

New Jersey State Tax news

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Voluntary Disclosure Initiatives

The Division of Taxation is conducting two voluntary disclosure initiatives that will run from March 15 through May 15, 2014. The following taxpayers will be able to participate:

- Companies that have nexus with New Jersey because they derived income from the use of intangible assets in this State, and
- Partnerships with income from New Jersey sources and individual partners with New Jersey tax obligations.

Intangible Asset Nexus Initiative

Companies that own intangible assets and derived income from the use of those assets in New Jersey can voluntarily come forward and comply with their corporation business tax filing requirements. In addition to the standard procedures and requirements for [voluntary disclosure agreements](#) (VDAs) for business taxes, the following principles apply:

- The lookback period is limited to periods beginning after July 1, 2010, or the date business commenced, whichever is later. Returns for prior periods are not required.

- The taxpayer must file all required returns and remit payment of the full tax liability reported within 45 days of the execution of its VDA.
- The Division will waive all penalties.
- The taxpayer must remit payment of interest within 30 days of assessment.
- Operating companies or those companies that have paid royalties and added those royalties back to their New Jersey entire net income may submit amended returns for any period for which the statute of limitations remains open in order to claim an exception to the addback.
- All returns are subject to audit with respect to issues not specifically covered in the VDA.

Taxpayers can submit requests for disclosure to:

NICHOLAS J. SOLIMANDO, AUDITOR
OFFICE AUDIT BRANCH
PO Box 269
TRENTON, NEW JERSEY 08695-0269

For questions, contact Mr. Solimando at 609-633-7837 or Nicholas.Solimando@treas.state.nj.us. Taxpayers can also address questions to Lee Evans, Chief, Office Audit Branch, at 609-292-5927 or Lee.Evans@treas.state.nj.us.

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Partnership Tax and Partner Fees Initiative

Partnerships that had income from New Jersey sources and have not filed the relevant forms (PART-100, PART-200-T, NJ-1065) and/or remitted the tax and fees due can voluntarily come forward and comply with their corporation business tax and gross income tax requirements. Individual partners that have not satisfied their New Jersey filing and tax remittance requirements can also come forward and become compliant.

In addition to the standard procedures and requirements for voluntary disclosure agreements (VDAs) for [partnerships](#) and [individuals](#), the following terms apply:

- The lookback period is limited to periods beginning on or after January 1, 2010.
- The taxpayer must file all required returns and remit payment of all taxes and fees due within 45 days of the execution of its VDA.
- The Division will waive all penalties.
- The taxpayer must remit payment of interest within 30 days of assessment.
- All returns remain subject to audit with respect to issues not specifically covered under the terms of the VDA.

Taxpayers can submit requests to participate in this disclosure initiative to:

WILLIAM BITTNER, CHIEF
GROSS INCOME TAX BRANCH
PO Box 288
TRENTON, NEW JERSEY 08695-0288

For questions, contact Mr. Bittner at 609-984-8275 or Bill.Bittner@treas.state.nj.us. □

Prescription Drugs for Animals

Veterinarians commonly prescribe drugs which are formulated for human use but are also used to treat animals. The New Jersey Sales and Use Tax Act provides an exemption from tax on the sale of prescription drugs sold pursuant to a doctor's prescription for *human use* (N.J.S.A. 54:32B-8.1(a)(1)). However, the sale of drugs sold pursuant to a veterinarian's prescription to treat animals is subject to sales tax even though the same drug is exempt when sold for human use.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

- (1) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- (2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (3) Intended to affect the structure or any function of the body.

N.J.S.A. 54:32B-8.1(b).

Pharmacies are required to collect and remit sales tax when selling prescription drugs prescribed by a veterinarian for use in the treatment of animals.

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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, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. 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

Director: Michael J. Bryan

News Coordinators for This Issue:

<i>Audit</i>	Peggy Cook Paula Vause
<i>Compliance</i>	John Spera Marlene Brodowicz
<i>Criminal Investigation</i>	Rose Tuthill
<i>Conference and Appeals</i>	Patrick Ryan
<i>Legislation</i>	John Kelly
<i>Property Admin.</i>	Michael Vrancik
<i>Regulatory Services</i>	Maryanna Paolinie

Contributors: Dorothy Aicher, Marlene Barnhart, Audrey Boyd-Iovino, Kerry Czymek, Stephen DeLuca, Jennifer Garabrant, Jessica Lanna, William Makar, Lloyd Martin, Kyle Mullane, Patrick Ryan, and Ryan Villaroman.

