

New Jersey State Tax news

A Quarterly Newsletter

ISSN 1073-6808



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Tax Amnesty 2009

Governor Jon S. Corzine recently signed a law (P.L. 2009, c.21) requiring the Division of Taxation to implement a limited Tax Amnesty Program this spring.

The 2009 Tax Amnesty Program will begin May 4 and end at midnight, June 15. During that time, taxpayers will be offered the opportunity to file delinquent returns and to pay back taxes and one-half of the balance of interest that remains due as of May 1, 2009, without penalty. Recovery fees and the imposition of civil or criminal penalties will also be waived provided that all of the eligibility requirements are met.

Most taxpayers are eligible for tax amnesty with few exceptions. Tax amnesty is not available to any taxpayer who is under criminal investigation or charge for any State tax matter. In addition, a taxpayer who has filed a complaint with the New Jersey Tax Court, or who is pursuing an appeal in any other manner, may only participate if approved by the Director and provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed.

Tax amnesty is available only for outstanding tax liabilities that are reportable on any tax return due on or after January 1, 2002, and prior to February 1, 2009. To receive amnesty, a taxpayer must:

- File the required tax return(s), if applicable; and
- Pay the balance of the tax due *and* one-half of the balance of interest that remains due; and
- Complete and submit a payment/waiver statement.

Taxpayers will be able to apply for tax amnesty on the Tax Amnesty Web site at: www.taxamnesty.nj.gov

After the amnesty period ends on June 15, 2009, a nonabatable 5% penalty will be imposed on any amnesty-eligible tax liabilities that are not satisfied during the amnesty period. An additional collection service fee may also be imposed. This will be in addition to all other penalties, interest, and other costs authorized by law.

The 2009 Amnesty Program includes all State taxes and fees administered by and payable to the New Jersey Division of Taxation including the corporation business tax, sales and use tax, and gross income tax. Taxes not administered and collected by the Division of Taxation – such as local property taxes, realty transfer fees, payroll taxes owed to the Department of Labor and Workforce Development, and Federal liabilities – are not eligible for amnesty.

The State will mail notices to approximately 600,000 individuals and businesses who are delinquent



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in filing returns and who owe back taxes to the State for the eligible years. The State also plans to undertake a full-scale public awareness campaign that includes radio and print advertising, and perhaps some television spots.

Information and forms will be available:

- Online at the Tax Amnesty Web site: www.taxamnesty.nj.gov
- By phone at: 1-800-781-8407 (toll-free)
- By e-mail at: tax.amnesty@treas.state.nj.us

You may also write to: New Jersey Division of Taxation, Tax Amnesty Program, P.O. Box 272, Trenton, NJ 08695-0272.

Organizations and individuals who would like to distribute pamphlets or other informational materials to their clients, or who would like to arrange to have a Division representative speak to their group about the 2009 Amnesty Program should visit our Web site at: www.taxamnesty.nj.gov □

Electronic Filing and Payment for Employer Returns

All Employer Quarterly Reports, Forms NJ-927, NJ-927-W, and WR-30, as well as Form NJ-927-H, Domestic Employer's Annual Report, are now required to be filed electronically. Monthly remittances of gross income tax withheld, Form NJ-500, must also be filed electronically. As a result, the quarterly reports for the first quarter of 2009,

due April 30, 2009, must be filed using the Division of Revenue's secure Web site or in bulk using Secure File Transfer Protocol (SFTP). Notification of the new filing requirement was mailed to all registered employers in late fall 2008. A reminder was also recently mailed.

Great success has been seen with other electronically filed business tax returns and fees. The State is expecting similar success with the NJ-927s and anticipates an easier and more user-friendly filing experience with the new format.

The advantages of electronic filing are many. Filing instructions are only a click away, and there are comprehensive help screens to guide the user through the entire report. Employers no longer need to wait for paper forms in the mail. Processing of information is quicker and more accurate. Employers can view all payments submitted for each quarter of 2009 and after. In addition, the revised filing system allows employers to specify the exact dollar amount to be remitted to the Division of Taxation and the Department of Labor and Workforce Development. This payment change gives employers greater control over payroll monies remitted to the State. Electronically filed returns have fewer errors, thereby reducing processing costs. Employers can make payment by using one of the three allowable methods: e-check, electronic funds transfer, or credit card.

