

New Jersey State Tax news

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Fall Outreach a Success

The Division of Taxation received over 35,000 payments for outstanding liabilities from a recent outreach to taxpayers owing back taxes to New Jersey.

From Oct. 1 to Nov. 17, 2014, the Division offered businesses and individuals the opportunity to pay outstanding tax liabilities with reduced or eliminated penalties, decreased interest, no costs of collection and no recovery fees. The offer covered liabilities for tax periods 2005 through 2013.

Taxpayers responded in record numbers to the Division's offer to clear their accounts at a substantial savings, and most of them made their payments electronically. The Division's Customer Service Center and Regional Offices answered over 9,700 calls, with the offices handling over 1,000 walk-in visits from taxpayers seeking information or assistance.

Initially, the Division contacted taxpayers with known tax debt from 2005 through 2013. However, any taxpayer who owed back taxes for that period could participate.

As a result, both deficient taxpayers — those who had filed returns but still owed tax — and delinquent taxpayers — those with unfiled returns — voluntarily came forward to pay outstanding tax liabilities. The Division will notify these taxpayers if they owe any additional amounts.

Taxpayers who took advantage of this payment opportunity entered into a closing agreement with the Division, which stipulated that the matter was closed, and waived their right to any further administrative review or judicial appeal.

Those who failed to take advantage of the opportunity remain on record as owing their full liability, including penalties, interest, collection costs and/or recovery fees. □

Taxation Collects Back Taxes From Boat Owners

Over the past two years, investigators from the Division of Taxation have recovered \$2.3 million in sales and use taxes from boat owners in New Jersey.

The Division, along with the New Jersey State Police and other agencies, actively search the waterways of New Jersey to find people or businesses attempting to evade sales or use tax on their vessels.

Taxation investigators patrol New Jersey's intercoastal waterways, lagoons and marinas to search for possible tax evaders who have failed to pay tax on their vessels at the time of purchase or first use in New Jersey.

Boats purchased by New Jersey residents from an in-State dealer are subject to 7% sales tax. Boats purchased from an out-of-State dealer

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are subject to use tax the first time they are used in New Jersey. Boats purchased from a nondealer are subject to sales tax if they are required to be registered in New Jersey. Out-of-State residents are subject to sales tax if they own property in New Jersey and have not paid sales tax of at least 7% to their home state.

Investigators also receive referrals from other states regarding boat purchases made by New Jersey residents. Some people purchase a boat in another state but fail to pay the required use tax when they bring it back to New Jersey.

The following are examples of recent enforcement action taken against boat owners who failed to comply with New Jersey sales and use tax laws:

- A Pennsylvania resident who docked his vessel in Wildwood, New Jersey met the New Jersey registration requirement but failed to remit use tax on his vessel. Investigators from the Division of Taxation, accompanied by the New Jersey State Police, seized the vessel until the owner was able to pay \$4,222, including penalty and interest, to release the vessel.
- A Taxation investigator observed a Delaware-registered vessel near the Canyon Club Resort Marina in Cape May, New Jersey. Investigators advised the vessel's owner that he was not in compliance with New Jersey tax laws. He agreed to pay \$14,496.
- Investigators canvassing a marina in Cape May discovered the owner of a charter fishing boat had taken an improper sales tax

exemption when he registered his vessel as a head boat. In order for a vessel to be tax-exempt as a head boat, the following conditions must be met: passengers must pay individually and board first come, first served; the vessel must be certified by the U.S. Coast Guard to carry more than six passengers; anglers must be permitted to fish at any time; and the vessel must be primarily engaged in sport fishing and sail on a daily fishing schedule for a designated species set by the captain. The investigators determined that the vessel operated as a charter fishing boat and, as such, was subject to use tax. The owner paid \$13,020 in back taxes.

- A New Jersey resident was found to have formed a Delaware corporation to purchase a vessel he docked in the Garden State in an attempt to evade sales tax. Because the company had no other purpose than to shield the buyer from paying sales tax, the owner was assessed tax plus penalty and interest totaling \$87,143.

For additional information about the taxability of boats and vessels visit the Division's [website](#) or send an email to TaxRevOps@treas.nj.gov. □

State Investigators Recover Unpaid Business Taxes

New Jersey Division of Taxation investigators engaged in various enforcement actions during July.

- On July 1, 2014, Taxation investigators from the Northfield and Neptune Revenue Opportunity

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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, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. 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

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unpaid business taxes - from page 2

Teams participated in a joint truck surveillance detail with the New Jersey State Police and the New Jersey Motor Vehicle Commission. About two dozen out-of-State businesses were inspected in Carneys Point, Salem County, and six companies were assessed \$68,860 in back taxes.

