

New Jersey State Tax news

Volume 35, Number 1
Spring 2006

A Quarterly Newsletter

ISSN 1073-6808



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Director John Baldwin
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State Treasurer Sworn In



Bradley Abelow was designated Acting Treasurer effective January 23, 2006, and served in that capacity until being sworn in as State Treasurer on March 13, 2006.

With oversight of 11 divisions and 3,700 employees, the Treasury Department, under the leadership of the State Treasurer, is responsible for the generation and collection of revenues, the distribution of appropriations that fund the operations of State government, assets management, and the administration of statewide support services.

In 2005, Mr. Abelow worked for the Executive Office of Goldman, Sachs & Co. of New York, NY. He retired

in January 2006, following a 15-year career with the company. Mr. Abelow was Head of the Operations Division for Goldman Sachs, overseeing the Global Operations, Corporate Real Estate, and Corporate Services departments. Prior to that role, he was responsible for the Operations, Technology and Finance Division in Asia, based in Hong Kong.

Before his career at Goldman Sachs, Mr. Abelow was Program Officer for the Urban Coalition of Minneapolis, Minnesota.

Mr. Abelow earned a master's degree in Public and Private Management from Yale University's School of Management in 1989 and a bachelor of arts degree from Northwestern University in 1983.

Mr. Abelow is married and has three children. □

LOCAL PROPERTY TAX Implementation of PAMS Project

The Division of Taxation continues to host design sessions for the PAMS project. In addition we are participating in meetings throughout the State to inform collectors, assessors, and tax administrators about the project. Several members of the

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John Baldwin, Director

John Baldwin, former Director of the Division of Taxation, died on March 9, 2006, at the age of 68. Mr. Baldwin, a career public servant, began his State service at the Division of Taxation in 1960 in the local property tax field. He was appointed Assistant Director in 1978 and served as Director from 1983 to 1990.

During his career with the Division, Mr. Baldwin was instrumental in establishing the administrative systems required at the inception of the sales and use tax. He also played a key role in implementing the State income tax and the original Homestead Rebate Program. Of his many accomplishments, he was most proud of the New York/New Jersey Cooperative Interstate Tax Agreement, the first pact in the nation in which two states agreed to collect and administer each other's sales and use taxes.

Mr. Baldwin was also active in various organizations. He was a former president of both the Federation of Tax Administrators and the North Eastern States Tax Officials Association, vice president of the National Tax Association/Tax Institute of America, and a former vice president of the Delaware Valley United Way. He was also one of the first state tax administrators to serve on the Commissioner's Advisory Group of the Internal Revenue Service, and most recently he served as chairman of the New Jersey Sales and Use Tax Review Commission.

Joseph C. Small, presiding justice with the Tax Court of New Jersey, fondly remembers Mr. Baldwin. "John was bright, tough, and decisive. His decisions on tax matters were always made with the public's best interests in mind," recalled Judge Small.

Mr. Baldwin earned his bachelor's degree in economics from the College of the Holy Cross, Worcester, Massachusetts, in 1959. He is survived by his wife, Janet; a daughter, Susan; stepdaughters, Kathleen Keegan and Eileen Notarnicola; stepsons, Kevin Dunshee and Roy F. Dunshee; a sister, Janet Stokes; and seven grandchildren. □

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project team have joined Stephen Sylvester, Assistant Director, Property Administration, in making presentations and answering questions about PAMS and how it will benefit municipalities.

The presentations include information on the design process, current status, and highlights of the new system. Assessors, collectors, and tax administrators will have the

opportunity to view a demonstration of the system later in the year.

The team has already spoken to assessors, collectors, and county tax administrators from Hunterdon, Somerset, Camden, Gloucester, Salem, Cumberland, Atlantic, Cape May, and Bergen counties. Presentations to the remaining counties as well as the New Jersey State League of Municipalities and other meetings are scheduled throughout 2006.

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New Jersey State Tax news

is published quarterly by the:

**New Jersey Division of Taxation
Technical Services
Information & Publications Branch
PO Box 281
Trenton, NJ 08695-0281**

The *State Tax News* is published on the Division of Taxation's Web site at:

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

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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For a list of scheduled meetings, visit the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/pams.shtml, then scroll down and select "Meetings & Presentations."

In other PAMS news, a committee from the Association of Municipal Assessors of New Jersey met in January to discuss enhancements to the New Jersey Residential Cost Manual. Input from this committee will be considered as the PAMS team modifies Tyler's *iasWorld* software specifically for use in New Jersey. □

INHERITANCE/ESTATE TAX ***Domestic Partners***

P.L. 2005, c.331, approved on January 12, 2006, provides a surviving domestic partner with the same intestacy rights as a surviving spouse. Additionally, a surviving domestic partner now has the right to take an elective share in a deceased partner's estate, be appointed administrator of the estate, and make funeral arrangements.

