

New Jersey State Tax news

Volume 38, Number 2
Summer 2009

A Quarterly Newsletter

ISSN 1073-6808



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Budget Funds Rebates

The State Budget for fiscal year 2010 (which began on July 1, 2009) provides funding for the Homestead Rebate Program – although not at the same level as last year. Eligibility and rebate amounts for homeowners are limited based on income, and rebates for tenants will not be paid to those under age 65 and not disabled. The Budget also 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, 2008, and who paid property taxes on that dwelling either directly or through rent, are eligible for a 2008 homestead rebate, provided that their gross income for the entire year does not exceed the applicable income limit: \$150,000 for homeowners age 65 or older or disabled, \$75,000 for homeowners under age 65 and not disabled, and \$100,000 for tenants age 65 or older or disabled. Under the terms of the Budget, no rebates will be issued to tenants under age 65 and not disabled.

Benefits

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.

The benefits under the Homestead Rebate Program are in addition to the State's other property tax relief programs. However, beginning this year with benefits paid for 2008, the total amount of all property tax relief benefits received (homestead rebate, property tax reimbursement, property tax deduction for senior citizens/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes (or rent constituting property taxes) paid on the applicant's principal residence for the same year.

Homeowners: The State Budget requires that the 2008 rebate be based on 2006 property taxes. For purposes of calculating the 2008 rebate, the 2006 property taxes for the dwelling that was the applicant's principal residence on October 1, 2008, 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. In no case will a homeowner receive a rebate greater than the amount of property taxes actually paid.

Under the terms of the Budget, 2008 rebate amounts will be no greater than those paid for 2006 (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

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marital status, or an increase in percentage of ownership.

Homeowners age 65 or older or disabled will receive the larger of either the applicable percentage of property taxes paid (20% if New Jersey gross income is \$100,000 or less, 10% if income is between \$100,001 and \$150,000) or the amount by which the property taxes paid exceed 5% of New Jersey gross income, but within the following ranges:

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

Homeowners under age 65 and not disabled will receive either 13.34% or 20% of the first \$10,000 of property taxes paid in 2006, depending on their income level.

\$50,000 or less	—	20%
\$50,001 – \$75,000	—	13.34%

Tenants: For tax year 2008, 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 not eligible.

How to Apply

Homeowners: The 2008 homestead rebate applications were mailed in May to homeowners who were 65 years of age or older or disabled on December 31, 2008. Application packets were mailed in late July/early August to nonsenior, nondisabled homeowners whose 2008 New Jersey gross income was \$75,000 or less. The filing deadline was recently extended for all filers to November 2, 2009.

Most homeowners can file their applications by phone by calling 1-877-658-2972 or [online](#).

Tenants: Applicants who are required to file a 2008 New Jersey income tax return complete their tenant homestead rebate application (Form TR-1040) and file it at the same time they file their resident income tax return (Form NJ-1040, or return filed electronically using NJ WebFile or approved vendor software), which was originally due by April 15, 2009.

Tenants who have already filed their income tax returns but did not complete the homestead rebate application even though they were eligible, have until November 2, 2009, to file the tenant rebate application, Form TR-1040. However, because no rebates will be paid to tenants who are not 65 or disabled, there is no reason for them to file an application if they have not done so.

Applicants who are not required to file a 2008 New Jersey income tax return because their income is below the minimum filing threshold file only Form TR-1040 and have until November 2, 2009, to apply.

Rebate Checks

Homeowners: Homestead rebate checks for senior and disabled homeowners who filed by the original June 1 filing deadline were mailed July 31, 2009, while checks for those who file between June 1 and November 2 will be issued as quickly as possible. Checks for all nonsenior, nondisabled homeowners are scheduled to be mailed in October.

Tenants: Homestead rebate checks for all eligible tenants were mailed July 31, 2009.

New Jersey State Tax **news**

is published quarterly by the:

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

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

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

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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

News Coordinators for This Issue:

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

Contributors: Jeffrey Adams, Dorothy M. Aicher, Pamela Allen, Beth A. Berniker, William G. Bittner, Thaedra Chebra, Kevin Curry, Kerry Czymek, Gary Dal Corso, Susan C. Greitz, Debra Lewaine, Maryanna Paolinie, Charles Peters, and Fred Wagner.

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

Editor: Sheri B. Silverstein



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

FY 2010 Budget Legislation

The following is a list of several recently enacted tax laws related to the fiscal year 2010 budget.

