New Jersey State Tax news

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Budget Funds Rebates

The State Budget for fiscal year 2009 provides continued funding for the Homestead Rebate Program; however, rebate amounts for tax year 2007 are limited for both homeowners and tenants. The Budget also limits eligibility for homeowners to those with income of $150,000 or less and requires that the rebates for homeowners be based on 2006 property taxes.

Who is Eligible

Homeowners and tenants who occupied their principal residence in New Jersey on October 1, 2007, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2007 homestead rebate, provided that their gross income for the entire year does not exceed the income limit: $150,000 for homeowners and $100,000 for tenants.

Benefit Amounts

Benefit amounts differ for homeowners and tenants, and are determined by income, amount of property taxes (or rent) paid, and whether the applicant is 65 or older or eligible to claim an exemption as blind or disabled for the tax year.

Homeowners: The State Budget requires that the 2007 rebate be based on 2006 property taxes. For purposes of calculating the 2007 rebate, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2007, will be used. If no property taxes were assessed on that dwelling for 2006, the Division of Taxation will determine the amount of property taxes that would have been due for 2006.

Under the terms of the Budget, 2007 rebate amounts will be no greater than those paid last year (when rebates were also based on 2006 property taxes) unless there has been a change in an applicant's filing characteristics. "Filing characteristics" means a reduction in income range, a change in age/disability status or marital status, or an increase in percentage of ownership.

For tax year 2007, homeowners will receive either 10% or 20% of the first $10,000 of property taxes paid in 2006, depending on their income level:

$100,000 or less — 20%
$100,001 – $150,000 — 10%

Homeowners who are age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (see above) or the amount by which the property taxes paid exceed 5% of gross income, but within the range specified based on income:

$70,000 or less — $1200 – $1000
$70,001 – $125,000 — $800 – $600
$125,001 – $150,000 — $500

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In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Tenants: For tax year 2007, tenants age 65 or older or disabled are eligible to receive rebates ranging from a minimum of $160 up to a maximum of $860. Tenants under age 65 and not disabled are eligible for rebates of $80.

How to Apply

Homeowners: The 2007 homestead rebate applications were mailed in early May to homeowners who were identified as being 65 years of age or older or disabled on December 31, 2007. Application packets were mailed during July to nonsenior, nondisabled homeowners.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or **online**. The filing deadline for all homeowners is August 15, 2008.

Tenants: Applicants who are required to file a 2007 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it with their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software) by April 15, 2008. If a taxpayer requests an extension of time to file their State income tax return, the filing deadline for the homestead rebate is also extended.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until August 15, 2008, to file the tenant rebate application, Form TR-1040.

Applicants who are not required to file a 2007 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until October 31, 2008, to apply.

Rebate Checks

Homeowners: Homestead rebate checks for senior and disabled homeowners who filed by the original June 2 filing deadline are scheduled to be mailed on or about July 31, 2008, while checks for those who file between June 2 and August 15 will be issued as quickly as possible. Checks for all nonsenior, nondisabled homeowners are scheduled to be mailed in the fall.

Tenants: Homestead rebate checks for all eligible tenants are expected to be mailed on or about July 31, 2008.

More information on the Homestead Rebate Program is available at: **www.state.nj.us/treasury/taxation/homestead/hrintro.shtml** ❑

LOCAL PROPERTY TAX

PAMS Project Extends Testing and Review Period

The implementation schedule for New Jersey's new Property Assessment Management System (PAMS) was revised to push the go-live date from January 2008 to the end of 2008. This new schedule provides more time for testing and for addressing issues that may be identified.

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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.

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PAMS project - from page 2

PAMS will replace the outdated MOD IV system and will provide added tools for the assessor, collector, and tax administrator. A key difference between the old and new systems is a change from a simple batch program that stores data in flat files to a relational database system with integrated functions. While this means users will have more screens and fields to navigate, it also means they will have more information and reporting capabilities at their fingertips.

The PAMS project undertook its second trial or "mock" conversion in April to ensure that the process for converting municipalities' data into the new system will run smoothly. PAMS will first be implemented in the three pilot counties of Camden, Hunterdon, and Salem.