- The State Police teamed up with the same Taxation investigators again on July 9, 2014, to inspect out-of-State businesses at the Carneys Point Weigh Station. They canvassed 46 out-of-State businesses, assessed seven companies \$38,500 in back taxes and secured two new business registrations. Five of the businesses that had previously been inspected and assessed for not paying taxes were found to be in compliance and paying all appropriate taxes.
- A Taxation field investigator secured \$60,466 in use tax from a Long Branch, Monmouth County,

businessman who was abusing dealer plates on three classic cars purchased as an investment. The vehicles had dealer tags that were being used improperly to avoid paying sales tax. The owner of the vehicles paid the tax after being informed of the law regarding dealer tags.

- On July 15, 2014, Taxation investigators from the Northfield Regional Office seized a restaurant in Egg Harbor Township, Atlantic County, for failure to pay State taxes. Division staff entered the establishment, served warrants of execution, secured the business and demanded full payment. The owner paid the warrant amount due of \$65,000, and the restaurant was allowed to remain open. □

Partnership Filing Requirements

Every partnership that has income or loss derived from New Jersey sources, or that has a New Jersey resident partner during the tax year, must file a New Jersey partnership return and pay any required filing fee and nonresident partner tax even if its principal place of business is outside of New Jersey. This article lists the New Jersey forms partnerships must use to file returns, submit payments and request extensions, along with their due dates.

Filing Returns

Form NJ-1065: The New Jersey Partnership Return is an annual tax return which partnerships use to report the number of partners and any nonresident partner tax. For calendar year filers, the 2014 NJ-1065 is due by April 15, 2015. Fiscal year filers must file their returns by the 15th day of the fourth month following the

close of the fiscal year. For example, a partnership with a fiscal year of July 1, 2014 – June 30, 2015, must file by Oct. 15, 2015.

Submitting Payments

Form PART-100: Partnerships that file Form NJ-1065 may also be required to file Form PART-100, Partnership Filing Fee and Tax Payment Return, which is submitted with payment of the partnership’s filing fee and/or the nonresident partner tax. The partnership is required to file the PART-100 and remit the taxes and/or fees on or before the original due date of the New Jersey partnership return.

If Line(s) 24 and/or 25, Form NJ-1065, reflect nonresident partner tax, the partnership has not satisfied all of its filing and payment requirements when it files *only* the partnership return, Form NJ-1065. Partnerships that are subject to the filing fee and/or the nonresident partner tax must also file Form PART-100 and remit any balance due. Partnerships may be subject to the filing fee if they have three or more partners and to the nonresident partner tax if they have nonresident partners. Payments made on behalf of the partnership by any tiered partnerships are also reported on the PART-100.

Requesting Extensions

Form NJ-1065: To receive a five-month extension of time to file Form NJ-1065, a partnership that obtained an extension of time to file the federal Form 1065 must include a copy of the federal application for extension, Form 7004, with the New Jersey partnership return when filed, and check the box labeled “Application for Federal Extension

Interest 6.25%

The interest rate assessed on amounts due for the period Jan. 1, 2014 – Dec. 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

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is attached” at the top of Form NJ-1065.

Partnerships that do not obtain a federal extension are required to submit the federal Form 7004 to New Jersey as their extension request on or before the original due date of Form NJ-1065. **Note:** A federal extension filed with New Jersey will only extend the filing deadline of the New Jersey partnership return.

Form PART-100: Partnerships that are required to file Form PART-100 may request a five-month extension of time to file by filing the PART-200-T, Partnership Application for Extension of Time to File Return PART-100, on or before the original due date of PART-100. For an extension to be considered valid, the partnership must have paid at least 80% of their total fee and/or nonresident tax by the original due date.

Electronic Filing Mandate

Beginning with tax year 2011, partnerships that use the services of a paid preparer must electronically file *all* their returns completed by that practitioner. This includes Forms NJ-1065, PART-100 and PART-200-T. Payments must be made electronically either by the partnership or the paid tax preparer. In addition,

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation’s website under “[Auctions](#).” Select the name of the business for details about that auction.

partnerships with 10 or more partners must also file all returns and submit all payments electronically whether or not they use the services of a paid preparer.

