

# New Jersey State Tax news

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## Family Leave Insurance

On May 2, 2008, Governor Jon S. Corzine signed a historic family leave insurance bill, propelling New Jersey to become only the third state in the nation to enact a paid family leave program for workers caring for sick family members, newborns, and newly adopted children.

The legislation extends the State's existing Temporary Disability Insurance (TDI) program and permits up to six weeks of paid family leave insurance benefits for workers taking leave to provide care certified to be necessary for a family member.

Some important facts regarding paid Family Leave Insurance (FLI):

- The law applies to all private and governmental employers subject to the Unemployment Compensation Law (R.S. 43:21-

1 et seq.), including local governmental employers who have chosen not to elect disability insurance coverage under the New Jersey Temporary Disability Benefits Law.

- There is no employer contribution to the program. However, beginning January 1, 2009, employers will be required to withhold 0.09% (0.0009) of their employees' taxable wages as defined in the Unemployment Compensation Law. This is the same wage upon which the withholding for unemployment compensation is based (\$27,700 in 2008; \$28,900 in 2009). The withholding rate increases to 0.12% (0.0012) beginning in 2010.
- Employers will report wages and deductions and submit payment with Form NJ-927, Employer's Quarterly Report.

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### Telephone Filing to be Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions will no longer be able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing will be discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.

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- In lieu of the State FLI plan employers may choose to provide self-coverage or arrange to have their employees covered by a private insurance carrier. Both of these alternatives require prior approval by the Division of Temporary Disability Insurance.
- Beginning July 1, 2009, employees may apply for up to six weeks of FLI benefits during leave taken to provide care for a sick family member or to care for a newborn or newly adopted child. Eligible applicants who are covered by the State FLI plan will receive weekly benefits amounting to no more than two-thirds of their weekly pay, subject to the same maximum as TDI for an individual's own disability (the maximum weekly benefit rate for TDI is \$524 in 2008).

For more information, visit the New Jersey Department of Labor and Workforce Development Web site: <http://lwd.dol.state.nj.us/labor/employer/ea/legal/FLI.html> □

#### LOCAL PROPERTY TAX

### **Tax Assessors' Calendar**

#### **October 1 (on or before)–**

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee (F.E.A.C.).
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

#### **October 1–**

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses/civil union partners eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

#### **November 1–**

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notice of Disallowance of farmland assessment issued by tax assessor.
- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.

#### **November 15–**

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

#### **December 1 (on or before)–**

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

## *New Jersey State Tax*

# *news*

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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.

#### **Division of Taxation Director:**

Maureen Adams

#### **News Coordinators for This Issue:**

<i>Audit</i>	Peggy Cook
<i>Compliance</i>	Marita Sciarrotta
<i>Crim. Investigation</i>	Lee Roach
<i>Property Admin.</i>	Toni Bushelli
<i>Legislation</i>	John Kelly

**Contributors:** Pamela Allen, Carol E. Bell, William G. Bittner, Thaedra Chebra, Kevin Curry, Kerry Czmek, Eric Friedmann, Susan C. Greitz, Debra Lewaine, Suzanne Miller, Maryanna Paolinie, Charlie Peters, and Bruce Stuck.

**Staff:** J. Donald Byrnes, Lauren D. Higgins, Terry A. McWilliams, Sara E. Murphey, Erin J. Toth, Kelly J. Warboys.

**Editor:** Sheri B. Silverstein

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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.
- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such land in current year attributable to successful appeals, revaluations, or reassessments.

