

# New Jersey State Tax news

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## Taxation Joins Sandy Fraud Task Force

The Division of Taxation has joined the Monmouth County Superstorm Sandy Fraud Task Force that was established by the Monmouth County Prosecutor's Office to protect residents from being victimized by fraudulent contractors, salespersons, and others looking to profit from the disaster.

The Task Force is made up of law enforcement officers and regulatory officials from local, State, and Federal agencies, including, among others, the Monmouth County Prosecutor's and Sheriff's Offices, the New Jersey Division of Consumer Affairs, the New Jersey Department of Health, the Internal Revenue Service, and the Federal Bureau of Investigation.

On March 8, 2013, Director Michael Bryan signed a Memorandum of Understanding with the Monmouth County Prosecutor's Office outlining the areas of cooperation and information sharing between their agencies with respect to Taxation's participation as a member of the Task Force.

The mission of the Task Force is both to educate residents on how to protect themselves from storm-related fraud and to provide those who may have been victims of unscrupulous home improvement contractors or other scam artists with a single point of contact to report such fraud.

Members of the countywide Task Force meet regularly to review complaints submitted by homeowners and others and refer them to the appropriate agency for action. In some cases several agencies may take action on the same complaint.

Investigators from the Division of Taxation's Compliance and Enforcement Activity look into complaints referred by the Sandy Fraud Task Force to determine whether or not the business operating here is actually registered in New Jersey and remitting all the required State taxes.

Relying on their experience in dealing with dishonest contractors, the investigators will secure the registration or update the business's existing registration information. If warranted, the investigator will refer the business for audit. In situations where it is necessary to protect the State's interest (i.e., if there is a risk the taxpayer may flee the State), the investigator may issue an on-the-spot jeopardy assessment and demand immediate payment of the tax due. Failure to comply with the assessment will result in immediate seizure of the business's available assets. □

## "Senior Freeze" Deadline Extended

The deadline for filing 2012 property tax reimbursement ("Senior Freeze") applications, Forms PTR-1

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*senior freeze extended - from pg. 1*

and PTR-2, has been extended to September 16, 2013. The original deadline was June 3, 2013.

For more information about the “Senior Freeze” Program, or to obtain an application, visit our [Web site](#), or call 1-800-882-6597, 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays). □

## Small Business Workshops

The Division of Taxation provides free small business workshops designed to assist small business owners in meeting their New Jersey tax obligations. The workshops are half-day seminars presented at locations throughout the State. The Internal Revenue Service does not participate in these seminars.

The workshops include the following topics:

- Identifying types of business ownership and the tax consequences of each type.
- Registering a business with the Division of Taxation, Division of Revenue and Enterprise Services, and Department of Labor and Workforce Development.
- Determining what is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

To attend a workshop, review the schedule and register with the contact

person listed for each event. The contact person can also provide the time of the workshop, parking information, and directions to the location. The Division does not manage the registration process.

The current workshop schedule is available on the Division’s Web site at: [www.state.nj.us/treasury/taxation/sbwsched.shtml](http://www.state.nj.us/treasury/taxation/sbwsched.shtml). The schedule is updated as new workshops are added. □

## LOCAL PROPERTY TAX Tax Assessor Exam

New Jersey Tax Assessors must hold a Tax Assessor Certificate when they take office. Certificates are granted only to those who pass the tax assessor examination.

Exams are offered twice a year, in March and September. Michael J. Bryan, Director of the Division of Taxation, said the purpose of the Assessor Certification and Tenure Act, which became law in 1967, is to ensure that assessors and administrators are properly trained in property tax laws, and that the State has sufficient numbers of trained, career professionals to ensure a uniform and fair property tax system.

The next New Jersey certified tax assessor examination will be held on Saturday, September 28, 2013. Applications to take the exam must be filed by Thursday, August 29, 2013. The test will be given at the Richard J. Hughes Justice Complex in Trenton.

The Application for Admission to a Tax Assessor Certification Exam, Form AC-1, is available on the Division’s [Web site](#) or by calling

## New Jersey State Tax news

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This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure, and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of the information contained in this publication. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation  
Director:** Michael J. Bryan

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assessor exam - from page 2

Marilyn E. Gaines at 609-292-8823, or writing to Property Administration, PO Box 240, Trenton, NJ 08695-0240. A \$10 fee must accompany the completed application. □

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

**July 1-**

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2014 together with a notice that the completed form must be filed with assessor by August 1, 2013, to claim continuance of Farmland Assessment.
- Disallowed property tax deduction recipients granted a filing extension required to pay back tax deductions previously granted. If left unpaid, these become real property liens.