For additional information on the partnership filing fee and nonresident partner tax, see Technical Bulletin [TB-55\(R\)](#), *Partnership Filing Fee and Nonresident Partner Tax*. For additional information on partnership filing requirements, see the instruction booklets for the New Jersey Partnership Return, Form [NJ-1065](#), and the Partnership Filing Fee and Tax Payment Return, [PART-100](#). □

LOCAL PROPERTY TAX

Tax Assessors’ Calendar

Oct. 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.

Oct. 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 (age 65), disabled persons, or surviving spouses/civil union partners (age 55) eligibility established (pretax year). Age or disability status established by December 31 (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.
- Taxable property value in all districts designated by the municipality, including district proposed in ordinance, certified by assessor as not exceeding 15% or 20% of the total taxable property assessed in the municipality (pretax year).
- Proposed preliminary revenue allocation plan and property tax increment base of district, estimate of taxable value of assessed property, statement of tax abatements or exemptions expected to be granted, etc. certified by assessor.

Nov. 1 (on or before)–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- 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.

Nov. 15–

For Monmouth County, see *Monmouth County Demonstration Program* below.

- Deadline for filing proposed compliance plans with Division of Taxation and County Tax Board.

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

Dec. 1 (prior to)–

- Deadline for filing Form FA-1, Application for Farmland Assessment (pretax year), in cases where assessed values reflect revaluation of all property.

Dec. 1 (on or before)–

- 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.
- 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.

Dec. 20 (on or before)–

- 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.

Dec. 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and senior citizens, disabled persons, and surviving spouses/civil union partners property tax deductions must be filed with assessor during the pretax year, thereafter with collector during the tax year.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by reducing the number of successful appeals, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began Oct. 1, 2013. The following dates

on the assessors' calendar have been revised for municipalities in Monmouth County:

Nov. 1–

- Preliminary assessment list completed by assessor and certified to County Tax Board (pretax year).

Nov. 15–

- Assessor to notify each taxpayer by mail of the current assessment and preceding year's taxes (pretax year). □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On May 21, 2014, Office of Criminal Investigation (OCI) special agents arrested four individuals in the City of Newark who were involved in trafficking, sales and possession of 7.9 cartons of New Jersey counterfeit-stamped cigarettes, 27,327 cigars and 223 pouches of cigarette tobacco to be used for roll-your-own cigarettes. Three subjects were processed at the Newark Police Department, charged with indictable offenses relative to the contraband and remanded to Essex County Jail. The fourth subject was released for a later appearance before the Court.
- On May 21, 2014, OCI special agents, with the assistance of the Camden County Sheriff's and Prosecutor's Offices, executed search warrants after a surveillance operation of an open air contraband market in a Camden City strip mall, which led to the search of storage units, homes and a vehicle. Three individuals

**Enforcement Summary Statistics
Third Quarter 2014**

Following is a summary of enforcement actions for the quarter ending Sept. 30, 2014.

	Number	Amount
• Bank Levies	579	\$ 3,188,512
• Certificates of Debt	3,397	53,812,302
• Seizures	63	1,134,368
• Auctions	7	240,478
• Warrants of Satisfaction	4,098	

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were arrested. One had an outstanding warrant for failing to register as a sex offender, and another was transported to the Essex County Jail for outstanding criminal warrants. The third subject was released on his own recognizance pending a court appearance. More than 60 cartons of Delaware-stamped cigarettes, over 5,000 pirated DVDs, a DVD manufacturing device and related equipment were seized. OCI received assistance from the motion picture antipiracy group.

- On May 22, 2014, OCI special agents arrested a resident of Colonia, New Jersey, who was supplying New Jersey counterfeit-stamped cigarettes to retailers in central New Jersey. The subject was found in possession of 766.9 cartons bearing counterfeit New Jersey and Virginia stamps and legitimate Virginia stamps. A total of 1,700 counterfeit New Jersey stamps along with related application paraphernalia were seized. Additionally, \$41,350 in U.S. currency was seized. Numerous sheets from which counterfeit stamps had already been transferred to packs were recovered as evidence. The subject was processed at the Woodbridge Police Department. Indictable charges related to counterfeiting tax indicia and contraband possession have been filed in Superior Court. This arrest was a result of an OCI undercover operation.
- On May 30, 2014, OCI special agents arrested two subjects associated with a Newark, New Jersey, wholesaler and charged the owner with indictable counts related to possession of contraband

tobacco, failure to keep books and records and failure to file returns. A second subject was charged with related disorderly persons offenses and released pending a court appearance.