**December 20–**

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

**December 31 (on or before)–**

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2009 must be filed with assessor during the pretax year, thereafter with collector during the tax year. □

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

[www.state.nj.us/treasury/taxation/smallbus.shtml](http://www.state.nj.us/treasury/taxation/smallbus.shtml) □

### **Criminal Enforcement**

Criminal enforcement over the past several months included:

- On May 29, 2008, a Somerset County Grand Jury returned a 407-count indictment charging 15 defendants with interstate racketeering, money laundering, and conspiracy in this multistate case dubbed "Operation Stop Payment." Eric Eugene Criss, alleged organized crime leader, was also charged with failure to file tax returns and failure to pay taxes for his part in this scheme to defraud banks and other financial institutions. The scheme was carried out through the creation and presentation of fictitious payroll checks for payment. The investigation was initiated by the Somerset County Prosecutor's

Office when fictitious checks were reported by Peapack-Gladstone Bank and the organized crime enterprise, lead by Criss, was uncovered. Assisting in this six-month-long investigation were: the Federal Bureau of Investigation; U.S. Secret Service; Pennsylvania State Police; the Hunterdon, Middlesex, Ocean, and Warren County Prosecutor's Offices; and various local police departments.

- On June 6, 2008, Matilda Amante Ramos was sentenced to five years' probation and required to pay \$400 per month on restitution of \$35,851. A \$6,000 payment was made at the time of sentencing. Matilda Amante Ramos was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are: Paul Sarris, 50; Achilles "Butz" Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito "Angelo" A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal

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## **Small Business Workshops**

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

### **Current Amnesty Programs**

Oklahoma 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.

OK      Sept. 15 – Nov. 14      [www.tax.ok.gov/](http://www.tax.ok.gov/)

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\$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks.

- On June 10, 2008, a Bergen County Grand Jury handed up a six-count indictment against Carol Lynn Palma, the Deputy Municipal Clerk of Cliffside Park. The indictment charges Carol Lynn Palma with third-degree theft by deception, third-degree theft by failure to make required disposition of property, second-degree official misconduct, fourth-degree falsifying or tampering with records, third-degree failure to pay taxes when due, and third-degree filing or preparing false or fraudulent returns.

The Bergen County Prosecutor's Office and the Office of Criminal Investigation began an extensive investigation into payments made by the then Superintendent of the Cliffside Park School District, Robert Paladino, to the Deputy Municipal Clerk, Carol Lynn Palma. By way of criminal complaints, the Bergen County Prosecutor's Office charged that the defendants entered into a scheme whereby school board funds that should have been used for the education of children were instead diverted to Palma for election services. Invoices for these payments were virtually nonexistent, vouchers for these payments were improper, and the payments were not approved by the Cliffside Park Board of Education. The six-count indictment against Palma charges that she submitted false purchase order(s), known as vouchers, for payment and illegally received and kept for

herself Board of Education funds which she was not entitled to receive. The indictment charges that Palma filed false or fraudulent New Jersey State income tax returns for several years by failing to include these payments from Board of Education funds as income on her tax returns and that she failed to pay taxes due thereon.

- On June 27, 2008, Crystal Velitschkow, 50, of Marlboro, New Jersey, pled guilty to second-degree money laundering. Velitschkow, along with live-in boyfriend Spiro Pollatos, 45, was arrested in December on charges of first-degree money laundering, second-degree conspiracy to commit racketeering, and second-degree theft. The Marlboro couple allegedly conspired to steal more than \$2.5 million through fraudulent loan services, collecting excessive fees and commissions. It was determined that over \$2.5 million in criminal proceeds was funneled through Velitschkow's personal bank account to finance purchases of real estate, cars, and boats as well as other personal expenses in this series of mortgage and investment scams, allegedly orchestrated by her boyfriend, Spiro Pollatos. Under the plea agreement, Crystal Velitschkow faces a sentence of 10 years in State prison. Both are being held in the Morris County Jail; bail for Spiro Pollatos is set at \$2 million.
- On July 1, 2008, William Marsh was indicted for stealing \$44,569 from the State of New Jersey by filing fraudulent tax returns. Marsh filed 24 fraudulent New Jersey gross income tax returns between February 2002 and

March 2006. He received 14 refund checks from the Division of Taxation totaling \$43,557 and 11 homestead rebate checks totaling \$1,012. The returns were suspicious in that they used typical variations of the defendant's name such as Will P. Marsh, Will H. Marsh, etc. and listed one of two post office boxes rented by Marsh in West New York, New Jersey, as the mailing address. The employers listed on the W-2s filed with the returns were nonexistent or never filed wage reports with New Jersey. William Marsh was indicted on charges of third-degree money laundering and third-degree theft by deception.

