

# New Jersey State Tax news

Volume 33, Number 2  
Summer 2004

A Quarterly Newsletter

ISSN 1073-6808



## inside

|   |    |
|---|----|
| <i>changes to rebate programs</i> .....     | 1  |
| <i>ptr filing deadline extended</i> .....   | 3  |
| <i>employer withholding rates</i> .....     | 3  |
| <i>hotel occupancy fee, tax rates</i> ....  | 3  |
| <i>reciprocity for course credits</i> ..... | 3  |
| <i>tax assessor recertification</i> .....   | 4  |
| <i>affidavit requesting waiver</i> .....    | 4  |
| <i>tax assessors' calendar</i> .....        | 5  |
| <i>interest rate 7.00%</i> .....            | 5  |
| <i>criminal enforcement</i> .....           | 6  |
| <i>enforcement summary stats</i> .....      | 6  |
| <i>tax briefs</i> .....                     | 9  |
| <i>current amnesty programs</i> .....       | 10 |
| <i>in our courts</i> .....                  | 11 |
| <i>in our legislature</i> .....             | 16 |
| <i>tax calendar</i> .....                   | 19 |
| <i>from the director's desk</i> .....       | 20 |

For information on tax relief for those affected by the July 2004 flooding in Burlington and Camden counties in New Jersey, go to: [www.state.nj.us/treasury/taxation/floodrelief.shtml](http://www.state.nj.us/treasury/taxation/floodrelief.shtml)

## Changes to Rebate Programs

The Homestead Property Tax Rebate Act of 2004 (P.L. 2004, c.40), signed into law June 28, 2004, folds the NJ SAVER Rebate Program for homeowners into the Homestead Rebate Program. The legislation is expected to provide property tax relief in the form of increased rebates for nearly two million New Jersey residents as part of Governor McGreevey's FAIR (Fair and Immediate Relief) plan.

Even though the programs have been combined, for tax year 2003 homeowners must file applications under both the Homestead Rebate and NJ SAVER Rebate Programs. NJ SAVER rebates will be calculated in the same manner as homestead rebates, taking into account the income of each applicant and the amount of property taxes paid. Eligible applicants will receive *either* the homestead rebate *or* the NJ SAVER rebate. (Tenants, who are not eligible for NJ SAVER rebates, file homestead rebate applications to receive their rebates.)

For 2004 and thereafter, eligible homeowners and tenants will file homestead rebate applications only.

### Who is Eligible for 2003

**NJ SAVER Rebate:** Residents who owned, occupied, and paid property taxes on a home in New Jersey that was their principal residence on October 1, 2003, provided their

gross income does not exceed \$200,000.

**Homestead Rebate:** Homeowners and tenants who paid property taxes on their principal residence in New Jersey, either directly or through rent, and whose gross income does not exceed \$200,000 (homeowners) or \$100,000 (tenants).

### How to Apply for 2003

**NJ SAVER Rebate:** NJ SAVER rebate application packets were mailed to all eligible homeowners over a two-week period that began July 6, 2004. Most homeowners can file their NJ SAVER rebate applications by phone by calling 1-877-658-2972 (toll-free within NJ,

*continued on page 2*



## important phone numbers

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



rebate programs - from page 1

NY, PA, DE, and MD) or 609-826-4288, or on the Division's Web site at: [www.njsaverrebate.com](http://www.njsaverrebate.com). The filing deadline is August 16, 2004.

**Homestead Rebate:** Applicants who are required to file a 2003 New Jersey income tax return file their homestead rebate application, Form HR-1040, with Form NJ-1040 (or complete the homestead rebate application section of Form NJ-1040EZ, or of a return filed electronically using NJ WebFile, NJ

TeleFile, or approved vendor software) by April 15, 2004. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate application is also extended.

Residents who are not required to file a 2003 New Jersey income tax return because their income is below the minimum filing threshold have an additional nine months — until January 18, 2005 — to file a 2003 homestead rebate application.

continued on page 3

### 2003 Homestead/NJ SAVER Rebate Payment Dates

#### HOMEOWNERS

##### Age 65 or Older and/or Disabled

| 2003 Gross Income                                | Payment Date     |
|--|------------------|
| <i>over</i> \$ 0 — <i>but not over</i> \$100,000 | July 31, 2004    |
| \$ 100,000 — \$200,000                           | October 15, 2004 |
| \$ 200,000                                       | Not eligible     |

##### Under Age 65 and NOT Disabled

| 2003 Gross Income                                | Payment Date     |
|--|------------------|
| <i>over</i> \$ 0 — <i>but not over</i> \$200,000 | October 15, 2004 |
| \$ 200,000                                       | Not eligible     |

#### TENANTS

##### Age 65 or Older and/or Disabled

| 2003 Gross Income                                | Payment Date  |
|--|---------------|
| <i>over</i> \$ 0 — <i>but not over</i> \$100,000 | July 31, 2004 |
| \$ 100,000                                       | Not eligible  |

##### Under Age 65 and NOT Disabled

| 2003 Gross Income                                | Payment Date  |
|--|---------------|
| <i>over</i> \$ 0 — <i>but not over</i> \$100,000 | July 31, 2004 |
| \$ 100,000                                       | Not eligible  |

## New Jersey State Tax news

is published quarterly by the:

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

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

[www.state.nj.us/treasury/taxation/publnews.shtml](http://www.state.nj.us/treasury/taxation/publnews.shtml)

Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

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 Director:**  
Robert K. Thompson

#### News Coordinators for This Issue:

- Audit* Peggy Cook
- Compliance* Marita Sciarrotta
- Criminal Investigation* Rosemary Tuthill
- Property Admin.* Richard Stier
- Technical Services* Beth Chambers
- Legislation* Ronald DeMarco

**Contributors:** Dorothy M. Aicher, Carol E. Bell, Beth A. Berniker, Maryann Cortina, Eric C. Friedmann, Kathleen Haller, Susan J. Kane, Frank Malloy, John M. Metzger, Danielle Morris, Patrick J. Ryan, Patricia Svarnas, Fred Wagner, Patricia Wright.

**Staff:** J. Donald Byrnes, Lauren D. Higgins, Maria E. Likakis, Terry A. McWilliams, Joanne M. Monte, Sara E. Murphey, Kelly J. Warboys.

**Editor:** Sheri B. Silverstein



rebate programs - from page 2

### 2003 Rebate Amounts

For 2003, both the homestead rebate and the NJ SAVER rebate will be calculated the same way. Rebate amounts differ for homeowners and tenants, and are also affected by income, amount of property taxes (or rent) paid, filing status, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

**Homeowners:** For tax year 2003, rebates for eligible homeowners age 65 or older or disabled range from a minimum of \$500 up to a maximum of \$1,200. Homeowners under age 65 and not disabled are eligible for a minimum of \$500 up to a maximum of \$800. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

**Tenants:** For tax year 2003, tenants age 65 or older or disabled are eligible for a minimum rebate of \$150 up to a maximum of \$825. Tenants under age 65 and not disabled are eligible for a rebate of \$150.

More information on the rebate programs is available at: [www.state.nj.us/treasury/taxation/relief.shtml](http://www.state.nj.us/treasury/taxation/relief.shtml) □

## Property Tax Reimbursement

### Filing Deadline Extended

The deadline for filing 2003 Property Tax Reimbursement Applications has been extended to September 8, 2004. For more information about the Property Tax Reimbursement Program, visit our Web site at: [www.state.nj.us/treasury/taxation/propfrez.shtml](http://www.state.nj.us/treasury/taxation/propfrez.shtml)

## New Employer Withholding Rates

Recent tax legislation (Chapter 40, P.L. 2004) increases the New Jersey gross income tax rates for all taxpayers with gross income over \$500,000. The increase is retroactive to January 1, 2004.

Because of the increase in tax rates, new withholding rates are required. All employers must withhold at the rate of 12% from salaries, wages, and other remuneration paid in excess of \$500,000 during the remainder of 2004. This new rate takes effect immediately and must be instituted by all employers no later than September 1, 2004. On January 1, 2005, the top withholding rate is reduced to 9.9%. Withholding rates for employees with wages of \$500,000 or less are unaffected.