- On May 30, 2014, two Virginia residents were stopped by the New Jersey State Police while traveling on the New Jersey Turnpike. The subjects were in possession of 418 cartons of Virginia-stamped cigarettes. Both were charged by OCI special agents with four indictable crimes, each relative to violations of the Cigarette Tax Act, which will be heard in Burlington County Superior Court. The cigarettes were valued at \$36,073.40 and the tax due to New Jersey is \$11,286.
- On June 5, 2014, Joseph H. Kayati Jr. of Camden, New Jersey, was charged in a 33-count indictment for allegedly stealing more than \$48,000 by continuing to cash his father's annuity checks for more than two years after his death. He was charged with 26 counts of forgery, 2 counts of failure to pay taxes and 1 count each of theft by deception, identity theft, theft by failure to make required disposition of property received, failure to file income tax returns and filing a false or fraudulent NJ-1040 tax return. All of the counts were third-degree charges. The State Grand Jury indictment alleges that between Nov. 21, 2011, and Dec. 23, 2013, Kayati Jr. stole \$48,382 in annuity checks from Monarch Life Insurance Company. It was alleged that he failed to report that his father had died in 2011. Over the course of more than a year, Kayati Jr. allegedly took 26 annuity checks

out of his father's post office box and cashed them, forging his father's signature on each check. It was also alleged that he failed to report the annuity proceeds as taxable income to the New Jersey Department of the Treasury. Third-degree crimes carry a maximum sentence of five years in State prison and a criminal fine of up to \$15,000. This case was a joint effort with the Office of the Attorney General, the Office of Insurance Fraud Prosecutor, New Jersey State Police Private Detective Unit, Waterford Police Department and the Office of Criminal Investigation.

- On June 18, 2014, OCI performed a compliance inspection at Downtown Trader LLC located on Market Street in Newark, New Jersey. Seized were 32.7 cartons of contraband cigarettes. The owner of the business was arrested and processed at the Newark Police Department. OCI filed indictable charges to be heard in Superior Court.
- On June 19, 2014, OCI performed a compliance inspection at Fresh Wok restaurant located on Stuyvesant Avenue in Newark, New Jersey. The inspection resulted in the seizure of 207.9 cartons of unstamped/out-of-State cigarettes, 16 Marlboro "loosies," 1,639 cigars and 5 pouches of cigarette tobacco. The owner was arrested and charged with indictable offenses in Superior Court.
- On June 19, 2014, during an inspection at Abdul Mini Market in Newark, New Jersey, OCI special agents found contraband tobacco products as well as various bags and boxes of suspected controlled

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dangerous substances (CDSs). Some of the pouches contained suspected synthetic marijuana. The Newark Police Department Narcotics Unit seized the CDSs. The respective agencies arrested and charged the subject for the CDSs and contraband tobacco.

- On July 4, 2014, OCI special agents responded to information related to importation of untaxed/counterfeit Newport cigarettes from mainland China. Agents recovered 43 cartons as well as evidence tying an Old Bridge, New Jersey, resident to an ongoing contraband operation in central New Jersey. The investigation resulted in the arrest of Othello Alferd of Old Bridge, New Jersey, on Aug. 21, 2014. During his arrest an additional 93.4 cartons of counterfeit cigarettes were seized. The subject was remanded to Middlesex County Jail in lieu of \$25,000 cash.
- On July 22, 2014, OCI staff assisted in a multi-agency investigation of contraband cigarettes originating in Virginia and trafficked over several state lines. The subject was observed loading suspected contraband cigarettes into his vehicle at another suspect's home in Winchester, Virginia. As a result of a motor vehicle stop in New Jersey, the subject gave consent to search his vehicle, where 915 cartons of Virginia-stamped cigarettes valued at \$79,788 were found. OCI special agents arrested the subject and charged him with violations of the Cigarette Tax Act.
- On July 24, 2014, an OCI special agent was ordered by the

presiding Judge to arrest two defendants who failed to appear in the City of Passaic Municipal Court on various charges for contraband cigarette cases. Ambioris Y. Genoa was arrested at his business that afternoon and brought before the Court. A second defendant, Francis C. Robles, turned himself in to the Passaic Police Department later that evening.

