

New Jersey State Tax News

Fall 1999

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New State Treasurer Named



Former Director of the New Jersey Division of Investment Roland M. Machold was named as the new State Treasurer by Governor Christine Todd Whitman effective August 16, 1999. Mr. Machold succeeds James DiEleuterio as top executive of this key State agency. He will serve in an acting capacity until confirmed by the State Senate.

A graduate of Yale and the Harvard Business School, Mr. Machold spent his early career as an investment banker with Morgan Stanley & Co. before beginning State service in 1975 as Deputy Director of the Division of Investment. In 1977 he was elevated to Director of that Division where he spent the next 22 years guiding the State's pension funds through a

period of remarkable growth. A 1997 recipient of the Stoddard award, presented by the National Association of State Investment Officers for outstanding public service, Mr. Machold retired in 1998 as head of a Division that was responsible for 152 State funds aggregating \$76 billion.

In addition to government service, Mr. Machold has served as trustee and on the boards of many community organizations and educational institutions, including Columbia University Teachers College, Bryn Mawr College, the Mercer Street Friends Center and

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Important phone numbers

Call Center.....	609-292-6400
Automated Tax Info.....	800-323-4400
.....	609-826-4400
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

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

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the Princeton Child Development Institute. He has also served in the capacity of Independent Director for a global cluster of mutual funds, as Founding Trustee of the National Association of State Investment Officers and the Council of Institutional Investors and as a consultant to the Alabama Retirement Systems.

Mr. Machold has made numerous appearances before the SEC and various congressional Committees, providing testimony on issues as diverse as corporate governance, taxation of pension funds, American competitiveness and the one-share-one-vote issue. He has often been interviewed on network television for his insights on markets, governance and divestment and has served as commentator on the 1997 public television series *Beyond Wall Street*.

Mr. Machold lives in Princeton with his wife Pamela. He is the father of three children. □

NJ SAVER Checks Mailed

As the Governor promised in January when she proposed the NJ SAVER Rebate program for homeowners, the first rebate checks were in the mail to homeowners over the Labor Day weekend. Beginning September 3, the State mailed out an average of 200,000 rebate checks each day over a 5-day period. In total, more than 1 million NJ SAVER rebate checks were mailed representing almost \$170 million in property tax relief.

The NJ SAVER rebate program refunds to homeowners the amount of local school tax paid on the first \$45,000 of their home's equalized value. Homeowners within each municipality receive the same amount, but variations in local tax rates mean that rebate amounts will differ from municipality to municipality.

Homeowners who qualified and
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New Jersey State Tax news

is published quarterly by the:

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Technical Services
Taxpayer Services Branch
Office of Communication
PO Box 281
Trenton, NJ 08695-0281**

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<http://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.

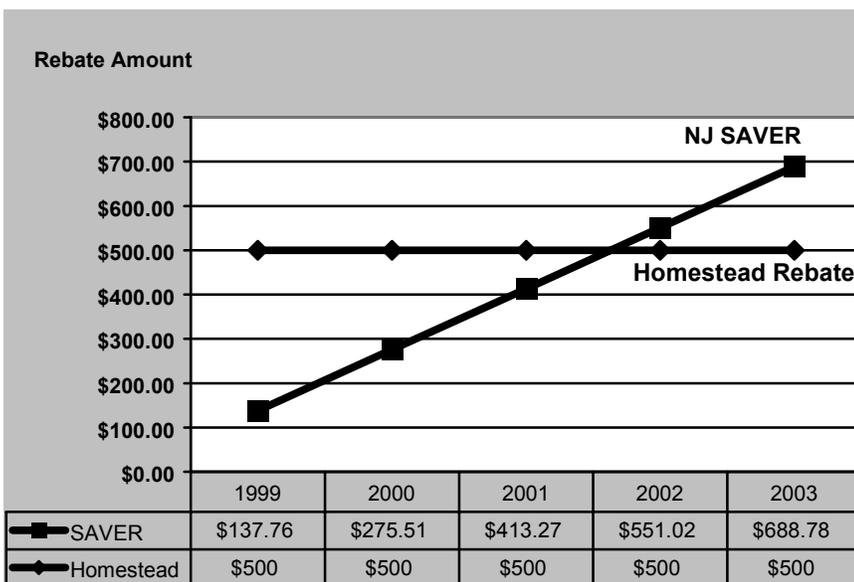
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The chart above illustrates how a typical homeowner who qualifies for the maximum homestead rebate (\$500) will receive a greater benefit from the NJ SAVER program by the fourth year of its phase-in (\$551). The home is in Hamilton township and has an equalized value in excess of \$45,000.

nj saver checks mailed - from page 2

applied for both a homestead rebate and a NJ SAVER rebate received whichever rebate provides the greater benefit. As NJ SAVER rebates grow to their maximum amount over the program's five year phase-in period, many homeowners, particularly those who are senior citizens or disabled, will find that they receive a greater benefit from the NJ SAVER program. (See chart on page 2)

Homeowners who received less than the maximum NJ SAVER rebate for their municipality or who did not receive a check for some reason, got detailed notices of explanation from the Division explaining how their rebate was calculated or why they had not received a check.

To prepare for the expected barrage of inquiries about the new NJ SAVER rebate checks, the Division of Taxation hired additional staff and kept phone lines at its Call Center open evenings and weekends for several weeks after the rebate checks were mailed to assist homeowners who had questions about notices or the amount of their rebates.

The Division has tried to make it as easy as possible for homeowners to check on the status of their rebate claims. Those calling the NJ SAVER Rebate Hotline (1-877-658-2972) — the same number used to file claims — can access an automated inquiry system to find out if their rebate checks have been issued without having to speak to a Taxation agent.

Homeowners can also visit the Division of Taxation's Web site (www.state.nj.us/treasury/taxation)

and inquire online about the status of their NJ SAVER rebates.

Eligible New Jersey residents can file for the 1998 NJ SAVER rebate until November 15, 1999. □

CORPORATION TAX Technology Benefit Transfer Program

On June 28, 1999 Senate Bill No. 1709 was signed into law by Governor Whitman. This legislation clarifies provisions of the Corporation Business Tax Technology Benefit Transfer Program.

Summary

This program allows new or expanding emerging technology and biotechnology businesses to "sell" their unused net operating loss (NOL) carryover and unused research and development (R & D) tax credit carryover to any corporate taxpayer for at least 75% of the value of the tax benefits. The "selling" technology or biotechnology business surrenders those tax benefits in the form of a certificate which identifies the value of the tax benefits. The certificate is "sold" to the "buying" corporate taxpayer and the proceeds of the sale are used by the selling business for fixed assets, working capital and other expenses determined by the New Jersey Economic Development Authority (NJEDA) to be in conformance with the New Jersey Emerging Technology and Biotechnology Financial Assistance Act. The "selling" business must qualify as

a technology or biotechnology company and the "buying" business must do business or a portion of its business in New Jersey.

During State Fiscal Year 2000 (July 1, 1999 through June 30, 2000) this program will have a cap of \$50 million. Each State Fiscal Year thereafter, the cap will be \$40 million. The value of this cap is defined as the loss of tax revenues to the State of New Jersey resulting from the sale of tax benefits. Each applicant company additionally has a lifetime cap of \$10 million.

Eligibility

In order to qualify, a selling business must meet the threshold criteria listed below. In addition to these requirements, the NJEDA will determine eligibility of the selling businesses according to criteria reflected in questions asked in section 8.A through D of the Selling Business Application.

1. Meet the definition of a technology business or a biotechnology business located at the back of the Selling Business Application;
2. Employ fewer than 225 people of which 75% work in New Jersey;
3. Show negative or no operating net income in either of the two most recent, full-year financial statements for the individual company and consolidated affiliates;
4. Show an excess of revenues over expenses of less than 110% in either of the two most recent, full-year financial statements for the company.

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Fees

Each year that a selling company applies to the NJEDA for authorization to sell tax benefits, the company must pay a non-refundable \$500 fee. Applications must be received by the NJEDA by June 30 of each year.

Valuation

In addition to issuing the transfer certificate, the Division of Taxation is also responsible for valuing the unused benefit. R & D credits are valued at face value. NOLs, since they represent a deduction, must be multiplied by the anticipated allocation factor of the seller and the appropriate tax rate. Provided the nature of business remains comparable, the anticipated allocation factor will generally be computed using an average of past filings.

This valuation will be used both to ensure that the unused benefits are sold for at least 75% of their value as well as to determine how much benefit can be sold subject to the program caps.