Two sets of revised withholding tables for the percentage method of withholding are available on our Web site at: [www.state.nj.us/treasury/taxation/newrates.shtml](http://www.state.nj.us/treasury/taxation/newrates.shtml)

The percentage method computation rates in Tables A through E are for weekly, biweekly, semimonthly, monthly, daily or miscellaneous, and annual pay periods. Employers who have a pay frequency other than those provided should divide the amount of tax to be withheld under the Annual Pay Period column for each rate table (but not the withholding percentage rate) by the number of pay periods in the year.

Employers who have questions about their responsibilities can call the Division's Customer Service Center at 609-292-6400 or e-mail us at [taxation@tax.state.nj.us](mailto:taxation@tax.state.nj.us). Prerecorded tax information is available by calling our Automated Tax Information Service at 1-800-323-4400. □

## Hotel Occupancy Fee, Tax Rates

As of July 1, 2004, the State occupancy fee, which was effective August 1, 2003, on the rental of rooms in a hotel, motel, or similar facility, is reduced from 7% to 5%. At the same time, the municipal occupancy tax, which is imposed only in the municipalities that have enacted a local ordinance, can increase from a rate of up to 1% to a rate of up to 3%. However, in the six municipalities that already had local taxes imposed on occupancies prior to August 1, 2003 (Atlantic City, Newark, Jersey City, Wildwood, Wildwood Crest, and North Wildwood), the rates will not change on July 1. For additional information about the rates in these municipalities, the occupancy fee and tax in general, and a list of the municipalities that have enacted an occupancy tax ordinance, see: [www.state.nj.us/treasury/taxation/hotelfeeinfo.shtml](http://www.state.nj.us/treasury/taxation/hotelfeeinfo.shtml) □

## LOCAL PROPERTY TAX Reciprocity for Property Appraisal Course Credits

The Division of Taxation is pleased to announce that the Tax Assessor Continuing Education Eligibility Board and the New Jersey Board of Real Estate Appraisers have approved reciprocal agreements to accept real property appraisal course credits which are approved by either board. This will make it easier for individuals who are both certified assessors and licensed real estate appraisers to meet their continuing

*continued on page 4*



course credits - from page 3

education requirements. This agreement is retroactive to January 1, 2003. Any further inquiries can be directed to Judy Miller or Danielle Morris at 609-292-7974. □

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

Four years have passed since the commencement of the Continuing Education Program for all certificate holders. The end of the first five-year cycle is June 30, 2005. All assessors and holders whose certificates were issued prior to July 1, 2000, will have July 1, 2000, as the beginning date of their five-year cycle and June 30, 2005, as their end date. Assessors and holders whose five-year cycle ends next year on June 30, 2005, must file their Form CEU-1 by May 31, 2005. If application is made within six months of the expiration of the certificate, the application may be made in the same manner as renewal, but an additional late fee of \$50 applies. The additional six months are provided to submit required paperwork to the Division of Taxation and may not be used to earn CEU credits for the foregoing period.

To file for assessor certification renewal you must include:

1. Completed Form CEU-1 (*Assessor Certification Renewal Application*)
2. All CEU-3 Forms (*Uniform Request for Continuing Education Credit*)
3. \$50 application fee

As a reminder, certificate holders who are in their first five-year cycle must show proof of earning at least 50 Continuing Education credit hours. The course credit hour minimum is as follows: 20 credit hours in Property Tax Administration and 20 credit hours in Real Property Appraisal. The additional 10 credit hours needed may be fulfilled by any combination of Appraisal or Administration and are considered electives. Any number of credit hours received over the required 50 cannot be carried into the next cycle.

The next five-year group to be recertified passed the C.T.A. (certified tax assessor) exam on September 23, 2000, and were issued certificates dated January 1, 2001. Their renewal deadline will be November 30, 2005, or 30 days prior to their five-year expiration date of December 31, 2005.

After their initial five-year cycle, certificate holders will enter into a three-year cycle in which they will complete 12 credit hours in Property Tax Administration, 12 credit hours in Real Property Appraisal and 6 added credit hours in either concentration.

Certified assessors are reminded to access up-to-date continuing education information on the Internet. The Web site address is: [www.state.nj.us/treasury/taxation/lpt/recert.shtml](http://www.state.nj.us/treasury/taxation/lpt/recert.shtml)

Also, it is important that any address and/or name changes be reported to the Policy and Planning Section at 609-292-7813. If you have questions concerning assessor recertification, please contact Danielle Morris, Policy and Planning, at 609-943-4399. □

## **INHERITANCE AND ESTATE TAX** ***Affidavit Requesting Tax Waiver***

Form L-9 is an affidavit executed by an executor, administrator, or joint tenant requesting the issuance of a tax waiver for real property located in New Jersey which was held by a resident decedent. The waiver releases the tax lien and allows the estate to sell the property.

Form L-9 may not be used if any of the following conditions exist:

1. Any asset valued at \$500 or more passes to a beneficiary other than the decedent's parents, grandparents, spouse, children, legally adopted children, children's issue, adopted children's issue, or stepchildren.
2. Where a trust agreement exists or is created under the terms of the decedent's will. In the event that all other conditions for the use of Form L-9 are met and there is no possibility that any portion of the trust assets will pass other than to a Class "A" beneficiary, the Division will give consideration to the issuance of a real estate tax waiver.
3. The relationship of a mutually acknowledged child is claimed to exist.
4. Where the decedent's date of death is after December 31, 2001, and his/her gross estate for Federal estate tax purposes under the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000.
5. In any instance where there is an inheritance or estate tax or the possibility of a tax.

*continued on page 5*





tax waiver - from page 4

6. In any instance where an inheritance or an estate tax return must be filed.

Common errors to avoid when filing Form L-9 include:

1. Using an older version of the form. The form was revised in April 2003. The revision was made necessary due to the changes made in the New Jersey estate tax effective on January 1, 2002.
2. Failure to answer all the questions.
3. Failure to submit a copy of the Letters Testamentary or Letters of Administration, the decedent's will and codicils thereto, and any trust agreement.
4. Failure to submit a copy of the decedent's last full-year Federal income tax return.
5. Failure to submit a full description of realty, including the owner of record and the assessed and market value on the decedent's date of death.
6. Failure to list all beneficiaries, their relationship to the decedent, and their interest in the estate.
7. Failure to properly answer the questions related to the decedent's gross estate, deductions, and adjusted taxable gifts under the provisions of the Internal Revenue Code in effect on December 31, 2001. The "gross estate" is not limited to probate assets and "adjusted taxable gifts" is not the gross estate less deductions. The decedent's gross estate includes all property which was subject to the Federal estate tax

in 2001 including, but not limited to, real estate wherever located, stocks, bonds, bank accounts, annuities, jointly held assets, life insurance policies, and certain transfers. Adjusted taxable gifts are lifetime taxable gifts made by the decedent other than those included in the gross estate.

The completed Form L-9 should be mailed to the Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, New Jersey 08695-0249. Information pertaining to the use of the form may be obtained by calling 609-292-5033. □

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

#### **July 1-**

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension within which appeals may be heard and determined.
- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2005 together with a notice that the completed form must be filed with the assessor by August 1, 2004, in order to claim continuance to each taxpayer whose land was assessed for tax year 2004 under the Act.

#### **2nd Tuesday in July-**

- State Equalization Table prepared.

#### **August 1-**

- Owners of farmland must file application (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2005.

#### **August 5-**

- All SR-1A forms showing information to be used in compiling 2004 Table of Equalized Valuations for State School Aid to be received by Property Administration.

#### **August 15-**

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

#### **August 25-**

- Completion of State Equalization Table by Director, Division of Taxation.

*continued on page 6*

### **Interest 7.00%**

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

The assessed interest rate history is listed below.

