

New Jersey State Tax news

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Electronic Filing Hits Milestone

New Jersey Treasurer John E. McCormac announced that for the first time since tax year 1995, when the Division of Taxation began offering a paperless tax filing option, the number of paperless tax forms submitted has surpassed the one million mark.

The number of paperless returns filed for 2003 topped 1 million on April 13, and by the April 15 filing deadline the number had reached 1,117,878. This represents a 14.6% increase over tax year 2002, the previous single year record for paperless submissions, when 975,179 filers chose one of New Jersey's three "FastFile" options. The FastFile, user-friendly systems include NJ TeleFile, NJ WebFile, and NJ ELF, which enable taxpayers to submit paperless returns over the telephone, via the Internet, or through use of a computer software package. Based on the total number of returns the Division of Taxation had received by the filing deadline, one out of every three taxpayers has submitted forms through FastFile.

The overall increased usage of the NJ FastFile systems has enabled personnel in the Divisions of Taxation and Revenue to process returns and deliver refunds to taxpayers at an accelerated rate this spring.

"We are pleased with taxpayers' response to the paperless filing options," said Treasurer McCormac. "Our overall paperless success has been made possible though improvements to technology and computer programming. As a result, the State is reducing processing costs while also delivering efficient, user-friendly services to the citizens of our State."

NJ FastFile systems are accessible 24 hours a day, seven days a week. For more information, visit www.njfastfile.com or call our Customer Service Center at 609-292-6400. Representatives are available Monday through Friday, 8:30 a.m. to 4:30 p.m. □



important phone numbers

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



Investment Clubs

On January 14, 2004, P.L. 2003, Chapter 256 was signed into law. The act took effect immediately and applies to taxable years and privilege periods beginning on and after January 1, 2002.

Chapter 256 defines an "investment club" as an entity that is classified as a partnership for Federal income tax purposes and all of its owners are individuals. All of the "investment club's" assets must be securities, cash, or cash equivalents. The market value of the total assets can not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity. The "investment club" is not required to register itself or its membership interests with the Federal Securities and Exchange Commission.

If an entity meets the definition of an "investment club," it will be exempt from the \$150 per owner annual partnership filing fee and from the requirement that a partnership make payments of New Jersey gross income tax on behalf of its nonresident owners.

The market value of the total assets, as well as the per owner amount, will increase by an inflation adjustment factor each year beginning on or after January 1, 2003. The adjusted market value of the total assets for years beginning on or after January 1, 2003, is \$253,200 and the adjusted per owner amount is \$35,500. Accordingly, if the investment club had three owners, the market value of the investment club's total assets cannot exceed \$106,500 (3x\$35,500). □

Tax Assessor Certificates

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

Four persons passed the Tax Assessor Certification Examination held on September 20, 2003, and received Tax Assessor Certificates dated January 1, 2004. They are as follows:

Bergen County: Peter J. Colao, Cliffside Park Borough.

Burlington County: Linda A. Rogers, Eastampton Township.

Cape May County: Lori Lynn Rosell, Middle Township.

Mercer County: Danielle Cordray Morris, East Windsor Township.

The next examination is scheduled for September 18, 2004. The deadline to file applications for this exam is August 19, 2004. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813. □

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

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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tax assessors' calendar - from page 2

Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.

- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County budgets certified by County Tax Boards.
- 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, Division of Taxation.

April 15–

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

May 1–

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.

- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, 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. The tax credit rate is calculated by dividing the total REAP aid by total taxable value of qualified residential property.
- General tax rates certified by County Tax Boards.

May 23–

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

June 1–

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

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, Division of Taxation.

June 15–

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%



Criminal Enforcement

Criminal enforcement over the past several months included:

- A Linden, New Jersey, luxury used car dealer, its president, and their certified public accountant have pled guilty to charges arising from a scheme uncovered by the Office of Criminal Investigation (OCI) to evade turning over \$350,000 in sales tax collected from customers and filing for the New Jersey tax amnesty program indicating no liability. The dealership, Auto Village, Inc., and its president, Hisham Sadek, had failed to file New Jersey sales tax returns for the year 1994. Mr. Sadek instructed his certified public accountant to take advantage of the 1996 amnesty legislation by preparing sales tax returns reporting no sales tax had been collected for the period. Our investigation revealed that the business had collected sales tax in excess of \$90,000 during the amnesty period. The investigation also revealed that fraudulent sales tax returns were filed for the periods after amnesty, and that sales tax in excess of \$350,000 was, in fact, collected by Auto Village, Inc., but not turned over to the State. Although having originally received amnesty, the corporation, Mr. Sadek, and the accountant were prosecuted as a result of the investigation. Auto Village, Inc. pled guilty to purposely failing to turn over taxes (second degree), Hisham Sadek pled guilty to misapplication of property withheld for the benefit of the government (third degree), and the accountant to having participated in the scheme to evade

taxes. Under the terms of plea agreements, the corporation will be faced with fines and restitution totaling more than \$800,000 at the time of sentencing. Mr. Sadek will face a sentence of a four-year term of incarceration, restitution of the tax due, and possible deportation upon his release from prison. The certified public accountant faces criminal sanctions as well as civil sanctions by the Board of Accountancy for his actions. The case is being prosecuted by the State Office of the Attorney General.

