

New Jersey State Tax NEWS

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New Director Named

Governor Christine Todd Whitman has announced the nomination of Richard D. Gardiner as Director of the Division of Taxation. Pending Senate confirmation, Mr. Gardiner was appointed Acting Director effective June 1, 1994.

State Treasurer Brian Clymer described Mr. Gardiner as "a top-notch professional who understands every aspect of the tax system." He added, "I expect to work closely with him as the Governor works to restructure our tax system."

A career public servant, Mr. Gardiner began his State career in 1959 as an Examiner with the Corporation Tax Bureau. In 1966, Mr. Gardiner was selected to organize the Sales Tax Bureau. He advanced to Supervising Auditor in 1968 and was placed in charge of the Audit and Compliance Section of that Bureau.

Following a complete reorganization of the Division, Mr. Gardiner was promoted to Chief of the Processing Branch in 1971 and was named Assistant Superintendent of Collection and Enforcement in 1977 and Superintendent of Collection and Administration in 1979.

In 1983, Mr. Gardiner was appointed to Assistant Director of Investigations/Special Procedures. In 1984, he was elevated to Deputy Director. He served the Division in this capacity through May 31, 1991. He

graduated from Mount St. Mary's College in 1958 with a B.S. degree in business administration with a major in accounting.

Income Tax Threshold Raised

P.L. 1994, c.8, approved March 16, 1994, increases the minimum income required to be subject to New Jersey Gross Income Tax. Effective January 1, 1994, the threshold was raised from \$3,000 to \$7,500 for individuals filing as single, head of household, qualifying widow(er) or married, filing joint return, and estates and trusts. For married persons filing separately, the threshold was raised from \$1,500 to \$3,750.

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important phone numbers

Taxpayer Hotline 609-588-2200
Recorded Topics 800-323-4400
Speaker Programs 609-588-3179
NJ TaxFax 609-588-4500

Alcoholic Bev. Tax 609-984-4121
Corporate Mergers, Withdrawals &
Dissolutions 609-292-5323

Corporate Tax Liens .. 609-292-5323

Director's Office 609-292-5185

Inheritance Tax 609-292-5033

..... 609-292-5035

..... 609-292-7147

Local Property Tax 609-292-7221

Motor Fuels Tax Refunds

..... 609-292-7018

Public Utility Tax 609-633-2576

Tax. Registration 609-292-1730

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Beginning with tax year 1994, a single individual, married couple, or estate or trust with gross income for the year of \$7,500 or less (\$3,750 for married persons filing separately) has no tax liability to New Jersey. This means that many low income persons, senior citizens, students and others who had to file New Jersey income tax returns in the past will no longer be required to file. However, taxpayers whose income is below the minimum still have to file a return to claim a Homestead Property Tax Rebate or to get a refund if they had tax withheld from wages or made estimated tax payments.

Part-year Residents

Part-year New Jersey residents are subject to tax if their income for the *entire year* exceeds \$7,500 (\$3,750 for married persons filing separately), even if the income reported for the period of New Jersey residence was \$7,500 or less (\$3,750 for married persons filing separately).

A New Jersey income tax return must be filed by a part-year resident who receives any income (whether from New Jersey sources or not) during the part of the year spent as a resident of this State. However, no New Jersey income tax is due if the income a part-year resident received during the *entire year* was \$7,500 or less (\$3,750 for married persons filing separately). A copy of the Federal income tax return should be attached to the taxpayer's part-year return, or, if no Federal income tax return was filed, a statement to the effect that income for the entire year was \$7,500 (\$3,750) or less.

Nonresidents

Nonresidents who receive any amount of income from New Jersey sources during the year must file a New

Jersey nonresident income tax return. No tax is due if a nonresident's income from all sources (both inside and outside New Jersey) for the *entire year* was \$7,500 or less (\$3,750 for married persons filing separately).

Exemption from Withholding

As a result of the change in the minimum income requirement, some employees may no longer be subject to New Jersey income tax withholding. The Division of Taxation has created the Employee's Withholding Exemption Form (Form NJ-W4-E) for use by employees who claim they are exempt from withholding because they expect their income for the year to be less than the minimum amount.

Employers must furnish Form NJ-W4-E to their employees, but employees are not required to complete it. Employers may not withhold tax from the wages of an employee who has given them a completed Form NJ-W4-E certifying that he or she meets the minimum income conditions for the current year. If an employee does not complete Form NJ-W4-E, the employer uses the information on the employee's Federal W-4 or NJ-W4 Form for New Jersey withholding purposes.

CAUTION: Employees who complete Form NJ-W4-E indicating that they are exempt from New Jersey withholding may owe New Jersey income tax when they file a return at the end of the year if their income for the year exceeds \$7,500 (\$3,750 for married persons filing separately). An underpayment penalty may be imposed if the amount of tax due exceeds \$100.

Interest 9% for Second Quarter

The interest rate assessed on amounts due for the second quarter of 1994

remains at 9%. This rate is calculated as follows:

$$6\% \text{ (prime)} + 3\% = 9\%, \\ \text{compounded annually}$$

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/93	9%
1/1/94	9%
4/1/94	9%

New Jersey State Tax news

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Reduced Sales Tax in Salem County

Effective July 1, 1994, certain sales made by businesses located in Salem County will become taxable at a sales tax rate of 3% instead of 6%.