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



assessors' calendar - from page 5

**September 1-**

- Extension to file Form FA-1 where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or an immediate member of the owner's family.
- Tangible business personal property returns (Form PT-10) of local exchange telephone, telegraph, and messenger system companies, with respect to tax year 2005, to be filed with the assessor for taxing district in which the said property is located.
- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2005, for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

**September 13-**

- Table of Aggregates transmitted to Taxation and Local Government Services Directors, State Auditor, Municipal Clerk, and Clerk of Board of Freeholders by County Boards of Taxation. □

**Criminal Enforcement**

Criminal Enforcement over the past several months included:

- The Office of Criminal Investigation (OCI) arrested Norman Levine of Manchester Township, New Jersey, after an investigation identified Levine as the recipient of untaxed cigarettes by way of a FedEx shipment from Virginia. Levine appeared in court in Maryland on December 12, 2003, in a case stemming from a previous arrest. Immediately after pleading guilty to a felony count of transportation/possession of contraband cigarettes, he was followed by agents of the Maryland Comptroller of the Treasury to Virginia and North Carolina where they observed him purchasing cigarettes again and shipping them from Virginia Beach to a New Jersey business. OCI surveillance led to the arrest of Levine after he took possession of the delivery and was placing the cigarettes in a storage unit in Neptune Township. Levine was actively engaged in a mail-order business with an Internet site. A total of 754 cartons of contraband cigarettes were seized; 457 cartons were in the delivery that had

been observed, and the remainder were found in his storage unit. A combination of Delaware tax stamped, Virginia tax stamped, and unstamped cigarettes (from North Carolina) were seized, along with \$2,138 in cash and a 1998 Mercury. Levine was charged with transportation and sale of untaxed cigarettes and possession of more than 20,000 unstamped cigarettes, and released on \$25,000 bail.

- On December 31, 2003, a settlement agreement was reached between the Division of Taxation and Mario Capalbo t/a Garden Pinball and Vending Company of Paterson, New Jersey. The agreement stipulated that Capalbo withdraw his appeal regarding the denial of a Cigarette Wholesale Dealer's License, and will not apply for or receive a Cigarette Wholesale and/or Distributor's License in the future. Appellant agreed to a three-year suspension of his cigarette vending machine license. Finally, reactivation of the vending machine license is contingent on continued "good behavior" as it relates to compliance with the tax laws of the State and any other indictable offense.

*continued on page 7*

**Enforcement Summary Statistics  
First Quarter 2004**

Following is a summary of enforcement actions for the quarter ending March 31, 2004.

|                         |              |  |     |
|-------------------------|--------------|--|-----|
| • Certificates of Debt: |              | • Jeopardy Seizures                          | 1   |
| Total Number            | 3,051        | • Seizures                                   | 45  |
| Total Amount            | \$41,835,712 | • Auctions                                   | 12  |
| • Jeopardy Assessments  | 232          | • Referrals to the Attorney General's Office | 501 |

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

[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)



*criminal enforcement - from page 6*

This completes the process of denying a cigarette wholesaler's license to Capalbo on the basis of his criminal conviction for gambling and maintaining an illegal gambling resort.

- On January 5, 2004, Lamine Ouattara of East Orange, New Jersey, was arrested for filing fraudulent personal income tax returns. OCI, the East Orange Police Department, and Wachovia National Bank worked the case together. Ouattara filed 13 fraudulent returns generating \$9,311 in refunds claiming the Earned Income Tax Credit with unsupported Schedule C income. Other aspects of this investigation are ongoing.
- On January 9, 2004, in Superior Court – Middlesex County, New Brunswick, New Jersey, John B. Forrest, formerly of Colts Neck, New Jersey, failed to appear for sentencing pursuant to his guilty plea of September 12, 2003, on behalf of himself and his corporation, Tri-State Ticket Exchange, Ltd., Old Bridge, New Jersey, to charges of theft by deception of approximately \$647,000 from customers who ordered sports and entertainment event tickets that were never delivered; misapplication of \$122,626.37 in sales taxes of New Jersey and eight other states which Forrest collected from his customers but failed to turn over to tax agencies; credit card fraud; failure to file New Jersey sales and use tax returns for the period January 2001 through December 2002; and failure to turn over \$33,280 in New Jersey sales and use tax collected in that period. An arrest

warrant has been issued for Forrest, and he has been listed as one of the New Jersey Division of Criminal Justice's 12 Most Wanted. This was a joint investigation between OCI and the Division of Criminal Justice, who prosecuted the matter.

- On January 14, 2004, in Totowa, New Jersey, Dipan Patel and Switu Patel of North Bergen, New Jersey, and Pritisha S. Patel of Groton, Connecticut, were arrested as a result of sales by the subjects to undercover agents of 373 cartons of untaxed cigarettes. Two vehicles used in the transportation of the contraband were seized. Bail for Dipan Patel was set at \$50,000. The other two subjects were released on their own recognizance. This was a joint investigation by OCI and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives.
- On January 16, 2004, Dennis Fetterman of Williamsburg, Virginia, was arrested by OCI based on information received from the Montville, New Jersey, Police Department for possession and transportation of untaxed cigarettes. Fetterman was involved in selling cigarettes at local businesses. After a brief joint surveillance with the Montville Police, Fetterman was followed to an auto dealership in Parsippany, New Jersey, where he was arrested and 45 cartons of Virginia-stamped cigarettes, less than 50 grams of marijuana, and \$795 were seized. On March 2, 2004, in Parsippany Municipal Court, Fetterman pleaded guilty to charges of transportation of untaxed cigarettes and possession of a controlled dangerous substance (marijuana). He was fined

\$2,925, sentenced to one year's probation with mandatory drug testing and six months' loss of driver's license, and the \$795 was forfeited to the State.

- On January 27, 2004, a grand jury in Morristown, New Jersey, returned an eight-count indictment of Bernard and Shirley Davidson, husband and wife. The indictment included charges of theft by various means and filing false or fraudulent tax returns, failure to pay taxes due, and false swearing. The charges stem from Bernard Davidson's position as a Court Officer in Morris County and his theft of official receipts in excess of \$75,000 and the failure to report the illegal income by Bernard and Shirley Davidson on their New Jersey gross income tax returns. The investigation was conducted jointly with the Morris County Prosecutor's Office.
- On January 27, 2004, in Superior Court – Hudson County, Jersey City, New Jersey, John Drzymkowski of Berkeley Heights, New Jersey, was admitted into the Pretrial Intervention Program (a supervision program for first-time offenders charged with nonviolent offenses) for a term of 36 months, and ordered to make restitution to the State of \$331,039.36 pursuant to his guilty plea on July 28, 2003, to one count of failing to file tax returns. The charges involve petroleum products gross receipts tax which Drymco, Inc., a now-defunct heating oil company of which Drzymkowski was chief operating officer, collected from its customers in connection with

*criminal enforcement - from pg. 7*

the sale of diesel fuel to truck stops from September 1999 to December 2000.

- On February 3, 2004, a grand jury in Ocean County charged Kathy J. Manna of Lavallette, New Jersey, with an eight-count indictment. The indictment included charges of aggravated assault, theft by extortion, theft by deception, forgery, and filing false and fraudulent New Jersey gross income tax returns for the years 1999, 2000, 2001, and 2002. Ms. Manna ran a phony investment scam wherein she stole in excess of \$75,000 from seven Ocean County residents and failed to report the illegal income on her tax returns. The investigation was conducted jointly with the Ocean County Prosecutor's Office.
- On February 10, 2004, a State Grand Jury in Trenton indicted Richard J. Nardone of San Diego, California, a chiropractor who previously lived in Garwood, New Jersey, for gross income tax and corporation business tax (CBT) violations. The indictment alleges Nardone concealed approximately \$400,000 in personal income in 1998 and 1999 by having six medical corporations, which he controlled, issue payroll checks to fictitious employees. With aid from his office manager, Donna Januik of Mountainside, New Jersey, who is also his sister, Nardone would have the checks cashed and the currency returned to him. In addition, it is alleged that Nardone and Januik utilized corporate accounts to pay more than \$180,000 in personal expenses without reporting the funds as income. Nardone was charged with filing fraudulent New Jersey personal income tax returns for 1998 and 1999, failing to pay over a total of \$67,467 tax, conspiracy, misconduct by a corporate official, and filing fraudulent CBT returns for the corporations he used. Januik was also indicted and charged with evading \$1,740.77 in personal gross income tax in 1998, conspiracy, and assisting in the filing of the false CBT returns. The total amount subject to restitution to the State will include tax, penalty, and interest. This case was investigated jointly with the Division of Criminal Justice – Office of Insurance Fraud Prosecutor.
- On February 11, 2004, the Division of Taxation suspended for six months the license of K-Mart Corp. store #3523 in Paramus, New Jersey, to sell cigarettes at retail. This action is a result of enforcement of the Sales to Minors statutes by the Paramus Board of Health.
- On February 27, 2004, Rosa M. Castro, a tax preparer from Clifton, New Jersey, was charged with filing false and fraudulent tax returns and theft by deception based on the allegation that she has prepared in excess of 2,000 fraudulent New Jersey gross income tax returns, seeking almost \$1,000,000 in illegal refunds in the largest tax refund fraud scheme investigated in State history. The case was opened based on a referral from the Division of Revenue. Investigation determined two types of fraud being committed: Earned Income Tax Credit (EITC) fraud and excessive medical deduction refund fraud. To date, the investigation has identified 1,329 tax returns claiming refunds of \$908,850.56 for the EITC, and has found more than 500 tax returns claiming in excess of \$5,900,000 in bogus medical expenses, generating over \$80,000 in refunds. Castro is alleged to have prepared and filed fraudulent New Jersey gross income tax returns for herself, family members, friends, and others using actual and fictitious names and social security numbers. Undercover agents met with Rosa Castro at her home office on January 23 and 27, 2004, at which time she prepared fraudulent tax returns utilizing fictitious information which would have generated refunds. On March 1, 2004, the Division of Criminal Justice and OCI raided her home office and seized her computer, financial and business records, and obtained a court order freezing her bank accounts and safety deposit box. Ms. Castro was on Federal probation for tax fraud for perpetrating a similar scheme against the Federal government.
- One hundred eighteen (118) complaints alleging tax evasion were evaluated from January through March 2004 in the Office of Criminal Investigation.
- During the same period, one hundred forty (140) charges were filed in court and thirty-eight (38) arrests were made in forty (40) cases involving violations of the Cigarette Tax Act. Items seized were: 1,452.7 cartons of untaxed cigarettes having a total value of \$84,256.60, including 223.1 cartons bearing counterfeit New Jersey tax revenue stamps, and four vehicles. □





