

New Jersey State Tax news

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What's New for Tax Year 2004

There have been some important changes affecting the preparation of New Jersey income tax returns, and the preparation of applications for New Jersey's various property tax relief programs:

Income Tax

- **Increased Tax on Income Over \$500,000** — The New Jersey gross income tax rate on income over \$500,000 has increased from 6.370% to 8.970% for tax years beginning on or after January 1, 2004.
- **Domestic Partnership** — Taxpayers who are members of a domestic partnership registered in New Jersey on the last day of the tax year may claim an exemption for their domestic partner only if the domestic partner does not file a New Jersey income tax return. A copy of the New Jersey Certificate of Domestic Partnership must be enclosed the first time the exemption is claimed and the taxpayer may be asked to provide additional information at a later date.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2004 is .038801.
- **Depreciation Adjustment** — New Jersey income tax law has decoupled from certain changes in Federal depreciation and

expense deduction limits. A New Jersey depreciation adjustment may be required for assets placed in service on or after January 1, 2004. The New Jersey adjustments affect the determination of income in the categories net profits from business; net gains or income from disposition of property; net gains or income from rents, royalties, patents, and copyrights; income from estates or trusts; distributive share of partnership income; and net pro rata share of S corporation income. Taxpayers must complete the Gross Income Tax

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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 ..	1-888-238-1233
Property Tax Reimbursement Hotline	1-800-882-6597
Earned Income Tax Credit Hotline	1-888-895-9179
NJ TaxFax	609-826-4500
Business Paperless Telefiling System	1-877-829-2866
Speaker Programs	609-984-4101
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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Depreciation Adjustment Worksheet GIT-DEP to calculate the adjustment.

- **Nonresident Estimated Tax Payments on Real Estate Transactions** — Nonresident individuals, estates, or trusts that sell or transfer real property in New Jersey after July 31, 2004, may be required to make estimated payments on the gain from a transfer or sale of the property as a condition of the recording of the deed.
- **Use Tax** — An optional Estimated Use Tax Chart is available for residents who are paying the New Jersey use tax they owe with their resident income tax return. Taxpayers who have incomplete or inaccurate receipts may use the chart to estimate the amount of use tax due on purchases costing less than \$1,000 each. Taxpayers must calculate the exact amount of use tax due on purchases costing \$1,000 or more each.
- **E-Filing Requirement for Practitioners** — Tax practitioners who prepared or filed 200 or more 2003 New Jersey income tax resident returns must now use one of the three New Jersey electronic filing methods (NJ WebFile, NJ TeleFile, and NJ ELF) to file their clients' 2004 New Jersey income tax resident returns.

Electronic Funds Transfer

- **Threshold Lowered to \$10,000** — Beginning July 1, 2004, taxpayers with a prior-year liability of \$10,000 or more in any one tax are required to make their payments for all taxes by electronic funds transfer (EFT).

- **Payment Options** — Taxpayers who are required to make all their tax payments by EFT now have a choice of several payment options: Automated Clearing House (ACH) debit or credit, electronic check (e-check), or credit card.

Property Tax Relief Programs

- **FAIR (Fair and Immediate Relief) Rebate Program** — The NJ SAVER Rebate and Homestead Rebate Programs have been combined into the FAIR Rebate Program. The homestead rebate and NJ SAVER rebate applications have been replaced with the FAIR tenant rebate application (Form TR-1040) which can be found in the income tax return booklet, and a separate FAIR rebate application for all homeowners, which is *not* in the booklet.

Eligible tenants file the FAIR tenant rebate application, Form TR-1040, with the New Jersey income tax return. FAIR rebate applications are currently scheduled to be mailed to eligible homeowners at the end of April.

- **Property Tax Deduction/Credit** — Schedule 1-A, which replaces Schedule HR-A, must be completed by residents who: had more than one New Jersey residence during the year; owned a principal residence with more than one unit; shared ownership of their principal residence with anyone other than a spouse; or shared rent for an apartment or other rental dwelling with anyone other than a spouse. Schedule 1-A is used to calculate the amount of property taxes and/or rent to

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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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be used on Schedule 1 (or Schedule A and Worksheet F). Homeowners and tenants complete Schedule 1 (or Schedule A and Worksheet F) to determine whether they receive a greater tax benefit from the property tax deduction or the property tax credit.

Schedule 1-A is included in the NJ-1040 instruction booklet.

- **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2004 must have total annual income *less than*:

2003: \$40,028 if single, or \$49,082 (combined income) if married, and

2004: \$40,869 if single, or \$50,113 (combined income) if married.

Benefits available under this program may be affected by State budgetary constraints.

2004 Package NJX

- The Division of Taxation has automated the process of ordering *Package NJX* materials. Materials can only be ordered [online](#) and payments must be made by electronic check (e-check). □

EFT Payment Options

Businesses with a prior-year tax liability of \$10,000 or more in any one tax are required to remit their payments for all taxes by electronic funds transfer (EFT).

Taxpayers who are required to pay electronically are no longer limited to the Automated Clearing House (ACH) debit or credit option. There are now two additional payment options that can be used to meet the EFT payment requirement: electronic check (e-check) and credit card.

Taxpayers must [enroll](#) with the Division of Revenue before they can pay by ACH debit or credit. This process may take several weeks. Enrollment is not required prior to making e-check or credit card payments.

The e-check and credit card payment options are not available for all business taxes. Consult the online [Guide to Electronic Filing and Payment Services](#) to learn which taxes can be paid by electronic check and credit card.

A list of [Frequently Asked Questions](#) about the EFT Program can be found on the Division of Revenue's Web

site. Taxpayers may contact the Division of Revenue's EFT Unit at 609-984-9830 or by [e-mail](#). Requests for information on EFT may also be faxed to 609-292-1777. □

GROSS INCOME TAX Tax Rate Used on Form NJ-1080C

For tax year 2004, the New Jersey Income Tax Nonresident Composite Return (Form NJ-1080C) has been modified to permit the use of two tax rates, 6.37% and 8.97%. Recent legislation (P.L. 2004, c.40) creating a new top income tax rate of 8.97% retroactive to January 2004 provided a disincentive for nonresident individuals who had participated on a Form NJ-1080C in the past. The Division has, therefore, announced that the 6.37% gross income tax rate applies to

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 200 or more 2003 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2004 New Jersey resident income tax returns electronically. More information is available at:

- [Frequently Asked Questions](#)
- [Electronic Filing Handbook for EROs](#)
- [NJ WebFile](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)
- [List of E-File Approved Software Vendors](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [email us](mailto:taxation@tax.state.nj.us) at taxation@tax.state.nj.us.



tax rate on nj-1080c - from pg. 3

participants with income of less than \$250,000 each. The 8.97% rate applies to participants with income of \$250,000 or more.

