

New Jersey State Tax News

Vol. 30, No. 3 – Fall 2001

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Check, Please?!*

It happens every July, and continues into September. Many New Jersey residents who receive a check under one or more of the State's property tax relief programs are uncertain as to what that check is for. Beginning on July 15 with the mailing of the Property Tax Reimbursement checks, continuing into August with the distribution of more than one million Homestead Rebate checks on July 31, and stretching into September, when the NJ SAVER rebates are mailed, the Division of Taxation is inundated with inquiries.

This year, the rebate season was impacted by a number of factors which added to the uncertainty:

- Legislation which increased the amounts of both the NJ SAVER rebates and the maximum Homestead Rebates.
- An extensive newspaper and radio advertising campaign for the NJ SAVER Rebate Program.
- The mailing of notices from the Internal Revenue Service heralding the arrival of "Immediate Tax Relief."
- The mailing of the Federal Advance Payment checks.

The result? An increase in phone calls and correspondence unlike anything the Division has ever seen before.

During the 2000 rebate season the Division received 40,472 phone calls between July 1, 2000, and August 31, 2000, regarding the Homestead and NJ SAVER Rebate Programs. During that same period in 2001, we received 115,083 phone calls regarding these two programs, representing an increase of 184%. Total e-mails increased from 3,132 during July and August 2000, to 16,040 during the same period in 2001. These numbers represent an increase in total e-mails received of 412%.

The Division recognizes the complexity of the property tax relief programs and knows that that complexity is compounded by the fact

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Important Phone Numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info ..	1-800-323-4400
.....	609-826-4400
NJ SAVER Hotline	609-826-4282
Property Tax Reimbursement Hotline	1-800-882-6597
Speaker Programs.....	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax.....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office.....	609-292-5185
Inheritance Tax.....	609-292-5033
Local Property Tax.....	609-292-7221
Motor Fuels Tax Refunds.....	609-292-7018
Public Utility Tax	609-633-2576

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that each program has a different set of eligibility requirements, and the fact that the checks for all three programs are mailed within a 6-week period. Every effort is made to provide information about these programs that is clear and understandable, but we know that there will always be questions and problems. When you or your clients find it necessary to contact us about these programs by phone, please be sure that you have all the relevant information on hand. If contact is being made via e-mail or snail mail, the correspondence should, at the very least, include name, address, social security number, and a description of the problem. And finally, please be patient. We will respond, but response times vary, depending upon the time of year and the volume of correspondence we receive. □

Federal Income Tax Rebates

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), approved by Congress and signed by President Bush, directs the Treasury to send checks to most taxpayers this year, giving them an advance payment of a 2001 tax credit.

The Federal advance payment gives taxpayers immediate benefit of the retroactive tax rate reduction enacted by the EGTRRA for tax year 2001. The amount a taxpayer receives is based on their tax liability for tax year 2000. The IRS has stated that the advance payment is "a reduction of tax and is not taxable on the federal tax return."

For New Jersey gross income tax purposes the Federal advance payment will be treated as a Federal tax refund. As such, it is not considered taxable income and should not be reported on the taxpayer's 2001 gross income tax return. Taxpayers can find this information specifically stated in the instructions to the New Jersey gross income tax return, which enumerate "Federal advance payments" as exempt income. □

Qualified Tuition Plans

HR-1836, otherwise known as the Economic Growth and Tax Relief Reconciliation Act of 2001, which was signed by President Bush on June 7, 2001, changed the income tax treatment of Qualified Tuition Plans established under section 529 of the Internal Revenue Code.

For Federal income tax purposes, prior to the Economic Growth and Tax Relief Reconciliation Act of 2001, earnings in Qualified Tuition Plans were tax-deferred and then taxable (usually to the student) when distributions were used to pay higher education expenses. The 2001 Tax Act, however, provides that, beginning in tax year 2002, the earnings from a Qualified Tuition Plan will be tax-free if used to pay qualified education expenses. The exclusion from gross income is also extended to distributions from qualified tuition programs established and maintained by an educational entity other than a State (such as a private institution) for distributions made in taxable years after December 31, 2003. Also, in 2002, taxpayers are allowed to roll over

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

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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credits or other amounts for a designated beneficiary from one Qualified Tuition Plan to another. Taxpayers are only allowed one rollover per 12-month period, and there is a lifetime limit of three rollovers.

For New Jersey income tax purposes, a qualified state tuition program is defined as one established under section 529 of the Internal Revenue Code. Presently, N.J.S.A. 54A:6-25 allows the earnings accumulating in a qualified state tuition program account to be excluded from New Jersey gross income. Upon distribution, any amounts that are used for higher education expenses (as defined under section 529 of the Internal Revenue Code) are then excluded from the taxpayer's income. A rollover from one account to another is considered a qualified distribution within the meaning of N.J.S.A. 54A:6-25 if it meets the requirement in section 529(c)(3)(C)(i) of the Internal Revenue Code. The amendments to Federal law

regarding income tax treatment of distributions and earnings from a Qualified Tuition Plan correspond to the current treatment for New Jersey gross income tax purposes under N.J.S.A. 54A:6-25. The Economic Growth and Tax Relief Reconciliation Act of 2001, therefore, has no effect on the New Jersey income tax treatment of distributions and earnings from a Qualified Tuition Plan. □

Refund Claims for Paid Assessments

On September 14, 1998, former Governor Whitman signed Assembly Bill A-1730 into law. One of the provisions of this Bill extends the time a taxpayer can file a refund claim for payment of an additional tax assessment levied by the Division of Taxation for nine specified taxes. This provision is applicable to tax periods beginning on or after January 1, 1999. To qualify and file for a refund under the provisions of this legislation, a taxpayer must meet the following requirements:

2. The additional tax assessment must be for tax periods beginning on or after January 1, 1999.
3. No protest or appeal was filed with the Division of Taxation or the Tax Court against the additional tax assessed.
4. The additional tax assessment, including any penalty and interest charges associated with the tax, must have been paid within one year after the date of the statute of limitations for protesting the assessment expires.
5. The refund claim must be filed on Form A-1730 within 450 days after the date the protest limitations period expires.
6. All information required on refund claim Form A-1730 must be attached when the claim is submitted. Incomplete claim forms will be returned. A statement listing the facts or law for disputing the additional tax assessment with all supporting documentation must be attached.

Refund Claim Requirements

1. The additional tax assessment must be for one of the following taxes:

- Corporation Business Tax
- Corporation Income Tax
- Estate Tax
- Gross Income Tax
- Petroleum Products Gross Receipts Tax
- Sales and Use Tax
- Savings Institution Tax
- Tobacco Products Wholesale Sales and Use Tax
- Transfer Inheritance Tax

Important Note

The following assessments are not additional tax assessments and therefore are not eligible for a refund under the provisions of N.J.S.A.54:49-14.b.

- Jeopardy Assessments
- Delinquency Assessments
- Estimated or Arbitrary Assessments
- Penalty and Interest Assessments
- Self-Assessed Tax
- Costs of Collection

Refund claim Form A-1730 and

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Interest 9%

The interest rate assessed on amounts due for the period October 1, 2001 – December 31, 2001 will be 9%.

The assessed interest rate history for the last three years is listed below.

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

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instructions can be requested in writing from the Division of Taxation, Audit Claims Processing, PO Box 275, Trenton, New Jersey 08695-0275, or by telephoning 609-292-7578. □

Tax Amnesty in Louisiana, Maryland

Louisiana's Tax Amnesty Program began September 1, 2001, and will continue through October 30, 2001. The program gives qualified taxpayers the opportunity to pay delinquent taxes without having to pay interest or penalty. Amnesty applies to all taxes administered by the Louisiana Department of Revenue, and will be granted for any taxable period prior to July 1, 2001, provided the taxpayer satisfies all the amnesty conditions. Taxpayers must apply for amnesty in writing by submitting a Louisiana Tax Amnesty Application, Form R-20083. For more information, or to obtain Form R-20083, visit the Louisiana Department of Revenue Web site (www.rev.state.la.us), call the Tax Amnesty Hotline (1-800-662-0546 or 225-925-7456) 8:00 a.m. – 4:30 p.m., Monday through Friday. Taxpayers can also write to the Louisiana Department of Revenue, PO Box 144, Baton Rouge, LA 70821-0144.