Alcoholic Beverage Tax

P.L. 2009, c.71, increases the alcoholic beverage tax rate imposed on certain alcoholic beverages by 25% effective August 1, 2009. The tax rate imposed on liquor is increased to \$5.50 per gallon; the rate on wine, vermouth, and sparkling wine is increased to \$0.875 per gallon; and the rate on hard cider is increased to \$0.15 per gallon. The law also dedicates certain additional revenues generated by the tax to the Health Care Subsidy Fund.

Cigarette Tax

P.L. 2009, c.70, raised the cigarette tax rate, effective July 1, 2009. The rate increased \$0.125 per pack of 20 cigarettes from \$2.575 to \$2.70.

The law also dedicates additional revenue to the Health Care Subsidy Fund.

Corporation Business Tax

P.L. 2009, c.72, extends the 4% surcharge on corporation business tax liabilities for one year to include privilege periods ending before July 1, 2010. It also decouples the corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.

Gross Income Tax

P.L. 2009, c.69, makes various modifications to the New Jersey gross income tax.

- The tax rate for tax year 2009 is increased to 8% on income over \$400,000 but not over \$500,000; 10.25% on income over \$500,000 but not over \$1,000,000; and 10.75% for income over \$1,000,000.
- The property tax deduction for tax year 2009 is limited to \$5,000 for homeowners under age 65 and not blind or disabled whose gross income is over \$150,000 but

not over \$250,000. The deduction for 2009 is suspended for homeowners under age 65 and not blind or disabled whose income exceeds \$250,000.

- New Jersey Lottery winnings from prizes over \$10,000 are subject to New Jersey gross income tax beginning with tax year 2009. The New Jersey State Lottery is required to withhold income tax on taxable winnings at the rate of 3%.

Insurance Premiums Tax

P.L. 2009, c.75, modifies the tax treatment of certain lines of insurance.

- The rate on group accident and health insurance premiums increases to 1.35% for taxes payable in 2009.
- Dental service corporations are subject to the 1.35% insurance premiums tax for taxes payable in 2009.
- The tax for surplus lines coverage increases to 5%.

The law also dedicates certain additional revenue to the Health Care Subsidy Fund.

For more information on 2009 tax legislation, visit the Division's Web site at: www.state.nj.us/treasury/taxation/newlegislation2009.shtml □

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

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

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

INHERITANCE/ESTATE TAX

Alternate Valuation Date

With the recent decline in the value of stocks, bonds, other investments, and realty, the Division has received numerous inquiries regarding the use

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alternate valuation - from page 3

of the alternate valuation date. This was not an issue of any great concern to most taxpayers until the market's recent precipitous decline.

New Jersey Inheritance Tax

The inheritance tax statute does not provide for the use of an alternate valuation date. Assets must be valued for all inheritance tax purposes at their value on a decedent's date of death in accordance with the provisions of N.J.A.C. 18:26-8.10(a).

Estate Tax

The provisions of the Internal Revenue Code in effect on December 31, 2001, provide for the use of an alternate valuation date if certain conditions are met. The policy of the Division has been and continues to be that if an election to use the alternate valuation date could have been made under the provisions of the 2001 Internal Revenue Code, that election may be made for New Jersey estate tax purposes. If a Federal estate tax return is filed, the same election must be made for New Jersey estate tax purposes and all other Federal and New Jersey tax purposes.

In situations where a Federal estate tax return is neither filed nor required to be filed, a taxpayer may make an

election to use the alternate valuation date for New Jersey estate tax purposes provided the election could have been made under the provisions of the Internal Revenue Code in effect on December 31, 2001.

In situations where a Federal estate tax return is filed with the Internal Revenue Service even though a tax return is not required to be filed, and in situations where a Federal estate tax return is filed with the Internal Revenue Service pursuant to the requirements of the Internal Revenue Code, the same valuation date must be used for New Jersey estate tax purposes as is used for Federal purposes.

In those situations where date of death valuations must be used on the Federal estate tax return filed as alternate date valuations and would not decrease the Federal estate tax, date of death valuations must be used for New Jersey estate tax purposes. This is mandated even though an election to use the alternate valuation date could have been made under the provisions of the Internal Revenue Code in effect on December 31, 2001.