Allocation of Benefits

Once all eligibility determinations are made and appropriate tax records confirmed, the NJEDA and the Division will determine the amount of tax benefit each taxpayer will be authorized to sell subject to the program limitation. In the event more benefits are requested to be sold than allowed by the annual \$50/\$40 million cap, the benefits will be apportioned. First, authorized benefits up to \$250,000 per company will be ap-

proved. The remaining unauthorized benefits will go into a pool and be apportioned based upon a percentage derived by subtracting the amounts already authorized from the annual cap (\$50/\$40 million) divided by the total remaining benefits being requested to be sold.

Benefit Transfer Certificate

The Division will issue a Benefit Transfer Certificate to the "selling" business and furnish a copy to the NJEDA. The certificate is then sold to the buying corporation. The buying business will attach a copy of the certificate to its next corporation business tax return filed. The certificate will enable the buying business to deduct the proper amount of NOL deduction and/or take credit for the proper R & D credit.

Miscellaneous Provisions

Buyers will be deemed to have accrued the purchase themselves. Therefore, unless the buyer qualifies in the future to be a seller under this program, the acquired benefits will not be transferable.

The NOLs and R & D credits will retain the same "vintage" in the hands of the purchaser as they had with the seller. A 1993 NOL carry-forward would expire after tax year 2000.

In the event a subsequent event or an audit discloses an additional liability owed by the seller, the Division will not take action to rescind the Transfer Certificate. Purchasers, upon receipt of the certificate, are guaranteed the validity of the benefits. □

Interactive CBT Returns on Web

Starting this fall, the Division of Taxation's Web site will offer corporation business tax forms and accompanying schedules that can be downloaded and completed on your computer. The finished returns will then be printed and mailed to the State for processing.

Currently, corporation business tax returns downloaded from the Division's Web site must be printed out blank and completed by hand. The new format allows users to complete forms CBT-100 and CBT-100S and related schedules on their computer, using the Adobe Acrobat Reader software available free over the Internet at: www.adobe.com.

After completing the forms by typing in the appropriate information, the taxpayer prints out hard copies of the return, one to be sent to the State, and another retained for the taxpayer's files. Unfortunately, the free Acrobat Reader does not allow the user to save an electronic version of the return. However, taxpayers that purchase the full version of Adobe Acrobat will be able to save an electronic copy of the return. Information about obtaining the full version of Acrobat is also found at the Adobe Web site.

The Division is researching the feasibility of filing corporate business tax returns online. However, in the meantime, several tax practitioners voiced their preference to complete corporate returns on the computer since that is where much of the information is stored. The Division is glad to respond to their request with this interim step.

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Questions about the interactive corporation business tax forms should be sent to the Division by e-mail through our Web site at:

<http://www.state.nj.us/treasury/taxation/>
or by writing to:

NJ DIVISION OF TAXATION
TECHNICAL SERVICES TSB/OCE
PO BOX 281
TRENTON NJ 08695-0281



GROSS INCOME TAX ***Federal Refunds for State Tax Debts***

Federal legislation was enacted in July 1998 which authorizes the Federal government to offset Federal tax refunds for state tax deficiencies. This program, known as the Federal Reciprocal Refund Offset Program, will be run by Financial Management Services (FMS), a branch of the U.S. Treasury.

It is anticipated that by participating in this program, over 13,000 New Jersey income tax debts which taxpayers are unable to satisfy, either through payments, DPC plans or New Jersey's SOIL program, may be able to be resolved through the set-off of Federal refunds. Taxpayers who have an income tax debt to New Jersey can contact the Division of Taxation and make arrangements to satisfy their debt before their information is submitted to the program.

New Jersey expects to be able to submit claims to FMS by the end of 1999 in order to claim eligible 1999 Federal refunds. Questions regarding this program should be directed to the Division of Taxation's Call Center at 609-292-6400.
□

DIVISION OPERATIONS ***Sale of Certificates of Debt***

For the first time, and in accordance with the provisions of P.L. 1998, c.39, codified as N.J.S.A. 54:50-29 et seq., the State Treasurer, on June 28, 1999, entered into a purchase and sale agreement to sell certain Certificates of Debt which had been filed by the Division of Taxation.

The Certificates of Debt in Bound Lot #1999-1, which were identified for sale by the Director, had an original face value of \$25.4 million and a current face value of \$25.1 million. The Certificates of Debt, which have the same force and effect as a docketed judgment adjudicated in a court of law, represented 250 primary taxpayers and their respective officers or spouses. The taxes due on the said liens ranged from 1967 through 1993 and consisted primarily of sales and use tax, gross income tax (employer), corporation business tax, and gross income tax (individual). Prior to the sale of these liens, the taxpayers had more than ample opportunity to extinguish their indebtedness to the Division, but failed to do so.

These Certificates of Debt have been assigned to an entity known as Tax Enforcement Bureau, LLC. As the new owner of these liens, Tax Enforcement Bureau, LLC will have the same rights as to collection of this debt as would the Division of Taxation, had the sale not taken place. All payments associated with the liens which were sold, and any inquiries and/or requests for satisfaction of the said liens, should be directed to the new owner at the following address:

TAX ENFORCEMENT
BUREAU, LLC
DEPT. 771117
PO BOX 77000
DETROIT MI 48277-1117

Telephone: 1-800-501-2272
Web site: www.teb-nj.org



SALES AND USE TAX ***Taxability of Items for the Holidays***

The fall season includes several special holidays and special seasonal purchases. The following will clarify whether or not some of the major seasonal items are subject to New Jersey sales tax.

Halloween Purchases

Costumes - Children's costumes are exempt from sales tax. Adult costumes are always taxable, whether purchased or rented.

Makeup - Makeup for face painting is taxable.

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Interest 10.75% for Third Quarter

The interest rate assessed on amounts due for the third quarter of 1999 is 10.75%.

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

Effective Date	Interest Rate
10/1/97	11.25%
1/1/98	11.50%
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%

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Pumpkins - Pumpkins that are painted or carved are taxable. Plastic pumpkins or other Halloween decorations are also taxable. If a pumpkin is purchased for consumption it is exempt, i.e., to make a pie or bread, or to roast the seeds.

Thanksgiving Items

Decorative gourds, corn and hay are subject to sales tax.

To save time and effort, many families have their Thanksgiving dinner catered or prepared outside of the home. Just as in a restaurant, a catered meal is always taxable.

Prepared food, such as precooked turkey, ham, or side dishes that can be purchased heated at a supermarket deli counter or salad bar are taxable. Party platters such as cold cuts, vegetables or other arranged food are considered “ready to eat” and are taxable.

Food that is not heated and is intended to be eaten off-premises may be exempt from sales tax because of the way it is packaged or sold. These items are generally sold in a food or grocery store by bulk, weight, by the dozen or by volume (gallon, quart, etc.).

If three pounds of cold cuts are purchased at a supermarket and the purchaser brings it home to arrange on a platter, the cold cuts are exempt from sales tax. If that same supermarket sells the same three pounds of deli meats already arranged on a tray, it is “ready to eat” and is subject to sales tax.

Christmas Trees

The sale of any type of tree, whether it is cut or with its roots in a “ball” is taxable.

Fur Articles

Garments or articles such as coats, stoles, jackets, capes, collars, cuffs and hats made essentially of fur are subject to sales tax. Any article of clothing or footwear made from fur and other materials is subject to tax if more than one-half of the value of the article is attributable to the fur part. Fur does not include felt, woolens or other fabrics made from animal hair or leather or suede. Sheepskin with wool or hair attached (shearling) is considered fur; however, woven or knit materials made of animal hair or wool are not fur. “Fake” fur such as leopard print is not fur. However, rabbit fur dyed to look like mink is considered fur.

Income Tax Liability

Vendors engaging in businesses that sell seasonal items should become familiar with the taxability status of their products and services.

Vendors are reminded that any New Jersey gross income tax liability accruing on income derived from a seasonal business must be remitted with the estimated tax installment due next following the end of the quarter in which the income was earned. Remitting appropriate estimated tax payments ensures installment interest will not be charged for failure to make timely estimated payments. The fourth quarter 1999 estimated payment is due January 17, 2000. *Happy holidays!* □

GROSS INCOME TAX Hedge Funds

A taxpayer recently inquired whether a nonresident individual is subject to New Jersey gross income tax on income derived from commodities or securities trading conducted in New Jersey for their own account.

Under N.J.S.A. 54A:5-8, effective for taxable years ending after September 14, 1998, a nonresident is not deemed to be carrying on a trade, profession, occupation, or business or rendering personal services in New Jersey solely as a result of purchasing, holding and selling intangible personal property through an unincorporated business entity.