The 3% sales tax rate will apply to retail sales of tangible personal property, except as otherwise noted. To qualify for the 3% rate, the sale must be made from a place of business regularly operated by the vendor for the purpose of making retail sales at which items are regularly exhibited and offered for retail sale and which is not utilized primarily for the purpose of catalogue or mail order sales. Also, the merchandise must be ordered in person by the purchaser at the place of business in Salem County.

Items Eligible for the 3% Sales Tax Rate

In general, the reduced 3% sales tax rate applies to retail sales of tangible personal property. Tangible personal property means goods, merchandise and wares. The following are some examples of property that are considered tangible personal property.

- Books and Stationery
- Furniture and Carpeting
- Appliances (e.g., radios, tv's, etc.)
- Business Supplies/Equipment
- Computer Hardware
- Tobacco products other than cigarettes
- Toys
- Jewelry
- Cosmetics & Toilet Goods
- Luggage, Handbags and Wallets
- Lumber, Plumbing & Electrical Supplies

Retail Sales Ineligible for the 3% Sales Tax Rate

The following are not eligible for the reduced 3% sales tax rate. Vendors must collect tax on these transactions at the full 6% sales tax rate. (Vendors are liable for any sales taxes that are not collected and remitted to the State.)

- Motor vehicles
- Alcoholic beverages
- Cigarettes
- Catalogue or mail order sales
- Sales of services (e.g., maintenance and repairs)
- Prepared food, meals and beverages
- Telephone and electronically communicated sales
- Sales made from locations outside of the county
- Charges for room occupancy, admissions and amusements

Remitting Sales Tax

Reduced Sales Tax. If the 3% reduced sales tax is collected, Form ST-451, *New Jersey Sales and Use Tax Monthly Remittance—Salem County*, and Form ST-450, *New Jersey Sales and Use Tax Quarterly Return—Salem County*, must be filed in place of Forms ST-50 and ST-51. Returns and payments must be sent to the Division of Taxation at the address provided on the form.

State Sales Tax. If the reduced sales tax is collected, vendors will no longer file the *Sales and Use Tax Monthly Remittance* (Form ST-51) and *Sales and Use Tax Quarterly Return* (Form ST-50), except for the *Sales and Use Tax Quarterly Return* for the second quarter, due July 20, 1994. Detailed instructions will be sent to vendors with the Salem County sales tax forms.

Consolidated Reporting. If a vendor is currently filing a *Consolidated Sales*

Tax Return, Form ST-52, for any business located in Salem County, the vendor will now be required to file Forms ST-450 and ST-451 to report the transactions from the Salem County business. Receipts reported on the *New Jersey Sales Tax—Salem County* return should be excluded from the *Consolidated Sales Tax Return*.

Financial Business Tax Repealed

In accordance with the provisions of Chapter 295, Laws of 1993, the annual excise tax imposed on *unincorporated* financial businesses since 1946 has been repealed. As a result, the tax presently imposed upon partnerships, associations and individuals doing a financial business in New Jersey, calculated at the rate of 1-1/2% of the adjusted net worth, is no longer due effective January 1, 1994.

NOTE: This does not affect *corporations* qualifying as financial business corporations in accordance with N.J.S.A. 54:10A-4(m).

INHERITANCE/ESTATE TAX Waiver Requirements Unchanged

Despite the many changes in the administration of the New Jersey Transfer Inheritance Tax, both statutory and procedural, the statute regarding "Consents To Transfer" (Waivers) has not been rescinded nor revised in any manner.

In estates of decedents dying on or after July 1, 1988, Class "A" beneficiaries of an estate are fully exempt from New Jersey Transfer Inheritance Tax and Class "C" beneficiaries, as of that

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date, each receive an exemption from the tax in the amount of \$25,000. However, contrary to what seems to be a growing misconception, any waiver requirements that existed prior to these changes continue to be valid statutory requirements subsequent to the changes.

The Transfer Inheritance Tax Branch is experiencing an increase in instances where delinquent tax collections are being paid by Attorneys, CPA's, Title Companies, Banking Institutions, etc. due to negligence in failing to obtain a waiver for the transfer of decedent's assets when required.

Many of the collections from members of this group are the result of not having obtained a waiver before transferring a decedent's interest in real property located in New Jersey. In this regard, tax has been collected from representatives of the seller who failed to obtain a waiver and, in some instances, from representatives of the buyer who failed to insist on a required waiver prior to closing.

Since most of these violations do not surface until many years after the sale of the property, when the buyers attempt to sell, there is the added burden of interest at the rate of 10% per annum, from eight months after the decedent's date of death. There is, of course, no unavoidable cause of delay in the payment of the tax and, therefore, interest cannot be reduced.

The Transfer Inheritance and Estate Tax Branch advises preparers of transfer inheritance tax returns and estate representatives to be very cautious in this area. There are no acceptable excuses for non-compliance and none shall be entertained.

Use Tax Billing

In the spring of 1994, the Audit Services Branch sent out over 6,000 bills to individuals for Use Tax including penalty and interest. These bills were the result of out-of-state taxpayer purchases of merchandise that was shipped to a New Jersey address.

Use Tax is due 20 days after purchases enter New Jersey. State Form ST-18 should be used to remit Use Tax on a timely basis. Use tax may also be remitted on Line 35 of the taxpayer's NJ-1040 form.

Doctor Self Audit Program

The Division of Taxation recently started a use tax self audit program for doctors who are licensed to practice medicine in New Jersey. This program was initiated based on the results of a series of recent test audits that indicate the medical community is not meeting its obligations under the Sales and Use Tax Act. The period covered by the self audit is limited to the three year period of July 1, 1991 through June 30, 1994.

