

New Jersey State Tax News

Spring 1998

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New Property Tax Reimbursement

Gov. Christie Whitman strengthened her commitment to helping control local property taxes when she enacted a property tax freeze for approximately 300,000 New Jersey residents. The new law (P.L. 1997, c.348, approved January 14, 1998) freezes property taxes at their 1997 level for eligible seniors and citizens with disabilities.

"Throughout this administration, I have been committed to easing the property tax burden on the taxpayers of this State. And we must continue working to ease that burden," said Gov. Whitman. "We have taken the next step by providing real property tax relief to a group of New Jerseyans who need it very much – our State's low income seniors and citizens with disabilities.

"Together, along with the legislative sponsors of this bill, we are helping to preserve the independence of New Jersey seniors and ensuring that seniors on a fixed income will be able to make ends meet."

The legislation signed by Gov. Whitman freezes property taxes at 1997 levels for those who meet the following criteria:

- Age 65 or older or receiving Federal Social Security disability benefits;
- Owner of a homestead or lessee of a site in a mobile home park

on which a manufactured or mobile home owned by the lessee is placed;

- Have lived in New Jersey and paid property taxes either directly or through rent for at least ten consecutive years;
- Have owned and lived in their home for at least three years; and
- Have annual income less than \$17,918, if single, or combined income of \$21,970, if married.

In order to receive benefits, eligible seniors and citizens with disabilities will have to apply by filling out forms provided by the Division of Taxation.

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important phone numbers

Tax Hotline	609-588-2200
Automated Tax Info	800-323-4400
	609-588-2525
Speaker Programs	609-984-4101
NJ TaxFax	609-588-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds	609-292-7018
Public Utility Tax	609-633-2576

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

property tax - from page 1

A reimbursement will be paid annually to every eligible claimant, thereby freezing their property taxes at the 1997 level. The amount of this Homestead Property Tax Reimbursement will be the difference between the amount of property taxes that were due and paid by the claimant in 1997 (or the year in which the claimant becomes eligible) and the amount of property taxes due and paid in subsequent years.

The Division of Taxation has established a hotline to assist taxpayers by answering questions related to this new legislation. Representatives will be available at 1-800-882-6597 from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Look for more information on the Homestead Property Tax Reimbursement in future issues of the *State Tax News* and on the Division's Home Page. □

TeleFile a Success

The 1997 TeleFile season is just about ready to end another successful filing season. Early statistics indicate that nearly 30% more New Jersey residents took advantage of NJ TeleFile this year over last year. The Division is encouraging taxpayers to continue to TeleFile their returns through the end of the tax season. Whether you file early or right before the deadline, refunds are mailed within two

weeks.

Purchasing additional computer equipment and increasing the gross income threshold opened up the TeleFile system to a great many more New Jersey residents than in prior years. For tax year 1997, over 1.3 million taxpayers were eligible to TeleFile. Many of those who TeleFiled this year are previous TeleFilers who were eager to receive their refund quickly again this year. TeleFile is fast, easy and convenient.

For those last minute tax filers — TeleFile will be available until midnight, April 15. You may file at any time, day or night and have your refund mailed within two weeks.

Tax preparers — just a reminder — you can TeleFile for your clients. You are eligible to TeleFile a New Jersey income tax return for your client provided that you have a Power of Attorney Form for your client in your file. For more information on how to TeleFile for a client, refer to the Winter 1997 issue of the *New Jersey State Tax News*.

The 1997 TeleFile season will continue through midnight Wednesday, April 15, 1998. To reach NJ TeleFile call 1-888-235-FILE (toll-free from Touch-tone phones within New Jersey only) or 609-588-FILE (from Touch-tone phones anywhere). □

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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
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NEW STATE TAX LEGISLATION

A significant quantity of tax legislation was enacted in December 1997 and January 1998. A synopsis of these new laws has been included both in the legislative summary located in the center pullout section of this issue and in our regular *In Our Legislature* feature beginning on page 24. A more extensive summary of the legislation is available on the Division's Home Page at: <http://www.state.nj.us/treasury/taxation/>

CORPORATION TAX

NJ QSSS Estimated Payments

A subchapter S corporation that elects to be treated as a Qualified Subchapter S Subsidiary for New Jersey tax purposes and has previously filed the necessary election form (CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent company for the year in which the New Jersey QSSS election was made.

The subsidiary (QSSS) should submit a written request, signed by an officer of the corporation, to the address set forth below together with a completed copy of Federal Form 966 and a copy of the New Jersey S corporation election form (CBT-2553).

NEW JERSEY DIVISION OF TAXATION
OFFICE AUDIT BRANCH
PO BOX 269
TRENTON NJ 08646-0269

The Division will transfer all of the QSSS's estimated payments except for \$300.00 which will be used to satisfy the QSSS's current year minimum tax and the 50% estimated tax payment for the subsequent year. □

GROSS INCOME TAX

Roth IRAs

Editor's Note: At the time this newsletter went to print, the State Assembly was considering legislation that would conform New Jersey's tax treatment of Roth IRAs to the Federal treatment.

One of the provisions in the Taxpayer Relief Act of 1997 was the creation of the Roth IRA. Contributions to a Roth IRA are not excludable for Federal or New Jersey income tax purposes.

Distributions or withdrawals of income from a Roth IRA may be tax exempt for Federal income tax purposes, but are *taxable* for New Jersey gross income tax purposes in the year received.

Where periodic payments are made from a Roth IRA account, the income earned and accumulated by the Roth IRA is subject to New Jersey gross income tax on the ratio that the income bears to the total amount in the account.

For example:

Principal amount	
in the account —	\$15,000
Income earned —	3,000
Total —	\$18,000

Assume that periodic payments totaling \$2,000 from the Roth IRA account were received by the individual in his tax year.

The income earned was .167 (\$3,000 : \$18,000) of the account. The taxable income for New Jersey gross income tax purposes is therefore .167 of the \$2,000 amount withdrawn, or \$334.00. The \$334.00 is reported as pension/annuity on the NJ-1040 form.

The principal amount, or contribution(s) to the Roth IRA, was already taxed when originally earned or received and is not taxable when withdrawn from the account.

There is a Federal requirement to keep the income in the Roth IRA for five years to obtain Federal tax exempt status. Since individuals may experience different taxation treatments of Roth IRA withdrawals by New Jersey and the IRS, taxpayers are reminded to keep detailed records of contributions, income and withdrawals.

Under Federal tax law, during tax year 1998 only, taxpayers may convert an existing IRA to a roll-

over Roth IRA, spreading the fund balance over a four year period as gross income on the Federal return.

New Jersey has adopted the same four-year rule as under Federal law for reporting income on the conversion with payment of New Jersey gross income tax on the amount not previously taxed. New Jersey gross income tax had been paid on contributions to the existing IRA when the contributions were made; therefore, only the earnings are taxed for New Jersey purposes. Taxpayers *must* report the income to New Jersey over the four year period if they have made the Federal election.

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Interest 11.50% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1998 is 11.50%.

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

Effective Date	Interest Rate
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%
4/1/97	11.25%
7/1/97	11.25%
10/1/97	11.25%
1/1/98	11.50%

roth iras - from page 3

By way of example, Mr. Jones contributed \$20,000 to an IRA which, at the date of conversion in 1998, had a total value of \$80,000. Mr. Jones elects the special Federal rule which allows him to spread the \$80,000 over a four year period, paying tax on \$20,000 a year.

For New Jersey gross income tax purposes, Mr. Jones would spread \$60,000 of earnings over a four year period, reporting \$15,000 a year on the pension/annuity line on the NJ-1040 return. The earnings were calculated by reducing the \$80,000 IRA value by the \$20,000 contributions, which had been previously taxed by New Jersey. □

GROSS INCOME TAX ***Deductible Business Expenses***

Recently a tax practitioner asked what criteria govern when an expenditure by a sole proprietorship or a partnership qualifies as a deductible business expense under the Gross Income Tax Act.

The item of cost or expense must meet the definition of "ordinary" and be incurred in the "ordinary course of business" to qualify as a deduction in the determination of "net profits from business" under N.J.S.A 54A:5-1(b). An expense is not deductible merely because it was incurred by the business.

For an expense to meet this "ordinary" standard and qualify as a deduction, the expense must meet all of the following criteria. The business expense must be:

1. Undertaken primarily and directly in the pursuit of business income;
2. A common and accepted practice in the taxpayer's field of business;
3. Required or appropriate to the intended business purpose; and
4. In an amount that is reasonable in relation to the intended business purpose.

Expenditures that are in violation of the Gross Income Tax Act or public policy will be disallowed. No deduction is permitted for taxes based on income or for fines and penalties.

Taxpayers are reminded that they bear the burden to prove that expenditures incurred by the business and claimed as deductions in the determination of their "net profits from business" meet the criteria above. □

SALES AND USE TAX ***Cell Phones for Promotions***

The Division has changed its opinion regarding sales and use tax responsibilities of cellular carriers and their sales agents with regard to the transfer of cellular tele-

phones in connection with the sale of cellular airtime service. Upon consideration of the relevant statutory provisions and industry practices, the Division agrees with the following tax treatment:

1. A cellular communication carrier's sales tax liability is limited to the amount charged the customer when the cellular carrier itself sells a cellular phone at any amount below cost to a retail customer in conjunction with the sale of an airtime contract subject to tax under N.J.S.A. 54:32B-3(f).
2. A cellular communication carrier is not subject to use tax when the carrier gives a cellular phone at no cost to a retail customer in conjunction with the customer's purchase of an airtime contract subject to tax under N.J.S.A 54:32B-3(f).
3. The sales tax liability of a communication carrier's agent is limited to the amount charged the customer when the agent provides a cellular phone at a price below the agent's cost to a customer who is also purchasing a cellular airtime contract subject to tax under N.J.S.A. 54:32B-3(f).

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NJ TeleFile AD # The fastest way to file

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1997 income tax return/ homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-588-FILE (from anywhere).

- # Full year New Jersey resident during 1997
- # Not 65 years of age or older as of December 31, 1997
- # Same filing status as on your 1996 NJ return

- # Not blind or disabled as of December 31, 1997#
- # Total New Jersey income of \$150,000 or less#
- # Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

cell phones - from page 4

- The cellular communication carrier's agents are not subject to sales and use tax when the agent provides a cellular phone at a price below the agent's cost and at no cost to a customer who is also purchasing a cellular airtime contract subject to tax under N.J.S.A. 54:32B-3(f).