## Tax Briefs

### Corporation Business Tax

**Allocation of Freight Revenues** — Trucking companies deriving revenues from transporting freight must calculate their receipts fraction using mileage in the following manner: The taxpayer's receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and N.J.A.C. 13:18-3.12 shall make calculations using such records.

In addition, with regard to the property fraction, movable property such as tractors and trailers shall be allocated to this State using the same mileage fraction set forth above. Such allocated movable property shall be added to the fraction formed by the nonmovable property in New Jersey over nonmovable property everywhere to arrive at the property fraction.

With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth above. Such allocated payroll shall be added to the fraction formed by nonmobile wages everywhere to arrive at the payroll fraction. See N.J.A.C. 18:7-8.10(c)(4)(iii).

**Correction: Alternative Minimum Assessment (AMA)** — The rule for the selection of the computation method for the Alternative Minimum Assessment is set forth at N.J.A.C. 18:7-18.4(c) which states that: "For the first privilege period that the taxpayer pays the Alternative Minimum Assessment, the

taxpayer may select a computation method for the Alternative Minimum Assessment, based on gross profits or gross receipts. Once selected, that method must be employed for that privilege period, and for the next succeeding four privilege periods."

As such, the taxpayer can defer the selection of the AMA computation method until the first privilege period that AMA is greater than the corporation's corporation business tax liability.

Accordingly, this notice supercedes the item published on page 12 in the [winter 2003 issue](#) of the *New Jersey State Tax News*.

**Minimum Tax and Affiliated or Controlled Groups** — Under N.J.S.A. 54:10A-5(e), any taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, is subject to a tax not less than \$2,000. Each taxpayer member is subject to at least the minimum tax during that privilege period. See also N.J.A.C. 18:7-3.4(g).

Affiliated groups cannot elect to file on a consolidated basis for New Jersey purposes. A corporation which is included in a consolidated Federal income tax return must complete all schedules of the CBT-100 on its own separate basis and attach a copy of the Affiliations Schedule, Form 851, which it filed with Form 1120 for Federal income tax purposes. Also, a corporation which is included in a consolidated Federal income tax return must complete Lines 1 to 38 of the CBT-100 on its

own separate basis without consolidation with any other corporation. A schedule of payroll per member must also be submitted with the corporation business tax return.

A key corporation must be named when an affiliated group claims the \$20,000,000 threshold during a privilege period. The election is made each year that the affiliated group exceeds the threshold. The key corporation is a single member of an affiliated group that acts as a clearinghouse for adjustments to members of the group under N.J.A.C. 18:7-18.4(d).

**Professional Corporation Fees** — The Business Tax Reform Act established a \$150 per licensed professional fee for professional corporations with more than two licensed professionals. A corporation is subject to this fee if it has New Jersey source income or New Jersey resident members. A corporation with New Jersey professionals is subject to the filing fee.

Under N.J.A.C. 18:7-19.2(b), if a professional corporation includes nonresident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may be used provided that the professional corporation has an office outside of New Jersey.

The total apportioned professional corporation fee is equal to the sum of:

1. The number of resident professionals multiplied by \$150; plus
2. The number of nonresident professionals with physical nexus to New Jersey multiplied by \$150; plus

*continued on page 10*



tax briefs - from page 9

- 3. The number of nonresident professionals without physical nexus to New Jersey multiplied by \$150, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners. The licensed professionals are listed in N.J.A.C. 18:7-19.1.

**Inheritance and Estate Tax**  
**Restricted Payment of Life Insurance Benefits** — A taxpayer asked if the Division requires a 50% retention of the payment of benefits to beneficiaries by life insurance companies pending a tax waiver from the Division of Taxation.

The life insurance company is not required to retain 50% of any payments or file Form O-71 for the payment of benefits made to a decedent’s surviving spouse. Also, with regard to the payments of benefits made to beneficiaries other than the decedent’s surviving spouse, all sums payable (100%) under the terms of the life insurance contract may be disbursed by the life insurance company without obtaining a tax waiver from the Director of the Division of Taxation.

The life insurance company must complete and mail Form O-71 to the Director within ten days after any sums payable have been paid, and each beneficiary listed on the form should be advised that information

regarding death claim payments is being supplied to the State.

The instructions to Form O-71 have been amended to reflect the above provisions.

**Litter Control Fee**  
**Wholesaler to Wholesaler Deduction** — Retailers of litter-generating products must pay a fee of  $2.25/100$  of 1% (.000225) on their gross receipts from sales of litter-generating products. The law imposing the fee, however, provides that “retailer” does not include “a restaurant, the principal activity of which consists of preparing...a meal or food to be eaten on the premises.” The Division defines “principal activity” as more than 50% of the restaurant’s food and beverage sales. The effect of the restaurant provision is to exempt primarily eat-in restaurants (including bars serving meals that are primarily for eat-in) from liability for the fee.

Wholesalers must pay a fee of  $3/100$  of 1% (.0003) on their gross receipts from sales of litter-generating products. For purposes of calculating the fee, however, a wholesaler is allowed a deduction for a sale to another wholesaler. Since a primarily eat-in restaurant is not a “retailer” and not liable for the fee, a wholesaler asked whether its sales to an exempt eat-in restaurant are

exempt from the fee. In other words, the wholesaler asked whether the sale to the eat-in restaurant (a non-“retailer”) could be considered eligible for the wholesaler-to-wholesaler deduction or otherwise exempt from the fee.

The Division replied that the wholesaler’s sales to the eat-in restaurant are not deductible as a sale from a wholesaler to a wholesaler. Although the restaurant is not a “retailer” liable for the fee, the restaurant is not included in the definition of “wholesaler.” Under N.J.A.C. 18:38-1.3, for the sale to be considered a sale to a wholesaler, the sale must be to an entity that will resell to another wholesaler or to a retailer. The restaurant is not buying the product to resell to a wholesaler or another retailer. Therefore, a wholesaler is not allowed to deduct a sale of a litter-generating product to any restaurant as a sale from a wholesaler to a wholesaler.

**Partnership Filing Fee**  
**Limited Liability Company With No Income** — The Division replied to an inquiry concerning whether a New Jersey LLC with no revenues, property, or wages is subject to the new \$150 per partner filing fee.