For inquiries concerning New Jersey income tax withholding, call the Division of the Taxation at 609-984-1721 or visit the Division's Web site at:

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

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

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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.

**Division of Taxation
Acting Director:** Cheryl Fulmer

News Coordinators for This Issue:

<i>Audit</i>	Peggy Cook
<i>Compliance</i>	Marita Sciarrotta
<i>Crim. Investigation</i>	Lee Roach
<i>Property Admin.</i>	Toni Bushelli
<i>Legislation</i>	John Kelly

Contributors: Jeffrey Adams, Pamela Allen, Carol E. Bell, William G. Bittner, Thaedra Chebra, Russ Glenn, Susan C. Greitz, Robert Kelliher, Jessica Lanna, Debra Lewaine, Colleen McAllister, Maryanna Paolinie, Charlie Peters, Matt Suto, and Edward Vrancik.

Staff: J. Donald Byrnes, Lauren D. Higgins, Terry A. McWilliams, Sara E. Murphey, Erin J. Toth, Kelly J. Warboys.

Editor: Sheri B. Silverstein



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For questions concerning unemployment, disability, or family leave insurance contributions, call the Division of Employer Accounts at 609-633-6400 or visit the Department of Labor and Workforce Development's Web site at:

lwd.dol.state.nj.us/labor

For questions concerning the filing of the online Employer's Quarterly Report, call the Division of Revenue at 609-633-1132 or visit Revenue's Web site at:

www.state.nj.us/treasury/revenue/



LOCAL PROPERTY TAX

Tax Deductions Certified

The State Revenue Sharing Act distribution for 2008 for senior and disabled persons, surviving spouses, and veterans was delivered to the State Treasurer on September 15, 2008.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation

certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2008. The revenue sharing funds are comprised of the senior citizen and veterans' deductions in each municipality. Qualified senior citizens and disabled persons are permitted a tax deduction of \$250 annually as per N.J.S.A. 54:4-8.40 et seq. Qualified veterans are permitted a deduction of \$250 pursuant to N.J.S.A. 54:4-8.10 et seq.

The total amount of property tax deductions for senior citizen and disabled persons and surviving spouses for 2008 was \$19,316,880. That amount represents a decrease of 5% from 2007. The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2008 was 74,318. When compared to tax year 2007, the number of deductions decreased 5%.

For tax year 2008, the amount of veterans' deductions was \$69,353,434. That amount represents a decrease of 3% from 2007. The total number of veterans' deductions for 2008 was 272,364. When compared to tax year 2007, the number of deductions decreased 3%.

The total amount of senior citizen and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of P.L. 1997, c.30. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

April 1-

- Deadline for filing 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.
- Property Tax Deduction Disallowance Notice, Form PD4, for non-filing or late filing of Post-Tax Year Statement or income over \$10,000 sent by collector.
- Percentage level of taxable value of real property established by the County Tax Boards.
- If appeal petition or complaint is filed April 1 or during the 19 days preceding April 1, the 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.

Telephone Filing Discontinued for Forms NJ-500, NJ-927, and NJ-927-H

Effective January 1, 2009, employers and others who withhold New Jersey gross income tax and unemployment/disability contributions are no longer able to file their returns and make the related payments by phone through the Division of Taxation's Business Paperless Telefiling System. Telephone filing has been discontinued for monthly and quarterly returns (Forms NJ-500/NJ-927) as well as the annual return for domestic employers (Form NJ-927-H).

For information on electronically filing returns due after December 31, 2008, or amending a return that was previously filed by telephone, go to [Tax & Employer Filings and Payments](#) on the Division of Revenue's Web site.



assessors' calendar - from page 3

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Certification of REAP aid due to each local unit for tax year received by County Tax Board.
- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with the collector where property tax deduction recipient's illness or medical problem prevented the required March 1 filing.
- Extended deadline for filing assessment appeals to the County Tax Board or State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

May 20–

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

May 23–

- Table of Aggregates signed by County Tax Boards and transmitted to County Treasurer who files, prints, and transmits a certified copy to the Director, Division of Taxation; State Auditor; Director, Division of Local Government Services in the Department of Community Affairs; the clerk of the Board of Freeholders; and 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 PD-65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June–