The latest edition of the quarterly PAMS newsletter, ***Update***, focuses on new tools for analysis and scheduling. An electronic version is available on the Division's Web site at: **www.state.nj.us/treasury/taxation/pamsvol/pams.shtml**

For questions, contact Dana Max at dana.max@treas.state.nj.us or 609-292-8311. ❑

SALES AND USE TAX

Clarification: Streamlined Sales Tax Registration

An article in the *New Jersey State Tax News,* fall 2007 issue, p. 3, provided an overview of the central online registration system for sales tax that was developed by the Streamlined Sales Tax Project. This article provides additional information on cancelling a sales tax registration entered through that system.

The central online registration system was developed for companies desiring to register with every member state of the Streamlined Sales and Use Tax Agreement (SSUTA), including those states that adopt the SSUTA after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any full-member state. In addition, a registrant may choose to collect and remit taxes to any or all states that are associate members. Additional information concerning the central registration system may be found at: **www.state.nj.us/treasury/taxation/streamregpro.shtml**

Sellers who collect tax for any full-member or associate-member states during the time they are registered must remit the tax to the state(s).

If you used the central registration system and registered in more states than you wanted to, you cannot cancel registration for just the states you do not want to be registered with. To receive the benefits of the SSUTA, you *must* remain registered with *all* of the full-member states. You can, however, cancel your registration with any associate-member state. You may also opt out of the central registration system entirely, in which case your registration will be cancelled with all of the states. If you want to register for sales tax with only a few states, you should *not* use the central registration system. While amnesty has expired in New Jersey, it may still be available in other SSUTA member states. Information on amnesty is available at: **www.streamlinedsalestax.org/amnesty.html**

If you believe that you mistakenly registered through the central online registration system, find you no longer want to participate, need to update previously submitted registration information, or add an associate state, log into the Streamlined Sales Tax Project Web site at **www.sstregister.org/sellers** and select "Update Registration." You will then need your Streamlined Sales Tax ID and password to continue. To cancel your registration select "Change Registration Status" and follow the instructions.

Once you terminate your sales tax registration through the central registration system, your *central registration account* for sales tax with all the SSUTA member states, including New Jersey, will be cancelled. However, if you were already registered with New Jersey for sales tax — or any other taxes — *before* you

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Current Amnesty Programs

Nevada is conducting a tax amnesty program. During the designated amnesty period, 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 site listed below.

NV	July 1 – Sept. 30	**http://tax.state.nv.us/amnesty.shtml**

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registered through the SSUTA central registration system, then your sales tax account with the State of New Jersey, as well as your accounts for any other New Jersey taxes, will remain open.

If you initiated your New Jersey sales tax registration only through the SSUTA central registration system, and subsequently cancel your central registration account, then your sales tax registration with New Jersey is terminated along with your central registration account. In this case, if you either have a legal obligation or choose to continue to collect and remit New Jersey sales and use tax, you must register directly with the State of New Jersey through the New Jersey Division of Revenue's Web site at: www.state.nj.us/treasury/revenue/ ❑

Small Business Workshops

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

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

For more information, including the current workshop schedule, visit the Division's Web site at: www.state.nj.us/treasury/taxation/smallbus.shtml ❑

LOCAL PROPERTY TAX

Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Thirteen persons passed the March 29, 2008, Tax Assessor Certificate examination. They are:

Atlantic County: Megan M. Fasy, Egg Harbor Township; Theresa Prendergast, Egg Harbor Township.

Bergen County: Anthony J. Rinaldi, Jr., Dumont Borough; Mathew S. Rinaldi, Cliffside Park Borough.

Burlington County: Gregory T. Hutchinson, Eastampton Township.

Essex County: Steven P. Priscoe, Verona Township.

Monmouth County: Richard A. Anderson, Millstone Township.

Morris County: Natale T. Buono, Jr., East Hanover Township.

Ocean County: Stephen Bruemmer, Stafford Township; Theodore J. Tobiassen, Brick Township.

Salem County: Steven H. Caltabiano, Carneys Point Township.

Somerset County: Silvia N. Forbes, Bedminster Township.

Union County: Jonathan M. Bernstein, Westfield Town.