The Domestic Partnership Act, which was approved on January 12, 2004, formally recognized domestic partnerships and provided certain rights and benefits to individuals participating in them. The Act made significant changes to the New Jersey inheritance tax for individuals dying on or after July 10, 2004. Transfers made to a surviving domestic partner, as defined in section 3 of P.L. 2003, c.246 (N.J.S.A. 26:8A-3), were made exempt from the inheritance tax. Thus,

all transfers made by a decedent to a surviving domestic partner whether by will, survivorship, contract, under the laws of intestacy, under the elective share provisions of the statute, or by any other means are exempt from inheritance tax.

The New Jersey estate tax is based upon the Federal estate tax credit for state death taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001. The provisions of the Internal Revenue Code do not provide a deduction for property passing to a surviving domestic partner. □

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

June 30, 2005, marked the close of the first five-year continuing education cycle requirement for Certified Tax Assessors. The Director, Division of Taxation, has issued certificates of renewal to approximately 600 holders of CTA certificates. Of the almost 2,000 CTA certificate holders, nearly 1,400 have been removed from the Certified Tax Assessor list due to noncompliance with continuing education requirements, failure to timely submit the required renewal information and fees, retirement, etc.

Information regarding continuing education courses can be found on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/lpt/recert.shtml □

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. April 1 deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling or late filing of 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.
- 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.

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.



assessors' calendar - from page 3

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 property tax deduction recipient'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.
- For REAP recipients, 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-

- Members of the County Board of Taxation shall sign the Table of Aggregates and transmit it to the County Treasurer who shall file, print in its entirety, and transmit certified copy to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- 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.
- Repayment of disallowed property tax deduction 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-

- If Director, Division of Taxation, requires, assessors shall report to

the Director the description and valuation of railroad property not used for railroad purposes.

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. □

Small Business Workshops

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

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

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

www.state.nj.us/treasury/taxation/smallbus.shtml □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Fifty-seven individuals were recently indicted as a result of a nearly six-year investigation conducted by the Federal Bureau of Investigation with the assistance of the Office of Criminal

Interest 10.00%

The interest rate assessed on amounts due for the period January 1, 2006 – December 31, 2006, will be 10.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%



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- On December 8, 2005, in Atlantic City, New Jersey, OCI agents, assisted by the Atlantic City Police Department, arrested Anthony R. Minor, 43, of Atlantic City, and charged him with sale of untaxed cigarettes and engaging in conduct without required registration or licensure with intent to evade tax, both indictable offenses. 10.5 cartons of untaxed cigarettes with a retail value of \$622.20 were seized.

On the same date Atlantic City Police arrested Garrett S. Wilkerson of Atlantic City on charges related to his sale of trademark-counterfeit CDs and DVDs. Information regarding Wilkerson's unregistered business was turned over to OCI for investigation of possible sales and use tax and gross income tax violations.

These arrests were in response to complaints received by OCI from legitimate retailers regarding

sales on the streets by unregistered vendors, and were carried out utilizing video surveillance to document the violations.

- On December 16, 2005, in Newark, New Jersey, OCI assisted New Jersey State Police and other agencies of the Essex Anti-Crime Partnership in the execution of a search warrant at Scratch Records, a CD/DVD retail store at which both stolen goods and trademark-counterfeit goods are known to have been sold. The search resulted in the recovery of a large volume of business records which were turned over to OCI for investigation of possible sales and use tax and gross income tax violations. Victor Sanks, 40, of East Stroudsburg, Pennsylvania, the responsible person of Scratch Records II LLC, was arrested and charged with failure to turn over \$66,665.74 in sales tax collected (3rd degree crime), failure to collect \$13,582.48 in sales tax with intent to evade (3rd degree crime), failure to pay sales tax in the amount of \$80,248.22 with intent to evade (3rd degree crime), failure to file quarterly and monthly sales tax returns with intent to evade (3rd degree crime), dealing in stolen property (3rd degree crime), and conspiracy to deal in stolen property (3rd degree crime) between January 2002 and November 2005. Sanks was released on \$250,000 bond.
- On December 19, 2005, in Superior Court, Ocean County, Richard Carroll, 48, of Brick Township, New Jersey, who had been indicted on October 19,

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation affects the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Notice: NJ Sales Tax Exemption for Drugs and Medical Equipment](#)

[Streamlined Sales and Use Tax Law: Motor Vehicle Leasing Issues](#)

[Notice: Rental of Equipment With An Operator](#)

[Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)

[Notice: Sales And Use Tax Exemption for Clothing](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us

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2005, pled guilty to selling unstamped cigarettes on June 13, 2005, and failure to maintain records as required by both the Cigarette Tax Act and the Sales and Use Tax Act with the intent to evade tax between 2001 and 2004 in connection with Towne Stationery, a convenience store operated by Carroll as a sole proprietor in Toms River, New Jersey. Carroll also agreed to pay restitution of \$12,342.60 in sales and use tax. This case was investigated jointly by OCI and the Dover Township Police and prosecuted by the Ocean County Prosecutor's Office. The case resulted from numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. Carroll had previously pled guilty in municipal court to possession of 42.1 cartons of untaxed cigarettes in May 2002 and possession of 35.6 cartons of untaxed cigarettes in November 2002.