During the first week of June, the Division mailed approximately 26,000 self audit packages. These packages contained a letter explaining the program, instructions on completing the audit, a questionnaire, a list of items commonly purchased by doctors and whether they are taxable or non-taxable, worksheets for listing untaxed, taxable purchases and a summary report to be used for remitting use tax.

The program allows doctors until September 20, 1994 to report and pay any unreported use tax together with the minimum interest allowed by law. After that date, late filing and payment penalties totaling 30% will be added to any underpayment.

While this is a self audit program designed to minimize the effort necessary to bring non-filing taxpayers into compliance, it is not voluntary. Those doctors who fail to respond to the notice or appear to substantially under-report their liability will be contacted. This contact may result in a field audit for a period of up to seven years. Any additional tax discovered will be subject to maximum penalty and interest.

Self audit programs are one of several methods currently being used to bring taxpayers into compliance with their use tax responsibilities. Questions regarding use tax may be answered by contacting the Division's Taxpayer Information Service.

Tax Assessor Certificates

Twenty-four persons qualified to become municipal tax assessors by passing the tax assessor's examination held on March 19, 1994.

Atlantic County: Gilbert F. Bosies, Egg Harbor City; Maryanne C. Lorenzi, Margate City

Bergen County: Derek P. Eisenberg, Engelwood City; Evan K. Elias, Closter Boro; Joseph J. McKeon, Ridgewood Village; Joyce Ranone, Carlstadt Borough; James S. Rizzo, Teaneck Township; Michael Baldwin Weber, Dumont Borough

Burlington County: James J. Renwick, Maple Shade Township

Camden County: John A. Dymond, Merchantville Borough

Essex County: Kevin J. Dillon, West Orange Township; Samuel Stubbs, South Orange Village

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assessor certificates - from page 4

Hudson County: Arlene Reiner, Secaucus Town

Monmouth County: Jeremiah J. Bowen, Long Branch City; Kenneth L. Walker, Jr., Shrewsbury Borough

Morris County: Susan I. Cusano, Morris Township; Bruce H. Downing, Parsippany-Troy Hills Township; Barbara Gothie, Denville Township

Ocean County: Mark M. Calozzo, Dover Township; Marilyn Rogers, Brick Township

Passaic County: Gale Barth, West Milford Township; Ellen Skoler Garfing, Wayne Township; Mohammad Imran, Ringwood Borough

Union County: Michael J. Frangella, Linden City

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate. The next exam is scheduled to be held on September 24, 1994.

LOCAL PROPERTY TAX
Revised SR-1A Form

The SR-1A, created in 1957 as a legal extension of the deed recording process, has been revised in order to provide for the capturing of certain information, which when present on the SR-1A will minimize inquiries to the assessor for this information. The changes to the SR-1A form consist of two new fields located in Section Two of the document and an expanded area for assessor's "Remarks."

The two fields added to Section Two are entitled "Floor Area" and "Year Built." The municipal tax assessor

may complete the "Floor Area" field by including the gross square footage of the improvement or improvements conveyed by the transfer of real estate. The "Year Built" field should include the actual year in which the improvement(s) were constructed. The illustration below shows the two new fields of data for the revised SR-1A form.

and appraisers' requests to review property record card data to determine a final estimate of real property value.

The additional data will not be mandatory for the July 1, 1994 to June 30, 1995 sampling period. However, the revised SR-1A forms will be distributed to all county board of taxa-

The revisions have been discussed with and endorsed by a sampling of tax assessors, the New Jersey Association of County Tax Board Commissioners and County Tax Administrators, the New Jersey Board of Real Estate Appraisers and the New Jersey Real Estate Commission.

The data to be included in the revisions has always been of invaluable assistance to realtors and appraisers. While the new information will require the SR-1A to undergo additional adjustments within the parameters of the MOD IV System, accurate entry of this data by assessors should effectively reduce the number of realtors'

tion offices prior to July 1994. Assessors are strongly urged to employ the new fields on the appointed date and to review all of the proper procedures for completion of Section Two of the SR-1A form outlined in Section 1002.33 of the Handbook for New Jersey Assessors.

Lastly, assessors should be aware that the "Remarks" area in Section Two has now been expanded. In the past computerization replaced the manual systems many taxing districts employed for the continuous processing of SR-1A's, and the "Remarks" field had diminished. As a result, the assessor's comments were necessarily

revised sr-1a - from pg. 5

reduced. Assessors will now find additional space where they may enhance their comments with more substantive data pertaining to the usability or nonusability of a particular sale. This should assist everyone involved in the process of the Sales Ratio study, and ultimately lead to a more accurate Table of Equalized Valuations as promulgated by the Director of the Division of Taxation.

LOCAL PROPERTY TAX **Sales Ratio Policy** **Unchanged**

"Guidelines" established by the Local Property Branch on March 27, 1981 to implement the "Categories of Non-Usable Deed Transactions" under N.J.A.C. 18:12-1.1 for purposes of the Sales Ratio Program were recently reviewed to ensure greater uniformity in treatment by Property Administration field staff, thereby increasing the accuracy of the Table of Equalized Valuations promulgated by the Director of the Division of Taxation. Sales ratio data comparing real estate sales prices to assessment values form the basis of the Equalized Valuation Table used in the calculation and apportionment of State School Aid.