The next examination will be held on Saturday, September 20, 2008, at the Richard J. Hughes Justice Complex in Trenton. The deadline for candidates to submit applications for this examination is August 21, 2008. To obtain an application, write to Gary R. DalCorso, P.O. Box 251, Trenton, NJ 08695-0251 or call 609-292-7813. A fee of $10 must accompany the completed application. ❑

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 of time to hear and determine appeals.
- Disallowed property tax deduction recipients, granted a filing extension, required to pay tax deductions 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 2009 together with a notice that the completed form must be filed with assessor by August 1, 2008, to claim continuance of Farmland Assessment.

2nd Tuesday in July–

- State Equalization Table prepared.

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August 1–

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2009.

August 5–

- All SR-1A forms showing sales transactions to be used in compiling 2008 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

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

August 25–

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

Interest 9.00%

The interest rate assessed on amounts due for the period April 1, 2008 – December 31, 2008, will be 9.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%
1/1/08	10.50%
4/1/08	9.00%

September 1–

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor determines failure to file by August 1 was due to owner's illness or death or the death of an immediate family member.

- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) for tax year 2009 with the assessor for taxing district in which property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2009 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.

September 13–

- County Tax Board transmits Table of Aggregates to County Treasurer who then files, prints, and transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. ❑

Criminal Enforcement

Criminal enforcement over the past several months included:

- On February 8, 2008, the Office of Criminal Investigation (OCI) performed a routine cigarette compliance inspection at Laxmi Pan Center of J.C. L.L.C., Jersey City, New Jersey. The business is owned by Yogeshkumar Patel and operates as a small "stand" type business: customers do not enter the street front business; the items are sold through a sliding glass window used to transact business. The store sells tobacco products, candies, and other sundry items. The inspection resulted in the confiscation of 314.6 cartons of cigarettes that were not properly stamped and taxed. Seized were 270 cartons of beedies (hand-rolled, South Asian cigarettes) along with 38.6 cartons of imports — Willis Classic, Gold Flake, and Guang Gram; 4 cartons with counterfeit stamps; and 2 cartons with Delaware stamps. Charges are pending against Yogeshkumar Patel in Jersey City Municipal Court for possession of contraband cigarettes, no invoices, buying cigarettes from an unlicensed person, and the $25 per carton civil penalty which amounts to $7,865.

- On March 27, 2008, a cigarette inspection was conducted at an Irvington, New Jersey, convenience store, Ivelisse Supermarket, and 11.8 cartons of contraband cigarettes were seized. Also, through the customary inspection of the entire facility, Office of Criminal Investigation personnel noticed crudely packaged DVDs with partial labels. As a result of this observation and having suspicion that the DVDs were counterfeit, assistance was requested from the Irvington Police Department and the Motion Picture Association of America, Inc. The DVDs were confirmed as counterfeit merchandise and inventoried. The owner of the business, Mr. Leoclides Torres, was placed

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under arrest by the Irvington Police Department for possession of counterfeit DVDs. Criminal charges will be pursued in municipal court.

- On April 10, 2008, Jennifer Pham of Egg Harbor pled guilty to structured transactions, filing fraudulent returns, and failure to pay taxes. Jennifer and Jimmy Pham, husband and wife, were indicted in August 2007 for the structuring of funds and tax fraud for systematically depositing funds of unknown origin, in amounts less than $10,000, to avoid filing Currency Transaction Reports and for failing to report and pay taxes on this income for tax year 2006. The Phams, employed by Harrah's Hotel and Casino, came under investigation by the Division of Gaming Enforcement after a Suspicious Activity Report was filed by Commerce Bank. In the plea agreement, Jennifer Pham will receive three years' probation and forfeiture of property seized, which included an estimated $240,000 in cash and jewelry. The Phams' tax liability ($17,000) plus penalty and interest ($1,278) will be satisfied with the proceeds of the auctioned jewelry. Charges were dropped against Jennifer's husband, Jimmy Pham. This was a joint investigation between the Division of Gaming Enforcement and the Office of Criminal Investigation.