*continued on page 11*

### Current Amnesty Programs

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

|    |                |  |
|----|----------------|--|
| AR | Jul 1 – Sep 30 | <a href="http://www.accessarkansas.org/dfa/amnesty.html">www.accessarkansas.org/dfa/amnesty.html</a> |
| NE | Aug 1 – Oct 31 | <a href="http://www.revenue.state.ne.us/amnesty/">www.revenue.state.ne.us/amnesty/</a>               |
| WV | Sep 1 – Oct 30 | <a href="http://www.wvtaxamnesty.gov/">www.wvtaxamnesty.gov/</a>                                     |



*tax briefs - from page 10*

Under N.J.A.C. 18:35-11.1, “Income” means income, loss, gain, or expense. If the partnership in question incurred any income, loss, gain, or expense attributable to New Jersey, the partnership will have New Jersey income. Any partnership having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150 for each owner of an interest in the entity. N.J.A.C. 18:35-11.2(a). If the LLC in question is considered a partnership for New Jersey tax purposes and had no New Jersey income, loss, gain, or expense (as noted above) during the taxable year, the LLC would not be subject to the \$150 per owner fee.

**Sales and Use Tax**

**Personal Chef and Catering Services** — The New Jersey Sales and Use Tax Act imposes tax on “receipts from the sale of food and drink...by caterers [including]... those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink.” N.J.S.A. 54:32B-3(c); N.J.S.A. 54:32B-3(c)(2). Catering consists of the preparation of food or drink and usually involves delivery and/or the serving of such meals in a prepared or heated state.

On the other hand, personal chef services are exempt from tax as a personal service transaction. N.J.S.A. 54:32B-2(e)(4)(A). Personal chef services typically involve food shopping and preparing meals for the client, packaging, and stor-

ing the meals (e.g., for a one-week period) at the client’s premises. Personal chefs may also prepare the meals off premises and deliver the food cold or frozen for future consumption, similar to the type of meals found in the frozen food section of a supermarket. The client will then heat or otherwise further prepare the meal. However, if the meals are prepared off the client’s premises, and delivered in a heated, ready-to-eat state, the prepared food will be subject to sales tax (similar to take-out food). N.J.S.A. 54:32B-3(c).

**“Restocking” Fee** — The Division responded to an inquiry about the application of the New Jersey Sales and Use Tax Act to the following set of facts:

1. Consumer buys an item for \$100 and pays 6% tax.
2. Consumer returns the item and is charged a 30% restocking fee or \$30.
3. The consumer expected \$76, but received \$74.20.
4. The business said there was a 6% tax levied on the \$30 restocking fee.

A fee imposed for “restocking” is not subject to sales tax since there is no sale once an item is returned. The restocking fee is not an expense of any taxable sales transaction and, by itself, is not subject to sales tax. Thus, the consumer should have received a full refund of \$70 plus the \$6 sales tax paid.

**Travel Agent Sales** — Sales of travel services by a travel agency are considered tax-exempt professional services. N.J.S.A. 54:32B 2(e)(4) (A). Thus, the amount charged by a travel agent for a trip or vacation is

neither subject to sales nor luxury tax in New Jersey, whether or not the customer is separately charged for all the various items that comprise the invoice such as hotels, meals, transportation, amusements, etc.

However, each vendor of taxable services or property in this State who sells such services or property to the travel agent is required to impose and collect, if applicable: sales tax; state occupancy fee; municipal occupancy tax; tourism promotion fees, taxes, and assessments; casino room fee; and/or luxury tax, on the receipts from that sale. In effect, the travel agent is considered the retail purchaser of such services, property, admissions, or occupancies, rather than a reseller. □

**In Our Courts Administration**

**Time Period to File Complaint** – *James Liapakis v. Director, Division of Taxation*, denied March 9, 2004; Supreme Court of New Jersey No. C-421 September Term 2003, 55,336.

The New Jersey Supreme Court denied the Division of Taxation’s petition for certification. Previously, the Appellate Division ruled that the 90-day period to file an appeal with the Tax Court commences on the date the taxpayer receives the Division of Taxation’s notice rather than on the mailed date.

**Cigarette Tax Cigarette Purchases via Internet or Telephone** – *Gary Mosher v. Director, Division of Taxation*, decided November 22, 2002; Tax Court No. 001180-2002.

*continued on page 12*

*in our courts - from page 11*

After viewing vendor's advertisements that claimed cigarettes were sold "tax free," plaintiff (Mosher) purchased 52 cartons of cigarettes over the Internet and/or telephone from Smokers Advantage of Louisville, Kentucky, for his friends and his personal use. Smokers Advantage is an out-of-State, unlicensed distributor of unstamped cigarettes. Smokers Advantage did not remit sales or cigarette taxes to New Jersey, but did inform the New Jersey Division of Taxation (Division) of Mosher's purchases pursuant to the Federal Jenkins Act. In September 2000 the Division notified and assessed Mosher sales and use tax as well as cigarette tax on purchases that occurred between August 1999 and March 2000.

The Tax Court held that Mosher's purchases were subject to sales and use tax, as well as the cigarette tax ruling that the vendor's advertisements stating that the cigarettes were "tax free" did not excuse him from being chargeable with knowledge that the tax could be collected by New Jersey because New Jersey charges tax on cigarettes. Relying on case law, the Court found that the Jenkins Act, Sales and Use Tax Act, and the Cigarette Tax Act were held to be constitutional. The Court also ruled that the Jenkins Act disclosure did not violate Mosher's right of privacy because even if the right asserted was a fundamental right, the State's compelling and substantial need for this information would outweigh Mosher's privacy interest. Finally, the Court found that the assessment was subject to 5% amnesty penalty, pursuant to a law enacted in 2002, of which Mosher was previously notified.

**Cigarette Purchases via Internet or Telephone** – *Gary Mosher v. Director, Division of Taxation*, decided February 17, 2004; Appellate Division No. A-2515-02T3.

The Appellate Division affirmed the Tax Court for substantially the reasons stated by the Tax Court. Furthermore, the Court found that plaintiff's arguments were without sufficient merit to warrant a written decision.

Mosher filed a petition of certification with the New Jersey Supreme Court.

**Gross Income Tax Gain on Sale of Rental Real Estate Not Held by a Business Entity** – *John J. and Mary T. Moroney and Thomas J. Jr. and Susan Denitzio v. Director, Division of Taxation*, decided January 8, 2004; Tax Court Nos. 005582-1998 and 005564-2002.

The Moroneys acquired rental real estate for \$327,399 and sold the property eight years later for \$245,000. The property was not held by a business entity. In each year of ownership, the annual operating expenses, exclusive of depreciation, exceeded the annual income. In determining their gain or loss, the Moroneys calculated an \$82,399 capital loss by subtracting the original purchase price from the sales price. Pursuant to an audit, the Division determined that the \$104,330 of depreciation reduced the real estate's basis. Therefore, the Division calculated an N.J.S.A. 54A:5-1(c) gain on this sale under the theory that the property's basis decreased to the extent that annual depreciation offset annual gross income before considering any other deductions. The Denitzios' legal

issue is identical and therefore the cases were heard together, but were not consolidated.

The Tax Court commenced its analysis by reviewing *Koch* where the New Jersey Supreme Court held that tax could not be imposed unless there is recovery of a past tax benefit or an accession to wealth and, therefore, that a partner's basis in his partnership interest could not be reduced by nondeductible partnership losses. The *Koch* decision prevented the Division from taxing what the New Jersey Supreme Court described as a return of capital because the taxpayer did not receive a tax benefit for nondeductible losses. After *Koch*, the Division stated in the *State Tax News* that the *Koch* decision would also apply to the sale of rental real estate that is not held by a business entity. In a later *State Tax News* article, the Division explained that unutilized depreciation expense would adjust basis in that it would increase basis when calculating gain (loss) from the sale of rental real estate that is not held by a business entity. The Division defined unutilized depreciation as the amount that allowed or allowable depreciation exceeds gross income (gross receipts) before considering any other expenses or deductions. This calculation resulted in limiting basis reductions to depreciation that resulted in tax benefits to the taxpayer.

In calculating N.J.S.A. 54A:5-1(c) gain from the disposition of property, the Court ruled that basis could only be reduced by depreciation to the extent that depreciation could offset income remaining after first deducting operating expenses (actual out-of-pocket expenses as

*continued on page 13*



*in our courts - from page 12*

opposed to accounting expenses such as depreciation) against gross income. The Court determined that although N.J.S.A. 54A:5-1(c) authorized the Division to assign priority and assignment to deductions for S corporations, that otherwise there was no statutory language applicable to the sale of property. Also, the Court found that the Division's assignment of a first priority deduction to depreciation produced a result that was both contrary to *Koch* and inconsistent with the Internal Revenue Code.