To qualify under this provision *all* of the entity’s activity must be the sale of intangible property exclusively for the entity’s own account and the entity cannot hold any intangible personal property for sale to customers.

For any year in which the entity has income that does not meet these criteria (i.e. income from the sale of tangible property) *all* of the entity’s income for that year would be deemed to be derived from New Jersey sources and taxable to a nonresident for gross income tax purposes.

A related article can be found on page 24 of the Winter 1998 issue of the *New Jersey State Tax News*. Taxpayers and tax practitioners requiring additional information should contact the Division’s Taxpayer Services Branch or the Individual Tax Audit Branch. □

Web Site Tour

The spring and summer issues of this year's *New Jersey State Tax News* examined several significant features of our recently renovated Web site. We now conclude our tour with a summary of the remaining unexplored paths and side bar menu items.



Kid's Path

Utilizing puzzles, games and other instructive materials, the Kid's Path makes learning about taxes — what they are, how they are applied and how the revenue they produce is used — fun and exciting for youngsters. Offerings aimed at all grade levels are available, but parents and educators are urged to encourage kids to try puzzles from other levels.



Everyone Else's Path

As the name suggests, Everyone Else's Path is for the average taxpayer. In addition to offering visitors access to the latest details on New Jersey taxes, tax programs and legislation, this path provides links to timely information on such varying topics as refunds, ordering forms and obtaining income tax assistance. There's even an interactive area, *Advice on Billing Notifications*, where taxpayers can get help understanding a bill, notice or statement they received. A standard side bar and e-mail link for navigational flexibility, plus links to the New Jersey State Home Page, the Division of Revenue and *Our User Survey* complete the list of options available on this page.

Publications

Clicking the Publications side bar item gives visitors the opportunity to view and print New Jersey tax publications, including:

- News Releases
- Important Tax Notices
- Cigarette Tax Act Notices & Publications
- NJ Income Tax – instructions & Tax Topic Bulletins
- Sales & Use Tax Bulletins
- *Taxpayers' Bill of Rights*
- *NJ SAVER FAQ*
- NJ Council of Economic Advisors – Outlook Reports
- Technical Bulletins
- *New Jersey State Tax News*
- Enforcement Activity Summaries
- Division *Annual Reports*
- Other Publications – This choice links to an expanded list of frequently requested publications

Taxation Topics

The Taxation Topics side bar item offers links to material on those topics most frequently requested by practitioners, businesses and individuals. Information on matters as diverse as inheritance/estate tax, sales & use tax, unclaimed property and senior citizens is accessible from this page.



Taxation Tour

Selecting the Taxation Tour whisks you away on a tour of the Division's organizational structure and introduces you to the programs designed to make tax filing easier. Your itinerary and tour guide await you — enjoy the ride!



Unclaimed Property Search

The Unclaimed Property side bar option allows visitors to search a listing of apparent owners of property which has met the statutory criteria to be classified as "unclaimed property." The abandoned funds originate from such sources as wage checks, bank accounts, certificates of deposit, bonds or stocks, etc. Why not drop by and search for your name. You might be pleasantly surprised.



Info For Seniors

From the latest on pension income, retirement exclusions and property tax benefit programs to listings of important telephone numbers or locations where free income tax preparation is available, the Info for Seniors side bar selection makes finding information on matters of concern to New Jersey's seniors a snap.

Please help us help you by sending us an e-mail with your comments, suggestions and general feedback about our new Web site.

Now that you are familiar with our Web site, we encourage you to stay abreast of any additions, changes and other developments by following a regular new feature on the subject that will appear in upcoming issues of the *New Jersey State Tax News*. □

Small Business Workshops

The New Jersey Division of Taxation and the IRS periodically conduct workshops designed to help small businesses better understand their tax obligations. These free seminars, which run from 9:00

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a.m. to 4:00 p.m., are held at various locations throughout the State. The New Jersey portion of each session is presented in the afternoon and typically covers the following topics:

- Types of business ownership and the tax consequences of each type
- Registering with the State of New Jersey
- Meeting employer responsibilities
- Reporting business income
- What's taxable and what's exempt from New Jersey sales tax
- Filing sales and use tax returns

To find out more about small business workshops, or to sign up for one of the fall sessions listed below, call the Internal Revenue Service at 1-800-829-1040, or the Division's Call Center at: 609-292-6400.

Fall 1999 Schedule

November 5	Paramus
November 12	* Linden
November 19	Gloucester
December 2	Union
December 4	Manalapan
December 10	Camden
December 16	Newark

* Special topic: S corporations. □

1999 Package NJX

Package NJX is available in both standard printed format and on CD ROM. The electronic version, *NJX PLUS*, contains many useful tax information publications in addition to the reproducible tax forms. Three-ring binders capable of holding several volumes of the printed version may be purchased separately at extra cost. See the order blank on page 23.

DIVISION OPERATIONS

Taxpayer Accounting Branch

In its most simple terms, the Mission Statement of the Taxpayer Accounting Branch is to review bills and refunds and answer taxpayer correspondence, so that taxpayers can pay what they owe, receive what is due to them, and have any errors in their accounts corrected.

Bills and refunds are automatically computer-generated. Some are flagged for manual review based on predetermined criteria designed to screen out errors. The Taxpayer Accounting Branch reviews the flagged transactions and attempts to correct them before they are sent to the taxpayer.

Occasionally insufficient refunds or improper bills are sent to taxpayers. When taxpayers dispute a billing or discover a discrepancy with the amount of refund received, their correspondence is sent to the Taxpayer Accounting Branch. All letters received from taxpayers in response to any notices are reviewed. When the information necessary to correct an account is received, Taxpayer Accounting staff will adjust the account and notify the taxpayer that the problem has been resolved.

When a taxpayer responds to a notice or corresponds with the Division for any other reason, it is very important to provide as much information as possible, both as to the identity of the taxpayer and the nature of the problem. In order for the Taxpayer Accounting Branch

to adequately respond to or request additional information from a taxpayer, all correspondence should include:

1. The full name and identification number of the taxpayer as it appears on the Division notice;
2. The tax type and period in question;
3. The nature of the problem;
4. The taxpayer's phone number; and
5. The taxpayer's current address.

When a taxpayer or his representative responds to a notice, the correspondence should be sent to the Post Office Box shown on the notice. This insures that it gets to the office that initiated the notice and is best suited to resolve the problem.

In Fiscal Year 1999, Taxpayer Accounting personnel:

- Responded to over 105,000 pieces of correspondence;
- Reviewed more than 51,000 bills and 66,000 refunds;
- Collected more than \$8 million; and
- Made almost 245,000 adjustments or corrections to accounts.

Additionally, Taxpayer Accounting is, and will continue to be, very heavily involved in the Property Tax Reimbursement, NJ SAVER Rebate, and Homestead Rebate programs, and staffs Tax Practitioner Hotlines for tax practitioners who are unable to resolve client problems through normal channels. □

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

October 1-

- All real property in taxing district valued for tax purposes (pretax year).
- \$50 veterans' tax deduction eligibility established (pretax year).
- \$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-

- Notices of revisions to State-owned property listing given by Director, Division of Taxation, to County Tax Boards and taxing districts.
- Deadline for taxing districts' appeals of Table of Equalized Valuations to NJ Tax Court.

December 1-

- Appeals from added assessments filed with County Tax Board.
- Appeals from omitted assessments filed with County Tax Board.

December 31-

- Legal advertisement of availability of Tax List for public inspection. □

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

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Thirteen persons passed the examination for the tax assessor certificate held on March 27, 1999 and were certified on May 14, 1999.

Atlantic County: William M. Johnson, Galloway Township.

Bergen County: Thomas Patrick Peletier, Bogota Borough.

Burlington County: James C. Rhoads, Moorestown Twp.; Neal A. Snyder, Springfield Twp.

Camden County: Charles John Poliero, Jr., Haddonfield Borough.

Essex County: Kent A. Gage, South Orange Township.

Hudson County: Donna M. Rossi, Bayonne City.

Morris County: Scott A. Branco, Washington Township; Virginia Klein, Roxbury Township.

Ocean County: Thomas J. McCartny, Beachwood Boro.

Sussex County: Kathleen M. McChesney, Sparta Township.

Warren County:

Melanie L. Bulmer,
Washington Borough.

Pennsylvania: Elizabeth S. Ashton,
Bucks County.