- On July 2, 2008, James Hendricks and Mary Ann Clark, a husband and wife trading as B & J Towing & Service, located in Sicklerville, New Jersey, were indicted by a Grand Jury on the third-degree charges of conspiracy, failure to make required disposition of property received, misapplication of government property, and failing to remit sales taxes with intent to defraud or evade.
- On July 14, 2008, Julio A. Rozon of Union, New Jersey, pled guilty to third-degree failure to pay taxes. Mr. Rozon, the sole officer of Rozon Distributors, Inc. of Newark, New Jersey, had been arrested on February 27, 2008. Mr. Rozon was entered into a Pre-Trial Intervention Program, sentenced to 50 hours of community service, and ordered to pay the tax.
- On July 29, 2008, Robert Parrish, 44, of Neptune, New Jersey, former manager of the New Africa

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Day Care Center, was found guilty of theft as an accomplice, following a five-day trial. Robert Parrish was convicted of third-degree theft by failure to make a required disposition of property, third-degree misconduct by a corporate official, and third-degree failure to file a State income tax return for 2002 for diverting thousands of dollars in State funding from the day care center for his personal use. Parrish was indicted in June 2006 along with New Africa Day Care Center Inc., formerly located in Newark, New Jersey, its executive director, Muslimah Suluki, 60, who is Parrish's mother; and her ex-husband, Mahdi Suluki, 66, of East Orange, New Jersey, who was a consultant and board member of New Africa. Mahdi Suluki pled guilty on July 21 to a charge of third-degree theft by deception. He admitted that he solicited a donation of \$4,785 from a Newark

business for New Africa after the day care center went out of business and deposited it into a bank account he controlled. The charges remain pending against Muslimah Suluki, a fugitive whose last known residence was in College Park, Georgia.

- In the area of refund fraud, the Office of Criminal Investigation prevented the issuance of fraudulent refund claims totaling \$10,894,456 for the period July 2007 through June 2008. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. □

## Tax Briefs

### Corporation Business Tax

**Short Period Returns** — The treatment of an S corporation that changes to a C corporation for Federal purposes is set forth at N.J.A.C. 18:7-20.1(e) which states that:

If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and, therefore, ceases to be a New Jersey S corporation, but continues its corporate existence, the corporation must file a New Jersey S corporation return (CBT-100S) for the short period ending on the day before the disqualifying event, and a C corporation short period return (CBT-100) for the remainder of the year.

1. The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension

of time to file the CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T on or before the due date of the return.

The procedure for revoking an S corporation election is set forth at N.J.A.C. 18:7-20.1(f) which states that:

In general, once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation unless the election is revoked pursuant to N.J.S.A. 54:10A-5.22(d).

1. To revoke an election, a letter of revocation signed by all shareholders holding more than 50 percent of the outstanding shares of stock on the day of the revocation, must be filed. A copy of the original election form must accompany the letter of revocation.

2. Subject to (f)1 above, an election may be revoked on or before the last day of the accounting or privilege period in which the election would otherwise apply.

Short period returns are required in New Jersey subsequent to a merger as set forth at N.J.A.C. 18:7-12.1(b) which states that:

Some of the circumstances which require the filing of short period returns are:

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

## Interest 9.00%

The interest rate assessed on amounts due for the period April 1, 2008 – December 31, 2008, will be 9.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%

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2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;
3. Corporations which dissolve, merge, consolidate, withdraw, surrender, or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;
4. A corporation which changes its accounting period.

**Minimum Tax for Short Period upon Dissolution, Merger, Consolidation, or Withdrawal** — A short period return is required when corporations dissolve, merge, consolidate, withdraw, surrender, or otherwise cease to have a taxable status in New Jersey prior to the close of a 12-month accounting period. N.J.A.C. 18:7-12.1(a)3.

When a short period return is required, the minimum tax cannot be prorated. The full minimum tax amount that would be due for a full accounting or privilege period must be paid. N.J.A.C. 18:7-12.2(a)1.