**2nd Tuesday in July-**

- State Equalization Table prepared.

**July 15-**

- Property tax reimbursement (Senior Freeze) payments will begin to be issued to eligible claimants.

**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 2014.

**August 5-**

- All SR-1A forms showing sales transactions to be used in compiling 2013 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 2014 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 2014 for machinery, apparatus, or equipment directly used to manufacture petroleum products from crude oil.
- September 10-**
- County Board of Taxation to revise Table of Aggregates to include the tax rate for local taxing purposes for municipalities having adopted the State fiscal year.

**Interest 6.25%**

The interest rate assessed on amounts due for the period January 1, 2013 – December 31, 2013, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%

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**Update:**  
**NJ/NY Cooperative Interstate Tax Program**

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from page 3

**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:

- Office of Criminal Investigation (OCI) special agents, along with other Division and Department personnel, were recognized by the Treasurer for their work during Superstorm Sandy.
- Charles Giblin, Special Agent in Charge, participated in a criminal tax symposium at Bergen County Community College presenting an overview of OCI. The event was attended by CPAs and lawyers who specialize in tax crime defense. Rutgers School of Law and various law firms sponsored the event. IRS Criminal Investigation participated as well. There were many questions about enforcement relating to Top 100 Tax Debtors as well as failed electronic funds transfers and bad checks.
- On January 17, 2013, search warrants were issued in Bloomfield and Passaic, New Jersey. This was a three-month joint investigation with OCI and the Passaic Police Department. Members of the Passaic County Prosecutor's Office, Bloomfield Police Department, and Paterson Police Department

assisted in the operation. A search warrant was executed at the Bloomfield, New Jersey residence of Juan Polanco. Seized were 2,129 cartons of cigarettes with counterfeit New Jersey tax stamps as well as Virginia tax stamps affixed to them, 56,806 counterfeit New Jersey tax stamps, 13,395 counterfeit New York tax stamps, and \$209,109 in U.S. currency. Polanco was charged and bail was set at \$75,000, no 10%. Additional search warrants were executed at the Passaic residence of Victor Matos, who was arrested and released on his own recognizance. Seized were 21 cartons of counterfeit New Jersey-stamped cigarettes, 160 counterfeit New Jersey tax stamps, and \$3,765 in U.S. currency. Another search warrant was executed in Passaic at

the residence of Ambioris Genao, who was arrested and released on his own recognizance. Seized were 50 cartons of counterfeit New Jersey-stamped cigarettes and \$4,271 in U.S. currency. Also arrested were Berto Estevez and Rafael Grullon. Estevez had 40 cartons of counterfeit New Jersey tax-stamped cigarettes in his vehicle and \$4,722 on his person. He was released on his own recognizance. Seized from Grullon were four cartons of counterfeit New Jersey tax-stamped cigarettes, \$1,237 in U.S. currency, and his vehicle. He posted \$100,000 bail, no 10%.

Additional inspections were performed in Paterson and Passaic that led to seizures of cigarettes, tobacco products, and currency. Follow-up investigations resulted

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**Enforcement Summary Statistics  
First Quarter 2013**

Following is a summary of enforcement actions for the quarter ending March 31, 2013.

	Number	Amount
• Bank Levies	924	\$ 3,787,470
• Certificates of Debt	3,741	47,158,715
• Seizures	132	2,037,079
• Auctions	12	137,762
• Warrants of Satisfaction	3,420	

**Second Quarter 2013**

Following is a summary of enforcement actions for the quarter ending June 30, 2013.