- On December 23, 2005, in Mount Olive Municipal Court, Lakeview Energy LLC, trading as Lakeview Gulf, was charged with engaging in business as a seller of special fuels (diesel fuel) without first obtaining a license from the Division of Taxation to do so. This case was opened as a result of a referral of information from the Division's Audit Services Branch.
- One hundred fourteen (114) complaints alleging tax evasion were evaluated from October

through December 2005 in the Office of Criminal Investigation.

- During the same period, one hundred two (102) charges were filed in court and twenty-two (22) arrests were made in thirty-four (34) cases involving violations of the Cigarette Tax Act. 5,725.3 cartons of untaxed cigarettes, having a total value of \$356,228.17 and including 250 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

Wireless Phone Cards — A fee of \$.90 is charged by (1) mobile telecommunications companies on each mobile telephone number of a customer with a primary place of use in New Jersey, and (2) telephone exchange companies for each voice grade access service line. The fee is only imposed on periodic bills received by the customer for such service. Since periodic bills are not issued for prepaid wireless phone cards and prepaid pay-as-you-go service, the sales of these cards and services are not subject to the fee.

Telephone Bills: Taxes and Fees —

Of the various charges that appear on telephone bills, the Division of Taxation administers only the "9-1-1 System and Emergency Response" fee, which is assessed on mobile and land telephone numbers, and sales tax, which is imposed at a rate of 6%. Information on sales tax and the 9-1-1 fee is available on the Division's Web site or by calling the Customer Service Center at 609-292-6400. Customers with questions regarding any other tax or fee on a telephone bill

should contact his or her service provider. In addition, the FCC maintains an informative Web site at: <http://ftp.fcc.gov/cgb/phonebills/WirelessPhonebill.html> explaining various charges found on telephone bills.

Corporation Business Tax

Federal Employment Credits — In general, the amount reported on Line 28, Schedule A of the New Jersey CBT-100 should be the same as the amount reported on Line 28 of Federal Form 1120. If a Federal deduction, such as for wages, is reduced because a taxpayer elects to take a Federal credit, the amount shown on Line 28, Schedule A, Form CBT-100 also reflects the reduced wage deduction as shown on the Federal return above Line 28. The election to take a Federal credit is a choice made by the taxpayer. No wage adjustment can be made at the State level to increase the deduction to what it would have been if the Federal credit had not been elected by the taxpayer.

A taxpayer is not entitled to take a deduction for State purposes which it could not take Federally when it elected to take a credit at the Federal level. This principle was litigated successfully by the Division in the context of the ESOP credit in *AT&T Co. v. Director, Division of Taxation*, 13 NJ Tax 534 (1993).

Net Operating Losses: Liquidation

— Net operating loss (NOL) carryover deductions not due to expire in 2002 or 2003, which were disallowed due to the suspension in 2002 and 2003 of the NOL deduction, could be carried forward for use in 2004 and 2005, subject to limitations. Legislation enacted June 29, 2004 (P.L. 2004, c.47),

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allowed for a limited NOL for privilege periods beginning during calendar years 2004 and 2005. The deduction permitted a reduction of entire net income by up to 50% during those tax periods.

Corporations dissolving in 2004 or 2005 had to limit the deduction of unused NOLs as indicated. There is no exception allowing corporation business taxpayers that dissolve and completely liquidate to deduct an amount greater than the statutory limits.

Trucking Companies: Filing Requirements — One way corporations become subject to New Jersey corporation business tax is by “doing business” in the State of New Jersey. Under N.J.A.C. 18:7-1.9 et seq., whether a corporation is considered to be doing business in New Jersey is based upon the nature and extent of the activities of the corporation in this State. Other factors include the continuity, frequency, and regularity of the activities of the corporation in New Jersey.

A foreign (out-of-State) corporation may complete a “Nexus Questionnaire” to determine whether it engages in activity within New Jersey that makes the company subject to corporation business tax. This form is not yet available on the Division of Taxation’s Web site; however, you may request the questionnaire by contacting the Nexus Audit Group at 609-984-5749.

A foreign (out-of-State) corporation providing routine trucking services, such as the pickup or delivery of goods within New Jersey, is considered to be deriving receipts from transporting freight in this State and

is therefore subject to New Jersey corporation business tax pursuant to N.J.S.A. 54:10A-2. In addition to filing the corporation business tax return (Form CBT-100 or CBT-100S), the entity must pay at least the minimum tax of \$500 (or \$2,000 in certain situations) or a tax based on the alternative minimum assessment, whichever is greater. Taxpayers may obtain Form CBT-100 or CBT-100S, along with complete filing instructions, through the Division’s Web site at: www.state.nj.us/treasury/taxation/prntcibt.shtml

Any entity that intends to do business in New Jersey must register with the State for tax purposes at least 15 days before starting business by completing and filing a Business Registration Application (Form NJ-REG) contained in the New Jersey Registration Package (NJ REG). This form can be completed [online](#), or downloaded and printed from the Division of Revenue’s New Jersey Business Gateway Services Web site at: www.state.nj.us/njbgs/ There is no fee for filing Form NJ-REG.

