

New Jersey State Tax News

Spring 2000

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New Taxation Kiosk



Taxpayer Services Branch Chief Edward Scheingold shows Taxation employee Kathy Dougherty how to print out tax forms from the Division's new kiosk. See article on page 3.

NJ SAVER Rebate Applications

Applications for the 1999 NJ SAVER rebate will be mailed to homeowners over a two week period in early May. This is the second year of a five-year phase-in of the program that provides direct property tax relief to qualified New Jersey homeowners. Applications must be filed by June 30, 2000, and NJ SAVER rebate checks are scheduled to be mailed on or before September 15, 2000.

Applications which contain information from last year's filing will be mailed to individuals who applied for and received a 1998 NJ

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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/>

SAVER rebate, or who would have received one had their homestead rebate not provided a greater benefit. Applications will also be mailed to individuals who constructed or purchased a home between October 2, 1998 and October 1, 1999 and other individuals who have been identified as possibly eligible homeowners. Homeowners may expect to receive their applications between May 1 and May 15.

Most homeowners will be able to file their NJ SAVER application by calling the automated NJ SAVER Rebate Filing System at 1-877-658-2972 or 609-826-4288. This system is available 24 hours a day, 7 days a week. The average call length will range from less than 1 minute for second-time filers whose information remains unchanged to 3½ minutes for first-time filers. Applications can also be filed on the Division's Web site at:

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

By staggering the mailing of the 1999 NJ SAVER rebate applications the Division expects to make it easier for homeowners who have questions about the program to get through to the Call Center. In addition, the NJ SAVER rebate filing system will be expanded this year to 720 lines.

New Jersey residents who own, occupy and pay property taxes on a home in New Jersey that was their principal residence on October 1, 1999 are eligible to receive a NJ SAVER rebate for that year. Rebates will average \$240 for tax year 1999. This amount will increase each year until the program is fully phased in with an average rebate of \$600 for tax year 2002.

Homeowners are entitled to receive either a NJ SAVER rebate or a homestead rebate, whichever provides a greater benefit. For many senior citizens, the homestead rebate will be greater. This may change as the NJ SAVER rebate program is phased in and the amount of the NJ SAVER rebate increases. Eligible applicants should continue to file for both the homestead and NJ SAVER rebates.

For further information about the NJ SAVER rebate program call the NJ SAVER Rebate Hotline at 609-826-4282. Division representatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

1998 NJ SAVER Update

The 1998 NJ SAVER filing season was extraordinarily successful with nearly 1.5 million applications filed by the initial June 15, 1999 deadline and a total of nearly 1.7 million applications filed to date.

New Jersey State Tax news

is published quarterly by the:

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Technical Services
Taxpayer Services Branch
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A subscription to the *State Tax News* is free. To be placed on the mailing list, or to notify us of an address change, write to us at the address above or e-mail us through our Web site at:

<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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Robert K. Thompson

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New Taxation Kiosk

A kiosk employing computer touch-screen technology to dispense tax forms and information was recently installed in the lobby of the Taxation Building, the Division's Trenton regional office, at 50 Barrack Street in Trenton. The kiosk provides both New Jersey and Federal tax forms as well as information about a variety of taxes administered by the Division. Users are able to view or print information or forms simply by touching a screen.

The new kiosk is a prime example of the Division of Taxation's continued effort to make tax information and forms more accessible to the public. □

NJ Ranks 2nd in Survey

New Jersey tied for second place in a recent survey designed to measure how well states are using technology to streamline government operations and improve services. New Jersey's high ranking in the first installment of "The Digital State" survey came in the taxation/revenue category.

The survey looked at five factors in assessing states' progress in electronic taxation and revenue activities:

- Availability of downloadable tax forms;
- Ability of taxpayers to file tax returns online;

- Ability of taxpayers to contact staff through a general electronic mailbox;
- Ability of taxpayers to contact specific staff members via e-mail; and
- The percentage of tax records stored digitally.

The survey also rated participants' Web sites on their completeness and user-friendliness.

The results of the survey, which was conducted by The Center for Digital Government and the Progress & Freedom Foundation, appear in the January 2000 issue of *Government Technology* magazine in an article entitled "The Dawn of Electronic States." A copy of the article is also available on the Division's Web site at:

www.state.nj.us/treasury/taxation/
□

Donations to Charity Increase

The figures are in on the recently completed State Employees' Charitable Campaign. "Over 72% of all Division of Taxation employees participated in this most worthwhile program," reported Director Robert K. Thompson. A total of \$89,850 was given in cash, checks and pledges. This represents an increase of 16.7% over last year's contributions. Thanking Division employees for their continued generosity, Director Thompson noted that donations to the campaign benefit numerous charitable agencies and organizations. □

GROSS INCOME TAX Federal Offset Program

On October 11, 1999 the Division mailed Notices of Intended Federal Offset letters to 14,000 taxpayers who had either received 90 day letters or COD letters for TGI deficiencies.

This endeavor is part of a new program developed by the IRS. We are one of the States participating in this new project.

If the taxpayer's debt to New Jersey is not satisfied, the taxpayer's name will be submitted for the set-off program. The IRS will then reduce or withhold any eligible Federal tax refunds by the amount of the debt.

As a result of this program the Division has collected \$499,248.56. There have been 165 payment plans set up and 239 taxpayers have paid in full. Approximately 162 responses were forwarded to caseworkers in various Division locations such as field offices or the Attorney General's referral unit. A number of taxpayers have submitted documentation of bankruptcy, which may also eliminate them from the setoff list.

The deadline for submitting payment or documentation was December 10, 1999. It appears that this new program will be a very successful addition to our collection projects. Next year we hope to target all taxpayers with TGI deficiencies. □

CORPORATION TAX
Tax Benefit

Transfer Program

The New Jersey Economic Development Authority (NJEDA) and the Division of Taxation have completed their review of applications for sale of unused Corporation Business Tax Benefits for New Jersey Technology and Biotechnology companies.

Of the 88 applications received, 61 companies were approved to sell their unused Net Operating Losses and Research and Development Tax Credits. These companies had over \$169 million in unused tax value, of which \$116 million will be available for sale over the next few years. In fiscal year 2000 there is a \$50 million overall program

cap. In future years this cap will be \$40 million.

After the initial \$250,000 sale authorization approved sellers were allowed to sell approximately 35% of their remaining sellable benefits. The unused sellable benefits will be part of fiscal year 2001 pool.

New Technology and Biotechnology companies who wish to apply for the program for 2001 need to submit their applications to the NJEDA by June 30, 2000. □

GROSS INCOME TAX
***New York City UBT/
Philadelphia BPT***

Reversing its previous policy as stated in the *New Jersey State Tax News* July/August 1990 issue, the Division of Taxation has determined that tax paid to New York City as Unincorporated Business Tax (UBT) is a tax on an individual's income and can be included in New Jersey's calculation of credit for taxes paid to other jurisdictions.

From the provisions of the New York City Unincorporated Business Tax and the New Jersey Gross Income Tax Act, the Division has determined as follows:

1. The UBT is an income tax because it is imposed on, as well as based on and measured by the business income of the unincorporated business;
2. The UBT is imposed on income similar to the income taxed under the Gross Income Tax Act, in that they are both imposed on

the individual proprietor's business income or the individual partner's distributive share of the partnership's business income; and

3. The UBT, therefore, may be credited against the gross income tax of the New Jersey resident taxpayer, using a separate calculation from the New York State or New York City credit computation.

Similar to the New York City Unincorporated Business Tax is the net income portion of the Philadelphia Business Privilege Tax. This is a tax levied on the net income of an unincorporated business from activities conducted within the City of Philadelphia. As such, the net income portion of the Philadelphia Business Privilege Tax qualifies as an income tax and is therefore allowable in determining a taxpayer's credit for taxes paid to other jurisdictions under N.J.S.A. 54A:4-1.

This change in policy will be effective immediately and the credit for other jurisdictions will be granted to all New Jersey resident taxpayers who earn income subject to the New York City Unincorporated Business Tax or the net income portion of the Philadelphia Business Privilege Tax provided that the credit is calculated in the manner required by N.J.S.A. 54A:4-1 and the current regulations. The Division of Taxation will accept amended returns if they are received within the statutory period in accordance with N.J.S.A. 54A:9-8. The credit will also be allowed for all cases pending before the New Jersey

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***Interest 11.50% for
Second Quarter***

The interest rate assessed on amounts due for the second quarter of 2000 is 11.50%.

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

Effective Date	Interest Rate
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%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%

Tax Court and the Conference and Appeals Branch, to the extent that the matter involved a final determination that denied plaintiffs a New Jersey gross income tax credit for New York City UBT or the Philadelphia Business Privilege Tax. □

SALES AND USE TAX **Accepting Exemption Certificates**

Exemption certificates are the primary method for a vendor to document the non-taxability of a sales transaction. Properly completed certificates are usually accepted in “good faith” (N.J.A.C. 18:24-10.1 et seq.). The auditor, however, has the right to question the reasonableness of the vendor’s judgment in accepting an exemption certificate. The vendor is presumed not only to be familiar with the tax laws and regulations that apply to the business, but also to the products sold, their common usage, and, to some extent, who their customers are and what they do with the product.

Auditors should question exemption certificates that appear to be contrary to the tax laws and regulations. Auditors should also question those exemption certificates where the common usage of the product seems unreasonable to the declared activity of the customer.