Maryland's Tax Amnesty Program also began September 1, 2001, but ends October 31, 2001. Taxpayers who have failed to file returns or pay eligible tax liabilities due on or before December 31, 2000, can pay their back taxes and interest, and avoid civil or criminal penalties. The following taxes are eligible for Maryland Tax Amnesty:

- Employer Withholding Tax
- Corporate Income Tax
- Sales and Use Tax
- Admission and Amusement Tax

To obtain a Tax Amnesty application and tax forms online, visit Maryland's Web site at (www.marylandtaxes.com), or call 1-800-MD-TAXES or 410-260-7980. Requests for applications and forms can be sent by e-mail (amnesty@comp.state.md.us) or mailed to: Amnesty – Forms Request, Comptroller of Maryland, PO Box 1829, Annapolis, MD 21404-1829. □

Limousine Dealers and Repairers

The New Jersey Sales and Use Tax Act was recently amended to include an exemption for the sale of a limousine to a person licensed by the New Jersey Division of Motor Vehicles. A licensee must obtain a certificate of compliance from the municipality where the licensee resides. (N.J.S.A.48:16-17).

The sales and use tax exemption also applies to charges for repair services to limousines, including replacement parts. A "limousine" is defined as (1) a motor vehicle registered under the provisions of N.J.S.A. 39:3-19.5, or registered as a limousine under the laws of another state; and (2) used exclusively in the business of carrying passengers for hire to provide pre-arranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis, that is not conducted on a regular route and with a seating capacity of no more than 14 passengers, excluding the driver. See N.J.S.A. 54:32B-8.52.

For purposes of the exemption, a limousine does not include any taxicab, hotel or airport shuttle or bus, or bus used solely to transport children or teachers to and from school. It also does not include any vehicle owned and operated without charge by a business entity for its own purposes. In order to document the applicability of the exemption for the purchase of the limousine, the customer must provide a copy of the license to operate a limousine service and the vehicle must be registered as a limousine at the time of closing the sale transaction. An Exempt Use Certificate (ST-4) must also be provided to the motor vehicle dealer.

In order to document the applicability of the exemption for parts and repair service, the purchaser must complete an Exempt Use Certificate (ST-4), citing the limousine exemption. N.J.S.A. 54:32B-8.52. In addition, the motor vehicle must be registered as a limousine in New Jersey or another state. The service provider should confirm that the vehicle has "Limousine" license plates. □

LOCAL PROPERTY TAX Veteran Status

P.L. 2000, c.127 (approved September 21, 2000) provides that the New Jersey Department of Military and Veterans' Affairs shall determine the status of veterans in certain non-property tax related cases.

This Act provides that the Adjutant General of the Department of Military and Veterans' Affairs shall determine whether any person is to be considered a "veteran" or a "dis-

- Personal Income Tax

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abled veteran” under N.J.S.A. 11A:5-1 (for civil service preference), N.J.S.A. 18A:66-2.2 (for retirement allowance), N.J.S.A. 43:15A-6.1 (for retirement allowance), and N.J.S.A. 43:16A-11.7a (for military service credit). It also extends adjudication authority to the Adjutant General concerning the statutes listed above.

As introduced, this bill had also directed the Adjutant General of the Department of Military and Veterans’ Affairs to adjudicate appeals concerning whether a person is to be considered a “veteran” for the purpose of receiving a property tax deduction, or as having a “service-connected disability” for the purposes of receiving a property tax exemption. However, this provision was removed before the bill became law. Therefore, the appeal process for property tax deductions and exemptions re-

mains with the municipal assessor, county tax board, and various courts.

P.L. 2001, c.127 (approved June 28, 2001) extends certain veterans’ benefits, including the veterans’ property tax deduction, to certain participants in the Lebanon Crisis of 1958. See *Service Periods for Veterans’ Benefits*, below. □

Service Periods for Veterans’ Benefits

The Lebanon Crisis of 1958 has been added as a qualified war period for property tax benefits. On June 28, 2001, P.L. 2001, c.127 was approved, expanding certain veterans’ benefits to certain participants of the Lebanon Crisis of 1958. The start date for this period is July 1, 1958, and the end date is November 1, 1958. This mission carries with it the 14 days in the actual combat zone requirement as

described in the box below.

Haiti is not a qualified war period for veteran’s property tax deduction and exemption. In a recent *Veterans Guide* published by the New Jersey Department of Military and Veterans Affairs, Haiti was included in a listing of New Jersey War Dates. While recent legislation has been passed designating Haiti as a wartime service period for certain civil service matters, this legislation does not extend to or affect property tax benefits. The current wartime periods for property tax purposes, as specified in New Jersey statutes, are listed in the box below. □

Qualified War Periods for Property Tax Benefits	Start Date	End Date
Operation “Joint Guard” – Bosnia & Herzegovina*	December 20, 1996	Ongoing
Operation “Joint Endeavor” – Bosnia & Herzegovina*	November 20, 1995	December 20, 1996
Operation “Restore Hope” – Somalia*	December 5, 1992	March 31, 1994
Operation “Desert Shield/Desert Storm”*	August 2, 1990	Ongoing
Panama Peacekeeping Mission*	December 20, 1989	January 31, 1990
Grenada Peacekeeping Mission*	October 23, 1983	November 21, 1983
Lebanon Peacekeeping Mission*	September 26, 1982	December 1, 1987
Vietnam Conflict	December 31, 1960	May 7, 1975
Lebanon Crisis of 1958*	July 1, 1958	November 1, 1958
Korean Conflict	June 23, 1950	January 31, 1955
World War II	September 16, 1940	December 31, 1946
World War I	April 6, 1917	November 11, 1918

* Peacekeeping missions require a minimum of 14 days service in the actual combat zone except where service-incurred injury or disability occurs in the combat zone, then actual time served, though less than 14 days, is sufficient for purposes of property tax exemption or deduction. The 14-day requirement for Bosnia and Herzegovina may be met by service in one or both operations for 14 days continuously or in aggregate. For Bosnia and Herzegovina the combat zone also includes the airspace above those nations.

Tax Compliance of Bus Companies

The Division's Special Projects Unit recently joined forces with the New Jersey Motor Vehicle Services Bus Safety Inspection Unit. The results benefited both agencies and the public.

While buses were undergoing safety inspections by Motor Vehicle Services personnel, Taxation investigators were accessing the Division's mainframe computer system via remote hookup to determine if the bus company was registered with the Division of Taxation. Upon completion of the safety checks Motor Vehicle inspectors directed the bus drivers to a safe area to allow Taxation investigators time to complete their research.

For those bus companies that were either unregistered or noncompliant with New Jersey's Corporation Business Tax, calls were made to the bus company headquarters to determine the extent of the corporation's tax liability. Warrants of Execution-Jeopardy Assessment were then served upon those businesses found to have liability with New Jersey. Payment of the assessment was required before the bus was permitted to continue on its route.

As a result of the impact of this joint initiative, busing industry trade associations have asked the Division of Taxation to give members of the associations time to voluntarily comply with New Jersey tax laws.

The Division is always receptive to voluntary disclosure. The Division's voluntary disclosure program allows any taxpayer to initiate contact with the Division

of Taxation in order to register, file delinquent returns, and make full payment of liabilities plus interest. In return, the taxpayer would not be subject to civil or criminal penalties.

In those instances where the taxpayer voluntarily discloses their tax liability, the Division generally agrees to a look-back period of four years (three prior years and the current year) which coincides with the Taxpayers' Bill of Rights. In those instances where trust fund taxes were collected, such as sales tax, the look-back period is not limited to four years but extends to the original date the taxes were collected.

The Special Projects Unit of the Division of Taxation will continue its compliance initiatives that focus on areas of noncompliance in order to "level the playing field" for the law-abiding citizens of New Jersey. □

INHERITANCE TAX New Waiver Form

The Division has developed a new Inheritance Tax Waiver Form (Form 0-1) which will replace the form currently in use. The use of the new form is scheduled to be phased in over the next several months.

Waivers are currently issued using preprinted, custom-sized forms (8½" × 8") printed on plain, white paper. The appearance of the new waiver form will be far different. The new form will be printed using a laser printer and letter-sized (8½" × 11"), bonded, cream-colored paper on which the Great Seal of the State of New Jersey will be watermarked.