In addition, certain business entities (profit or nonprofit corporations, limited partnerships, limited liability partnerships, or limited liability companies) must complete and file a Public Records Filing for New Business Entity form to create the business entity, or to receive authorization to conduct business in New Jersey if the business is a foreign entity. This registration form is available in the NJ REG package and can also be completed [online](#). A fee must be submitted with the Public Records Filing for New Business Entity form. Sole proprietorships and partnerships are not subject to

the Public Records Filing requirement. Foreign entities without nexus to this State that need a Business Registration Certificate to contract with New Jersey public agencies may not need to complete this filing.

Foreign corporations that do not have a Certificate of Authority to do business in New Jersey, but carry on certain activities in the State are required to file a [Notice of Business Activities Report](#) (Form CBA-1).

Cosmetic Medical Procedures Gross Receipts Tax

Removal of Skin Tags — Removing a person’s skin tags is subject to the 6% cosmetic medical procedures gross receipts tax (CMPGRT) under N.J.S.A. 54:32E-1 if the procedure is performed in order to improve the patient’s appearance without significantly serving to prevent or treat illness or disease or to promote proper functioning of the body. In other words, if the skin tags are being removed simply to make the patient look better, the service is subject to the CMPGRT.

If, instead, the growths are suspicious and need to be biopsied, then their removal has a significant medical purpose (preventing disease) and is not subject to the CMPGRT. When skin tags tend to bleed or become painful because of friction with the patient’s clothing or jewelry or when they protrude from the eyelid and cause itching or interference with the patient’s field of vision, then their removal significantly serves to promote the proper functioning of the body. In those cases, the fees for removing skin tags are not subject to the CMPGRT.



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Gross Income Tax

Partnership Filing Requirements

— Every partnership that has income or loss derived from New Jersey sources, or has a New Jersey resident partner during the tax year, must file a New Jersey Partnership Return (Form NJ-1065) even if its principal place of business is outside of New Jersey. Tax is imposed on the partners on income derived from a partnership, whether or not the income is actually distributed. The partnership must include a Schedule NJ-NR-A with Form NJ-1065 if (1) the partnership is doing business both inside and outside of New Jersey, or (2) 100% of the partnership's business is carried on outside of New Jersey.

Under the New Jersey Gross Income Tax Act, individual members of a partnership are subject to tax on their distributive share of partnership income (loss), whether or not the income has actually been distributed. The partner's share of the partnership's income (gain or loss) is determined by the partnership agreement in the same manner as determined for Federal income tax purposes. N.J.S.A. 54A:2-2; N.J.S.A. 54A:5-4. Each member receives a Schedule NJK-1 from the partnership showing that particular partner's distributive share of the partnership's income (loss). Nonresident partners are subject to New Jersey gross income tax on their distributive share of partnership income only to the extent the income is derived from sources within New Jersey.

A partnership is required to make a payment of tax on behalf of its nonresident partners with Form NJ-1065 unless it is classified as a qualified investment partnership, an

investment club, or listed on a United States national stock exchange. The amount of tax is based on each partner's share of the partnership's income and is calculated at the rate of 6.37% for individual partners and 9% for corporate partners. Under N.J.A.C. 18:7-17.6, when the Division receives a payment from a partnership, the amount of tax paid is "credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class as set forth in N.J.A.C. 18:7-17.5." An individual nonresident partner may claim a credit on their New Jersey nonresident income tax return (Form NJ-1040NR) for the amount of tax allocated to it by the partnership. The partner may also request a refund for any excess tax payments that are made. N.J.A.C. 18:7-17.6(c). A copy of the partner's Schedule NJK-1 showing the amount of tax paid on their behalf must be included with Form NJ-1040NR.

Transportation Fringe Benefit —

For New Jersey income tax purposes, qualified employer-provided transportation benefits up to a specified limit per employee are excluded from the employee's New Jersey gross income under N.J.S.A. 54A:6-23. Qualified benefits include those provided in connection with alternate means of commuting, including public transportation, car pools, van pools, bus pools, ferries, and bicycling. The exclusion provided in N.J.S.A. 54A:6-23 does not apply to any commuter transportation benefit unless such benefit is provided in addition to, and not in lieu of, any compensation otherwise payable to the employee.

The inflation-adjusted limit for employer-provided commuter

transportation benefits excludable by an employee for New Jersey gross income tax purposes is \$1,310 for calendar year 2005, and \$1,360 for 2006.

Additional information is available on the Division's Web site at:

www.state.nj.us/treasury/taxation/pdf/regs/commutrlimits.pdf

Sales and Use Tax

Ingestible Telemetric Gastrointestinal Capsule Imaging Systems —

The Division received several inquiries regarding the taxability of ingestible telemetric gastrointestinal capsule imaging systems (PillCams) sold to gastroenterologists who use them in providing virtual endoscopies to view and diagnose small bowel problems.

The pill-sized camera is swallowed by the patient. While in the patient's body, the camera transmits images to computer equipment contained in a belt worn by the patient during the procedure. After the photographing is completed, the doctor downloads the images from the computer and interprets them in order to find the source of intestinal bleeding or find other abnormalities. The camera passes through the patient's digestive system and is eventually excreted. It is not retrieved.