**Severance Payments** – *Donald M. Kopczynski v. Director, Division of Taxation*, decided January 7, 2003; Tax Court No. 008748-1996.

Two days after his 60th birthday, plaintiff's employer notified him by letter that his employment would be terminated in two weeks. The letter outlined severance benefits that were available to him that included \$31,282.02 paid under the severance payment plan in equal monthly installments in accordance with the employer's regular payroll, payment for unused vacation and personal time, and to provide medical and dental benefits for the duration of the severance or until employment was secured in exchange for plaintiff's signed general release form within 21 days. In part, the general release form stated that plaintiff specifically releases his claims and demands against the employer under numerous areas including the Age Discrimination in Employment Act of 1967, as well as any actions that existed as of the date of the release under any tort laws.

Plaintiff consulted an attorney and signed a retainer agreement for pur-

poses of negotiating a settlement agreement of his unspecified claims against his employer. Thereafter, the plaintiff and employer agreed to increase the \$31,282.02 to a \$41,500 severance, and the agreement included all the other provisions stated above. Plaintiff executed the general release form. Employer paid plaintiff \$19,466 in 1993 and \$21,833 in 1994 while withholding taxes for Federal and State income taxes.

Plaintiff filed 1993 and 1994 returns with the Division of Taxation (Division) where he included the severance payments as taxable income from wages, salaries, and other employee compensation. Afterwards, plaintiff filed refund claims asserting that the severance payments were actually received in exchange for plaintiff's not bringing an age discrimination lawsuit against the employer through an agreement with plaintiff's attorney. Thereafter, plaintiff filed a complaint contending that his severance payments were not taxable as damages under N.J.S.A. 54A:6-6(b).

The Tax Court determined that severance and severance-like payments are includable in gross income under N.J.S.A. 54A:5-1(a) as salaries, wages, tips, fees, commissions, bonuses, or other remuneration received for services rendered unless they are excludable under N.J.S.A. 54A:6-6(b). Moreover, the Court ruled that severance payments are includable in gross income, recognizing that the services were previously rendered and that there was not concurrent consideration. The Court reached its result by relying upon guidance from Federal case law regarding taxability of severance payments as it was applied to the Internal Revenue Code.

Under N.J.S.A. 54A:6-6(b), damages received due to personal injury or sickness are excludable from gross income regardless of whether they are received by suit or agreement. As there was no prior New Jersey case law and as the statute is similar to Internal Revenue Code §104(a) (2), the Court looked to Federal cases for guidance. The Court found that the Federal Courts relied on the payer's intent in determining whether the payment was for personal injury or sickness in cases where there was either no express language or evidence as to a specific amount to compensate the person. One Federal Court noted that the withholding of taxes significantly suggests that the employer intended severance payment. Another Federal Court found that the payment was not for personal injury or sickness as it was based on a formula relating to the employer and employee relationship. In *Commissioner v. Schleier*, 515 U.S. 323 (1995), the United States Supreme Court stated that neither the person's reaching age 60 nor being discharged because they are 60 years old could be described as a personal injury or sickness. Furthermore, the Supreme Court ruled that neither back wages nor punitive damages for age discrimination constituted compensation for personal injury or sickness.

Plaintiff presented no evidence or testimony that he received the payments for personal injury or sickness. In fact, the employer withheld income taxes, both State and Federal. Therefore, the Court held that the payments were not excludable under N.J.S.A. 54A:6-6(b) as damages received due to personal injury or sickness.

*continued on page 14*



in our courts - from page 13

**Insurance Premiums Tax**

**Retaliatory Tax** – *American Fire and Casualty Company & West American Insurance Company v. Director, Division of Taxation*, decided December 2, 2003; Tax Court No. 004714-2001.

Plaintiffs are foreign casualty insurance corporations that seek refunds of retaliatory tax assessed against each of them pursuant to N.J.S.A. 17:32-15 after they each calculated their tax liability under N.J.S.A. 54:18A-6.

Under N.J.S.A. 54:18A-6, a non-life insurance company may calculate insurance tax on 12.5% of its total premiums where its New Jersey taxable premiums are greater than 12.5% of the company's and all its affiliates' total premiums. However, pursuant to N.J.S.A. 17:32-15, retaliatory insurance tax is imposed against a foreign insurer when the foreign insurer's insurance tax and other obligations in New Jersey are less than what a foreign insurer's insurance tax and other obligations would have been in its home state if it were a New Jersey insurance company doing business there.

In the instant case, the Division permitted each taxpayer to file under the 12.5% statute, but then the Division assessed retaliatory tax on the amount of tax that each would have

had to hypothetically pay to their home state on its New Jersey premiums, if it were a New Jersey insurance company doing business there, to the extent that amount exceeded the tax that they were obligated to pay to New Jersey. Plaintiffs claim that the retaliatory tax provision is unconstitutional in that it denies plaintiff equal protection because the statute functions as a preference for domestic insurers. Alternatively, plaintiffs claim that when the two statutes are read *in pari materia*, the Division's methodology provides an interpretation that is inconsistent with the purpose and policy considerations of both statutes.

The Court read the statutes *in pari materia* because they related to the same subject matter. The Court found that the purpose of N.J.S.A. 54:18A-6 was to encourage foreign and domestic insurance companies to expand their operations in New Jersey, and that the purpose of retaliatory tax statutes was to influence foreign states to reduce insurance company taxation in order to promote interstate insurance business by maintaining low taxes and other obligations on domestic insurers.

In addressing whether there was an irreconcilable conflict between the statutes, the Court found that neither the statutes, amendments, nor legislative history provided any guidance as to one statute's relationship with

the other. Therefore, the Court ruled that there was an inference that the legislative intent was that neither statute should affect the interpretation of the other. The Court reasoned that the Legislature's failure to address any possible conflict was indicative that the statutes function independently and in the manner as applied by the Division.

The Court found that the United States Supreme Court previously upheld the constitutionality of retaliatory tax under the Equal Protection Clause of the United States Constitution using the rational basis test. In applying the rational basis test to the instant case, the Court ruled that the Division's methodology of calculating retaliatory tax served the legitimate purpose of influencing other states regarding taxes imposed on New Jersey insurers, and that the Legislature could have reasonably believed that the method of calculating the tax could achieve that purpose. Therefore, the Court also upheld the Division's methodology on constitutional grounds.

**Local Property Tax**

**Omitted Added and Added Assessments** – *Freehold Borough v. Nestle USA*, decided November 10, 2003; Tax Court, Nos. 004915-2001, 004916-2001.

*Nestle USA*, decided November 10, 2003; Tax Court, Nos. 004915-2001, 004916-2001.

The issue before the New Jersey Tax Court was whether the omitted added assessment of \$1 for tax year 2000 and the added assessment of \$1 for tax year 2001 made by the Freehold Borough assessor against a food processing/manufacturing facility owned by Nestle USA should be voided.

Nestle moved for summary judgment voiding the \$1 assessments and

*continued on page 15*

**New Jersey tax forms at your fingertips!  
From your fax machine's phone, dial**

**609-826-4500**

**NJ TaxFax**

**NJ Tax Forms & Publications  
24 Hours – 7 Days a Week**





*in our courts - from page 14*

dismissing the complaints on grounds that any increases in value attributable to improvements to the subject property should have been included in the regular assessment for the 2000 and 2001 tax years. Nestle alleges that the assessor's use of the omitted added and added assessment procedures was an attempt to manipulate and extend the time for municipal appeals seeking increased assessments on the subject property.

The assessor claims he became aware of projects undertaken by Nestle in late 1999 when he received copies of building permits for various projects at the site taken out by Nestle during 1997, 1998, and 1999. The assessor determined that some permits indicated the subject property's value might change as a consequence of the projects and an inspection would be required. Due to the assessor's lack of expertise in valuing the manufacturing property, he requested an appraiser be hired in 2000. But because of the cost involved, the Borough did not retain an appraiser until 2001. The appraiser was unable to quantify the amount of increase, but confirmed that there was a significant value increase over the current value of the subject property. Prior to the deadline for filing added assessments with the county tax board, the assessor knew that an added assessment in an unknown amount was called for as a result of the construction described in the building permits. He made an omitted added assessment and an added assessment for tax years 2000 and 2001, for \$1 each respectively. Freehold appealed the assessments to the Monmouth County Board of Taxation, which

affirmed them, and then appealed the Board's judgments to this Court.