This position supersedes that expressed in the article on this topic in the Winter 1995 issue of the *New Jersey State Tax News* (Vol. 24, No. 4). □

SALES AND USE TAX ***Internet Services***

The Division responded as follows to an Internet Service Provider's (ISP) inquiry about the taxability of the services it provides:

- Charges billed to a customer for Internet access, on either a lump-sum monthly basis (e.g., \$199.99/month for unlimited access) or on an hourly basis (e.g., \$3.75/hour) are treated as charges for the sale or use of information and are not subject to sales tax.
- If the Internet Service Provider is charging the customer for transmission-related services, such as dedicated phone numbers and telephone connect time, such charges are taxable telecommunications services for New Jersey services addresses (customers).
- Web Site Design – advertising services are subject to tax in New Jersey, except for use in newspapers and magazines

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TOBACCO TAXES ***Rate Increases***

Recent legislation (P.L. 1997, c.264, signed into law on December 19, 1997) increased the rate of both the Cigarette Tax and Tobacco Products Wholesale Sales and Use Tax as follows:

Cigarette Tax

The Cigarette Tax Act has been amended to provide for the imposition of a \$0.04 tax for each cigarette effective January 1, 1998.

Change in the Cost of Cigarette Stamps

Effective January 1, 1998 the cost of New Jersey Cigarette Tax Stamps will be as follows:

<u>Size of Pack</u>	<u>Stamp Cost</u>
10 Cigarettes	\$0.40
20 Cigarettes	0.80
25 Cigarettes	1.00

Change in the Cigarette Stamp Discount

Effective January 1, 1998, the discount to distributors for purchases of 1,000 or more New Jersey stamps will be as follows: (Stamps will only be sold in blocks of 100 or more; no discounts will be allowed on a purchase of fewer than 1,000 stamps.)

<u>Size of Pack</u>	<u>Cost of 1,000 Stamps</u>	<u>Discount per 1,000 Stamps</u>	<u>Net Cost per 1,000 Stamps</u>
10 Cigarettes	\$ 400.00	\$2.43	\$397.57
20 Cigarettes	800.00	4.50	795.50
25 Cigarettes	1,000.00	4.50	995.50

In no case will a discount be allowed on any sale of less than 1,000 stamps. Stamps will not be sold in blocks of less than 100 stamps.

Licensed distributors that have a bond or an irrevocable letter of credit issued by a state or a Federally chartered bank for the credit purchase of stamps should review the amount of the bond or letter to insure that they will be able to purchase the quantity of cigarette stamps necessary for their operation at the higher rate.

Cigarette licensees must file a return reporting inventory in their possession in New Jersey at 12:01 A.M. on January 1, 1998. The return was required to be filed on or before March 1, 1998 along with any additional tax due.

Tobacco Products Tax

The Tobacco Products Wholesale Sales and Use Tax Act was amended to provide for the imposition of a tax at the rate of 48% on the receipts from every sale of tobacco products other than cigarettes, by a distributor or wholesaler to a retail dealer or consumer. □

internet services - from pg. 5

N.J.S.A. 54:32B-3(b)(5); charges for creating and designing a web site for advertising or promotional purposes are subject to tax, just as designing a brochure or other form of advertising would be.

4. Web Site Storage – charges for housing a web page are exempt from tax as a charge for advertising space.
5. Consulting Services – separately stated consulting services are generally exempt from tax as professional services under N.J.S.A. 54:32B-2(e)(4)(A).
6. Domain Name Registration – exempt from sales tax.

CORPORATION BUSINESS TAX **CBT-100S-P** **Printing Error**

The 1997 New Jersey S Corporation Business Tax Forms booklet, CBT-100S-P, contains a printing error on pages 6 and 7 of the instructions. Corrected instruction pages were mailed to taxpayers and practitioners on the Division's mailing list. Instructions in the *1997 Package NJX* and in approved software packages *do not* contain the error.

The CBT-100S, with complete and correct instructions, can be downloaded from the Division's Home Page at:

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

Litter Control Tax

The litter control tax is imposed on each person engaged in business in

this State as a distributor, manufacturer, wholesaler or retailer. Retail sales and/or wholesale sales of litter-generating products sold within or into New Jersey are subject to the tax.

Litter-generating products are the fifteen categories of products listed below which meet any of the following conditions:

- (a) Products produced, distributed or purchased in disposable containers, packages or wrappings; or
- (b) Products not usually sold in packages, containers or wrappings but are commonly discarded in public places; or
- (c) Products of an unsightly or unsanitary nature commonly thrown, dropped, discarded, placed or deposited by a person on public property, or on private property not owned by him.

It is presumed that all products in the following categories listed satisfy at least one of the above conditions and qualify as a litter-generating product.

1. Groceries
2. Nondrug drugstore sundry products
3. Food for human or pet consumption
4. Soft drinks and carbonated waters
5. Beer and other malt beverages
6. Wine
7. Distilled spirits
8. Cigarettes and tobacco products

9. Cleaning agents and toiletries
10. Paper products and household paper
11. Newsprint and magazine paper stock
12. Motor vehicle tires
13. Glass containers sold as such
14. Metal containers sold as such
15. Plastic or fiber containers made of synthetic materials and sold as such (not including any container which is routinely reused, has a useful life or more than one year and is ordinarily sold empty at retail).

One major area of noncompliance found during recent audits concerns manufacturers not filing returns or overstating deductions under the presumption that their sales qualify for the wholesaler to wholesaler deduction under N.J.A.C. 18:38-5.2. Manufacturers, as defined in the Act, do not qualify for this deduction. Only wholesalers (who do no fabricating or processing of the product other than buying and reselling as is) selling to other wholesalers may take this deduction.

The Out-of-State Audit Branch has recently initiated contact with several manufacturers to increase compliance. These companies have been allowed to perform self-audits to determine their liability with consideration given toward abating penalties and reducing interest to statutory minimums. As of this date, 40 businesses have taken advantage of this opportunity with assessments on these companies totaling \$1,678,254.

For more information on the Litter Control Tax call 609-984-4108.

Tax Practitioners' Hotline

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

The Tax Practitioners' Hotline is a special service provided by the Taxpayer Accounting Branch of the New Jersey Division of Taxation *for tax practitioners only*. The purpose of the Hotline is to assist practitioners by resolving specific tax problems over the telephone when the practitioner has been unable to resolve the problem *through normal channels*. Practitioner Hotline technicians are authorized to perform updates to monetary account information as well as non-monetary taxpayer profile information. During calendar year 1997, the Tax Practitioners' Hotline handled about 2,200 business tax and 7,700 personal income tax calls. To be successful and to provide the best possible service, we ask that all practitioners wishing to take advantage of the service adhere to the following guidelines.

GUIDELINES

- **Types of calls handled by the Tax Practitioners' Hotline.** Account maintenance activities, adjustments, transfers, updates, and refunds.
- **Types of calls *not* handled by the Tax Practitioners' Hotline.** Tax information inquiries and form requests will not be han-

dled by the Tax Practitioners' Hotline. These calls are handled by our Taxpayer Services Hotline at 609-588-2200. Cases assigned elsewhere in the Division will not be addressed by the Tax Practitioners' Hotline. Practitioners must contact the tax representative already handling the matter.

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

Package NJX for practitioners' convenience.

Power of Attorney Forms M-5008 filed with the Tax Practitioners' Hotline are not valid for any other matters being handled by any other area of the Division. Likewise, Forms M-5008 filed with other areas of the Division do not apply to matters being handled by the Tax Practitioners' Hotline.

- **Supporting Documentation.** All corrections and approvals performed at the request of a practitioner must be supported by documentation that has been signed and properly completed. Corrections and approvals will not be made until proper documentation has been received. All correspondence should be addressed to:
NJ DIVISION OF TAXATION
TAXPAYER ACCOUNTING BRANCH
TAX PRACTITIONERS' HOTLINE
PO BOX 266
TRENTON NJ 08646-0266
Correspondence should be marked to the attention of the agent who handled the practitioner's call.

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

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From your fax machine's phone, dial

609-588-4500

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ALCOHOLIC BEVERAGE TAX

Liquor License Transfers

The enactment of P.L. 1995, Chapter 161 (signed into law on June 30, 1995) established a Sales and Use Tax reporting and review system for alcoholic beverage wholesalers and retailers. Effective September 1, 1995 a tax clearance certificate from the Division of Taxation is required in order to transfer a retail liquor license. Unlike the requirements for the renewal of a license, which are to be phased in over a period of time, the requirement for transfers pertains to all 21 counties.

The following procedure was established to allow for the transfer of liquor licenses:

1. Before a clearance certificate can be issued, the prospective purchaser of the license must notify the Division of Taxation in writing at least ten (10) days prior to the proposed date of transfer by completing and submitting Form C-9600, Notification of Sale, Transfer or Assignment in Bulk..
2. Upon receipt of a notification of sale, transfer or assignment of a liquor license, the Bulk Sales Section of the Division of Taxation will send the transferee's attorney or agent an escrow agreement requiring signature. This agreement requires the purchaser's representative to hold the stipulated escrow and to release such funds to the Division should a demand be necessitated.
3. Upon receipt of the signed agreement, the Director will issue an Alcoholic Beverage Re-

tail Licensee Clearance Certificate to the transferee's attorney or agent.

NOTE: If the agreed escrow upon which the Alcoholic Beverage Retail Licensee Clearance Certificate was conditioned is not held and remitted on demand, the transferor and the transferee shall be jointly and severally liable for tax deficiencies and subject to the Division of Taxation's collection procedures.

Requests for Form C-9600, Notification of Sale, Transfer or Assignment in Bulk, can be made as follows:

By Phone: 609-292-6604

By Mail:

NJ DIVISION OF TAXATION
BULK SALES SECTION
PO BOX 245
TRENTON NJ 08646-0245

By Downloading on Internet:

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

ALCOHOLIC BEVERAGE TAX **ABC Clearance Process**

The Division of Taxation is conducting the annual review of tax records for *all* retail liquor licensees throughout the State's twenty-one counties. Granting of a tax clearance certificate is predicated on taxpayer compliance with the following taxes:

- Sales Tax
- Tourism Improvement and Development District Tax (Cape May County Tourism Tax)
- Atlantic City Luxury Tax

If the Division's records indicate *no* money or returns are due for the taxes listed above, the Division

will grant the licensee a tax clearance. If the Division's records indicate money or returns are due, but are for taxes *other* than the aforementioned taxes, the Division will still grant the licensee a tax clearance. If it is discovered that money or returns are due for Sales Tax, Tourism Improvement and Development District Tax, or the Atlantic City Luxury Tax, the Division will *withhold* the tax clearance certificate.