- On July 24, 2014, Brian K. Lewis, appeared at the Burlington County Courthouse in Mount Holly, New Jersey, on charges of tax evasion and theft by deception. Lewis was arrested in Riverside, New Jersey, for the tax charges on a warrant issued by the Prosecutor's Office. A victim later came forward with an additional complaint alleging Lewis had agreed to do repair work on his home for more than \$30,000 and did not fulfill the contract. An auditor from OCI testified in Court on July 18, 2014, that Lewis had not paid any taxes since 2002 and was on probation since January 2014 for unregulated contracting. During subsequent hearings, Superior Court Judge Susan L. Claypoole set Lewis's bail at \$100,000, no 10 % cash option, for the tax charges, and Judge Jeanne T. Covert set bail at \$20,000, 10 % cash option, for the theft charges. Lewis is being held at the Burlington County Jail in Mount Holly. In June 2013, he was arrested for allegedly impersonating a police officer to extort an immigrant worker out of \$15,000. Court records show he pled guilty to charges of theft through illegal retention in 2011 and charges of theft by deception in August 2013. For the latter charge, he was sentenced to four years' probation.

- On July 30, 2014, OCI executed a search warrant against the owner of M & K Snacks in Clifton, New Jersey. Seized were 8 cartons of Virginia-stamped Newport cigarettes, 2 cartons of counterfeit New Jersey-stamped Marlboro cigarettes, 62,568 cigars, 1,011 pouches of cigarette tobacco, 27 cans of snuff, 164 Cialis pills, 210 Viagra pills, 198 African Superman pills, various receipts, books and records. Also seized were a 2005 Honda Accord and \$44,195 in U.S. currency. The owner of the business and his son were arrested.
- On July 31, 2014, an OCI special agent responded to the Newark Police Department Vice Unit's inquiry about the discovery of possible sheets of counterfeit New Jersey stamps. Upon examination, the agent arrested the store owner for possession of counterfeit New Jersey stamps. The subject was charged with two third-degree crimes, a fourth-degree crime and disorderly persons offenses. The subject was also selling loose cigarettes and was in possession of 2.4 cartons of Virginia and New Jersey counterfeit-stamped cigarettes. □

Tax Briefs

Gross Income Tax

National Guard Pension – A taxpayer asked whether a National Guard pension should be reported on the NJ-1040 and whether it is subject to New Jersey gross income tax.

The Division responded that for tax years beginning on or after Jan. 1, 2001, New Jersey law excludes from

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gross income “military pension payments or military survivor’s benefit payments paid to individuals by the United States with respect to service in the Armed Forces of the United States.” N.J.S.A. 54A:6-26.

While the New Jersey Gross Income Tax Act does not define “Armed Forces of the United States,” Internal Revenue Code §7701(a)(15) provides that the term “Armed Forces of the United States” includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and the Coast Guard. Members of these forces include commissioned officers and personnel below the grade of commissioned officers.

The exclusion for military pensions applies to pensions resulting from service in the Army, Navy, Air Force, Marine Corps or Coast Guard. This exclusion does not apply to civil service pensions or annuities, even

if the pension or annuity is based on credit for military service. Most military pensions and survivor’s benefit payments are paid by the U.S. Defense Finance and Accounting Service, while a civil service annuity is paid through the U.S. Office of Personnel Management.

New Jersey considers the New Jersey National Guard to be part of the “Armed Forces of the United States” because they are subject to the regulations and jurisdiction of the Army and Navy. Consequently, military pensions paid to noncivilian members by the U.S. Defense Finance and Accounting Service are excluded from New Jersey gross income. However, payments from a National Guard civilian’s pension made through the U.S. Office of Personnel Management or from any source other than the U.S. Defense Finance and Accounting Service are to be included in New Jersey gross income and are subject to tax because that pension is not a military pension.

Sales and Use Tax

Breast Radiation Treatment Catheter Device – The taxpayer, a manufacturer of medical devices, inquired about whether sales of breast radiation treatment catheter devices to hospitals and physicians are subject to sales tax. The taxpayer stated that the device is used in the following manner:

Brachytherapy, also known as internal radiation, is a means to deliver radiation therapy. Instead of aiming radiation beams from outside the body, radioactive seeds or pellets are placed into the breast tissue next to the cancer. A device is put into the space left from breast-conserving surgery and is left in place until treatment is complete. The device goes into the breast as a small catheter (tube). The end of the device inside the breast is then expanded so that it stays securely in the right place for the entire treatment. The other end of the catheter sticks out of the breast. For each treatment, one or more sources of radiation (often pellets) are placed down through the tube and into the device for a short time and then removed. Treatments are given twice a day for five days as an outpatient. After the last treatment, the device is collapsed down again and removed.