- On October 6, 2003, in Superior Court – Mercer County, Trenton, New Jersey, the sentences of Robert S. Brown and William D. Black, Jr. were modified. Brown and Black are, respectively, the president and vice-president of both Employer's Management Group, Inc. and Pratt Temporaries, Inc., which are temporary employment agencies. On November 13, 2000, Brown, Black, and the corporations pled guilty to charges of failing to turn over New Jersey gross income tax withheld and failing to file New Jersey gross income tax returns in 1993–1999. Prior to sentencing, the corporations made full restitution of almost \$1 million in withholding taxes. Brown and Black executed a consent judgment for penalty and interest of \$318,599.52 plus accruing interest. Brown and Black were each sentenced to four years' probation. On October 6, 2003, the Mercer County Superior Court, having been advised by OCI of the amount of restitution still outstanding and that no payments have been received since July

2003, issued a court order which extends the probation of both defendants to five years. The order reflects that the outstanding amount due is in excess of \$100,000.

This case is noteworthy for several reasons. First, the Division of Taxation aggressively pursues criminal prosecution of the willful failure to remit gross income tax withheld, whereas some other agencies have been seen by the business community as treating cases of this kind as solely a civil collection matter. Second, this case illustrates that OCI has and will continue to monitor and participate in the restitution, probation, and parole programs of the State to ensure that financial penalties assessed in cases of tax fraud are carried out. This is done to protect the State's revenues, to maintain criminal prosecution as a meaningful deterrent to tax evasion, and to fairly administer and enforce the State tax laws.

- On October 15, 2003, the Office of Criminal Investigation arrested Kenny Choi of Pomona, New Jersey, and Nhi Wiget of South El Monte, California, for trafficking in counterfeit cigarettes. The Mansfield Township Police stopped their truck for a commercial inspection and it was found to be filled with 22,750 cartons of the counterfeit cigarettes. The cartons were not only unstamped, but were also counterfeit trademark cigarettes. An interview with Mr. Wiget led to a commercial storage facility in Tabernacle Township, Burlington County, New Jersey, where OCI agents conducted a consent search and



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found 10,800 cartons of counterfeit cigarettes. OCI filed initial charges of possession of over 20,000 untaxed cigarettes, no invoices, no consumer license, and possession of over 1,000 counterfeit trademark items. Mansfield Township charged both subjects with illegal transportation and, in the case of Wiget, an additional charge of possession of narcotics paraphernalia. Cash bail was set at \$250,000 for Nhi Wiget and \$200,000 for Kenny Choi (later raised to \$250,000). Additional charges have been filed against Wiget for the cigarettes found in Tabernacle Township, and they include failure to maintain books with intent to evade, engaging in conduct requiring registration or licensure with intent to evade, failure to file returns or reports with intent to evade, failure to pay and turn over taxes with intent to evade, and possession of over 1,000 counterfeit trademark items. The value of the seized cartons, numbering 33,550, is \$2 million with the averted tax loss to the State of New Jersey being \$800,000. On November 21, 2003, Wiget and Choi were subsequently indicted by the Burlington County Grand Jury. The charges included second-, third-, and fourth-degree crimes related to the unstamped and counterfeit products, as well as numerous disorderly person counts.

- On October 24, 2003, in Superior Court – Mercer County, Trenton, New Jersey, Carl F. Monto, of Toms River, New Jersey, pursuant to his guilty plea of May 27,

2003, to charges of failing to file tax returns and misapplication of \$100,454 of motor fuels tax collected from January to September 1997 on the retail sale of diesel fuel at Courtesy Truck Stop, Inc., Jersey City, New Jersey, was sentenced to five years' probation and ordered to make restitution within that period of probation totaling \$249,681 including tax, penalty, and interest. This case was a joint investigation by OCI and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Office of the Attorney General.

- On October 29, 2003, a State Grand Jury handed down an indictment of Michael Evangelista, Cambria Corporation, Philip McKeane, and Clones American Corporation on charges arising from a data entry business in Pennsauken, New Jersey. They were indicted on a total of six third-degree counts, four counts of misapplication of entrusted property, one count of failure to file New Jersey employer withholding returns, and one count of failure to pay New Jersey employee wage withholding. These offenses are based on the withholding and failure to remit to the State New Jersey gross income tax from the employees of Cambria Corporation, later renamed Clones American Corporation. On November 17, 2003, corporate officer Philip McKeane, of Cherry Hill, pled guilty to two counts of misapplication of entrusted property (third degree). Under the terms of a plea agreement, Mr. McKeane will be required to serve five-year con-

current terms of imprisonment on each count. In addition, he entered into a civil consent judgment to pay the New Jersey gross income tax withholdings. Mr. McKeane is scheduled for sentencing on Friday, May 14, 2004.

- On October 30, 2003, in Superior Court – Mercer County, Trenton, New Jersey, Yefim Belotzerkovsky, a.k.a. Fred Bell, of Brooklyn, New York, and a corporation he owns, Raymond Petroleum, Inc., pled guilty to filing fraudulent motor fuels tax returns and misapplication of \$87,282.78 in motor fuels tax collected from retail diesel fuel customers from July 1997 to June 1998 at a truck stop operated by the defendants in Newark, New Jersey. At the time the plea was entered, the defendants made full restitution of \$155,061.27 in tax, penalty, and interest. On December 2, 2003, in Superior Court-Mercer County, Yefim Belotzerkovsky was admitted into the Pretrial Intervention Program for a term of six months, during which time he will be monitored by the Probation Services Division. Also, Belotzerkovsky and Raymond Petroleum, Inc. have waived their right to appeal the suspension, revocation, or non-renewal of the corporation's motor fuels licenses by the Division of Taxation in the event either is convicted of a criminal tax offense subsequent to October 30, 2003. This case was investigated jointly by OCI and the New Jersey State Police-Organized Crime Unit, and was prosecuted by the State Office of the Attorney General.