	Number	Amount
• Bank Levies	987	\$ 2,801,147
• Certificates of Debt	3,689	50,595,901
• Seizures	121	1,655,832
• Auctions	21	107,829
• Warrants of Satisfaction	3,983	



*criminal enforcement - from page 4*

in seizures and contraband charges being filed in the City of Passaic. The investigation culminated when Juan R. Polanco turned himself in to authorities on January 24, 2013. Polanco was identified as the main figure in a bi-state contraband cigarette smuggling operation. All subjects were charged with various violations of Title 54 and Title 2C concerning possession of counterfeit tax stamps, possession of untaxed cigarettes, failure to file tax returns due, and failure to maintain books and records with intent to evade taxes. The operation resulted in the seizure of over 3,188 cartons of untaxed cigarettes, 7,850 untaxed cigars, 56,806 counterfeit New Jersey cigarette tax stamps valued at \$153,376, and 13,395 counterfeit New York State cigarette tax stamps valued at \$58,268. Two vehicles used in the operation were also seized. Special agents seized over \$227,000 in U.S. currency used in the scheme, which will be shared with the cooperating agencies.

- Members of OCI's Financial Investigations Unit recently attended the "Stolen Identity Refund Fraud" symposium provided

by the U.S. Department of Justice (USDOJ) regarding Tax Division Directive 144. The USDOJ Tax Division has defined a subset of identity theft cases, known as Stolen Identity Refund Fraud Cases (SIRF), which specifically target fraudulent tax refund claims involving the use of stolen identities. To provide Federal law enforcement officials the ability to timely address SIRF cases and to streamline SIRF investigations, the Tax Division issued Directive 144, which delegates to the U.S. Attorneys' Offices the authority to take action without approval from the Tax Division's Criminal Enforcement Sections.

- On January 23, 2013, Herlindo Garcia-Merlos was sentenced to eight years in State prison as a result of a plea deal he entered on November 28, 2012. Garcia-Merlos was also ordered to pay \$135,462 in restitution to the New Jersey Department of the Treasury. The restitution is a result of unreported corporation business tax due to Garcia-Merlos's failure to file tax returns for his two businesses, Orients Construction and Melrose Construction. The investigation is for tax years 2006 through 2010.
- On February 12, 2013, a State Grand Jury indictment charged Carrie Ann Manerchia and Lisa Marie Matto with second-degree conspiracy, money laundering, and receiving stolen property for the theft of 36 New Jersey gross income tax refund checks totaling \$73,995.44 and 20 United States Treasury checks totaling \$23,978.97. The conduct occurred between March 20, 2008, and October 30, 2008. The total theft was just under \$98,000. The

returns in question were all filed electronically or using the Division's NJ WebFile program and contained similar taxpayer information, such as wage amounts, New Jersey withholdings in excess of 10%, employers, and check mailing addresses. An OCI investigation determined that the individuals whose social security numbers were used without their knowledge were victims of identity theft in a scheme by Manerchia and Matto to defraud the State of New Jersey and the Federal government of tax refunds. Summonses have been issued for Manerchia and Matto and bail has been set at \$100,000, 10%.

- On February 14, 2013, Michael L. Jones, a former Atlantic City police officer, was indicted on charges of official misconduct, theft by deception, filing fraudulent tax return, and failure to pay State tax. Jones used his position as a police officer to obtain housing from the Atlantic City Housing Authority through the "Safe Neighborhood" program at a substantially reduced rate. Mr. Jones then sublet the housing to others, collected rent from those tenants, and failed to include the rental income on his New Jersey gross income tax resident return for the years 2005 through 2011. The total tax due is \$6,393.70.
- On February 21, 2013, Brian S. Lewis and Shellie Williams were indicted on charges of official misconduct, theft by deception, false claims to government, public servant doing business with self, unsworn falsification, filing fraudulent return, and failure

### **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.

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to pay tax. Lewis is a former Atlantic City Housing Authority (ACHA) employee and is married to Williams. The couple allegedly created fraudulent companies and collected payments for work performed by real companies. Lewis and Williams failed to report the payments received from the ACHA on their New Jersey gross income tax resident returns for the years 2009 through 2011. The total tax due is \$22,019. On April 23, 2013, Mr. Lewis pled guilty to five counts including second-degree official misconduct, second-degree theft, third-degree theft, third-degree filing a fraudulent tax return, and third-degree failure to pay State tax. Lewis and Williams were charged with the tax offenses as a result of a thorough investigation into the couple's finances by the Office of Criminal Investigation.