The retail sale of tangible personal property is subject to tax unless a valid exemption applies. N.J.S.A. 54:32B-3(a). The Sales and Use Tax Act contains an exemption for the sale of a prosthetic device. N.J.S.A. 54:32B-8.1. “Prosthetic device” means a replacement, corrective, or

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supportive device (including repair and replacement parts for same) worn on or in the body in order to: (1) artificially replace a missing portion of the body; (2) prevent or correct a physical deformity or malfunction; or (3) support a weak or deformed portion of the body.

The Division responded that because the breast radiation treatment catheter device is worn in the body and is part of the radiation treatment used to correct a physical deformity or malfunction it is considered to be a prosthetic device and is exempt from tax.

Charges for Services Offered in Connection With the Sale of a Cellular Phone – A cellular phone retailer inquired as to whether charges for the following services performed in connection with the sale of a cellular phone are subject to sales and use tax:

1. Activation of the phone on a new plan;
2. Assistance in changing phone numbers;
3. Data transfer from one phone to another; and
4. Troubleshooting various issues associated with a phone's use.

The Division responded as follows:

1. Activation of the phone is necessary to complete the sale of the phone. Thus, the charge for activation is taxable as part of the sales price of the phone. N.J.S.A. 54:32B-2(oo).
2. The charge to assist customers in changing a phone number is not subject to tax.

3. The charge to transfer data from one phone to another is not subject to tax.
4. The charge to troubleshoot and resolve issues associated with the phone is taxable as the servicing of tangible personal property. N.J.S.A. 54:32B-3(b)(2).

Postage Sold in Connection With Printed Advertising Material – A taxpayer who sells printed advertising material inquired about the taxability under the Sales and Use Tax Act of each of the following methods for selling postage to its customers:

1. The taxpayer collects a prepayment deposit from its customer for the cost of the postage for the mailings, procures the postage and mails the material;
2. The customer, using its own postal permit, deposits an amount equal to the estimated cost of the postage in its own United States Postal Service (USPS) account; and
3. The customer, using its own postal permit, allows the USPS to direct debit the cost of the postage from the customer's account.

The Division responded that sales tax is imposed on sales of printed advertising material as well as printed advertising material processing services. There are exemptions in

the Act for printed advertising material delivered to out-of-State recipients, and for the processing services performed in connection with such material. N.J.S.A. 54:32B-8.39; N.J.S.A. 54:32B-3(b)(5). Processing services are described as addressing, separating, folding, inserting, sorting and packaging advertising material and transporting to the point of shipment.

The definition of "sales price" includes delivery charges. N.J.S.A. 54:32B-2(oo)(1)(D). The definition of "delivery charges" includes postage since postage is the means by which printed advertising material is delivered (delivery is part of the processing service). N.J.S.A. 54:32B-2(rr). Thus, postage charged to a customer as part of the sales price for printed advertising material and processing services where the material is delivered to a location in New Jersey is taxable. The postage expense is part of the taxable sales price whether or not separately stated to the customer. However, postage charged to a customer as part of the sales price for printed advertising material and processing services where the material is delivered out-of-State is not taxable. N.J.S.A. 54:32B-8.39.

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24 Hours – 7 Days a Week**



Note: Effective June 1, 2015, the NJ TaxFax Service will be discontinued.

Delivery charges only refer to charges made by the seller of goods and services. The purchase of postage directly from the USPS is not taxable.

Starting with the premise that the charges for the printed advertising material are taxable, the Division responded to the taxpayer as follows:

1. The prepayment deposit is taxable because the taxpayer is purchasing the postage and the postage expense is part of the sales price of the printed advertising material and processing services;
2. The charge for the customer using its own postal permit is not taxable since the postage is purchased directly from the USPS; and
3. The charge for the customer using its own postal permit and allowing the USPS to direct debit the cost of the postage from the customer's account is not taxable because the customer makes payment directly to the USPS. □

In Our Courts

Sales & Use Tax

Bankruptcy – *Glenn B. Slater v. Director, Division of Taxation*, cert. denied, April 21, 2014; United States Supreme Court, Docket No. 13-925.

Taxation issued plaintiff/petitioner (Slater) a Notice of Finding of Responsible Person Status for sales and use taxes owed by his business. Slater did not challenge this notice. Two years later, Slater filed a petition for Chapter 11 bankruptcy. Taxation filed proof of claims for sales and use tax, which were later expunged as untimely. The Court never issued

an order that the claims were discharged or dischargeable. In 2002, the Bankruptcy Court dismissed Slater's bankruptcy petition without there being a discharge as to any debt in the bankruptcy proceeding. In 2008, Slater filed a complaint in Tax Court seeking a refund of sales and use tax and argued that Taxation was barred from collecting because Taxation's claims were expunged by the Bankruptcy Court. Taxation moved to dismiss the complaint on the grounds that it was not filed within 90 days.