- If the 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 □

Practitioners' E-File Mandate

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 25 or more 2007 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2008 New Jersey resident income tax returns electronically. More information is available at:

- [E-File Mandate](#)
- [Frequently Asked Questions](#)
- [Opt Out Request Form, NJ-1040-O](#)
- [Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at nj.taxation@treas.state.nj.us



Criminal Enforcement

Criminal enforcement over the past several months included:

- On December 9, 2008, a contraband investigation conducted at the Plainfield Supermarket in the City of Plainfield resulted in the seizure of 30.8 cartons of contraband cigarettes: 20.8 cartons were affixed with counterfeit New Jersey tax stamps and 10 cartons were untaxed Indian imported beedie cigarettes. In addition, loose cigarettes for sale, in violation of the law, were also recovered.
- On December 19, 2008, Francisco Monterroso and his wife Lucy Rodriguez Monterroso were indicted by a Middlesex County Grand Jury on two counts of failure to file New Jersey gross income tax returns (Form NJ-1040) for years 2006 and 2007, two counts of failure to pay the tax,

four counts of second-degree theft by deception, and two counts of third-degree theft by deception. Francisco Monterroso was a home remodeler and had taken \$396,600 for these two years.

- On December 31, 2008, Spiro Pollatos of Hackensack, New Jersey, was assessed \$69,825 in tax and \$38,270.44 in penalties and interest, totaling \$108,095.44, for failing to declare \$1,350,000 in income over the past four years and failing to pay the taxes due. At the same time, Crystal Velitschkow of Aberdeen, New Jersey, was assessed \$81,853.34 in tax and \$43,062.25 in penalties and interest, totaling \$124,915.59, for failing to declare \$1,538,828 in income over the past four years and failing to pay the taxes due. Information obtained from the Division's Data Warehouse, in conjunction with Pollatos's and Velitschkow's pleas, lead to the two assessments. Spiro Pollatos pled guilty on October 17, 2008, to first-degree money laundering, and Crystal Velitschkow pled guilty on June 27, 2008, in connection with a series of mortgage and investment scams through which they stole approximately \$2.9 million from victims. From January 2004 through March 2007, Pollatos and Velitschkow

funneled more than \$2.7 million in criminal proceeds through a personal bank account they controlled, using the money to buy real estate, cars, and boats and pay personal expenses.

- On July 1, 2008, James Hendricks, t/a B & J Towing, and his wife, Mary Ann Clark, were indicted by a State Grand Jury on four counts: third-degree conspiracy, third-degree theft by failure to make required disposition of property received, and third-degree misapplication of entrusted funds for Hendricks and Clark; and third-degree failure to remit sales and use tax for Hendricks. Hendricks and Clark were scheduled to be sentenced in March of 2009.
- On January 8, 2009, 330 cartons of unstamped cigarettes were retrieved from the United States Customs & Border Protection (USC&BP) office at the New Jersey International Bulk Mail Center in Jersey City, New Jersey. The Office of Criminal Investigation (OCI) was notified of the presence of these cigarettes as a result of continued cooperation between OCI and USC&BP, which originated with the aggregate seizure of 57,762

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Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2009 – December 31, 2009, will be 7.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%

Fur Clothing Retail Gross Receipts Tax and Use Tax Repealed Effective January 1, 2009

P.L. 2008, c.123, repealed the Fur Clothing Retail Gross Receipts Tax and Use Tax effective January 1, 2009. The final return for the quarter ending December 31, 2008, was due January 20, 2009. Beginning January 1, 2009, sales of fur clothing are subject to sales tax at the rate of 7%. For more information see the [Notice to Fur Clothing Sellers Effective January 1, 2009](#).



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cartons of unstamped cigarettes between November 2004 and January 2007. These cigarettes all share the common element of being shipped from outside the United States, with the intent of the domestic recipients avoiding payment of State cigarette taxes. The addressee information of all New Jersey residents will be forwarded to Audit Services, and the information of out-of-State recipients to the proper taxation authority.