In January, the Division mailed notification to all license holders as to their tax clearance status. Licensees that did not receive a letter indicating their clearance status may contact the Division's ABC Clearance Section to get this information. It is very important that licensees with tax problems resolve them well before their submission deadlines for license renewal with their local municipalities. For licensees that owe money or returns, regardless of whether or not they received a clearance, the Division will pursue full compliance with our tax statutes.

Inquiries may be directed to:

Mail:

NJ DIVISION OF TAXATION
ABC CLEARANCE SECTION
PO BOX 245
TRENTON NJ 08646-0245

Telephone:

609-292-0168 or
609-290-0140

ALCOHOLIC BEVERAGE TAX ***Results of Non-Compliance***

Liquor license holders are prohibited from renewing their licenses if they are not in compliance with the Division of Taxation. Licensees in all twenty-one (21) counties are required to obtain a certificate of tax clearance from the Division's ABC Clearance Unit before renewing their licenses with their municipalities.

Over the next several months Field Investigators will be concentrating much of their attention on those taxpayers seeking to renew their liquor licenses but who are not in full compliance with the Division of Taxation. The ABC Clearance Section has sent notices to all licensees in an effort to resolve their outstanding liabilities; however, some taxpayers cannot or will not pay what they owe. Investigators will visit the establishment and discuss with the owners their tax delinquencies and deficiencies.

Field Investigators may be required to seize a liquor license and possibly the assets of a bar, tavern, liquor store, restaurant or other establishment which is non-compliant. During the 1997 calendar year, in which the liquor license holders in only fourteen New Jersey counties were subject to the clearance program, 95 seizures of liquor licenses occurred.

Investigators seize licenses by physically removing the license from the wall where it should be displayed in an active business location. In addition, a warrant of execution is served on the municipal clerk's office or local ABC office. These actions prevent the non-compliant licensee from transferring or renewing the license

and, in specific localities, may prevent any sales of liquor from being conducted.

Licenses that are held by non-operating businesses (pocket licenses) which have an outstanding liability are bound by the same criteria as active licenses and therefore are also subject to levy at the local ABC or clerk's office.

If a taxpayer cannot resolve their debt, the Division can auction the license, as well as any other seized business assets and apply the proceeds against the outstanding liabilities. If a balance due remains after the auction, further collection action may be taken against the business owner or corporate officers, including seizing their personal assets for future auction.

Please direct inquiries regarding liquor license holder to the ABC Clearance Section at 609-292-0168 or 609-292-0140. □

LOCAL PROPERTY TAX ***Revaluation Study Results Available***

The Property Administration Branch has compiled a statistical study, by firm, of the revaluations completed during the last five years. The study compares the general coefficient as well as the average ratio prior to the revaluation with the general coefficient and the average ratio for the first six month sampling period and for the next full year sampling period following implementation of the revaluation. Anyone wishing to obtain a copy of the study may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX ***Farmland Data***

Farmland Data reports for the tax years 1996 and 1997 have been completed. Copies of the reports have been distributed to the County Tax Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

LOCAL PROPERTY TAX ***Tax Assessors' Calendar***

April 1-

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

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15-

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

assessor's calendar - from pg. 9

May 1-

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

May 20-

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

May 23-

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

June 1-

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

June 3-

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

June 5-

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1,

completed and forwarded by collector to County Tax Board.

2nd Monday in June-

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

June 15-

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

LOCAL PROPERTY TAX **Tax Assessor Certificates**

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

Six persons passed the examination for the tax assessor certificate held on September 27, 1997 and became certified tax assessors on December 8, 1997.

Atlantic County: Margaret M. Schott, Margate City.

Essex County: Howard L. Schottenfeld, Livingston Township.

Middlesex County: Bert L. Buckler, East Brunswick Township; Arthur M. Haney, Old Bridge Township.

Monmouth County: John L. Guyer, III, Oceanport Borough.

Union County: Liborio Firetto, Elizabeth City. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On October 6, 1997, a bench warrant was issued in Superior Court – Essex County for James M. Kennedy of Montville, NJ, Morris County, for failure to appear at a hearing concerning Kennedy's violation of probation. Kennedy had pleaded guilty in 1992 for failing to remit sales tax collected from 1987 to 1992, and was ordered to make restitution of tax, penalty and interest as a condition of probation. He has made sporadic payments (last payment in June 1997) and currently owes \$355,425 in tax, penalty and interest. On November 10, 1997, Kennedy surrendered on the warrant and a Violation of Probation hearing was ordered. On December 8, 1997, Kennedy claimed he has no assets and is unable to abide by the court-ordered restitution plan. The court then terminated his probation, allowing the Division to pursue its civil and administrative remedies to collect the amount due and owing.
- On October 15, 1997, Chris G. Alevras was sentenced to 87 months in prison by a Federal Judge in Newark. Mr. Alevras had committed various frauds wherein he received over \$800,000. It was determined that, of this amount, Mr. Alevras fraudulently received over \$108,000 in New Jersey gross income tax refunds by utilizing various taxpayer accounts. Appropriate adjustments have been made to cor-

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rect the taxpayers' accounts. It is unlikely that restitution will be forthcoming in this matter. The Office of Criminal Investigation participated in this investigation with the U.S. Justice Department.

- On October 20, 1997, Emanuel Leonessa, of Hazlet Township, was indicted by a Monmouth County grand jury on charges of theft by deception, uttering a forged instrument, falsifying records, and defrauding secured creditors. Leonessa forged a letter purportedly from the Division of Taxation granting abatement of \$6,213.96 penalty and interest on an outstanding judgment against Leonessa for sales tax he owed to the State. He submitted this forged letter to Champion Mortgage, in order to close on a loan. This case was investigated by the Office of Criminal Investigation as a result of a referral from the Division's Bankruptcy Section, and was prosecuted by the Monmouth County Prosecutor's Office.
- On October 27, 1997, a 19 count indictment, alleging official misconduct, theft by deception, misuse of credit cards, theft of services, conspiracy to possess a controlled dangerous substance, failing to file New Jersey tax returns, filing false and fraudulent New Jersey tax returns and failing to register a business, was handed down by a Hudson County Grand Jury. Those indicted were Michael T. Mulvaney of Hoboken, the Executive Director of the Hoboken Housing Tenants' Association and Vice President of the Hoboken

Housing Authority; Helena Mulvaney, the wife of Michael and an employee of the Hoboken Parking Authority; Enrico and Nancy Addeo of Maywood and Robert Bonovitch of North Bergen. The indictments were the result of an extensive joint investigation by the Hudson County Prosecutor's Office and the Office of Criminal Investigation.

- On November 3, 1997, Moshe Levkowitz, of Vineland, plead guilty in Superior Court – Camden County to one count of filing 32 fraudulent sales tax returns from 1989 to 1996, which underreported sales tax collected by Levkowitz's used car dealership, Roey's Auto in Vineland, by \$82,821. Levkowitz has agreed to make restitution to the State of \$125,000 in tax, penalty and interest. He will be sentenced January 9, 1998, and can face up to five years imprisonment and a fine of up to \$250,000. This case was investigated jointly by the Office of Criminal Investigation and the Camden County Prosecutor's Office.
- On November 12, 1997, Satnam Singh, of Palisades Park, was charged with failure to maintain records relating to the disposition of 1,429,118 gallons of diesel fuel sold by Singh's company, Cheema Oil Corp., between November 1994 and May 1997. Singh claimed the fuel was sold for tax-exempt purposes. The amount of tax exemption claimed was \$192,930. If convicted, Singh faces up to six months in jail and a fine of up to \$1,000. He also faces civil assessment and collection of the tax on the sales alleged to be

tax-exempt but unsupported by the required records.

- On December 1, 1997, the Monmouth County Grand Jury returned a six count indictment against Serguei Tsesarenko of Freehold, NJ, owner of United Gas of Freehold, Inc., Howell Township, NJ, alleging tax evasion of over \$142,000 in motor fuel taxes. The indictment arose out of an investigation of United Gas of Freehold, Inc. by the New Jersey Division of Taxation, Office of Criminal Investigation, and the Monmouth County Prosecutor's Office. Evidence uncovered during the investigation revealed that Tsesarenko continued to operate his service station for the sale of diesel fuel after May 1997, when the Division of Taxation denied his application to renew his license and ordered him to cease selling special fuels. In late November, Special Agents and Auditors with the Office of Criminal Investigation, along with County Detectives, executed search warrants at the defendant's home, business and accountant's office, seizing business and financial records. The six counts include misapplication of entrusted property, failure to pay over motor fuel taxes, failure to pay motor fuel taxes with intent to evade, failure to file motor fuel tax returns, issuing bad checks, and sale of motor fuels without a Seller/User license. In addition, members of the Office of Criminal Investigation and the Howell Township Police Department executed an arrest warrant. Tsesarenko was placed

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in Monmouth County Jail in lieu of \$100,000 cash bail. Tsesarenko faces up to ten years in prison and a \$100,000 fine.

- On December 17, 1997, a State Grand Jury indicted Samuel H. Brangan of Pineville, PA, on charges of failing to file tax returns, failing to pay over tax, misapplication of entrusted property, theft, and misconduct by a corporate official in connection with the theft of \$131,416 in sales tax collected and not turned over to the State by KEI Industrial Services, Inc. between 1989 and 1992. During this time, Brangan was the president of KEI, an industrial sewer-line cleaning company operating in New Jersey. As of the date of the indictment, \$381,000 in tax, penalty and interest was owed to the State.
- Bhasin Suhirdbir Singh of Northfield, NJ, who was previously charged in two separate municipalities as a result of violations uncovered during the Division's Deficiency / Delinquency project, was fined a total of \$1,522. Singh closed both of the involved service stations subsequent to the filing of the complaints and prior to the court hearings. Singh operated the Bargaintown Citgo Service Station in Bargaintown, NJ, and was charged in Egg Harbor Municipal Court with operating an unregistered business and operating without a Motor Fuel Seller/User and Retail Dealer License. Singh pleaded guilty to the charges and was fined a total of \$1,215. Singh was also charged in Northfield Municipal Court for licensing violations discovered at his station (Singh

Citgo) in Northfield, NJ. Singh pleaded guilty to two (2) licensing violations and was fined a total of \$307.