Preparers of composite returns will notice the following changes:

1. The face of the return has two columns: Column A for income of those participants reporting New Jersey income from the entity of less than \$250,000; and Column B for those participants reporting income of \$250,000 and over.
2. There are three supporting directories:

Schedule A — Participants with New Jersey income from the entity of less than \$250,000;

Schedule B — Participants with New Jersey income from the entity of \$250,000 or more; and

Schedule C — Nonparticipants.

For years the composite return has been a popular choice for those nonresidents with limited New Jersey sources of income. Even with the imposition of the highest individual income tax rate, nonresident individuals participated in composite returns as a matter of convenience. Individual nonresident returns are not necessary when all the New Jersey source income is reported and taxed on a composite return. Now, with the availability of two income tax rates, eligible nonresident individuals will still find participation in the NJ-1080C to be an acceptable alternative to filing an individual nonresident return, Form NJ-1040NR. □

GROSS INCOME TAX Presidential Disaster Relief Areas

The IRS provides special tax law provisions to help taxpayers recover financially from the impact of a disaster, especially when the President declares their location to be a major disaster area. The Federal government designates Presidentially declared disaster relief areas on a county-by-county basis.

Depending on the circumstances, the IRS may postpone for up to one year certain tax filing deadlines for taxpayers that are affected by a Presidentially declared disaster relief area. The tax deadlines the IRS may postpone include those for filing income and employment tax returns, paying income and employment taxes, and making contributions to a traditional IRA or Roth IRA.

If any tax deadline is postponed, the IRS publicizes the postponement in the affected area and publishes a news release, revenue ruling, revenue procedure, notice, announcement, or other guidance in the Internal Revenue Bulletin (IRB) and on their Web site at www.irs.gov

It is the New Jersey Division of Taxation's general policy to follow the guidelines provided by the IRS for special tax relief for taxpayers in the Presidential disaster relief areas. The relief granted to affected taxpayers is limited in time to the periods during which emergencies actually occurred and/or during which relief and recovery activities were ongoing. Affected taxpayers include businesses and individuals located in the affected areas, those whose tax records are in the affected areas, and relief workers.

Qualified taxpayers may file New Jersey tax returns and submit payments for any return and/or payment, including estimated payments, that have either an original or extended due date in accordance with the special tax filing deadlines as provided by the IRS. To qualify for this relief, affected taxpayers must write in red ink "Presidential Disaster Relief Area" and the Presidential disaster relief area designation as provided by the IRS at the top, center of their New Jersey tax return when filed.

If you are not sure whether your area qualifies for tax relief, more specific information about Presidential disaster relief areas is available on the IRS Web site or you may [e-mail](mailto:taxation@tax.state.nj.us) the Division with your question at taxation@tax.state.nj.us

If you are affected by a Presidentially declared disaster area and the New Jersey Division of Taxation postpones the due date for filing your return and for paying your tax,

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Interest 8.00%

The interest rate assessed on amounts due for the period January 1, 2005 – December 31, 2005, will be 8.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
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%
1/1/04	7.00%
1/1/05	8.00%



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you may be eligible for interest and penalty abatement on underpaid tax that would otherwise accrue for the period of the postponement. For information concerning potential abatement of penalties and/or interest, affected taxpayers should call our Customer Service Center at 609-292-6400. □

LOCAL PROPERTY TAX

County Tax Board Judgments

Under N.J.A.C. 18:12A-1.12(c), rules for county boards of taxation, a copy of any judgment rendered by the county board of taxation involving the appeal of a veteran's property tax deduction or a property tax deduction for a senior citizen, disabled person, and certain surviving spouses *must* be furnished by the county board of taxation to the Division of Taxation. The copy of the judgment must be mailed within 10 days from the date of its entry to the Division of Taxation, Property Administration, 50 Barrack Street, PO Box 251, Trenton, New Jersey 08695-0251. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

January 1 –

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10 (before) –

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

January 10 –

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

January 25 –

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (prior) –

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

February 1 –

- After February 1, the assessor or County Board of Taxation shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

February 10 –

- Certification by assessor filed with the County Tax Board or, if completed by County Tax Board, filed with the County Administrator, "within 10 days" of the date the bulk mailing of notifications of assessment completed.

February 15 (on or before) –

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

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TIP Hotline

The Division of Taxation's Office of Criminal Investigation has established the **TIP** (Tobacco Interdiction Program) Hotline at 609-984-1225. Anyone with information about the illegal sale of untaxed, smuggled, or counterfeit cigarettes is encouraged to call the TIP Hotline to report such violations.



assessors' calendar - from page 5

March 1 –

- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services; and post a copy at the courthouse.

March 10 (before) –

- Equalization table hearings completed by County Tax Board.

March 10 –

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the

Division of Local Government Services. □

Criminal Enforcement

Criminal Enforcement over the past several months has included:

- On June 23, 2004, confirmation was received that a Passaic County Grand Jury had returned an indictment against Dipan P. Patel of North Bergen, New Jersey, charging him with possession and sale of untaxed cigarettes. Patel had been arrested by the Office of Criminal Investigation (OCI) on January 14, 2004, in Totowa, New Jersey, during a joint investigation with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives in which Patel sold Virginia-stamped and unstamped cigarettes to an

undercover operative on two separate occasions.

- On June 29, 2004, in Superior Court – Mercer County, Oscar Kirkconnell of Elizabeth, New Jersey, was admitted into the Pre-trial Intervention (a program of supervision by the Probation Services Division for nonviolent defendants with no criminal record) for a term of six months, pursuant to his indictment on charges of theft, misapplication, and failure to pay over \$88,308.44 in sales tax collected, filing fraudulent sales tax returns, and failure to maintain records with intent to evade sales tax, from January 1, 1999, to September 30, 2002, in connection with Cinderella's Go-Go Palace, a go-go bar Kirkconnell, a sole proprietor, operates in Elizabeth. As

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How to
Get Your NJ Income Tax Refund
FASTER!