- As announced on January 8, 2009, by Attorney General Anne Milgram, New Jersey has entered into a multistate settlement with the Santa Fe Natural Tobacco Company over its violation of the Master Settlement Agreement. Santa Fe distributed decorative tin signs to consumers that featured its “Natural American Spirit” cigarettes brand name. This violated the agreement and under terms of the settlement Santa Fe agrees not to distribute the following types of brand name merchandise: decorative tin signs, toys, games, fashion accessories, CDs, DVDs, video games, clothing, athletic equipment, outdoor gear, luggage, stationery items, housewares, and paintings and plaques intended for the home. In

addition, Santa Fe Natural agrees to pay a penalty of \$250 for every future violation of the agreement. Forty-two states, including New Jersey, are party to the settlement agreement with Santa Fe.

- On January 26, 2009, a Monmouth County Grand Jury returned a 38-count indictment against 16 defendants following an investigation into a cocaine trafficking and money laundering network based in Manalapan, New Jersey. The investigation revealed cocaine was imported utilizing corporations, Diamond Builders of New Jersey, LLC and Bacardi Oil, LLC, owned by Vicente Esteves, to launder the financial proceeds of the criminal activities. The indictment charges Vicente Esteves, 36, with three counts of failure to file State income tax returns and three counts of failure to pay or turn over State income taxes in addition to second-degree racketeering conspiracy, first-degree leader of a narcotics trafficking network, possession of a controlled dangerous substance, first-degree possession of a controlled dangerous substance with intent to distribute, multiple counts of first-, second-, and third-degree financial facilitation of criminal activity, two counts of second-degree misconduct by

a corporate official, one count each of fourth-degree deceptive business practices and fourth-degree falsifying records, and four counts of fourth-degree unlawful check cashing. Esteves is being held at the Monmouth County Correctional Institution in lieu of \$2,500,000 bail. □

Tax Briefs

Gross Income Tax

Section 401(a) and 401(k) Retirement Plans — A taxpayer wrote to the Division of Taxation asking about the gross income tax treatment of Section 401(a) and 401(k) retirement plans. The Division explained that the governing rules for IRC Sections 401(a) and 401(k) plans are very similar. However, 401(a) plans are usually offered by government employers and 401(k) plans are offered by private companies. Section 401(k) allows for employees to contribute to their plans, whereas under 401(a) plans no employee contributions are allowed.

In adopting its gross income tax, New Jersey has not incorporated Federal conformity except as may be specifically set forth in the law. The New Jersey Gross Income Tax Act at N.J.S.A. 54A:6-21 does not provide

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Public Auction Information

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

Enforcement Summary Statistics Fourth Quarter 2008

Following is a summary of enforcement actions for the quarter ending December 31, 2008.

• Bank Levies	1,480	• Seizures	103
• Certificates of Debt:		• Auctions	4
Total Number	3,836		
Total Amount	\$70,990,485		



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for the tax-deferred treatment of contributions made under IRC Section 401(a) plans. These same contributions, however, are not taxable when distributed at retirement time, to the extent that the taxpayer is receiving previously taxed amounts.

Section 401(k) plans are the only plans specifically excluded from gross income under the provisions of the Gross Income Tax Act. The law was enacted intending to only encompass the plans that were in and of themselves 401(k) plans, not plans with similar requirements and characteristics. This has been the case since the 401(k) contribution exclusion was enacted in 1984.

Therefore, for a 401(a) plan, any Federally deferred contributions are included in a taxpayer's gross income as they are contributed; only interest, dividends, and other earnings credited to a Section 401(a) plan are subject to income tax when withdrawn.

Viatical Settlement— The Division received a letter from a taxpayer inquiring about the taxability of income received through a viatical settlement. A viatical settlement is the sale of a life insurance policy by the policy owner before the policy matures. Generally, viatical settlements involve insured individuals with a shorter life span.

For New Jersey gross income tax purposes, N.J.S.A. 54A:6-4 states that proceeds of life insurance contracts payable by reason of death are excluded from New Jersey gross income taxation. If the person is still alive, amounts received would be taxable and included in the net gains or income from the disposition of property category of income, since they are not specifically excluded under the Act in accordance with N.J.S.A. 54A:5-1(c). However, 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.

Therefore, for New Jersey purposes, any amount from a viatical settlement reported on Form 1099-LTC that is taxable for Federal income tax purposes must be included in a taxpayer's New Jersey gross income in the same way as for Federal purposes; and any amount excluded for Federal income tax is excluded for New Jersey gross income tax purposes.

The taxpayer also inquired about the treatment of the income for purposes of the property tax reimbursement. The Division answered that proceeds received from viatical settlements should not be taken into account to determine eligibility for the property tax reimbursement.