The next exam is scheduled for September 18, 1999. The last date for accepting applications for this exam is August 19, 1999. Admission to the exam will be by application only. There is a filing fee of \$10.00 To receive an application, call 609-292-7975 or write to:

NJ DIVISION OF TAXATION
ASSESSOR CERTIFICATION
PO BOX 251
TRENTON NJ 08695-0251

Criminal ***Enforcement***

Criminal Enforcement over the past several months included:

- On April 1, 1999, in Union County Superior Court, Luis A. Chavez, 49, of Elizabeth, New Jersey, the owner of Elizabeth Ave. Wines & Liquors, Inc., pursuant to his guilty plea on December 15, 1998 to one count of misapplication of \$69,000 in sales tax collected from July 1990 to June 1994, was sentenced to 2 years probation and ordered to pay fines and penalties of \$755. Mr. Chavez made restitution to the State of \$98,000 in tax, penalty and interest prior to sentencing. This case was investigated by the Office of Criminal Investigation and prosecuted by the State Attorney General's Office.

- On April 5, 1999, in Long Branch Municipal Court, Anthony Amorino, 58, of Eatontown, New Jersey, being the

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responsible person of Absolute Clubs, Inc., was charged with filing a false 1997 corporation business tax return, failing to charge and pay \$17,974.62 in sales tax between April 1994 and June 1998, and failure to file sales tax returns for the same period. Absolute Clubs, Inc., a now closed business in Long Branch, New Jersey, was purported to be a health club by Mr. Amorino. The maximum penalty, if convicted of all charges, is a fine of \$39,000 and imprisonment of two years. This case was investigated jointly by the Monmouth County Prosecutor's Office, Long Branch Police Department, and the Office of Criminal Investigation.

- On April 7, 1999, a State grand jury indicted Naum Raichel, 51, and Bernard Mondry, 64, both of Brooklyn, New York, in connection with conspiracy and theft of \$85,085.49 in motor fuels tax collected from January 1997 to September 1998 at Gas R Us, Inc., a truckstop in Elizabeth, New Jersey, that Mr. Raichel owned and Mr. Mondry supplied with over 680,000 gallons of

“off-the-books” diesel fuel and kerosene. Mr. Raichel faces a maximum of over 50 years in prison and \$500,000 in fines if convicted on all charges; Mr. Mondry faces a maximum of 25 years in prison and \$122,500 in fines. This investigation was conducted jointly by the New Jersey State Police Organized Crime Unit and the Office of Criminal Investigation, and was presented to the grand jury by the State Attorney General's Office.

- On April 9, 1999, Eyad Bader and Osama M. Jamhour, both of Paterson, New Jersey, were detained at the Holland Tunnel by Port Authority of New York and New Jersey Police Officers after a commercial vehicle inspection found 90 full master cases (domestic) of unstamped cigarettes (5,400 cartons) in a U-Haul rental vehicle. The subjects could not provide any documents relative to the cigarettes. The Office of Criminal Investigation's Special Agents responded to the scene and arrested both subjects. They were processed, arraigned and required to post \$10,000 bail before being released from the

Hudson County Jail.

- On April 15, 1999, the Passaic County grand jury indicted Abdalla A. Dabbas of Paterson, New Jersey, for possession of over 100 cartons of contraband cigarettes, (a crime of the fourth degree), transportation of contraband cigarettes, no invoices and no consumer license.
- On April 16, 1999, Joseph Gentile, principal of Jogen, Inc., was named in a six-count indictment by a Middlesex County grand jury. Mr. Gentile was charged with theft by deception (second degree); misapplication of entrusted property (second degree); and four counts of issuing a bad check (each third degree). All counts evolved from the collection and non-remittance of State motor fuels taxes in the amount of \$123,112.71.
- On May 7, 1999, in Camden County Superior Court, Steven H. Willans, 34, of Barrington, New Jersey, was sentenced to five years imprisonment and ordered to make restitution to the State of \$16,312 in tax, penalty

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Enforcement Summary Statistics

Second Quarter 1999

Following is a summary of enforcement actions for the quarter ending June 30, 1999.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,109	• Seizures	43
Total Amount	\$51,474,010	• Auctions	41
• Jeopardy Assessments	191	• Referrals to the Attorney General's Office	0

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and interest, as a result of Mr. Willans' plea of guilty on March 15, 1999 to having failed to file sales tax returns from 1992 to 1995 in connection with Entertainment Emporium, a computer sales and service business owned by Mr. Willans. Mr. Willans' prison term is to be served concurrently with a sentence of five years imprisonment for the theft of \$77,000 from the Barrington volunteer ambulance squad, of which Mr. Willans was the treasurer. This case was investigated jointly by the Barrington Police Department, the Camden County Prosecutor's Office, and the Office of Criminal Investigation, and was prosecuted by the Camden County Prosecutor's Office.

- On May 13, 1999, Spyridon Gizas of Dover (Morris County), New Jersey, was arrested during a New Jersey State Police investigation, for promoting gambling and maintaining an illegal gambling resort at the Greek Orthodox Club in the same city. Mr. Gizas was found in possession of 141.5 cartons of contraband cigarettes. The Office of Criminal Investigation has charged Mr. Gizas with possession of over 100 cartons of contraband cigarettes (fourth degree crime, indictable), no consumer license, no retail license, failure to register for sales tax, and no invoices, all of which are disorderly persons offenses. The seized cigarettes were unstamped, Pennsylvania stamped and US Tax-Exempt Export cigarettes.
- Toomey Vending of Egg Harbor City, New Jersey, pleaded guilty in Atlantic City Municipal Court to operating 18 unlicensed ciga-

rette vending machines. The court imposed fines, fees, and costs totaling \$2,114. Subject is now currently licensed.

- On May 24, 1999, Allan B. Shalleck, formerly of Pennington, New Jersey, entered a guilty plea to three counts of an indictment that had been presented to a grand jury by the Mercer County Prosecutor's Office in 1997. Mr. Shalleck plead guilty to one count of theft by deception, one count of forgery, and one count of failure to file a 1994 New Jersey gross income tax return. Mr. Shalleck is exposed to a fifteen year period of incarceration and \$45,000 in fines as a result of this plea. Sentencing is pending.
- On May 26, 1999, Daniel Provenzano, 36, of Upper Saddle River, New Jersey, was indicted by a State grand jury on charges of racketeering conspiracy, acting as a leader of organized crime, money laundering, various violent offenses in furtherance of his illegal activities, failing to file a 1996 New Jersey personal income tax return, and filing false and fraudulent 1994, 1995, and 1997 New Jersey personal income tax returns. The indictment alleges that most of the crimes were committed to enhance the financial operations of Advice, Inc., an actual printing business that was owned and run by Mr. Provenzano in Fort Lee, New Jersey, until 1997. This case was investigated jointly by the New Jersey Division of Criminal Justice and the Office of Criminal Investigation, and was presented to the grand jury by the State Attorney General's Office.

- On June 18, 1999, Special Agents of the Office of Criminal Investigation were conducting a follow-up investigation concerning counterfeit stamped cigarettes in the city of Camden, New Jersey. As part of that investigation, a New Jersey cigarette distributor was visited and a number of violations of the Cigarette Tax Act were found. It was during that time that the licensed distributor offered a bribe to a Special Agent in violation of N.J.S.A. 2C:27-2, Bribery in Official and Political Matters, a crime of the second degree. Subsequently, a joint investigation by the Office of Criminal Investigation, Taxation's Internal Security Unit and the New Jersey State Police Official Corruption Unit, led to the arrest of the subject after he delivered the \$2,000 bribe. Bail was set at \$10,000 after arraignment before the Camden County Superior Court. The matter is now pending action of the State-wide grand jury.
- Eighty-nine charges were filed in municipal court on thirty-four cases for violating the cigarette tax law including possession of 6,027.37 cartons of contraband cigarettes, valued at \$196,431.82.

□

Tax Briefs

Correction

Punitive Damage Awards — The Division is withdrawing the Tax Brief published on page 15 of the Spring 1998 issue of *New Jersey State Tax News* (Vol. 27, No. 1). The article incorrectly characterized punitive damage awards as interest income within the meaning of N.J.S.A. 54A:5-1e and inappropriately relied on the reasoning of a United States Supreme Court case construing Federal income tax law.

Corporation Business Tax

Manufacturing Equipment and Employment Investment Tax Credit

— Where a corporation moves its equipment that otherwise would qualify for the Manufacturing Equipment and Employment Investment Tax Credit from a location outside the State to a location within the State, such equipment would be eligible for the Manufacturing Equipment and Employment Investment Tax Credit.