Whenever an exemption certificate is questioned, further investigations can be made to ascertain the validity of the exemption claim. The first step in this process should be for the auditor to explain the reason the certificate was ques-

tioned. If the certificate is not fully completed the vendor may be asked to contact the customer to obtain a completed certificate or a detailed explanation of the missing or incomplete parts. If the item requested for exemption appears to be in conflict with the exemption being claimed, the vendor may again be asked to contact the customer to obtain a more detailed explanation. The auditor may also independently research the circumstances of the customer. Before any audit result is finalized however, the auditor will always meet with the vendor and discuss the findings. At this point, the vendor may also present relevant information concerning the transaction or the customer. Only then should a final determination be made.

Exemption certificates are accepted in paper form and if the seller and customer are electronic trading partners an electronic certificate will be acceptable.

The following are examples of questioned exemption certificates and some possible results of the subsequent investigations:

A gas station issues an ST-3 to a concrete block distributor.

- Taxable: blocks were for use at the business.
- Exempt: gas station has an area where blocks are sold to the public.

An auto parts store issues an ST-3 to a firearm manufacturer.

- Taxable: guns were purchased for the owner’s use.
- Exempt: auto parts store also sells hunting and fishing equipment.

A carpenter issues an ST-3 to a lumberyard.

- Taxable: wood was used for a residential construction project.
- Exempt: wood was used for a repair at a church, properly completed ST-13 was issued by carpenter.

Other problem areas with exemption certificates:

- A manufacturing company issues an ST-4 to a hardware store for machine parts, but also purchases hand tools. The tools are a taxable purchase despite the certificate.
- A soft drink distributor accepts ST-3s from a coat manufacturer, a bank and a law office. The soft drinks are taxable if none of the entities sell soda at retail.

Examples of exemption certificates that should *not* be questioned:

- A pharmaceutical company issues an ST-4 to a shelving supplier claiming R&D usage.
- A manufacturing company issues an ST-3 to another manufacturer for heat-treating 350,000 cotter pins.

As a general guideline, if the vendor had no good reason to question a properly completed certificate, the auditor will also have no reason to question it. Vendors should never accept exemption certificates solely for the purpose of creating a tax advantage, or to avoid confrontations. Only fully completed exemption certificates should be accepted and vendors should feel free to question the merchandise’s use if good faith issuance by a customer is in doubt. □

Inheritance Tax Waivers

Upon the death of a resident of this State, R.S. 54:35-5 imposes a lien on his or her property to secure the payment of any Inheritance Tax which may be payable. The statute also provides that a bank may not release any funds held on deposit which belong to or stand in the name of a resident decedent or in the joint names of a resident decedent and one or more other persons without first notifying the Director of the Division of Taxation and withholding sufficient funds to pay the tax and interest which may be assessed on the funds released. The written consent issued by the Director permitting a banking institution to transfer a bank account and releasing the statutory lien is commonly known as a waiver. In the normal course, waivers are issued by the Division after an Inheritance Tax return has been filed and any tax and interest assessed has been paid. However, the statute and regulations provide procedures whereby a beneficiary or an estate representative may obtain funds from a banking institution without first filing an Inheritance Tax return and paying any tax and interest which may be assessed. There are two commonly used procedures which permit a beneficiary or an estate representative to obtain funds held on deposit in a banking institution without first contacting the Division.

Form L-8 (Affidavit and Self-Executing Waiver) may be used when a bank account passes to a parent, grandparent, child, stepchild, legally adopted child, issue of any child or legally adopted child (does not include a stepgrandchild or a great-stepgrandchild) or to a sur-

viving spouse. The bank account must pass to a qualified beneficiary by contract (e.g., survivorship), it must be specifically bequeathed to a qualified beneficiary, or if the bank account does not pass by contract and it was not specifically bequeathed, all heirs by intestacy or all beneficiaries under the will must be qualified beneficiaries. The Form L-8 is completed by the appropriate beneficiary or estate representative and presented directly to the banking institution. Most banking institutions have this form on hand. It may also be obtained by contacting the Division at 609-292-5033.

The regulation (N.J.A.C. 18:26-11.16), commonly known as the Blanket Waiver, provides that the proper estate representative may withdraw up to 50% of the funds on deposit in an account without first obtaining a waiver from the Division. The blanket waiver provisions apply to each institution and to each account within that institution. The amount which may be withdrawn is limited to no more than 50% of the funds in an account regardless of whether the account was held in the decedent's name alone or jointly in the name of the decedent and one or more other persons. In addition to the 50% which may be released to the proper estate representative, a banking institution may release any additional amount without a waiver provided the check is made payable to the New Jersey Inheritance Tax and is for the payment of Inheritance Tax and/or interest. □

SALES AND USE TAX

Spring Planting

As the ground thaws, our attention turns to the landscaping needs of our lawns and gardens. Lawns may need to be reseeded, flowerbeds planted and trimmed, new mulch laid, and trees that did not weather the cold of winter may need to be removed or replaced.

Whether plants and materials are sold to either landscapers or homeowners, the transaction is a retail sale and sales tax must be collected. Landscapers are considered contractors. A contractor always pays sales tax on the materials and supplies purchased. Purchases of seeds, dirt, trees, plants, stakes, stones, shovels, rakes, etc. are all subject to sales tax.

If the contractor's bill to the property owner separately states the cost of materials and labor, sales tax may be charged on the *labor* portion of the bill only. If the landscaping work completed on a customer's property results in a capital improvement, the property owner is not charged sales tax on the labor portion of the bill provided that the owner gives a *Certificate of Capital Improvement* (Form ST-8) to the landscaper. Examples of capital improvements are:

- Laying new sod or seeding a new lawn
- Planting trees, shrubs, plants, etc.
- Filling, terracing or clearing land
- Building permanent structures such as fences, walls, trellises or patios

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spring planting – from page 6

Repairs and maintenance that a landscaper may perform are always subject to sales tax. Some examples of taxable services are:

- Pruning trees
- Aerating soil
- Reseeding, fertilizing and mowing lawns
- Treating with insecticides or herbicides

The homeowner will pay sales tax on the labor portion of the bill for landscape maintenance or repairs. □

Tax Practitioners' Hotline

609-633-6657 Personal Income Tax
609-633-6905 Business Taxes

The Tax Practitioners' Hotline is a special service provided by the Taxpayer Accounting Branch of the New Jersey Division of Taxation *for practitioners only*. The purpose of the Hotline is to assist practitioners by resolving specific tax problems over the telephone when the practitioner has not been able to resolve the problem *through normal channels*. Practitioner Hotline Technicians are authorized to perform updates to monetary account information as well as non-monetary taxpayer profile information. During Fiscal Year 1999, the Tax Practitioners Hotline handled about 5,300 business tax and 8,000 personal income tax calls. To be successful and to provide the best possible service, the Tax Practitioners' Hotline must operate within certain guidelines, and we ask that all practitioners wishing to take ad-

vantage of the service adhere to them.

GUIDELINES:

- **Types of calls handled by the Tax Practitioners' Hotline.** Account maintenance activities, adjustments, transfers, updates, and refunds.
- **Types of calls NOT handled by the Tax Practitioners' Hotline.** Tax information inquiries and form requests will not be handled by the Tax Practitioners' Hotline. These calls are handled by our Taxpayer Services Call Center at 609-292-6400. Cases being handled elsewhere in the Division or by a contracted vendor, will not be addressed by the Tax Practitioners' Hotline. Practitioners must contact the individual already handling the matter.

- **This service is for tax practitioners only.** The telephone numbers should not be given to clients under any circumstances.
- **Power of Attorney.** The Division has a statutory obligation to protect the confidentiality of taxpayer information. Division personnel staffing this Hotline will discuss a client's account in general terms, and verify information provided by practitioners who have a Power of Attorney for their clients. New Jersey Division of Taxation Power of Attorney, Form M-5008, must be completed and submitted by practitioners requesting an adjustment to a taxpayer's account. This form must accompany every document submitted unless the taxpayer has specifically authorized his representa-

tive with complete jurisdiction until further notice. If this is the case, the authorization Form M-5008 must clearly note the tax and periods covered. Form M-5008 is included in the New Jersey *Package NJX* for practitioners' convenience. Power of Attorney Forms M-5008 filed with the Tax Practitioners' Hotline are not valid for any other matters being handled by any other area of the Division, or by a contracted vendor. Likewise, Forms M-5008 filed with any other area will not apply to matters being handled by the Tax Practitioners' Hotline.

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Pay Your NJ Income Taxes By Credit Card



Call:

1-888-2PAYTAX

For more information:

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

practitioners' hotline – from pg. 7

- **Supporting Documentation.** All corrections and approvals performed at the request of a practitioner must be supported by documentation that has been signed and properly completed. Corrections and approvals will not be made until proper documentation has been received. All correspondence should be addressed to:

NJ DIVISION OF TAXATION
TAXPAYER ACCOUNTING BRANCH
TAX PRACTITIONERS' HOTLINE
PO BOX 266
TRENTON NJ 08695-0266

Correspondence should be marked to the attention of the agent who handled the practitioner's call. Correspondence and documentation may also be submitted by way of fax at 609-633-6444.

- **Waiting Time.** Practitioners should wait a reasonable amount of time from the date a return is filed to allow for processing before calling the Tax Practitioners' Hotline for assistance, and then only if the matter has not been able to be resolved through the Taxpayer Services Call Center. Practitioners should allow a minimum of 30 days from the date the supporting documentation has been sent before making a second call to the Tax Practitioners' Hotline on the same matter. □

LOCAL PROPERTY TAX **Tax Assessor** **Recertification**

Chapter 278, Laws of 1999 provides that all tax assessor certificates issued prior to its effective date of seven months after December 8, 1999 or July 2000, shall expire five years following that effective date. All tax assessor certificates issued on or after the effective date of July 2000 shall expire five years after each certificate's issuance. Both shall require application for renewal and payment of a renewal fee of not less than \$50 provided that continuing education requirements of fifty continuing education credit hours over five years are met. Beyond the initial five year renewal period, renewal shall be required every three years provided that continuing education requirements of thirty credit hours over three years are met. One continuing education credit hour means 50 minutes of classroom or lecture time. An additional late renewal fee of \$50 is required if application for renewal

is made within six months of the expiration of a certificate.