- On April 14, 2008, an arrest and cigarette seizure was executed as a result of an ongoing investigation by U.S. Immigration and Customs Enforcement into contraband cigarette sales conducted by Mohamed Gaafar. It had been alleged that the subject sold cartons of cigarettes from the Hollywood Beauty Salon in Jersey City, a location at which the subject rented a chair to perform hairstyling. Gaafar was arrested across from the beauty salon while in the process of transferring multiple boxes containing unstamped cigarettes from his vehicle to another. When OCI personnel arrived, two boxes had already been transferred with the remaining boxes still in the subject's vehicle. A combined seizure total between the vehicles was 400 cartons of unstamped Marlboro and Newport products. Additionally, the Hollywood Beauty Salon was searched and a total of 88.6 cartons of Marlboro, Parliament, and Newport products were found. All of the contraband located within the business was also unstamped, with some containing cellophane wrapping indicative of a possible export product. As a result of the total 488.6 cartons of unstamped products being seized, the subject was arrested and charged with the following offenses: possession of contraband cigarettes (fourth degree), failure to keep records (fourth degree), dealing with unlicensed persons (fourth degree), failure to obtain cigarette license (disorderly persons), and transportation of contraband cigarettes (disorderly persons).

- On April 28, 2008, Tommy Tavarez, OH Main, LLC, pled guilty as charged to third-degree conspiracy and third-degree filing false or fraudulent New Jersey sales tax returns. Juan Torres, OH Main, LLC, filed an application for the Mercer County Pretrial Intervention Program. OH Main, LLC, is a retail deli/grocery located in Passaic, New Jersey. The investigation was initiated by a field inspection for untaxed/contraband cigarettes and was expanded. The owners/operators underreported sales, failed to pay sales tax for five quarters in 2006 and 2007, and filed fraudulent New Jersey gross income tax and partnership returns for tax year 2006. As part of the plea agreement, Tavarez and Torres must file amended New Jersey sales and use tax returns, New Jersey partnership returns, and New Jersey gross income tax returns by May 30, 2008, and pay all tax, penalty, and interest by the sentencing date of July 21, 2008. This successful prosecution was the result of the combined efforts of a special agent and auditor, both from the Office of Criminal Investigation, and the New Jersey Division of Criminal Justice.

- On May 12, 2008, a twenty-six count indictment was returned charging Larry Kushner, 56, and his wife Jacqueline Kushner, 43, both of Long Branch, New Jersey, with five counts of second-degree theft by deception, two counts of third-degree theft by deception, one count of second-degree identity theft, one count of third-degree fraudulent use of credit card, and one count of fourth-degree fraudulently obtaining a credit card. Both defendants were also charged with third-degree failure to file a tax return and third-degree failure to pay taxes for the years 2003 through 2006. The investigation revealed that Mr. Kushner bilked

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seven investors out of $1.2 million dollars by telling them that money invested in his company, Foreclosure 911, would be used to purchase foreclosed properties. Instead, the money was used for personal expenses and travel. Jacqueline Kushner was the president of the company and most of the stolen funds were diverted to her. This criminal investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- In the area of refund fraud, the Office of Criminal Investigation prevented the payment of fraudulent refund claims totaling $7,373,500 for the period July 2007 through mid-May 2008. In addition, the Office of Criminal Investigation issued assessments based on refunds found to be fraudulently obtained. ❑

Tax Briefs

Corporation Business Tax

Doing Business in New Jersey — The requirement that foreign corporations doing business in New Jersey must register with the State is set forth at N.J.S.A. 14A:13-3(1), which states that:

> No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. A foreign corporation may be authorized to do in this State any business which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to do such business in the jurisdiction of its incorporation, but no other business.

In addition, penalties for doing business in New Jersey without registering are set forth at N.J.S.A. 14A:13-11(3), which states that:

> In addition to any other liabilities imposed by law, a foreign corporation which transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than $200.00, nor more than $1,000.00 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. Such penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in such action in a summary manner or otherwise.

A foreign corporation is doing business in New Jersey when it meets the requirements of N.J.A.C. 18:7-1.9(a) and (b), which states that:

> (a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit.
>
> 1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of this Act.
>
> 2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.
>
> (b) Whether a foreign corporation is doing business in New Jersey is determined by the facts in each case. Consideration is given to such factors as:
>
> 1. The nature and extent of the activities of the corporation in New Jersey;
>
> 2. The location of its offices and other places of business;
>
> 3. The continuity, frequency and regularity of the activities of the corporation in New Jersey;
>
> 4. The employment in New Jersey of agents, officers and employees;
>
> 5. The location of the actual seat of management or control of the corporation.