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- On December 2, 2003, special agents arrested Jamil Bader of Elizabeth, New Jersey, at his retail store for possession of contraband cigarettes. The cigarettes were unstamped and VA stamped. Previously charged and found guilty of possession of contraband in the Elizabeth Municipal Court in November 2003, Bader was once again charged with possession of untaxed goods, no invoices, no consumer license, and failure to collect the cigarette tax. The Court set bail at \$7,500 cash, no 10%.
- On December 12, 2003, three top executives at JCA Associates, Inc., a Moorestown engineering firm, pled guilty to criminal accusations of filing or preparing false or fraudulent tax returns (third degree), in violation of N.J.S.A. 54:52-10. The accusations stemmed from acts committed between 1995 and 2000 that involved the concealment of campaign contributions to public officials by characterizing them as ordinary and necessary corporate business expenses on the corporation business tax returns filed

by the corporation. The corporate executives from JCA Associates, Inc. are Mark Neisser, President; Henry Chudzinski, Director of Marketing; and William Vukoder, Chief Financial Officer. As a condition of their pleas, Mr. Neisser and Mr. Chudzinski were ordered to resign their positions for two years and divest themselves of stock or ownership interests with the firm. Mr. Vukoder must resign his position for a period of five years and divest himself of all corporate interests. JCA Associates, Inc. will, under the terms of a civil settlement, pay a \$100,000 civil penalty. All parties are also required to cooperate with ongoing criminal investigations being conducted by the Division of Criminal Justice.

- On December 17, 2003, Gary Dewayne Dennington, a prison inmate in Beaumont, Texas, was indicted by a Federal Grand Jury on one count of conspiracy in violation of Title 18, United States Code, Section 371 and six counts of mail fraud in violation of Title 18, United States Code, Section 1341. The charges in the indictment stem from Mr. Dennington's

attempt to obtain New Jersey gross income tax refunds for the years 1998, 1999, and 2002 by filing fictitious New Jersey gross income tax returns with fictitious W-2 forms attached. If convicted of all counts, Mr. Dennington will face a criminal sentence of not more than 35 years and fines of not more than \$500,000. This joint investigation with the Federal Bureau of Investigation resulted in their presentation of Mr. Dennington's acts to the Federal Grand Jury and the resulting indictment.

- Ninety-nine (99) complaints alleging tax evasion were evaluated from October through December 2003 in the Office of Criminal Investigation.
- During the same time period, one hundred and two (102) charges were filed in court on thirty-four (34) cases for violation of the Cigarette Tax Act. Of the thirty-four (34) cases, eleven (11) involved counterfeit tax stamp investigations. Further, a total of thirty-one (31) arrests were made and one (1) vehicle was seized. □

Enforcement Summary Statistics

Fourth Quarter 2003

Following is a summary of enforcement actions for the quarter ending December 31, 2003.

• Certificates of Debt:	• Jeopardy Seizures	3	
Total Number	2,583	• Seizures	61
Total Amount	\$39,964,430	• Auctions	1
• Jeopardy Assessments	315	• Referrals to the Attorney General's Office	636

For more detailed enforcement information, visit our Web site at:

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



Tax Briefs

Corporation Business Tax

Extraterritorial Income Exclusion

— The Division replied to an inquiry regarding the Federal Extraterritorial Income Exclusion and whether it is an addback on New Jersey's corporation business tax return. Sub-part F income should be included on Line 28 of the CBT-100, reflecting Federal taxable income. Under the Corporation Business Tax Act's dividend exclusion provision, this amount should be excluded (on Line 33b) even though it is undistributed for that year. A copy of Federal Form 5471 should be included with the filed CBT-100 to explain the deduction. The Division follows the Federal treatment of sub-part F income as "deemed" dividend income.

Federal Renewal Community Employment Credit — For New Jersey purposes, the share of income received by the shareholder would not reflect the reduced Federal amount caused by the IRC Section 1400H Renewal Community Employment Credit. The reduced amount of wages would be used on the New Jersey CBT-100S to compute New Jersey income. N.J.S.A. 54:10A-4(k). The share of income to the shareholder should not be adjusted based upon the amount of the Federal credit because New Jersey law does not recognize this Federal credit. See *AT&T v. Director*, 13 N.J. Tax 534 (1993) regarding Federal credits and the Corporation Business Tax Act.

Nexus on Immune Activity — Every corporation that elects and qualifies pursuant to Section 1361 of the Internal Revenue Code and has qualified and been accepted as

a New Jersey S corporation is required to file a CBT-100S for New Jersey purposes.

Foreign corporations that meet the filing requirements and whose income is immune from tax pursuant to Public Law 86-272, 15 U.S.C. §381 et seq., must obtain and complete Schedule N, Nexus-Immune Activity Declaration, and remit the minimum tax with the CBT-100S.