Over the years, policies have been developed for 27 categories of non-usable deed transactions which may be excluded from the Table. As part of the recent review, the Division's position on property transfers which have been the subject of tax appeals, Non-Usable Category 26, was reevaluated and confirmed.

In an Attorney General's opinion dated August 22, 1966, Leon S. Wilson stated, in part: "An assessment subjected to arbitration, discussion or judgment by any party other than the assessor must to some degree render

the assessment not the product of the assessor's unfettered determination." Attorney General Wilson recommended that the result of the consent judgment be disregarded as not representative of the valuation of the assessor.

Sales of real property for which the assessments were revised by consent judgment within the year sold are considered "usable" for sales ratio purposes, provided there are no other non-usable factors affecting value. The ratio of these sales is computed on the municipal tax assessor's original assessment as per the Tax List of January 1. It must be noted, however, that sales in the year of consent judgment may be non-usable if there are revaluation/reassessment omissions, mistakes in measurements as reflected on the property record card, or wrongful property classifications, e.g., a Class 2 three-family parcel placed in the Class 4 commercial category. Where a tax appeal has been filed within the two years prior to sale, the transaction is non-usable.

There is no basis for a policy change by the Division of Taxation at this time.

Freeze Act

In accordance with N.J.S.A. 54:3-26, judgments have a binding effect known as the Freeze Act. If no further appeal is made from the judgment of a county board of taxation, the assessed value must remain in effect for the assessment year and two subsequent years, unless otherwise stipulated by the parties themselves. The Supreme Court of New Jersey has held that the Freeze Act is triggered not only by adjudicated judgments but by judgments based on settlements as well. The distinction between judgments resulting from adversary presentation and those of mutual agreement of the parties was decided to be legally unsound. Thus,

property sales occurring in the two years subsequent to consent judgments are non-usable. Likewise, if an assessment has been adjusted in the two years prior to the year of sale and the Freeze Act is in effect, the sale is also non-usable.

Alcoholic Beverage Enforcement

Several major enforcement initiatives are underway to combat noncompliance with the retail sales tax on alcoholic beverages.

P.L. 1993, c.232 (approved August 6, 1993) amends the Alcoholic Beverage statutes in R.S. 33: 1-26 to permit a liquor license to be deemed property subject to lien, fees, interest and penalty imposed by any State tax law for which a lien may be attached. Previously only the Internal Revenue Service could seize and sell a liquor license.

The Division's Investigations Branch has developed guidelines which have been approved by the Director's Office for the seizure and sale of liquor licenses. These will only be undertaken as a last resort after all other enforcement measures have been attempted.

Through the month of May 1994, the Division has auctioned three (3) liquor licenses with proceeds in the amount of \$260,000.

Suspensions of Alcoholic Beverage licenses for nonpayment of taxes to the Division of Taxation have also been requested by Taxation and approved by Alcoholic Beverage Control, where significant noncompliance exists. Taxation has requested that these licenses be suspended until such time as all taxes due to the Division are paid.

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alcoholic bev. enforcement - from p. 6

In addition to these enforcement initiatives, the Division's Office of Criminal Investigation is engaged in a joint project with the Division of Alcoholic Beverage Control to combat noncompliance by alcoholic beverage retailers. Agents from both agencies are performing on site inspections statewide, which has resulted to date in 29 cases being referred to the Division of Criminal Justice for prosecution. Sixteen guilty pleas or verdicts and almost \$3,000,000 in tax assessments have resulted.

Taxpayers and Preparers are urged to come forward concerning problems that may exist in these areas. In most circumstances, voluntary disclosures will be helpful in reducing the severity of civil and/or criminal sanctions that will be imposed.

Criminal Enforcement

Criminal enforcement actions over the past several months included:

March 11, 1994 - Joseph P. Miller, the owner of Spanky McFarland's Restaurant and Lounge in Ocean Township, was fined \$105,000 and sentenced to five years probation for failing to pay State sales and wage taxes. Miller was indicted in February 1993 for failing to pay \$98,000 in Sales Tax between April 1989 and July 1992.

March 15, 1994 - Daniel J. Fitzpatrick of Seaside Heights was charged with filing false State income tax returns and homestead rebate applications for four people, including a dead person. The purpose of filing the returns was not to pay more taxes or collect a refund, but to get the homestead rebates, which ranged from \$30 to \$500.

\$2 Million Motor Fuels Tax Judgment

March 18, 1994 - Petro AM Ltd., Inc. and Gregory Plishka were sentenced after pleading guilty last August to the misapplication of entrusted property and the property of government. The corporation also had pleaded guilty to failing to file returns or reports in violation of the State's motor fuels tax laws. The corporate defendant was ordered to pay over \$2 million in motor fuels tax restitution. Gregory Plishka was sentenced to five years in prison and also ordered to make restitution in the same amount as the corporation.

April 5, 1994 - Maria C. Rodriguez, a Howell Township bookkeeper, was indicted by an Ocean County Grand Jury on charges of embezzlement and filing fraudulent income tax returns. The indictment is the result of a joint investigation with the Ocean County Prosecutor's Office.

April 18, 1994 - Matthew J. Werneth, president of JR Associates of NJ, Inc., was sentenced on charges regarding the failure to remit \$82,421 of Sales Tax that had been collected from patrons of this bar located in Dunellen, NJ. The judge ordered full restitution of the tax to commence 30 days after Mr. Werneth is released from jail. Werneth was sentenced to 364 days in jail and 4 years probation.