When a corporation takes over another corporation and the target

corporation ceases to exist in New Jersey, two short period returns must be filed and the appropriate amount of minimum tax must be submitted for each short period. The minimum tax is calculated based on New Jersey gross receipts for each privilege period. A minimum tax must be calculated for the short period return that is filed to reflect income for the target company up to the point that it is no longer a separate entity. The minimum tax is calculated based on gross receipts for the short period.

### **Gross Income Tax Property Tax Deduction/Credit and Mobile Homes**

— Mobile homes which are located inside a mobile home park are not subject to local property taxes. Instead, such homes are subject to a municipal service fee which covers the cost of local services such as sewer and water. Because they do not pay property taxes on their home, owners of mobile homes inside mobile home parks cannot be treated as homeowners when claiming the property tax deduction/credit. However, since the land that the mobile home is located on is subject to property taxes, and the mobile home owner is leasing that land, he/she can claim the property tax deduction/credit as a tenant using 18% of the rent paid if all of the other eligibility requirements are met. The mobile home owner should enter 18% of the rent paid for the land on Line 1, Schedule 1 of Form NJ-1040. The fee for municipal services may not be included. If the

taxpayer is renting the mobile home as well as the land, he or she cannot use the rent paid for the mobile home when determining the property tax deduction/credit.

**Partnerships  
LLC Filing Requirement-Inactive** — Every flow-through entity that operates as a partnership and has New Jersey source income or has a New Jersey resident member, must file Form NJ-1065. Income from New Jersey sources includes any income, gain, loss, or expense.

An LLC operating as a partnership in New Jersey must file Form NJ-1065 even if there is no activity to report for a privilege period.

Fiscal year returns are due the 15th day of the fourth month after the end of the tax year. Any short period return must be filed by the due date of Federal Form 1065.

An entity with ten or more owners must file its return electronically. Form NJ-1065 filers that have less than ten partners have the option to file electronically or on paper.

A \$150 per owner filing fee is imposed on partnerships and other flow-through entities having income (or loss) derived from New Jersey sources and that have more than two owners. The filing fee is due on or before the 15th day of the fourth month succeeding the close of each privilege period. An installment payment equal to 50% of the filing fee for the current fiscal year is also required at the same time. The filing fee does not have to be submitted if the LLC derived no income from New Jersey sources although it is still responsible for filing Form NJ-1065.

### **Public Auction Information**

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "[News](#)." For details about a particular auction, select "NJ Public Auction" at the beginning of its listing.

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The LLC must also file an annual report along with a \$50 filing fee. Online filing is required. For more information, visit the Division of Revenue's Web site at: [www.state.nj.us/njbgs/](http://www.state.nj.us/njbgs/)

**Recycling Tax**

**Liability for Tax** — P.L. 2007, c.311, as amended by P.L. 2008, c.6, imposes a recycling tax on every ton of solid waste accepted for disposal or transfer at a solid waste facility. The recycling tax is further imposed on every ton of solid waste collected by a solid waste collector that transports solid waste for transshipment or direct transportation to an out-of-State disposal site.

The incidence of the tax falls directly on the solid waste facility or, in the case of haulers transporting to railroad transfer stations or directly out-of-State, directly on the hauler. The recycling tax is not a "trust tax" under which a facility or hauler collects and remits tax on behalf of the State. Rather, it is a cost of business that is passed on to customers in billing for services.

From a tax standpoint, any pass-through of the tax either from the

solid waste facility to the hauler or from the hauler to the waste generator is merely an increase in rates for services billed and does not represent a collection of the recycling tax.

Organizations designated as exempt organizations holding Exempt Organization Certificates (Form ST-5) are exempt from sales tax imposed by the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). This exempt status does not extend to taxes imposed under any other area of tax law. Therefore, an exempt organization can be subject to any tax other than sales tax (e.g., recycling tax) unless a specific exemption is expressed in the law.

**Sales and Use Tax**

**Construction Permitting Services** — The Division responded to an inquiry regarding the taxability of various costs associated with the acquisition of construction permits. The business gathers data for permit applications, prepares the documentation for submission, does onsite inspections, and performs research to assist the client in obtaining construction permits. Other services provided include consultation, supervision of onsite inspections, risk assessment and safety compliance

for site work, code consulting and research, and secretarial services. Time, travel, tolls, etc. will also be charged to the client.