A corporation is subject to tax in New Jersey when it meets the requirements of N.J.A.C. 18:7-1.6, which states that:

> (a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return and pay a tax thereunder provided it falls within any one of the following:
>
> 1. Existing under the laws of the State of New Jersey; or
>
> 2. If a foreign corporation:
>
> i. Holding a general Certificate of Authority to do business in this State issued by the Secretary of State; or
>
> ii. Holding a certificate, license or other authorization

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issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or

iii. Doing business in this State; or

iv. Employing or owning capital in this State; or

v. Employing or owning property in this State; or

vi. Maintaining an office in this State; or

vii. Deriving receipts from sources within this State; or

viii. Engaging in contacts within this State.

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Texas Margin Tax — When a taxpayer calculates its entire net income for corporation business tax (CBT) purposes under N.J.S.A. 54:10A-4(k), it is not permitted to deduct or exclude "taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act...."

A taxpayer inquired whether or not the new Texas Margin Tax is considered a state tax "on or measured by profits or income, or business presence or business activity" pursuant to N.J.S.A. 54:10A-4(k)(2)(C) such that it would have to be added back to the tax base.

The Division of Taxation responded that the Texas Margin Tax must be added back to the New Jersey entire net income for CBT purposes. The Division noted that the statutory addback in question was enacted to stop tax rate discrimination among taxpayers. The legislative history provided, in part: "If the deduction of the taxes of other jurisdictions is allowed, corporations which do business in several states pay a lower effective rate of tax on their New Jersey activities than do corporations which only do business in New Jersey." See *Ross Fogg v. Director*, 22 N.J. Tax 372 (2005) at 377.

The Division stated that the Ohio Commercial Activities Tax (CAT tax) and the Washington Business and Occupation Tax (B&O tax) were also included among other state taxes that must be added back to the CBT tax base.

Environmetal Taxes and Fees

DEP Registered Brokers — The Division recently received an inquiry regarding the newly imposed recycling tax from a broker in the solid waste industry who does not directly haul waste. He wanted confirmation that there is no requirement for a broker to register and pay the recycling tax.

He was advised that either the haulers that are hired (if taking out-of-State or to a railroad transfer station) or the facilities that accept the solid waste in New Jersey would be responsible for calculating and remitting the recycling tax. Brokers in the industry, although registered with the Department of Environmental Protection as "haulers," are not required to register with the Division of Taxation for the tax.

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Sales Tax Information

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. More information is available at:
Streamlined Sales and Use Tax

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

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

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***Solid Waste Collectors* —** The Division responded to an inquiry regarding application of the recycling tax. The inquiry questioned whether solid waste transporters registered with the Department of Environmental Protection that transport solid waste from an in-State solid waste facility for out-of-State disposal are considered solid waste collectors subject to the recycling tax.

Solid waste collectors are only subject to the recycling tax and required to register in the following circumstances: (1) the solid waste collector transports solid waste to a rail transfer station for transshipment, or (2) the solid waste collector transports solid waste from its generators directly to an out-of-State disposal site.

Where a solid waste collector hauls solid waste from a New Jersey nonrailroad transfer station to an out-of-State disposal site, the collector is not transporting waste *directly* from generators as outlined above. Therefore, no tax is due on the transaction.

Gross Income Tax

***Economic Stimulus Payments* —** Starting in May 2008, the Federal Treasury began sending economic stimulus payments to more than 130 million households. To receive a payment taxpayers must have a valid social security number, $3,000 of income, and file a 2007 Federal tax return.

Taxpayers will not owe Federal income tax on the payment when they file their 2008 Federal income tax return, and it will not reduce their 2007 or 2008 refund or increase the amount owed when the 2008 return is filed.

Similarly, New Jersey's gross income tax treatment of the economic stimulus payments will correspond to the Federal treatment and the payments will not be considered taxable income for New Jersey gross income tax purposes.

***Educational Debt Exchange* —** The National Institutes of Health generally repays up to a certain amount per year of a qualified health professional's educational debt in exchange for a two- or three-year commitment to perform medical research. The benefits provided by the Loan Repayment Program are taxable for Federal income tax purposes.