Enforcement Summary

Civil Collection Actions Quarter Ending - March 31, 1994

Compliance Activity personnel collected a total of \$40.3 million for the

quarter ending March 31, 1994. Following is a summary of enforcement actions.

Certificates of Debt

After demands for payment were unsuccessful, the Division entered 1,252 Certificates of Debt in Superior Court totaling \$32.6 million.

Contact and Demand

Prior to the filing of Certificates of Debt, the Division collected \$36.1 million through normal collection procedures.

Levies

The Division collected \$2.3 million by levying against 409 bank accounts.

Settlements

Another \$1.6 million was collected by closing 147 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

Tax Seizures

After the Division has exhausted all other means to collect the State taxes due from vendors who cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets, such as inventory, machinery, furniture, etc.

If the liability of the closed business is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the Division can seize the personal assets of the responsible officers where trust fund taxes (Sales Tax and Income Tax Withholding) are involved.

A total of 23 businesses were scheduled for seizure for the quarter end-

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enforcement - continued from pg. 7

ing March 31, 1994. Of these, 20 businesses were actually closed and 3 were left open, resulting in collections of \$300,000. A listing of seized businesses appears on pages 9 and 10.

Tax Briefs

Corporation Business Tax

Allocation; Property Factor & Storage Fees – A taxpayer raised a question about storage fees at public warehouses. The storage fees are paid at a per carton - per day rate. In the typical case, there is no definite lease as in a building rental or office rental.

The Division advised that New Jersey would consider storage fees paid to a public warehouse as rent for Corporation Business Tax purposes. Under N.J.A.C. 18:7-8.5(c), leased or rented property is valued at 8 times its annual rent. The storage fees would be included in this calculation. It does not appear that the fact inventory exists in the property fraction affects the way storage fees are treated in the property fraction for allocation purposes.

ESOP Deduction – A taxpayer inquired as to the position of the State of New Jersey on deducting ESOP dividends on the New Jersey Corporation Business Tax Return (CBT-100). Under IRC section 404(a), the ESOP dividends are a deductible item for Federal purposes.

The Division advised that the Corporation Business Tax Act provides in pertinent part that "...a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to re-

port to the United States Treasury Department for the purpose of computing its federal income tax..." N.J.S.A. 54:10A-4(k). Thus, deductions made above Line 28 on the Federal Form 1120 would similarly be deductible for State purposes in arriving at Line 28 of Schedule A of CBT-100, and as such the applicable ESOP deduction would be reflected on the NJ CBT-100 above Line 28 Schedule A.

Gross Income Tax

Per Diem Lodging and Meals – An inquiry was made regarding whether an employer is required to withhold gross income tax from per diem amounts which cover lodging and meals.

The Division replied that it follows the guidelines of the Internal Revenue Service in determining whether the value of meals and lodging is taxable for New Jersey income tax purposes. Thus, the per diem amounts for meals are includible in gross income as wages and subject to withholding unless furnished for the employer's convenience and on the employer's premises. Amounts for lodging are includible in gross income and subject to withholding unless the lodging is furnished for the employer's convenience on the employer's premises **and** is a condition of employment.

S Corporation Losses – The Division received an inquiry regarding whether an individual shareholder could use S corporation losses to reduce other New Jersey taxable income on the NJ-1040, now that New Jersey permits S corporation status.

The reply stated that such treatment is not permitted under the Gross Income Tax Act. S corporation losses and income are included in a new category of income referred to as "net pro rata share of S corporation income." See

P.L. 1993, c.173. This category is the net amount of the shareholder's portion of S corporation income and losses. The losses would not be deductible against other categories of income.

N.J.S.A. 54A:5-2 limits the offset of gains in one category of income against losses which occur in the same category of income. Consequently, a taxpayer who is a shareholder in more than one S corporation may reduce the net gain from one by using the net loss from another, but cannot use a net S corporation loss to reduce any other taxable income.

A separate line for reporting net pro rata share of S corporation income will be added to the 1994 NJ-1040, NJ-1040NR, and NJ-1041.

Sales Tax

Condominium Association Purchases – A condominium association does not qualify as an exempt organization pursuant to N.J.S.A. 54:32B-9; thus, sales tax must be paid on the purchase of taxable goods and services. For example, repairing, maintaining and servicing real property are taxable services. N.J.S.A. 54:32B-3(b)(4). Snow removal, clean-up of common areas, lawn cutting, tree trimming, and repairs to sewers, curbs, sidewalks, etc. are all subject to tax. Trash removal services are exempt from tax only if performed on a regular contractual basis for a term not less than thirty days.

Diplomatic/Consular Exemption – The Division received a request for an ST-5 exemption certificate for New Jersey sales tax exemption documentation for a Vice Consul at the Consulate General of Egypt in New York. The Vice Consul resides in New Jersey and is seeking exemption from