For additional information, Bulletin GIT-9S, *Income From S Corporations*, is available on the Division's Web site at www.state.nj.us/treasury/taxation/pdf/pubs/corp/git9s.pdf

Gross Income Tax

Tuition Reimbursement — New Jersey has no provision similar to the Federal provision regarding educational assistance plans and education reimbursement. Educational reimbursements are treated as compensation and must be included in the employee's gross income under the New Jersey Gross Income Tax Act in accordance with N.J.S.A. 54A:5-1(a). However, if the tuition reimbursement payments made by the employer are for courses that are job-related, the payments are not subject to withholding and do not have to be included in the employee's gross income. To be considered job-related, the course must: maintain or improve skills required by the employer in his trade, business, or employment; meet the express requirements of the employer or meet the requirements of applicable law or regulations imposed as a condition of the retention of the employee's salary status or employment; and successful completion of the course must be required to meet the minimum requirements for employment.

IRC Section 721(a) — For Federal income tax purposes, section 721(a) provides that no gain or loss is recognized by any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership. The New Jersey Gross Income Tax Act at N.J.S.A. 54A:5-1(c) provides that net gains or net income does not include transactions to the extent to which nonrecognition is allowed for Federal income tax purposes. Thus, for New Jersey income tax purposes, a taxpayer is not required to include gains or income from a "section 721(a)" exchange of property, to the extent of which nonrecognition is allowed for Federal income tax purposes.

Obligation to Withhold PA Income Tax — As a result of the reciprocal income tax agreement which was entered into between New Jersey and Pennsylvania, New Jersey income tax withholdings will not be required with respect to wages, salaries, and other compensation paid to Pennsylvania residents who file an Employee's Certificate of Non-Residence in New Jersey (Form NJ-165) with their employer. If such certificate is not filed, the employer must withhold tax under the New Jersey Gross Income Tax Act in the same manner as from any other employee. The Pennsylvania resident is liable for income taxes in his home state. Therefore, if a Pennsylvania resident files a Certificate of Non-Residence, the employer may withhold taxes for Pennsylvania income tax purposes and remit such taxes directly to Pennsylvania on behalf of such employee. If income tax is not withheld, the employee is requested to file estimated tax returns in Pennsylvania.

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Litter Control Fee

Roll Stock Exclusion — The Division responded to an inquiry regarding the application of the litter control fee to roll stock under N.J.A.C. 18:38-3.1(b)(12). The regulations provide for 15 litter-generating product categories including “paper products and household paper.” This category includes “all items of tangible personal property made or substantially derived from paper including all paper products for home and other personal use but does not include newspapers and magazines, and does not include roll stock produced by paper product manufacturers and wood pulp, sold as such.” N.J.A.C. 18:38-3.1. Two questions were asked about the roll stock exclusion. It was noted that in neither scenario is any ink or print being applied to the paper.

When a paper distributor purchases paper as raw material (e.g., 500 sheet packages of 8.5- × 11-inch paper) and sells such paper to end users without any alteration to the paper, is such a sale by the distributor exempt from the litter control fee? Stated differently, must the seller be the manufacturer for the sale to be exempt or would the subsequent resale of the product qualify? The exclusion relating to receipts derived from the sale of “roll stock” applies only to sales made directly by the paper manufacturer. Therefore, gross receipts deriving from subsequent sales of the same product would be subject to the litter control fee. Further, the exclusion is for “roll stock,” which are large rolls that are the direct result of the paper production process. The transaction described here

involves packages of cut paper. Therefore, the exclusion is not applicable to the sale regardless of the selling party.

If a paper distributor takes paper stock from its inventory and either cuts it down to a smaller size or punches holes in the paper and then sells it to its end-user customer, is such a sale exempt from the litter control fee? Again, the exclusion above relating to receipts derived from the sale of “roll stock” applies only to sales made directly by the paper manufacturer. The scenario provided refers to sales made by a distributor. Further, the “roll stock” exemption is only applicable to the sale of “roll stock” as is, not in a modified state. Therefore, the distributor’s gross receipts from the sale to an end user are subject to the litter control fee.

Outdoor Advertising Fee

Exempt Organizations — The outdoor advertising fee is imposed on the retail seller of billboard advertising space. For purposes of this legislation, the retail seller is the licensee, which is the entity authorized to sell advertising space on billboards pursuant to N.J.S.A. 17:5-5 et seq. The licensee is responsible for remitting the outdoor advertising fee on the gross amounts collected from selling advertising space on billboards.

Although this fee is imposed on the retail seller, there is nothing in the law that prohibits the retail seller from passing on this cost to the customer. If the outdoor advertising fee is separately stated on the invoice or bill provided to the customer, it should be labeled accordingly, “outdoor advertising fee,” and not as a tax. The retail seller may not in any way mislead the customer or misrepresent that the outdoor advertising fee is anything more than a reimbursement of the fee imposed on the retail seller and not a tax on the customer.

The purchase of billboard advertising space by an organization that has obtained exempt status from the New Jersey Division of Taxation is not exempt from the outdoor advertising fee imposed by Chapter 124, P.L. 2003. Since the outdoor advertising fee is not imposed directly on the exempt organization but is merely a cost passed on to the customer (exempt organization) by the licensee, the exempt organization’s exemption certificate (Form ST-5) is not valid.