All of the services mentioned are nonenumerated services that are not subject to sales tax. The expenses incurred by the service provider are also not subject to tax since they are incurred as part of a nontaxable receipt.

**TV Converter Box Coupons** — The Department of Commerce's National Telecommunications and Information Administration, a department of the Federal government, is administering the Digital-to-Analog Converter Box Coupon Program as authorized in the Digital Television Transition and Public Safety Act of 2005. Between January 1, 2008, and March 31, 2009, eligible U.S. households can request up to two coupons, worth \$40 each, to be used towards the purchase of up to two coupon-eligible converter boxes. Information regarding the program may be viewed at: [www.ntiadtv.gov](http://www.ntiadtv.gov)

Under the New Jersey Sales and Use Tax Act, the amount of a reimbursed coupon is included within the "sales price" of property and services and

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**Enforcement Summary Statistics**  
**Second Quarter 2008**

Following is a summary of enforcement actions for the quarter ending June 30, 2008.

• Bank Levies	1,493	• Seizures	136
• Certificates of Debt:		• Auctions	9
Total Number	7,291		
Total Amount	\$69,569,074		

For more detailed enforcement information, visit our Web site at: [www.state.nj.us/treasury/taxation/jdgdisc1.shtml](http://www.state.nj.us/treasury/taxation/jdgdisc1.shtml)



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is taxed accordingly. This position is not dependent upon who actually provides the reimbursement, but rather, that a third party has agreed to pay the seller the coupon amount towards the specific purchase made by the coupon holder. The Division has been advised that the Federal government reimburses the store for the amount of the coupon. Thus, for example, if the converter is priced at \$49.99 and the store receives a \$40 coupon issued by the National Telecommunications and Information Administration, the 7% sales tax is calculated on \$49.99, prior to the deduction for the coupon amount. □

## In Our Courts

### Gross Income Tax

**Alimony** – *Nancy McGoldrick v. Director, Division of Taxation*, Docket No. 001074-07, decided June 24, 2008.

Judge Hayser granted the Division's motion for summary judgment and denied plaintiff's motion for reconsideration.

On April 8, 2004, Peter and Nancy McGoldrick signed a Property Settlement Agreement (PSA). The agreement called for Mrs. McGoldrick to receive \$100,000 in alimony. It also called for her to receive "additional alimony" of \$10,649.72 from April 2004 to December 2004. This amount represented 34% of the proceeds of the sale of Natural Specialties Inc. to Acosta Inc. Mrs. McGoldrick will receive these payments until 2011, and they will not terminate upon remarriage or death. The PSA specifically indicated that this amount is to be taxable to the wife and deductible to the husband. Plaintiff argued that the taxability provision violated public policy. Plaintiff contended that the payment received was an "assignment of a right to income arising in connection with the divorce" and not taxable to her.

Judge Hayser stated:

Indeed, if the proceeds were only income to the former husband, they presumably would have been factored into the basic alimony award. His employment agreement with NSSI is the only subject of his personal services, and thus taxable, and the only basis for basic alimony payments to the plaintiff. Even if the proceeds of the sale of the brokerage relationships were paid to the former husband as a W-2 employee, it does not change the nature and source of these proceeds, just as "additional alimony" is not necessarily alimony.

The "additional alimony" payments were taxable to Mrs. McGoldrick as alimony on her NJ-1040 return and deductible by Mr. McGoldrick as an alimony deduction on his NJ-1040 return.

**Local Property Tax**  
**"Hospital Purposes" Exemption for Off-Site Building** – *Hunterdon Medical Center v. Township of Readington*, decided July 14, 2008.

This New Jersey Supreme Court appeal raises the issue of whether a hospital's off-site building that houses its Health and Wellness Center, which provides physical therapy and cardio-pulmonary rehabilitation services, is exempt from local property tax. N.J.S.A. 54:4-3.6 states that real property used for the work of nonprofit organizations, including "all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes" are exempt from property tax. Whether the health

## Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

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center is exempt depends on the term “hospital purposes.”