NJTeleFile 

Call 1-888-235-FILE (3453)
 Fill out the NJTeleFile worksheet in your tax packet. Then, use a Touch-tone phone to call our toll-free number to file your return.

NJWebFile 

Use your computer to file your return.
 Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.

NJELF 

Use tax software or ask your tax preparer.
 See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.

www.njfastfile.com

NJFastFile
 3 ways to a faster refund.   



criminal enforcement - from page 6

conditions of admission into Pretrial Intervention, Kirkconnell is required to sell the business in question, and has paid restitution to the State of \$99,094.07 in tax, penalty, and interest. The Elizabeth Police Department assisted in the investigation. The matter was prosecuted by the State Office of the Attorney General.

- On July 16, 2004, Bernard Davidson, a former court officer in Morris County, was sentenced to a one-year term of probation and ordered to make restitution as a result of his guilty plea to charges of filing a false and fraudulent 1998 New Jersey gross income tax return. The charge stemmed from Bernard Davidson's actions as a court officer in Morris County, his theft of official receipts in excess of \$75,000, and his failure to report the illegal income on his New Jersey gross income tax return.
- On July 16, 2004, in United States District Court in Texas, Gary Dewayne Dennington, an inmate at the State Correctional Facility in Beaumont, Texas, was sentenced to a 37-month term of incarceration for a mail fraud scheme involving the filing of fraudulent tax returns. Inmate Dennington will go to Federal prison after completing his State sentence. This joint investigation with the Federal Bureau of Investigation revealed that Dennington had filed fraudulent state income tax returns in New Jersey, Missouri, and Connecticut. He did not receive refunds from New Jersey; however, his efforts did

reward him with an extra 37 months of jail time.

- On July 19, 2004, in Newark Municipal Court, Miguel A. Puca of Newark, New Jersey, pled guilty to failing to file motor fuels tax returns and failing to pay \$60,397 in motor fuels tax during the period April 2003 through April 2004 in connection with Puca's business, Puca & Son Fueling, which sells diesel fuel at retail to trucking companies. Puca was fined \$1,500 and is subject to restitution of the tax and an additional \$16,902 in civil penalty and interest. This case was opened based on a letter from the owner of a local gas station, who complained that the subject was harming legitimate businesses by evading the motor fuels tax.
- On August 3, 2004, Notices of Complaint were served upon Rite Aid of New Jersey, Wharton, New Jersey, and Resa Enterprises, Inc., Paramus, New Jersey, in cigarette retail license suspension actions by the Director of the Division of Taxation, as requested by local boards of health following the conviction of each of the licensees for two separate violations of State law which prohibits the sale of cigarettes to minors.
- On August 12, 2004, the Mercer County Prosecutor's Office confirmed that in Superior Court – Mercer County, Mohinder Braich of Freehold, New Jersey, pled guilty to a charge of failure to turn over \$617,000 in motor fuels tax which he collected between 1992 and 2002 in connection with the retail sale of diesel fuel at MLB Sunshine Service Station, a gas station/truck stop which he

operated in Old Bridge, New Jersey. Braich is scheduled to be sentenced October 10, 2004. This matter was investigated by OCI and prosecuted by the Mercer County Prosecutor's Office.

- On August 23, 2004, in Superior Court – Monmouth County, a hearing was held in the matter of Asif Hafeez, formerly of Millstone Township, New Jersey. Hafeez had been arrested by OCI on June 27, 2001, in possession of 319 cartons of untaxed cigarettes and 29,793 counterfeit cigarette tax stamps. Hafeez later jumped bail and fled to Canada. He was arrested as he tried to cross into the United States from Canada recently and was extradited to New Jersey and held in the Monmouth County Jail. At the August 23, 2004, hearing it was determined that Hafeez would be turned over to Pennsylvania authorities to answer a charge of violation of probation which had been imposed for an earlier violation of the Pennsylvania cigarette tax. Extradition proceedings and prosecution in this matter are being conducted by the Monmouth County Prosecutor's Office.
- On September 3, 2004, the Office of Attorney General confirmed that in Superior Court – Union County, Edward Mongon of Union City, New Jersey, and Mikhael Centeno of Jersey City, New Jersey, pled guilty to racketeering, consisting of burglary, theft, receiving stolen property, fencing, money laundering, failure to file State personal



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income tax returns, and failure to pay State tax from 1992 to 2003, and were sentenced to 13 years and 12 years, respectively, in State prison, and that Edward Troisi of Hoboken, New Jersey, pled guilty to failure to file State personal income tax returns and pay tax for tax years 1999 through 2002, and was admitted into Pretrial Intervention, a program of supervision for nonviolent first offenders. The charges to which the above defendants pled guilty resulted from their operation of an enterprise engaging in large-scale theft of cargo from trains and trucks. Based on these guilty pleas, OCI will pursue civil assessment and collection of sales and use tax due on the disposition of tangible personal property in the amount of more than \$5 million. This case was a joint investigation with the New Jersey Division of Criminal Justice – Organized Crime and Racketeering Bureau.

- On September 14, 2004, in Jersey City, OCI seized 17,100 cartons of untaxed, counterfeit-product cigarettes which had been abandoned in two self-storage units by traffickers

following previous arrests and seizures by OCI at this location. It is believed the counterfeit products were manufactured in China. The value of the seized cigarettes is \$1,063,962. The amount of tax loss averted is \$410,400 cigarette tax and \$60,192 sales and use tax, for a total of \$470,592. This investigation is continuing.

- On September 17, 2004, John B. Forrest, a fugitive and one of the Division of Criminal Justice’s ten most wanted, was arrested by U.S. Customs at the border in Pharr, Texas. On September 12, 2003, in Superior Court – Middlesex County, New Brunswick, New Jersey, Forrest, of Colts Neck, New Jersey, had entered guilty pleas on behalf of himself and his corporation, Tri-State Ticket Exchange, Ltd., Old Bridge, New Jersey, to charges of theft by deception of approximately \$647,000 from customers who ordered sports and entertainment events tickets that were never delivered, misapplication of \$122,626.37 in sales taxes of New Jersey and eight other states which Forrest collected from his customers but failed to turn over to tax agencies, credit card fraud, failure to file New Jersey sales and use tax returns for the period January

2001 through December 2002, and failure to turn over \$33,280 in New Jersey sales and use tax collected in that period. Forrest had agreed to make restitution of all of the above amounts, and never again to engage in business as a ticket seller or broker in New Jersey. Forrest was scheduled to be sentenced on January 9, 2004, but fled the country one day prior to sentencing and is believed to have lived in Brazil and Mexico during his flight. This was a joint investigation between OCI and the Division of Criminal Justice, who prosecuted the matter.