**Division of Taxation Seizures
(January - March 1994)**

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

County	Name/Address	Seizure Date	Business Type	Status
Atlantic	Decor Art, Inc. T/A Decor Art Gallery & Framing, Hamilton Mall Mays Landing	2-17-94	Art Gallery/Frames	Bankrupt 2-25-94
	Decor Art, Inc. T/A Decor Art Gallery & Framing, Ocean One Mall Atlantic City	2-17-94	Art Gallery/Frames	Bankrupt 2-25-94
Burlington	Mohan Village Paint & Hardware Co., Inc. Marlton Square Shopping Ctr. Route 70 Marlton	1-11-94	Hardware Store	Reopened 1-14-94
	Sidney & Gail L. Jirak T/A Sid's Music 6 W. Camden Ave. Moorestown	3-30-94	Music Store - Instruments, Sheet Music, Instruction	Closed
Camden	Belo Electronics Inc. T/A Bell Radio & TV 1017 W. Marlton Pike Cherry Hill	2-1-94	Appliance Repair - TV's, Radios, VCR's	Closed
	Petcare Industries, Inc. 1820 Garden Ave. Cherry Hill	3-22-94	Pet Supply Store	Closed
Cape May	Genove, Inc. T/A Venezia Ristorante 326 Cloverdale Avenue Villas	2-2-94	Restaurant/Bar	Reopened 2-7-94
Hudson	The Dugout 1 Hudson Place Hoboken	3-16-94	Restaurant/Fast Food	Reopened 3-24-94
Mercer	Michael T. Exedaktilos T/A Manukas Coffee Shop 230 East State Street Trenton	1-27-94	Coffee Shop	Closed
	T/C Cafe, Inc. T/A Take It Easy Bar & Liquor Store, 69-71 Rt. 156 Hamilton	2-2-94	Liquor Store/Lounge	Closed
	Buzgo Radice, Inc. T/A Jamey's 700 Roebling Ave. Trenton	3-10-94	Small Bar & Restaurant	Closed

taxation seizures - continued from pg. 9

County	Name/Address	Seizure Date	Business Type	Status
Middlesex	Asian Gardens, Inc. T/A Asian Gardens 6 Edgeboro Rd. & Rt. 18 East Brunswick	2-16-94	Restaurant	Reopened 2-17-94
	Harbans Singh T/A Sahib Restaurant 575 New Brunswick Ave. Fords	2-16-94	Restaurant	Reopened 2-23-94
Monmouth	Paisanos, Inc. T/A Paesano's 78 Oceanport Ave. W. Long Branch	1-25-94	Restaurant	Closed
	Monmouth Video, Inc. 319 Main Street Keansburg	3-2-94	Video Shop	Reopened 3-9-94
	Craig L. Riley T/A CJ's Place 45 Third Ave. Long Branch	3-14-94	Luncheonette/Breakfast & Lunch Trade	Released Keys to Landlord 3-28-94
Morris	Skat, Inc. T/A Skats 75 Maple Ave. Rockaway	1-12-94	Bar & Restaurant	Reopened 1-14-94
Ocean	New Jersey Diamonds Brokers, Inc. 853 Mill Creek Road, #4 Manahawkin	3-21-94	Jewelry Store	Reopened 3-25-94
Somerset	Gerald Debaro Plumbing 618 East Main Street Bridgewater	2-22-94	Plumbing Fixtures/Supplies	Closed
Union	Athas Merkouriou T/A Colonial III Restaurant 1731 E. 2nd Street Scotch Plains	2-15-94	Restaurant/Cafe	Closed

tax briefs - continued from pg. 8

sales tax on his telecommunications bills from his telephone company.

The Division advised that foreign diplomatic and consular personnel issued United States Department of State tax exemption cards by the Office of Foreign Missions, U.S. Department of State, Washington, D.C., are entitled

to New Jersey sales tax exemption for their telecommunications services purchased in New Jersey. ST-5 exemption certificates, issued to exempt organizations, such as churches and charities, but never to individuals, would not be the proper exemption documentation in this instance. A photocopy (front and back) of the

Department of State Tax Exemption Card would suffice to document this exemption.

Additional information on diplomatic/consular sales tax exemption in New Jersey is available for diplomatic/consular personnel or New Jersey vendors from the Division of Taxation, Tax Services Branch.

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tax briefs - continued from pg. 10

Fire Damage Cleanup & Repair –

In response to an inquiry concerning damage and repair it was indicated that services such as cleaning dishes, glassware, personal items, bric-a-brac, etc., damaged in a house fire, are subject to sales tax as maintaining or servicing tangible personal property under N.J.S.A. 54:32B-3(b)(2).

In addition, smoke or fire damage restoration work on buildings (real property) is a service subject to sales tax under N.J.S.A. 54:32B-3(b)(4) when the service involves maintaining, servicing or repairing the real property. The receipts from smoke or fire damage restoration work for the contents of buildings, such as furniture or appliances, are subject to sales tax under N.J.S.A. 54:32B-3(b)(2) for maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business, **except** any receipts from laundering and dry cleaning.

The laundering and dry cleaning exemption would include (1) rug and carpet cleaning, including the incidental charges of picking up and re-laying cleaned rugs and carpets; (2) on-location rug and carpet cleaning performed on the customer's premises; and (3) cleaning of upholstered fabrics, including cleaning of draperies and other textile home furnishings.

A separately stated and identified charge for cleaning (laundering) upholstery, carpets and rugs is excludible from the taxable receipt for damage restoration services.

Please note that restoration work that does not qualify as "laundering" as explained above would be subject to tax under N.J.S.A. 54:32B-3(b)(2).

Refrigerated Trailer for Farm Use

– An inquiry was received regarding

the taxation of rentals of refrigerated semi-trailers for use by a nursery.

A nursery qualifies as a farm business and may issue a Farmer's Exemption Certificate (Form ST-7) when applicable. The regulations governing the application of the farm exemption, N.J.S.A. 54:32B-8.16, provide exemption for property used to preserve farm products upon the farm premises, and to prevent or deter the destruction, injury or spoilage of farm products, N.J.A.C. 18:19.4(f)(5). Thus, the rental of a refrigerated trailer by a farmer for such purposes is exempt from tax.