The stamped signature of the Director, Division of Taxation will continue to be required to validate a waiver. Only originally-printed and stamped waivers may be accepted by banking institutions, county clerks, and transfer agents. As in the past, copies may not be accepted.

Waivers issued on the old forms will continue to be valid and may be filed with and accepted by banking institutions, county clerks, and transfer agents. Waivers do not have an expiration date.

It is expected that the use of the new inheritance tax waiver form will facilitate the waiver process and minimize the processing time required for the issuance of waivers. This should prove to be beneficial to both the Division and to the taxpayer.

Any questions related to the new waiver form or the validity of a particular waiver may be directed to the Transfer Inheritance Tax Information Section at 609-292-5033. □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the New Jersey Association of Public Accountants (NJAPA), and cooperating colleges. The one-day institutes, which begin in November and end in mid-December, are geared toward the intermediate and advanced tax preparer.

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2001 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Nov. 7	Mays Landing	ATLANTIC COUNTY COLLEGE Room J-206	David Matagiese (609) 522-6012
Nov. 15	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov. 17	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov. 26	Piscataway	RUTGERS UNIVERSITY Busch Campus – Student Center	Stuart Simon (732) 679-6363
Nov. 28	Sewell	GLOUCESTER COUNTY COLLEGE Auditorium – Student Center	Nancy Ritchie (609) 387-2127
Dec. 13	Union	KEAN UNIVERSITY	Alice Weinstein (973) 379-3275
Dec. 14	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355
Dec. 17	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990

2001 Practitioner Institutes Registration

Fee \$75 – Preregistration

Detach and Mail to:

(Make check payable to NJAPA)

**New Jersey Association of Public Accountants
Attn: Niles Breslau
101 N. Washington Place, Suite 1B
Margate, NJ 08402 TEL: (609) 823-9103**

Name of Attendee	Firm or Company Name	
Business Phone	Student (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No	
Firm or Company Address		
City	State	Zip Code
College Location	Amount Remitted	

institutes - from page 6

The topics presented by the New Jersey Division of Taxation are:

- Estates and Inheritance Tax
- Credit for Taxes Paid to Other Jurisdictions (income tax update and follow-up from last year)
- Use Tax Update
- Doing Business with New Jersey (including online registration, filing, and payment of taxes for individuals and businesses)
- 2001 Tax Update (including new S corporation tax rates)

The topics presented by Internal Revenue Service are:

- Trusts and the 1041 Return
- Offer and Compromise
- Release of Liens
- Doing Business with the IRS
- 2001 Tax Update

Most sessions begin at 8:30 a.m., conclude at 3:30 p.m., and include lunch. The session at Montclair University begins at 9:00 a.m. and concludes at 4:00 p.m. Registration desks will open 30 minutes before the beginning of the session, and coffee will be served. Six CPE credits will be issued in taxation to those who complete the session.

The preregistration fee for commercial tax preparers is \$75 (\$15 for full time students, ID required). Those who register at the door will be required to pay a \$90 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds, however, you can reschedule for another location. The locations, dates, and registration form appear on page 7.

□

LOCAL PROPERTY TAX ***Tax Assessors'*** ***Calendar***

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- Veteran's tax deduction eligibility established, pretax year (\$150 for tax year 2001).
- \$250 real property tax deduction for qualified senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1 –

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1 –

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax

bills for added assessments, whichever is later.

- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 31 –

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2002 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

LOCAL PROPERTY TAX ***Tax Assessor*** ***Certificates***

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Sixteen persons passed the recent examination for the tax assessor certificate held on March 31, 2001. They are as follows:

Atlantic County: Christopher B. Hackett, Linwood City.

Bergen County: Edward T. Addison, Washington Township; Rouslan Boundine, Westwood Borough.

Cumberland County: Kevin P. Maloney, Fairfield Township.

Essex County: Patricia Sychala, Bloomfield Township.

Gloucester County: John Joseph Caruso, East Greenwich Township; Bonnie Lynn Longo, Monroe Township.

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Hunterdon County: Loretta B. Smith, East Amwell Township.

Mercer County: Derek W. Bridger, Hopewell Borough.

Middlesex County: James V. LeBlon, North Brunswick Township.

Monmouth County: Michael James Dolce, Belmar Borough; Maria G. Gagliano, Rumson Borough.

Ocean County: Thomas Joseph DePetro Jr., Brick Township.

Somerset County: Brett J. Trout, Bedminster Township.

Warren County: Michael G. Snyder, Mansfield Township.

State of Pennsylvania: Paul Charles Miller, Haverford Township, Delaware County.

The next examination is scheduled for March 23, 2002. The deadline to file applications is February 21, 2002. To obtain an application call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. A filing fee of \$10 must accompany the completed application. For further information regarding this exam, please contact Mary Ann Miller at 609- 292-7813. □

Criminal Enforcement

Criminal Enforcement over the past months included:

- In March of 2001 the Office of Criminal Investigation (OCI) arrested Abdelnasa A. Sarameh for transporting 304 cartons of contraband cigarettes. Mr. Sarameh was under Federal indictment in Ohio for money laundering and trafficking in fraudulent food stamps. His New

Jersey arrest was a violation of his pretrial agreement set by the U.S. Court. At the request of the U.S. Attorney, a member of OCI testified in the U.S. District Court in Cleveland, Ohio, in regard to the New Jersey arrest. As a result, the subject was remanded to the custody of the U.S. Marshals to remain in Federal custody pending trial. He then plead guilty to the above charges and is serving a twenty-three (23) month sentence in Federal custody.

- On March 26, 2001, David B. Cohen, a Certified Public Accountant from Cherry Hill, New Jersey, entered a guilty plea to misusing more than \$632,000 of his clients' funds. Mr. Cohen, the President of Payroll Masters, a payroll service company, misused the escrowed monies from clients that were designated as Federal and state payroll taxes, as well as Social Security contributions. He also entered guilty pleas to Failing to Turn Over Taxes Withheld and Failing to File New Jersey Gross Income Tax Returns.
- On April 4, 2001, OCI executed search warrants for a Union Township, New Jersey, residence with an unattached garage, and two South Carolina (SC) registered vehicles. In addition, a search warrant was executed on a grocery store in Irvington, New Jersey. As a result, five subjects were arrested by OCI for their involvement with possession and transportation of counterfeit stamped cigarettes. OCI seized two conversion vans, two handguns, \$37,984 in cash, 1,897.7 cartons of New Jersey counterfeit stamped cigarettes and 1,020

cartons of New York State/City counterfeit stamped cigarettes. These arrests and seizures are the result of a joint investigation by New Jersey's Office of Criminal Investigation and the New York State Department of Taxation and Finance Office of Tax Enforcement, and the New York City Finance Department Office of Tax Enforcement with the assistance of the Union County Prosecutor's Office and the Union Township and Irvington Police Departments.

- Working with United States Customs at Newark International Airport, a new cigarette smuggling scam has been uncovered by the Office of Criminal Investigation. Passengers from Pakistan are traveling with large amounts of English-made unstamped cigarettes such as Benson & Hedges. The bags are left at the Air Cargo Terminal and the passengers immediately make a return trip to Pakistan. The bags are left for unidentified parties to pick up with no United States address. This has occurred on four occasions. OCI seized 190.9 cartons on the first occasion, 245 cartons on the second, 160 cartons on the third, and 284.5 cartons on the fourth.
- On April 7, 2001, a State Grand Jury returned indictments against George S. Scott, of Edison, New Jersey, on numerous charges, including Theft by Deception, Money Laundering, and the Failure to File New Jersey Personal Gross Income Tax Returns for the years 1998 and 1999. The joint investigation between the Division of

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Criminal Justice and the Office of Criminal Investigation established that the subject had failed to report \$2.3 million that was generated by a real estate scam operated by Mr. Scott during the years 1998 and 1999. It was also determined that Mr. Scott failed to remit the combined income tax liability due in the amount of \$147,681.