Nestle contended that the assessor's method of reflecting additional value was invalid. It argued that the admittedly fictitious \$1 omitted added and added assessments were improper attempts to increase erroneous valuations of the subject property as reflected in the regular assessments for tax years 2000 and 2001. It asserted that the omitted added and added assessment for 2000 and 2001 were imposed solely to extend the time for the Borough to contest the value of the improvements constructed prior to September 2001, which it should have appealed as regular assessments for those tax years as permitted by N.J.S.A. 54:3-21. Nestle asked that the assessment be voided.

The purpose of the added assessment law is to permit taxation of real property which becomes assessable during the year following the statutory October 1 assessment date. The assessor is authorized to make an added assessment "when any parcel of real property contains any building or other structure which has been erected, added to or improved after October 1 and completed between January 1 and October 1 following." The added assessment is imposed for the tax year in which the improvement is completed, and is prorated for the months remaining in the calendar year following completion of the project. The omitted assessment statute may be used where the assessor has failed to make an added assessment on an improvement through error. Omitted assessments may be imposed in the year in which the property should have been assessed or in the next succeeding year.

The Court found that both the omitted added assessment for tax year 2000 and the added assessment for 2001 were fictitious as to amount and that the years to which the assessor attributed the completion of the improvement were arbitrary. The assessor admitted he had not inspected the subject property until sometime in 2001. He knew by 1999 that building permits had been taken out by Nestle during 1997, 1998, and 1999, and candidly admitted that there might have been value added to the property by October 1, 1999. He further testified that he was unable to specify which projects resulted in the 2000 omitted added assessment and which projects resulted in the 2001 added assessment.

The courts of New Jersey have prohibited the use of omitted and added assessments to reflect a change in opinion as to the value of property on the regular assessment date. Omitted assessment procedures cannot be used to correct an assessor's valuation error. Also there was no "discovery" of undisclosed improvements here, but rather a refusal to determine the date on which known improvements were completed and their value. An assessor's original assessment is entitled to a presumption of correctness. In this case, the \$1 assessments were so wide of the mark of true value and deficient in assessment methodology that no presumption of correctness could attach to them.

The Court found the assessor failed to perform his statutory duties. The assessments were made contrary to the statutory scheme for added assessments, which mandates that, after examination and inquiry by the

*continued on page 16*





in our courts - from page 15

assessor, such assessments are to be made for the tax year in which the improvements are completed or in the next succeeding year. In addition, the municipality could have timely appealed the regular assessments for 2000 and 2001 when the assessor, by requesting an appraiser, made the Borough aware that the values were inadequate. The assessments appealed from were made only with the knowledge that the improvements had been made sometime before the inspection of the subject property in 2001. The Court, therefore, concluded that the omitted added assessment for tax year 2000 and the added assessment for tax year 2001 must be voided.

### Sales and Use Tax

**Chemical and Catalyst Exemption** – *Atlantic City Linen Supply, Inc. v. Director, Division of Taxation*, decided February 10, 2004; Supreme Court of New Jersey No. C-646, September Term 2003, 55,533.

The New Jersey Supreme Court denied Atlantic City Linen's petition for certification. Previously, the Appellate Division upheld the Tax Court's ruling that chemicals and detergents used in Atlantic City Linen's laundering process were not exempt from sales tax as materials used in the manufacturing and refining process pursuant to N.J.S.A. 54:32B-8.20. The Appellate Division emphasized that A.C. Linen did not create a different end product, but instead performed a service.

**Cigarette Purchases via Internet or Telephone** – *Gary Mosher v. Director, Division of Taxation*, decided November 22, 2002; Tax Court No. 001180-2002; decided

February 17, 2004; Appellate Division No. A-2515-02T3.

Please see [Cigarette Tax](#), page 12, for both case summaries.

**Refunds** – *Jennifer Nicoletta and Tzvi Kulger v. Elrac, Inc., D/B/A Enterprise Rent-A-Car*, decided February 17, 2004; Appellate Division No. A-1214-02T2.

Plaintiffs rented cars as individual consumers from the defendant. At the time of rental, plaintiffs obtained optional driver protection options on which they paid sales tax and claim that defendant knew that these transactions were not subject to sales tax. Thereafter, plaintiffs filed a complaint seeking recovery of damages for consumer fraud, unjust enrichment, negligent misrepresentation, and a refund of sales tax paid for themselves and a class of all taxpayers, as well as punitive damages and equitable relief. Initially, the Court granted a class certification and found that defendant improperly charged sales tax. Pursuant to a motion for reconsideration, the Court reversed vacating the prior certification and ruling that filing a refund application to the Division of Taxation was a superior remedy to a class action.

The Appellate Division dismissed the complaint holding that the complaint did not state a cause of action under the Consumer Fraud Act. In order to have a cause of action under the Consumer Fraud Act, there is a requirement that plaintiff prove an "ascertainable loss." The Court determined that plaintiffs' claim was for a refund of sales tax that is specifically governed by Sales and Use Tax Act N.J.S.A. 54:32B-20. Therefore, the Court found it improbable that a similar cause of action would

exist under the Consumer Fraud Act, and that the governing tax statutes indicate an "unmistakable legislative intent that the Sales and Use Tax Act statute is the exclusive framework for refunds of the tax." Finally, the Court noted that unjust enrichment does not occur when a vendor collects and timely remits sales tax to the Division of Taxation. □

## In Our Legislature

### Administration

**Electronic Funds Transfer** — P.L. 2004, c.52, enacted on June 29, 2004, and effective immediately, lowers the threshold for mandatory use of electronic transfer as the means of filing State taxes to those taxpayers whose prior year liability was \$10,000 or more.

**Bank Account Information** — P.L. 2004, c.56, enacted on June 29, 2004, and effective immediately, requires financial institutions, in response to a request by the Director of the Division of Taxation, to transmit electronically a report regarding the accounts of tax debtors.

**Contractor Registration Changes** — P.L. 2004, c.57, enacted on June 29, 2004, and effective immediately, but remaining inoperative until September 1, 2004, extends to local government agencies the requirement that public entities may enter into public contracts with providers of goods and services only if they have presented documentation showing that they are registered with this State for tax purposes. The act also requires that these providers of goods and services and their affiliates remit sales or use tax on

continued on page 17





*in our legislature - from page 16*

tangible personal property delivered to a retail buyer in this State.

**License Suspension of Tax-Noncompliant Businesses** — P.L. 2004, c.58, enacted on June 29, 2004, and effective immediately, provides a mechanism whereby the Division of Taxation will receive information regarding the identity of entities (including individuals) that are holders of licenses to engage in a particular profession, trade, or business in this State, and will then examine their tax records to identify any areas of noncompliance and will give them an opportunity to contest their indebtedness or delinquency or to come into compliance. The act authorizes the Director to demand the summary suspension of a professional, occupational, or business license of an entity that already has an unsatisfied judgment for tax indebtedness, or who fails to remedy any tax indebtedness after receiving the notice provided for under this act.

**Report for Study Commission on Discrimination** — P.L. 2004, c.79, enacted on July 2, 2004, and applicable to studies already begun before that effective date, permits the Secretary of State to request from the Division of Taxation, and requires the Division to supply, a report containing basic information, not including tax information, regarding public employees and contractors. This information will be used by the Governor's Study Commission on Discrimination in State Employment and Contracting, solely in assessing the nature and scope of any past or present discrimination.

**Cigarette Tax**

**Rate Increase** — P.L. 2004, c.67, enacted on June 30, 2004, and effective July 1, 2004, increases the cigarette tax to \$.12 per cigarette, increasing the tax on a pack by \$.35.

**Packaging Requirements** — P.L. 2004, c.96, enacted on July 9, 2004, and effective October 1, 2004, amends the Cigarette Tax Act to prohibit the sale of cigarettes in packs of fewer than 20.

**Corporation Business Tax**

**Decoupling** — P.L. 2004, c.65, enacted on June 30, 2004, and effective immediately, affects certain expense deductions and depreciation permitted on the New Jersey CBT-100. For property placed in service on and after January 1, 2004, the law decouples the Federal ceiling from the amount permitted to be deducted as an expense for New Jersey corporation business tax purposes under IRC section 179. Returns for periods ending after December 31, 2003, are affected if property has been placed in service on or after January 1, 2004, but during the privilege period. Since the amount of the deduction under prior law was \$25,000, that is the limit of the IRC section 179 deduction for New Jersey purposes. The act also makes clear that property placed in service after September 10, 2001, will not receive the bonus depreciation treatment.