Staff: Lauren D. Higgins, Monique M. Hughes, Terry A. McWilliams, and Sara E. Murphey.

Editor: Linda B. Hickey



drugs for animals - from page 2

Veterinarians are required to collect and remit sales tax on retail sales of drugs if the bill to the customer separately states the charge for the drugs to the customer as opposed to merely listing the items used in the performance of medical services.

Consumers who do not pay sales tax when purchasing prescription drugs prescribed by a veterinarian for use in the treatment of animals must pay use tax.

For more information on the sale of prescription drugs by veterinarians and pharmacies see publication [ANJ-12, Veterinarians & New Jersey Sales Tax](#), and Technical Bulletin [TB-63\(R\), Health Care Products: Drugs, Grooming and Hygiene Products, Prosthetic Devices, Durable Medical Equipment, and Mobility Enhancing Equipment](#). For information on how to remit and pay use tax see publication [ANJ-7, Use Tax in New Jersey](#). □

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2014 – December 31, 2014, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%
1/1/14	6.25%

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1–

- Deadline for filing appeals of assessed valuations in nonrevalued and nonreassessed municipalities to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$1,000,000 to State Tax Court.
- 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 State Tax Court.
- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.

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.

May 1–

- Residential properties identified by assessors and certified to County Tax Board.
- Deadline for filing assessment appeals to the County Tax Board or where assessed values exceed \$1,000,000 to the State Tax Court in taxing districts that have implemented a municipality-wide revaluation or reassessment.

1st Business Day in May–

- County Tax Board to organize and elect a president for one year, or until his successor is elected.

May 10–

- Form TL-45 filed with Property Administration by County Tax Administrator.

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 the clerk of each municipality in the county.

June 1–

- County Tax Administrator to furnish to Director, Division of Taxation, a list of current members, the appointment and expiration dates of their terms of office, and the status of their required courses.
- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.



assessors' calendar - from pg. 3

June 3–

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

NOTE: Complaints (appeals) from County Tax Board judgments must be filed with the Tax Court within 45 days of service.

The complete [2014 Work Calendar](#) is available on the Division's website.

Monmouth County Demonstration Program

P.L. 2013, c.15, established a Real Property Assessment Demonstration Program to make the assessment of real property more precise by using technology driven procedures and to benefit municipalities by performing annual assessment programs, thereby protecting funding of municipal budgets from the impact of losses due to appeal refunds. Monmouth County was the first county to adopt this program, which began October 1, 2013. The following dates on the assessors' calendar have been revised for municipalities in Monmouth County:

April 1–

- Tax appeals are heard for February, March, and April.

May 5–

- Assessor to file assessment lists and duplicates with County Tax Board.

May 10 (after)–

- County Tax Board may permit tax collector to have custody of tax duplicate.

May 15 (before)–

- County Tax Board to complete equalization table hearings.

May 15–

- Total tax amount to be raised for county purposes sent by County Board of Freeholders to County Tax Board, apportioned among the taxing districts.
- County Tax Board to notify Director, Division of Local Government Services, when copy of budget resolution (in CY municipality) showing amount to be raised is not received.
- County Tax Administrator to submit copy of equalization table to County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

May 25–

- Following confirmation of equalization table, County Tax Board to submit copy to each taxing district in the county; Director, Division of Taxation; Tax Court; and Director, Local Government Services (two copies).

May 31–

- General tax rates certified by County Tax Boards.
- County Tax Board to file final SR-3A forms with Property Administration.
- Tax rate set by County Tax Board.

June 15–

- County Tax Board Presidents to file annual appeal statistics report (Form TAS) with Director, Division of Taxation. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On November 13, 2013, Philip R. Kossoy of Freehold Township, New Jersey, pled guilty before State Superior Court Judge Anthony J. Mellaci Jr. to third-degree charges of theft by failure to make required disposition of property received and failure to pay taxes for his cleaning business, Absolutely Spotless Home Cleaning Professionals, Inc. Kossoy sought to conceal and disguise revenue from his business by taking cash payments from customers and depositing them into multiple personal bank accounts, rather than his business account. He also sought to disguise the source of these funds by having customers make checks payable to him personally and not to the business. In addition, the State's investigation revealed 192 instances of Kossoy altering customer checks by blacking out the memo section of the checks, which referenced the true business purpose of the check. To further conceal income, Kossoy deposited more than \$1 million in cash and checks into personal accounts created using another person's social security number. The case was investigated for the Office of Criminal Investigation (OCI) and the Department of Law and Public