- As a result of the cigarette tax saturation enforcement operation that took place in the summer of 1997, in Ventnor, Longport and Margate, M.T. Shure Company plead guilty to twenty counts of failure to obtain 85 cigarette vending machine licenses. In a plea agreement involving the Trenton Municipal Prosecutor and defense counsel, the defendant corporation was fined the maximum \$1,000 per count and assessed \$150 in fees per count, for a total of \$23,100. Division of Taxation staff from Field Audit, Investigations and the Office of Criminal Investigation conducted this enforcement operation.
- Forty-six guilty pleas for sixteen cases were entered in municipal courts throughout the State during the month by individuals and businesses for non-compliance with the cigarette tax law and motor fuel tax law. In total, the aforementioned cases resulted in the imposition of fines and penalties of \$37,835 and the awarding of 7,562.5 cartons of cigarettes, valued at \$151,264 to the State.
- One hundred and eleven charges were filed in municipal court on eighteen cases for violating the cigarette tax law and motor fuel tax law. Seven of the cases resulted in the seizure of 1,113.7 cartons of contraband cigarettes, valued at \$22,274 and 50.37 cartons of contraband "beedie" cigarettes, valued at \$1,007.40. □

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1997

Following is a summary of enforcement actions for the quarter ending December 31, 1997.

Certificates of Debt

During the quarter ended December 31, 1997, the Division filed 3,320 Certificates of Debt in New Jersey Superior Court. These CODs, which have the same force and effect as docketed judgments, totaled \$39.9 million.

Levies

\$50,603 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds

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used to satisfy the tax debt.

For the quarter ending December 31, 1997, \$189,675 was collected from jeopardy assessments.

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1997, property of 28 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 19-21.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending December 31, 1997, three auctions were held by the Division. A listing follows on page 21.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are made to the Office of the Attorney General. During the quarter ending December 31, 1997, 519 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$1.2 million in revenue during the fourth quarter of 1997.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$112 million from holders of the various types of licenses subject to audit and collected \$105 million. The Divi-

sion of Taxation expects to collect a total of \$150 million during the three-year program.

During the quarter ending December 31, 1997, 178 notifications of liquor license transfer were received by the Division's Bulk Sales section. Thirteen (13) audits relating to this project and previously requested were completed; assessments from these audits totaled \$383,931. □

Tax Briefs

Corporation Business tax

Filing Example for Affiliated Group Having Qualifying S Corporation Subsidiaries, an S Corporation Parent and Trusts as Shareholders — The Division of Taxation recently responded to an inquiry involving the following facts:

In November 1996, Corporation A was incorporated and registered to do business in the State of Delaware. It is wholly owned by two U.S. trusts, domiciled and located outside New Jersey and it is not registered to do business in New Jersey. As the result of a series of transactions, it became the parent of Corporation B.

Before January 1, 1997, Corporation B had been owned by two domestic trusts. Corporation B in turn, was the common parent of a consolidated group of corporations filing a consolidated Federal income tax return. Members of the group filed separate state tax returns in those states in which they conducted business.

Effective January 1, 1997, the trusts that are shareholders of Corporation A elected to file for Fed-

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eral S corporation status for Corporation A. Concurrently each subsidiary (Corporation B and its subsidiaries) elected to be treated as a Qualified Subchapter S Subsidiary (QSSS) for Federal purposes.

For Federal purposes, the shareholders (the trusts) of the consolidated S corporation group are the ultimate taxpayers. All income of Corporation A and its QSSS subsidiaries will flow through to the shareholders (the trusts) and be taxed at the applicable rate. To ensure this flow through of income, separate state S corporation elections were timely filed where required by Corporation A, Corporation B and every subsidiary.

Specifically, a New Jersey S corporation election was filed by Corporation A, Corporation B and Corporation C, a New Jersey subsidiary of Corporation B. The entities could then meet the definitions contained in N.J.S.A. 54:10A-4(o) and N.J.S.A. 54:10A-4(p) for an "S corporation" and a "New Jersey S corporation," respectively.

Estimated corporation business tax payments were remitted for 1997 by or on behalf of the shareholders of Corporation A, i.e. the trusts. No withholding payments were remitted to New Jersey with respect to the trusts' income for the individual beneficiaries of the trusts who are nonresidents of New Jersey. Where applicable, corporate level taxes were paid by the specific corporate entities.

In light of these facts, the Division advised as follows.

For Federal purposes as the result of Federal legislation, an S corpo-

ration may own subsidiaries. In light of this change, Instruction 32 of the 1997 New Jersey S corporation business tax return (CBT-100S) provides as follows:

Schedule Q - Qualified Subchapter S Subsidiaries (QSSS):

For the 1997 Corporation Business Tax return year, all Federal S corporations which are treated federally as a Qualified Subchapter S Subsidiary (QSSS) will be recognized accordingly by New Jersey. However, to qualify as a New Jersey QSSS, a copy of Federal Form 966 and a New Jersey Form CBT-2553 signed by a corporate officer in which the corporate parent shareholder consents to taxation by New Jersey must be submitted. The Corporation Business Tax return of the New Jersey QSSS will reflect a \$200 minimum tax liability, and its assets, liabilities, income and expenses will be treated as those of the parent corporation. Failure to file either a Federal Form 966 or a New Jersey Form CBT-2553 with the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and subject the entity to taxation in New Jersey as a C corporation. A New Jersey QSSS, like an S corporation, is required to file annually a Corporation Business Tax Return and annual report.

The present inquiry goes beyond the information contained in the instruction.

First, if the proper application and election forms have been submitted, New Jersey will recognize the existence of a consolidated S corporation group. In its definition of "entire net income" at N.J.S.A.

54:10A-4(d), the New Jersey Corporation Business Income Tax Act relates the income for New Jersey purposes to amounts required to be reported to the U.S. Treasury Department. Thus, assuming the proper election forms have been filed, Corporation B and Corporation C would file New Jersey CBT-100S returns and pay minimum tax, and Corporation A, the parent, would file a New Jersey CBT-100S return reflecting its income and that of its subsidiaries. Corporation A would pay the corporate level tax on its income. Administrative rule N.J.A.C. 18:7-3.6, supplies the applicable tax rates.

Where trusts are shareholders of an S corporation, New Jersey has taken the position that the trust beneficiaries must join in filing the New Jersey CBT-2553 S Corporation Election in addition to the trusts, as shareholders themselves. As such, the nonresident individuals who are the beneficiaries of the nonresident trusts would file and pay New Jersey gross income tax on their share of income from New Jersey sources. This could be done for convenience on a composite return: N.J.A.C. 18:35-1.30. See Form NJ-1080-E.

Second, in this case the upper tier parent corporations, Corporations A and B, should be authorized to do business in New Jersey with the New Jersey Secretary of State's Office, Division of Commercial Recording and registered with the New Jersey Division of Taxation.

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1997 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
	1/27/97	Conditional veto of bill reducing tax rate for S corporations.	CBT	S-231 (2R)
30	3/07/97	Increases reimbursements to taxing districts for veterans', senior citizens', disabled persons' and surviving spouses' property tax deduction programs, and removes requirement that the Division of Taxation annually furnish each municipality with a supply of forms.	LPT	S-1674
36	3/17/97	Removes professional wrestling from the regulation and control of the State Athletic Control Board thus eliminating the exemption from sales tax for which receipts from the sales of admissions to professional wrestling events formerly qualified.	S&U	A-2213 (1R)
40	3/27/97	Reduces the corporation business tax rate for S corporations to 2% (0.5% for those S corporations with \$100,000 or less annual income).	CBT	S-231 (3R)
41	3/27/97	Revises procedures concerning collection and distribution of funds received by the NJ Firemen's Association from the tax on fire insurance premiums.	IPT	S-253 (2R)
134	6/27/97	Alters the cap on the tax due on transfers of hazardous substances.	SCC	A-1668 (1R)
139	6/27/97	Revises the law concerning certain domestic and foreign entities authorized to transact business in this State.	MIS	A-2875 (3R)
153	7/1/97	Reduces the alcoholic beverage tax rate on certain apple cider from \$0.70 per gallon to \$0.12 per gallon.	ABT	S-1946 (1R)
162	7/14/97	Revises taxation of gas, electric and telecommunications public utilities and sales of electricity, natural gas and energy transportation service.	PUT	A-2825 (2R)
167	7/22/97	Establishes the "Energy Tax Receipts Fund," to replace the existing method of distributing certain funds guaranteed to municipalities from the State's taxation of energy and telecommunications.	PUT	A-2824 (1R)
204	8/14/97	Establishes the "Uniform Enforcement of Foreign Judgments Act."	MIS	A-2220 (2R)
207	8/14/97	Provides for an extension of time to file and pay gross income tax and certain other relief for persons in the Armed Forces serving in an area designated a "qualified hazardous duty area." This legislation affects NJ residents currently serving in Bosnia and Herzegovina, Croatia and Macedonia.	GIT	A-2883
226	8/25/97	Provides for the set-off against and collection from an individual's State gross income tax refund and homestead property tax rebate of any debt the individual owes to the Violent Crimes Compensation Board.	GIT	S-360

continued

1997 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
237	9/2/97	Establishes the "New Jersey Better Educational Savings Trust (NJBEST) Program" in the Higher Education Assistance Authority. The program will provide a means for families to save for future college costs by, among other things, excluding earnings and distributions from NJBEST accounts from New Jersey gross income for State income tax purposes.	GIT	S-2012 (2R)
245	9/9/97	Amends the Banking Act of 1948 to allow nonprofit corporations to perform certain functions presently reserved to banks. In particular, the bill allows educational institutions to act as trustee of funds in which the institutions have an interest.	MIS	A-2063 (1R)
264	12/19/97	Increases the cigarette tax from \$0.02 to \$0.04 per cigarette and the tobacco products wholesale sales and use tax from 24% to 48%.	TPT CIG	A-2157 (1R)
273	12/24/97	Permits State funding for the construction of a convention center facility in the Cape May County Tourism Improvement and Development District under certain conditions, and authorizes the New Jersey Sports and Exposition Authority to undertake certain additional projects.	CMC	S-1683 (4R)
278	1/6/98	Facilitates the remediation of contaminated real property by providing for the reimbursement to certified developers of up to 75% of the cost of remediation and for the establishment of a mechanism to fund such reimbursements. The new law also amends the property tax provisions of the "Environmental Opportunity Zone Act," P.L. 1995, c.413, to require municipalities participating in the program to provide exemptions from real property taxes for environmental opportunity zones and allows such exemptions to be extended to fifteen years at the municipality's option.	MIS	SCS for S-39, A-2250 ACS, S-1815 and 1539 (2R)
293	1/8/98	Exempts receipts from the sale of tangible personal property used directly and primarily on farms (with the exception of automobiles and property which becomes incorporated into a building or structure) from the Sales and Use Tax Act.	S&U	S-1248 (1R)
333	1/12/98	Exempts from the sales tax receipts from imprinting services performed on machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling or refining and exempt from taxation pursuant to subsection a. of section 25 of P.L. 1980, c.105 (C.54:32B-8.13).	S&U	S-142