Similarly, for New Jersey gross income tax purposes, amounts paid in accordance with the Loan Repayment Program are provided in exchange for work performed or services rendered. These amounts are taxable as "other remuneration received for services rendered" in accordance with N.J.S.A. 54A:5-1(a).

***Military Retirement* —** The New Jersey Gross Income Tax Act at N.J.S.A. 54A:6-26 permits taxpayers to exclude military pension payments and military survivor's benefit payments from their New Jersey gross income tax. Military pension payments and military survivor's benefit payments are those earned with respect to service in the Army, Navy, Air Force, Marine Corps, and Coast Guard. Generally, for military retirement pay to qualify as a military pension, it must be received under Titles 10 and 32 of the U.S. Code and paid from the Defense Finance and Accounting Service.

***Stock Options* —** A nonresident taxpayer who worked for the same company both inside and outside New Jersey during the period stock options were earned inquired whether she is subject to New Jersey income tax on these options.

Stock options a nonresident taxpayer receives while working in New Jersey, or for a New Jersey company, or for services performed in New Jersey are taxable as New Jersey source income. N.J.S.A. 54A:5-8.

New Jersey gross income tax due from a nonresident taxpayer is based on the amount of income attributable to New Jersey sources. Here, the portion of the taxpayer's income from the stock options that is considered New Jersey source income must be determined using an allocation formula. N.J.S.A. 54A:5-7. The amount of the stock option payment is multiplied by a fraction,

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the numerator of which is the total time (e.g., number of days) employed in New Jersey and the denominator, the time employed within and outside New Jersey for the period the stock options were earned.

***Telecommuting* —** For New Jersey purposes, nonresident taxpayers are subject to income tax if they have income sourced or earned in New Jersey. N.J.S.A. 54A:5-8. Generally, a nonresident taxpayer working for a New Jersey company has income sourced to New Jersey and has to file a New Jersey nonresident return (Form NJ-1040NR). Specifically, if a telecommuter comes into New Jersey to perform work or services, even occasionally, this individual is considered to have New Jersey source income and must file accordingly.

However, with regard to nonresident telecommuters who never enter the company's home state to perform work or services, New Jersey uses a "physical presence" test. Using this test, only the telecommuting employee's home state will tax the income.

***Withholding on Pension Income* —** Under the New Jersey Gross Income Tax Act, a taxpayer may request that the payor of pension and annuity income withhold State income tax from disability or retirement benefits. N.J.S.A. 54A:7-1.1. This provision applies to all payors of pensions and annuities, both private and public, and to all payments, including lump-sum distributions.

The recipient of a pension or annuity must make a request in writing to the payor for the amount to be withheld on Form NJ-W-4P, Certificate of Voluntary Withholding of New Jersey Gross Income Tax From Pension and Annuity Payments. Form NJ-W-4P is contained in the employers' instruction booklet (Form NJ-WT) and is also available on the Division's Web site at: **www.state.nj.us/treasury/taxation/prntgit.shtml**

The amount of State income tax withheld from pension or annuity payments must be a minimum of $10 per payment period or an even dollar amount greater than the minimum as specified by the recipient of the pension or annuity. The amount withheld may be changed or terminated upon request by the recipient. The amount withheld must be reported on and remitted with Form NJ-500, NJ-927, or NJ-927-W. The total annual amount of tax withheld from pension and annuity payments (as reported on Form 1099-R) must be included on Form NJ-W-3, Gross Income Tax Annual Reconciliation of Tax Withheld.

Sales and Use Tax

***Freight Charges* —** On and after October 1, 2006, P.L. 2006, c.44, modified the exclusion for delivery charges that are separately stated from the sales price of an item on the invoice, bill, or similar document given to the purchaser. N.J.S.A. 54:32B-8.11. The law provides for tax to be imposed on delivery charges for taxable items and no tax to be imposed on delivery charges for nontaxable items like clothing.

The law defines "delivery charges" as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. If a shipment includes both exempt and taxable property, the seller should allocate the delivery

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Enforcement Summary Statistics
First Quarter 2008

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

• Bank Levies	1,294	• Seizures	129
• Certificates of Debt:		• Auctions	5
Total Number	6,100	• Referrals to the Attorney General's Office	694
Total Amount	$461,940,170		

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdiscl.shtml

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charge by using: (1) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. N.J.S.A. 54:32B-2(rr). Only the portion of the delivery charge that relates to the taxable property or service is subject to tax.