For questions related to this issue, contact the Inheritance and Estate Tax Section at 609-292-5033. □

GROSS INCOME TAX

Charitable Remainder Trusts

The New Jersey Gross Income Tax Act states at N.J.S.A. 54A:2-1 that tax is imposed on the gross income of every trust, other than a charitable trust or a trust forming part of a pension or profit-sharing plan. The Act does not exempt any other type of trust from tax.

A "charitable trust" for New Jersey gross income tax purposes means a trust operated exclusively for religious, charitable, scientific, literary, or educational purposes. A trust cannot be deemed to be a charitable trust unless it is operated exclusively, during all of the taxable years in question, for religious, charitable, scientific, literary, or educational purposes; serves a public interest as opposed to a private interest; and, under the governing instrument, there is no possibility that a non-charitable beneficiary will receive gains or income. See *Burke, Clare and Hill, Trustees, v. Director*, 11 N.J. Tax 29 (1990).

In contrast, a Charitable Remainder Trust (CRT) is formed to pay income to one or more noncharitable income beneficiaries. The donor donates property or money to the CRT while continuing to use the property, receive income, and/or provide for beneficiaries. After a specified period of time, the CRT pays the entire remainder amount to charity or uses the trust for a charitable purpose. The terms of the trust are specified in the governing instrument.

There are three types of CRTs, all of which are treated similarly for New Jersey gross income tax purposes:

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

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

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Charitable Remainder Annuity Trust (CRAT), which pays a fixed dollar amount annually; Charitable Remainder Unitrust (CRUT), which pays a fixed percentage of the trust's value annually; and Charitable Pooled Income Fund (CPIF), which is set up by the charity, enabling many donors to contribute. See Internal Revenue Code Section 664.

Only *exclusively* charitable trusts qualify for income tax exemption under the New Jersey Gross Income Tax Act. A CRT, in contrast to a charitable trust, has noncharitable beneficiaries and does not operate exclusively for charitable purposes. Accordingly, a CRT is not an exclusively charitable trust exempt from New Jersey gross income tax under N.J.S.A. 54A:2-1, and income that is not distributed and which is not deemed to be permanently and irrevocably set aside or credited to a charitable beneficiary is taxable income to the trust. □

Interest 7.00%

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

The assessed interest rate history is listed below.

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

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.

Eighteen persons passed the March 28, 2009, Tax Assessor Certificate examination. Seventeen persons have received certificates dated July 1, 2009. They are:

Atlantic County: Wesley W. Briscoe, Jr., City of Atlantic City.

Bergen County: Richard A. Hubschman, Jr., Cresskill Borough; Christopher L. Lauver, Fair Lawn Borough.

Burlington County: Glenn P. McMahon, Eastampton Township.

Camden County: Kathleen M. McNally, Berlin Borough.

Cumberland County: Mary I. Reimer, Stow Creek Township; Steven Wisneski, Vineland City.

Essex County: Mary Frances Hildebrandt, Glen Ridge Borough.

Hudson County: Barry Appel, Guttenberg Town.

Mercer County: Erica J. Brill, Ewing Township.

Monmouth County: Gerald J. Briscione, Oceanport Borough; Michael Donald Imbriaco, Freehold Township.

Morris County: William Kersey, Wharton Borough; Maryellen Vautin, Long Hill Township.

Ocean County: Bruce E. Jones, Manchester Township.

Somerset County: William David Schelling, Warren Township.

Commonwealth of Pennsylvania, Philadelphia County: Eugene P. Davey, City of Philadelphia.

The next examination will be held on September 28, 2009, at the Richard J. Hughes Justice Complex in Trenton. The deadline to file applications for this exam is August 27, 2009. The filing fee is \$10. If you have any questions regarding this exam or wish to obtain an application, please contact Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division's Web site under "Assessor - Continuing Education & Recertification" at: www.state.nj.us/treasury/taxation/lpt/localtax.shtml □

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.

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assessors' calendar - from page 5

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2010 together with a notice that the completed form must be filed with assessor by August 1, 2009, to claim continuance of Farmland Assessment.

2nd Tuesday in July-

- State Equalization Table prepared.

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 2010.

August 5-

- All SR-1A forms showing sales transactions to be used in compiling 2010 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.

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 2010 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 2010 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. □

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 □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On February 20, 2009, Spiro Pollatos was sentenced to more than 13 years in State prison for his lead role in mortgage and investment schemes. Spiro Pollatos pled guilty on October 17, 2008,

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Public Auction Information

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

**Enforcement Summary Statistics
First Quarter 2009**

Following is a summary of enforcement actions for the quarter ending March 31, 2009.