Chapter 278's enactment amends N.J.S.A. 54:1-35.31 adding as a prerequisite for tenure, "...compliance with requirements for continuing education pursuant to Section 1 of P.L. 1999, c.278..." As amended, removal for "good cause" shall include the failure of a tax assessor to meet continuing education requirements. N.J.S.A. 54:1-35.29 is also amended so that a tax assessor certificate can now be revoked or suspended for "Failure to comply with requirements for continuing education pursuant to Section 1 of P.L. 1999, c.278 (C.54:1-35.25b) and cause the automatic revocation, without a hearing, of the tax assessor certificate."

Chapter 278 also establishes within the Division of Taxation, Department of the Treasury, the Tax Assessor Continuing Education Eligibility Board consisting of six members: the Director of the Division of Taxation or his designee, the

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Ride the new wave...

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

assessor recertification – from page 8

President of the Association of Municipal Assessors, and the President of the New Jersey Association of County Tax Board Commissioners and County Tax Administrators as permanent members; and two additional members serving a term of two years, appointed one each by the Director and the President of the Association of Municipal Assessors. The Director of Government Services at Rutgers University shall serve ex officio. The Board shall establish curriculum areas and number of hours in each curriculum area that an assessor shall complete to renew certification. The Board shall meet annually, with the first meeting of the Board held at the call of the Director of the Division of Taxation. The Director, by regulation, may grant an extension of time to complete the requirements for continuing education. □

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.

Seven persons passed the examination for the tax assessor certificate held on September 18, 1999. Six persons became certified tax assessors on November 8, 1999.

Bergen County: Thomas J. Gawlik, Closter Borough; Janet K. Ridenhour, Westwood Borough.

Burlington County: William John Kennedy, Medford Township.

Mercer County: Judy P. Miller, Ewing Township; Kenneth A. Pacera, Lawrence Township.

Middlesex County: Tricia A. Mercado, Monroe Township.

The next exam will be held sometime in September 2000 and applications need to be filed thirty days prior to the examination date with the Division of Taxation, PO Box 251, Trenton NJ 08695-0251. If you have any questions on the date or location of this exam contact Mary Ann Miller at 609-292-7975. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10–

- Copy of County Tax Board resolution of real property taxable value percentage level

mailed to assessors, municipal clerks, and Director, Taxation.

April 15–

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1–

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20–

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23–

- Table of Aggregates signed and transmitted within three days to Taxation and Local Government Services Directors, State Auditor, municipal clerks and the clerk of board of freeholders by County Tax Board.

June 1–

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3–

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

June 5–

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15–

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On October 1, 1999, as a result of a joint investigation with the US Customs Service at Newark International Airport, the Office of Criminal Investigation's Special Agents arrested Awad Bashir for possession of 626.1 cartons of contraband cigarettes. Mr. Bashir was transported to Essex County Jail by Special Agents and bail was set at \$20,000. The subject had been previously arrested by OCI in 1997 and subsequently convicted of Possession of Contraband Cigarettes in the Elizabeth Municipal Court.
- On October 21, 1999, Ki Filip, of West Bloomfield, Michigan, was indicted by a Monmouth County Grand Jury on charges of conspiracy and promoting prostitution, failure to file personal gross income tax returns

on income earned in 1996, 1997 and 1998, and failure to pay personal gross income tax for 1996, 1997 and 1998, in connection with the operation of Tokyo Therapy, a purported massage parlor in Howell, New Jersey. This case was investigated jointly by the New Jersey State Police Organized Crime Unit and the Division of Taxation, Office of Criminal Investigation and was presented to the grand jury by the Monmouth County Prosecutor's Office. On December 6, 1999, Ki Filip failed to appear in Monmouth County Superior Court for arraignment on the indicted charges. A bench warrant was issued for the defendant's arrest.

- On November 23, 1999, the Monmouth County Prosecutor's Office announced that on November 15, 1999, Stanley W. Hudson of Monmouth Beach, New Jersey, entered a plea of guilty to one count of failure to pay taxes with intent to evade in

continued on page 11

Enforcement Summary Statistics

Fourth Quarter 1999

Following is a summary of enforcement actions for the quarter ending December 31, 1999.

• Certificates of Debt:	• Jeopardy Seizures	3
Total Number	2,041	• Seizures
Total Amount	\$41,523,897	18
• Jeopardy Assessments	212	• Auctions
		3
		• Referrals to the Attorney General's Office
		264

For more detailed enforcement information, see our Home Page at:

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

the amount of \$25,144.43 for the years 1993 through 1996 on income earned as a jewelry salesman and on illegal income in the form of proceeds from the theft of jewelry consigned to him for sale. This case was investigated jointly by the Monmouth County Prosecutor's Office and Taxation's Office of Criminal Investigation, and prosecuted by the Monmouth County Prosecutor's Office.

- On December 1, 1999, Stogies Distributors, Inc. of Ridgefield, New Jersey, was found guilty in Ridgefield Municipal Court for violations of the Administrative Code for Failure to Stamp unstamped cigarettes within 24 hours of receipt, and for stamping cigarettes in a manner that places only half of a tax stamp on each pack of cigarettes, thus underpaying the tax due by half. The defendant also plead guilty to failing to provide security of New Jersey tax stamps. Fines, costs and fees totaling \$1,620 were imposed by the Court.
- On December 8, 1999, both Tri-State Wholesale Distributors and Dok Ryu, the president and owner, were indicted by the State Grand Jury for one count of N.J.S.A. 2C:27-2, Bribery in Official and Political Matters. This is a crime of the second degree. This case involves the attempted bribery of a Special Agent of the Office of Criminal Investigation to ignore criminal violations uncovered during an investigation.
- On December 17, 1999, Meyer Shevrin, a resident of Manalapan, New Jersey, was sentenced to a 12 month term of probation based on his guilty

plea in August 1999 to one count of Failure to Make Required Disposition of Property Received. Mr. Shevrin had operated the now defunct computer sales business known as World Sales, Inc. in Freehold, New Jersey, and failed to remit sales tax monies that he had collected from customers. Prior to his sentencing, Mr. Shevrin made full restitution to the State of New Jersey in the amount of \$43,861.99.

- On December 18, 1999, Aldo's Wholesale Distributors of Camden, New Jersey, and HF Wholesale, a.k.a. FA Wholesale of Irvington, New Jersey, will begin a ten day suspension of their wholesale cigarette licenses. These suspensions are based upon violations of the Unfair Cigarette Sales Act. The violations were brought to the attention of the Division of Taxation as a result of civil suits brought by the New Jersey Wholesale Marketers Association (NJWMA).
- Sixty-five charges were filed in municipal court on 18 cases for violating the cigarette tax law including possession of 4,372.2 cartons of contraband cigarettes, valued at \$139,910.40. □

Tax Briefs

Corporation Business Tax

LLC Liability — Assume the following facts: Company A and Company D, one of its subsidiaries, are the two members of a Delaware LLC, which is taxed federally as a partnership. Company A has a principal office in New Jersey and is qualified to do

business in New Jersey.

All accounting and administrative functions are performed by an out-of-State affiliate for the LLC, but are managed from New Jersey, and D takes part in the management. LLC owns a discount buying club and is in the business of selling annual club memberships. LLC has no office or place of business anywhere.

Company B is a single member LLC whose sole purpose is to provide service to the club including membership cards, preparing membership fulfillment kits, and promotional packages and compliance services. It does this through its subcontractors Companies C and E. C makes available a toll-free number and E is responsible for taking membership cancellations and complaints.

Buying club members pay \$60 per annum membership fee to the LLC for the right to purchase products at discounts from Company C's participating vendors. Club members receive two free airline tickets as an incentive to join and may cancel their membership at any time for a full refund.

Based upon these facts, the LLC is a conduit with no independent economic substance. Compare *C.I.T. Financial Services v. Taxation Div. Dir.*, 4 N.J. Tax 568, 576 (1982) regarding "corporate *alter ego*." As such, the places of business of its members are the places of business of the LLC. (Under the New Jersey limited liability company law, a foreign limited liability company is required to maintain a registered office and agent in this State. N.J.S.A. 42:2B-6a).

Accordingly, since Company A, a member of LLC, has nexus in New

Jersey, its nexus is attributed to the LLC, and the LLC is deemed to have nexus in New Jersey. The LLC itself, which is treated as a partnership, is not subject to tax, though its corporate members are subject to tax in this State, in this particular instance.

Gross Income Tax

BIG GAME Lottery Winnings —

On May 26, 1999, the New Jersey State Lottery Commission, pursuant to the authorization contained in N.J.S.A. 5:9-7, adopted the powerball or BIG GAME lottery game with the first drawing taking place on May 28, 1999. The BIG GAME is a multistate lottery that offers a minimum jackpot of \$5 million, nine ways to win and overall odds of 1 in 31. The other member states include Georgia, Illinois, Maryland, Massachusetts and Virginia. All prize awards are subject to claim procedures, validation tests, and other applicable requirements of the New Jersey Lottery.