continued

1997 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
334	1/12/98	Directs the New Jersey Economic Development Authority to establish a corporation business tax benefit certificate transfer program to allow certain emerging technology and biotechnology companies with unused R&D credits and unused NOLs to surrender these tax benefits for use by other corporate business taxpayers in the State.	CBT	S-446 (1R)
348	1/14/98	Provides for a homestead property tax reimbursement which effectively "freezes" the property taxes of certain senior and disabled homeowners at 1997 levels (or at the level prevailing during the year in which the claimant becomes eligible). Homeowners must meet specified income, residency and age (or disability) requirements.	LPT	A-3 (3R)
349	1/15/98	Authorizes a credit under the Corporation Business Tax Act for investments in small, New Jersey-based high technology businesses that conduct research here.	CBT	S-445 (1R)
350	1/15/98	Provides for a 15 year net operating loss deduction carry forward under the corporation business tax for certain high-tech companies. Applies to NOLs which occur during privilege periods which begin on and after July 1, 1998, but no later than June 30, 2001.	CBT	S-447 (1R)
351	1/15/98	Provides for a 15 year carry forward of research and development credits for certain high-tech companies. The extended carry forward applies to qualified research expenses incurred and basic research payments made during privilege periods which begin on and after July 1, 1998, but no later than June 30, 2001.	CBT	S-449 (2R)
373	1/19/98	Exempts officers and employees of drug stores and pharmacies from the fingerprinting requirements of the cigarette tax licensing provisions.	CIG	S-1074
409	1/19/98	Excludes from New Jersey gross income tax the U.S. military pensions and survivor's benefits of persons 62 years of age or older and disabled persons.	GIT	A-229 (2R)
413	1/19/98	Exempts from the corporation business tax income derived from shipping and aircraft operations by foreign national corporations whose home countries provide a similar exemption to U.S. corporations on such income.	CBT	A-670 (1R)
414	1/19/98	Effective January 1, 1998, establishes certain standards and provides certain tax exclusions and deductions for medical savings accounts which qualify under section 220 of the Internal Revenue Code of 1986, 26 U.S.C. § 220.	GIT	ACS for A-671 and 495 ACS (2R)

*Legend for 1997 Tax Laws

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

Division Mailing Addresses

The Division receives many requests for the mailing addresses where tax forms, documents and responses to Division notices and statements should be sent. Generally, Division forms, notices, statements and correspondence contain the return mail address of the branch or section that originated the mail. Unless a form, notice or statement instructs otherwise, taxpayer replies and correspondence should be mailed to the return address of the originating office.

Please, always use the following address format when you send mail to the Division of Taxation:

Example

NEW JERSEY DIVISION OF TAXATION
 NAME OF SECTION OR BRANCH (if applicable)
 PO BOX XXX
 TRENTON NJ XXXXX-XXXX

The most frequently requested Division mailing addresses follow.

Tax Forms	PO Box	Zip Code
NJ-1040 (tax due)	111	08645-0111
NJ-1040 (refund or no tax due)	555	08647-0555
HR-1040 (rebate application without return)	197	08646-0197
NJ-1040NR	244	08646-0244
NJ-1040-ES	222	08646-0222
NJ-630-M	282	08646-0282
ST-50/ST-51	999	08646-0999
NJ-500/NJ-941	248	08646-0248
NJ-W-3/W-2/1099	333	08646-0333
CBT-100/100S	666	08646-0666
Other Matters		
Transfer Inheritance and Estate Tax	249	08646-0249
Unclaimed Property	214	08646-0214
Local Property Tax	251	08646-0251
Motor Vehicles Casual Sales	267	08646-0267
Deferred Payments	190	08646-0190
Conference and Appeals	198	08625-0198
Taxpayer Services OCE	281	08646-0281
Special Procedures (judgments, bulk sales, bankruptcy, liens, levies, seizures, SOIL)	245	08646-0245

**ORGANIZATION CHART
NEW JERSEY DIVISION OF TAXATION**

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Chief of Staff
Mark Wintermute
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Joseph Flynn
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Deputy Director
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Deputy Director
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Out-of-State Audit
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Audit Services
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Field Investigation
Cheryl Fulmer, *Chief*..... (609) 292-7332
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Ronald Stubbs, *Chief*..... (609) 292-7390
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Office Audit
Lee Evans, *Chief*.....(609) 292-5927

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George Lorbeck, *Chief*.....(609) 292-7929
Local Assessment Compliance
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LPT Policy & Planning
Harris Adams, *Chief*.....(609) 292-7974
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Taxpayer Services
Joan Bench, *Chief*.....(609) 588-8526
Conference & Appeals
William Bryan, *Chief*.....(609) 588-3933
Technical Education
Edward Scheingold, *Ass't. Chief*..... 609-984-4101

Office of Technical Support
John D'Errico, *Chief*..... (609) 292-5045

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Third, estimated corporation taxes should be remitted by Corporations A, B and C for 1998 as was done in 1997, and estimated New Jersey gross income taxes should be remitted by the trusts on behalf of the beneficiaries with regard to income derived from New Jersey sources. (Also see *NJ QSSS Estimated Payments* on page 3 of this issue.)

Fourth, the Federal treatment of S corporations has been adopted in so far as that is possible under the applicable New Jersey statutes. Corporations A and B are subject to tax in New Jersey by virtue of it being their place of business.

Gross Income Tax

NJ/PA Reciprocal Agreement — The reciprocal agreement between Pennsylvania and New Jersey only applies to wages. A Pennsylvania resident receiving income from any other New Jersey source must report the income to New Jersey. The sources of income subject to New Jersey taxation would include but not be limited to: 1099, partnership K-1, S corporation K-1 or sole proprietor income earned in New Jersey.

A nonresident who is a partner in a partnership or a shareholder in an S corporation that does business in New Jersey is subject to tax on the income reported on the K-1 received from their investment. This income is taxable whether it is received or not. Intangible income—interest and dividends—are not taxable to nonresidents of New Jersey.

A resident who is a partner in a partnership or a shareholder in an S corporation is subject to tax on the income reported on the K-1 received from their investment.

A partner holding an interest in a partnership for others or as part of a group of owners has an obligation to inform the partnership of the *nominee* arrangement (See Temporary Regulation 1.6031(c)-1T). If this reporting obligation is not met the nominee is to furnish the other person(s) with a written statement containing the distributive share of partnership income, gain, loss, deduction, or credit, etc. that is allocable to such interest in the partnership. The nominee failing to properly notify the other parties to the nominee agreement can be held liable for the K-1 as reported to the nominee.

New York's Commuter Tax — In New York State, the taxpayer's income from all sources is used to determine the tax rate and a base tax. The base tax is then reduced in the proportion that the taxpayer's income earned from New York sources bears to income earned from all sources. This method of calculating the tax increases the tax due to New York because the nonresident taxpayer is placed in a higher income tax rate category than would be the case if only New York source income were used to determine tax rate. However, the amount of income which is actually being taxed by the State of New York is the New York source income.

New York's method of calculating the tax on nonresidents is not within the power of New Jersey to change. A challenge to the constitutionality of New York's personal income tax as it applied to nonresidents was dismissed in Federal

court for lack of jurisdiction; the court held that the taxpayers had an adequate remedy in New York courts. *Hardwick v. Cuomo*, 891 F.2d 1097 (1989).

The issue was subsequently litigated in New York State courts in the case of *Brady, et al. v. State of New York et al.*, 607 N.E.2d 1060 (1992). In *Brady*, the New York Court of Appeals, New York State's highest court, upheld the ruling of the New York Supreme Court, Appellate Division, that in the case where one spouse works in New York and the other spouse does not, the individual can elect to file as married, filing separately. In this way, the income of the nonresident spouse who does not work in New York will not be used to determine the tax rate and base tax. However, the court also ruled that under New York's method for calculating a nonresident's tax, the income from non-New York sources was not used for anything other than as a measurement of the tax due on New York income. Therefore, the use of all sources of income was used solely to determine the rate of tax to be applied to New York source income.

New Jersey residents receive a credit for taxes they pay to New York State. N.J.S.A. 54A:4-1 of the New Jersey Gross Income Tax Act provides resident taxpayers with a credit against the tax otherwise due under the Act of the amount of any income tax or wage tax imposed for the taxable year by another state or political subdivision thereof with respect to income which is actually taxed in both jurisdictions.

Punitive Damage Awards — New Jersey's Gross Income Tax law

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excludes from income “the amount of damages received, whether by suit or agreement, on account of personal injuries or sickness.” N.J.S.A. 54A:6-6(b). Compensatory damages from personal injury claims are excluded from gross income under this section. Punitive damages, however, are not excluded from income.

Prior to 1996, the New Jersey Gross Income Tax Act and the Federal Internal Revenue Code used very similar language for income from personal injury claims. Both New Jersey and Federal law excluded income that was damages received “on account of personal injuries or sickness.” Prior to amendment in 1996, IRC section 104(a)(2) excluded from income “the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness.” The 1996 amendment inserted the parenthetical clause, “(other than punitive damages)” after the words, “any damages” in the Federal statute.

Even before the Internal Revenue Code section was amended, the Supreme Court held that punitive damages received in a suit in connection with physical injuries or physical sickness are not “on account of” the personal injuries and are therefore not excludable from gross income. *O’Gilvie, Kelly v. U.S.*, (1996, U.S. S. Ct.). A district court in the Tenth Circuit had already concluded that punitive damages in a case involving personal injury were not received “on account of” personal injuries or sickness and were therefore not excludable from income under Code Sec. 104(a)(2). *Lane, Kari v.*

U.S., (1995, DC OK). In *Lane*, the Court’s rationale was that because the purpose of punitive damages under applicable state law was to punish the tort-feasor rather than to compensate the tort victim, the portion of settlement proceeds allocated to punitive damages was not received “on account of” personal injury.

New Jersey follows the reasoning of the U.S. Supreme Court in its interpretation of the phrase, “damages received on account of personal injuries or sickness.” Under New Jersey law, therefore, punitive damages resulting from personal injury claims are included in gross income for tax purposes pursuant to N.J.S.A. 54A:5-1e.

Cafeteria Plans — Although IRC §125 excludes from Federal taxable income benefits received by a taxpayer through a cafeteria plan, the New Jersey Gross Income Tax Act does not contain any provisions similar to IRC Section 125. Consequently, for New Jersey gross income tax purposes, any amounts which an employee may elect to contribute into a cafeteria plan through a salary reduction agreement must be included in gross wages *unless* such contributions are *required* as a condition of employment. In addition, employer provided benefit dollars that the employee may use to purchase benefits or may take out in cash must also be included in gross wages. Only benefit dollars that are provided by the employer which must, under the terms of the cafeteria plan, be used to purchase qualified benefits and cannot be “cashed in,” may be excluded from gross income.