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's website under "[Auctions.](#)" Select the name of the business for details about that auction.



criminal enforcement - from page 4

Safety's Division of Criminal Justice's Financial and Computer Crimes Bureau. The Division of Criminal Justice's Deputy Attorney General handled the State's criminal forfeiture action and the Division of Consumer Affairs provided valuable assistance. On January 9, 2014, Kossoy was sentenced to 364 days in county jail and two years' probation by Superior Court Judge Anthony J. Mellaci Jr. in Monmouth County Superior Court. Under a plea agreement, Kossoy paid the State \$1.1 million in restitution of \$900,000 in unpaid taxes, penalties, and interest plus a \$200,000 anti-money laundering penalty. He forfeited \$424,000 from bank accounts seized by the State and paid the remaining \$676,000 at the plea hearing.

- On November 14, 2013, Mahmoud Salim Alsoub of Eatontown, New Jersey, was arrested and charged with two counts each of distribution of a controlled dangerous substance (CDS) and of possession of a CDS with intent to distribute within 500 feet of a park. A three-month joint

investigation by the Monmouth County Prosecutor's Office, Monmouth County Sheriff's Office, OCI, and the Eatontown Police Department uncovered large quantities of synthetic marijuana being sold at Alsoub's Main Street convenience store. Alsoub kept the synthetic marijuana, known as K-2, out of the view of store patrons, but when asked for the substance by a "code word," he would retrieve the synthetic marijuana and sell it to the patron. Special agents and detectives seized a large amount of cash from the store, along with merchandise Alsoub illegally purchased out of State for resale in the store. Additionally, OCI charged him with 12 counts of failure to file a tax return, one count of failure to maintain books or records, and one count of failure to collect sales tax. Alsoub was processed at the Eatontown Police Department and transported to the Monmouth County Correctional Institution. He posted \$50,000 bail with no 10% option as set by Monmouth County Superior Court Judge Richard W. English.

- On November 20, 2013, William K. Herring of Vineland, New

Jersey, was indicted on charges of second-degree theft, fourth-degree falsifying or tampering with records, third-degree failure to pay or turn over taxes, and third-degree filing or preparing a false or fraudulent tax return. The indictment comes from a report submitted by OCI to the Cumberland County Prosecutor's Office alleging unreported income by Herring. It is alleged that he used his position at J & C Auto Sales, Inc. to steal in excess of \$375,000 in cash and cars from their inventory. The investigation was conducted jointly by OCI, Vineland Police Department, and the New Jersey Motor Vehicle Commission.

- On November 21, 2013, Keansburg residents Conrad Levulis and Carrie Ann Chapman were arrested by OCI special agents and charged with multiple counts of cigarette smuggling. Members of the Keansburg Police Department assisted the agents in executing a search warrant at their residence. Levulis was the subject of an investigation by OCI for allegedly trafficking in contraband cigarettes as well as sales of Virginia-stamped cigarettes from his home. He allegedly sold contraband cigarettes to a State undercover agent on two different occasions. Levulis and Chapman were arrested as they returned from Virginia where they had allegedly purchased cartons of cigarettes and transported them back to New Jersey for resale. Investigators alleged that the defendants carried out this smuggling pattern for several months. The Monmouth County Prosecutor's

Enforcement Summary Statistics

First Quarter 2014

Following is a summary of enforcement actions for the quarter ending March 31, 2014.

	Number	Amount
• Bank Levies	879	\$ 3,632,726
• Certificates of Debt	4,515	57,101,882
• Seizures	76	1,194,218
• Auctions	3	470,489
• Warrants of Satisfaction	2,976	

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criminal enforcement - from pg. 5

Office assisted OCI in the investigation, and the Monmouth County Sheriff's Office K-9 unit also assisted with the search warrant. A total of 70 cartons of Virginia-stamped cigarettes were seized along with cell phones, a laptop computer, and various records which allegedly recorded the illegal business activity. The defendants were processed at the Keansburg Police Headquarters, and both were charged with ten violations of the New Jersey Cigarette Tax Act, including third- and fourth-degree crimes. Additionally, under legislation that took effect on August 19, 2013, a civil penalty of \$1,000 per carton may be imposed by the courts. Levulis was remanded to the Monmouth County Correction Institution with bail set at \$42,500, no 10% cash option. Chapman posted \$5,000 bail.