The purchase of the ingestible camera, which is consumed by the patient and then discarded and not returned to the physician for analysis or use, is treated as exempt from sales or use tax. N.J.S.A. 54:32B-8.1. The purchase of the hard drive worn on the patient's body during the procedure and of any equipment used to download the images or to read them is taxable and not subject to any exemption.



Promotional Gift Cards — The Division responded to an inquiry concerning the following transaction:

Retailer XYZ owns and operates department stores nationwide. A number of these stores are located in New Jersey. XYZ has a marketing program to encourage the public to shop at its department stores on a regular basis. The program rewards customers who spend a predetermined amount of money in the store with a gift card redeemable as cash on the customer's next purchase in the store. The gift card can only be used in XYZ stores and may not be exchanged with XYZ for cash. For example, every customer who spends \$50 on a single visit to the store will receive a \$10 gift card to be used on the customer's next purchase.

In general, the sale of a gift card or gift certificate is not a taxable transaction; when the gift card is redeemed, it is treated as money and sales tax is collected on the full price of the taxable goods. On the other hand, where a vendor issues a store coupon entitling a purchaser to receive a discount upon presentation, and the vendor receives no reimbursement from any person, the sales tax is due from the purchaser on only the discounted price, which is the actual receipt.

In the situation described above the gift card is not "sold." Instead, it is offered as a promotional item to customers who make the minimum purchase of goods. Unlike the transaction where a gift card is purchased and then valued as money when redeemed, the store receives no compensation whatsoever for the gift card. Rather, it is more like a store

coupon transaction where the store discounts the subsequent purchase by the amount of the gift card. Thus, the redemption of gift cards that are given away by the vendor in transactions as described above should be treated in the same manner as a store coupon. The customer will only pay sales tax on the amount actually charged after the gift card amount is deducted. □

In Our Courts

Corporation Business Tax

Nexus: Activities of Delivery Drivers – *Chester A. Asher, Inc. v. Director, Division of Taxation*, decided January 5, 2006; Tax Court No. 004061-2003.

Plaintiff (Asher) is a Pennsylvania corporation that manufactures and sells candies and confection products. Asher's primary place of business is in Pennsylvania and it did not own or lease any real property in New Jersey during the years at issue.

Asher held a certificate of authority to conduct business in New Jersey and during the three years at issue consummated over \$8 million of gross sales to customers located in New Jersey. Asher's salespersons regularly visited customers in New Jersey to solicit orders that would be written up and faxed to the Pennsylvania headquarters. Daily deliveries were made in Asher trucks that advertised the company logo. Pursuant to company policy, the delivery drivers also would collect and return goods and damaged products from its customers as well as collect payments on delivery and on outstanding balances from certain New Jersey customers.

Asher claimed that the activities of its delivery drivers did not result in the loss of immunity granted under P.L. 86-272 as the activities were ancillary to the solicitation of sales. Alternatively, Asher contended that the delivery driver activities were immune under P.L. 86-272 because the activities were *de minimis*.

The Court's analysis centered on P.L. 86-272 and *Wrigley*. In general, P.L. 86-272 prohibits states from imposing a net income tax on income derived within the State from business activities involving interstate commerce where the only activities in the State involve the solicitation of orders. In *Wrigley*, the United States Supreme Court determined that *Wrigley's* activities of replacement of stale gum, as a matter of company policy on a continuing basis by sales representatives, supplying gum through agency stock checks, and the storage of gum exceeded the scope of the term solicitation of orders because the activities did not facilitate the requesting of sales and therefore were not protected activities under P.L. 86-272. However, the *Wrigley* Court recognized that an unprotected activity would not result in the loss of immunity from state income taxation where the activity was only *de minimis*; where the unprotected activity only established a trivial additional connection to the taxing state. The Court decided that *Wrigley's* unprotected activities taken together amounted to more than *de minimis* even though the activities were not large compared to *Wrigley's* other operations in the State.

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Addressing the instant case, the Court decided that Asher's salesmen's activities did not exceed the boundaries of solicitation of orders of P.L. 86-272. However, the Court found that the activities of Asher's delivery drivers did not facilitate the requesting of sales and thereby exceeded the scope of solicitation of orders. The Court determined that the drivers' collecting of New Jersey customers' damaged, spoiled, or overshipped packages was an unprotected activity similar to the salespersons picking up stale gum in *Wrigley*. Furthermore, the Court determined that the drivers' collection activities existed independently of solicitation of orders and were therefore also unprotected activities.

Turning to the issue of whether the unprotected activities were *de minimis*, the Court found that the collection of money and returned goods from customers was regular and pursuant to company policy rather than picked up on a few occasions as a courtesy to the customer. Therefore, the Court concluded that the unprotected activities constituted more than a *de minimis* connection to New Jersey regardless of the total amount. Consequently, the Court held that Asher must file New Jersey corporation business tax returns for the years at issue as it was not protected by P.L. 86-272.

Net Operating Loss and Dividend Exclusion – *Ronson Corporation v. Director, Division of Taxation*, decided November 21, 2005; Appellate Division No. A-6776-03T2.