New Jersey Lottery is established in accordance with N.J.S.A. 5:9-1, et seq. The New Jersey State Lottery Commission has the authority under N.J.S.A. 5:9-7 to promulgate rules and regulations governing the establishment and operation of a State lottery as it deems necessary. These rules and regulations may include, but are not limited to, the types of lotteries to be conducted, the price of tickets, the manner of payment of prizes, the method to be used in selling tickets, etc.

The New Jersey Gross Income Tax Act in accordance with N.J.S.A. 54A:6-11 specifically provides for the exclusion of New Jersey lottery winnings from gross income. This applies to both residents and nonresidents. This exemption serves as an incentive to participate in the lottery by limiting the tax consequences of collecting lottery winnings. The term “lottery winnings” is not defined in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1, et seq., nor in the statutes governing the New Jersey Lottery. The commonly understood meaning of the term “lottery winnings” as used for New Jersey gross income tax purposes is prize money awarded on account of a winning New Jersey lottery ticket. In order to claim a prize in the New Jersey State lottery, the regulations of the State Lottery Commission covering procedures and safeguards must be followed. *Karafa v. N.J. State Lottery Commission*, 129 N.J. Super. 499 (1974).

Thus, since all winners, tickets and transactions of the BIG GAME are subject to New Jersey State Lottery rules, regulations and New Jersey State law, BIG GAME lottery winnings should be exempt from New Jersey gross income tax.

Investment Partnerships —

Effective for taxable years ending after September 14, 1998, a non-resident shall not be deemed as having New Jersey source income solely as a result of the purchase, holding and sale of intangible personal property by a trade, profession, occupation, business, enterprise or undertaking, to the extent that:

1. The activities related to the intangible personal property are for the account of the trade, profession, occupation, business, enterprise or undertaking; and
2. The trade, profession, occupation, business, enterprise or undertaking does not hold the intangible personal property for sale to customers. See P.L. 1998, c.106.

If the investment activities do not meet the criteria and generate New Jersey source income, the nonresident must file a New Jersey gross income tax return, regardless of losses that reduce the income. N.J.A.C. 18:35-1.3(f)3. Losses can only be used against income within the same category and within the same tax year. N.J.S.A. 54A:5-2.

Litter Control Tax

Sales of Cleaning Agents — The litter control tax only applies to sales of the products that are listed as litter-generating products in the Clean Communities and Recycling Act. N.J.S.A. 13:1E-92 et seq. Cleaning agents and toiletries are listed as litter-generating products. If chemicals are sold for the purpose of making them into litter-generating products like cleaning agents and toiletries, the sales of the chemicals are not subject to the litter control tax. Only sales of the end product, such as the cleaning agent or toiletry, are subject to the tax. However, if a supplier sells chemicals as a cleaning agent (and not as a component part of an end product), the sales of the cleaning agent are subject to the litter control tax.

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1999 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
12	1/25/99	Checkoff for Drug Abuse Education Fund — Establishes the Drug Abuse Education Fund to which taxpayers can designate contributions on their New Jersey gross income tax returns.	GIT	ACS for A-132
21	2/8/99	Coded Designations for Contribution Checkoffs — Provides a coding designation system for some of the charitable donation options on the gross income tax return.	GIT	A-1514(4R)
42	3/12/99	Nonofficial Examination of State Tax Records — Provides that any person violating the confidentiality provisions of the State Tax Uniform Procedure Law by examining records for any reason other than the performance of official duties shall be guilty of a disorderly persons offense. Unauthorized disclosure or use continues to be treated as a fourth degree crime. Whenever records and files are used in the prosecution of a person for such offenses, the defendant shall be given access to said records and files. Portions of the court record containing the confidential records shall be sealed by the court.	MIS	A-1631(2R)
63	4/15/99	NJ SAVER and Homestead Rebate Act — Establishes a New Jersey School Assessment Valuation Exemption Relief (NJ SAVER) program which allows homeowners to receive a direct rebate check representing a portion of the school taxes paid on their primary residence. This legislation also extends the homestead rebate income limit for tenants.	LPT	S-12
67	4/16/99	Extension of Time for Filing Property Tax Reimbursement Applications — Extends the deadline for filing 1998 property tax reimbursement applications to April 15, 1999.	LPT	A-2915
71	4/28/99	Shore Protection Fund — Increases the amount annually credited to the Shore Protection Fund to \$25 million.	MIS	A-1676(2R)
92	5/3/99	Checkoff for Korean Veterans' Memorial Fund — Adds the Korean Veterans' Memorial Fund to the list of funds to which gross income tax filers can designate charitable contributions on their return.	GIT	ACS for A-974
94	5/3/99	Simplified Wage Tax Reporting for Employers of Domestic Workers — Simplifies employer reporting and payment requirements for household workers and permits gross income tax withholding and wage taxes for such workers to be paid annually.	GIT	A-1635(3R)
102	5/6/99	Neighborhood and Business Child Care Tax Incentive Program — Provides new tax credits to certain corporations based on their expenditures for child care facilities and also allows certain unincorporated businesses to fully deduct such expenditures for gross income tax purposes.	CBT/ GIT	A-1669(3R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
116	5/21/99	State Tuition Program Accounts, Education IRAs — Allows earnings of qualified state tuition program accounts and educational IRAs to be deferred from New Jersey gross income until the earnings are distributed and excludes from income qualified distributions from qualified state tuition program accounts that are used for qualified higher education expenses.	GIT	A-2367(2R)
118	5/27/99	Aid for Challengers of the NYC Personal Income Tax — Authorizes the New Jersey Attorney General to assist New Jersey residents' legal challenge of the New York City personal income tax.	MIS	A-1040
140	6/28/99	Tax Benefit Certificate Transfer Program — Clarifies the Corporation Business Tax Surrendered Tax Benefit Certificate Transfer Program for new or expanding emerging technology and biotechnology companies.	CBT	S-1709(1R)
152	6/30/99	Garden State Preservation Trust Act — Establishes a statutory framework for the acquisition and preservation of open space, farmland and historic properties. Provides a property tax exemption for real property placed in a preservation trust. Provides funding for municipalities that would otherwise lose tax revenue as a result of such property tax exemption.	MIS	S-9(1R)
177	8/3/99	Pension Exclusion, Other Retirement Income Exclusion Increased — Increases, over a four-year period, the maximum amount of certain retirement income that may be excluded from taxable income under the New Jersey Gross Income Tax Act.	GIT	A-126(1R)
208	9/17/99	Tax Court Proceedings — Changes certain procedures governing county tax board appeals and appeals to the Tax Court.	LPT	S-673(1R)
216	9/21/99	Revaluation Relief Act of 1999 — Changes certain real property tax revaluation procedures which will affect the City of Newark.	LPT	S-192(1R)
221	9/22/99	Expanded Exemption for Film and Video Industry — Exempts the sale of tangible personal property for use directly and primarily in the production of film or video for sale, and the services of installing, maintaining, servicing or repairing such property.	S&U	S-1074(2R)
222	9/22/99	Health Insurance Costs for Self-employed Taxpayers — Allows self-employed individuals and 2% or more shareholders in an S corporation to deduct health insurance costs from gross income.	GIT	S-1133(1R)
246	10/15/99	Exemption for Certain Aircraft Repairs, Equipment — Exempts repairs and replacement parts on aircraft with a maximum takeoff weight of 6,000 pounds or more from sales tax.	S&U	A-1952, 977 (1R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
248	10/15/99	Prepaid Telephone Calling Arrangements — Shifts the incidence of sales tax on prepaid telephone calling arrangements by requiring retail vendors to collect tax at the time of the sale to the consumer.	S&U	A-2050(2R)
249	10/15/99	Exemption for Certain Vending Machine Sales — Increases from \$0.10 to \$0.25 the maximum price of merchandise that is exempt from sales tax when sold through coin-operated vending machines.	S&U	A-2139
253	10/15/99	Firearm Accident Prevention Act — Provides an exemption from sales and use tax for sales of firearm trigger locks.	S&U	A-2420
254	10/15/99	Secure Firearm Storage Act — Provides an exemption from sales and use tax for the sales of firearm vaults.	S&U	A-2421
259	10/15/99	Homestead Rebates — Clarifies the calculation of homestead rebate or NJ SAVER benefits payable to eligible elderly or disabled taxpayers.	LPT	A-3040
260	10/18/99	Higher Tax Filing Thresholds — Increases, over a three year period, the minimum income threshold for filing gross income tax returns.	GIT	ACS for A-2339
	11/2/99	Constitutional Amendment — On November 2, 1999 the electorate approved an amendment to Article VIII, Section I, paragraph 3 of the New Jersey Constitution increasing the property tax deduction for veterans.	LPT	
273	11/24/99	Commuter Ferryboat Exemption — Provides for an exemption from sales tax on the sales, repairs, alterations or conversion of commuter ferryboats.	S&U	S-761(2R)
278	12/8/99	Continuing Education Program for Tax Assessors — Sets continuing education requirements for tax assessor certificate renewals and establishes the Tax Assessor Continuing Education Eligibility Board.	LPT	A-2716(2R)
284	12/20/99	Taxability of Recreational Vehicles in a Campsite — Provides that a recreational vehicle installed in a campsite is not subject to tax as real property.	LPT	A-1126(1R)
314	1/6/00	Farmer's Exemption — Expands the sales tax exemption for certain purchases made for farm use.	S&U	SCS for S-1825(1R)
328	1/6/00	Sales of Reimported Cigarettes — Forbids the stamping and sale of reimported cigarettes originally produced for export.	CIG	A-3250
342	1/10/00	Extension of Cap Benefit — Provides an extension of the cap benefit under the Spill Compensation and Control Act.	SCC	A-2461(3R)