- On April 3, 2013, Benjamin H. Isaiah Brown and Ernestine Centeno, both of New York, were

indicted in Somerset County and charged with third-degree failure to maintain books and records with intent to evade taxes, fourth-degree conduct requiring license without license to evade payment, fourth-degree dealing with unlicensed person to evade payment of taxes, etc., and fourth-degree possession of 2,000 or more unstamped cigarettes. Arraignment for Brown is scheduled to take place in Somerset County on July 31, 2013, before the Honorable Judge Julie M. Marino. Centeno is currently a fugitive and a Bench Warrant has been issued for her arrest.

- On April 12, 2013, in Essex County Superior Court, Maritza Torres-Falu and her husband, Luis A. Velez, were indicted by a Grand Jury for filing false tax returns, failure to file tax returns, and money laundering for the years 2008 through 2011. Torres-Falu, a former Newark City Hall staffer, now considers herself a tax preparer and insurance broker. The companies operated by the

couple and cited in the indictment are Latin Eagles, LLC; Impact 2000, Inc.; and L. Velez General Contracting, LLC. □

## **Tax Briefs**

### **Gross Income Tax**

#### ***Rental Income From Property Rented Less Than 15 Days A Year***

— A taxpayer inquired about an exclusion from New Jersey gross income for rents received from a property the taxpayer used as a home but rented less than 15 days during the year.

For Federal income tax purposes, if a taxpayer uses a dwelling unit as a home and rents it for less than 15 days during the year, the taxpayer does not include the rent received in income or deduct any associated expenses. However, for New Jersey gross income tax purposes, net gains or net income derived from or in the form of rents, royalties, patents, and copyrights must be included in gross income. N.J.S.A. 54A:5-1(d). Additionally, N.J.A.C. 18:35-1.1(c) (3) states that rental income of a taxpayer which is not received in the conduct of a trade or business must be taken into account in determining the taxpayer's net gains or net income from rents, royalties, patents, and copyrights described in N.J.S.A. 54A:5-1(d).

Because New Jersey law does not provide an exclusion for rental income received from a property used as a home but rented less than 15 days during the year, the taxpayer must include such rental income in gross income.

### **Practitioners' E-File Mandate**

Preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-633-6657 or [e-mail](mailto:nj.taxation@treas.state.nj.us) us at [nj.taxation@treas.state.nj.us](mailto:nj.taxation@treas.state.nj.us)

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**Litter Control Fee**

**Product Category of Soft Drinks and Carbonated Waters** — A grocery store inquired about the treatment of sales of bottled water under the litter control fee. One of the product categories subject to the litter control fee is “Soft drinks and carbonated waters.” N.J.S.A. 13:1E-215.3e.

The litter control fee regulations, N.J.A.C. 18:38-3.1(b)14, provide:

Soft drinks and carbonated waters means all beverages, whether carbonated or noncarbonated, except alcoholic beverages, including fruit juices, milk, carbonated water and all mixtures or dilutions of nonalcoholic beverages, but does not include noncarbonated water.

The Division explained to the store that sales of unsweetened noncarbonated water are not subject to the litter control fee. However, if the noncarbonated water contains natural or artificial sweeteners, it is subject to the fee as a soft drink.

**Sales and Use Tax**

**Charges for Tables Provided by a Casino-Style Gaming Company** — A taxpayer provides a casino-style gaming entertainment service at events held on the premises of its customer and provides the customer with a gaming table and an operator. The customer does not have possession or control of the table; rather the table is used by the operator to provide a nontaxable entertainment service. The taxpayer inquired as to whether a charge for gaming tables used in the performance of providing the service is taxable when billed to the customer.

The Sales and Use Tax Act contains the following definition of “sales price,” at N.J.S.A. 54:32B-2(oo):

(1) “Sales price” is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller’s cost of the property sold;
- (B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (C) Charges by the seller for any services necessary to complete the sale;
- (D) Delivery charges;...

The Division responded that the entertainment service provided by the taxpayer is not subject to sales tax. The tables provided by the taxpayer are not subject to tax because they are part of the sales price of the nontaxable entertainment service. Because the taxpayer is using the tables in the performance of the service, the taxpayer is required to pay sales or use tax when purchasing the tables. N.J.S.A. 54:32B-3(a). □

**In Our Courts**

**Gross Income Tax**

**Trust: Undistributed Income – Residuary Trust A u/w/o Fred E. Kassner; Michele Kassner; Trustee v. Director, Division of Taxation**, decided January 3, 2013; Tax Court, Docket No. 000364-2010.