Sales and Use Tax

Natural Gas and Electricity Sales — The purchase of energy used in the manufacturing process is subject to the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.). The

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New Jersey Sales and Use Tax Act does provide an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible personal property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). However, effective January 1, 1998, the retail sales of gas and electricity became subject to sales and use tax in New Jersey. N.J.S.A. 54:32B-2(g); N.J.S.A. 54:32B-3(a). Natural gas and electricity are defined as "energy" which is taxed as tangible personal property. The law does not provide for any exemptions on natural gas sales to commercial and residential accounts. Since the tax is broad-based, there are no exemptions for purchases of energy for use in production, research and development, or by farmers, qualified exempt organizations (such as schools, churches, nursing homes, etc.), qualified Urban Enterprise Zone businesses, or State and local government entities. N.J.S.A. 54:32B-9(c)(3).

Sales of Whitening Products — The Division responded to an inquiry regarding the taxability of whitening gel sold to a dentist's office. N.J.S.A. 54:32B-8.1 provides an exemption from the New Jersey Sales and Use Tax Act for certain medical supplies and equipment. It states, in pertinent part:

Receipts from the following are exempt from the tax imposed under the Sales and Use Tax Act: sales of medicines and drugs sold pursuant to a doctor's prescription for human use; over the counter drugs recommended and

generally sold for the relief of pain, ailments, distresses or disorders of the human body....

Receipts from sales of medical equipment, durable medical equipment, and supplies, other than medicines and drugs, purchased for use in providing medical services for compensation, but not transferred to the purchaser of the service in conjunction with the performance of the service, shall be considered taxable receipts from retail sales notwithstanding the exemption from the sales and use tax provided under this section.

Since whitening gel is not customarily used to serve a medical purpose and is generally useful in the absence of illness or injury, such a product does not qualify for the exemption, even if the patient provides a prescription from a physician. Under the law, the existence of a prescription does not determine exempt status. Thus, the sale of whitening gel by a dentist's office is subject to New Jersey sales tax as the sale of tangible personal property. N.J.S.A. 54:32B-3(a). When purchasing whitening gel, the dentist should provide a New Jersey Resale Certificate (Form ST-3) to its vendor and not pay tax at the point of purchase. The dentist's office would then collect and remit sales tax on the sale of the product to the patient. On the other hand, if the whitening gel is being used during the treatment of a patient by the dentist at the dentist's office (i.e., the dentist is not reselling the product), the dentist must pay tax at the time of purchase and should not use a resale certificate. □

In Our Courts

General

Timeliness of Protest — *Harry and Susan Dashoff v. Director, Division of Taxation*, decided July 30, 2003; Tax Court No. 004747-1998.

The Appellate Division remanded this case to the Tax Court for an evidentiary hearing. Previously, the Tax Court held that plaintiff failed to timely file the complaint. At issue on remand is whether the mailing of a Notice of Assessment that was never received by plaintiff triggered the statutory period to file a protest with the Division or an appeal with the Tax Court.

The Division mailed plaintiff a Notice of Assessment ("Notice") by certified mail, return receipt requested. The Notice's envelope indicated that unsuccessful attempts to deliver the Notice were made and that therefore the unclaimed mailing was being returned to the Division. Subsequently, the Division mailed a Certificate of Debt ("Certificate") via certified mail to plaintiff. Plaintiff received the Certificate and thereafter filed a protest with the Division. The Division determined that the protest was untimely, as it was not received within the statutory period to file a protest from the date of the Notice.

This Court found that plaintiff chose not to claim the Notice and that the evidence was conclusive that the Notice was never received by plaintiff. The general rule is that the mailing of a properly addressed notice is presumptive evidence of receipt pursuant to N.J.S.A. 54:50-6a. However, this statute creates only a rebuttable presumption of receipt, not effective receipt. Regardless, the



Court ruled that the presumption of receipt does not apply to certified mail. Therefore, the Court found “that the attempted service of the Notice by certified mail failed regardless of whether the Notice was simply unclaimed or purposely refused by Dashoff.” The Court opined that had the Notice been sent by regular or ordinary mail simultaneously or subsequently that service would have been effectuated.

Gross Income Tax

Basis in Partnership Interest – Eugene and Janet Schenkman v. Director, Division of Taxation, decided November 3, 2003; Tax Court No. 000223-1998.

Plaintiff (Schenkman) was a general partner in Hoes Lane Associates between 1983 and 1991. In 1992, Schenkman, along with other partners of Hoes Lane, contributed his partnership interest in Hoes Lane to S/K Birdsall, another partnership, which then became a general partner in Hoes Lane.

Hoes Lane reported a net loss for each year that it was in existence. Schenkman was able to utilize only a portion of his allocated Hoes Lane losses to offset other partnership income for gross income tax (GIT) purposes.

In 1992, Hoes Lane petitioned for bankruptcy. Hoes Lane transferred its real property to the mortgagor in exchange for discharge of the mortgage. The parties agree that Schenkman’s amount realized from the disposition of property is gain income for GIT purposes. However, the parties disagreed as to whether Schenkman could offset his gain with his GIT basis in Hoes Lane that

he subsequently transferred to S/K Birdsall upon contribution.

Schenkman claimed that his GIT basis in Hoes Lane transferred to S/K Birdsall upon contribution. The Division argued that S/K Birdsall, being an entity, is not entitled to and cannot be transferred the New Jersey adjustments to Federal basis (i.e., the *Koch* effect). Thus, Schenkman’s New Jersey adjusted basis in Hoes Lane (i.e., his basis in Hoes Lane unadjusted by allocated Hoes Lane losses that were not deducted for GIT purposes) before the transfer to S/K Birdsall is also his New Jersey adjusted basis in S/K Birdsall by virtue of his contribution to S/K Birdsall. Also, the Division claimed that Schenkman could obtain the *Koch* adjustment only when he disposed of his interest in S/K Birdsall.