In determining its corporation business tax income for tax year 1995, plaintiff (Ronson) used its net operating loss (NOL) carryover deduction from 1991, 1993, and 1994 to reduce its net income. From that figure, Ronson deducted its N.J.S.A. 54:10A-4(k)(5) dividend exclusion to reduce its income to a negative net income figure.

Ronson utilized the 1995 negative income as an NOL deduction for 1996 and then applied the dividend exclusion to generate another negative income figure that it used as an NOL carryover for 1997.

In 1998, 1999, and 2000, Ronson sought to reuse the NOL carryover that it had used in 1995 on the basis that the dividend exclusion would eliminate the 1995 net income and therefore the pre-1995 NOL carryover was available.

At issue was whether an NOL carryover must be applied to the first available income and before the subsidiary dividend exclusion, and whether the subsidiary dividend exclusion could generate or add to an NOL that could be carried forward.

After analyzing the relevant statutes, the Tax Court found that the statutes required that the NOL carryover must be used against available net income as soon as the income is available and that the NOL carryover be applied to entire net income before application of the dividend exclusion. Consequently, the pre-1995 NOL carryover had to be used in 1995 before utilizing the dividend exclusion. Secondly, the Tax Court stated that an NOL is statutorily defined as where there are excess deductions over gross income when computing entire net income without considering the NOL deduction and other statutory exclusions such as the dividend exclusion. Therefore, Ronson's dividend exclusion could not create an NOL.

Ronson appealed to the Appellate Division claiming that the two relevant statutes, N.J.S.A. 54:10A-4(k)(5) and (6), contradict each other and that if the NOL carryover is applied first, then the purpose of the dividend exclusion could be negated because dividends could be subject to double taxation. Specifically, Ronson asserts that (k)(5) states that entire net income is calculated by excluding dividends whereas (k)(6) defines the NOL carryover deduction as the excess "of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in [N.J.S.A. 54:10A-4(k)(4) and N.J.S.A. 54:10A-4(k)(5)]."

The Appellate Division ruled that although (k)(5) creates a dividend exclusion from entire net income, it is not and does not change the definition of entire net income. Therefore, the Court determined that there

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was no inconsistency pertaining to the definition of entire net income. As to the argument regarding double taxation, the Appellate Division found that dividends would not be taxed in the situation where there was a profit, loss, or an NOL carryover and noted that the legislature was aware of the interplay between (k)(5) and (k)(6) because (k)(5) was amended at the same time (k)(6) was enacted in 1985. Consequently, the Appellate Division affirmed the decision of the Tax Court.

Gross Income Tax

Sale, Exchange, or Other Disposition of Property – *Diana King v. Director, Division of Taxation*, decided May 25, 2005; Appellate Division No. A-5189-03T2.

In April 1991 plaintiff, Ms. Diana King (King), entered into a loan agreement with Amiro Fiorintino Associates, Inc. (AFA). The loan was evidenced by a revolving credit note. The principal shareholder of AFA was the guarantor of the loan. The loan was also secured pursuant to a security agreement granting King a security interest and lien in certain AFA collateral. When King recorded her security interest pursuant to the Uniform Commercial Code (UCC), King's loan was subordinated to a bank loan. In 1992 and 1995 the loan agreement was amended. Essentially, Ventura Entertainment Group (VEG) was an additional guarantor of AFA's obligation and the loan was secured pursuant to a security agreement that granted King a security interest in 100,000 shares of VEG.

In 1996 AFA filed Chapter 11 bankruptcy. King filed a proof of claim

as a secured creditor in the amount of \$568,857.35 consisting of the \$450,000 principal, \$106,090.65 interest and \$12,766.70 arrears. As a junior secured creditor, King consented to the sale of AFA's assets conditioned upon her receipt of \$120,000 and that she be released from claims against the debtor. King's consent was evidenced on a bankruptcy document titled "Response of Diana King to the Debtor's Application for an Order Approving a Purchase Agreement and Authorizing a Sale of Assets." Thereafter, King terminated her UCC filings and the bankruptcy proceeding was later dismissed.

On her 1996 Form NJ-1040, King reported a \$330,000 loss (\$450,000 principal less \$120,000 payment) and \$32,973 of attorney fees as a \$362,973 nonbusiness bad debt deduction. Thereafter, she filed an amended return reclassifying the \$362,973 as a long term capital loss, claiming that it was an investment loss on the disposition of a security.

On both her NJ-1040 return and amended return, King offset this loss against other gains included under N.J.S.A. 54A:5-1(c) disposition of property category. However, the Division disallowed the deduction claiming that it was a nondeductible, nonbusiness bad debt.

N.J.S.A. 54A:5-1(c) includes net gains, net losses, and net income derived from the sale, exchange, or other disposition of property. At issue is whether King engaged in a sale, exchange, or disposition of property. The Court found that King settled her claim for a reduced amount by giving up her right to sue on the note and that she did not sell or transfer the note evidencing the debt or any other security. Also, the Court noted that King presented no evidence that she exchanged the note. Citing *Vinnick* and *Walsh*, the Court upheld the Division's assessment.