- On September 22, 2004, in Superior Court – Camden County, Jeffre and Cynthia Levy of Cherry Hill, New Jersey, pled guilty to purposely failing to turn over taxes to the State. Jeffre Levy and Cynthia Levy admitted to keeping approximately \$170,000 in sales and income tax proceeds from their janitorial companies and failing to forward the money to the State as required. The money was collected between January 1, 1994, and December 31, 2001, and included State income taxes they withheld from employees and

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Enforcement Summary Statistics Third Quarter 2004

Following is a summary of enforcement actions for the quarter ending September 30, 2004.

• Certificates of Debt:		• Jeopardy Seizures	2
Total Number	3,619	• Seizures	58
Total Amount	\$2,332,480.44	• Auctions	6
• Jeopardy Assessments	340	• Referrals to the Attorney General’s Office	500

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdisc.html



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sales taxes they collected from customers of their Cherry Hill-based companies – Executive Maintenance Co., Executive Maintenance Inc., and Executive Maintenance Industries Inc. The Levys attempted to evade the payment of the taxes by operating a business for a relatively short period of time before forming a successor business which would also fail to comply with the tax laws of this State. The Levys were sentenced in December 2004 to perform community service, serve probation, and to repay almost \$400,000 in taxes, penalties and interest.

- Two hundred two (202) complaints alleging tax evasion were evaluated from July through September 2004 in the Office of Criminal Investigation.
- During the same period, one hundred twenty-one (121) charges were filed in court and twenty-seven (27) arrests were made in twenty-nine (29) cases involving violations of the Cigarette Tax Act. 17,799.7 cartons of untaxed cigarettes, having a total value of \$1,107,497.33, and including 340.4 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

Corporation Business Tax Credit Unions — This article replaces the tax brief that appeared in this issue when it was published on March 21, 2005.

Additional information reviewed pertaining to the Federal tax treatment of credit unions prompted the Division to reconsider its position on the tax status of credit unions in New Jersey.

Federal credit unions organized and operated in accordance with the Federal Credit Union Act, as amended, are instrumentalities of the United States and, therefore, exempt under I.R.C. section 501(c)(1). They are included in a group exemption letter that is issued to the National Credit Union Administration.

State-chartered credit unions and other mutual financial organizations may file applications for recognition of exemption from Federal income tax under I.R.C. section 501(c)(14). An organization that wishes to obtain recognition of exemption as a credit union without capital stock, organized and operated under state law for mutual purposes and without profit, must apply for the exemption by supplying facts, information, and attachments that demonstrate it meets the qualifying criteria to the Internal Revenue Service. For

Federal income tax purposes, state-chartered credit unions receive nonprofit status and are thereby exempt from income tax.

In New Jersey, financial business corporations must file a Corporation Business Tax Return for Banking and Financial Corporations (Form BFC-1) pursuant to N.J.A.C. 18:7-1.16(g). Currently, credit unions organized under the laws of New Jersey are not included in the definition of a financial business corporation. N.J.A.C. 18:7-1.16(c)7.

Under the New Jersey Corporation Business Tax Act, (54:10A-1.1 et seq.), “nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under provisions of...Title 17...” are exempt from corporation business tax. N.J.S.A. 54:10A-3(e). Organizations meeting the criteria of the statutory and regulatory references above would be exempt. Credit unions organized pursuant to “The Credit Union Act of 1984,” which falls under Title 17 of the New Jersey Statutes, are eligible for exemption from New Jersey corporation business tax. It is also a matter of policy that New Jersey exempts credit unions due to their status as nonprofit corporations, associations, or organizations which are eligible for Federal exemption.

Examples Under Refund Regulation — The Division offered some clarifying examples regarding the operation of the corporation business tax refund regulation, N.J.A.C. 18:7-13.8(a). Under that rule the four-year period for filing a claim for refund commences to run from the later of the payment of the tax

Current Amnesty Programs

California is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

CA Feb 1 – Mar 31 www.taxes.ca.gov/index.html

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for the taxable year or from the filing of the final return for the taxable year. If a return is filed and payment is made before the original due date of the return, the original due date of the return is deemed the payment date.

Example: The original due date of the tax return is April 15, 1994. The due date was extended until October 15, 1994. The tax was paid in full on September 30, 1994, with the final return. A refund claim was filed on October 13, 1998. The claim is late because the refund claim was filed after the four-year period, which began on September 30, 1994, when the tax was paid.

Example: A taxpayer pays 90% of its corporation business tax liability with its tentative return (Form CBT-200-T) and requests an extension of time to file its final return. Two weeks before the extended due date for the return, taxpayer files its final return (Form CBT-100) and pays the additional 10% tax plus interest. In this situation the four-year period for filing a claim for refund is measured from the date of filing the final return (Form CBT-100). If the taxpayer files a refund claim for the full tax amount paid before four years from the date the final return was filed on extension, the claim is timely. However, a claim filed after four years from the date the final return was filed, but before four years from the extended due date, is untimely. In the case of final returns filed after the original due date, the four-year period for filing a claim for refund is measured from the date of filing the final return (Form CBT-100), not from the extended due date.

Immune Activity: Contract Carrier

— A foreign corporation whose income is immune from tax must complete Schedule N, Nexus-Immune Activity Declaration, and remit the alternative minimum assessment or the minimum tax with Form CBT-100.

Pub. L. 86-272, 15 U.S.C. §381-384(1959) restricts the power of the states to tax net income derived from sources within the state from interstate commerce if the “only business activity within such state by or on behalf of such person” is the solicitation of orders for sales of tangible personal property where the orders are sent outside of the state for approval or rejection and are filled by shipment or delivery from a point outside of the state. As long as this activity is not combined with additional activities or contacts that will subject a corporation to tax based on or measured by income, the income may be immune from New Jersey corporation business tax.

An international shipping company that excludes income from Federal taxation pursuant to I.R.C. Section 883 and is therefore not required to file Federal income tax returns may also exclude income from New Jersey corporation business tax. However, international shipping companies are required to file a corporation business tax return (Form CBT-100) and pay the minimum tax pursuant to N.J.S.A. 54:10A-4(k)(9), or the alternative minimum assessment, whichever is greater. N.J.S.A. 54:10A-5.