• Bank Levies	1,494	• Seizures	110
• Certificates of Debt:		• Auctions	4
Total Number	4,740		
Total Amount	\$58,795,959		



criminal enforcement - from page 6

to first-degree money laundering, and Crystal Velitschkow pled guilty on June 27, 2008, in connection with a series of mortgage and investment scams through which they stole approximately \$2.9 million from victims. From January 2004 through March 2007 Pollatos and Velitschkow funneled more than \$2.7 million in criminal proceeds through a personal bank account they controlled, using the money to buy real estate, cars, and boats and pay personal expenses. In December 2008, Spiro Pollatos was assessed \$69,825 in State taxes due and \$38,270.44 in penalties and interest, totaling \$108,095.44, for failing to declare \$1,350,000 in income over the past four years. At the same time, Crystal Velitschkow of Aberdeen, New Jersey was assessed \$81,853.34 in State taxes due and \$43,062.25 in penalties and interest, totaling \$124,915.59, for

failing to declare \$1,538,828 in income over the past four years. Information obtained from the Division's Data Warehouse, in conjunction with Pollatos's and Velitschkow's October pleas, led to the assessments.

- On March 9, 2009, William C. Neumann, Jr. pled guilty to one count of second-degree theft by deception and one count of third-degree failure to file taxes in Monmouth County Superior Court. Neumann was the owner of Cabbage Rose, LLC, a furniture store located in Fair Haven, and Chelsea Manor Unlimited, an Internet furniture business. The investigation revealed that from January 2004 through January 2007 Neumann received payments from customers totaling over \$330,000 but failed to deliver any of the merchandise or submit any refunds. Additionally, from 2003 through 2006 Neumann failed to file New Jersey gross income tax returns.

- On March 10, 2009, a Cape May County Grand Jury returned a seven-count indictment against Bonita Lynn Morin. This indictment follows a criminal investigation conducted by the Cape May County Prosecutor's Office in conjunction with the New Jersey Division of Taxation, Office of Criminal Investigation (OCI). The investigation revealed that Morin earned wages in excess of \$70,000 for tax years 2004, 2005, and 2006 as a nurse utilizing a fictitious social security number and failed to file tax returns associated with those wages. The indictment charges her with three counts of third-degree failure to file tax returns, one count of second-degree trafficking in personal identifying information, one count of third-degree receiving stolen property, one count of second-degree receiving stolen property, and one count of second-degree conspiracy.
- On March 31, 2009, Paul Sarris pled guilty to second-degree theft by deception of New Jersey home-
stead rebate checks in the Mercer County Superior Court before Judge Darlene Pereska. Under the plea agreement the State will recommend that he be sentenced to ten years in State prison and pay restitution of \$282,902 plus penalties and interest. Sarris was one of six defendants indicted on February 5, 2007, by a State Grand Jury on charges of first-degree conspiracy, first-degree money laundering, and second-degree theft by deception. The defendants, all Jersey City residents, including five members of one family, are: Paul Sarris, 50;

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criminal enforcement - from pg. 7

Achilles “Butz” Amante, 55; his sister, Matilda Amante Ramos, 56; and his three sons, Aristides Amante, 27, Amorito “Angelo” A. Amante, 33, and Aloysius M. Amante, 31. The six were indicted on charges they conspired to steal \$573,383 from the State by filing fraudulent applications for 745 homestead rebate checks. The investigation revealed that Matilda Amante Ramos ran a travel agency, while all of the other defendants operated their own financial service companies offering tax preparation services. Between August 2001 and September 2003 the six defendants allegedly filed 745 false homestead rebate applications with the State

of New Jersey, including multiple applications for each of 15 residential and commercial addresses they rented in Jersey City. The defendants allegedly filed the applications using names and social security numbers obtained from tax preparation clients without permission. They allegedly laundered the \$573,383 in stolen funds by depositing the rebate checks in various commercial bank accounts maintained for their businesses. To date, five have entered plea agreements. Achilles “Butz” Amante remains at large and is believed to be out of the country.