On appeal, King argued that her loan was an investment that produced a

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capital asset that sold at a loss during bankruptcy proceedings and therefore she is entitled to a loss on the sale or exchange or other disposition of property pursuant to N.J.S.A. 54A:5-1(c). The Appellate Division disagreed with King by affirming the well-reasoned opinion of the Tax Court. Furthermore, the Appellate Division commented that although under the Internal Revenue Code notes from nonbusiness loans implicate Federal capital gain or loss when they become worthless, New Jersey statutes do not allow for the deduction of worthless nonbusiness debts. Similarly, unlike Federal tax law, New Jersey does not generally recognize discharge of indebtedness as income. In the instant case, King did not sell, exchange, or dispose of the note, King focused on collecting and securing the debt for herself and not on transferring the note, and in her "counsel's own words, 'sur-rendered' the debt."

**Sales and Use Tax
Evidence of Food Consumed Off
the Premises Where Sold –
Bubbles, Inc. t/a Auntie Anne's Pretzels v. Director, Division of Taxation,
decided June 2, 2005; Tax Court No.
003209-2002.**

Plaintiff (Bubbles) is a franchise of Auntie Anne's, Inc., that sold hand-rolled soft pretzels, dips, carbonated soft drinks, lemonade, and Dutch Ice at the Quakerbridge Mall (Mall). Bubbles sold its products from a leased store as well as a kiosk-type cart or stand. The store was not accessible to customers as the front of the store is bounded by a counter where products are sold to customers standing in a common area of the

Mall. Like the store, customers purchased products over the counter of the kiosk. Testimony indicated that other Mall stores had their own dine-in seating and that there were no tables or chairs in the common areas of the Mall.

Bubbles prepared pretzels from raw ingredients that are placed in an oven for baking. After they are baked, most of the pretzels are dipped in butter and placed in a piece of equipment so that the butter is baked into the pretzels. Occasionally, pretzels are sold immediately after they are removed from the oven without being buttered. When pretzels are purchased, Bubbles delivers them in either a wax paper bag that holds six pretzels or another bag that holds up to three or four pretzels depending upon the quantity purchased. Each bag has instructions for reheating the pretzels. Pretzels are served with napkins. Bubbles did not collect sales tax on the sale of pretzels, noncarbonated lemonade, and the Dutch Ice believing that the sales were not subject to sales tax.

Bubbles argued that the pretzels were not sold for consumption on its premises because it had no premises on which its customers could consume food. Bubbles claimed the areas leased by it were not open to the public, that there was no seating made available for consuming food, and that the Mall, not Bubbles, controlled the common areas of the Mall.

The Court found that N.J.S.A. 54:32B-3(c) imposes sales tax on sales of food and drink for consumption on the premises where sold and that N.J.A.C. 18:24-12.2 defined the

phrase "on the premises."

In *Campo*, the Tax Court recently upheld the Division's regulation in defining premises broadly as the total space and facilities in or on which a vendor conducts his business to mean that Campo's premises constituted the entire stadium and arena despite the fact that its license did not grant Campo the right to use any specific area of the facilities for either preparation or sales. Therefore, as to Bubbles, the Court ruled likewise that the phrase "on the premises" meant within the Mall even though the lease did not grant Bubbles any rights to the Mall beyond the boundaries of its store and kiosk.

Bubbles further argued that the pretzels were not sold for consumption in the Mall because 75% of the pretzels sold were either purchased in quantities greater than one or exited the doors of the Mall unconsumed. N.J.S.A. 54:32B-12 presumes that all N.J.S.A. 54:32B-3(c) sales are taxable unless the contrary is established by the person contesting the tax. Moreover, case law recognizes that the Division's assessments are presumed correct. The Court concluded that Bubbles' testimony and evidence did not overcome the Division's presumption of correctness. The Court did not find Bubbles' witnesses' testimony credible or reliable as to where the customers consumed the pretzels and beverages. The Court opined that Bubbles failed to establish with credible evidence the percentage of sales that were consumed off the Mall's premises as it did not produce any documentary evidence, such as cash register tapes, to support its contentions. The Court cited case

law that “A taxpayer’s ‘naked assertions,’ without supporting records or documentation are insufficient to rebut the presumption that the Director’s assessment is correct.” Consequently, the Court concluded that Bubbles’ sales of food and beverages were for consumption on the premises as Bubbles could not overcome the presumption that the Division’s assessment is correct by proving with “evidence that is definite, positive, and certain in quality and quantity” that any portion of the food and beverages were consumed off the premises.