N.J.S.A. 54A:6-24, which became effective on January 1, 1996, authorizes a limited exclusion from

gross income for certain plans. If under the terms of the plan an employee can receive cash in lieu of qualified employer-provided benefits only if the employee derives a substantially similar benefit from a source other than the employer, then the value of the cash option shall not be included in the gross wages of those employees *who do not elect to receive cash* if the value of the cash option is excludable for Federal income tax purposes. However, this exclusion does not apply to benefits provided under a “salary reduction agreement.” A “salary reduction agreement” is defined as:

an agreement between an employer and an employee under which the employee individually chooses to reduce the employee’s compensation, or to forgo increases in compensation, and to have the amount provided, as an employer-provided benefit, by the employer to the employee; including but not limited to the agreements commonly known as flexible spending accounts and premium conversion options.

If the terms of a cafeteria plan require that the benefits which an employee receives must be included in New Jersey gross wages then the employer must withhold from the gross amount.

Property Tax Deduction for Principal Residence — The Property Tax Deduction Act, N.J.S.A. 54A:3A-15 et seq., enacted in 1996, provides a deduction or a credit from income taxes for property taxes paid on a homestead. Under the Act, “homestead” is defined as “a dwelling house and the land on which that dwelling house is located which constitutes

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the place of the taxpayer's domicile and is owned and *used by the taxpayer as the taxpayer's principal residence.*" N.J.S.A. 54A:3A-16 (emphasis added). "Principal residence" is further defined in the statute as "a homestead actually and continually occupied by a taxpayer as the taxpayer's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the taxpayer, and other secondary real property holdings." N.J.S.A. 54A:3A-16. The NJ-1040 instructions regarding the property tax deduction/credit (Lines 35 and 43) state that the deduction is only available for a principal residence which is occupied by the taxpayer. Thus, paying taxes on a residence does not qualify the taxpayer for the deduction/credit unless the dwelling is also the taxpayer's principal residence.

School Board Worker's Compensation — Under the New Jersey Gross Income Tax Act, amounts received by an employee through an accident or health insurance plan for personal injuries or sickness are not subject to tax. N.J.S.A. 54A:6-6(c). In order to qualify for the exclusion, all of the following requirements must be met:

1. The payments must be compensation for wage loss from absence due to injury or sickness; and
2. The payments must be due and payable under an enforceable contractual obligation under the plan; and
3. The payments must not relate to sick leave wage continuation (the taking of which is largely discretionary and the payments

are made regardless of the reason for absence from work). N.J.A.C. 18:35-1.15 (b).

New Jersey school boards must make payments to an employee injured on the job under N.J.S.A. 18A:30-2.1. The statute requires that "whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in sections 18A:30-2 and 18A:30-3." N.J.S.A. 18A:30-2.1. As long as the employee is disabled and the disability is work-related, the school district is legally obligated to provide the benefit. Such benefits are considered by the Division to be in the nature of worker's compensation payments. Therefore, the school board payments satisfy the requirements for New Jersey income tax exclusion provided by N.J.S.A. 54A:6-6(c).

Interest Accumulated on a Life Insurance Policy — Under the New Jersey Gross Income Tax Act, specific categories of income are taxed. One such taxable category is interest. N.J.S.A. 54A:5-1(e). In addition, N.J.S.A. 54A:8-3(c) requires that a taxpayer's accounting method for gross income tax purposes be the same as his accounting method for Federal income tax purposes. Taxable interest for Federal purposes is also taxable for gross income tax purposes. Accordingly, the interest accumulated on a life insurance

policy is taxable in New Jersey to the same extent as under Federal guidelines.

Sales and Use Tax

Dance Hall Admission Charges

— The Division recently determined that the admission or "cover" charge paid for admission to dance halls in New Jersey is taxable as an admission charge to, or for the use of, any place of amusement.

The statutory exception for charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools, does not apply since listening to music and dancing are not considered a "sporting activity" within the meaning of the exception. N.J.S.A. 54:32B-3(e)(1).

Cleaning of Newly Constructed Homes

— Cleaning and maintenance services performed on model houses and newly constructed homes prior to the issuance of a Certificate of Occupancy and sale of the homes are subject to sales tax as services performed in maintaining, servicing or repairing real property. N.J.S.A. 54:32B-3(b)(4). The rendering of these services results neither in an increase in the capital value of the real property upon which they are performed nor in a significant increase in its useful life. N.J.A.C. 18:24-5.7. Consequently, such services do not qualify for exemption from tax under N.J.S.A. 54:32B-3(b)(2)(v).

Beauty Consulting — The Division responded to an inquiry regarding the taxability of services and merchandise sold by a beauty consultant under the Sales and Use

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Tax Act.

The services of rendering advice, applying cosmetics, styling hair and doing "makeovers" are deemed nontaxable personal services. If small amounts of cosmetics are transferred to the client as an inconsequential element of the service transactions and no separate charges are made for these items, the entire charge is nontaxable. N.J.S.A. 54:32B-2(e)(4)(A).

However, if the beauty consultant also sells "beauty products" to customers, she must collect tax on these sales regardless of whether she personally delivers them to her customers or has her supplier drop ship them directly to her customers in New Jersey.

Hospital Beds — The Division was asked to review the taxability of specialty hospital beds under certain conditions. These beds are used by patients in hospitals, nursing centers, etc., but the cost is directly billed to the patient, referred to as private pay billing.

The New Jersey Sales and Use Tax Act provides that medical equipment which is purchased for use in providing medical services for compensation is subject to sales tax; durable medical equipment purchased by a patient for home use is entitled to exemption. N.J.S.A. 54:32B-8.1. In general, when a hospital or nursing home purchases or rents equipment, including beds, for use in the facility, such charges are taxable unless the facility is a qualified exempt organization under N.J.S.A. 54:32B-9.

Conversely, if the patient is discharged, and purchases or rents a hospital bed for home use, the sale or rental charge is exempt from

tax. The situation at issue is a hybrid of these two scenarios because the bed is used at the facility, yet the patient is directly responsible for payment.

In order to give effect to the legislative intent as expressed in N.J.S.A. 54:32B-8.1, the Division will consider the direct rental of the hospital bed to "private pay" patients in medical care facilities to be exempt from New Jersey sales tax as durable medical equipment. Thus, billings to patients for specialty hospital beds in private pay situations are not required to include sales tax.

Sale of Freshly Baked Pretzels —

The Division responded to an inquiry concerning the following facts: *"Our client makes fresh, hot pretzels, and sells them in the mall. The client makes these pretzels from scratch using flour, yeast, salt, water, basically the same ingredients as bread, and bakes them on premises. Since the pretzels are made from scratch, we are wondering if sales tax is applicable to these baked goods."*

Pursuant to N.J.S.A. 54:32B-3(c) of the Sales and Use Tax Act, sales of food in an unheated state of a type commonly sold in the same form and condition in food stores, other than those principally engaged in selling prepared foods, are granted exemption from sales tax in this State. Thus, for example, sales of various baked foods (cake, bread, cookies, donuts, etc.) by the dozen or part thereof are not taxable whether vended for off-premises consumption in a supermarket or at a stand or storefront in a mall. Freshly baked pretzels are included in the above category of baked goods.

This statutory exemption, however, is limited to food sold in an unheated state. The determination of whether food is sold in a heated state is made according to the vendor's method of merchandising. If food is maintained at a temperature which is warmer than the surrounding air temperature by using heat lamps, warming trays, ovens or similar devices, or is cooked to order, the food is deemed heated and sales are subject to sales tax whether or not intended for off-premises consumption.

School Bus Purchases — The Division responded to an inquiry about the sales tax treatment of a contract carrier's purchase of stop sign arms, radios and air conditioning and the labor for installing them in school buses that the carrier already owns.

N.J.S.A. 54:32B-8.28 exempts from sales and use tax the purchase of the buses themselves and of "repair and replacement parts and labor therefor." The Division views the additional equipment installations as exempt under this provision if they are essential to the operation of the school bus, e.g., the stop sign arm, or if they

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Division of Taxation Seizures (October - December 1997)

Note: Businesses listed may have satisfied their tax liability or otherwise come to agreement with the Division following the date of seizure and may now be reopened.

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	CBO, Inc. t/a Tycoons 300 Railroad Ave. Hammonton	10/20/97	Bar	Liquor license seized
	Bnabramoff, Bernice Margate	11/10/97	N/A	Vehicle seized
	Kehoe, Edward J. Kehoe Sign, Art & Display, Inc. 230 E. Waveland Ave. Absecon	12/16/97	Sign company	Assets released
Bergen	CNT Enterprises t/a Molly's 26 Ridge Rd. North Arlington	11/24/97	Bar	Liquor license seized
Essex	Olivera Enterprises, Inc. t/a Panteezz 955 Frelinghuysen Ave. Newark	10/15/97	Bar	Liquor license seized
	Monchito Corp. t/a La Posa 173 Sherman Ave. Newark	12/03/97	Tavern	Liquor license seized
	Alex Fraenkel Photography, Inc. t/a Alex Fraenkel Photography 193 Ferry St. Newark	12/16/97	Photographer	Closed
Hudson	McNamara, Robert Mack Auto Sales 344 Westside Ave. Jersey City	10/29/97	Auto sales	Vehicles released
	Novielli Enterprises t/a Pizza Bistro 165 Broadway Bayonne	11/13/97	Pizzeria	Closed
	Nook Auto Repair, Inc. 888 Communipaw Ave. Jersey City	11/25/97	Auto repair	Closed
	Hardy's Liquor & Deli, Inc. 520 Ocean Ave. Jersey City	12/02/97	Liquor/grocery store	Liquor license seized
	George's Wine & Deli, Inc. 381A Ocean Ave. Jersey City	12/02/97	Liquor/grocery store	Liquor license seized