Depreciation, having started when the property was originally placed in service outside the State, would continue. The equipment is not disqualified from the Manufacturing Equipment and Employment Investment Tax Credit by depreciation not starting in New Jersey.

Gross Income Tax

Form DD-2058-1 — Military taxpayers who meet the conditions for nonresident status in New Jersey must file a Form DD-2058-1, State Income Tax Exemption Test Certificate. This form must be filed with the service person's payroll or finance officer in order to stop New Jersey income tax from being withheld from military pay. Form DD-2058-1 is a U.S. Government

form that is used as a basis for not withholding New Jersey income tax from military pay. This certificate should not be filed with the New Jersey Division of Taxation.

Military Pension Exclusion

— P.L. 1997, c.409, effective beginning with tax year 1998, provides a gross income tax exclusion for "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 by a person who is 62 years of age or older, or who, by virtue of a disability, is or would be eligible to receive payments under the Federal Social Security Act..." See N.J.S.A. 54A:6-26.

After retiring from military service, many military retirees work for the civilian sector of the Federal government. When these people later retire from Federal civil service, they may either receive both a military pension and a civil service annuity, or they may elect to waive the military pension and receive a civil annuity that includes military service for computation purposes. See 5 CFR §831.301(c). A military pension is received through the U.S. Defense Finance and Accounting Service, while a civil service annuity is received through the U.S. Office of Personnel Management.

The military pension exclusion was drafted with language specific enough to exempt "military survivor's benefit payments". In contrast, however, the statutory language makes no mention of civil service annuity payments. Thus, the exemption language does not provide a basis for the exclusion of any portion of a civil service annuity, including any part attributable to prior military service.

Any change in the treatment of civil service annuities would require a legislative amendment to the law.

Coast Guard Pension

— P.L. 1997, c.409, effective beginning with tax year 1998, provides a gross income tax exclusion for military pension payments (or military survivor's benefit payments) paid to individuals with respect to services in the Armed Forces of the United States to a person who is 62 years of age or older, or disabled. We believe that military pension payments from the Coast Guard are included within the meaning of P.L. 1997, c.409. In this regard, we note that 10 U.S.C.A. sec. 101 defines the Armed Forces to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard. The Coast Guard is instituted under title 14 U.S.C.A., which establishes the Coast Guard as a military service and branch of the Armed Forces of the United States. A 1976 amendment transferred the Coast Guard from a service in the Treasury Department to a service in the Department of Transportation. However, the amendment provides that the Coast Guard will operate as part of the Navy in time of war or when the President directs. 14 U.S.C.A. sec. 3.1.

For Federal tax purposes under IRC sec. 7701(a)(15), the Coast Guard is included under the definition of military, naval, and Armed Forces of the United States. N.J.S.A. 38A:1-1(h) defines military as meaning any part of or all of the armed forces. This enables the Coast Guard to receive the same treatment as the other branches of the Armed Forces

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under the laws of New Jersey.

S Corporation Losses — Taxpayers cannot use a loss from a prior year to offset a current year's income or carry an unused loss into a subsequent tax year. Any S corporation losses that are not used in the current year will be an adjustment to the basis of the S corporation when sold.

At the time an S corporation is liquidated, the taxpayer will determine the gain for New Jersey purposes by using New Jersey adjusted basis in the S corporation. The New Jersey adjusted basis is generally the amount of initial contribution added to the balance of the New Jersey Accumulated Adjustments Account (AAA) as of the date of the disposition of the stock, less any unused losses from previous years. In addition, any indebtedness of the S corporation that is satisfied at the time of the disposition of stock must also be used to adjust basis.

Sales & Use Tax

New Federal SmartPay Credit Cards — The State of New Jersey will continue to extend sales and use tax exemption to all purchases by Federal employees that are paid directly from a Federal government account. Purchases made by Federal employees using funds

from their own account, even though they may be subsequently reimbursed by the government, are subject to New Jersey sales and use tax.

According to the Federal General Services Administration's new SmartPay program there are four types of SmartPay credit cards with specialized uses:

1. Purchase Cards

- Printed on Front: "United States of America – SmartPay for Official Government Purchases Only U.S. Government Tax Exempt"
- Only used to purchase tangible personal property
- Visa or MasterCard
- Billed directly to and paid by U.S. Government
- Transactions *Exempt* from New Jersey sales and use tax

2. Fleet Cards

- Printed on Front: "United States of America – SmartPay for Official Government Fleet Use Only"
- Only used to purchase fuel, repair services and other items related to vehicles, airplanes, boats and equipment
- Voyager or MasterCard
- Billed directly to and paid by U. S. Government
- Transactions *Exempt* from New Jersey sales and use tax

3. Travel Cards

- Printed on Front: "United States of America – SmartPay for Official Government Travel Only"
- Only used to purchase lodging, meals, airfare, car rentals, etc.
- Visa or MasterCard
- May or may not be billed directly to and paid by U.S. Government
- *Exempt Transactions* – Transactions billed directly to and paid by the U.S. Government are exempt from New Jersey sales and use tax. SmartPay travel cards having a 0, 6, 7, 8 or 9 as the sixth digit of the card account number are government directly billed and paid and result in tax exempt transactions
- *Taxable Transactions* – Transactions billed to and paid by Federal employees from their own accounts (even though subsequently reimbursed by the government) are subject to New Jersey sales and use tax. SmartPay travel cards having a 1, 2, 3 or 4 as the sixth digit of the card account number are Federal employee billed and paid and result in taxable transactions.

4. Integrated Cards

- Printed on Front: "United States of America – SmartPay for Official Government Use Only"
- Used for any combination of purchase, travel or fleet services
- Visa or MasterCard
- May or may not be billed directly to and paid by U.S. Government
- *Exempt Transactions* – Trans-

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actions billed directly to and paid by the U.S. Government are exempt from New Jersey sales and use tax. SmartPay Integrated cards, when used for tangible personal property purchases or fleet purchases, are always directly billed to and paid by the government and result in exempt transactions. SmartPay Integrated cards used for *travel purchases* having a 0, 6, 7, 8 or 9 as the *sixth digit* of the card account number are also government directly billed and paid and result in exempt transactions

- **Taxable Transactions** – Transactions billed to and paid by Federal employees from their own accounts (even though subsequently reimbursed by the government) are subject to New Jersey sales and use tax. SmartPay Integrated cards used for *travel purposes* having a 1, 2, 3, or 4 as the *sixth digit* of the card account number are Federal employee billed and paid and result in taxable transactions.

In order to document a sales tax exempt transaction when a SmartPay card is used, New Jersey will require that the vendor retain in his records the merchant copy of the SmartPay credit card transaction record showing the credit card number. We will not require a special exemption certificate, letter or form as additional documentation; however, a copy of the applicable contract, purchase order or travel authorization, on official letterhead, signed by a qualified officer should be provided to the vendor.

Advertising Services — The Division has received several telephone inquiries from taxpayers who mistakenly believed that recent legislation created a blanket exemption for all purchases and sales by advertising agencies. This is not true.

P.L. 1998, c.99, repealed the portion of a sales and use tax provision (N.J.S.A. 54:32B-3(b)(5)) which imposed tax on “advertising services,” in general. Under the repealed provision, services that were not otherwise taxable under some *other* category of taxable service were subject to tax if they were for advertising. For example, while writing is not a taxable service, writing an advertisement was; while web site design is not a taxable service, designing a web site for advertising was. Now that this section of the provision has been repealed, these creative services are no longer taxable.

Because an advertising agency will no longer charge tax on its professional services, it is deemed to be the retail purchaser of tangible personal property (e.g., photographs, illustrations) that it uses in rendering its professional services; it can not claim a resale exemption.

The repeal of the tax on “advertising services” in general did not affect the taxability of direct mail advertising processing services. These services are still taxable if the advertising material will be distributed to recipients within New Jersey.

In addition, advertising-related services that are already taxable under some other category of taxable service continue to be taxable. For example, imprinting logos on promotional items supplied by the customer is a taxable imprinting

service, N.J.S.A. 54:32B-3(b)(1); installing an electrical advertising display is a taxable installation service, N.J.S.A. 54:32B-3(b)(2); repairing a damaged advertising mural on a concrete wall is a taxable repair, N.J.S.A. 54:32B-3(b)(4). These services, however, were never considered “advertising services” under the prior law. The repeal of the tax on “advertising services” therefore has no effect on the taxability of related services under other subsections of N.J.S.A. 54:32B-3(b).