- On April 20, 2001, Thomas B. Ellis Jr. was sentenced in U.S. District Court for the Eastern District of Virginia to twelve (12) months incarceration in a Federal Correctional Institution, twenty-four (24) months of supervised probation, and restitution of \$173,692.24 as a result of his guilty plea to Federal Mail Fraud charges. Mr. Ellis was the subject of a joint investigation with the Federal Bureau of Investigation relating to the filing of fictitious New Jersey income tax returns and the receipt of fraudulent refunds. The investigation revealed that Mr. Ellis, using fictitious or assumed identities, victimized forty (40) States, the District of Columbia, and the Federal Government. This case emphasizes that with State and Federal cooperation, tax-related crimes with multijurisdictional aspects can be successfully prosecuted.
- On May 16, 2001, the Cumberland County Grand Jury indicted four county residents on charges of Theft by Deception and Falsifying Records. Christine Marie Stubbs, Tonya Darnell Redding, and Paula Denise Jones, all of Bridgeton, together with Annie M. McCoy of Millville, filed multiple fictitious or fraudulent

New Jersey Homestead Rebate Applications and received fraudulent rebates. The individuals, collectively, have been charged with filing 154 New Jersey Homestead Rebate Applications and receiving \$58,785.01 in Homestead Rebates.

- On May 21, 2001, Steven J. Lawlor, a Certified Public Accountant from Demarest, New Jersey, plead guilty to one count of Misapplication of Entrusted Property. Mr. Lawlor prepared fraudulent sales tax returns for a used car business and filed these returns during the Division's Tax Amnesty Program in 1996.
- On May 21, 2001, Vincent Stewart, of Camden, New Jersey, plead guilty to one count of Conspiracy to Commit Theft By Deception based on his preparation of approximately 1,500 fraudulent New Jersey Homestead Rebate Applications for

residents of Camden County. This joint investigation with the New Jersey State Police and the Division of Criminal Justice resulted in Mr. Stewart's arrest in January. The investigation was a major factor in reducing Homestead Rebate fraud in the area.

- The Office of Criminal Investigation has begun a joint enforcement project with the Audit Services Motor Fuels section to cite, in municipal court, sellers and users of special fuel (diesel and kerosene) who have failed to comply with Division requirements to obtain a bond as part of the licensing procedure, and who are subsequently operating without a license or a bond.
- On May 25, 2001, the Office of Criminal Investigation conducted an enforcement sweep in

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the City of Newark relative to contraband cigarette activity, as well as related offenses and licensure. A total of forty-four (44) locations were visited. At twelve (12) of those locations, contraband cigarettes were seized. One arrest was made as a subject was making a delivery to a retail store of Delaware stamped cigarettes and untaxed tobacco products.

- On June 7 and 8, 2001, the Division of Taxation sponsored the FTA Tobacco Tax Section Northeast Regional Meeting in Lambertville, New Jersey. The day-and-a-half meeting was well attended with 50 representatives of State, Local, and Federal agencies concerned with tobacco tax issues. The Office of Criminal Investigation received positive feedback on all aspects of the conference.
- On June 18, 2001, a State grand jury returned a true bill on an indictment naming the Office of Criminal Investigation case subject A-AAACE Mechanical Contractors and its corporate officer Jeffrey Biggiani of Parsippany, New Jersey, in the following four (4) counts: Theft by Failure to Make Required Disposition of Property Received (2nd Degree), Misapplication of Entrusted Property (2nd Degree), Failure to Turn Over Sales Taxes (3rd degree), and Misconduct by a Corporate Official (2nd degree). This investigation determined that the subject business had charged and collected, but failed to report and remit sales tax monies in the amount of \$81,344.00 over the period of

January 1, 1993, through September 30, 1996.

- One hundred and forty-one (141) complaints alleging tax evasion were evaluated from April through June 2001 in the Office of Criminal Investigation.
- During the same period, April through June 2001, one hundred and nine (109) charges were filed in court on twenty-seven (27) cases for violation of the Cigarette Tax Act including possession of 4,047.3 cartons of contraband cigarettes, valued at \$141,655.50 and resulting in twenty-seven (27) arrests. □

Tax Briefs

Corporation Business Tax

Bank Subjectivity — The Division responded to questions about the subjectivity to New Jersey Corporation Business Tax of a New York bank, qualified to do business in New Jersey, that wishes to provide mortgages to New Jersey customers. The questions and answers follow.

If it qualifies to do business in New Jersey and does not close a particular loan in New Jersey (e.g. it closes the loan in New York), then: (1) Is nexus created? (2) Is the income from the loan New Jersey source income?

- (1) Nexus is created due to activity in New Jersey related to the loan, such as inspection of property, etc. The loan closing itself is not the only factor considered. However, becoming qualified to do business in New Jersey subjects the bank to filing and remitting at least the minimum tax.

- (2) Yes, income is sourced to New Jersey.

If it qualified and does close a particular loan in New Jersey (but does not maintain any office in New Jersey) then: (1) Is nexus created? (2) Is the income from the loan New Jersey source income?

- (1) There is no nexus for a tax based on income if the corporation does not meet the criteria of N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.6. But it may be required to file a minimum return and pay the minimum tax. See *Pomco Graphics v. Director*, 13 N.J. Tax 578 (1993).

- (2) The income from the loan is New Jersey source income.

If it does not qualify to do business in New Jersey and closes the loan in New York, then: (1) Does the mere fact that the mortgage loan is secured by a property in New Jersey create nexus? (2) If it assigns the loan (i.e., sells it) upon closing, is the income from sale considered New Jersey source income? The income from the assignment (which is a common industry practice) is called "yield spread premium."

- (1) If the foreign corporation is not qualified to do business in New Jersey, and there are no other facts creating nexus, then the foreign bank *may* not be subject to New Jersey corporation income tax (i.e., the second tier tax N.J.S.A. 54:10E-1). See *Chemical Realty Corp. v. Taxation Div. Director*, 5 N.J. Tax 581 (1983) affirmed 6 N.J. Tax 448 (App. Div. 1984) (holding

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New Jersey had no nexus under due process claims to tax interest and other income from loans secured by New Jersey realty (six financing transactions)). However, this is a facts and circumstances determination.

- (2) The income may be sourced to New Jersey if the corporation is considered subject to tax.

The administrative rule relating to subjectivity of foreign banks is found at N.J.A.C. 18:7-1.14.

Gross Income Tax

Stock Option Treatment — The Division has been getting many inquiries from taxpayers receiving stock options and has compiled the following explanation of New Jersey gross income tax treatment:

- **Nonqualified stock options** — Nonqualified stock options are taxable as compensation in the same manner as prescribed for Federal purposes. Taxpayers will not realize a taxable gain until the options are exercised. The gain is then measured by the difference between the fair market value of the options at the time of exercise and the taxpayer's exercise price.
- **Incentive stock options** — The taxability of incentive stock options is also based on the Federal treatment. Thus, incentive stock options may be received and exercised by an employee without recognizing any gain. If the requisite holding period is met, the taxable event is the sale of the stock and gain or loss will be realized to the extent of the difference between the option price and the sale price of the stock. Such gain or

loss is reportable in full under N.J.S.A. 54A:5-1(c). The adjusted basis to be used when determining the gain or loss for New Jersey purposes is the same as the adjusted basis for Federal income tax purposes.

- **Qualified stock options** — For New Jersey gross income tax purposes the taxable event with respect to an employee's qualified stock option plan that meets all the standards required under Federal law is not deemed to occur at the time the option is granted or exercised. Instead, the taxable event occurs at the time of the sale of the stock. Accordingly, where all the requirements of Federal law have been met which would make the sale of the stock a capital gain, similar treatment will be accorded for New Jersey gross income tax purposes and such gain is reportable in full under N.J.S.A. 54A:5-1(c).

Sales and Use Tax

Horse Boarding — The service of boarding horses is deemed to be "storing all tangible personal property not held for sale in the regular course of business," and is therefore taxable pursuant to N.J.S.A. 54:32B-3(b)(3). The horse-boarding business must be registered as a vendor and collect New Jersey sales tax on its charges. It may claim a resale exemption when purchasing feed for the horses that it boards. Separately itemizing the charges for feeding a customer's horse will have no practical effect. If the business charges customers for the feed, the charge is taxable under N.J.S.A. 54:32B-3(a). If the feeding is simply included in the boarding charge, the entire charge is taxable as a service under N.J.S.A. 54:32B-3(b)(3).

If a customer rents a horse stall and does not receive any service or tangible personal property in connection with the rental (e.g., food and hay, grooming service, routine care), then the transaction is treated as a rental of real property, rather than as storage service, and is not subject to sales tax.