continued

1999 TAX LAWS (continued)

CH.	DATE	SYNOPSIS	TAX*	BILL
355	1/14/00	Checkoff for Vietnam Veterans' Memorial Fund — Makes the Vietnam Veterans' Memorial Fund one of the permanent checkoffs on the gross income tax return.	GIT	S-1869
357	1/14/00	Realty Transfer Fee — Clarifies that the conversion from a cooperative to a condominium is not subject to the realty transfer fee.	LPT	S-2217
365	1/14/00	Exemptions for Hurricane Floyd Victims — Provides an exemption from sales tax paid by victims of Hurricane Floyd to replace motor vehicles, household goods, and home repair materials, as well as services to install, replace or repair property that was damaged or lost in flooding attributable to Hurricane Floyd in counties federally designated as disaster areas.	S&U	A-3408(1R)
369	1/14/00	Certain Income of Alien Corporations Excluded — Excludes certain investment income of alien corporations from Corporation Business Tax.	CBT	A-3622
372	1/14/00	Qualified Conservation Contribution — Provides a gross income tax deduction for qualified contributions of certain interests in real property for conservation purposes.	GIT	A-1918(2R)
375	1/14/00	Expiration Dates Extended — Extends the municipal payroll and parking tax authorization for Jersey City, Elizabeth and Hudson County municipalities.	MIS	S-1241(3R)
386	1/14/00	Checkoff for Organ and Tissue Donor Awareness Education Fund — Allows taxpayers to make voluntary contributions on their gross income tax returns for organ donor education programs.	GIT	A-3544(1R)
416	1/18/00	Exempt Organization Status — Grants exempt organization status under the Sales and Use Tax Act to the National Guard, Marine Corps League and war veterans' posts or associations and creates a Sales and Use Tax Review Commission to review any bills that would expand or reduce the base of the sales and use tax.	S&U	A-6

*Legend for 1999 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Tax
ACC = Atlantic City Casino Control Commission	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PUT = Public Utility Taxes
CMC = Cape May County Tourism Sales Tax	SCC = Spill Compensation & Control Tax
FBT = Financial Business Tax	S&U = Sales and Use Tax
GIT = Gross Income Tax	TPT = Tobacco Products Tax
IPT = Insurance Premiums Tax	

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Sales & Use Tax

Broadcasting and Film Production Exemptions

Exemptions — The recently enacted exemptions for the film and video industry contained in P.L. 1999, c.221, apply to purchases of certain tangible personal property and services used or consumed directly and primarily in the production of film or video *for sale*. When items of tangible personal property are used to produce programming to be broadcast by a television station, they are not deemed to be used primarily to produce film or video tape to be sold to others. Therefore P.L. 1999, c.221 does not apply.

If equipment such as tapes, cameras, filming equipment, video transmission equipment, and tape recording equipment is used directly and primarily in the process of producing or transmitting television programming, a broadcast station's purchases of these items may instead be exempt under N.J.S.A. 54:32B-8.13e, sometimes referred to as the broadcast exemption.

Motor vehicles used to carry broadcast and transmission equipment are not deemed to be used *directly* in production of the programming and therefore are not exempt under N.J.S.A. 54:32B-8.13e. In addition, 54:32B-8.13 expressly excludes motor vehicles from the exemption. However, note that trucks used to carry broadcast and transmission equipment may be exempt under N.J.S.A. 54:32B-8.43 if the statutory criteria for exemption are satisfied. Since these trucks are neither farm vehicles nor used exclusively for transporting interstate freight, they will be exempt only if they are registered for road use and

have a manufacturer's assigned gross vehicle weight rating of more than 26,000 pounds.

Sales of Headstones — Sales of vaults and headstones to family members and to funeral directors are subject to sales tax. Funeral directors are not exempt from sales tax on such purchases. N.J.S.A. 54:32B-8.17 provides that funeral directors may *not* claim a resale exemption when purchasing tangible personal property that they use in rendering funeral services. Thus if a funeral director purchases a headstone for a client, the *funeral director* must pay the sales tax on the purchase. The headstone, and other merchandise that the funeral director may transfer to a client, is deemed to be merely incidental to the nontaxable professional services sold by the funeral director. However, if a family member simply purchases the headstone directly from a business that produces headstones, instead of obtaining it from the funeral director as part of a funeral service, the family member, as the retail purchaser, is liable for the sales tax. See N.J.S.A. 54:32B-3(a).

A Form ST-8 cannot be used in order to make an exempt purchase of headstones sold as tangible personal property. The ST-8 is a Certificate of Capital Improvement. It applies only to *services* that are exempt under N.J.S.A. 54:32B-3(b)(2)(v): "services rendered in installing property which, when installed, will constitute an addition or capital improvement to real property or land." Customers who hire a business to dig graves or to install headstones and vaults are entitled to exemption from sales tax on the charge for this service. They should use a

completed ST-8 to support their exemption.

Imaging of Exemption Certificates — Electronic storage of the images of a customer's paper sales tax exemption certificates is acceptable, provided that *all* of the content of the certificate is stored and capable of being reproduced, including the customer's signature. These stored images are deemed "true copies" of the certificates within the meaning of N.J.S.A. 18:24-2.3(a), and certificates stored in electronic form and reproducible in paper form on demand are deemed to be in the vendor's "physical possession" and "available for appropriate inspection" within the meaning of N.J.S.A. 18:24-10.6(b).

Use of ST-3NR — A Form ST-3NR (Resale Certificate for Non-New Jersey Vendors) may be used by a business purchasing taxable items in New Jersey for resale if the purchase qualifies for the resale exemption under New Jersey law and if the purchaser satisfies the following requirements: (1) it is not registered with the New Jersey Division of Taxation, (2) it does not have tax nexus with the State of New Jersey and therefore is not required to be registered with the New Jersey Division of Taxation, and (3) it *is* registered as a vendor with some other state.

A non-United States company not registered in New Jersey may use the ST-3NR if it is registered as a vendor in some other state in the U.S.A. The state where it is registered does not have to be its "home" state or the jurisdiction where the business is based. Note that, even if it is not *required* to be registered with New Jersey be-

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cause it does not have sales tax nexus with this State, it *may* register voluntarily. In that case, it would become eligible to use the regular ST-3, the resale certificate used by vendors registered with New Jersey. However, if the purchaser is registered *only* in a foreign country, it may not use either the ST-3NR or the ST-3.

Exempt Organization Shop or Store Sales — If a nonprofit organization has applied for and received a permit to be exempt from sales and use tax under N.J.S.A. 54:32B-9 of the Sales and Use Tax Act, the organization is exempt from collecting sales tax on occasional fundraising sales. See N.J.A.C. 18:24-9.11. However, when a qualified exempt organization operates a store or a regular mail order business, the organization is required to collect sales tax unless the store meets the criteria in a newly-enacted exemption for “thrift” stores.

As provided in P.L. 1998, c. 118, effective February 1, 1999, a store operated by an exempt organization is not required to collect sales tax if “the tangible personal property was received by the organization as a gift or contribution and the shop or store is one in which substantially all the work in carrying on the business of the shop

or store is performed for the organization without compensation and substantially all of the shop’s or store’s merchandise has been received by the organization as gifts or contributions....”

The Division of Taxation interprets “substantially all” as meaning 75%. Thus, an exempt organization store is exempt from collecting sales tax on taxable *donated* items if the store meets the following criteria:

1. At least 75% of all the merchandise being sold is received as gifts or contributions; and
2. At least 75% of the work in carrying on the store business is performed without compensation, e.g., volunteers.

If an exempt organization store meets the standards of 1 and 2 above, and if all the merchandise is either donated or exempt from sales tax by law (such as clothing), the store qualifies to be put on a non-reporting basis. To be put on a non-reporting basis for sales tax collection purposes, the qualified exempt organization must complete and mail (to the address on the form), the Form C-6205-ST, Request To Be Placed On A Non-Reporting Basis. The form is available by calling the Division’s Automated Tax Information System at 1-800-323-4400 and select-

ing the Forms Request System.

Motor Vehicle Rental Charges — The Division replied to an inquiry concerning various charges that relate to motor vehicle rentals in New Jersey in view of the following regulation:

The charge to the customer which is subject to the sales tax is the total charge to the customer except where nontaxable charges such as registration fees, license fees, insurance and gasoline are separately stated then such charges are not subject to the tax. N.J.A.C. 18:24-7.15(b).

The taxability of separately stated charges is as follows:

1. **Collision Damage Waiver (CDW)** – When a CDW is purchased by a renter, the rental car company agrees not to pursue the renter for reimbursement of the costs of physical damage to the rental vehicle. There is no insurance carrier involved. *Taxable as a charge directly related to the rental.*
2. **Personal Accident Insurance (PAI)** – PAI provides the renter and any passengers with accidental death and accidental medical expense benefits. The renter is an insured under an insurance policy with a licensed insurance carrier. *Exempt because the coverage is provided by a licensed insurance carrier as evidenced by contract.*
3. **Personal Effect Coverage (PEC)** – When offered, it is sold in combination with PAI. It provides protection against risk of loss or damage to the personal effects of the renter and the renter’s immediate family traveling with the renter. The

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renter is an insured under an insurance policy with a licensed insurance carrier. *See #2.*

4. Supplemental Liability Protection – SLP provides the renter with up to \$1,000,000 of liability protection against claims by a third party as a result of bodily injury and property damage arising out of the use of the rental vehicle. The renter is an insured under an insurance policy with a licensed insurance carrier. *Exempt because the coverage is provided by a licensed insurance carrier as evidenced by contract.*

5. Fuel Charge – If the rental vehicle is returned with less gas than it had when it left, the renter is charged \$3.00 for each estimated χ of tank capacity which appears used, regardless of tank size. There is no fuel charge if the rental vehicle is returned with the same amount or more gas. *Exempt under N.J.A.C. 18:24-7.15(b) if it is a separately stated charge for the sale of gasoline (i.e., per gallon or per tank or part thereof) and does not include any additional services or costs related to the rental receipt. If this is a service charge for the vendor's expense of refueling the vehicle, the exemption for the sale of fuel does not apply.* □

In Our Courts

Administration

Time Period to File Appeal with Tax Court – *Alex M. Ponzi-Montalto v. Director, Division of Taxation*, decided November 16, 1999; Tax Court; No. 005577-1998.