The Court decided that Federal tax partnership rules were applicable, because under N.J.S.A. 54A:5-1 (c), gains and losses from the disposition of property are determined under the Federal income tax method of accounting. Internal Revenue Code (IRC) section 722 states that a contributing partner’s basis in its partnership interest will increase by the amount of the partner’s adjusted basis in the contributed property. IRC section 723 states that the partnership’s basis in contributed property is equal to the contributing partner’s basis. Upon disposition of the contributed property, any built-in gain or loss recognized is allocated to the contributing partner pursuant to IRC section 704(c)(1)(A) and *Treas. Regs.* section 1.704-3.

After reviewing the aforementioned IRC sections, *Walsh v. Director*, 10 N.J. Tax 447 (1989) and *Koch v.*

Director, Division of Taxation, 157 N.J. 1 (1999), the Court found that Schenkman’s GIT basis in his partnership interest in Hoes Lane transferred to and was Schenkman’s basis in S/K Birdsall. The Court also stated that Schenkman’s allocated loss on the disposition of Hoes Lane property occurs with the transaction, and not when Schenkman disposes of his partnership interest in S/K Birdsall.

Sales and Use Tax

Chemical and Catalyst Exemption

– *Atlantic City Linen Supply Inc. v. Director, Division of Taxation*, decided November 6, 2003; Appellate Division No. A-5146-01T1.

Plaintiff (A.C. Linen) is a commercial laundry that uses a variety of chemicals, cleaning agents, and detergents in various stages of the laundering process. A.C. Linen claims that these chemicals and detergents used in its laundering process are exempt from sales tax as materials used in the manufacturing and refining process pursuant to N.J.S.A. 54:32B-8.20. The Tax Court ruled that plaintiff did not qualify for this exemption because the laundry process did not result in a tangible finished product different from the material input into the process. A.C. Linen appealed that determination.

The Appellate Division affirmed the Tax Court for substantially the reasons expressed in its opinion. The Court emphasized that A.C. Linen did not create a different end product, but performed a service on the product, and that this provider of laundry services is entitled to tax exemptions that are not applicable to refining and manufacturing operations.

continued on page 11

in our courts - from page 10

Atlantic City Linen filed a petition of certification to the New Jersey Supreme Court.

Floor Covering Materials – *Sanford Rever v. Director, Division of Taxation*, decided August 14, 2003; Tax Court No. 005566-2002.

Plaintiff entered into a contract for the construction of a new house with a contractor. The contractor referred plaintiff to a dealer to select floor covering if plaintiff desired to upgrade items contained in the contract. Plaintiff purchased flooring material and carpeting from this dealer. The invoice detailed three types of materials, the number of units purchased, the item price, and the extended price. In determining

the total invoice price, the dealer calculated sales tax on the materials and then deducted a builder's credit. Dealer refused to accept plaintiff's Form ST-8, Certificate of Capital Improvement, as a basis for sales tax exemption. Therefore, plaintiff paid dealer sales tax. The floor covering was installed by an installer, not the dealer, who plaintiff alleged was a subcontractor. Plaintiff timely filed a sales tax refund claim, which was denied by the Division.

Here, the Tax Court found that the agreement between the plaintiff and the contractor required plaintiff to purchase the upgraded flooring materials himself, with an allowance towards their cost to be paid by the contractor. *This allowance reflected*

the cost that was presumably included in the original selling price of the house. Therefore, the contractor did not purchase the upgraded materials *and did not pay sales tax on plaintiff's purchase of upgraded flooring.*

Plaintiff contested the refund denial claiming that the dealer should have paid sales tax when the dealer purchased the inventory it resold to plaintiff because the contractor, which plaintiff identified as the dealer, not the customer is obligated to pay the sales tax. The Tax Court determined that this transaction was the retail sale of floor covering materials from the dealer to the plaintiff and that this transaction is subject to sales tax. Although it was undisputed that the installed floor material constituted a capital improvement, the Court found that a tax exemption existed only for the installation involved in the capital improvement and not for the materials installed.

Plaintiff also argued that he contracted with the dealer for the purchase as well as the installation of flooring materials. The Court ruled that the capital improvement installation services are exempt from sales tax where the charges are stated separately on the invoice. Here the Court found that there was no evidence that installation services were contained in the invoice and noted that it was not disputed that there was no separate charge for installation.

Plaintiff filed a motion for amendment pursuant to R. 1:7-4(b) that was denied by the Court on September 26, 2003, as the Court addressed the same issues in its previous decision. □

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Tax Calendar

The following three calendars provide listings of filing and payment dates (January 1, 2004 – December 31, 2004) for businesses and individuals:

- [Chronological List of Filing Deadlines](#) — This calendar is for use by both businesses and indi-

viduals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

- [Alphabetical Summary of Due Dates by Tax Type](#)

- [Payment Dates for Weekly Payers](#) — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more. □

from the director's desk

The Division of Taxation's ongoing enforcement and prosecution efforts recently resulted in the arrest and indictment of several individuals.