Drugs and Cosmetic Treatments

— Creams and ointments sold to physicians which a physician applies to patients' skin as part of their medical treatment may be purchased without paying sales tax.

The taxability of creams and ointments sold to physicians which the physician then gives to patients for their own use as part of the services the physician provides for compensation depends upon whether the cream or ointment is a "medicine or drug." If the product is *generally* recommended and used to cure, treat, or alleviate "pain, ailments, distresses, or disorders of the human body," it is treated as an exempt drug. N.J.S.A. 54:32B-8.1. However, if it is *generally* sold as a sunscreen, skin softener, moisturizer, "wrinkle cream," etc., it is treated as a cosmetic and is taxable whether sold to the physician or directly to the user.

Sales of Parts for Corrective Eyeglasses

— The sale of "corrective eyeglasses" is exempt from New Jersey sales and use tax. The medical exemption provision, N.J.S.A. 54:32B-8.1, explicitly exempts sales of corrective eyeglasses and other artificial devices to correct or alleviate physical incapacity. The provision also explicitly exempts "replacement parts" for these exempt medical items.

Based on this statutory language, the sale of a complete pair of cor-

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rective eyeglasses, including both the lenses and the frames, is of course exempt. In addition, if the frames are sold separately, the exemption will also apply, assuming that the frames will become part of a new pair of corrective eyeglasses, or will replace the old frames on an existing pair of corrective eyeglasses.

Medical Illustrations — The Division responded to an inquiry regarding the taxability of case-specific medical drawings. The illustrator explained that these illustrations are custom-made to the specifications of the lawyer handling the matter and of the physician or other expert witness who might be testifying. They are not reusable for other purposes, and may not be resold.

The sale of these case-specific drawings is deemed to be the sale of tangible personal property pursuant to N.J.S.A. 54:32B-3(a), rather than the sale of a professional “service” as that term is used in N.J.S.A. 54:32B-2(e)(4)(A). Receipts from this sale in New Jersey are, therefore, subject to sales tax. The attorneys are selling a nontaxable professional service, N.J.S.A. 54:32B-2(e)(4)(A); they are not deemed to be “reselling” the medical illustrations to clients. Therefore, the attorneys are considered to be the retail purchasers of the illustrations which they use in rendering their nontaxable services. Therefore, the attorney may not claim a resale exemption when purchasing the illustrations.

Purchases Taken (or Delivered) to and from New Jersey — Sales of taxable goods and services in New Jersey are subject to 6% New Jersey sales tax, unless a specific

statutory exemption applies (e.g., resale, exempt organization, or various specific exempt uses). Sales tax liability will arise if the goods are picked up or delivered in New Jersey and no specific exemption applies. There is no exemption based on the purchaser’s status as a nonresident of the United States, and nonresidents are therefore not entitled to any refunds of New Jersey sales tax upon leaving the country.

If, however, the customer does not take possession of the goods in New Jersey, but instead requests shipment by the seller to his address abroad, the transaction is not treated as a New Jersey sale, and no New Jersey sales tax will be due. The same is true if the goods are shipped directly to a freight forwarder for shipment outside the United States.

A New Jersey resident will be required to pay 6% use tax when he returns to New Jersey with taxable goods that were purchased outside of this State, including in a foreign country. If the returning New Jersey resident has new merchandise delivered to a New Jersey address from abroad, or if he brings back newly-purchased merchandise (i.e., property purchased no more than six months earlier), the use tax will be due on the original purchase price. N.J.S.A. 54:32b-7(b). However, if the returning resident used the property elsewhere for more than six months, the 6% use tax is calculated instead on the current fair market value of the property, rather than on its original purchase price. N.J.S.A. 54:32B-7(b)(1). New Jersey’s credit for sales and use tax paid in another jurisdiction does not extend to taxes paid to foreign nations. N.J.S.A. 54:32B-11.

If a nonresident of New Jersey comes to New Jersey with taxable property that he has already owned and used elsewhere, no tax is due. N.J.S.A. 54:32B-11. However, if he purchased goods abroad and has the new purchase shipped directly to New Jersey, his new home, then the purchase is treated as a New Jersey transaction for sales and use tax purposes. In that case, he will owe 6% New Jersey use tax on the merchandise, as would any New Jersey resident. □

In Our Courts

Administration

Interest Waiver Due to Reliance on Written Advice of Division — *L&L Oil Service, Inc. v. Director, Division of Taxation*, 18 N.J. Tax 514 (Tax Court 2000), aff’d as modified, June 26, 2001; Appellate Division No. A-3386-99T5.

Plaintiff claims that interest on its tax liability should be waived because it reasonably relied upon several Division advisory letters, some of which are to other companies in the industry, and an article in the *New Jersey State Tax News*. Plaintiff sent a subpoena to a Tax Counselor, a Division employee, to testify about advisory letters she and her colleagues sent.

The Appellate Division upheld the Tax Court’s quashing of the subpoena stating that plaintiff improperly sought to use the Division employee’s testimony to advance alleged contrary legal conclusions citing authority that “expert witnesses may not render opinions on issues of law.” Furthermore, the Court found that the testimony would have been of minimal relevance to the waiver

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issue because the inquiry and advisory letters were in the record.

The Appellate Division affirmed the Tax Court's holding that plaintiff could not rely upon advisory letters to other companies because differences in business operations may lead to different tax consequences.

The Tax Court found that none of plaintiff's inquiry letters fully and accurately described the nature of plaintiff's operations and neither the Division's correspondence nor the *New Jersey State Tax News* even suggested that plaintiff's actual maintenance and service operations were exempt from sales tax. The Appellate Division affirmed.

Untimely Complaint – *Corri-gan's, Inc. v. Director, Division of Taxation*, decided June 15, 2001; Tax Court No. 000121-1999.

On January 14, 1999, plaintiff filed a complaint in the Tax Court appealing the Division's October 13, 1998, Final Determination concerning a Sales and Use Tax and Corporation Business Tax assessment. The Division moved to dismiss the complaint due to its untimeliness.

After looking at various statutes concerning the aforementioned assessments, the Court ruled that plaintiff's complaint must be filed

within ninety days after the date of the October 13, 1998, Final Determination. As the date of the Final Determination was October 13, 1998, the ninety-day period for appeal expired on January 11, 1999. Consequently, the Court granted the Division's motion.

Failure to State a Claim – *Mayer & Schweitzer, Inc. v. Director, Division of Taxation*, decided June 25, 2001; Tax Court No. 001800-2000.

Plaintiff, domiciled in New Jersey, is a market maker and licensed broker dealer of securities in twenty-two states.

Initially, plaintiff filed 1992 – 1995 Corporation Business Tax (CBT) returns that allocated sales to New Jersey based upon the trader's location. Thereafter, plaintiff filed amended returns that allocated sales to New Jersey based upon the purchaser's location.

The Division moved under R. 4:6-2(e) to dismiss the complaint due to plaintiff's failure to state a claim upon which relief may be granted. The Court denied the Division's motion opining that plaintiff was entitled to an opportunity to present facts before the Court to show that the securities at issue were integrated with its business carried on in another state.

Corporation Business Tax Amount Includable in the

Numerator of Receipts Fraction – *Stryker Corporation v. Director, Division of Taxation*, 18 N.J. Tax 270 (Tax Court 1999); aff'd, Appellate Division No. A-736-99T5 (July 21, 2000); aff'd, Supreme Court of New Jersey, A-27 September Term 2000 (June 14, 2001).

Osteonics, a New Jersey corporation, is the wholly owned subsidiary of plaintiff Stryker, a Michigan corporation. Both corporations are located in the same building in Allendale, New Jersey. Stryker manufactures orthopedic hip and knee replacements and sells its products to Osteonics, whose function is to market, sell, and process customer orders for Stryker's products. After the order is placed, Stryker packs and ships the products to Osteonics' customers throughout the United States, via common carrier F.O.B. Allendale.

In calculating the numerator of the receipts fraction, Stryker allocated sales to Osteonics by the ship-

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ment's destination state. Accordingly, Stryker included sales of only New Jersey customer destination shipments in the numerator of the receipts fraction. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of

Enforcement Summary Statistics *Second Quarter 2001*

Following is a summary of enforcement actions for the quarter ending June 30, 2001.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	2,230	• Seizures	34
Total Amount	\$33,493,434	• Auctions	10
• Jeopardy Assessments	223	• Referrals to the Attorney General's Office	632

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

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customer destination.

