deduction.

This legislation also removes from the Division of Taxation and restores to the municipal tax collector the responsibility for mailing to each recipient of a property tax deduction the required post-tax year statement of income form

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In our legislature – from pg. 21
 accompanied by a return receipt envelope addressed to the municipality.

The legislation also requires the State to reimburse each local taxing district 102% of the amount of the deductions granted under these programs, rather than 100% as currently required. The additional two percent will compensate taxing districts for the costs of administering the programs.

The legislation is effective immediately and is applicable in tax year 1997 and thereafter.

Sales and Use Tax

Admission Charges to Professional Wrestling Events No Longer Exempt from Sales Tax

— P.L. 1997, c.36 (signed into law on March 17, 1997) recognizes professional wrestling events as activities in which the primary purpose of the participants is to provide entertainment for spectators rather than to engage in a bona

fide athletic contest. The legislation removes professional wrestling from the regulation and control of the State Athletic Control Board, eliminating the taxes imposed by the Board on ticket sales as well as television and cable receipts.

As a result, admission charges to professional wrestling events are no longer exempt from sales tax under N.J.S.A. 54:32B-3(e)(1).

This legislation is effective immediately. □

tax calendar

july

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

July 10

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

July 15

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

continued

July 15 - continued

- 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, manufacturers, representatives and consumers

- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-20 New Jersey/New York Combined State Sales and Use Tax**—Quarterly return *continued*
- NJ-941-W Employer's quarterly return**

July 21 - continued

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

July 25

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

July 31

- NJ-941 & Gross Income Tax**—

august

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

August 11

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

August 15

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

continued

August 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 return

August 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

August 20 - continued

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

August 25

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

september

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

September 10

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

September 15

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

continued

September 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 return

September 22

- 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

September 22 - continued

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

September 25

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

from the director's desk

Tax Season Assistance

During the income tax season from January 1 through April 15, 1997, the Division provided assistance to many taxpayers in New Jersey. This year was marked by the expansion of the NJ TeleFile program, which enables taxpayers to file State income tax returns and homestead rebate applications by telephone.

- ★ **Tax Hotline**
Calls answered—224,064
- ★ **ARIS (Automated Refund Inquiry System)**
Calls received—147,358
- ★ **NJ TaxFax**
Calls received—51,063
- ★ **HR (Homestead Rebate) InfoLine**
Calls received—48,839
- ★ **Electronic Filing Program**
Returns filed—108,539
- ★ **Tax Talk (Automated information)**
Calls received—54,999
- ★ **TeleFile Program**
Returns filed—144,237
- ★ **Automated Forms Request System**
Calls received—76,628
- ★ **Taxation Building Lobby**
Taxpayers assisted—9,592 (793 on April 15)
- ★ **Regional Offices**
Taxpayers assisted—49,739
- ★ **Taxation Home Page**
Visits to Division's World Wide Web site—57,408