- On April 8, 2009, OCI retrieved 323 cartons of unstamped cigarettes from the United States

Customs & Border Protection (USC&BP) office at the New Jersey International Bulk Mail Center in Jersey City, New Jersey. OCI was notified of the presence of these cigarettes as a result of continued cooperation between OCI and USC&BP, including a previous seizure of 330 cartons in January 2009. These cigarettes all share the common element of being shipped from outside the United States with the intent of the domestic recipients to avoid payment of State cigarette taxes. The Division of Taxation will bill the New Jersey residents.

- On April 9, 2009, an Ocean County Grand Jury returned a 25-count indictment against James Hankins, Jr. This indictment follows a criminal investigation which was conducted by both the Ocean and Monmouth County Prosecutor’s Offices in conjunction with the New Jersey Division of Taxation, Office of Criminal Investigation. The investigation revealed that Hankins had bilked investors out of as much as \$12 million to purchase viatical or life settlements between March 2006 and November 2007. Hankins never purchased a single life insurance policy. Instead, he used the funds to make real estate investments and cover his own lavish lifestyle. The indictment charges him with 2 counts of first-degree financial facilitation of criminal activity, 1 count of second-degree theft by deception, 14 counts of second-degree issuing bad checks, 4 counts of third-degree failure to file tax returns, and 4 counts of third-degree failure to pay.

Sales Tax Information

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

[Streamlined Sales and Use Tax](#)

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

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

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

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

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

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



criminal enforcement - from page 8

- On May 5, 2009, in Plainfield City Municipal Court, Dinesh Patel, owner of Plainfield Supermarket, pled guilty to criminal possession of untaxed cigarettes and was fined \$1,000 plus court costs. He was also assessed a \$770 civil penalty for accepting delivery of untaxed cigarettes. Total amount paid was \$1,961. Charges stemmed from a December 2008 investigation in which this retailer made available for sale 30.8 cartons of cigarettes consisting of packs affixed with counterfeit New Jersey Revenue stamps and untaxed imported cigarettes. □

Tax Briefs

Corporation Business Tax

Nonprofit Condominium Association Exempt From Corporation Business Tax — A representative of a condominium association inquired whether a condominium association that was incorporated for the purpose of operating a professional office complex could qualify for exemption from the corporation business tax. Condominium associations are usually organized as nonprofit corporations under Title 15A. The representative was advised that commercial condominium associations, as well as residential condominium associations, are exempt from corporation business tax pursuant to N.J.S.A. 54:10A-3(e) if they are organized as nonprofit corporations under Title 15A. While these corporations are not required to file a New Jersey corporation business tax return, they may be required to file Federal income tax returns with the Internal Revenue Service.

Cosmetic Medical Procedures Gross Receipts Tax

Fee for Room and Board — A surgery center wrote to the Division of Taxation with a question concerning the cosmetic medical procedures gross receipts tax. The surgery center provides cosmetic procedures such as cosmetic plastic surgery. In addition to fees such as the doctor’s fee for the surgical procedure, the center charges a separately itemized fee for day use (not overnight) of the surgical and other rooms used to provide the cosmetic surgery. The surgery center inquired whether this charge, described on the bill as “room and board,” is subject to the tax.

N.J.S.A. 54:32E-1.b includes the following definition:

“Cosmetic medical procedure” includes but is not limited to cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peel, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic dentistry.

N.J.S.A. 54:32E-1.b also provides, in pertinent part:

“Gross receipts from a cosmetic medical procedure” means all amounts paid for services,

property or occupancy required for or associated with the performance of a cosmetic medical procedure and billed to the procedure subject’s account.

Since the statute specifically taxes amounts paid for occupancy, the Division determined that the day use room and board charge was subject to the cosmetic medical procedures gross receipts tax. The legislature intended that the tax be broadly applied to the various fees charged for the cosmetic surgery.

Gross Income Tax

Election Worker Stipend — A taxpayer wrote to the Division of Taxation to ask whether a stipend paid to a poll worker for services performed on election day is subject to New Jersey gross income tax. The Division answered affirmatively.

Under the New Jersey Gross Income Tax Act at N.J.S.A. 54A:5-1(a), gross income includes all wages, salaries, commissions, tips, bonuses, sales awards, and other types of compensation for services rendered. Therefore, for New Jersey gross income tax purposes, the stipend that poll workers receive as compensation for their services is considered taxable and should be reported on the New Jersey gross income tax return.