Thus, only delivery charges imposed by the seller of taxable items on the end-user are subject to tax.

Magazine Articles Delivered Electronically — Under N.J.S.A. 54:32B-8.5(a), magazines and periodicals sold by single issue in hard copy are subject to tax. Magazines and periodicals accessed electronically are exempt because they are neither tangible personal property nor digital property. "Digital property" is defined specifically as music, ringtones, movies, books, audio and video works and similar property delivered through electronic means. Magazines and periodicals delivered electronically are not included in this definition of digital property. Therefore, a document delivery service's charge for a single purchase of an article from a magazine publisher delivered electronically is not subject to tax.

In Our Courts

Gross Income Tax

Basis – *William & Margaret Sitar v. Director, Division of Taxation,* Docket No. 005141-2002, decided February 15, 2008.

In a bench decision, Judge Bianco granted the Division's motion for summary judgment in this matter.

The issue presented was the correctness of the methodology employed by the Director in denying the deduction of personal expenses from the gain on sale of land held purely for investment purposes. The plaintiffs, William and Margaret Sitar, asserted that since personal expenses (interest on a loan and property taxes) incurred in connection with the land they held for investment purposes were deductible Federally, but not for New Jersey purposes, pursuant to *Koch,* the New Jersey gross income tax assessment denying a basis adjustment was invalid. The Director contends that land is not a depreciable asset and the plaintiffs' personal expenses of interest on the loans to purchase the property and yearly property taxes are not deductible. Therefore, the taxpayers' basis for the calculation on the sale of the land is the taxpayers' Federal adjusted basis under N.J.S.A. 54A:5-1(c).

There is no statutory provision which allows and provides for the deductions claimed by the plaintiffs. Plaintiffs sold a piece of vacant land, which was held by the plaintiffs in their individual capacity for investment purposes. No improvements were made on this land. Plaintiffs had borrowed money to purchase the property and thus had to pay interest on the personal loan. Plaintiffs paid property taxes on this property. This property was not income producing. For tax year 1998 plaintiffs filed their Federal income tax return on which they deducted, on their Schedule A, interest paid on the loan to purchase the said property and the real estate taxes paid on the property in the amount of $1,710,158. These Schedule A expenses were personal expenses which were not related to the taxpayers' being involved in a trade or business. The Court held in *Gilligan v. Director,* 11 N.J. Tax 414 (1991), such expenses are not deductible from the plaintiff's gross income.

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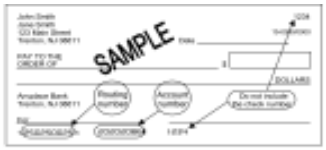
Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation



Make a payment directly from your bank account

Credit Card*

1-800-2PAYTAX www.officialpayments.com

VISA American Express Cards MasterCard DISCOVER NOVUS

* Fee of 2.49% of tax payment applies.

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The Director's determination that plaintiffs must use the Federal adjusted basis to compute gain from sale of the land in this case was not a tax on a return of capital nor a tax on fictitious, phantom income and was sustained.

Credit for Taxes Paid to Other Jurisdictions – *Glenn A. Harris & Terrie D. Harris v. Director, Division of Taxation,* Docket No. 006227-2007, decided February 19, 2008.

The issue in this case was whether the Director properly calculated the gross income tax credit for taxes paid to other jurisdictions. N.J.S.A. 54A:4-1. Plaintiffs alleged that the Division of Taxation had not allowed credits for tax payments to Philadelphia and Pennsylvania in the amount of $3,189 for tax year 2002, $6,157 for tax year 2003, and $7,067 for tax year 2004. The principal thrust of the plaintiffs' argument in their summary judgment motion was that *Jenkins v. Director*, 4 N. J. Tax 127 (Tax 1982), was wrongly decided and that the Director's regulation N.J.A.C. 18:35-4.1(a)(11) is *ultra vires* (in excess of the powers granted) because it is contrary to the plain language of the statute. On January 8, 2008, cross-motions for summary judgment were heard by the Honorable Gail L. Menyuk. In a letter opinion dated February 19, 2008, Judge Menyuk denied plaintiffs' motion for summary judgment and granted the Director's cross-motion for summary judgment. In finding for the Director, the Court concluded that *Jenkins* was correctly decided and that the Director's regulation N.J.A.C. 18:35-4.1(a)(11) is valid.