Homestead Rebate

Life Estate — Two taxpayers with a life estate in their home inquired whether they may receive a rebate under the New Jersey Homestead Rebate Program.

The Homestead Rebate Program is established by law in accordance with N.J.S.A. 54:4-8.57 et seq., and provides specific rebate qualifications and amounts. Under the law, the definition for "homestead" provides, in pertinent part:

[A] homestead shall be deemed to be owned by a person if that person is a tenant for life or a tenant under a lease for 99 years or more and is entitled to and actually takes possession of the homestead under an executory contract for the sale thereof or under an agreement with a lending institution which holds title as security for a loan....

Pay NJ Taxes Electronically

Electronic Check (E-Check)

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

SAMPLE

John Smith
Jane Smith
123 Main Street
Trenton, NJ 08611

Date _____ 15-09/0000

PAY TO THE ORDER OF \$ _____

Anyplace Bank
Trenton, NJ 08611

Routing number: 02020889
Account number: 1234

For #250250029

Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX

www.officialpayments.com

* Fee of 2.49% of tax payment applies.



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Therefore, the two taxpayers with a life estate in their home are considered homeowners under the Act and can receive a rebate under the New Jersey Homestead Rebate Program if their home is a permanent legal residence in New Jersey and they meet the other eligibility requirements. Information about the Homestead Rebate Program, including eligibility requirements, is available on the Division of Taxation's Web site at: www.state.nj.us/treasury/taxation/relief.shtml

Since these taxpayers are not the actual owners of record they must file a homestead rebate paper application, which they can obtain by calling 1-888-238-1233. The

application must include a copy of an official document (e.g., deed, lease) establishing their right to occupy the property.

Sales and Use Tax

Imitation Fur on Clothing — A taxpayer wrote to the Division asking whether imitation fur (fake fur) clothing is subject to sales and use tax, which is imposed on purchases of fur clothing effective January 1, 2009. The Division of Taxation answered the taxpayer by explaining that imitation fur does not meet the definition of "fur clothing" for purposes of the Sales and Use Tax Act.

The definition of fur clothing provides, in pertinent part:

For the purposes of this section, 'fur' means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state....

Therefore, fake fur clothing does not fit within the definition of fur clothing. As a result, fake fur clothing is exempt from sales tax under the clothing exemption, and retailers are not required to charge sales tax on clothing that includes only imitation fur.

Prefabricated Firewood — A taxpayer inquired whether sales tax applies to sales of prefabricated firewood.

The New Jersey Sales and Use Tax Act contains a tax exemption for "sales of gas other than natural gas, water, steam, or fuel delivered to consumers through mains, lines, pipe, or in containers or bulk." N.J.S.A. 54:32B-8.7. Firewood is exempt from sales and use tax as fuel. Firewood treated with a burning catalyst, often lighter fluid, is also exempt from sales tax in accordance with the statutory exemption. Therefore, sales of prefabricated firewood are exempt. Lighter fluid is also exempt from sales and use tax as a fuel.

Underground Oil Tank Services — A business wrote to the Division asking about the sales tax treatment of certain services performed in relation to oil storage tanks. Specifically, the business repaired, removed, and installed underground oil tanks, both commercial and residential.

In response to the questions, the Division explained that the business is considered a "contractor" for sales tax purposes. A contractor

Sales Tax Information

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. More information is available at:

[Streamlined Sales and Use Tax](#)

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit:

[Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at:

[Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)

P.L. 2008, c. 123, revised the New Jersey Sales and Use Tax Act to conform with various provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments took effect on January 1, 2009, and include changes in telecommunications, direct mail, fur clothing, the definition of sales price, and the medical products exemption. More information is available at:

[Amendments to Sales and Use Tax Act Effective January 1, 2009](#)

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is an individual or business entity engaged in the business of improving, altering, or repairing the land, buildings, or other real property of others. Where work performed by a contractor results in a capital improvement to the property, the property owner may provide the contractor with a Certificate of Exempt Capital Improvement (Form ST-8) in lieu of paying sales tax on the services.

The Division deems the installation of an underground oil tank to be a capital improvement. Also, the removal and restoration of the real property and the sand-filling of an abandoned oil tank is deemed to be a capital improvement. Therefore, the property owner may issue a contractor a Certificate of Exempt Capital Improvement (Form ST-8) in lieu of paying sales tax on these services.