**Net Operating Loss Changes** — P.L. 2004, c.47, enacted on June 29, 2004, and effective immediately, provides that for privilege periods beginning during calendar year 2004 and calendar year 2005, a limited net operating loss ("NOL") deduction is allowed for the privilege period. The deduction permitted may reduce entire net income by up to 50%. To

the extent that any NOL is disallowed by reason of this limiting provision, the date on which the disallowed deduction would otherwise expire is extended by a period equal to the period of disallowance.

**Cosmetic Medical Procedures Tax**

P.L. 2004, c.53, enacted on June 29, 2004, and effective immediately, but which remains inoperative until September 1, 2004, imposes a new 6% gross receipts tax on the purchase of certain cosmetic medical procedures, which are medical procedures performed in order to improve a person's appearance, but without significantly serving to prevent or treat illness or disease or to promote proper functioning of the body. "Cosmetic medical procedures" do not include reconstructive surgery or dentistry to correct or minimize abnormal structures caused by birth defects, developmental abnormalities, trauma, infection, tumors, or disease. The tax will be collected from the patient by the cosmetic medical service provider, who will be required to remit the tax quarterly.

**Environmental Taxes**

**Spill Compensation and Control Tax Changes** — P.L. 2004, c.50, enacted on June 29, 2004, provides for tax rate increases effective immediately and retroactive to transfers occurring on and after January 1, 2004. The new tax rate for petroleum products, hazardous substances containing precious metals, elemental phosphorous, and elemental antimony or antimony trioxide for fire retardants is \$.023 per barrel transferred. The new tax rate for hazardous substances other than

*continued on page 18*



in our legislature - from page 17

the above listed is 1.53% of the fair market value of the substance transferred.

**Air Toxics Surcharge** — P.L. 2004, c.51, enacted on June 29, 2004, and effective immediately, imposes a new annual surcharge ranging from \$.10 to \$10 per pound of toxic substance, depending on the category of toxin, on toxic air emissions at certain kinds of facilities. A portion of the revenue from this fee will be used to improve security at nuclear power plants in the State.

**Gross Income Tax**

**Increased Tax on High-Income Taxpayers** — P.L. 2004, c.40, enacted on June 28, 2004, and effective immediately, increases the gross income tax rate for the highest-income taxpayers. It establishes an additional tier in the graduated gross income tax table for taxpayers with taxable income above \$500,000, providing that the portion of income

exceeding \$500,000 shall be taxed at a rate of 8.97%.

**Estimated Tax on Income From Sale of Real Property by Non-residents** — P.L. 2004, c.55, enacted on June 29, 2004, and effective August 1, 2004, supplements the Gross Income Tax Act by requiring nonresidents who derive income from the sale of real property in this State to pay estimated gross income tax. The legislation provides that a county recording officer, at the time the deed is filed, must be presented with evidence of filing or payment of estimated tax with respect to the gain realized from the sale.

**Local Property Tax**

**Property Tax Convention Task Force** — P.L. 2004, c.85, enacted on July 7, 2004, and effective upon enactment, establishes a Property Tax Convention Task Force to study and make recommendations regarding reform of the local real property tax system and appropriates \$250,000 to fund its activities.

**Miscellaneous**

**HMO Assessment** — P.L. 2004, c.49, enacted on June 29, 2004, and effective immediately, establishes an interim assessment on health maintenance organizations and mandates a comparative study of the equity of various taxes imposed on all health care insurance companies.

**Mobile Telecommunications Fee**

P.L. 2004, c.48, enacted on June 29, 2004, and effective immediately, applicable to billing periods ending on or after July 1, 2004, for most services, and to billing periods ending on or after August 1, 2004, for certain services, imposes a \$.90 fee on periodic billing to mobile telecommunications and telephone exchange customers. The fee shall be used to fund the “911” system and certain other emergency response systems.

**Motor Vehicle Tire Fee**

P.L. 2004, c.46, enacted on June 29, 2004, and effective August 1, 2004, imposes a fee of \$1.50 on the sale of new motor vehicle tires, including tires sold as a component part of a new motor vehicle either sold or leased in New Jersey.

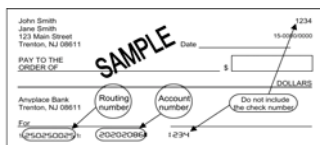
**Outdoor Advertising Fee**

**Fee Changes** — P.L. 2004, c.42, enacted on June 29, 2004, and effective immediately, provides for gradual reduction in the rate of the fee imposed on outdoor advertising signs and provides that entities that are treated as exempt organizations for sales and use tax purposes shall be exempt from the outdoor advertising fee as well. It also subjects outdoor advertising signs to real property tax.

# Pay NJ Taxes Electronically

## Electronic Check (E-Check)

[www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation)



Make a payment directly from your bank account

## Credit Card\*

1-800-2PAYTAX

[www.officialpayments.com](http://www.officialpayments.com)



\* Fee of 2.5% of tax payment is paid directly to Official Payments Corporation.



in our legislature - from page 18

**Property Tax Relief Programs**  
**Benefits Increased** — P.L. 2004, c.40, enacted on June 28, 2004, and effective immediately, as part of the new FAIR (Fair and Immediate Relief) program, provides increased property tax relief benefits to New Jersey homeowners and tenants. For information on rebate amounts paid in 2004 for applications filed in 2003, see [Changes to Rebate Programs](#), page 1.

**Realty Transfer Fee**  
**General Purpose Fee Added** — P.L. 2004, c.66, enacted on June 30, 2004, and effective immediately, applicable to realty transfers taking place on or after August 1, 2004, imposes an additional “general purpose fee” at a graduated rate on

grantors of realty where the value of the deed is more than \$350,000, and makes other changes in fees and clarifications in the provisions governing realty transfer fees.

**Transitional Energy Facility Assessment**

**Phase-Out Schedule** — P.L. 2004, c.43, enacted on June 29, 2004, and effective immediately, extends the end date of the phase-out period for this assessment to 2010 and modifies the annual rates.

**Urban Enterprise Zone**

**New Zone Created** — P.L. 2004, c.75, enacted on July 1, 2004, and effective immediately, establishes a new urban enterprise zone, the 32nd, located in New Brunswick in Middlesex County. □

**Tax Calendar**

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

- [Chronological List of Filing Deadlines](#) — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.
- [Alphabetical Summary of Due Dates by Tax Type](#)
- [Payment Dates for Weekly Payers](#) — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$20,000 or more. □

## *from the director's desk*

New Jersey taxpayers who invested in a variety of bond and option sales strategies, commonly called "Son of BOSS" tax shelters, as well as other Federally listed abusive tax avoidance transactions, will have until September 15, 2004, to submit a written application to resolve the tax issues.

In the late 1990s, the U.S. Treasury Department issued a notice to shut down the abusive tax shelter known as the Bond and Option Sales Strategy (BOSS), which was marketed and sold by investment bankers to tax accountants. One year later, the IRS similarly struck down a scheme with a similar design, known as "Son of BOSS."

As in the BOSS shelter, the "Son of" scheme featured a series of contrived steps to generate artificial tax losses from investments designed to offset income from other transactions. The IRS in 2000 denied taxpayers the purported losses resulting from this shelter transaction because they do not represent bona fide losses reflecting actual economic consequences as required under the tax law.

New Jersey's initiative will require taxpayers to concede 100% of the tax at issue plus interest, computed at prime rate plus 3%. Taxpayers that take advantage of this initiative will avoid all penalties, which may include the imposition of a 50% civil fraud penalty. Transaction costs such as promoter and professional fees will not be deductible.

Taxpayers wishing to participate in this initiative will be required to submit a written application, signed under penalty of perjury, no later than September 15, 2004. The application must identify in detail their participation in the abusive transactions, the entities utilized, the name(s) of the promoter(s), and all information necessary to determine the tax, interest, and penalty, if applicable.

Taxpayers who have additional questions regarding this initiative or who wish to submit an application may contact Richard W. Schrader, Assistant Director, Audit Activity at 609-292-0978.

*Robert K. Thompson*