The Tax Court dismissed Slater's complaint for lack of subject matter jurisdiction, thereby denying Slater's refund claim. The Appellate Division affirmed, stating that Taxation's claims "were not discharged or deemed dischargeable in the bankruptcy proceeding and, because plaintiff's petition was dismissed, the order expunging the Director's claims was vacated as a matter of law. See 11 U.S.C.A. §349. Plaintiff was therefore mistaken in his belief that the Director's claims were disposed of in the bankruptcy proceeding and, because he did not file his claim for a refund on a timely basis, it was properly dismissed." Slater petitioned higher courts but both the New Jersey Supreme Court and United States Supreme Court declined to hear Slater's appeal. □

In Our Legislature

Administration
State Agencies Required to Post Certain Rule-Making Procedures and Documents Online — P.L. 2013, c.259, was signed into law on Jan. 17, 2014, and took effect immediately, but was inoperative until July 1, 2014.

This law amends several provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to require State agencies to use various electronic technologies in rule-making procedures. Thus, each agency is required to post various documents (or URL address links thereto) to its website including, but not limited to, the text of all rule proposals, notices of rule adoptions, and the complete and current text of all agency rules.

The new law codifies the 30-day advance notice requirement for rule proposals to interested parties.

Dishonored Electronic Funds Transfers Criminalized — P.L. 2014, c.45, signed into law on Sept. 10, 2014, and effective immediately, provides that a person commits a crime if they issue or pass a check or similar payment of money knowing that it will not be honored by the drawee. The new law amends N.J.S. 2C:21-5 to specifically include payments made by electronic funds transfer (EFT). Thus, a person commits a crime if he/she authorizes an EFT knowing that it will not be honored. The degree of the crime and the associated penalties depend on the amount of the payment.

Dishonored Payments Recovery Process — P.L. 2014, c.46, signed into law Sept. 10, 2014, and effective immediately, provides a process for payees to recover payments which were dishonored for lack of funds or because the maker does not have an account with the drawee. Prior to the enactment of this law, the statute only applied to payments made by checks, drafts and orders of withdrawal. The new law amends N.J.S. 2A:32A-1 to specifically include payments made by electronic funds transfer (EFT).

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This new law does not increase penalties; it merely takes existing provisions and applies them to dishonored payments made by EFT.

Gross Income Tax

Checkoff for Homeless Veterans Grant Fund — P.L. 2013, c.239, signed into law on Jan. 17, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Homeless Veterans Grant Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for Leukemia & Lymphoma Society – New Jersey Fund — P.L. 2013, c.244, signed into law on Jan. 17, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Leukemia & Lymphoma Society – New Jersey Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for New Jersey Farm to School and School Garden Fund — P.L. 2014, c.38, signed into law on Aug. 25, 2014, effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the New Jersey Farm to School and School Garden Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Checkoff for Local Library Support Fund — P.L. 2014, c.47, signed into law on Sept. 10, 2014,

effective immediately, and applicable to tax years beginning on or after Jan. 1, 2015, allows taxpayers to donate to the Local Library Support Fund by specifying that a certain amount of their income tax overpayments should go to that fund or by enclosing a contribution with their gross income tax returns.

Local Property Tax

Certain Blue Acres Properties Exempt From Taxes — P.L. 2013, c.261, signed into law on Jan. 17, 2014, took effect immediately and is retroactive to Oct. 29, 2012, the date on which Superstorm Sandy made landfall in New Jersey.

The new law exempts certain designated blue acres properties acquired by municipalities from county, school and fire district taxes. A blue acres property is a parcel of real property acquired by a municipality using funds made available under a federal, county, municipal or State program for the acquisition of property situated in flood-prone areas of the municipality. The property becomes tax-exempt on the date it is acquired by the municipality.

Previously, any municipality that acquired a blue acres property before Oct. 1 was required to pay the taxes for the remainder of the year. If the municipality acquired the property after Oct. 1, it was required to pay the taxes not only for the remainder of that year but for all of the following year as well. This exemption will allow municipalities to take advantage of grants for acquiring properties in flood-prone areas without having to pay the associated tax liabilities.