This exemption is only available to farmers, defined as those who operate or manage a farm for gain or profits, N.J.A.C. 18:24-19.2. When a refrigerated trailer is rented to a florist, wholesaler, distributor, etc., for use as storage on the premises (as opposed to use in combination with a motor vehicle qualified for exemption under N.J.S.A. 54:32B-8.43), there are no exemptions available under the law.

Services to Aircraft – The Division received an inquiry concerning the application of sales tax in New Jersey to the receipts from various services performed on the interior and exterior of aircraft.

The New Jersey Sales and Use Tax Act subjects the services of maintaining, servicing or repairing tangible personal property to sales tax under N.J.S.A. 54:32B-3(b)(2). However, the law also provides the following exemption from tax:

“Receipts from sales of aircraft and repairs thereto including machinery or equipment to be installed on such aircraft and replacement parts therefor when utilized by an air carrier as defined by the Civil Aeronautics Board or the Code of Federal

Regulations having its principal place of operations within the State and engaging in interstate, foreign, or intrastate air commerce are exempt from the tax imposed under the Sales and Use Tax Act.” N.J.S.A. 54:32B-8.35.

The “repair” of tangible personal property includes “maintenance” or servicing such property. Thus, the following services are exempt from sales tax when performed on aircraft qualified for exemption under N.J.S.A. 54:32B-8.35: The sale of cleaning and maintenance services performed on the interior of air carrier airplanes. This service may include such things as cleaning and scrubbing, as well as vacuuming, removing trash, stocking items, emptying ashtrays, cleaning windows, etc.; the sale of deicing services performed on the exterior of air carrier airplanes during the winter months; and the sale of lavatory and water services performed for air carrier airplanes. Such services include removing waste from the plane's lavatory tanks, filling the plane's lavatory tanks with chemicals, and filling the plane's fresh water tanks; and the sale of cleaning services performed on the exterior of air carrier airplanes.

In Our Courts

Corporation Business Tax Allocation Factor May Include Rental Property – Brunswick Corporation v. Director, Division of Taxation, Supreme Court of New Jersey, Argued November 9, 1993; Docket Number A-53-93, decided March 30, 1994.

Brunswick Corporation is engaged in the manufacture and sale of recreational products and services in the defense, aerospace and industrial

courts - continued from pg.11

fields. Brunswick contested the deficiency tax assessments, interest and penalties imposed by the Director of the Division of Taxation (Director) in respect of Brunswick's 1986 and 1987 Corporation Business Tax (CBT) returns. During the years in issue, Brunswick owned and leased real property and tangible personal property located in New Jersey. Brunswick challenged the authority of the Director to adopt a regulation, N.J.A.C. 18:7-8.5(b), that adjusts the manner of calculating franchise taxes under the New Jersey Corporation Business Tax Act (CBTA). The CBTA assesses a franchise tax on all corporations doing business in New Jersey according to a business allocation factor that measures a corporation's business activity in the State.

Brunswick contended that the challenged regulation is inconsistent with N.J.S.A. 54:10-6(A) because the Legislature intended to limit the meaning of "taxpayer's property" to property **owned** by the taxpayer. According to Brunswick, that legislative intent can be inferred from: 1) the origins of the CBTA; 2) almost forty years of implementation by the Director limiting the meaning of that section owned; and 3) the Legislature's failure to enact statutory amendments that would have accomplished the same result as the new regulation. The Director, on the other hand, believed that Sections 8 and 27 of the CBTA granted the authority to promulgate the regulation at issue.

The Tax Court sustained the Director's authority to adopt the regulation. That Court found that the term "taxpayer's property" is neutral as to whether the allocation factor includes or excludes rental property. The Tax Court also concluded that it is reason-

able to infer that the Legislature intended to grant to the Director broad discretion as to how the property should be computed, in order to reflect the change from net worth to net income and the legislative directive to tax income measured by capital employed. The court found that inference confirmed by an examination of Section 8 of the CBTA as interpreted by the Supreme Court in *Metromedia, Inc. v. Director of the Division of Taxation*, 97 NJ 313 (1984).

The Appellate Division had affirmed the Tax Court's decision substantially for the reasons stated by that Court. The Supreme Court granted certification. The Supreme Court held that the regulation, N.J.A.C. 18:17:7-8.5(b), adopted by the Director of the Division of Taxation, which included New Jersey property rented by a taxpayer in calculating the percentage of the taxpayer's net income properly attributable to the State, was not beyond the authority granted to the Director under the enabling legislation of the Corporation Business Tax Act.

The Supreme Court stated that the decision of the Tax Court was affirmed substantially for the reasons expressed in Judge Lasser's opinion. The Court concluded that the Legislature vested in the Director broad authority to adjust the property factor. The Director's authority to define that factor derives from Sections 8 and 27 of the CBTA. Through these sections, the Legislature has painted with a broad brush, intending that the Director supply the details through the promulgation of regulations. Because the description of property does not include the term "owned," the language of Section 6(A) permits an interpretation that includes leased property. The Director could properly conclude that a lessee should pay its fair share of the cost of public

benefits and services that it uses to generate profits. In view of the changes in economic conditions, the Director needs the authority to adapt the Division's regulations to assess more accurately the income of a lessee that is reasonably attributable to this State. If the Director has misperceived that authority, the Legislature may override the regulation through the appropriate legislation.