- On December 12, 2013, the Union City Police Department and OCI arrested Ahmad Chacha. Drugs such as Cialis and Viagra were

seized from Chacha and an individual with him, Mervat Maher. Both were charged with distribution of a prescription legend drug, distribution of a controlled dangerous substance (CDS) 500 feet from public property, CDS near or on school property, and possession of a prescribed CDS in a container not dispensed in. Maher was also charged for possession of a CDS in a motor vehicle. Judge Macias set bail at \$10,000 cash with no 10%. Additionally, OCI had observed Chacha selling untaxed cigars to a business in Newark, and charged him with indictable offenses in Essex County Superior Court.

- On December 13, 2013, Acting Attorney General John Hoffman announced that Brian P. Mohen, formerly of Far Hills Borough, who ran a now-defunct insurance brokerage company, Arden Financial Services Inc., had been sentenced to State prison for his role in a scheme to misappropriate more than \$660,000 by failing to remit insurance premiums to insurance companies. He was

sentenced to five years in State prison by Superior Court Judge Julie M. Marino in Somerset County. The sentence was based on Mohen's guilty plea, filed on October 28, 2013, to second-degree misapplication of entrusted property and two counts of third-degree failure to file an income tax return. Mohen's wife, Lisa A. Stanko-Mohen, who also ran the company, previously pled guilty to one count of third-degree misapplication of entrusted property and two counts of third-degree failure to file an income tax return. She was sentenced to five years' probation. In addition, the defendants will execute consent judgments that will require them to pay a total of \$660,446 in restitution and \$116,451 in unpaid taxes, including interest and penalties.

- On December 13, 2013, Tariq Mehmood, of Atlantic City, was sentenced in Atlantic County Superior Court to 364 days in Atlantic County Correctional Facility and three years' probation. On November 4, 2013, Mehmood pled guilty to seven of the 16 charges related to counterfeit cigarettes and distribution of a counterfeit legend drug he was indicted under in Superior Court. The Honorable Judge Mark Sandson ordered Mehmood to pay restitution to the State of New Jersey as well as the Rite Aid and CVS pharmacies. He was also ordered to pay \$9,607.31 in taxes he owed to New Jersey. This investigation was led by an OCI special agent and a detective of the Atlantic City Police Department Special Investigations Section. The

Save The Date

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Atlantic County Prosecutor's Office handled the prosecution.

- On January 10, 2014, Anthony Foti, Jr., owner of Wheels Are Us Auto Sales, was sentenced to two years' probation and ordered to pay restitution of \$500 monthly to the Division of Taxation under a consent judgment for \$60,610.12 that includes \$37,211.03 for sales tax, \$1,760.55 for interest, and \$21,638.54 for penalty. Foti operated the business from February 1, 2006 to March 28, 2008, selling used vehicles. Foti collected sales tax but never filed sales and use tax returns or remitted sales tax to New Jersey.
- On January 16, 2014, OCI performed a sweep in Roselle Park with the assistance of the Roselle Park Police Department. OCI inspected 14 stores and seized a combined total of 2,051 cigars and 52 containers of hookah tobacco. OCI will file disorderly person's offenses for the seized tobacco. Additionally, Roselle Park Police seized 228 prescription legend drugs and 2,500 items of related paraphernalia.
- On January 30, 2014, OCI special agents arrested Ankurkuma G. Rana, and Bharatkum L. Shah, for possession of 34.8 cartons of counterfeit-stamped cigarettes at their store in Passaic. Also seized was a 2002 Honda Accord and \$118,536 in U.S. currency. Rana was charged with third-degree possession of 2,000 or more cigarettes with counterfeit New Jersey stamps, fourth-degree dealing with a person not properly licensed or registered, third-degree failure to maintain books or records as

required, fourth-degree transportation of contraband cigarettes, and a disorderly persons offense for possession of untaxed goods. Shah was charged with third-degree possession of 2,000 or more cigarettes with counterfeit New Jersey stamps, fourth-degree dealing with a person not properly licensed or registered, and third-degree failure to maintain books or records. Both were processed at the Passaic Police Department and their bail was set at \$15,000 with 10% by Judge Karen Brown. Rana and Shah were released after meeting their bail requirement. Additional charges are pending further investigation.