Multiple Taxes

Certain State Tax Compliance Standards and Benefit Restrictions

— P.L. 2014, c.13, was signed into law on June 30, 2014, and took effect immediately, except that sections 1, 2 and 3 apply to privilege periods ending on or after July 1, 2014, and section 4 applies to sales made, services rendered and uses occurring on or after July 1, 2014. The new law restricts certain State tax benefits and clarifies existing law in order to protect revenue. These modifications were warranted as a result of recent Tax Court decisions.

Operational Income. Section 1 of the law revises the definition of operational income in response to the Tax Court's decision in *McKesson Water Products Co. v. Director, Div. of Taxation*, 200 N.J. 506 (N.J. 2009). Previously, operational income was defined as income from real or tangible property if the acquisition, management *and* disposition of the property constitute integral parts of the taxpayer's trade or business operations. The Court held that all three factors must be satisfied in order for income to be deemed operational. Under the new law, income will meet the definition of operational income as long as any one of the three factors (acquisition, management *or* disposition of the property) is an integral part of the taxpayer's regular trade or business operations.

Refunds of Partnership Payments.

Section 2 of the law clarifies the circumstances in which the tax paid by a partnership on behalf of its non-resident partners may be claimed in response to the Tax Court decision in *BIS LP, Inc. v. Director, Div. of Taxation*, 2014 N.J. Tax (App. Div. April 11, 2014).

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In 2002, legislation was enacted to require New Jersey partnerships to make payments on behalf of their nonresident partners. In the *BIS* decision, the Court interpreted this language to mean that a nonresident that was determined to have no filing obligation could be entitled to a refund of tax the nonresident did not pay, but that was paid on the nonresident's behalf. This new law clarifies that these payments are only refundable to a nonresident partner who files a New Jersey tax return and reports income that is subject to tax in this State. In that case, the nonresident partner may apply the tax that was paid by the partnership and credited to the nonresident partner's partnership account against the partner's tax liability. The law also provides that a partnership that pays tax pursuant to this section is not entitled to claim a refund of payments credited to any of its nonresident partners.

Parity with IRC Section 108. Section 3 of the law provides corporation business tax parity with the federal tax treatment of net operating losses (NOLs) when an entity receives discharge of indebtedness in certain circumstances.

The Internal Revenue Code excludes certain categories of debt cancellation from income (such as discharges in bankruptcy). Instead, IRC Section 108(b) calls for a reduction of certain "tax attributes," including NOLs. The New Jersey Corporation Business Tax Act provides no such reduction. The new law requires that a net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period must be reduced by the amount excluded from

federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC Section 108, for the privilege period of the discharge of indebtedness.

Sales and Use Tax: Click-Through Nexus. Section 4 of the law creates the presumption that a remote seller making sales to New Jersey customers of tangible personal property, specified digital products or services taxable under the Sales and Use Tax Act has nexus with New Jersey and is required to collect and remit New Jersey sales tax if that seller enters into an agreement to pay a commission or other consideration to an independent contractor or other representative located in this State who refers customers to that seller, whether by a link on a website or otherwise. The independent contractor or other representative is deemed to be soliciting customers on behalf of the remote seller through such links, thereby creating nexus. If more than \$10,000 in New Jersey sales is achieved through such links, nexus is established and registration and remittance is required. This presumption may be rebutted by proof that the independent contractor or representative with whom the seller has an agreement did not engage in any solicitation in the State on behalf of the person that would satisfy the nexus requirements of the United States Constitution.

Sales and Use Tax Exemption for Certain Tattooing With Reconstructive Breast Surgery — P.L. 2013, c.193, signed into law on Jan. 17, 2014, took effect immediately and applies to medically prescribed services provided on or after that date.

The law, called "Jen's Law," amends N.J.S.A. 54:32B-3 to eliminate the

imposition of sales tax on certain permanent cosmetic make-up applications (i.e., tattooing) provided pursuant to a doctor's prescription in conjunction with reconstructive breast surgery. These procedures are clearly distinguishable from purely aesthetic tattooing, including permanent body art and permanent cosmetic application, which is taxable under N.J.S.A. 54:32B-3(b)(10). □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2014 (Jan. 1, 2014 – Dec. 31, 2014) and tax year 2015 (Jan. 1, 2015 – Dec. 31, 2015) 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.

[2014](#) [2015](#)

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

[2014](#) [2015](#)

- **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.

[2014](#) [2015](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline
for Homeowners..... 1-888-238-1233
- 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 609-341-4800
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director's Office 609-292-6400
- Inheritance Tax 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634