The repeal of the tax on advertising services, in general, of course did not affect the taxability of advertising material. Purchases of advertising posters, printed advertising brochures, promotional video cassettes and other advertising materials are still taxable as tangible personal property, N.J.S.A. 54:32B-3(a), subject to the exemption for such materials which are ultimately delivered out of State, N.J.S.A. 54:32B-8.39.

Sales and Installation of Venetian Blinds — Venetian blind installers are generally functioning as “contractors” within the meaning of the Sales and Use Tax Act. See N.J.A.C. 18:24-2.2. Contractors are deemed to be the retail purchasers of the materials and equipment that they use or install when working on their customer’s real property. N.J.S.A. 54:32B-2(e)(2). Therefore contractors must pay sales tax or use tax on property that is purchased for installation onto the real property of their customers. Their customers are liable for tax only on the installation service charges, unless the installation results in a capital improvement, in which case the installation labor is exempt as well. N.J.S.A. 54:32B-

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3(b)(2). The installation of venetian blinds is generally deemed to result in a capital improvement. (The tax brief published in the November/December issue of the 1980 *New Jersey State Tax News* may be disregarded.) When a vendor both sells blinds from a retail location and installs venetian blinds, sales and use tax payment and collection obligations will depend upon how the sales are structured by the venetian blind retailer. The following guidelines can be applied to these sales.

Sales of blinds only: In any case where a vendor sells blinds to the customer without installation, regardless of whether the customer is a homeowner, contractor, builder or developer, sales tax must be collected on the sale price if the property is either picked up or delivered to a location in New Jersey. The vendor may claim a resale exemption from sales tax on its purchase of blinds that it sells as a retailer without installation.

Sale of blinds, separate installation agreement: In any case where a vendor sells blinds to a customer as a retailer and agrees to install the item under a *separate* installation agreement (other than when acting as subcontractor for a prime contractor), sales tax must be collected on the sale price of the blinds if they will be installed at a location in New Jersey. The vendor is deemed to be making both a retail sale of the blinds, and a separate sale of the service of installation. The charge for installation is not subject to sales tax because the installation is deemed to result in a capital improvement. N.J.S.A. 54:32B-3(b)(2). The cus-

tomers should issue a Certificate of Capital Improvement (Form ST-8) to the retailer/contractor.

In cases where the separate installation agreement provides that the installation work will be done as a subcontractor for a general contractor, there is no need to obtain an ST-8 from the prime contractor. Instead, the prime contractor, who will be responsible for billing the customer, will need to obtain a completed ST-8 from the customer.

Sale of blinds installed: In any case where a vendor agrees to sell venetian blinds installed (single agreement), the person is acting as a contractor under the Sales and Use Tax Act. Thus, the contractor is liable for the remittance of use tax based on his cost of purchasing the blinds, if he purchased them with a resale exemption. Persons who act only as contractors cannot issue Resale Certificates (Form ST-3) for the purposes of the New Jersey Sales and Use Tax Act. The sale agreement, now considered one for the services of installing property which is incorporated into real property, is not subject to the collection of sales tax from the customer. The customer in this circumstance should issue a Certificate of Capital Improvement (Form ST-8) to the contractor. However, if a person is acting as subcontractor, he should not require an ST-8 from the general contractor; no tax should be charged to the general contractor. N.J.A.C. 18:24-5.12(c). Instead, the general contractor will be responsible for collecting sales tax from the property owner on any taxable services and for obtaining a completed ST-8 from him to support the capital improvement exemption applicable to venetian blind installation.

Medical Equipment to Healthcare Professionals

— Pursuant to N.J.S.A. 54:32B-8.1 of the New Jersey Sales and Use Tax Act, (See P.L. 1987, c. 383) sales of durable medical equipment are exempt from sales and use tax in this State. Durable medical equipment is defined in the law to mean equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury, and is appropriate for use in the home.

The law expressly eliminates from the exemption any durable medical equipment or other medical devices, prosthetic aids and medical supplies (other than drugs or medicines) purchased by a person who provides medical services for compensation and which are not transferred to the patient in conjunction with the performance of medical services. “Transferred to the patient” implies that the patient leaves the office, hospital etc. with the property.

Urban Enterprise Zone Program: Delivery Requirements for the 3% Sales Tax Rate

— The Urban Enterprise Zone Program offers a partial sales tax exemption for certain retail sales made by certified vendors. N.J.S.A. 52:27H-80. In order for a vendor to offer the 3% sales tax rate to a purchaser who makes an in-person purchase at the vendor’s place of business in a zone, the purchaser must accept delivery at the vendor’s place of business in the zone or the vendor must deliver the goods to the purchaser from the vendor’s business location in the zone. N.J.A.C. 18:24-31.4(e) provides as follows:

All sales made by a qualified and
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certified vendor must be made from his place of business within an enterprise zone, that is, *either the purchaser must accept delivery at the vendor's place of business within an enterprise zone, or the vendor must deliver the tangible personal property from its place of business within an enterprise zone.* Only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

Receipts from mail order, telephone, telex and similar sale transactions are subject to sales tax at the regular rate where delivery is made to a location within the state.

Example 1

A consumer goes to a UEZ certified retail building supply business to make a purchase of materials. The retailer does not have all the materials in stock and agrees to order from another source or obtain the materials from another location operated by the retailer.

In order for the transaction to be taxed at the reduced rate, the materials must come to rest and be handled by the employees at the vendor's location in the zone. Either the purchaser must come to the vendor and pick up the materials or the vendor must deliver the materials from the zone location.

Example 2

A vendor has two certified retail stores in different UEZ zones. A purchaser makes an in-person order for goods at one location but the vendor does not have the goods at the location. The goods, however, are in stock at the second location.

Each reduced rate transaction must be originated and completed at the same UEZ location that is certified under the program. Thus, the goods that are offered at the reduced rate must be ordered and delivered from the same location.

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In Our Courts

Corporation Business Tax

Compensation – *Seventeen Thirty Corp. v. Director, Division of Taxation*, decided April 16, 1999; Tax Court; No. 003648-97.

The president of plaintiff was the sole shareholder and served as store manager for fiscal years commencing October 1, 1988 through October 31, 1992. Not only was the president compensated through regular salary, but he also supplemented it by writing checks to himself for varying amounts at varying times during each year based upon the availability of cash in plaintiff's business. Plaintiff neither withheld New Jersey gross income tax or Federal income tax nor did it issue W-2 Forms or other reporting forms reflecting these supplemental payments. However, the corporation business tax returns reported the supplemental payments as officer compensation deductions and the president reported the supplemental payments as other income on his New Jersey gross income tax returns. The Division

of Taxation disallowed the supplemental payments as deductions because there was no objective evidence to characterize the nature of the payments as compensation rather than the distribution of earnings and profits, dividends.

The Tax Court ruled that New Jersey's Corporation Business Tax Act's references to the Federal income tax principles permitted the decisional law under the Internal Revenue Code to be relevant in determining whether the payments at issue were compensation under the Corporation Business Tax Act. The Tax Court then adopted the two-pronged test for deductibility espoused in *Elliot's, Inc. v. Commissioner*, 716 F.2d 1241 (9th Cir. 1983). The test's first prong requires an inquiry into whether the amount of compensation is reasonable. The second prong requires that the payments must be entirely for services. The *Elliot's* court noted that this second prong may be difficult to establish due to its subjective nature and, in that case, the answer may be inferred from the outcome of the first prong's reasonableness test.

Applying the *Elliot's* test, the Tax Court held that the payments at issue were reasonable and constituted deductible compensation rather than dividends. The Court found the following facts to be significant in arriving at its determination: (1) The president had no sophisticated understanding of the Internal Revenue Code, New Jersey Gross Income Tax Act, or the Corporation Business Tax Act; (2) the president believed he earned the corporation's additional cash from his long work hours; (3) the defendant did not dispute that the total payments to the president

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constituted reasonable compensation; and (4) the plaintiff paid minimal dividends for four of the five years at issue. Additionally, the Court noted the *Elliot's* court's finding that a corporation is not required to pay dividends.

Gross Income Tax

Various Deductions – *John W. Dantzer, Jr. and Kathleen M. Dantzer v. Director, Division of Taxation*, decided June 1, 1999; Tax Court; No. 006040-96.

This case concerned eight separate issues involving partnership deductions, deductions for personal transactions, and the credit for taxes paid to other jurisdictions on plaintiff's gross income tax (GIT) return.

Partnership Deductions

The query is whether the following items, which are not ordinarily deductible on a New Jersey gross income tax return, are deductible by a partnership in calculating its distributive share of partnership income where they are considered ordinary business expenses.