A contract carrier providing trucking services within New Jersey is considered to be deriving receipts from sources within this State and is, therefore, subject to New

Jersey corporation business tax pursuant to N.J.S.A. 54:10A-2. N.J.A.C. 18:7-8.10(c)4iii provides guidance on how to allocate inland trucking receipts.

Minimum Tax and Affiliated or Controlled Groups

— Under N.J.S.A. 54:10A-5(e), any taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, is subject to a \$2,000 minimum tax. Each member is subject to the minimum tax during that privilege period. See also N.J.A.C. 18:7-3.4(g).

Affiliated groups cannot elect to file on a consolidated basis for New Jersey purposes. A corporation which is included in a consolidated Federal income tax return must complete all schedules on its own separate basis without consolidation with any other corporation. Such corporation must also attach a copy of the Affiliations Schedule, Form 851, which it filed with Form 1120 for Federal income tax purposes. A schedule of payroll per member must also be submitted with the corporation business tax return.

If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are also required to file New Jersey returns which shall reflect the minimum tax.

Nonprofit Corporations: Residential Homeowners' Association

— Nonprofit corporations, associations, and established organizations may be exempt from corporation



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business tax in New Jersey under N.J.S.A. 54:10-3(e). In addition, other statutes may contain tax exemption provisions specifically applicable to nonprofit housing organizations as well. (e.g., N.J.S.A. 55:16-1 et seq., N.J.S.A. 40A:20-19).

Residential homeowners' associations are normally exempt from corporation business tax under N.J.S.A. 54:10A-3(e). Generally, a condominium association is exempt as long as the units are being used for residential purposes. On the other hand, the exemption does not apply to an association of unit owners if the units are used for business purposes and not for residential purposes.

In order to be considered exempt from corporation business tax, it is recommended that a nonprofit corporation obtain an exemption opinion from the Regulatory Services Branch of the Division of Taxation. In making the request, the applicant organization must submit:

1. An affidavit, signed by an officer of the corporation, indicating that the corporation is:
 - a. A nonprofit corporation that is not operated to make a profit, without regard as to whether there is profit or loss for a particular year;
 - b. Organized without capital stock;
 - c. Incorporated under the provisions of Titles 15, 15A, 16, or 17 of the Revised Statutes of New Jersey or under a special charter or under any similar general or special law of this or any other state; and

- d. Not conducted for the pecuniary profit or benefit of any private shareholder or individual;
2. A copy of the organization's Certificate of Incorporation; and
3. A copy of the organization's bylaws.

Exemption opinion requests may be directed to:

NEW JERSEY DIVISION OF TAXATION
 REGULATORY SERVICES BRANCH
 PO Box 269
 TRENTON, NEW JERSEY 08695-0269

Unless the entity's operations or activities cause it to be considered a profit-making corporation, no further corporation business tax returns or Federal returns are required to be filed with the Division of Taxation. The Division of Taxation does not require the filing of a copy of Federal Form 990. Questions regarding the exemption letter process may be directed to 609-292-5994.

A nonprofit organization properly exempted from filing corporation business tax returns may have other filing requirements with other agencies of the State of New Jersey including, for example, the following:

1. Responsibilities under the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq. and N.J.A.C. 13:48; or
2. Responsibility to file Annual Reports, N.J.S.A. 15A:4-5.

Receipts Fraction: Dock Sales Outside New Jersey — The Division responded to a question regarding "dock sales" outside New Jersey. Specifically, this inquiry related to the effect on New Jersey apportionment where the buyer, either directly or via a common carrier that the buyer engaged, picks up inventory from the seller at a site outside New Jersey and then transports the goods into New Jersey. This is the inverse

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Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 200 or more 2003 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2004 New Jersey resident income tax returns electronically. More information is available at:

- [Frequently Asked Questions](#)
- [Electronic Filing Handbook for EROs](#)
- [NJ WebFile](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)
- [List of E-File Approved Software Vendors](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [email us](mailto:taxation@tax.state.nj.us) at taxation@tax.state.nj.us.

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of the New Jersey dock sale rule where goods are shipped to a non-New Jersey customer and possession is transferred in New Jersey resulting in receipts allocable to New Jersey. N.J.A.C. 18:7-8.8(a)1ii.

The Division stated that if a purchaser took direct receipt of the property outside New Jersey in its own vehicles or through a common carrier agent that it had engaged, such sale would be considered a non-New Jersey sale. Thus, the position of the Division is that the inverse of the fact pattern referenced in the rule cited above results in a non-New Jersey sale.

Trade Show Nexus — The nature and frequency of a foreign corporation's activities in this State are determining factors in assessing whether a corporation is "doing business" in New Jersey under N.J.A.C. 18:7-1.9(b). The number of employees in New Jersey is another determining factor.

A state's jurisdiction to impose a tax based on net income is subject to Federal statutory limitations of Pub. L. 86-272, 15 U.S.C. §§361-384(1959), which restricts the power of the states to tax net income derived from sources within the state from interstate commerce if the "only business activity within such state by or on behalf of such person" is the solicitation of orders for sales of tangible personal property where the orders are sent outside of the state for approval or rejection and are filled by shipment or delivery from a point outside of the state.

While the solicitation of business is not enough to establish nexus for New Jersey corporation business tax purposes under Pub. L. 86-272, the

corporation may still be subject to a tax on its gross profits or gross receipts earned in New Jersey based on New Jersey's Alternative Minimum Assessment ("AMA"). Corporations are not liable for the AMA if they have New Jersey gross receipts of less than \$2.36 million or New Jersey gross profits of less than \$1.18 million. If not liable for the AMA, the taxpayer must file a return and pay the minimum tax. If liable for AMA, either the alternative minimum tax or the minimum tax of \$500 (\$2,000 for members of affiliated or controlled groups) must be paid, whichever is greater.

The presence of employees at trade shows in New Jersey for the purpose of soliciting or generating business establishes physical presence within the State and creates nexus and triggers tax obligations. If the trade show activities are limited solely to: (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order, and involve maintaining a display at a single location for less than two weeks during the tax year, a foreign corporation will not be subject to corporation business tax based on or measured by income. N.J.A.C. 18:7-1.9(d) and 18:7-1.9(d)3v; N.J.A.C. 18:7-1.9(d)2ix.

Gross Income Tax

Military Stipend — A taxpayer recently inquired about the gross income tax consequence of a military stipend paid by an employer to an employee.