Repairing real property is subject to sales tax under N.J.S.A. 54:32B-3(b) (4). Therefore, the business must collect sales tax on repairs to underground tanks. On the other hand, soil testing services and inspection services, in connection with oil tank services, are not subject to sales tax when separately itemized. □

In Our Courts

Gross Income Tax

401(k) Contributions, Credit for Taxes Paid to Philadelphia

– *Macario A. Sarreal v. Director, Division of Taxation*, Docket No. 007828-2008, decided December 30, 2008.

N.J.S.A. 54A:4-1(a) provides a New Jersey resident a credit against the New Jersey gross income tax for income or wage tax imposed by a

political subdivision of another state on income that is also subject to the New Jersey gross income tax.

At issue was whether the Division of Taxation properly excluded the plaintiff's 401(k) contribution from income earned in Philadelphia for the purpose of calculating the taxpayer's credit for taxes paid to other jurisdictions.

When calculating his taxes paid to Philadelphia, the taxpayer overstated the numerator of his credit fraction by not having deducted 401(k) contributions from his Philadelphia wages.

The Division had adjusted the taxpayer's credit calculation because 401(k) contributions, although taxable to the City of Philadelphia, are excludible for New Jersey gross income tax purposes. To provide a credit for taxes paid on 401(k) contributions would result in the taxpayer taking a credit for taxes paid on income which was not taxed under the New Jersey Gross Income Tax Act.

The plaintiff had argued that the Division's instructions regarding the exclusion were inadequate and therefore he should not be subjected to the deficiency assessment.

Judge Menyuk granted the Division's motion for summary judgment opining:

I conclude that N.J.S.A. 54A:4-1 plainly provides a credit for taxes paid to another jurisdiction only for those taxes on income that is also subject to tax by New Jersey. I also find that consistent with the statute, the Division's regulation, its instructions for the 2004 gross income tax return and its informational bulletin, GIT-3W (rev. 12/04) clearly directed that, in calculating the amount of the credit, tax on Philadelphia income that was not subject to tax by New Jersey was to be excluded when calculating the amount of the allowable credit.

Single-Member LLC – *Michael & Helen Kaplan & Morris & Sandra Kaplan v. Director, Division of Taxation*, Docket No. A-3758-07T3, decided February 11, 2009.

The New Jersey Superior Court, Appellate Division, affirmed the Tax Court opinion reported in 23 N.J. Tax 594 (Tax 2008) in this case involving an attempted change in business type to gain favorable tax treatment.

The Kaplans had acquired commercial apartment properties as single-member LLCs, disregarded entities. Recognizing that a large loss from the property could not be

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in our courts - from page 9

used on the NJ-1040 return, the taxpayers reported partnership income that should have been reported as distributive share of partnership income as net income from rents to take advantage of the large loss.

The Division placed the partnership income back into the distributive share of partnership income category resulting in a notice of deficiency.

The taxpayer challenged the Division's action, claiming that the single-member LLC, disregarded entity, was a tenant in common, a partnership in reality. The taxpayers argued the loss from the apartment should be allowed as an offset in the distributive share of partnership income category. The taxpayer believed that the partnership entity status should have been allowed, since the taxpayer and his brother were partners together in other partnerships.

The taxpayer next attempted to file amended returns for New Jersey and file a first-time Georgia partnership return and a first-time Federal partnership return almost three years after the original NJ-1040 was filed.

Judge Kuskin found in favor of the Division, disallowing the change

in type of business entity for New Jersey gross income tax in order to gain favorable tax treatment. □

In Our Legislature

Local Property Tax

Property Tax Exemption for Certain Sports and Entertainment Projects — P.L. 2009, c.6, enacted on January 27, 2009, and effective immediately, provides that a sports and entertainment project constructed under a redevelopment plan adopted by an eligible city that is owned, used, and operated by the eligible city to provide sports and entertainment events, shows, public meetings or events, exhibitions, or other expositions shall be deemed to be devoted to an essential public and governmental use and purpose. The property of the sports and entertainment project is exempt from property taxation as well as any special assessments of the State or any local government entity.