The Tax Court held that Stryker's sales receipts from its direct shipments to Osteonics' out-of-State customers are includable in the numerator under N.J.S.A. 54:10A-6(B)(6) because the receipts are earned in New Jersey but not includable under N.J.S.A. 54:10A-6(B)(1) because there were no physical shipments to Osteonics. On appeal, the Appellate Division upheld the Tax Court.

The New Jersey Supreme Court reviewed the legislative history of the Corporation Business Tax Act and addressed Stryker's three arguments: (1) the allocation formula violates the Commerce Clause, more specifically the doctrine of internal consistency; (2) these receipts are not other business receipts under N.J.S.A. 54:10A-6(B)(6); and (3) the Legislature's repeal of N.J.S.A. 54:10A-6(B)(3) implies their intent to exclude these receipts from the numerator.

The Court first addressed whether the application of the Division's methodology would cause manufacturers to be taxed twice in violation of the Commerce Clause; once on their transactions with the dealers and then a second time on their product shipments to the destination state. The Court rejected that argument noting that the doctrine of internal consistency requires that a tax is structured so that it would not result in multiple taxation if applied by every state. Because the manufacturer and dealer transaction is treated separately from the dealer and customer transaction, no state would require the manufacturer to allocate the receipts from the whole-

saler's sale of the product. Hence, the Court held that there is no threat of multiple taxation and no Commerce Clause violation.

Addressing the issue of whether Stryker's sales to Osteonics were other business receipts under the general catch-all provision of N.J.S.A. 54:10A-6(B)(6), the Court rejected Stryker's claim that (B)(6) was inapplicable because (B)(1) and (B)(2) dealt specifically with the shipments destination to determine whether or not the receipts are included in the numerator. It was noted that neither N.J.S.A. 54:10A-6 nor the regulations thereunder contemplated drop-shipment scenarios. The Court found that (B)(6) was not limited by (B)(1) or (B)(2) because the legislative history did not indicate that the product's ultimate destination should trump the determination of whether or not the receipt was attributable to the State. Under the substance over form doctrine, Stryker's drop-shipment transactions result in the realization of intrastate sales to Osteonics which fall into the (B)(6) catch-all net that permits the Division to plug loopholes in the Corporation Business Tax Act to effect a fair apportionment of receipts to the State.

Finally, the Court found that the deletion of N.J.S.A. 54:10A-6(B)(3) in 1967 was not done with the intention of restricting inclusion in the receipts fraction to only sales of product shipments to destinations in the State. Essentially, deleted section (B)(3) included sales where the orders were received or accepted in New Jersey and the property was located in New Jersey at the time of the order. Although the sales in the instant case would have been treated as New Jersey sales under

this provision, the section did not encompass or even relate to out-of-State drop-shipment type sales.

Based upon the aforementioned, the Court held that the receipts at issue were included in the numerator of the receipts fraction. In a concurring opinion, Justice Stein addressed the concern of *amici curiae* that upholding the lower courts would unduly burden New Jersey manufacturers. Justice Stein stated that there was no incompatibility between legislation benefiting New Jersey manufacturers and the lower courts' rulings, and that the sales at issue would not have been includable had Osteonics been formed as a division rather than as a subsidiary.

Sales and Use Tax

Complimentary Alcoholic Beverages – *GNOC, Corp. t/a The Grand v. Director, Division of Taxation*, decided April 3, 2001; Supreme Court of New Jersey No. A-35 September Term 2000.

Plaintiff purchased alcoholic beverages from its wholesaler free of sales tax pursuant to a resale certificate. Upon audit, the Division assessed use tax on the purchase price of alcoholic beverages that were provided to patrons on a complimentary basis.

Addressing the issue of whether the purchase of alcoholic beverages constituted a nontaxable sale for resale, the New Jersey Supreme Court affirmed the Appellate Division's and Tax Court's determination that there was no resale of the alcohol because there was either no consideration or legally insufficient consideration for the complimentary drinks. Therefore, the transaction

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between plaintiff and the wholesaler constituted a taxable retail sale and not a nontaxable sale for resale.

The New Jersey Supreme Court next addressed the issue of whether the wholesaler's sales to plaintiff are exempt from sales tax because they are beverage sales for human consumption off the premises where sold under N.J.S.A. 54:32B-8.2. After reviewing the legislative history, the Court found that when the Legislature exempted the sales tax on retail sales of alcoholic beverages by enacting the exemption under N.J.S.A. 54:32B-8.34, it simultaneously deleted the exclusion for alcoholic beverages from the N.J.S.A. 54:32B-8.2 exemption. However, when the Legislature re-enacted legislation that effectively subjected alcoholic beverages to the retail sales tax by repealing the exemption under N.J.S.A. 54:32B-8.34, it inadvertently failed to re-enact the exclusion for alcoholic beverages from the N.J.S.A. 54:32B-8.2 exemption. Regardless, the Court found that alcoholic beverages (on and off premises) were made subject to taxation under the Assembly Appropriations Committee Statement to Assembly Bill No. 3610, P.L. 1990, c.40. Furthermore, the Court found the fact that alcoholic beverages were not included as products entitled to the fifty percent sales and use tax exemption provided to retailers located in urban enterprise zones to be further evidence of its taxability. Based upon the aforementioned, the Court held that the Legislature clearly intended to subject all alcoholic beverages to sales and use tax regardless of whether they were for consumption on or off the premises.

Complimentary Alcoholic and Nonalcoholic Beverages – Adamar

of New Jersey t/a Tropicana Casino and Resort v. Director, Division of Taxation, decided April 3, 2001; Supreme Court of New Jersey No. A-36 September Term 2000.

As to the issue of taxability of complimentary alcoholic beverages, the facts are identical to the companion case of *GNOC v. Director, Division of Taxation*. The Court affirmed the decision of the Appellate Division as supplemented by the Supreme Court's opinion in *GNOC*.

As to the issue of taxability of non-alcoholic beverages provided as complimentary beverages, the Court also affirmed the Appellate Division's decision to remand to the Tax Court the issue of the scope of the closing agreements between the plaintiff and the Division.

Maintaining or Servicing Real or Personal Property – L&L Oil Service, Inc. v. Director, Division of Taxation, 18 N.J. Tax 514 (Tax Court 2000), aff'd as modified, June 26, 2001; Appellate Division No. A-3386-99T5.

Plaintiff is in the business of pumping waste oil, sludge, and anti-freeze from storage tanks located on both commercial and residential properties into its trucks. After removal, the waste materials were transported to plaintiff's facility where the waste was either refined or processed for sale.

Customers paid plaintiff to remove the materials and sometimes clean the tank. Plaintiff's invoices usually charged a lump sum price for pumping and removal without charging sales tax. However, a few invoices included a separate transportation fee and a few charged sales tax.

Pursuant to an audit the Division assessed sales tax on sales for the

removal of waste materials where sales tax was not previously charged. The Tax Court upheld the Division's assessment and the Appellate Division affirmed.

The Tax Court held that plaintiff's waste removal services were subject to sales and use tax because they constituted maintenance or servicing, and the removal allowed the tanks to be used again for their intended purpose of collecting waste. The Appellate Division modified the holding stating that plaintiff's services did not maintain property because the word maintain "...connotes more the concept of repair or preventive maintenance as opposed to emptying a tank so that it can be refilled." The Appellate Division held that the removal of waste fluids from a tank that remains in use for the benefit of the user falls under the term servicing.

The Appellate Division upheld the Tax Court's rejection of plaintiff's alternative theories of non-taxability on the basis that the charges to its customers were exempt (1) as acquisition of raw materials because L&L was not the purchaser; (2) as transportation charges after granting an allocation of the lump sum charge between removal and transportation; and (3) because plaintiff did not have a license from the Department of Environmental Protection (DEP) to perform maintenance or repair involving hazardous waste contained in storage tanks, even if such license was required. The Appellate Division noted that nothing in the DEP statutes or regulations indicated that plaintiff's removal business did not constitute providing a service. Furthermore, the DEP statutes and Sales and Use Tax Act could not be read in *pari materia* because they

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don't have the same purpose or object; DEP statutes were enacted to prevent groundwater pollution whereas the Sales and Use Tax Act was enacted to raise revenue.