Interest on Refund – *McLaughlin v. Director, Division of Taxation,* Docket No. 008593-07, decided April 17, 2008.

Judge Hayser denied the Division's summary judgment motion without prejudice and transferred the case to Superior Court.

The taxpayer sent the Division a $5,000 check intended for the IRS. The taxpayer is seeking interest on the payment, which the Division sent back to the taxpayer upon his request, but according to the taxpayer a year and a half after the taxpayer improperly sent the check to the Division.

Judge Hayser stated in an unpublished decision that "there is no statutory authority that permits or requires the defendant make the interest payment requested by the Plaintiff" and "under the facts of this case, in weighing the relative equities between the parties there is no overriding and compelling equitable basis to require the Defendant to make the interest payment requested by the Plaintiff."

However, "Rather than dismissal, it is appropriate to transfer this action to the Superior Court, the appropriate Court to consider Plaintiff's claim as set forth in the complaint, whether viewed as the tort of wrongful conversion or a claim predicated on unjust enrichment. That is the court that can finally determine whether the Plaintiff has met the procedural requirements of the Torts Claims Act."

Retroactivity – *Charles J. Demuth v. Director, Division of Taxation,* Docket No. 008298-07, decided April 22, 2008.

Judge Hayser granted the Division's motion for summary judgment and denied the plaintiff's motion.

In May 2004, the taxpayer made three stock sales resulting in a net gain. N.J.S.A. 54A:2-1, approved on June 28, 2004, increased the tax rate percentage from 6.37% to 8.97% for gross income of $500,000 or more.

Plaintiff stated he would not have conducted the stock transactions if he knew they would be subject to a higher tax. Therefore, the taxpayer believes that the tax increase "as applied to his transactions" should "(1) be declared void on equitable principles as the imposition of such tax constitutes a manifest injustice...," and "(2) the statutory enactment constitutes a violation of due process under the U.S. Constitution...."

The taxpayer also argued the principle of *Oberhand v. Director,* 193 N.J. 558 (2008), where the Court ruled that the retroactive application of State estate or transfer tax was unfair and unenforceable under the doctrine of manifest injustice in support of his claim.

Public Auction Information

Announcements of upcoming public auctions of seized property are published on the Division of Taxation's Web site under "**News**." For details about a particular auction, select "NJ Public Auction" at the beginning of its listing.

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The Court distinguished *Oberhand* opining "the focus is one transaction, event or occurrence giving rise to the tax liability, and not income realized over an entire year."

Judge Hayser further opined:

> Neither the expectations of the taxpayer for a static tax rate nor a taxing authority attempting to operate a taxation system by speculating or seeking to divine when income is subject to an income tax or which taxpayer would have avoided realizing income under varying circumstances, serves neither the public nor private needs. For a rational tax system based upon annual income to function, it must both meet the changing demands required of an annual state budget, while also fairly apportioning the resulting tax liability to all those who realize annual income, and not on their unpredictable transactions individually discrete or not, during the tax year. The alternative as suggested by the Plaintiff's argument, would be a chaotic, unpredictable, arbitrary and unfair system that serves no one's needs or legal obligations. ❑

In Our Legislature

Environmental Taxes and Fees

Amendments to the Recycling Enhancement Act and Delay of Its Effective Date — P.L. 2008, c.6, enacted March 26, 2008, deferred the effective date of the recycling tax, which was enacted by P.L. 2007, c.311. The effective date is now April 1, 2008. Entities subject to the recycling tax are required to register with the Division of Taxation by April 1, 2008, and the first quarterly recycling tax returns and tax payments are due July 20, 2008. The provisions delaying the effective date of the tax are retroactive to January 13, 2008. The Act also adds type 27-A asbestos-containing waste to the list of types of waste included within the definition of "solid waste." In addition, the Act treats recycling tax revenue as an exclusion to be added to calculations of the adjusted local property tax levy. ❑

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2007 (January 1, 2007 – December 31, 2007) and tax year 2008 (January 1, 2008 – December 31, 2008) 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.

  2007 2008

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

  2007 2008

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

  2007 2008 ❑

important phone numbers

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