- **Political Contributions** – The Tax Court ruled that under the Gross Income Tax Act, a partnership's political contribution may be deductible by the partners where there is demonstrated some specific nexus between the political contribution and the partnership's business. As plaintiff could not provide adequate proof linking the contribution to conduct of the partnership's business, the Court disallowed the claimed deductions.
- **Miscellaneous Expenses** – The Court disallowed the claimed deductions because plaintiff could

not prove what the expenses were and why they were deductible.

- **Medical Expense Deductions** – The partnership allocated \$2,534 of medical insurance expense to the plaintiff that was consistent with the allocations to all but 11 of the 75 partners who the Court found were either qualified or did not elect to participate. It was not known whether or to what extent the allocation represented either the partnership's actual expenditures or was related to the plaintiff.

The Court ruled that the medical insurance premium deductions are allowed to the extent that they are for all partners and employees and to the extent that the specific premiums or contributions for plaintiff exceed the Gross Income Tax Act's two percent requirement, but that they are not deductible in calculating plaintiff's distributive share of partnership income.

- **Pension Expense Deductions** – Plaintiff's partnership maintained a defined contribution plan for its eligible partners and staff. Although the plan had a 401(k) portion and a non-401(k) portion (Keogh), only the non-401(k) is at issue. Participation in the non-401(k) portion was not voluntary and was required of all eligible personnel. Only the partnership made contributions to the non-401(k) based upon a specified percentage of the person's allowable compensation.

The Court held that the pension contributions are allowed to the extent they are for all personnel. However, those contributions specific to plaintiff are not deductible on his gross income tax return.

Personal Expenditures

- **FICA Taxes** – Plaintiff deducted Federal self-employment tax (FICA) attributable to being a partner. The Court held that FICA taxes are not deductible under the Gross Income Tax Act because they are paid by the individual and not the partnership. The Court noted that a selfemployed individual was not permitted to deduct FICA because it is a tax on income.

- **Interest on Loan** – The partnership agreement required plaintiff to provide capital to the partnership. Prior to approximately May 1992, plaintiff borrowed the amount from the partnership and paid interest on such loan. After approximately April 1992, plaintiff borrowed from Citibank who paid the funds directly to the partnership to satisfy plaintiff's loan from the partnership. The partnership guaranteed repay-

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ment of the Citibank loan and paid the interest on behalf of plaintiff. The Court noted that the interest amounts on the aforementioned loans would otherwise have been distributed to plaintiff by either a cash payment or added to his capital account.

The Court held that although the interest was not considered a deductible expense connected to net profits from business, as it was not a partnership obligation, it may be deductible. The Court found that this interest was plaintiff's personal expense connected to his partnership capital contribution requirements and the situation was analogous to investment interest that is deductible to a stocks and bonds investor whose business is to invest in stocks and bonds. Therefore, the Court permitted plaintiff to deduct the interest from plaintiff's distributive share of partnership income. The Court reasoned that a partner should be allowed to deduct partnership expenditures required for participation in the partnership from his partnership income.

- **Loss on the Sale of a Home –** Plaintiff realized a gain on the sale of a personal residence and from the sale of securities attributable to his share of partnership gains. From this gain, plaintiff deducted a realized loss from the sale of another personal residence.

Following the law of *Baldwin v. Director, Division of Taxation*, 10 N.J. Tax 273 (Tax 1988), *aff'd ob. per curiam*, 237 N.J. Super. 327 (App. Div. 1990) that personal losses are not deductible from personal gains under the Gross Income Tax Act, the Court

disallowed the deduction for the loss.

Credit for Taxes Paid to Other Jurisdictions Calculation

– On their California income tax return, plaintiff claimed deductions for the FICA tax, the medical insurance expense, and the pension payment that constituted their California allocable amount. On their New Jersey gross income tax return, plaintiff claimed the credit for taxes paid to California, but did not deduct the aforementioned expenses from the numerator of the credit fraction.

In calculating the credit for taxes paid to California, the Court held that the numerator (California share) of the credit fraction must be reduced by expenses not subject to tax in California and should not be deducted in the denominator (income taxed in New Jersey).

Local Property Tax Municipalities Lack Standing to Lower Assessments

– A.G. Opinion 99-0050, March 23, 1999. N.J.S.A. 54:3-21 provides, in part, “A taxpayer...or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April 1 appeal to the county board of taxation...taxpayer or taxing district may on or before April 1 file a complaint directly with the tax court,....”

In reviewing the appeal statute, the A.G.'s Office explained, “Where a statute creates a cause of action, and identifies the requirements for bringing the action, as was done by N.J.S.A. 54:3-21, those requirements must be met.” Citing several

court decisions, the A.G. opinion reiterated that the right to appeal is statutory and the appellant is required to comply with all applicable statutory requirements.

Concluding that municipalities lacked standing to reduce assessments, the opinion relied on the Tax Court's reasoning in *Appeal of Monroe Twp.*, 16 N.J. Tax 261 (1996). A taxing district is not discriminated against by an assessment in the municipality that is too high, only by an assessment that is too low. Again citing prior case law, the opinion concurred that a municipality's appeal standing was limited to correcting under-assessments.

However, administrative remedy is available to assessors in that they can informally ask the County Board of Taxation to lower assessments. The County Tax Board can also, upon their own initiative, revise and correct assessments prior to their certification of the tax list. Finally, if administrative reduction is not possible for reason of timeliness, etc., taxpayers have the right to request a lesser assessment via the statutory appeal process.

Applicability of the Freeze Act – *Rockstone Group v. Lakewood Township*, decided March 24, 1999; Tax Court of New Jersey; No. 004614-97.

Appeal involves the Freeze Act (N.J.S.A. 54:51A-8) and whether it applies following entry of a stipulation of settlement between plaintiff and defendant upon the 1997 assessed values for two vacant land parcels assessed at \$327,000 and \$372,000 respectively. A Tax Court Judgment was entered on October 19, 1998 for tax year 1997 to reduce the assessments to

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\$230,000 per lot. The stipulation was silent as to Freeze Act application, since the parties were unable to settle that issue and had agreed to litigate it in a later proceeding.

Plaintiff's attorney then filed an application for judgment to "freeze" the assessments for tax years 1998 and 1999. Lakewood Township sought to avoid the freeze for 1998. It claimed that the subject property's value had substantially increased because it originally had a municipal site plan approval for a 54,800 square foot retail center. The land was granted conditional municipal preliminary and final site plan approval for construction of a 132-unit apartment complex on July 15, 1997, as memorialized by a Lakewood Township resolution. Approval was given subject to "posting a performance bond for any improvement in connection with this application, complying with all conditions as required by Federal, State or local law and obtaining all other approvals as required by law." Plaintiff submitted that, since the resolution required several governmental regulatory approvals not granted until after the valuation date of October 1, 1997 for the 1998 freeze year, the property essentially had no approvals at that time, and thus the Freeze Act should apply. Approvals included DOT and CAFRA permits, Municipal MUA approval, and County Soil Conservation District certification. Plaintiff asserts that the standard for "increase in value" should be final approval as defined in the Municipal Land Use Act (N.J.S.A. 40:55D-4). In opposition, the municipality's appraiser concurred with the assessor's conclusion that

obtaining final municipal planning board approval for development, even with additional permits and approvals pending, "*in and of itself* causes a substantial and meaningful increase in the value of vacant land."

The property rights that the legislature conferred on the developer automatically upon final approval of a site plan are a significant factor. During the approval period the developer is protected against re-zoning and retains all rights encompassed in the preliminary site plan approval. The economic reality is not whether every condition of final site plan approval is satisfied, but the perception in the real estate market that a protected right has been conferred on the property which has value. Defendant's experts observed that "most real estate appraisers recognize and reflect the increase in value of unimproved land created by obtaining municipal approvals" by means of adjustments. The assessor concluded that a significant increase in value resulted from the grant of approvals for the apartment complex, based on the taxpayer's appraisal report for the 1997 tax year, in which he had adjusted two comparable sales downwards by 25% due to their lack of approvals.

The municipality bears the burden of showing that the Freeze Act should not apply. In order to have defeated the freeze and thus been entitled to a plenary hearing, the municipality must have demonstrated a change in value from an internal or external change that materialized after the assessment date of the base year. The change must substantially and meaningfully increase the value of the property.