Admission Charges Imposed by Government Entities – *Meadowlands Basketball Associates v. Director, Division of Taxation*, 19 N.J. Tax 85 (Tax Court 2000), aff'd April 26, 2001; Appellate Division No. A-187-00T1.

Plaintiff is the owner of the Nets of the National Basketball Association. Pursuant to a license agreement, the New Jersey Sports and Exposition Authority (NJSEA) leased the Continental Airlines Arena to plaintiff for the Nets to play their home basketball games. The license agreement included the requirement that on behalf of the NJSEA plaintiff charge, collect, and transfer to the NJSEA a 10% "admission impost" on the price of admission of each ticket sold to home games. The impost fee was included and separately stated on the face of each ticket. Plaintiff did not charge or collect sales tax on the impost charge; however, it did collect and remit sales tax on the price of admission. Pursuant to an audit, the Division assessed plaintiff sales tax on the 10% admission impost fee.

The Tax Court held that the impost fees to the Nets games were subject to sales tax as admission charges to athletic events under N.J.S.A. 54:32B-9(f)(2) because the proceeds did not inure exclusively to the benefit of elementary or secondary schools. The Court found a New York Tax Appeal Tribunal case with similar facts to be unpersuasive. Plaintiff appealed on the basis that the impost fee is

exempt under N.J.S.A. 54:32B-9(a)(1), which generally exempts from sales tax a governmental agency's amusement charges and sales of goods and services.

The Appellate Division affirmed. The Court ruled that the impost fee was an admission charge, not an amusement charge or a sale of goods or services, and therefore did not qualify for the subsection 9(a)(1) exemption. Regardless, even if the impost fee was found to be exempt under 9(a)(1), the Court ruled that the impost fee would be subject to the subsection 9(f)(2) provisions concerning admission charges to athletic events. To be exempt under this subsection, the proceeds of admission charges to the Nets basketball games must inure exclusively to the benefit of elementary or secondary schools. Per statute, these proceeds were used only for the purposes of NJSEA. Therefore, the impost fee was held to be subject to sales tax. Finally, the Court found the unpublished New York Tax Appeal Tribunal holding that admission charges qualify as services to be unpersuasive because the decision did not consider New York's counterpart to subsection 9(f). □

In Our Legislature

Corporation Business Tax

Payment Obligations of Certain Partnerships and Limited Liability Companies — P.L. 2001, c.136 (signed into law on June 29, 2001) provides a mechanism that assures the fair taxation of the owners of limited liability companies and limited partnerships. A limited liability company, foreign limited liability company, limited partnership, or foreign limited partnership that is classified as a partnership for

Federal tax purposes may obtain the consent of each of its owners that are not individuals, trusts, or estates subject to the New Jersey Gross Income Tax Act, N.J.S.54A:1-1 et seq. (for example, each owner that is itself a corporation) that this State has the right and jurisdiction to tax the owner's income derived from the activities of the limited liability company or limited partnership in New Jersey. A business that does not have the consent of all its owners must pay a corporation business tax liability, on behalf of its nonconsenting owners, on each of the nonconsenting owner's shares of the business's New Jersey income.

The limited liability companies and limited partnerships will also make estimated payments of their nonconsenting members' current year's taxes. These payments will be based, where appropriate, on the prior year's income of the company or partnership.

Chapter 136 is effective, retroactively, for privilege periods beginning on or after January 1, 2001. Transition provisions exempt the companies and partnerships from making estimated payments for tax year 2001 and reduce the final payment of tax on behalf of the nonconsenting members for 2001, due in 2002, to 45% of the amount otherwise due to account for the enactment of the new provisions in the middle of a tax period.

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Corporate Mergers —

P.L. 2001, c.193 (signed into law on July 31, 2001) permits a corporation organized in New Jersey to change from an operating corporation to a holding corporation with one or more wholly owned subsidiaries by use of a merger without shareholder approval or a transfer of assets. The bill allows a corporation (parent) to form a direct subsidiary and an indirect subsidiary (a subsidiary owned by the direct subsidiary), and to merge the resulting parent corporation into the direct subsidiary. The direct subsidiary would then become the new parent corporation, and the original parent corporation would become a subsidiary. This merger method does not require shareholder approval if the new parent corporation is structurally identical to, with the same shareholder rights and directors as, the old parent corporation.

Also, the act provides that the Secretary of State, upon filing of the certificate of merger, forward a copy of the certificate to the Director of the Division of Taxation. Chapter 193 took effect immediately.

Gross Income Tax

Commuter Transportation Benefits

— P.L. 2001, c.162 (signed into law on July 17, 2001) allows State

and local government employers to offer qualified transportation fringe benefits to their own employees as an employee set-aside program. As a result, this act provides the full advantage under the Federal Internal Revenue Code of the tax incentives for qualified transportation fringe benefits recently extended under Federal tax law in the Federal Transportation Equity Act for the 21st Century (TEA-21), Title IX of Pub. L.105-178. The legislation allows State and local employees to choose to have the benefit deducted from their salary, receive any combination of the transportation benefits, or continue to receive the amount as salary, and allows the State and local governments and employees to take advantage of the Federal tax benefits.

For New Jersey gross income tax purposes, the exclusion provided for employer provided commuter transportation benefits shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee.

The act also amends the Travel Demand Management Program in the Department of Transportation (DOT) to make the DOT program similar to (but not the same as) the Federal program and makes some technical updates to that program. The act makes the DOT trip

reduction tax benefits (which, unlike the Federal benefits, allow an employee to exclude the benefits from income only when the benefits are offered in addition to, rather than instead of, cash salary) comply with the same annual levels as the Federal benefits, effective for 2002. So as not to take away any current State benefits, but also allow the State and Federal benefits at the same levels, the State benefits are increased to \$1,200 annually beginning in 2002, when the Federal transit benefits are also scheduled to increase to \$1,200 annually.

Additionally, Chapter 162 clarifies an important part of the New Jersey gross income tax effects of the 1998 TEA-21 tax changes, which allow the “flip-side” of salary reductions: employers can save money by paying their employees to not take employer-provided parking. Usually the election of this option by one employee would have the tax effect of making every other employee’s parking taxable, but the same provision that allows the salary reductions also permits the non-taxation of employees who don’t cash out of their parking. Chapter 162 took effect immediately.

NJ-AIDS Services Fund — P.L. 2001, c.217 (signed into law on August 24, 2001) allows taxpayers to make a voluntary contribution to the “NJ-AIDS Services Fund.” This act took effect immediately and applies to taxable years beginning on or after January 1, 2002.

Inheritance Tax

Settlement of Intestate Estates — P.L. 2001, c.109 (signed into law on June 21, 2001) modifies the probate code with regard to set-

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tlement of intestate estates when heirs are missing or unknown. In such cases, the share of property to which the missing or unknown heirs are entitled would be held for a period of two years. After that period, if the heirs remain missing, the property would be divided among the known heirs. In cases where there are no known heirs, the bill provides that the property would be presumed abandoned and handled in accordance with the "Uniformed Unclaimed Property Act." Chapter 109 took effect immediately.

Insurance Premiums Tax

Nonprofit Health Service Corporations May Convert to For-profit Health Insurers — P.L. 2001, c.131 (signed into law on June 29, 2001) provides that a nonprofit health service corporation may convert to a for-profit (domestic stock) health insurer. After conversion, all insurance premiums collected by the domestic stock health insurer will be subject to the insurance premiums tax. The legislation also establishes a Health Service Corporation Conversion Temporary Advisory Commission consisting of 15 members within, but not of, the Department of the Treasury. This act took effect immediately.

Local Property Tax

Reassessments Required in Certain Circumstances — P.L. 2001, c.101 (signed into law on June 14, 2001) provides that when an assessor has reason to believe that property comprising all or part of a taxing district has been assessed at a value lower or higher than is consistent with the purpose of securing uniform taxable valuation of property, or that the assessment of property is not in substantial compliance with the law and that the interests of the public would be promoted by reassessment, then the assessor must make a reassessment of the property in the taxing district that is not in substantial compliance. Chapter 101 took effect immediately.