A New Jersey resident testamentary trust was administered by a trustee who resided in New York and administered the trust exclusively outside of New Jersey. The trust did not make any distributions in 2006,

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## Pay NJ Taxes Electronically

### Electronic Check (E-Check)

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

**SAMPLE**

John Smith  
Jane Smith  
123 Main Street  
Trenton, NJ 08611

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

Anyplace Bank, Trenton, NJ 08611

Routing number: 080202086  
Account number: 1234

For: 1234

Do not include the check number

**Select “Electronic Services”  
to make a payment directly  
from your bank account**

### Credit Card

1-888-673-7694 [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

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the year at issue. The trust owned shares of four S corporations that conducted some business in New Jersey. Therefore, the S corporations issued a Schedule NJ-K-1 to the trust, reporting the trust's share of S corporation income allocated to New Jersey and outside of New Jersey.

The trust filed a 2006 New Jersey gross income tax fiduciary return and paid tax on its net pro rata share of allocated New Jersey S corporation income but did not pay tax on interest income and net pro rata share of S corporation income allocated outside of New Jersey. As a result of an audit, the Division determined that because it was a resident trust, it was also subject to tax on its net pro rata share of S corporation income allocated outside of New Jersey and the interest income.

On a summary judgment motion, the Court held that New Jersey could not tax the undistributed income from outside New Jersey or the interest income because the trust had insufficient contacts with New Jersey. The Court started its analysis with two prior New Jersey Tax Court cases, *Pennoyer* and *Potter*, where it held that the Due Process Clause of the Fourteenth Amendment prevents New Jersey from taxing undistributed income of a trust if the location of the trustee, assets, and beneficiaries are outside of New Jersey.

Addressing the location of the beneficiaries, the Court relied on the fact that the Final Determination and a winter 1999 *New Jersey State Tax News* article stated that the Division interpreted *Pennoyer* and *Potter* to mean that all trust assets and trustees must be located outside New Jersey to avoid taxation; however, neither

document included the location of the beneficiaries as a requirement.

The Court found that the trustee was a resident of New York and that the trust was not administered in New Jersey. The Court also stated that it would not consider out-of-State authority where there is relevant New Jersey case law, and that even using a New Jersey address on the New Jersey tax return was not enough for the Court to distinguish the holding in *Pennoyer*.

The Court also determined that ownership of stock in an S corporation does not constitute ownership of or holding title to the S corporation assets.

Finally, the Court found that although N.J.A.C. 18:35-1.5 would subject a resident S corporation shareholder to tax on income from all sources, the Court would not apply N.J.A.C. 18:35-1 as it was written because it would be a violation of constitutional due process based on the lack of sufficient contacts with New Jersey.

The Division filed an appeal with the New Jersey Appellate Division.

**Sales and Use Tax Evidence That Sales Were Originated and Completed in Urban Enterprise Zone** – *NFF Construction, Inc. v. Director, Division of Taxation*,

decided December 26, 2012; Tax Court, Docket No. 011330-2009.

During the period at issue, the plaintiff (NFF) had a certificate of authority to collect sales tax at the reduced rate of 3% on sales of tangible property at NFF's Pleasantville, New Jersey location within the urban enterprise zone. NFF sold building materials to a subcontractor for use in the construction of a hotel in Atlantic City and collected 3% sales tax. As a result of an audit, the Division of Taxation determined that such sales did not qualify for the 3% rate and were subject to the full 6% rate.

The law allows a certified vendor to charge 50% of the sales and use tax rate on retail sales made from a place of business located in a designated urban enterprise zone where the business is regularly operated for making retail sales. N.J.A.C. 18:24-31.4 provides that the place of business must regularly exhibit and offer tangible property for retail sale. In addition, delivery of goods must be taken at the vendor's place of business or may be delivered by the vendor to the purchaser if the sale has been completed in person at the zone location.

The corporation business tax returns reflected that NFF did not maintain an inventory. The purchase order

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terms were “F.O.B. Jobsite” and shipping instructions were to ship to the subcontractor in Atlantic City. A witness testified that the truck first delivered the goods to the Pleasantville location where items were counted and inspected without ever being removed from the truck.