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Litter Control Fee

Requirement to File Litter Control Fee Return

— A taxpayer wrote to the Division for guidance on its litter control fee filing responsibilities. For purposes of the litter control fee, the definition of a subject “retailer” excludes restaurants with over half of their prepared food served on the premises. The taxpayer inquired as to whether it is required to file the Litter Control Fee Return (Form LF-5) since it operates a restaurant that serves over 50% eat-in.

The Division advised that there is a check box on the reverse side of the return where a taxpayer can indicate this fact. Where a business anticipates that its on-premises service may fluctuate under and over the 50% threshold from year to year, the Division suggests that the business continue to file returns yearly using the check box where appropriate. However, where a business operates in such a manner that it is certain it will exceed the 50% threshold every year, the taxpayer may check the box on the reverse side of Form LF-5 as mentioned above. Or, to clearly end eligibility for the fee, the taxpayer may file Form REG-C-L, Request for Change of Registration Information, located on the Division of Revenue’s Web site at: www.state.nj.us/treasury/revenue/forms/regcl.pdf

Sales and Use Tax

Gratuity and Services Charges

— A taxpayer inquired about charges for a catering event imposed by a hotel. The taxpayer provided the following facts:

A catering facility’s customer contract provides that a charge equal to 11.25% of the food, beverage, room rental, and miscellaneous fees is added to the contract as a gratuity and is fully distributed to the caterer’s employees. The contract also provides that a charge equal to 10.75% of the food, beverage, room rental, and miscellaneous fees is added to the contract as a service charge and that this service charge is not a gratuity, but rather is retained by the caterer to cover general discretionary costs for the catering event.

Charges made for tips and gratuities, including stipulated gratuities or service fees/charges, are not subject to tax when: (1) the charge is separately stated on the bill or guest check given to the customer; (2) the charge is specifically designated as a gratuity; and (3) all such monies received by management are paid in total to the employees. N.J.A.C. 18:24-12.7. Thus, in order for the gratuity and the service charge to be exempt from sales tax, all three of the above criteria must be met.

Based on the facts provided, the 11.25% fee is not subject to tax as long as the three elements above are met. However, the 10.75% fee does not meet the above elements. This fee is simply an increase in the taxable receipt and is therefore included in the tax base. N.J.S.A. 54:32B-2(d); N.J.S.A. 54:32B-2(oo).

Purchase of a Wheelchair — A taxpayer inquired about the taxability of the purchase of a wheelchair for his own use. Mobility enhancing equipment is exempt from tax. N.J.S.A. 54:32B-8.1. “Mobility enhancing equipment” means equipment, other than durable medical equipment, that:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle; and
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Effective January 1, 2009, a prescription requirement was added to the exemption for mobility enhancing equipment. This is intended to clarify that there is no exemption for such equipment when purchased by a medical services provider (e.g., a for-profit hospital, doctor’s office, etc.). Thus, the wheelchair qualifies for the exemption as long as the purchaser provides a prescription to the seller. □

Current Amnesty Programs

Delaware, Louisiana, and Maryland 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.

DE	Sept. 1 – Oct. 30	http://revenue.delaware.gov/amnesty.shtml
LA	Sept. 1 – Oct. 31	www.rev.state.la.us/default.aspx
MD	Sept. 1 – Oct. 30	www.comp.state.md.us



In Our Courts

Gross Income Tax

Intercategory Netting – *Monsees, Gregg Peters v. Director, Division of Taxation*, Docket No. 003535-2008, decided May 1, 2009.

At issue was whether the Division of Taxation properly denied the taxpayer's netting of a net pro rata share of S corporation loss against other categories of gross income.

N.J.S.A. 54A:5-2 states that losses within one category of gross income may be applied against other sources of gross income within the same category of gross income during the taxable year. However, a net loss in one category of gross income may not be applied against gross income in another category of gross income.

In *Miller v. Director, Division of Taxation*, 352 N.J. Super. 98, 799 A.2d 660 (App. Div. 2002), the New Jersey Appellate Court stated that since income is taxed on a category-by-category basis, the New Jersey Gross Income Tax Act expressly prohibits the netting of income and losses among the different categories.

The Division had adjusted the taxpayer's net pro rata share of S corporation income to zero where the taxpayer had reported a loss on Line 21 of his NJ-1040 return. Plaintiff argued that he had reported and paid tax on income for over 20 years from his S corporation, so now that the S corporation had a loss, the Division should allow the loss.