Distribution of Miscellaneous Revenue — P.L. 2001, c.140 (signed into law on July 2, 2001) permits municipalities to distribute certain municipal revenues to real property taxpayers as a credit against property taxes owed for that local budget year. The credit must be more than one tenth of a penny. Landlords of multifamily dwellings are required to "pass through" to their tenants any savings in property taxes realized. Chapter 140 took effect immediately.

Homestead Rebate — P.L. 2001, c.159 (signed into law on July 16, 2001) increases the maximum benefit under the Homestead Rebate Program for homeowners and tenants who are age 65 or older or disabled from \$500 to \$750 beginning with Homestead Rebates paid in calendar year 2001. For Homestead Rebates paid beginning in 2002, the maximum amount will be indexed annually to the cost of living.

For purposes of this legislation, "cost-of-living adjustment" is

defined as the factor calculated by dividing the consumer price index for all urban consumers for the nation, as prepared by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of the tax year, by that index as of the close of the 12-month period ending on August 31 of the calendar year preceding the tax year in which the recomputation of the maximum Homestead Rebate is made.

This legislation increased the tenant Homestead Rebate paid in 2001 and thereafter to tenants who are not 65 or disabled to \$100, eliminating the three-year phase-in which, under prior legislation, was scheduled to end in 2003. The legislation also increased the minimum rebate for tenants who are 65 or disabled to \$100 this year.

Miscellaneous

Veterans' Benefits — P.L. 2001, c.127 (signed into law on June 28, 2001) expands certain veterans' benefits to those who served in Lebanon, or on board any ship actively engaged in patrolling the territorial waters of that nation, on or after July 1, 1958, for a period of at least 14 days commencing on or before November 1, 1958. Any person otherwise qualifying for veteran status under the bill who received an actual service-incurred injury or disability is to be classed as a veteran whether or not that person completed the 14 days' service requirement. This legislation took effect immediately.

Business Registration — P.L. 2001, c.134 (signed into law June 29, 2001) requires providers of goods and services to the State and its agencies, to casinos, and to subcontractors under those State and casino contracts to register

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their businesses with the Division of Revenue. This act took effect on September 1, 2001.

Delineated Municipal Areas — P.L. 2001, c.155 (signed into law on July 13, 2001) revises the Local Redevelopment and Housing Law to provide that a delineated area in a municipality may be determined to be in need of rehabilitation if more than half of the housing stock in that area is at least 50 years old, or a majority of the water and sewer infrastructure in that area is at least 50 years old and is in need of repair or substantial maintenance. This legislation also expands the definition of a delineated area to include current exemptions and abatements allow-

able. Chapter 155 took effect immediately.

Casino Reinvestment Development Authority Urban Revitalization Act — P.L. 2001, c.221 (signed into law August 24, 2001) establishes the Casino Reinvestment Development Authority urban revitalization incentive program to be administered by the Casino Reinvestment Development Authority (CRDA). The program aims to facilitate the next phase of Atlantic City's development into a destination resort and to assist urban areas throughout the State with development and revitalization projects.

To be eligible for project grants, a casino licensee is required to submit a project proposal to, and receive approval from, the CRDA

and the Department of Community Affairs, to invest a minimum of \$20 million of its investment alternative tax obligations to develop an entertainment-retail project or community and housing development project, in \$10 million increments for one or more such projects, in an urban area outside of Atlantic City. A casino licensee approved for participation in the incentive program is further required to extend its investment alternative tax obligations with the CRDA to 35 years from the current 30-year requirement. The bill requires the licensee's investment alternative tax obligations during the additional five years to be divided in such a way that Atlantic City receives 25%, South Jersey receives 25%, and North Jersey receives 50%. The bill takes effect on October 23, 2001. □

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tax calendar

october

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October 1

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

October 10

CWIP-1,2 Cigarette Tax—Wholesaler's informational report

CDIS-1,2 Cigarette Tax—Distributor's informational and sales report

CR-1 & CNR-1 Cigarette Tax—Wholesaler's monthly report of non-New Jersey stamped cigarettes

October 15

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

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

October 22

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

MSS-1 Cigarette Tax—Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel sold or used

GA-1X Motor Fuels Tax—Importer's monthly report of gallons of fuel imported

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use

MFT-14 Motor Fuels Tax—Monthly export report

October 22 - continued

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

SCC-5 Spill Compensation and Control Tax—Monthly return

SCC-6 Spill Compensation and Control Tax—Public storage facility operator return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-450 Sales and Use Tax—Salem County—Quarterly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

October 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

October 30

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

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

continued

november

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November 13

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

November 15

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

November 20

- CR-1 & CNR-1 Cigarette Tax—**Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—**Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax—**Jobber's monthly report of gallons of fuel sold or used
- GA-1X Motor Fuels Tax—**Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—**Monthly report by seller-user of special fuels for sales and/or use
- MFT-14 Motor Fuels Tax—**Monthly export report

November 20 - continued

- MFT-60 Motor Fuels Tax—**Monthly storage facility operator report
- SCC-5 Spill Compensation and Control Tax—**Monthly return
- SCC-6 Spill Compensation and Control Tax—**Public storage facility operator return
- ST-21 New Jersey/New York Combined State Sales and Use Tax—**Monthly return
- ST-51 Sales and Use Tax—**Monthly remittance
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—**Monthly return
- ST-350 Cape May County Tourism Sales Tax—**Monthly return
- ST-451 Sales and Use Tax—**Salem County—Monthly return
- TP-20 Tobacco Products Wholesale Sales and Use Tax—**Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—**Monthly return

November 26

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

November 30

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

continued

december

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December 10

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

December 17

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

December 20

- CR-1 & CNR-1 Cigarette Tax—** Monthly report of cigarettes sold or used by distributors and manufacturers
- MSS-1 Cigarette Tax—** Monthly report by manufacturers of special shipments of taxable cigarettes into New Jersey
- GA-1D Motor Fuels Tax—** Distributor's monthly report of gallons of fuel sold or used
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- GA-1X Motor Fuels Tax—** Importer's monthly report of gallons of fuel imported
- MFT-10 Motor Fuels Tax—** Monthly report by seller-user of special fuels for sales and/or use

December 20 - continued

- MFT-14 Motor Fuels Tax—** Monthly export report
- MFT-60 Motor Fuels Tax—** Monthly storage facility operator report
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- SCC-6 Spill Compensation and Control Tax—** Public storage facility operator return
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- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—** Monthly return

December 26

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

December 31

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

continued

from the director's desk

The Division of Taxation understands that the cataclysmic events of September 11, 2001 have created special problems not previously contemplated and wants to assure the victims of the tragedies in New York and at the Pentagon that it stands ready to assist them in any way it can to provide administrative remedies. In many private ways our employees are doing their part in aiding the victims and now they will work publicly to minimize the distraction of tax issues.

For those businesses and individuals directly affected by the attack, the Division of Taxation will extend the due date of returns and payments due between September 11 and November 30, including returns on extension, until December 15, 2001. Examples of those directly affected include victims whose place of employment was damaged or destroyed during these attacks, relief workers, taxpayers with records destroyed in the attacks, businesses destroyed or damaged, businesses whose accountants or payroll services were directly affected, and victims on the airlines.

For those individuals that were indirectly affected due to being stranded away from home or unable to access their funds, the Division will extend the due date for filing and payment of returns due during September to 10 business days after their due date.

Taxpayers who are entitled to the relief described above should write "September 11, 2001 – Terrorist Attack" in red ink at the top of the return they file. If they receive a notice from the Division of Taxation they should contact the Division as instructed on the notice and explain why they are entitled to relief.

In addition, the Division of Taxation will suspend compliance activities such as levies and seizures for directly affected taxpayers for 6 months.

This unprecedented tragedy may have effects not anticipated or considered in the above policy. The Division will closely monitor the situation and issue additional direction if warranted. For additional guidance, please continue to monitor the Division's Web site or write to State of New Jersey, Division of Taxation, Attn: Emergency Management Project, PO Box 269, Trenton, NJ 08695-0269.

The employees of the New Jersey Division of Taxation offer their prayers and condolences to all those affected by this attack.

A handwritten signature in black ink that reads "Robert K. Thompson". The signature is written in a cursive style with a large, prominent initial "R".