In 1992, the Division sent plaintiff a “Notice and Demand for Payment of Tax” (hereinafter Notice) stating that plaintiff had ten days to show cause why the State should not file a Certificate of Debt against her in her capacity as a responsible officer of her corporation. The Notice also stated: “A personal visit to the Division of Taxation is not necessary to discuss this matter. However, if you desire a conference, you *must* call or write in advance to arrange an appointment.” Fourteen days later, plaintiff’s attorney corresponded with the Division concluding as follows: “Accordingly, I wish you would review the enclosed orders and contact me at your earliest convenience so that we may discuss this matter further. Thank you.” Thereafter, the Division filed a Certificate of Debt (hereinafter COD) against plaintiff. In the same year, plaintiff twice communicated with the Division via telephone and was advised that she would be held responsible.

In 1994, the Division issued a Warrant of Execution to satisfy the indebtedness set forth in the 1992 COD. In December 1994, the Division issued a second COD to plaintiff in her capacity as a responsible person of the same corporation for an additional amount of assessed taxes against her corporation. Notification of the docketing of the 1994 COD was sent to plaintiff in 1995.

In 1997, plaintiff’s attorney corresponded with the Department of Law and Public Safety requesting a conference to dispute plaintiff’s status as a responsible officer. On May 20, 1998, a representative of New Jersey’s Attorney General wrote plaintiff’s attorney advising that the Division

would not release the client from responsibility and that the only alternative was Tax Court. On September 9, 1998, plaintiff filed a valid complaint with the Tax Court alleging that she was not a responsible officer for certain time periods and that her May 20, 1998 letter constituted an act of the Director from which she could appeal. In its September 10, 1999 bench opinion, the Court rejected plaintiff’s argument concerning the May 20, 1998 letter without reiterating the analysis and reasoning in this opinion.

In its inquiry, the Court focused on the adequacy and validity of the Division’s notifications with respect to the determinations of liability stated in the two CODs. The Court ruled that the notifications were adequate as they were not assessments and complied with the statutes in effect at that time. The Court found that the plaintiff did not request a hearing or formally protest any Division notification until 1997 and that her failure to appeal for more than four years was unexcusable where as here she received notification of the liability being imposed. Therefore, the Court granted the Division’s motion to dismiss the complaint on grounds of untimely filing.

Bankruptcy Choateness – *In the Matter of Johns, Klear, and the State of New Jersey v. the USA*, decided October 7, 1999; District Court; No. 99-2521 and 99-1880.

The District Court reversed, in part, the Bankruptcy Court’s determination of when the State’s lien arising under the New Jersey Gross Income Tax Act became choate.

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The District Court ruled that a State lien becomes established and enforceable on the assessment date (Citing *Monica Fuel Inc.*, 56 F.3d 508, 512 (3rd Cir. 1995)).

Under the New Jersey Gross Income Tax Act, the amount of tax that a return states is due is deemed assessed on the filing date (See N.J.S.A. 54:9-3(a)). Therefore, the Court held that the liens to the extent of the tax shown on the return were choate on the date plaintiffs filed their returns.

On the other hand, the Court ruled that penalty and interest were not deemed assessed on the filing date because taxpayers did not include penalty and interest on their returns. The Court reasoned that the assessment of penalty and interest under the Gross Income Tax Act must be made through the deficiency assessment process, which process was not performed in either of the aforementioned cases. Therefore the Court held that the liens for interest and penalties were inchoate, were not perfected.

Division's Inherent Power of Recoupment – *Playmate Toys Inc.*, v. *Director, Division of Taxation*, decided December 21, 1999; New Jersey Supreme Court; No. A-70.

The Division granted a refund claim to plaintiff on time periods that were barred by the statute of limitations. Thereafter, the Division issued a final determination directing plaintiff to return the erroneous refund.

In a unanimous decision, the New Jersey Supreme Court affirmed the Appellate Division's holding that although the Division has no statutory power to recoup mistaken disbursements, it does have an inherent power to do so. However,

the Court added that this inherent power is not unlimited as the "powers of the Division are not boundless." The Court differentiated this case concerning the correction of a clerical error from a case concerning the correction of an error in judgment.

Corporation Business Tax Standing to Appeal – *Richard Pobuta v. Director, Division of Taxation*, decided October 8, 1999; Tax Court; No. 002054-99.

Plaintiff filed the complaint challenging the interest due on Corporation Business Tax and Sales and Use Tax owed by Campin Corporation as well as the Gross Income Tax owed by plaintiff and his wife.

The Court held that Richard Pobuta lacked standing to appeal the corporate tax liabilities even though he was the sole officer, shareholder, and director of the corporation. Citing *Rule 1:21-1* of the *New Jersey Court Rules*, the Court ruled that only an attorney may file an appeal concerning corporate tax liabilities.

The Court held that it lacked jurisdiction to reduce interest below statutory minimum absent plaintiff's reasonable reliance on the Division's written advice furnished to the plaintiff. After establishing that interest was imposed at statutory minimum and there was no allegation of reliance on erroneous advice, the Court dismissed plaintiff's complaint.

Gross Income Tax Interest Deduction for Loan for Capital Contribution – *John W. Dantzer, Jr. and Kathleen M. Dantzer. v. Director, Division of Taxation*, decided June 1, 1999; Tax Court; Motion for Reconsid-

eration, denied, October 22, 1999; No. 006040-96.

On defendant's motion for reconsideration, the Court declined to change its determination that interest on plaintiff's loan used to make his partnership capital contribution is a deductible business expense under the Gross Income Tax Act.

In essence, plaintiff borrowed money from the partnership for his capital contribution. Thereafter, plaintiff borrowed money from Citibank and repaid the loan to the partnership. At issue is the Citibank loan interest that was paid by the partnership to Citibank and withheld from amounts that would otherwise have been distributed to plaintiff.

Taxability of Foreign S Corporation's Income to NJ Resident – *Vincent Mancini v. Director, Division of Taxation*, decided March 19, 1999; Tax Court; No. 2892-98.

Plaintiff is a New Jersey resident that owns a 25% interest in a corporation located in Pennsylvania that elected S corporate status for both Federal and Pennsylvania income tax purposes. Plaintiff's New Jersey gross income tax return did not report his pro rata share of income from this foreign S corporation. However, plaintiff's pro rata share of S corporation income was reported on his personal Federal income tax and Pennsylvania non-resident income tax returns.

The Court noted case precedent holding that a state has nexus to tax its residents or domiciliaries on all their income regardless of the source of that income. (Citing *Cohen v. Graves*, 300 U.S. 308, 312-314 (1937); and *Hoe v. Division of Taxation*, 2 N.J. Tax 67, 72 (1980 Tax), *aff'd*, 4 N.J. Tax 528

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(1981 App. Div.), *cert. denied*, 87 N.J. 418 (1981)).

After examining the New Jersey Gross Income Tax Act, the Court found that the legislative intent was to tax a resident taxpayer's share of S corporation income as allocated to the resident pursuant to N.J.S.A. 54A:5-86 regardless of either the location of the S corporation or whether the corporation elected New Jersey S status. Therefore, the Court held that plaintiff was taxable on his pro rata share of the Pennsylvania S corporation income as calculated under the New Jersey Gross Income Tax Act.

**Local Property Tax
Failure to File Timely Complaint**
– *Regent Care Center, Inc. v. Hackensack City*, decided November 16, 1999; Tax Court of New Jersey, No. 005835-97.

Plaintiff (Regent Care) moved to compel defendant (Hackensack City) to produce certain documents in a local property tax appeal after which the municipality cross moved for dismissal of the taxpayer's complaint. Cross motion is based upon defendant/municipality's contention that taxpayer failed to timely file its complaint to the Tax Court by April 1, 1997 as required by N.J.S.A. 54:3-21.

The subject property in Hackensack is utilized as a nursing home. The assessor submitted a timely 1997 tax list to the County Board of Taxation that indicated a total assessment for the subject property of \$8,090,300. In 1996, the assessment was \$4,390,200. Taxpayer acknowledged receipt of a February 1 notification card that indicated the assessment to be

\$4,390,200. However, a second Chapter 75 notification card was mailed to the taxpayer correcting the previous erroneous notice and informing the taxpayer that the accurate assessment for 1997 would be \$8,090,300. The taxpayer denied that it ever received this second notification. There is evidence that the company engaged to prepare and forward the notices of assessment for the municipality had performed a special mailing of Chapter 75 notices on February 28, 1997. No specific proof was submitted to show that the plaintiff received the corrected notice. Thus, the Tax Court determined that the municipality failed to produce sufficient evidence that the corrective notice was mailed to or received by the taxpayer. The taxpayer claimed that it became aware of the assessment increase when the tax bill for the third and fourth quarter of 1997 was received. The municipality demonstrated the mailing of said tax bills on July 11, 1997. Upon receipt of the tax bill toward the end of July 1997, plaintiff contacted the assessor's office and inquired about the increased assessment. In response, the assessor's office confirmed the increase in writing by letter dated July 29, 1997. Thus, the Court stated irrefutably that the tax bill was received between July 11 and July 29.