The IRS has ruled in Rev. Rul. 69-136 that payments made by employers to former employees who are actively serving in either the Armed Forces of the United States or the

National Guard are not subject to FICA, FUTA, and income tax withholding as they are not wages for services performed.

More specifically, Federal law provides that payments made by an employer to employees temporarily serving in a State National Guard that are equal to the difference between their normal wages and the amounts received from the state for their services are wages for the purpose of withholding. But where the employment relationship was terminated when the employee enlisted or was called for active military service with the U.S. government or State National Guard, the wage differential payments made by the employer are not wages subject to withholding.

Therefore, if the payments made to employees by the employer for serving in a military combat zone are not considered wages for services performed during employment with the company and they are not subject to Federal income tax withholding, they are not subject to New Jersey gross income tax withholding.

Motor Fuels Tax

Racing Gasoline — Gasoline is defined by the regulations included in the Administrative Code at N.J.A.C. 18:18-1.1: " 'Gasoline' means any liquid or gaseous substance commonly or commercially known or sold as gasoline regardless of its classification or use." Therefore, under the New Jersey Motor Fuels Tax Act, racing gasoline would be subject to the motor fuels tax. However, there is a provision that allows the taxpayer to apply for a refund when the fuel is used for a specific purpose as set



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forth in the Motor Fuels Tax Act at N.J.S.A. 54:39-66(i): “Any person: (1) Who shall use any fuels as herein defined for any of the following purposes: ... (i) Such highway motor vehicles as are operated exclusively on private property...”

While racing gasoline is subject to motor fuels tax, a refund claim can be filed by the user under N.J.S.A. 54:39-66(i).

Sales and Use Tax

Early Termination Fee: Wireless Service — The New Jersey Sales and Use Tax Act imposes tax on telecommunications services charged to a service address in this State, including all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-3(f). Thus, most components of a cellular telephone bill are subject to the 6% sales tax. However, an early termination fee imposed when a customer cancels service with the carrier prior to the end of the contract term is similar to a penalty or a charge for damages, rather than for any taxable goods or services. Thus, the early termination fee imposed in this case is not subject to New Jersey sales tax.

Restocking and Cut Fees — The Division responded to a question regarding the application of the New Jersey Sales and Use Tax Act to restocking and cut fees.

The vendor imposes a “restocking fee” if a customer cancels an order. A fee imposed on “restocking” is not subject to sales tax since there is no “sale” because the item is returned. The restocking fee is not considered an expense of any taxable transaction and by itself is not subject to sales tax. N.J.S.A. 54:32B-3(a).

The vendor imposes a “cut fee” if a customer requires a special size of the goods. Cut fees are inseparable from the underlying product. N.J.S.A. 54:32B-2(d). Thus, if the merchandise is a taxable item, the cut fee will be subject to tax since it is part of the taxable receipt. N.J.S.A. 54:32B-3(a). Conversely, if the underlying item is an exempt item (such as the sale of clothing), the cut fee is exempt since the underlying item is not subject to tax. N.J.S.A. 54:32B-8.4. □

In Our Courts

Local Property Tax

Denial of Tax Exemption – *Essex Properties Urban Renewal Associates, Inc. v. City of Newark*, decided September 4, 2002; Tax Court of New Jersey.

Plaintiff (Essex Properties Urban Renewal Associates, Inc.) requested property tax exemption pursuant to N.J.S.A. 54:4-3.6. Essex Properties is incorporated as a nonprofit

organization in New Jersey and owns the subject property which it administers as a 24-unit apartment facility for developmentally and/or physically disabled persons. A property tax assessment of \$278,700 was imposed on the subject property for tax year 2000.

In 1999 plaintiff applied for property tax exemption with the assessor of Newark. Upon the assessor’s denial of the exemption request, taxpayer appealed to the Essex County Board of Taxation. The county board of taxation affirmed the assessment without prejudice. Essex Properties appealed to Tax Court.

To qualify for exemption under N.J.S.A. 54:4-3.6, a taxpayer must satisfy the following conditions: (1) must be organized exclusively for a tax-exempt purpose; (2) property must be actually and exclusively used for the tax-exempt purpose; and (3) use and operation

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of the property must not be conducted for profit. Both parties stipulated to conditions (1) (organization for an exempt purpose) and (3) (non-profit operation). The sole issue before the Court is whether Essex Properties' activity qualifies as an actual and exclusive use for an exempt charitable purpose within the meaning of the statute.

The burden of proving tax-exempt status is upon the party claiming exemption. In this case, plaintiff fails to prove that its activity qualifies as an actual and exclusive use for a charitable purpose within the exempt purposes set forth under N.J.S.A. 54:4-3.6. Depending upon the specific facts and circumstances of each case, the courts have granted property tax exemption to certain charitable organizations. Plaintiff relies on *Salt and Light Co., Inc. v. Mount Holly Twp.*, 15 NJ Tax 274 (Tax 1995), aff'd, 16 NJ Tax 40 (App. Div. 1996), cert. denied, 148 NJ 458, 690 A.2d 606 (1997) in support of its claim for tax exemption. *Salt and Light* provided temporary housing and counseling services to homeless persons. They operated 24 residences in Mount Holly Township, which were purchased and renovated using funds from HUD, Federal home loan grants, government grants and funds, including charitable contributions.

Two-thirds of its residents received public assistance, which included some form of government welfare, distributed directly to *Salt and Light*. To the extent they were able, the remaining residents paid up to 30 percent of their income as rent. *Salt and Light* showed that its average daily cost to support the homeless was less than it would cost the government to do so. Rental payments were below market and no individual was evicted solely because of an inability to pay. Under these facts, the Tax Court held that although *Salt and Light* received government subsidies, it qualified for tax exemption in its use of its facilities to provide temporary shelter and services to the homeless.

Essex Properties argues that, like *Salt and Light*, they are entitled to tax exemption because they are a nonprofit corporation which provides housing and counseling to low-income, developmentally and/or physically disabled persons, and thereby relieves the government from doing so. However, unlike *Salt and Light*, Essex Properties failed to show evidence that (1) their rents were below market; (2) individuals not eligible for aid would be admitted into the facility; (3) plaintiff evicts or does not evict tenants who are unable to pay rent left uncovered by HUD; and (4) plaintiff would admit or retain a disabled person who could pay no rent at all.