Hunterdon Medical Center (HMC) is a nonprofit corporation in Flemington, New Jersey. It is a general, acute-care hospital with its certificate of incorporation in effect since 1983 and amended in 2001 to indicate that it is organized for charitable purposes including the establishment and management of a hospital, medical, and health center. In 1998, HMC opened its Health and Wellness Center about nine miles from the Flemington hospital. The HMC provides services to the community through exercise, fitness, diet, physical therapy, and cardio-pulmonary rehabilitation. The Center’s pool, running track, weight room, aerobic exercise equipment, and classroom areas were open to the public through the payment of membership dues. However, individuals could use the fitness equipment and facilities if they were patients of one of the two services that the hospital provides through the Center, namely, physical therapy and cardio-pulmonary rehabilitation. Also, the building contains a hospital-owned pediatric physician practice which had existed as a private practice prior to its acquisition in December 1997. HMC was receiving an exemption up until the 2000 tax year. The Readington Township tax assessor revoked the tax exemption and issued a tax assessment of \$3,300,000 for the property, \$2,000,000 of which was allocated to the facility.

The HMC filed with the Tax Court for the 2000 through 2005 tax years, wanting a tax exemption for the Wellness Center in its entirety (including the physical therapy service

and cardio-pulmonary rehabilitation service, and the pediatric practice), arguing that the uses were necessary to the hospital’s mission to provide a continuum of care to members of the community. The Tax Court rejected its application of “reasonably necessary test,” finding it unhelpful in the evaluation of the particular use of this property. The Court stated that no prior decision concerning “hospital purposes” exemption had concerned a hospital-owned facility having characteristics like those present in this matter: (1) a location distant from the main hospital campus; (2) not used for a purpose supportive of the hospital’s core function; and (3) used as part of the hospital’s continuum of care and its mission to enhance and improve the general health status of the population in the local area.

The Tax Court described the continuum of care to be a new element of hospital services. The Court devised its own framework for deciding between off-campus hospital facilities that would qualify for tax exemption under N.J.S.A. 54:4-3.6. The test had three components: (1) the nature and extent of the integration between the hospital and the subject facility; (2) the extent to which the activity conducted in the facility is under the control or supervision of the hospital staff; and (3) whether the facility serves primarily hospital patients

or primarily members of the general public. Two considerations were added to the third component: the first relates to the extent to which the hospital facility competes with commercial or privately owned facilities in the area, and the second is whether an exemption can be granted in proportion to the percentage of use by hospital patients of a specific facility within a building.

The Tax Court applied that framework to the Center and separately to the physical therapy service, finding each should be declared ineligible for exemption. The Appellate Division accepted the Tax Court’s finding with the new test criteria applied. The HMC appealed. The Supreme Court granted HMC’s petition for certification.

The High Court found earlier definitions, i.e., a facility providing continuous long-term care for periods exceeding 24 hours, too restrictive.

It was held that any medical or diagnostic service that a hospital patient may require, whether preadmission, during a hospital stay, or postadmission, constitutes a “hospital purpose” under the tax exemption statute. When an off-site facility provides services, its operational activities must be integrated and supervised by hospital personnel.

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The Supreme Court accepted the additional tests applied by the under Court but with a broader approach to the type of required supervision. The status of the physical therapy service was remanded to the Tax Court for further clarification.

The analysis for the term “hospital purposes” must meet the medical pursuits permitted to the “modern” hospital in New Jersey and can no longer just fit the needs of a nineteenth or even a twentieth century vision of a hospital building. Today, treatment is given on an outpatient basis at a hospital’s main facility and off-site facilities. The term “hospital purposes” should acknowledge the variety of activities that a modern hospital can be expected to perform for both inpatients and outpatients.

**Sales and Use Tax**  
**Due Process, Equal Protection Clause – *New Jersey Self Storage Association, Inc. et al. v. Corzine,***

*et al.*, Docket No. 004635-2007, decided June 23, 2008.