- On January 31, 2014, Daryl Turner was sentenced to seven years in State prison and his wife, Robyn Bernstein, was sentenced to five years' probation for their roles in a scam operated by their vacation travel club companies. Turner and Bernstein are required to pay approximately \$2.6 million in restitution to their victims. They were previously indicted

by a State Grand Jury on April 23, 2013. Turner's indictment was for the failure to file New Jersey gross income tax returns for tax years 2008–2011. Bernstein's indictment was for the failure to file a 2011 New Jersey gross income tax return. As part of Turner's plea agreement, he was required to file his returns by the sentencing date of January 31, 2014. He had a total tax liability of \$43,844 plus penalties and interest. Per the plea agreement, the failure to file an income tax return charge against Bernstein was dismissed at sentencing. □

Tax Briefs

Gross Income Tax

Overtime Pay — A taxpayer asked how the Division of Taxation treats overtime payments for gross income tax purposes. The Division responded that overtime payments are treated in a manner similar to other supplemental wages (bonuses, commissions, tips, awards, etc.).

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When an employer pays supplemental wages at the same time as regular wages, the income tax withheld should be determined as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year. However, if income tax has been withheld from the employee's regular wages, the employer may withhold from the supplemental wages without any allowance for exemptions. If vacation pay is paid in addition to regular wages for the vacation period, such vacation pay is to be treated as a supplemental wage payment.

Litter Control Fee

Gross Receipts From Sales of Cigarettes — A business that distributes cigarettes asked the Division whether, for purposes of calculating the litter control fee, its gross receipts from sales of cigarettes should include the amount that the business pays for its cigarette stamps. When the distributor sells the cigarettes, the amount charged to the buyer includes the seller's cost

of the cigarette stamps paid for the cigarette tax.

The Litter Control Act imposes a fee on gross receipts from the sales of litter-generating products, which include cigarettes and tobacco products. N.J.S.A. 13:1E-216. The litter control fee regulation at N.J.A.C. 18:38-1.3 defines gross receipts as "all receipts, of whatever kind and in whatever form, derived from sales of litter-generating products, without any deduction therefrom on account of any item of cost, expense or loss." Based on this definition, the distributor may not deduct from gross receipts the amount paid for the cigarette tax stamps.

Because the distributor indicated that 50% of its sales were wholesale sales (sales made for the purpose of resale), the Division treats the distributor as a wholesaler for the purposes of the litter control fee. N.J.S.A. 13:1E-216(a) provides that a sale by a wholesaler or distributor to another wholesaler or distributor is not subject to the litter control fee. Therefore, when calculating the litter control fee, the distributor should deduct any receipts from sales to other "wholesalers."

Sales and Use Tax

Charges for Admission to a Museum Owned by an Exempt Organization — A nonprofit museum which has a valid Form ST-5 (exempt

organization certificate) inquired whether charges for admission to its museum are exempt from sales tax.

N.J.S.A. 54:32B-9(f)(1) generally exempts admission charges if all the admission proceeds exclusively benefit an exempt organization that has a valid Form ST-5. The exemption does not apply to admission charges for carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation, and certain athletic competitions. Accordingly, when a qualified exempt organization charges for admission to its museum and retains the receipts for its own use, the admission charges are exempt from sales tax. □

In Our Courts

Gross Income Tax

Time to File for Refund – *Edward Alon v. Director, Division of Taxation*, decided August 6, 2013; Tax Court, Docket No. 007087-2011.

Plaintiff (Alon) filed his 2002 NJ-1040 on August 6, 2004, claiming a credit of \$7,644 to be applied to future tax liabilities. Alon filed his 2003 tax return (due in 2004) in May 2009, his 2004 and 2005 tax returns (due in 2005 and 2006, respectively) in March 2010, his 2006 and 2007 tax returns (due in 2007 and 2008, respectively) in April 2010, and his 2008 tax return (due in 2009) in May 2010. He requested refunds totaling \$13,595, resulting from estimated tax payments made during those years and the credit claimed on his 2002 return. Although the plaintiff claimed that the returns were all filed late due to personal hardships, he never requested an extension of time to file.

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The Tax Court held that, under the provisions of N.J.S.A. 54A:9-8(a), Alon had three years from the filing of a timely tax return to file for a refund. Plaintiff failed to timely file his returns and, consequently, failed to make timely refund requests. Alon's failure to file for a refund before the deadline prevented him from recovering a refund. The Court held further that, even if a refund claim is filed within the three-year period, the amount of refund or credit cannot exceed the portion of tax paid within the three years immediately preceding the filing of the claim, plus any extension of time for filing the return. Because the plaintiff did not make any payments in the three years immediately preceding the filing of the respective year's return, he is not entitled to any refund.