Essex Properties also argues that, in addition to housing, they provide on-site counseling and support similar to *Salt and Light*. While *Salt and Light* provided case managers who offered regular sessions, Healthcare Foundation and HUD paid for Essex Properties' social worker at no cost to plaintiff. This Court found that plaintiff's counseling service is not so unique as to warrant tax exemption. The Court also found that plaintiff's counseling and support service is incidental to plaintiff's main function of renting apartments.

As per *Presbyterian Homes*, 55 NJ at 286, 261 A.2d 143 "nonprofit status cannot be equated with charitableness." It is only one factor to consider when determining if property is being used for charitable purposes. Accordingly, plaintiff's IRS nonprofit charitable organization 501(c)(3) designation is not, in and of itself, enough to qualify plaintiff for property tax exemption under N.J.S.A. 54:4-3.6.

The Court stated in *Salt and Light* that "A truly charitable use is not necessarily vitiated by the receipt of government support on behalf of beneficiaries...so long as the charitable entity to some extent relieves a burden on government." Plaintiff fails to demonstrate that its operation of the subject property relieves the government of any burden. In *Southern Jersey Family Medical Centers, Inc. v. City of Pleasantville*, 351 NJ Super. 262, 798 A.2d 120 (App. Div. 2002), plaintiff's policy was to "treat anyone," and charged patients without insurance according to a sliding fee scale based on each patient's income. No person was denied

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service solely because of inability to pay. Southern Jersey received funds for services rendered (Medicaid payments) and funds received from Federal grants. The Court found that the facility earned the former by providing medical services to indigent patients and “receipt of these funds...does not impact upon its...exclusive operation for charitable purposes.”

Contrary to *Southern Jersey, supra*, plaintiff received funds from HUD to construct the subject property and continues to receive Federally subsidized rent income. These amounts are rents paid by HUD for plaintiff’s tenants, all of whom qualified for assistance. These payments are not earned for services rendered, such as healthcare or medical services, but simply rental payments. There is no evidence that plaintiff’s rental rates are below market, that plaintiff serves disabled persons who are not supported by government subsidies, or if plaintiff subsidizes tenants who are unable to pay, thus relieving the government of this burden. If a tenant was evicted for financial reasons, that person would become a public charge, and the State would be obligated to provide care.

This Court finds that plaintiff’s case is analogous to *1711 Third Avenue, Inc. v. Asbury Park*, 16 NJ Tax 174 (Tax 1996). *Third Avenue*, a non-profit corporation, owned property which housed tenants suffering from mental illness. The property was funded in large part by HUD’s Section 811 supportive housing program. The tenants were unemployed and derived their income from social security payments. The tenants

made rental payments equal to 30 percent of their income. Management provided counseling and other services to the tenants. The Court held that *Third Avenue* failed to offer the proper proofs to bring itself clearly within the exempting statute of N.J.S.A. 54:4-3.6.

The Court held that the following can be used as evidence in determining a plaintiff’s exemption claim: (1) financial statements of plaintiff and its managing company, (2) detailed explanation of plaintiff’s and management company’s use of revenues, including amounts paid for salaries, (3) proof that plaintiff charges below market rents, (4) explanation of financial arrangements between plaintiff and management company, (5) breakdown of plaintiff’s and management company’s sources of revenues, (6) whether plaintiff competes with for-profit entities providing housing, and (7) whether plaintiff evicts tenants who are unable to pay rent. *St. Luke’s Village, Inc. v. Peapack & Gladstone Borough*, 11 NJ Tax 76 (Tax 1990) held that providing affordable housing to low-income persons was not a charitable purpose where there was security for rental payments and residents were required to leave if unable to pay for operating expenses. Plaintiff was unable to demonstrate that the subject property is used for charitable purposes within the meaning of N.J.S.A. 54:4-3.6. Plaintiff failed to meet its burden of proof and bring itself clearly within the meaning of the exempting statute. Without such proof in the record, the Court can only conclude that plaintiff is subject to property tax.

Gross Income Tax Sale, Exchange, or Other Disposition of Property – *Diana King v. Director, Division of Taxation*, decided April 16, 2004; Tax Court No. 005337-2002.

In April 1991 plaintiff, Ms. Diana King (King), entered into a loan agreement with Amiro Fiorintino Associates, Inc. (AFA). The loan was evidenced by a revolving credit note. The principal shareholder of AFA was the guarantor of the loan. The loan was also secured pursuant to a security agreement granting King a security interest and lien in certain AFA collateral. When King recorded her security interest pursuant to the Uniform Commercial Code (UCC), King’s loan was subordinated to a bank loan. In 1992 and 1995 the loan agreement was amended. Essentially, Ventura Entertainment Group (VEG) was an additional guarantor of AFA’s obligation and the loan was secured pursuant to a security agreement that granted King a security interest in 100,000 shares of VEG.

In 1996 AFA filed Chapter 11 bankruptcy. King filed a proof of claim as a secured creditor in the amount of \$568,857.35 consisting of the \$450,000 principal, \$106,090.65 interest, and \$12,766.70 arrears. As a junior secured creditor, King consented to the sale of AFA’s assets conditioned upon her receipt of \$120,000 and that she be released from claims against the debtor. King’s consent was evidenced on a bankruptcy document titled “Response of Diana King to the Debtor’s Application for an Order Approving a Purchase Agreement and Authorizing a Sale of Assets.”

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Thereafter, King terminated her UCC filings and the bankruptcy proceeding was later dismissed.

On her 1996 Form NJ-1040, King reported a \$330,000 loss (\$450,000 less \$120,000) and \$32,973 of attorney fees as a \$362,973 nonbusiness bad debt deduction. Thereafter, she filed an amended return reclassifying the \$362,973 as a long-term capital loss, claiming that it was an investment loss on the disposition of a security. On both her NJ-1040 return and amended return, King offset this loss against other gains included under N.J.S.A. 54A:5-1c disposition of property category. However, the Division disallowed the deduction, claiming that it was a nondeductible, nonbusiness bad debt.

N.J.S.A. 54A:5-1c includes net gains, net losses, and net income derived from the sale, exchange, or other disposition of property. At issue is whether King engaged in a sale, exchange, or disposition of property. The Court found that King settled her claim for a reduced amount by giving up her right to sue on the note and that she did not sell or transfer the note evidencing the debt or any other security. Also, the Court noted that King presented no evidence that she exchanged the note. Citing *Vinnick and Walsh*, the Court upheld the Division's assessment.