Judge Bianco granted the Division's motion for summary judgment. In reaching his decision, he stated that N.J.S.A. 54A:5-2 prohibits intercategory netting by the taxpayer. □

In Our Legislature

Alcoholic Beverage Tax

Alcoholic Beverage Tax Increase — P.L. 2009, c.71, signed into law on June 29, 2009, and effective August 1, 2009, increases the New Jersey alcoholic beverage tax (excise tax), which is applied to the first sale or delivery of alcoholic beverages to retailers in New Jersey and is paid by manufacturers, wholesalers, and State beverage distributors.

The rate as it applies to liquors increases from \$4.40 a gallon to \$5.50 a gallon; still wines, vermouth, and sparkling wines increase from \$0.70 a gallon to \$0.875 a gallon; apple cider (cider containing at least 3²/₁₀% but not more than 7% alcohol by volume) increases from \$0.12 a gallon to \$0.15 a gallon.

Cigarette Tax

Cigarette Tax Increase — P.L. 2009, c.70 signed into law on June 29, 2009, and effective July 1, 2009, increases the New Jersey cigarette tax and applies to all New Jersey cigarette stamps, stamped floor stock, and to all cigarettes in the possession of any distributor, wholesaler, or retailer licensed by the State of New Jersey as of July 1, 2009. The law provides for new rates per pack of \$2.70 on a pack of 20 cigarettes and \$3.375 on a pack of 25 cigarettes.

Corporation Business Tax

New Jersey Decouples From Federal Deferral of Certain Discharge of Indebtedness Income and Extends the Business Surtax — P.L. 2009, c.72 enacted on June 29, 2009, and effective July 1, 2009, extends the 4% surtax on corporation business tax liabilities for one year. The annual surtax, which was initially imposed under P.L. 2006, c.38

(N.J.S.A. 54:10A-5.40) for privilege periods ending on or after July 1, 2006, but before July 1, 2009, will now apply to privilege periods ending on or after July 1, 2006, but before July 1, 2010. As previously imposed, the surtax is paid in addition to the franchise tax that is required pursuant to N.J.S.A. 54:10A-5.

The law also decouples the corporation business tax from Federal Internal Revenue Code deferral of certain discharge of indebtedness income.

Gross Income Tax

Rate Increase, Property Tax Deduction Suspension and Cap, New Jersey Lottery Winnings Taxable — P.L. 2009, c.69, approved on June 29, 2009, and effective July 1, 2009, applies to taxable years beginning on or after January 1, 2009. The legislation temporarily adjusts the New Jersey gross income tax rates for taxpayers with taxable incomes exceeding \$400,000 in taxable years beginning on or after January 1, 2009, but before January 1, 2010. The law provides for adjusted income taxation of the following brackets at the following rates: over \$400,000 but not over \$500,000 is adjusted from 6.37% to 8%; over \$500,000 but not over \$1,000,000 is adjusted from 8.97% to 10.25%; and over \$1,000,000 is adjusted from 8.97% to 10.75%.

The law also provides that for the taxable year beginning January 1, 2009, homeowners who have a gross income of more than \$250,000 and are not age 65 or older or allowed a personal exemption as a blind or disabled individual are not eligible for the property tax deduction.



in our legislature - from page 11

Additionally, the maximum property tax deduction is capped at \$5,000 for homeowners who have gross income of more than \$150,000, but not exceeding \$250,000, and are not age 65 or older or blind or disabled.

The law also provides that New Jersey lottery winnings from prizes exceeding \$10,000 are taxable for New Jersey gross income tax purposes and that the New Jersey State Lottery is required to withhold New Jersey gross income tax on such taxable winnings at the rate of 3%.

Insurance Premiums Tax
Increase in Insurance Premiums Receipts Tax Rates for 2009 — P.L. 2009, c.75, signed into law on June 29, 2009, and effective immediately, increases the tax rate on group accident and health insurance premiums payable in 2009 from 1% to 1.35%. The law also modifies the current tax exemption given to a dental service corporation to make it subject to the 1.35% insurance premiums tax for taxes payable in 2009. The legislation also increases the premium receipts tax for surplus lines coverage from 3% to 5%. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2009 (January 1, 2009 – December 31, 2009) and tax year 2010 (January 1, 2010 – December 31, 2010) 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.

[2009](#) [2010](#)

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

[2009](#) [2010](#)

- **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.

[2009](#) [2010](#) □



*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