Plaintiff appealed this decision to the Appellate Division. □

In Our Legislature

Inheritance/Estate Tax

Surviving Domestic Partners — P.L. 2005, c.331, enacted January 12, 2006, provides that a surviving domestic partner would have the same intestacy rights as a surviving spouse and would have authority to make funeral arrangements. For more information, see [Domestic Partners](#) on page 3. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2005 (January 1, 2005 – December 31, 2005) and tax year 2006 (January 1, 2006 – December 31, 2006) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2005](#) [2006](#)

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

[2005](#) [2006](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2005](#) [2006](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
 Automated Tax Info 1-800-323-4400
 609-826-4400
FAIR Rebate
 Hotline 1-888-238-1233
Property Tax Reimbursement
 Hotline 1-800-882-6597
Earned Income Tax Credit
 Information 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
 System 1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-984-4123
Corp. Liens, Mergers, Withdrawals
 & Dissolutions 609-292-5323
Director’s Office 609-292-5185
InheritanceTax 609-292-5033
Local Property Tax 609-292-7221
Motor Fuels Tax
 Refunds 609-292-7018
Public Utility Tax 609-633-2576

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2005 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
19	1/19/05	Revises the 1% fee on transfers of residential property purchased for more than \$1 million, exempts transfers to certain charitable organizations, and provides for refunds of certain fees paid.	RTF	A-3302(2R)
20	1/19/05	Clarifies that the minimum payment of estimated gross income tax on the sale of real property in this State by a nonresident is 2% of the consideration paid on the sale.	GIT	A-3510
44	3/21/05	Increases membership of County Boards of Taxation.	LPT	S-1086(1R)
63	4/07/05	Excludes housing and subsistence allowances of certain military personnel from New Jersey gross income.	GIT	S-250(1R)
64	4/07/05	Extends certain benefits to veterans of Operations Northern and Southern Watch.	LPT	S-1139
85	5/04/05	Establishes the "Cigarette Sales Act" to facilitate the collection of taxes on retail sales of cigarettes shipped from outside this State.	CIG	A-1838(1R)
121	7/02/05	Makes a supplemental appropriation of \$400,000,000 to pay homestead rebate claims beginning July 1, 2005.	PTRP	S-2646
124	7/02/05	Provides for enhanced collection of certain debts owed to the State.	MIS	S-3002
125	7/02/05	Authorizes a multistate reciprocal personal income tax refund set-off program.	GIT	S-3004
126	7/02/05	Amends the State's Sales and Use Tax Act to conform to the requirements of the Streamlined Sales and Use Tax Agreement.	S&U	A-3473
127	7/02/05	Uncouples corporation business tax and gross income tax from Federal deduction for certain qualified production activities income.	GIT/ CBT	A-4294
128	7/02/05	Modifies the insurance premiums tax treatment of health service corporations.	IPT	ACS for A-4401
130	7/02/05	Limits the pension and other retirement income exclusions to taxpayers with gross income of \$100,000 or less.	GIT	A-4404
141	7/07/05	Repeals the air toxics surcharge.	ENV	ACS for A-3667 & A-3868

2005 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
160	7/19/05	Makes certain corrections to statutory provisions governing wills and estates.	TIT/ET	S-2104(2R)
210	8/29/05	Requires that certain persons be notified of the availability of the Federal and New Jersey earned income tax credits.	GIT	S-753(1R)
288	1/09/06	Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated gross income taxes to end "double withholding."	GIT	S-1892(2R)
297	1/09/06	Authorizes the Director of the Division of Taxation to extend gross income tax filing and payment deadlines to conform to similar extended deadlines established for Federal personal income tax returns.	GIT	A-3826
298	1/09/06	Provides for voluntary contributions by taxpayers on gross income tax returns for the New Jersey World Trade Center Scholarship Fund.	GIT	ACS for A-3900 & A-4010
318	1/12/06	Allows corporation business tax or gross income tax credits for businesses employing handicapped persons at sheltered workshops.	CBT/GIT	S-487(1R)
345	1/12/06	Allows corporation business tax or gross income tax credits for qualified film production expenses.	CBT/GIT	S-2533(2R)
374	1/12/06	Extends eligibility for sales and use tax exemption on retail purchases of energy and utility services to certain qualified businesses in Urban Enterprise Zones and to certain businesses located in a county that qualifies for 50% sales tax exemption.	S&U	A-3484(2R)
384	1/15/06	Raises the minimum age for the sale and purchase of cigarettes from 18 to 19.	CIG	S-2783(1R)

***Legend for 2005 Tax Laws**

ABT =	Alcoholic Beverage Tax	LIT =	Litter Control Fee
ALL =	All Taxes Administered by the Division	LPT =	Local Property Tax
CAS =	Casino Taxes and Fees	MFT =	Motor Fuels Tax
CBT =	Corporation Business Tax	MIS =	Miscellaneous
CIG =	Cigarette Tax	PPT =	Petroleum Products Gross Receipts Tax
CMC =	Cape May County Tourism Sales Tax	PTRP =	Property Tax Relief Programs
CMPT =	Cosmetic Medical Procedures Gross Receipts Tax	PUT =	Public Utility Taxes
ENV =	Environmental Taxes	RTF =	Realty Transfer Fee
ERF =	9-1-1 System & Emergency Response Fee	S&U =	Sales and Use Tax
FBT =	Financial Business Tax	SCC =	Spill Compensation & Control Tax
GIT =	Gross Income Tax	TIR =	Motor Vehicle Tire Fee
HMO =	Hotel Motel Occupancies	TIT/ET =	Transfer Inheritance & Estate Tax
IPT =	Insurance Premiums Tax	TPT =	Tobacco Products Tax