Credit for Taxes Paid to Other Jurisdictions – *David E. and Janice Berliner v. Director, Division of Taxation*, decided November 14, 2013; Tax Court, Docket No. 000057-2008.

For tax years 2004 and 2005, David Berliner was a New Jersey resident and a partner in a New York City partnership. Along with filing a New Jersey resident income tax return in both years, the plaintiff filed multiple out-of-State returns to report partnership income. In 2004 he received an NJK-1 that reported a total distribution of \$330,798, \$6,994 of which was attributable to New Jersey. Plaintiff correctly reported the full \$330,798 as the distributive share of partnership income on his 2004 NJ-1040. In tax year 2005 he reported \$507,769 on his NJ-1040, \$10,897 of which was sourced to New Jersey.

Pursuant to N.J.S.A. 54A:4-1, a resident taxpayer is entitled to a credit

against their New Jersey tax for the amount of any income tax or wage tax imposed by another jurisdiction with respect to income which is also subject to tax under the Act, except as provided by subsections (c) and (d) of this section. The credit is not a dollar for dollar credit and must be determined in accordance with the Director's regulations.

For both 2004 and 2005, the plaintiff calculated a credit for taxes paid to other jurisdictions. He included the full partnership distribution amount in the numerator of the credit calculation. By including the New Jersey portion of the partnership income in the numerator, the calculated credit exceeded the limitations imposed by the statute. The Division reduced the numerator by the amount of income attributable to New Jersey sources. Plaintiff maintains that because the partnership was located in New York and the entire distribution was taxed there, he is entitled to a credit for the entire amount of the distribution.

In granting the Division's motion for summary judgment, the Court cited *Jenkins v. Director, Division of Taxation*, 4 N.J. Tax 127, 133 (Tax 1982), which explained that "the objective of N.J.S.A. 54A:4-1 is to avoid double taxation of the same income by providing a credit against New Jersey gross income tax for tax paid to another jurisdiction on the same income." It goes on to state that "the intent of the act is to avoid double taxation of foreign income by relinquishing all or part of the New Jersey tax on the foreign income, but not to relinquish New Jersey tax on income earned in New Jersey."

Sales Tax

Remote Controls and Converters – *Comcast of South Jersey, Inc., et al. v. Director, Division of Taxation*,

decided February 20, 2013; Tax Court, Docket Nos. 001153-2004, 001157-2004, 001160-2004, 001163-2004, 001165-2004, 001168-2004, 001170-2004, 001171-2004, 001173-2004, 001175-2004, 001177-2004, 001178-2004, 001179-2004, 001180-2004.

Plaintiff provides cable television services in New Jersey. At issue is whether purchases of converters and remotes are exempt from use tax under N.J.S.A. 54:32B-8.13(e) of the Sales and Use Tax Act as sales of machinery, apparatus, or equipment to a provider of cable program services for use in the transmission of television information. If either or both are found to be taxable, is the plaintiff subject to late payment and amnesty penalties? Plaintiff requests that the Division pay litigation costs and fees pursuant to N.J.S.A. 54:51A-22.

Converters are used to transmit and convert signals that are sent through coax cable from the cable company to customers' televisions. Via lease agreements, the plaintiff supplies converters to its customers to be connected at the customers' locations in order to convert the signal for viewing. The customers use the remotes to interact with the converters.

In *RCN Telecom Services, Inc. v. Dir., Div. of Taxation*, 23 N.J. Tax 520 (Tax 2007), also known as *RCN II*, the Court ruled that converters were used directly and primarily in the transmission of cable television signals and were therefore exempt. Here, the Division argued that there is additional evidence, not available at the time of the *RCN II* case, that the primary function of the converters was security and not

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transmission, making the purchases taxable. Even though the plaintiff's own documents identified converters as signal security devices, the Court determined that the converter's primary purpose was transmission and ruled that the purchase of converters was exempt.

Remotes send infrared signals to the converter to tune, convert, and transmit the signal for a specific channel. They also were used to access parental controls and the television guide, as well as order video on demand. The Court held that the remotes were not exempt under N.J.S.A. 54:32B-8.13(e) because they communicated by infrared signal and were therefore not part of the transmission process.

Plaintiff claimed that it should not be subject to late payment penalties because it had reasonable cause to believe that the remotes were exempt under the plain meaning of N.J.S.A. 54:32B-8.13(e) as well as previous court cases (*RCN I* and *RCN II*). The Court opined that the plaintiff should have known from its own documents and witnesses that there was no transmission involved in the remotes and that they were not even referenced as part of its cable system. Therefore, the Court upheld the late payment penalty stating that "Comcast's misunderstanding or misjudgment is not good cause for its failure to pay taxes" on the remotes.