- **Cigarette Trafficking Operations.** In January, three individuals were arrested in Totowa and 323 cartons of Virginia-stamped cigarettes were seized; in February, a Virginia man was arrested in Parsippany for possession of 45 cartons of untaxed cigarettes; and in April, 14,757 cartons of contraband cigarettes were seized during the arrest of two individuals in Jersey City.
- **Tax Refund Schemes.** In February, two inmates were indicted for attempting to defraud New Jersey by filing State income tax returns using fictitious wages and withholding figures on W-2 forms they created; and a California chiropractor and his sister were indicted for cheating New Jersey out of more than \$117,000 in business and income taxes. In March, criminal charges were filed against a Passaic County tax preparer who filed more than 1,970 fraudulent tax returns, seeking over \$708,000 in illegal refunds.

As part of our ongoing efforts to motivate people to comply with our tax laws, the Division of Taxation publicly displays a list of delinquent taxpayers on our Web site under "Largest Judgmednted Taxpayer Listings." The Web site separately lists business and individual delinquents, and distinguishes between recent and older tax debts. These postings have resulted in the collection of \$7.4 million to date.

We have an obligation to enforce our tax laws to ensure that all taxpayers pay their fair share. If you are aware of any individuals or business owners who don't pay State tax, call the Division at 609-292-6400. You don't have to give your name, but please be prepared to give as much information as you can. Stop New Jersey tax cheats now!



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2003 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	1/27/03	Makes technical amendments to the Urban Enterprise Zones Act.	S&U	SCS for S-1751
9	1/27/03	Exempts from gross income tax the income of individuals who died as a result of injuries caused by the September 11, 2001, terrorist attacks.	GIT	ACS for A-2233 & A-1912
25	2/27/03	Imposes requirements on tobacco product manufacturers, and authorizes revocation or suspension of the license or certificate of authority of distributors with contraband cigarettes or tobacco products produced by manufacturers that are not in compliance with these requirements.	TPT	A-3079(1R)
30	3/14/03	Changes the deadline for filing property tax reimbursement applications to June 1.	PTR	S-1341(2R)
33	3/24/03	Permits fiduciaries to employ and compensate accountants from fiduciary funds and permits certain out-of-State banks to be treated similarly as New Jersey banks.	MIS	S-1479(2R)
42	4/14/03	Allows vendors, under limited circumstances, to advertise that they will pay the sales tax for their customers on taxable transactions, and to do so, specifying the amount of tax paid on any invoice or receipt given to the customer.	S&U	A-1786
59	5/1/03	Makes changes in the Neighborhood Revitalization State Tax Credit Act.	MIS	S-1634
105	7/1/03	Imposes a new assessment payable by nursing homes to the Division of Taxation. The revenue generated from this fee shall be dedicated to various nursing home purposes as specified in the act.	MIS	ACS for A-3686
112	7/1/03	Creates a Hospital Care Payment Commission to which hospitals may assign their claims for unpaid patient accounts, which will then be paid partly through use of the existing Set Off of Individual Liability (SOIL) Program.	MIS	A-3708
113	7/1/03	Imposes a new, supplemental fee on the transfer of real property, payable by the grantor to the county in which the deed is recorded.	RTF	ACS for A-3709
114	7/1/03	Imposes a State hotel and motel occupancy fee (7% for FY 2004, 5% for FY 2005 and thereafter) and an optional municipal hotel and motel occupancy tax. The optional municipal tax will be 1% for FY 2004 and up to 3% for FY 2005 and thereafter. The legislation makes special rate provisions for those municipalities that already impose local taxes or fees for hotel/motel occupancies.	HMO	ACS for A-3710

2003 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
115	7/1/03	Increases the cigarette tax from \$.075 to \$.1025 per cigarette, resulting in an increase of \$.55 per pack.	CIG	ACS for A-3711
116	7/1/03	Imposes a 4.25% State tax on casino licensees on the value of rooms, food, beverages, or entertainment given away for free or at a reduced price as a “complimentary.” Imposes an 8% State tax on multi-casino progressive slot machine revenue. Imposes a new 7.5% State tax on the adjusted net income of casino licensees. Imposes a \$3.00 per day fee on each hotel room occupied by a guest in a casino hotel. Increases the minimum casino hotel parking charge from \$2.00 to \$3.00.	MIS	ACS for A-3713
117	7/1/03	Raises numerous State fees, including, for example, those for engineering and real estate broker licenses, equipment inspection, penalties for operating unlicensed health care facilities, filing divorce proceedings, certificates of need applications, criminal background checks and fingerprinting, brewery licenses, and imposes several new fees, including, for example, for licenses to operate a mental health facility and limousine licenses.	MIS	A-3719(3R)
124	7/2/03	Imposes a 6% State fee on the gross amount collected by retail sellers of outdoor billboard advertising space.	MIS	ACS for A-3714
125	7/9/03	Makes various changes in the law governing long-term real property tax exemptions.	LPT	S-2402(4R)
136	8/1/03	Provides that receipts from rental of tangible personal property between “related persons” (including business entities that are 80% or more owned by each other or 80% or more owned by the same third parties) are exempt from sales and use tax.	S&U	S-704(1R)
165	8/31/03	Exempts from sales and use tax the receipts from sales at concession stands at State-owned residential veterans’ facilities.	S&U	S-493
166	9/2/03	Expands the New Jersey Business Employment Incentive Program, which is designed to promote economic development, and provides for additional funding by authorizing the Economic Development Authority to issue bonds.	MIS	ACS(1R) for A-3705
194	11/21/03	Expands the economic incentives for rehabilitation and economic recovery in certain fiscally distressed municipalities.	CBT	S-2336(1R)
197	12/16/03	Extends eligibility for real property tax deduction or exemption to veterans who served in the theaters of operation of “Operation Enduring Freedom” or “Operation Iraqi Freedom.”	LPT	A-3564