Amendments to the New Jersey Sales and Use Tax Act (P.L. 2006, c.44) effective October 1, 2006, imposed tax on the furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage. Charges for the service of storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space remains subject to tax. N.J.S.A. 54:32B-3(b) (3). The distinction is that the new law extends the tax to transactions where the facility merely provides the space, but not any services.

“Space for storage” means secure areas, such as rooms, units, compartments, or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free access within reasonable business hours, or upon

reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hanger.

The New Jersey Self Storage Association, Inc. challenged the law on due process and equal protection grounds.

In an unpublished opinion, following cross-motions for summary judgment, Judge Menyuk held that the sales tax on the service of furnishing space for storage by a person engaged in the business of furnishing such space does not violate the due process or equal protection clauses of the Federal or State constitutions, the uniformity clause, or the prohibition against special legislation in the New Jersey Constitution. □

***In Our Legislature***  
**Cigarette Tax**

***Prohibition on the Sale of Certain Flavored Cigarettes*** — P.L. 2008, c.91, signed into law on October 1, 2008, and effective the sixtieth day after enactment, prohibits the sales of certain flavored cigarettes in New Jersey. It further establishes civil penalties for violations and outlines circumstances in which the Division of Taxation may suspend or revoke the license of a retail dealer and may subject the dealer to administrative charges.

**Gross Income Tax**  
***Income Verification Procedure for Medicaid and NJ FamilyCare Applicants*** — P.L. 2008, c.53, enacted on August 5, 2008, and effective 90 days after enactment, establishes a new income verification procedure

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for those applying for Medicaid and NJ FamilyCare benefits. Applicants will be required to provide the Division of Taxation written authorization to release applicable tax information to the Commissioner of Human Services for purposes of ensuring that program income guidelines are met.

**Local Property Tax**

**Property Tax Exemption for Renewable Energy System** — P.L. 2008, c.90, enacted on October 1, 2008, and effective immediately, provides a property tax exemption for the value of an installed renewable energy system.

**Miscellaneous**

**Out-of-State CPAs Authorized to Practice in New Jersey** — P.L. 2008, c.45, enacted on July 15, 2008, and effective on the 365th day after enactment, revises the “Accountancy Act of 1997” to authorize out-of-State CPAs to practice public accounting in New Jersey without the need to obtain a license or to notify the New Jersey State Board of Accountancy. It further subjects those accountants to the laws and regulations governing CPAs in this State. The law also requires some accounting firms to register with the New Jersey State Board of Accountancy.

**Fair Housing Reforms** — P.L. 2008, c.46, enacted on July 17, 2008, and effective on that date, revises various laws concerning the provision of affordable housing. It requires that regulatory proposals advanced by State agencies include a housing affordability impact statement. It further requires the Director of the

Division of Taxation to establish an appeals procedure to address challenges brought by developers regarding municipal nonresidential development fees.

**Transitional Energy Facility Assessment**

**Extension and Phase-out of TEFA** — P.L. 2008, c.32, enacted on June 30, 2008, and effective immediately, freezes transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2008 rates for 2009 through 2011, and reduces surcharges in calendar years 2012 and 2013. It provides that TEFA surcharges will expire on December 31, 2013. □

- **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 \$10,000 or more.

[2008](#)   [2009](#)   □

**Tax Calendar**

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) 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.

[2008](#)   [2009](#)

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

[2008](#)   [2009](#)



*important  
phone  
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- ..... 609-826-4400
- Homestead Rebate Hotline  
for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline  
for Tenants ..... 1-888-213-8623
- Property Tax Reimbursement  
Hotline.....1-800-882-6597
- Earned Income Tax Credit  
Information..... 609-292-6400
- NJ TaxFax ..... 609-826-4500
- Business Paperless Telefiling  
System .....1-877-829-2866
- Speaker Programs ..... 609-984-4101
- Alcoholic Bev. Tax ..... 609-588-3932
- Corp. Liens, Mergers, Withdrawals  
& Dissolutions..... 609-292-5323
- Director’s Office ..... 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
- Refunds ..... 609-588-3688
- Public Utility Tax..... 609-584-4337