As to the issue of whether amnesty penalties were properly assessed, it was agreed by both parties that the Court reserves its decision until the Appellate Division issues a decision on amnesty penalties in the case of *United Parcel Service*.

N.J.S.A. 54:51A-22 allows for a prevailing taxpayer to be awarded reasonable litigation costs not to exceed \$15,000. The statute defines "prevailing taxpayer" to be one who establishes that the position of the State was without reasonable basis in fact or law. In denying the plaintiff's request, the Court held that the Division was not unreasonable because it was sufficient that the Court determined that remote controls are taxable and not exempt. Furthermore, the Division provided additional evidence as to the transmission function of converters that was not in the RCN cases.

Marine Terminal Facility – *Ironbound Intermodal Industries, Inc. v. Director, Division of Taxation*, decided July 19, 2013; Tax Court, Docket No. 012089-2008.

Plaintiff is a New Jersey corporation located in Newark that provides storage, maintenance, and repair services to the shipping industry at Port Newark with respect to intermodal containers and chassis. When provided at a marine terminal facility, charges for such services are exempt from sales and use tax. The Division of Taxation determined that the plaintiff does not meet the definition of a "marine terminal facility" and issued assessments of sales tax on the plaintiff's storage services and chassis repair services.

The legislation that authorized the marine terminal exemption did not include a definition of marine terminal facility. The Division maintained that because plaintiff's facilities were not located at Port Newark, did not contain piers or wharves, and were not capable of loading and unloading containers on and off vessels (i.e., stevedoring), they were

not a marine terminal facility and not eligible for the exemption. The Court determined that plaintiff is a marine terminal facility as intended by the Legislature because it does all the same things as businesses located within Port Newark and its employees belong to the same union as workers located at the marine terminals. The Court concluded that the definition of marine terminal facility is general and broad in nature and not limited to Port Authority jurisdiction or location. Plaintiff's storage and chassis repair services for customers of the Port of Newark are entitled to the exemption provided in N.J.S.A. 54:32B-8.12.

The Tax Court granted the plaintiff's motion for summary judgment and denied the Director's cross-motion, which resulted in a reversal of the Director's sales tax assessment. The Court further determined that since the plaintiff is a marine terminal facility, there was no need to analyze the parties' alternative arguments regarding the chassis repair services.

On October 31, 2013, the Court denied the Director's motion for reconsideration but clarified the earlier decision by stating that the chassis repair services are exempt under N.J.S.A. 54:32B-8.12 as "other services rendered with respect to such loading, unloading and handling of cargo at a marine terminal facility."

Unstamped Cigarette Purchases – *Kimberly Steele v. Director, Division of Taxation*, decided October 16, 2013; Tax Court, Docket No. 019582-2012.

In accordance with the requirements of the Federal Jenkins Act (15 U.S.C. §375), the Division of Taxation received information from Smoker's

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Den (an out-of-State mail-order cigarette vendor) that the plaintiff (Steele) purchased 134 cartons of unstamped cigarettes between June 2006 and June 2009. The Jenkins Act requires any person or entity shipping cigarettes in interstate commerce to file a monthly report with the tax administrator of that state. The report must contain the name of each purchaser, the shipment date, shipping address, and the brand and quantity of cigarettes purchased.

On October 31, 2011, the Division of Taxation sent the plaintiff a letter advising that she was liable for excise tax and sales tax totaling \$3,646.73 for the purchase of 134 cartons of unstamped cigarettes. Plaintiff did not respond. On July 3, 2012, the Division issued a notice of assessment which included penalties and interest. After an administrative hearing held at the plaintiff's request, the Division issued a final determination upholding the assessment. Taxpayer appealed to Tax Court. Taxpayer did not deny purchasing cigarettes from Smoker's Den but stated that she only purchased 116 cartons, not 134 cartons, but she had no documentation or evidence to show the purchases she made. The Division moved for summary judgment.

Under the provisions of the Cigarette Tax Act, taxpayers can purchase stamped or unstamped cigarettes. Taxpayers who purchase stamped cigarettes are not required to pay tax because the stamps indicate that taxes have already been paid, but taxpayers who purchase unstamped cigarettes for consumption, use, or storage in New Jersey must obtain a

license, report their purchases, and pay the tax. Plaintiff failed to do so and the Division estimated and assessed the tax due based on the information it had. Plaintiff argued that it was unfair for her to be held responsible for a tax of which she claims she was unaware.