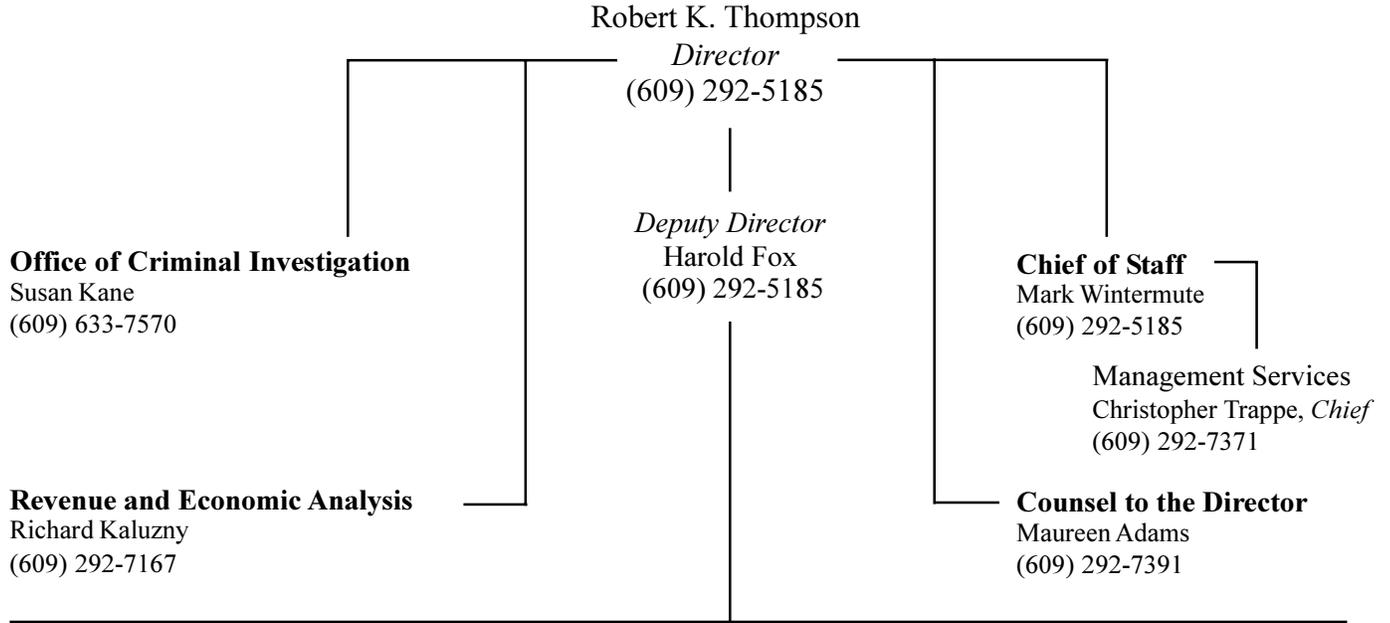
2003 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
224	1/9/04	Makes changes in the Spill Compensation and Control Act and the Brownfield and Contaminated Site Remediation Act. Provides a method of calculating developers' sales and use tax liability on materials used for remediation or for construction of new residences or other structures at a brownfield site.	MIS	A-2585(3R)
246	1/12/04	Establishes the criteria for a qualified domestic partnership. Provides, for purposes of transfer and inheritance tax, that property held jointly by domestic partners will be treated the same as property held jointly by spouses; that transfers to a domestic partner shall not be subject to tax; and that the value of a pension, annuity, or return of pension contribution paid to a domestic partner shall not be subject to tax. For gross income tax purposes, a domestic partner may be claimed as a "dependent" for a \$1,000 personal exemption.	GIT TIT/ET	A-3743(2R)
256	1/14/04	Exempts investment clubs from the \$150 per owner annual partnership filing fee and from the requirement that partnerships remit gross income tax payments based on a share of the partnership's net income allocated to its nonresident noncorporate partners.	CBT GIT	SCS(1R) for S-1770 and S-1773
266	1/14/04	Provides a sales and use tax exemption for the sale of "zero emission" motor vehicles.	S&U	SCS(1R) for S-2351
285	1/14/04	Designates Gloucester City in Camden County as an additional Urban Enterprise Zone.	S&U	A-2059(2R)
296	1/14/04	Provides for a corporation business tax credit for 100% of the costs of remediating certain contaminated sites during a three-year period.	CBT	A-2628(3R)

*Legend for 2003 Tax Laws

ABT = Alcoholic Beverage Tax	LPT = Local Property Tax
ACC = Atlantic City Casino Control Commission	MFT = Motor Fuels Tax
ALL = All Taxes Administered by the Division	MIS = Miscellaneous
CBT = Corporation Business Tax	PPT = Petroleum Products Gross Receipts Tax
CIG = Cigarette Tax	PTR = Property Tax Relief Programs
CMC = Cape May County Tourism Sales Tax	PUT = Public Utility Taxes
FBT = Financial Business Tax	RTF = Realty Transfer Fee
GIT = Gross Income Tax	S&U = Sales and Use Tax
HMO = Hotel Motel Occupancies	SCC = Spill Compensation & Control Tax
IPT = Insurance Premiums Tax	TIT/ET = Transfer Inheritance & Estate Tax
LIT = Litter Control Fee	TPT = Tobacco Products Tax

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