The Court found that the planning board approvals of July 15, 1997 constituted an external change subsequent to the assessment date of the base year. The municipality had submitted evidence to create a prima facie demonstration of a change in value. The Court ruled that the municipality was entitled to the plenary hearing to determine whether the change in value was sufficient to deflect the freeze that the plaintiff sought. The Court's decision was not a determination on the merits of the taxpayer's Freeze Act application, but only that the municipality had presented a prima facie allegation and provided sufficient evidence to proceed with the plenary hearing. The plenary hearing is a full evidential trial that will only address the increased valuation, if any, attributable to the site plan approval.

Sales & Use Tax

Admission Charges – *Seventeen Thirty Corp. v. Director, Division of Taxation*, decided April 16, 1999; Tax Court; No. 003648-97.

Plaintiff operates a retail store that sells adult-oriented books, periodicals, novelties, and videotapes. The store also contains a segregated area that contains 27 video booths where adult videotapes are viewed. Each booth contains a viewing device that displays ten to sixteen different videotapes with running times of approximately two hours. Entrance to the booth area generally required that each person purchase a minimum of twelve \$0.25 tokens (three dollars worth) which transactions were not subject to sales tax. Additional tokens could also be purchased.

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Exceptions to the minimum purchase requirement were made for individuals known to plaintiff's employees and persons who displayed previously purchased tokens. To operate the viewing device, a patron deposited a token that provided approximately one minute of playing time. At the end of the minute, the viewing device stopped. At this point, the patron could then insert another token to view another minute. It should be noted that no more than one token could be deposited at a time. The Division determined that the token sales were taxable under N.J.S.A. 54:32B-3(e)(1), which imposes sales tax on admission charges in excess of \$0.75 to or for the use of a place of amusement.

The Court ruled that the three-dollar minimum purchase requirement to enter the video booth area is taxable as an admission charge and that the video booth area is a place of amusement because the viewing devices provided entertainment to the patrons. Additionally, the Court ruled that a \$0.25 token deposited in the viewing device is not an admission charge because it is required only for the purpose of operating the device, not to enter the booth, and that the viewing device providing the amusement is a mechanical device, not a "place of amusement."

Sweeping Services & Garbage Removal – *Exterior Power Sweeping v. Director, Division of Taxation*, decided December 17, 1997; Tax Court; No. 011656-93, *rev'd*; Appellate Division; No. A-3346-97T5 (April 30, 1999).

Exterior Power Sweeping (EPS) was engaged in the business of power sweeping parking lots.

Essentially, on a daily to monthly basis, EPS trucks vacuumed paper products and other debris from customers' parking lots into its truck's hopper. When the hopper was full, it would either be emptied into the customer's dumpster or taken back to EPS's facility.

The Division found that EPS's services were subject to sales tax except where EPS additionally removed the debris to its own facility for disposal. Although EPS could not provide documentation showing a breakdown of the dollar amount of sales where the debris was removed to its facility, the Division estimated that it was sixty percent based upon a similar case and therefore taxed forty percent of the sales.

In an oral opinion, the Tax Court held that the power sweeping parking lot services were exempt from sales tax under the exemption for garbage removal. Furthermore, the judge voided the entire tax assessment finding that there was no factual basis for taxing forty percent of EPS's sales.

The Appellate Division reversed the Tax Court on the issue of whether sweeping services were taxable. Relying upon *D.P.S. Acquisition Corp. v. Director, Div. Of Taxation*, 16 N.J. Tax 292 (Tax 1997), *aff'd*, 17 N.J. Tax 592 (App. Div. 1998), initially, the Appellate Division held that the sweeping services performed by EPS are essentially the same as those sweeping services performed by D.P.S. and are taxable. However, there was one difference between D.P.S. and EPS and that was that D.P.S. did not remove any of the collected debris from the customers' premises to its facility while EPS did. The Appellate Division ruled that those services

were not taxable under the exemption for garbage removal.

As to the Division taxing forty percent of sales, the Appellate Division upheld the assessment. The Appellate Division ruled that the burden is not on the Division to justify its calculation but rather that the taxpayer carries the bur-

den of showing that transactions are exempt from taxation. In this case, EPS did not provide any documentation that broke down the dollar amount of transactions or the number of jobs where it removed the collected debris to its premises. Therefore, the accuracy of the figure could not be tested. □

In Our Legislature

Corporation Business Tax Tax Benefit Certificate Transfer Program — P.L. 1999, c.140 (signed into law on June 28, 1999) clarifies the Corporation Business Tax Surrendered Tax Benefit Certificate Transfer Program, established pursuant to P.L. 1997, c.334, which allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State.

The bill imposes a cap limiting the total amount of tax benefits that may be transferred under the program to \$50 million in fiscal year 2000 and \$40 million in each subsequent fiscal year. Individual companies applying to "sell" tax benefits under the program are limited to a lifetime maximum of \$10 million. In addition, the measure: (a) defines eligibility requirements for businesses

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wishing to surrender tax benefits; (b) provides criteria for approving applications for transfers; and (c) establishes a method for allocating transfers among qualified prospective participants in cases where the total amount of tax benefits requested to be surrendered by approved applicants in a particular fiscal year exceeds the ceiling on total allowable transfers for that year. This act applies to tax years beginning on and after January 1, 1999.

Gross Income Tax

Pension Exclusion, Other Retirement Income Exclusion Increased — P.L. 1999, c.177 (signed into law on August 3, 1999), increases the maximum amount of certain retirement income that may be excluded from taxable income under the New Jersey Gross Income Tax Act as follows:

- For taxpayers filing joint returns from \$10,000 to \$20,000

- For Married, filing separate filers from \$5,000 to \$10,000

- For Single filers from \$7,500 to \$15,000

Taxpayers eligible for the pension exclusion can exclude from reportable income either their actual pension income or the maximum exclusion amount for their filing status, whichever is less.

The higher exclusion limits extend as well to the Other Retirement Income Exclusion, the exclusion which allows taxpayers age 62 or older with earned income of \$3,000 or less to deduct the unused portion (if any) of their pension exclusion from their reportable gross income. The total amount of pension income plus other retirement income that may be excluded cannot exceed the new exclusion limits.

The new limits are to be phased in, in equal increments, over a four-year period commencing with taxable years beginning on or after January 1, 2000.

Miscellaneous

Garden

State

Preservation Trust Act — P.L. 1999, c.152 (signed into law on June 30, 1999), establishes statutory authority for efforts in pursuit of certain conservation objectives mandated by a recent amendment to Article VII, Section II of the State Constitution and provides a stable, dedicated source of funding for such efforts out of revenue from the sales and use tax.

The statute exempts property and income of the Trust from all taxes and special assessments of the State (except transfer inheritance and estate taxes) and provides for compensation to municipalities for tax revenues lost by reason of acquisition and ownership by the State of lands certified exempt from property taxes due to their use for conservation and recreation purposes. □

tax calendar

october

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

October 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

October 15

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

continued

October 15 - continued

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

October 20

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

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

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

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

SCC-5 Spill Compensation and Control Tax—Monthly return

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

continued

October 20 - continued

ST-50 Sales and Use Tax—Quarterly return

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

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

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

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

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

October 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return

november

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

November 1

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

November 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

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 22

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

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

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

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

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

November 22 - continued

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

december

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

December 10

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

December 15

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

continued

December 15 - continued

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

December 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

December 20 - continued

- 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

December 27

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

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from the director's desk

Increase in Retirement Income Exclusions

Although it does not take effect until tax year 2000, the new change will dramatically reduce the taxable income of elderly and disabled residents. The pension exclusion amounts* will be phased-in over a 4 year period. The charts below show the phase-in amounts. All exclusion amounts are affected by filing status.

Filing status: Married filing jointly	
Year	Exclusion
1999	\$10,000
2000	12,500
2001	15,000
2002	17,500
2003	20,000

Filing status: Single	
Year	Exclusion
1999	\$7,500
2000	9,375
2001	11,250
2002	13,125
2003	15,000

Filing status: Married filing separately	
Year	Exclusion
1999	\$5,000
2000	6,250
2001	7,500
2002	8,750
2003	10,000

* Taxpayers who did not use the maximum pension exclusion may be eligible to exclude other income.

New Zip Code

The US Postal Service recently assigned the Division of Taxation a new zip code to ensure that all mail reaches its proper destination. Items destined for the Processing Center, such as income tax returns (individual and corporate), sales and use tax returns/remittances, employer's quarterly reports, etc., should continue to use the 08646 designation. Effective immediately, mail addressed to other Division of Taxation locations in the Trenton area should bear the zip code 08695. Division stationery will be updated with the new zip code gradually as current supplies are depleted.