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County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Melania Corporation Casanova Lounge 279 Smith St. Perth Amboy	11/07/97	Bar	Reopened
Monmouth	GOJ, Inc. The Orchid Lounge, Inc. 904-906 Lake Ave. Asbury Park	10/09/97	Bar	Liquor license seized
	Route 520 Associates Nardino's 11 Rte. 520 Marlboro	10/17/97	Restaurant	Liquor license seized
	Campbell, Robert M., Jr. Chrisan Automotive 806 Sea Girt Ave. Sea Girt	12/09/97	Auto repair	Reopened
Ocean	Lacey Collision Incorporated Lacey Collision 410 N. Main St. (Rte. 9) Lanoka Harbor	10/21/97	Auto body shop	Reopened
Passaic	J&M Wines & Liquors Park 15 Wines & Liquors 15 Park Ave. Paterson	10/15/97	Liquor store	Liquor license released
	Montgomery Blue Dahlia Corp. Montgomery Tavern 80 Montgomery St. Paterson	10/15/97	Bar	Liquor license seized
	Lina Luli Corp. Casa D'Angelo 21 Rte. 23 Wayne	11/19/97	Restaurant	Liquor license seized
	Broadway Liquors, Inc. Broadway Liquors 270 Broadway Paterson	12/12/97	Liquor store	Liquor license seized
Salem	McCarthy's Bar 190 Griffith St. Salem	12/11/97	Bar	Closed
	J. Thomas McCarthy, Inc. J-Tee's Liquors Wines Beer 641 S. Broadway Pennsville	12/11/97	Liquor store	Reopened
Union	Laurel, April & McAllister M&M's 209 Jefferson Ave. Elizabeth	10/07/97	Liquor store	Reopened
	Half Time Sports Bar 476 Bloy St. Hillside	10/08/97	Bar	Reopened

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County	Name/Address	Seizure Date	Business Type	Status
Union	The Brothers Three, A NJ Corp. 901 Magnolia Ave. Elizabeth	12/03/97	Bar	Closed
	Leyva, Ann Marie & Ruber El Galeon Bar & Restaurant 246 Second St. Elizabeth	12/04/97	Bar/restaurant	Liquor license seized
	Modaca, Inc. Spanish & Portuguese Tavern 560 Grier Ave. Elizabeth	12/11/97	Tavern	Liquor license seized

Division of Taxation Auctions (October - December 1997)

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	Fusaro Enterprises, Inc. t/a Jo-Jo's Tavern 263 S. New York Rd. (Rte. 9) Oceanville	10/29/97	Bar	Liquor license
Essex	496 Corporation 489 Clinton Ave. Newark	11/20/97	Liquor store	Bar supplies
	C&D Supermarket 910 18th Ave. Newark	11/20/97	Liquor store	Bar supplies

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are standard pieces of equipment of the type that is available from a manufacturer in newly purchased vehicles. Under this standard, the installation of air conditioning and basic (not CB) radio systems in a school bus would be deemed exempt.

To support this exemption, the carrier should present a completed Form ST-4 (Exempt Use Certificate) to each vendor of the parts and installation services. "N.J.S.A. 54:32B-8.28" should be entered in the box on the form to indicate the legal basis for the exemption.

In Our Courts

Gross Income Tax Insurance Proceeds From Involuntary Conversion of Property – *Tischler v. Director, Division of Taxation*, decided January 20, 1998; Tax Court; No. 000616-97.

In a case of first impression, the Tax Court held that involuntary conversion of property is a disposition of property under N.J.S.A. 54A:5-1(c) and therefore gain is recognized (to the extent that the proceeds exceed the property's adjusted basis) in the tax year the non-reinvested insurance proceeds are received. The Court also ruled that the doctrine of equitable estoppel does not bar the Division

from imposing a tax, after the tax was previously paid and erroneously refunded, where Division employees provided incorrect advice as to taxability. Finally, the Court held that taxpayer must receive the Division's erroneous written advice prior to acting on that position in order to be relieved of paying interest on those tax liabilities attributable to that erroneous advice.

Local Property Tax Business Retention Act Found Constitutional – *General Motors Corporation v. City of Linden*, Supreme Court of New Jersey A-106 September Term 1996, decided July 21, 1997.

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The Supreme Court affirmed the Appellate Division decision that the Business Retention Act, Public Law 1992, c.24, was constitutional because it may reasonably be interpreted in a manner that does not create an unconstitutional exemption for real property from taxation that would favor business or industry. See also *New Jersey State Tax News*, Vol. 25, No. 4.

“Officiating Clergyman” Exemption Denied – *Friends of Ahi Ezer Congregation, Inc., Plaintiff v. City of Long Branch, Defendant*, decided June 19, 1997, Tax Court of New Jersey, Docket No. 007501-95.

In this local property tax complaint, the key question addressed by the N.J. Tax Court was what was meant by “officiating clergymen” relative to the parsonage exemption available under N.J.S.A. 54:4-3.6. The pertinent statute requires that the buildings, not exceeding two, be occupied as a parsonage by the officiating clergymen of any religious corporation of this State.

St. Matthew’s Lutheran Church for the Deaf v. Division of Tax Appeals, 18 N.J. Super. at 558 (1952), previously defined “officiating clergyman” as “a settled or incumbent pastor or minister, that is, a pastor installed over a parish, church or congregation.” The American Heritage Dictionary, Second College Edition defines “officiating” as “1. to perform the duties and functions of an office or position of authority. 2. to serve as a priest or minister at a religious service.”

In this decision, the Tax Court considered the extent of the clergyman’s activities as the guiding criterion. Three Saturday mornings

per month Rabbi Maslaton conducted the Bible (Torah) reading portion of the religious service at Ohel Simha synagogue, requiring about 15 hours preparation time per week. He also taught religious classes at the synagogue and at his home, the disputed property. In addition, every Friday afternoon he held religious services at an affiliated nonexempt nursing home and oversights the maintenance of their “Kosher kitchen.”

The Court, in its analysis, compared the position and functions of an ordained deacon with the deacon’s administrator and pastor for the congregation in *Shrine of Our Lady of Fatima v. Mantua Twp.*, 12 N.J. Tax 392 (1992). Since the “vast bulk” of the congregation’s religious services were performed by the pastor/administrator, the deacon was not deemed the officiating clergyman and his residence was not exempt. In *Goodwill Home and Missions, Inc. v. Garwood Borough*, 281 N.J. Super. 596 (1995), an administrative director who “took on the direct supervisory responsibility of pastor rather than having somebody...helping me with it” was ruled an officiating clergyman whose dwelling did qualify as a parsonage.

In summary, the Court concluded that although Rabbi Maslaton contributed to the synagogue on a regular basis and Rabbi Choueka relied heavily on his assistance, he was not an officiating clergyman.

Testimony given by Rabbi Choueka, the synagogue’s rabbi of 15 years, indicated that he, himself, was the only officiating rabbi. Choueka’s duties included conducting services, giving sermons, teaching, counseling, etc. By contrast, many of Rabbi Maslaton’s

duties could also be performed by volunteer lay congregants and Bar Mitzvah students. Maslaton had no direct responsibility for religious services—did not preside over the service nor present the sermon; had no decision making role in synagogue nor counseling functions; and did not officiate at funerals or weddings. He was not the pulpit rabbi. Neither could parsonage exemption be derived from Rabbi Maslaton’s duties at the nursing home. The nursing home was not a place of public worship as a church or synagogue, nor was it a nonprofit tax exempt entity. Therefore, Monmouth County Tax Board’s assessing of the residence was sustained. However, the 1995 value at \$191,600 having been alternately contested was scheduled for further hearing.

Eligibility for Assessment as Farmland Denied – *James I. Wyer, Plaintiff, v. Middletown Township, Defendant*. Tax Court of New Jersey, Decided June 19, 1997, Docket Nos. 008699-95 & 006272-96.

At issue before the New Jersey Tax Court was whether a wooded land parcel of 6.33 acres, known as Lot 1, having nectar producing trees and planted with clover was actively devoted to the cultivation of bees and sale of apiary products, a qualifying agricultural use under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., and as such, eligible for the reduced assessment for tax years 1995 and 1996.

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Although Lot 1 had no beehives the taxpayer contended the trees' existence and planted clover was sufficient farm activity. An adjacent farm-qualified lot had ten hives which were actively devoted since 1993. Taxpayer's professional beekeeper testified as to clover's importance for pollination and the trees for nectar sources. According to the keeper, bees forage at the closest nectar source within one-half mile of the hive and the disputed Lot 1 was only a short distance away. However, Lot 1 was not a primary nectar source; the keeper indicated that other closer adjacent lots had the same nectar sources as Lot 1 and that open meadow was preferable to woodland. The bees were just as likely to forage the other lots and the surrounding countryside.

The Tax Court ruled the taxpayer failed to show proof that he had planted or maintained the trees, that the bees needed Lot 1's quality or quantity of clover, what amount of land was necessary to support honey production of off-site bees, that the amount of honey produced would decrease if Lot 1 had no clover or that there was any bee activity on Lot 1. Because clover was not planted until 1994 and no activity was substantiated for 1993, the two successive years active devotion requirement for 1995 farm assessment was not satisfied. Also planting clover was insufficient for farm qualification for 1996.

The Court also ruled that Lot 1 did not qualify as appurtenant woodland. Taxpayer did not prove that Lot 1 was legally and functionally part of apiary use or reasonably necessary for maintenance of the

beehives and honey production. Parcels were separate tax line items with distinct physical characteristics and unintegrated purposes. Lot 1 was not marginal, untillable land area with no independent productive use but rather was capable of its own agricultural productivity. Trees and clover could have been cut and sold for firewood or hay component forage crops respectively. The judgments of the County Tax Board were affirmed.

Sales and Use Tax

Sale for Resale – *Boardwalk Regency Corp. t/a Caesar's Atlantic City Hotel and Casino v. Director, Division of Taxation*, decided January 21, 1998; Tax Court; No. 006294-96.

Providing patrons with complimentary beverages is not legally sufficient consideration that would allow the purchase of the beverages to be exempt under the sale-for-resale exemption. Furthermore, per statute the Director is prohibited from entering into closing agreements that are either disadvantageous to the State or where there is no definite ending period.

The parties stipulated to the following facts: (1) Plaintiff (BRC) purchased nonalcoholic carbonated beverages free of sales tax by issuing ST-3 resale certificates to various suppliers, which certified that BRC was purchasing the products for resale; (2) a portion of these purchases were provided to patrons for no monetary consideration and neither sales nor use tax was paid on these transactions; (3) prior to the assessment the Director entered into three closing agreements with BRC, in accordance with N.J.S.A. 54:53-1, the second of which provided that

“[no] sales or use tax will be imposed on the provision of complimentary meals or complimentary liquor effective January 1, 1986;” and (4) that non-alcoholic beverages were included within the term “complimentary meals.”

The Division assessment taxed the purchase price of nonalcoholic carbonated beverages provided to patrons at no charge. BRC contested and advanced two theories for nontaxability. First, it claimed that these purchases qualified as “sales for resale” and that although it received consideration (inducement for patrons to gamble), the consideration is non-monetary and therefore not subject to tax. Secondly, BRC claimed that the closing agreement prohibits the assessment.

The Court found that the resale exemption provision provides that where purchased property is intended to be resold, the initial purchase is exempt from tax and the property's subsequent resale is subject to tax based upon the amount of consideration. However, if the purchaser does not carry through with its intention to resell the items purchased under the sale-for-resale exemption, the exemption disappears and the compensating use tax provision becomes operative to tax the purchase.