In granting the Division's motion for summary judgment, the Court held that the plaintiff's lack of awareness did not relieve her of her liability to pay the taxes due. In addition, the Court held that the burden was on the plaintiff to provide evidence showing that the Division's assessment was based on untrue or inaccurate data, and she did not meet that burden. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2013 (January 1, 2013 – December 31, 2013) and tax year 2014 (January 1, 2014 – December 31, 2014) 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.

[2013](#) [2014](#)

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

[2013](#) [2014](#)

- **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.

[2013](#) [2014](#) □



*important
phone
numbers*

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
..... 609-826-4400
Homestead Benefit Hotline
for Homeowners..... 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 609-341-4800
Alcoholic Bev. Tax 609-633-7068
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director's Office 609-292-6400
Inheritance Tax 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-633-8878
Public Utility Tax..... 609-633-2634

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2013 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
13	1/29/13	Establishes the 2014 NJ Special Olympics Home Team Fund and provides for voluntary contributions by taxpayers on gross income tax returns for tax years 2012 and 2013.	GIT	S-1855
14	1/31/13	Provides a New Jersey Angel Investor Tax Credit for use against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.	CBT/GIT	S-581(1R)
15	1/25/13	Establishes a real property assessment county demonstration program.	LPT	S-1213
20	1/25/13	Authorizes the use of fraud prevention contractors by the Division of Taxation.	MIS	A-3027
43	4/15/13	Revises certain provisions of the Farmland Assessment Act of 1964.	LPT	SCS(4R) for S-589
55	5/9/13	Clarifies trustee's discretionary authority concerning income tax liability.	MIS	S-765
60	6/6/13	Requires a review of corporation business tax and gross income tax credit programs for payments to interns as it pertains to increasing long-term employment for future college graduates.	CBT/GIT	A-1271(1R) Corrected Copy
61	6/6/13	Expands the Neighborhood Revitalization State Tax Credit.	CBT/GIT	A-3206(1R)
73	6/27/13	Clarifies that charitable contributions are not a factor in determining a person's domicile for New Jersey gross income tax purposes.	GIT	S-2532
84	7/17/13	Revises the permitted amount of the surcharge on admission charges at certain major places of amusement.	ADS	A-3848
92	8/7/13	Creates a craft distillery license.	ABT	SCS(2R) for S-2286 and S-463
98	8/7/13	Prohibits imposition of corporation business tax on certain foreign corporations carrying passengers into and out of State in motor vehicle or motorbus.	CBT	A-1887(1R)
145	8/19/13	Increases penalties for unstamped and counterfeit cigarettes and cigarette smuggling, and establishes the transfers of counterfeit cigarettes as a crime.	CIG	S-2516(2R)
161	9/18/13	Establishes the New Jersey Economic Opportunity Act of 2013 which merges five current incentive programs into the Grow New Jersey Assistance Program (GROW NJ) and the Economic Redevelopment and Growth Grant program (ERGG).	MIS	ACS(4R) for A-3680

2013 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
166	10/16/13	Creates the Common Sense Shared Services Pilot Act.	MIS	SCS(2R) for S-533
171	12/27/13	Increases the compensation for wrongful imprisonment and excludes it from New Jersey gross income tax.	GIT	S-1219(2R)
193	1/17/14	Exempts cosmetic makeup services provided in conjunction with reconstructive breast surgery from sales tax.	S&U	S-374(1R)
259	1/17/14	Amends the Administrative Procedure Act to require State agencies to use various electronic technologies in rule-making procedures.	MIS	A-3321(1R)
261	1/17/14	Exempts certain properties acquired by municipalities from county, school, and fire district taxes.	LPT	A-3362(2R)

*Legend for 2013 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ADS = Admissions Surcharge	LPT = Local Property Tax
ALL = All Taxes Administered by the Division	MFT = Motor Fuel Tax
CAS = Casino Taxes and Fees	MIS = Miscellaneous
CBT = Corporation Business Tax	MULT = Multiple Taxes
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
DSF = Domestic Security Fee	RTF = Realty Transfer Fee
ENV = Environmental Taxes	S&U = Sales and Use Tax
ERF = 9-1-1 System & Emergency Response Fee	SCC = Spill Compensation & Control Tax
FBT = Financial Business 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