Miscellaneous

New Jersey Establishes a State Tax Amnesty Period — P.L. 2009, c.21, signed into law on March 17, 2009, and effective immediately, establishes a 45-day State tax amnesty period to end no later than June 15, 2009. During the amnesty

period established by the Director, a taxpayer who has failed to pay any State tax may, on or before the last day of the amnesty period, pay the amount of the tax owed and one-half of the balance of interest that is due as of May 1, 2009, without the recovery fee and without the imposition of any civil or criminal penalties arising out of the tax obligation.

Tax amnesty is not available to any taxpayer who at the time of payment is under criminal investigation or charge for any State tax matter, as certified by a county prosecutor or the Attorney General to the Director.

The law also imposes a 5% penalty upon any State tax liability eligible but not satisfied during the amnesty period.

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) 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.

[2008](#) [2009](#)

Current Amnesty Programs

Alabama, Arizona, Massachusetts, and Connecticut are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

AL	Feb. 1 – May 15	www.ador.state.al.us/cleanslate.html
AZ	May 1 – June 1	www.azdor.gov/taxamnesty
MA	Mar. 1 – April 30	www.mass.gov/dor
CT	May 1 – June 25	www.ct.gov/drs/site/default.asp

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

[2008](#) [2009](#)

- **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.

[2008](#) [2009](#) □



*important
phone
numbers*

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
..... 609-826-4400
- Homestead Rebate Hotline
for Homeowners..... 1-888-238-1233
- Homestead Rebate Hotline
for Tenants1-888-213-8623
- Property Tax Reimbursement
Hotline.....1-800-882-6597
- Earned Income Tax Credit
Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling
System1-877-829-2866
- Speaker Programs 609-984-4101
- Alcoholic Bev. Tax 609-588-3932
- Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax
Refunds 609-588-3688
- Public Utility Tax..... 609-584-4337

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2008 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
6	3/26/08	Delays effective date of recycling tax from January 13 to April 1, 2008, and treats recycling tax revenue as an exclusion to be added to calculations of the adjusted local property tax level.	ENV	A-1910(3R)
32	6/30/08	Delays phase-out schedule of transitional energy facility assessment unit rate surcharges.	TEFA	A-2807
45	7/15/08	Allows certified public accountants licensed in other states to practice in this State under certain circumstances.	MIS	A-2466
46	7/17/08	Revises laws concerning the provision of affordable housing.	MIS	ACS for A-500
53	8/5/08	Requires the Department of Human Services to verify income of applicants for Medicaid and New Jersey FamilyCare with Department of the Treasury records.	GIT	S-1696
90	10/1/08	Provides a property tax exemption for certain renewable energy systems.	LPT	SCS for S-241/394/1098(SCS) and S-710
91	10/1/08	Prohibits the sale of certain flavored cigarettes in New Jersey.	CIG	S-613(1R)
98	10/31/08	Permits implementation of encrypted, counterfeit-resistant stamps for cigarettes sold in the State.	CIG	A-786(2R)
102	11/24/08	Extends carryover period of net operating loss under corporation business tax.	CBT	S-2130
112	12/9/08	Establishes the InvestNJ Business Grant Program, administered by the New Jersey Economic Development Authority, to stimulate certain capital investment and job creation in New Jersey during a limited period.	MIS	ACS for A-3294
118	12/17/08	Broadens small qualified business exception under the urban enterprise zone sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$3 million to less than \$10 million.	S&U	AS for A-2720(1R)
119	12/18/08	Increases income eligibility limits for the Property Tax Reimbursement Program.	PTRP	A-3460
120	12/19/08	Eliminates throwout provision of the apportionment formula for corporation business tax and removes "regular place of business" requirement for allocation of income.	CBT	A-2722(2R)
123	12/19/08	Revises Sales and Use Tax Act to conform with Streamlined Sales and Use Tax Agreement.	S&U	A-3111 (Corrected Copy)

2008 TAX LAWS *(continued)*

***Legend for 2008 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	MULT = Multiple Taxes
CMC = Cape May County Tourism Sales Tax	PPT = Petroleum Products Gross Receipts Tax
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PTRP = Property Tax Relief Programs
DSF = Domestic Security Fee	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
FUR = Fur Clothing Retail Gross Receipts Tax and Use Tax	TEFA = Transitional Energy & Facility Assessment
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premium Tax	TPT = Tobacco Products Tax