In addressing the sale-for-resale issue, the Court first determined that the transfer of beverages to patrons at no charge to induce them to gamble did not constitute consideration. Resorting to consideration's common-law definition, the Court determined that

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consideration did not exist because if a patron was denied a drink, the patron would have no enforceable rights against BRC. Therefore, the Court held that there was no resale and that BRC owed use tax on the purchase price of beverages that were not resold because it became the end user of the beverages.

Turning to the agreements between BRC and the Director, the Court found that the language of the agreement concerning the issue at hand only applied to transactions between BRC and its patrons not the transactions between BRC and its suppliers. Furthermore, the Court found N.J.S.A. 54:53-1 allows the Director only to enter into closing agreements concerning tax liabilities where there is a definite ending period and where the State will not be disadvantaged. Therefore, the Court ruled that even if the Director intended to release BRC from tax liability on the purchase transaction between it and its suppliers that the Director would have exceeded his powers and the agreement would be void because the agreement does not provide for an ending period and the elimination of this tax liability can not be construed to be advantageous to the State.

Trump Plaza Associates t/a Trump Plaza Hotel and Casino v. Director, Division of Taxation, decided January 21, 1998; Tax Court; No. 007936-96.

The facts are the same as those in the case of *Boardwalk Regency Corp.* except that these consolidated cases also involve complimentary alcohol drinks. Under the holding and reasoning in *Boardwalk Regency Corp.*, the Court held that purchases of alcohol did

not qualify for the sale-for-resale exemption where the casino provided complimentary alcoholic beverages to its customers. Consequently, use tax was due on the purchase price.

Adamar of New Jersey t/a Trop-world Casino & Entertainment Resort v. Director, Division of Taxation, decided October 1, 1997; Tax Court; No. 005059-96.

In consolidated cases, plaintiffs (hotels) sought refunds under the sale-for-resale exemption on sales tax it paid relating to purchases of various hotel amenities it provided to its customers including writing pads, stationery, postcards, pens, matches, sewing kits, shoeshine cloths or pads, soap, shampoo, conditioner, shower caps, lotion, shower gel and mouthwash.

In this case of first impression, the Court held that the amenities were not sold to guests and therefore did not qualify for the resale exemption because (1) the amenities were not sold "as such" as they are "inseparably connected" to the services provided by the hotel; and (2) they were not sold as "a component part of a product produced for sale" as the amenities are not incorporated into the room and the room is not a product produced for sale. Furthermore, the Court found that the tax imposed on the rental of hotel rooms is a tax on the rental of the rooms not the resale of amenities. The reasoning underlying this decision is that the "true object" concerning a room rental is not the acquisition of amenities but the use of the room. □

In Our Legislature **Cape May County Tourism Sales Tax**

Funding for Convention Center and Other Projects in Tourism District — P.L. 1997, c.273 (signed into law on December 24, 1997) permits State funding for the construction of a convention center facility in the Cape May County Tourism Improvement and Development District under certain conditions, and authorizes the New Jersey Sports and Exposition Authority to undertake certain additional projects.

Corporation Business Tax Tax Benefit Transfer Program — P.L. 1997, c.334 (signed into law on January 12, 1998) directs the New Jersey Economic Development Authority to establish a corporation business tax benefit certificate transfer program to allow certain emerging technology and biotechnology companies with unused research and development tax credits and unused net operating loss carryovers to surrender those tax benefits for use by other corporate business taxpayers in the State. The measure applies to tax years beginning on or after January 1, 1999.

Small New Jersey-based High-Technology Business Investment Tax Credit Act — P.L. 1997, c.349 (signed into law on January 15, 1998) authorizes a credit under the Corporation Business Tax Act for investments in small, New Jersey-based high-technology businesses that conduct research here. The tax credit would be equal to 10% of the investment up to a maximum

allowed credit of \$500,000 for the tax year for each qualified investment made by the taxpayer. An unused credit may be carried for-

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ward for use in future years, sub-

ject to a \$500,000 per year limitation. The measure applies to qualified investments made during each of the three tax years beginning on or after January 1, 1999.

Extended Net Operating Loss Deduction Carryforward Period — P.L. 1997, c.350 (signed into law on January 15, 1998) provides for a 15 year net operating loss deduction carryforward under the corporation business tax for certain high-technology companies. The act applies to net operating losses which occur during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Extended Carryforward of Research and Development Tax Credits — P.L. 1997, c.351 (signed into law on January 15, 1998) provides for a 15 year carryforward of research and development tax credits for certain high-technology companies. The act applies to qualified research expenses incurred and basic research payments made during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Exemption for Shipping and Aircraft Operation Income — P.L. 1997, c.413 (signed into law on January 19, 1998) exempts from New Jersey corporation business tax the income derived from shipping and aircraft operations of those foreign national corporations whose home countries exempt such income of U.S. corporations. This legislation takes effect immediately.

Gross Income Tax

Military Pension Exclusion — P.L. 1997, c.409 (signed into law on January 19, 1998) excludes

from New Jersey gross income tax the United States military pensions and survivor's benefits of persons 62 years of age or older or disabled. This legislation applies to tax years beginning on or after January 1, 1998.

Medical Savings Accounts — P.L. 1997, c.414 (signed into law on January 19, 1998) establishes certain standards and provides certain tax exclusions and deductions for medical savings accounts which qualify under section 220 of the Internal Revenue Code of 1986, 26 U.S.C. § 220. This act is effective for tax years beginning on or after January 1, 1998.

Local Property Tax

Homestead Property Tax Reimbursement for Certain Seniors & Disabled — P.L. 1997, c.348 (signed into law on January 14, 1998) provides for a homestead property tax reimbursement to certain homeowners and certain owners of manufactured or mobile homes. To qualify, the homeowner must be 65 or more years of age or receiving Federal Social Security disability benefits and have an annual income of less than \$17,918, if single, or a combined income of less than \$21,970 if married. Income eligibility limits will increase annually by the amount of the maximum Social Security benefit cost of living increase for single and married persons, respectively.

Sales and Use Tax

Exemption for Property Used on Farms — P.L. 1997, c.293 (signed into law on January 8, 1998) exempts from sales and use tax receipts from the sale of tangible personal property used directly and primarily in the production for sale of tangible personal property on

farms. Automobiles and property incorporated into a building or structure do not qualify for the exemption. This legislation takes effect immediately.

Exemption for Certain Imprinting Services — P.L. 1997, c.333 (signed into law on January 12, 1998) exempts from sales tax receipts from imprinting services performed on machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling or refining and exempt from taxation pursuant to subsection a. of section 25 of P.L. 1980, c.105 (C.54:32B-8.13).

Tobacco Taxes

Rate Increases — P.L. 1997, c.264 (signed into law on December 19, 1997) increases the cigarette tax from \$0.02 to \$0.04 per cigarette and increases the tobacco products wholesale sales and use tax from 24% to 48% effective January 1, 1998.

Cigarette Tax Licensing Requirements for Retail Drugstore Chains — P.L. 1997, c.373 (signed into law on January 19, 1998) exempts officers and employees of drugstores and pharmacies engaged in the retail sale of prescription drugs and patent medicines from the fingerprinting requirements of the cigarette tax licensing provisions. This legislation is effective immediately.

Miscellaneous

Brownfield and Contaminated Site Remediation Act — P.L. 1997, c.278 (signed into law on January 6, 1998) makes various

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changes in the law in order to facilitate the remediation of contaminated real property. The Act provides for the reimbursement of up to 75% of the cost of remediation to certified developers and stipulates the requirements for certification. A special fund, to be known as the Brownfield Site Reimbursement Fund, will be established and credited with an amount that equals the percent of remediation costs expected to be reimbursed. A special account within

the Fund will be created for each qualified developer.

The legislation also amends the property tax provisions in the Environmental Opportunity Zone Act, P.L. 1995, c.413, to require that the governing body of a municipality *shall*, by ordinance, provide for exemptions of real property taxes for environmental opportunity zones if the municipality participates in the program and allows the property tax ex-

emption to be extended to fifteen years, at the option of the municipality, if the qualified property is to be remediated with a limited restricted use remedial action or an unrestricted use remedial action. The property tax exemption will end if the difference between the real property taxes otherwise due and payments made in lieu of those taxes equals the total remediation cost for the qualified real property. □

tax calendar

april

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

April 13

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

April 15

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Property Tax Rebate—Application

continued

April 15 - continued

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

April 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return

continued

April 20 - continued

- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 27

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

April 30

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

may

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

May 11

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

May 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending January 31

continued

May 15 - continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

May 20

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return
- ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

continued

May 20 - continued

- ST-51 Sales and Use Tax**—Monthly return
- ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return
- ST-350 Cape May County Tourism Sales Tax**—Monthly return
- ST-451 Sales and Use Tax—Salem County**—Monthly Return
- TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return
- UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

May 26

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

june

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

June 10

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

June 15

- CBT-100 Corporation Business Tax**—Annual return for accounting period ending February 28

continued

- CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500 Gross Income Tax**—Employer's monthly remittance

June 22

- CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used
- GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel
- MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5 Spill Compensation and Control Tax**—Monthly return

continued

June 22 - continued

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

June 25

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

from the director's desk

Sale of Principal Residence

As this issue of the *New Jersey State Tax News* goes to press, a bill which would bring New Jersey's treatment of the gain on the sale of a taxpayer's principal residence in line with the Federal treatment is moving through the legislative process. If this bill is signed in its current form, it would be effective for the 1997 tax year and may affect State returns filed earlier in the tax season.

Important Tax Tip

It is very important to accurately report the county/municipality code when completing the New Jersey income tax return. All county/municipality codes are listed on pages 41-42 of the NJ-1040 booklet—carefully transfer the correct code for the county and municipality of the current residence (not necessarily the mailing address) to the appropriate boxes on the top, left-hand corner of Form NJ-1040.

Changing Business Tax Information

Form REG-C, used by businesses in New Jersey to report changes in filing status and business activity, or to change identification information (i.d. number, name, address, etc.) is included in *Package NJX*, both printed and CD-ROM versions, and is also available for downloading from the Division's home page at: <http://www.state.nj.us/treasury/taxation/> From our home page, click on Print Tax Forms and select the Tax Registration section, where you will find Form REG-C.

Replacing Lost Coupon Booklets

To obtain a replacement for a lost sales and use tax (Form ST-50/51) or employer withholding (Form NJ-500/941) coupon booklet, call our Tax Hotline at (609) 588-2200. If the business is registered and is eligible to collect and remit the tax, the Hotline representative will order the appropriate forms and instruct the caller on how to file informally until the replacement forms are received.