Sales and Use Tax

Wrapping Supplies Exemption – *Quest Diagnostics, Inc. v. Director, Division of Taxation*, decided September 9, 2004; Tax Court No. 005140-2002.

Plaintiff (Quest) operates a laboratory that performs and provides test

results on human blood and other bodily fluids. Initially, Quest purchases vacutainers or similar devices, which are test tubes used to collect specimens, that are empty except that they contain chemical anticoagulants or clot activators. The vacutainers are shipped to Quest in sealed packages. Quest provides these vacutainers at no charge to physicians or to facilities operated by Quest. Then, Quest collects them from the physician's office when specimens are filled for testing and delivers them to the Quest laboratory. Unused vacutainers can be returned to Quest in their original packaging. Quest's competitors also provide physicians with the same or similar vacutainers and none of the vacutainers are identifiable to indicate whether they were provided by Quest or a competitor. After Quest completes testing, it destroys the used vacutainers and invoices the patient or the insurance company.

At issue is whether Quest's purchases of vacutainers qualify for an exemption from the Sales and Use Tax Act. In general, N.J.S.A. 54:32B-8.15 (8.15) provides an exemption for the sales or use of wrapping supplies including cartons, nonreturnable containers, etc., and all other wrapping supplies that are used incidentally in the delivery of personal property.

The Court determined that whether the vacutainers were wrapping supplies and whether their use was incidental to the delivery of personal property must be determined based upon Quest's use of the vacutainers and not the physician's later use of collecting specimens and their return to the Quest laboratory for testing and destruction. Under the statutory definition of "use," the

Court concluded that both Quest's purchase of the vacutainers and its delivery to physicians was a "use" of the product. First, the Court found that the vacutainers qualified as containers. In order to qualify for the 8.15 exemption, the statute specifically requires that containers be nonreturnable. The Court determined that Quest's sole purpose in providing vacutainers to physicians was to encourage physicians to return vacutainers containing specimens for testing purposes. Therefore, the Court held that the vacutainers were returnable containers and did not qualify for the 8.15 exemption. Additionally, the Court reasoned that as containers the vacutainers could not also qualify under the category of "all other wrapping supplies" because the statutory nonreturnable container requirement would be meaningless if a returnable container could qualify under another category.

The Court proceeded to discuss whether the vacutainers would have qualified for the "incidental to the delivery of personal property" requirement. The Court found that providing empty vacutainers, except for chemicals, to physicians was not a use that was "incidental to the delivery of personal property" because Quest did not use the vacutainers to deliver personal property. Only the physicians placed specimens, personal property, into the vacutainers for delivery to plaintiff. The Court opined that Quest's delivery of the vacutainers to the physicians was the use that determined the issue of taxability and that the physician's use of placing specimens in them and returning them to Quest is a separate,

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independent, second use of the container that could not be imputed to Quest. Additionally, the Court noted that the physician's use could not be attributable to Quest because Quest-purchased vacutainers may be returned to Quest or a competitor and likewise a competitor-purchased vacutainer may be returned to Quest or the competitor. Therefore, the physician's use of a Quest vacutainer may not be as a facilitator for Quest. Finally, the Court concluded that the statute refers to wrapping supplies used to deliver personal property to a third party and not to oneself. The Court found that the facts indicated that Quest used vacutainers to deliver personal property to itself regardless of whether an independent physician or Quest's facilities used the vacutainers to collect specimens and return them to Quest. □

In Our Legislature

Gross Income Tax

Estimated Tax on Nonresidents' Sale of Real Property — P.L. 2005, c.20, enacted January 19, 2005, and applied retroactively to August 1, 2004, clarified that nonresidents must pay a minimum estimated gross income tax of 2% of the consideration paid on their sale of real property in New Jersey.

Local Property Tax

Changes in Historic Site Property Tax Exemption — P.L. 2004, c.183, enacted on December 22, 2004, and effective immediately, revised the criteria for designation as an "historic site" for purposes of property tax exemption.

Miscellaneous

Local Tax Changes — P.L. 2004, c.181, enacted December 22, 2004, and retroactive in application to September 21, 1999, repeals the December 31, 2004, expiration of certain municipalities' authority to impose payroll taxes.

Realty Transfer Fee

Revisions — P.L. 2005, c.19, enacted January 19, 2005, effective February 1, 2005, and applicable to transfers of real property occurring on or after that date, made various changes in the statute imposing a 1% transfer fee on the buyer of real property purchased for more than \$1 million. It limits the fee to transfers of property that is classified as Class 2 residential; or property that includes both Class 3A farm property and a structure suitable for residential use, as well as any other real property transferred to the same grantee in conjunction with that transfer; or property that constitutes a "cooperative unit" within the meaning of N.J.S.A. 46:8D-3. It also exempts transfers to charitable organizations that are exempt from Federal income tax pursuant to 26 U.S.C.A. §501(c)(3). □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#)

[2005](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2004](#)

[2005](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$20,000 or more.

[2004](#)

[2005](#) □

from the director's desk

Tax season is well underway, so if you haven't filed your 2004 New Jersey income tax return yet, consider using one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ ELF — and enjoy the simplicity and security of electronic filing. As of March 15, 2005, just under 1 million 2004 New Jersey income tax returns have been filed electronically. That's a 31% increase over the number of electronically filed returns at this time last year.

Paperless filing is the fastest and most accurate way to file your return because once you enter your information all the necessary calculations are done for you. With NJ FastFile you also spend less time waiting for your refund because electronic returns can be processed more quickly. And, only taxpayers who file electronically can have their refunds deposited directly into their bank account. Taxpayers who owe State income taxes for 2004 can file now and wait until April 15, 2005, to pay.

New Jersey now requires all tax practitioners who prepared or filed 200 or more 2003 New Jersey income tax resident returns to file their clients' 2004 returns electronically using NJ WebFile, NJ TeleFile, or NJ ELF. Consequently, many New Jersey residents who have their returns prepared by a tax practitioner are experiencing the benefits of electronic filing: faster refunds, direct deposit, more accurate processing, and greater security of sensitive information.

For more information about any of the NJ FastFile options, visit www.njfastfile.com or call 1-800-323-4400. If you are looking for an easier way to file your return, or just want to get your refund faster, make the switch from paper to NJ FastFile. Put your pencils and calculators away and call or log on today!

Robert K. Thompson