On September 15, 1997 taxpayer filed a verified complaint seeking temporary restraints to prevent the municipality from collecting and imposing interest on unpaid taxes as well as a proposed order for expedited discovery. On September 16, 1997 the parties presented oral argument before another Tax Court judge on the issue of restraints, which request was denied on the record. Taxpayer was ad-

vised by that judge to resubmit its litigation by means of a standard complaint for relief to the Tax Court that was accomplished on September 19, 1997.

The Tax Court found that fairness requires that this taxpayer should receive a reasonable time within which to appeal. The Court thoroughly analyzed N.J.S.A. 54:3-21 in this matter, and deemed forty-five days from the taxpayer's receipt of the third and fourth quarter tax bill as appropriate. However, the taxpayer did not file its appeal within forty-five days of the receipt of the tax bill. Its first attempt at filing a complaint with the Tax Court was an in lieu of prerogative writ action seeking temporary restraints filed on September 15, 1997, after the forty-five day filing period. Neither N.J.S.A. 54:3-21 nor any other legislation or case law addresses the unusual circumstance where the purported notice fails to indicate a correct assessment. N.J.S.A. 54:3-21 addresses the issue of a change in assessment. There was no notification of a change in assessment in this case as defined by N.J.S.A. 54:3-21. The taxpayer herein failed to file a tax appeal within the extended forty-five day period. The Tax Court thus granted the municipality's cross motion dismissing the taxpayer's complaint and denied the taxpayer's motion for discovery.

Property Tax Assessment Reduced – *Theodore Cohn v. Livingston Township*, decided July 6, 1999; Tax Court of New Jersey, No. 004778-98.

Local property tax appeal involves the one-family ranch home in Livingston Township. Plaintiff

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(Cohn) appealed the property's 1998 assessment (\$103,000) to the Essex County Board of Taxation which reduced the assessed value to \$83,100. Plaintiff appealed from that determination.

Taxpayer appeared pro se. He was not an appraisal expert, and thus could not testify as an expert witness. He submitted four comparable sales in a timely manner ranging in price from \$210,000 to \$285,000, but he arrived at his estimate of value by averaging the four sales prices (\$260,000) without making adjustments between the comparable sales and the subject property. He provided no appraisal report.

His primary argument involved the subject's proximity to high tension wires in the rear of the property. Review of tax maps and photographs of the subject property showed that a child residing at the taxpayer's property would easily be able to have contact with the stanchion that holds the high tension wires. He also pointed to his rear yard slope and a drainage ditch on the rear edge of the property that causes flooding of his rear yard.

The municipality's real estate appraiser qualified to testify as an expert witness. He also used four comparable sales ranging in price from \$233,000 to \$310,000. Three of the four sales were located on different streets, distant from the subject property and, thus, clearly further from the high tension wires. He provided an adjustment grid demonstrating usual adjustments for size, age, location and amenities. The appraisal expert's opinion of value of the subject property based upon the market sales approach was \$320,000. This expert witness did not make adjustments for the existence of the

slope and drainage ditch on the subject property or for the proximity to the high tension wires, however.

The Tax Court is authorized by statute to consider reliable evidence from a pro se litigant, even if such evidence is not derived from expert opinion. It stated that the taxpayer's comparable sales provided reliable evidence from which the Court can glean value. The Court is not bound to accept any or all of the expert's testimony.

The Court examined the comparable sales provided and determined that the residential properties most approximate to high tension wires had a lower market value. The expert witness had not considered proximity to the wires an important factor. The plaintiff had thought that this negative factor was very relevant.

The Court found that, as of October 1, 1997, the relevant assessment date, the appraised value of the subject property was \$275,000. It then determined whether or not the taxpayer is entitled to discrimination relief on the basis of Chapter 123, or N.J.S.A. 54:51A-6. Livingston Township's average ratio, as promulgated by the Director of the Division of Taxation for 1998, was 26.80%, with an upper limit of the common level range of 30.82% and a lower limit of 22.78%. The Court calculated the ratio of the original assessment (\$103,900) to true value as found by the Tax Court (\$275,000) at 37.78%, clearly above the upper level (30.82%) of the common level range. This entitled the taxpayer to Chapter 123 relief. When the Chapter 123 ratio of 26.80% was applied to the Court's finding of true value (\$275,000), the resulting assessment for the subject

property is \$73,700. Judgment for 1998 was entered for an assessment as follows:

Land	\$28,900
<u>Improvement</u>	<u>44,800</u>
Total	\$73,700

Added Assessment on Improvements – *Michael Otelsberg v. Bloomfield Township*, decided June 25, 1999; Tax Court of New Jersey, No. 000128-97.

Decision addressed the validity of a 1997 added assessment imposed on taxpayer's property for alleged improvements after October 1, 1996. Plaintiff purchased the three bedroom, single family home on December 10, 1996 for \$135,000. He contended that the house contained several negative features: unpleasant odors, an outmoded kitchen, and other neglect and physical deterioration. Taxpayer himself completed renovations in January 1997 including replacement of the carpet in the living room, dining room, hallway, and three bedrooms; renovation of the kitchen with new cabinets, and new interior painting. He did not file permits for any of the work performed. After he had received his 1997 notice of assessment for \$162,300, he filed a petition of appeal to the Essex County Board of Taxation.

At the May 1, 1997 hearing, both the taxpayer (appearing pro se) and the assessor agreed that the 1997 assessment would be reduced to \$135,000 (the purchase price). Taxpayer testified that the assessor did not indicate during the settlement conference that the municipality would later impose an added assessment on the subject property. On May 16, 1997, the County Board entered judgment reducing

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the assessment in accordance with the agreement.

After the execution of this judgment, the municipality levied an added assessment of \$36,700 for the improvements to the property for 1997, and prorated it for six months at \$18,350. On appeal by taxpayer, the County Board upheld the added assessment, which determination was subsequently appealed to the Tax Court.

The Tax Court found that the added assessment on the taxpayer's property for the 1997 tax year is valid. N.J.S.A. 54:4-63.3 grants the authority to a municipality to impose an added assessment on a property, when the building or structure has been "erected, added to or improved after October 1, and completed between January 1 and October 1." The Tax Court referred to its decision in *Harrison Realty Corp. v. Town of Harrison*, 15 N.J. Tax at 385, defining the term "improved" as:

The mere retrofitting, up-grading or remediation of deferred maintenance does not constitute an addition to the property; nor does it constitute an improvement. The term "improved," as used in the statute must, under the doctrine of *ejusdem generis*, be read in the context of the word "added" as used in this statute. That is to say, an improvement is in the nature of an addition.

There is no other case law other than the *Harrison* decision to provide guidance to the meaning of "improved" as found in the statute. Black's Law Dictionary defines improved as "to meliorate, make better, to increase the value or good

qualities of, mend, repair..." It is a settled principle of statutory construction that "the language of a statute should be given its ordinary meaning and construed in a common sense manner to accomplish the legislative purpose."

The Tax Court also cited its decision rendered in *Snyder v. South Plainfield Borough*: "Without the added assessments, an improved property would escape taxation for a period of several months until the next regular assessment date." The taxpayer contends that the May 16, 1997 judgment reflects the true value of the subject property and binds the municipality to that assessment. The Tax Court found that, consistent with the *United States Postal Serv. v. Town of Kearney* decision, the executed stipulation of settlement in this litigation related only to the assessment under review at the time the settlement was made. The added assessment was not yet levied on May 1, 1997, nor was it before the County Board when they entered judgment based upon the stipulation of settlement.

Taxpayer has the burden of proof to establish by a preponderance of the evidence that the assessment appealed from is invalid. The Tax Court ruled that Otelsberg did not present any competent method of valuation. He did not present expert testimony or an appraisal report during trial. He relied solely upon his experience as the manager of a local real estate office to testify about his general knowledge of real estate values in the Township. He did not testify as to value nor did he produce sales of comparable properties from which to draw a conclusion of value.

The municipality presented its assessor as an expert witness. He had

an appraisal report, using comparable sales as an approach to valuation. He made adjustments to the subject property, concluding that the value of the subject property is \$171,700. Although he acknowledged his inability to gain access to the interior of some of his comparable sales, the evidence submitted by the municipality was more reliable than any evidence that the taxpayer submitted, the Tax Court concluded.

A municipality is empowered by the added assessment statute to levy additional taxes to a property where there has been an increase in the value to the property. The Court stated that all the improvements that the taxpayer made created a significant increase in the value to the property. The taxpayer cannot rely solely on the notion that the improvements made on the subject property were not additions; this was not a significant issue. The added assessment was valid, and a judgment was entered for 1997 for \$36,700 (prorated for six months).

Sales and Use Tax Fees for Exterminator's Reinspection – *Williams Termite & Pest Control, Inc. v. Director, Division of Taxation*, decided October 8, 1999; Tax Court; No. 003650-1997.

Plaintiff is in the business of exterminating termites and other pests. Plaintiff provided both inspection and treatment services during the period at issue. The initial contract provided for an inspection, treatment and a future annual reinspection and treatment fee. After performing the initial services, plaintiff sent annual re-

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newal notices to its customers offering reinspection and further treatment services, if necessary, for a \$109 fee. Sales tax was charged on the initial contract price but not on the \$109 renewal. At issue was whether the renewal was subject to tax where the initial service included treatment.