The Court determined that NFF was not entitled to collect tax at the reduced rate because it did not produce credible evidence to prove that the transactions originated and were completed in an urban enterprise zone. The judge opined that the witness was not entirely credible, that documentation submitted into evidence actually contradicted the witness, and that witness testimony was not corroborated by testimonial or documentary evidence. Additionally, the Court concluded that NFF could not rely on the Director’s certificate of authority to collect sales tax at a reduced rate where NFF did not comply with the Director’s regulations setting forth the transactional requirements for the reduced rate.

**Bankruptcy** – *Glenn B. Slater v. Director, Division of Taxation*, decided February 25, 2013; Appellate Division, Docket No. A-4579-11T4.

In February 1997, plaintiff Slater received a Notice of Finding of Responsible Person Status for sales and use tax due from his corporation. Slater did not file an administrative protest or appeal to Tax Court.

In September 1999, Slater filed a petition for Chapter 11 bankruptcy with the United States Bankruptcy Court. The Director filed untimely proof of claims which were ultimately

expunged. However, the Court didn’t enter an order that these claims were discharged or dischargeable. In April 2002, Slater’s bankruptcy petition was dismissed without a discharge as to any of the debts.

In October 2008, Slater filed a complaint with the Tax Court requesting a refund of sales and use tax and asking that the Division be barred from pursuing its claims because the claims were expunged in the bankruptcy proceeding. The Director moved to dismiss the complaint as untimely and the Tax Court dismissed the complaint for lack of subject matter jurisdiction.

The Appellate Division affirmed the Tax Court and noted that the Director’s claims were not disposed of in Bankruptcy Court. Furthermore, the refund claim was dismissed as untimely because the order expunging the Division’s claims was vacated as a matter of law when the petition was dismissed. Thus, the assessment was neither expunged nor discharged. Slater filed a notice of petition for certification with the New Jersey Supreme Court.

**Failure to Maintain Adequate Books and Records** – *Custom Lawn Sprinkler Co., LLC v. Director, Division of Taxation and Jose Rosario and Sherri Rosario v. Director, Division of Taxation*, decided December 5, 2012, Tax Court, Docket Nos. 010929-2007 and 010928-2007.

Custom Lawn Sprinkler Co., LLC (Custom Lawn) is a limited liability company of which Jose Rosario is the sole shareholder and principal. The business provides the installation, maintenance, and repair of lawn sprinkler systems; snow removal;

and demolition and debris removal.

Custom Lawn failed to maintain adequate books and records during the relevant tax years. The taxpayer did not issue invoices to its customers and did not obtain ST-8 forms, which are required by regulation. Custom Lawn did not collect, complete, or maintain any documentation with respect to the tax-exempt status of its customers as required by regulation.

Using the information provided, the conferee determined that 42% of the overall receipts for tax year 2004 were subject to New Jersey sales and use tax. The conferee then applied this ratio to the adjusted gross receipts to calculate the taxpayer’s sales tax liability for the periods at issue.

By applying the calculated error ratio to the reported gross receipts, the conferee determined that Custom Lawn had additional (unreported) income for each of the years examined. The unreported income was deemed a constructive distribution to the shareholder, Jose Rosario.

In both cases, the Tax Court granted summary judgment in favor of the Division which affirmed the taxes, penalties, and interest against both the business and the shareholder individually. □

## **Tax Calendar**

The following links provide access to calendars listing filing and payment dates for tax year 2012 (January 1, 2012 – December 31, 2012) and tax year 2013 (January 1, 2013 – December 31, 2013) for businesses and individuals:



tax calendar - from page 9

- **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.

[2012](#)      [2013](#)

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

[2012](#)      [2013](#)

- **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.

[2012](#)      [2013](#)     



*important  
phone  
numbers*

- Customer Service Ctr....609-292-6400
- Automated Tax Info ...1-800-323-4400
- .....609-826-4400
- Homestead Benefit Hotline  
for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement  
Hotline.....1-800-882-6597
- Earned Income Tax Credit  
Information..... 609-292-6400
- NJ TaxFax ..... 609-826-4500
- Business Paperless Telefiling  
System ..... 609-341-4800
- Alcoholic Bev. Tax ..... 609-633-7068
- Corp. Liens, Mergers, Withdrawals  
& Dissolutions..... 609-292-5323
- Director’s Office ..... 609-292-6400
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax  
Refunds ..... 609-633-8878
- Public Utility Tax..... 609-633-2634