The Court cited articles published in the January/February 1976, March/April 1979, and July/August 1981 *New Jersey State Tax News* that made it clear that the Division had pronounced that “when there is an obligation to retreat, and there has been a previous contract requiring treatment, the new charge, the warranty charge, the reinspection charge, the annual charge, whatever it is called, is subject to tax.” The Court found the Director’s interpretation logical acknowledging that there was no question of taxability where all the annual reinspection fees were charged with the initial contract.

The Court ruled that a “reinspection fee, which includes the right to a treatment, if necessary, which follows a treatment under the contract terms in this case, is subject to sales tax.” The Court did not rule on the taxability of a reinspection fee following only an inspection as those facts were not before the Court. □

In Our Legislature

Cigarette Tax

Sales of Reimported Cigarettes — P.L. 1999, c.328 (signed into law on January 6, 2000) forbids the stamping and sale of reimported cigarettes originally produced for export.

Under the legislation, distributors cannot stamp packages that:

- Do not comply with the Federal Cigarette Labeling and Advertising Act.
- Are labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or other wording indicating that the manufacturer did not intend that the product be sold in the United States.
- Have been altered adding or deleting words, labels or warnings described above.
- Were imported into the United States after January 1, 2000.
- Violate Federal trademark or copyright laws.

The law also makes it illegal to possess and/or sell cigarettes that fall into any of the above categories, and such cigarettes are subject to confiscation. This legislation became effective upon enactment.

Corporation Business Tax *Certain Hedge Fund Income of Alien Corporations Excluded* —

P.L. 1999, c.369 (signed into law on January 14, 2000) excludes certain investment income generated in New Jersey by corporations from foreign nations involved in investing and trading for their own accounts. If a corporation has some activities that go beyond trading for its own accounts, the trading income may remain exempt in some cases. This act applies to privilege periods ending on or after July 1, 2000.

Gross Income Tax

Checkoff for Organ and Tissue Donor Awareness Education Fund — P.L. 1999, c.386 (signed into law on January 14, 2000) allows taxpayers to make voluntary contributions on their gross income tax returns for organ donor education programs. This act ap-

plies to tax years beginning on or after January 1, 2001.

Qualified Conservation Contribution — P.L. 1999, c.372 (signed into law on January 14, 2000) provides a gross income tax deduction for qualified contributions of certain interests in real property located in this State for conservation purposes as defined under the Federal IRC section 170(h). The amount of the deduction will be equal to the amount allowed as a deduction for Federal income tax purposes. This act applies to tax years beginning on or after January 1, 2000.

Checkoff for Vietnam Veterans’ Memorial Fund — P.L. 1999, c.355 (signed into law on January 14, 2000) makes the Vietnam Veterans’ Memorial Fund checkoff on the gross income tax return permanent. This act applies to tax years beginning on or after January 1, 2000.

Local Property Tax

Realty Transfer Fee — P.L. 1999, c.357 (signed into law on January 14, 2000) clarifies that the conversion from a cooperative to a condominium is not subject to the realty transfer fee. This legislation became effective upon enactment.

Recreational Vehicles — P.L. 1999, c.284 (signed into law on December 20, 1999) provides that a recreational vehicle installed in a campsite is not subject to tax as real property.

The legislation defines a recreational vehicle as a unit consisting of one or more transportable sections primarily constructed off-site, built on a permanent chassis, and designed to be used as a temporary dwelling. The unit is on a nonpermanent foundation and is not used as a dwelling on a perma-

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ment basis. This legislation became effective upon enactment.

Continuing Education Program for Tax Assessors — P.L. 1999, c.278 (signed into law on December 8, 1999) requires tax assessors to complete a specified number of continuing education credits for renewal of tax assessor certificates and establishes the Tax Assessor Continuing Education Eligibility Board to set curriculum requirements.

To renew a certificate, applicants must pay the required fee of at least \$50 and provide verification that the continuing education requirements were met. The requirement for the first renewal is 50 continuing education credit hours during the preceding 5-year period. The requirement for subsequent renewals is 30 continuing education credit hours during the preceding 3-year period. This act takes effect on July 1, 2000.

Miscellaneous

Authorization to Impose Municipal Taxes Extended — P.L. 1999, c.375 (signed into law on January 14, 2000) extends the municipal payroll and parking tax authorization for Jersey City, Elizabeth and Hudson County municipalities to December 31, 2004. The authorization for Newark is extended to September 30, 2000 and can be extended further under the terms of P.L. 1999, c.216.

The law also clarifies that instrumentalities of the State, such as New Jersey Transit Corporation, are not exempt from local parking taxes. This legislation became effective upon enactment.

Sales and Use Tax

Exempt Organization Status — P.L. 1999, c.416 (signed into law on January 18, 2000) grants exempt organization status under the Sales and Use Tax Act to a National Guard organization, the Marine Corps League, war veterans' posts or associations and the auxiliary units of these organizations.

The law clarifies an existing requirement that the exemption from sales tax of a sale to an exempt organization shall apply only if no part of the net earnings of the organization benefit any private shareholder or individual and the organization does not engage in lobbying or political campaign activity.

The law also creates a Sales and Use Tax Review Commission to review any bills that would expand or reduce the base of the sales and use tax. This legislation took effect March 1, 2000.

Exemptions for Hurricane Floyd Victims — P.L. 1999, c.365 (signed into law on January 14, 2000) provides an exemption from sales tax paid by victims of Hurricane Floyd to replace motor vehicles, household goods, home repair materials, heating and cooling systems and appliances, as well as services to install, replace or repair property that was damaged or lost in flooding attributable to Hurricane Floyd in counties federally designated as disaster areas.

Documentation of the flood loss and proof of sales tax paid must accompany any claim for a refund. This legislation became effective upon enactment and applies retroactively to purchases made during the recovery period, September 17, 1999 through September 30, 2000. Refunds must be requested on or before March 31, 2001.

Farmer's Exemption — P.L. 1999, c.314 (signed into law on January 6, 2000) expands the sales tax exemption for certain purchases made for farm use.

The law provides that the sales tax exemption for wrapping supplies will now include containers for use in a "farming enterprise."

The farm use exemption is expanded to include the sale to a farmer of production and conservation services, in addition to the sale of tangible personal property. These sales must be directly and primarily used in the production, handling and preservation for sale of an agricultural or horticultural commodity at the farming enterprise of the farmer. The exemption does not apply to sales of automobiles, energy or materials used to construct a building or structure other than a silo, greenhouse, grain bin, or manure handling equipment. This act applies to sales made on or after January 1, 2000.

Commuter Ferryboat Exemption — P.L. 1999, c.273 (signed into law on November 24, 1999) provides for an exemption from sales tax on the sales, repairs, alterations or conversion of ferryboats that are used primarily to transport passengers during peak commuting hours. This legislation became effective upon enactment.

Spill Compensation Tax

Extension of Cap Benefit — P.L. 1999, c.342 (signed into law on January 10, 2000), provides an extension of the cap benefit under the Spill Compensation and Control Tax.

This law amends the Spill Compensation and Control Act to allow

continued on page 22

in our legislature – from pg. 21

a Spill tax capped corporation's successor in interest pursuant to an IRC §368(a)(1)(D) reorganization on or before October 1, 1997 to be eligible for such cap, which is an annual tax limit of no more than 125% of the tax liability in the

1986 base year of the predecessor corporation. It would also allow the successor corporation a refund of any Spill taxes paid in excess of the capped limitation since January 1, 1996.

The law also clarifies that for a capped corporation or its qualified

successor in interest, the taxes not included in the 1986 base would only be for those major facilities that prior to January 1, 1996 were entirely closed and decommissioned.

This legislation became effective upon enactment. □

tax calendar

april

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
2	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
0	16	17	18	19	20	21	22
0	23	24	25	26	27	28	29
	30						

April 10

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

April 17

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
continued

April 17 - continued

- HR-1040** Homestead Rebate—Application
- NJ-1040** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 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
continued

April 20 - continued

- 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
- 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

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

may

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2		1	2	3	4	5	6
0	7	8	9	10	11	12	13
0	14	15	16	17	18	19	20
0	21	22	23	24	25	26	27
	28	29	30	31			

May 1

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

May 10

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

May 15

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

May 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

continued

May 22 - continued

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

May 25

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

june

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2					1	2	3
0	4	5	6	7	8	9	10
0	11	12	13	14	15	16	17
0	18	19	20	21	22	23	24
	25	26	27	28	29	30	

June 12

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

June 15

CBT-100 **Corporation Business Tax—**Annual return for accounting period ending February 29

continued

June 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

June 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

June 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

June 26

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

from the director's desk

Small Business Workshops

The New Jersey Division of Taxation, in conjunction with the IRS, periodically conducts free workshops to help small businesses learn about their tax obligations. These seminars, which run from 9:00 a.m. to 4:00 p.m., are held at various locations throughout the State and cover a variety of topics.

Spring 2000 Schedule

April 28	Rutgers Newark 81 New St., Room 104 (parking at 200 University Ave.)	May 19	Public Policy Bldg., New Brunswick 33 Livingston Ave., Room 369 (parking available)
May 5	Brookdale Community College Newman Springs Rd. Larrison Hall, Room 210 (parking in lot #2)	June 7	Hudson County College 25 Journal Square 4 th Floor Board Room

Seating is limited so please confirm your attendance with the IRS by faxing them at 973-645-6691.

For additional information on these and other specialized workshops call our Technical Education Unit at 609-984-4101 or John Kelly at 609-292-7203.