Net Operating Loss after Merger - *Richard's Auto City, Inc. v. Director, Division of Taxation*, A-2194-92T1; decided February 1, 1994.

On October 31, 1986, Catena, Inc. merged into Auto City, leaving Auto City as the surviving corporation. The functions of Catena, Inc. were assumed by the leasing department of Auto City. Auto City claimed as a deduction on its 1986 corporation business tax return the net operating losses incurred by Catena, Inc. during the tax years prior to the merger. These losses were incurred as a result of an accelerated depreciation method that was available at the time for leased automobiles.

The issue was whether N.J.A.C. 18:7-5.13(b) was valid as consistent with N.J.S.A. 54:10A-4(k)(6). The regulation provides that "[t]he net operating loss may only be carried over by the actual corporation that sustained the loss," however, it may "be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger."

N.J.S.A. 54:10A-4(k)(6) permits carryover losses but is silent as to whether those losses may be carried over in a merger or reorganization. Plaintiff notes that the language and legislative history of 54:10A-4(k)(6) and the scheme of the New Jersey

continued on page 13

in our courts - continued from pg.13

tax acts evidence an intent by the Legislature to afford net operating loss carryovers at the State level the same treatment as provided at the Federal level under the I.R.C. Under subsection 381 of the I.R.C., the transferee corporation of a statutory merger may carry over the net operating losses of the transferor corporation.

The Court held that although N.J.S.A. 54:10A-4(k)(6)(D) is not explicit, under the reasoning of *Helvering v. Metropolitan Edison*, 306 U.S. 522 (1938), since the successor corporation is liable for the debts, it should also be provided the tax attributes, including the net operating losses in this case, subject of course, to the limitations of subsection (D). The State's proclaimed interest in providing a non-hostile economic environment for business, as implemented by the statute, favors this result.

N.J.S.A. 14A:10-6 is akin to the holding of *Metropolitan Edison*. Thus, the corporate personality of the transferor is consumed by that of the transferee and the transferee was liable for the debts of the transferor. Therefore, it was not unreasonable to conclude that the tax attributes of the predecessor corporation actually become the tax attributes of the surviving corporation. Because Catena, Inc. merged with Auto City, Auto City inherited the obligations and liabilities of Catena, Inc. and should also inherit the rights and privileges, such as the tax attributes. It follows that the tax attributes of the predecessor corporation are inherited by the surviving corporation, subject to the "primary purpose" limitation of subsection (D).

There was no change in the trade or business of Catena, Inc. Further, there is nothing in the record to indi-

cate that the primary purpose of the merger was to permit Auto City to use the net operating losses of Catena, Inc. The situation is not one of abuse wherein 54:10A-4(k)(6)(D) seeks to disallow the deduction.

**Local Property Tax
Floating Docks Deemed to be Real Property – *John Taylor and Jean Taylor v. Township of Lower***, No. 05-05-8680-90S, 1993 WL 520581 (Tax Court, August 30, 1993).

In the case of *Taylor v. Township of Lower*, the Tax Court of New Jersey held that floating docks and finger piers which were part of a marina condominium were real rather than personal property and subject to property tax assessment as such. The docks and piers in question, although floating, had infrastructure for built-in electrical systems; were constructed to remain in place twelve months a year; and were laid out so that they could not be changed without amending the master deed. Based on these characteristics the installation was considered permanent. In applying the Business Retention Act, the Court found that the docks and piers were not exempt from real property taxation as they did not fit the definition of machinery, apparatus or equipment; nor were they used or held for use in business. The judge concluded "the fact that the docks and piers float to accommodate the ebbing and flowing of tides does not distinguish these docks and piers, for local property tax assessment purposes, from piers and docks permanently installed."

Outdoor Billboard Signs Deemed to be Real Property – *R.C. Maxwell Co. and Scola, Inc. v. Galloway Township*, No. 012330-92 (Tax Court, December 9, 1993).

In another case (*R.C. Maxwell and Scola, Inc. v. Galloway Township*), the taxpayer contested the taxation of billboards as real property by Galloway Township. The subject billboards were four wooden A-frame structures with metal components that display outdoor advertising. They were erected by R.C. Maxwell Company on land leased from Scola, Inc. The plaintiff contended that a billboard is personal property, an impermanent structure not affixed to the ground, which can be removed or disassembled without material injury to either the land to which it is affixed or to the billboard itself. Plaintiff further argued that the billboard was not intended to be affixed permanently to the property as evidenced by the two-year lease agreement entered into between the landowner and itself, whereby it maintains the right to remove the billboard. Its impermanence was expressed by the lease and understood within the billboard industry. Then, the plaintiff alleged that the billboards were "apparatus or equipment" as defined in the Business Retention Act and thus were exempt from real property taxation. First, the judge found that the billboards did not fall within the definition of "apparatus or equipment" as defined in the act and even if they did, they would not be excepted because a billboard is a "structure." N.J.S.A. 54:4-1.15 defines "structure" as "any assemblage of building or construction materials fixed in place for the primary purpose of supporting...property." The judge continued "upon dismantling and removal of the billboard, ...there results no material injury to the real property; however, I find to the contrary relative to the billboard itself" in that "it is practically impossible to disassemble a billboard without material injury to

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courts - continued from pg.13

the billboard.” Concerning the plaintiff’s claim that the billboards are ordinarily not intended to be affixed permanently, the judge found “that billboards are ordinarily maintained and retained where originally constructed for the duration of their economic or useful life and that practice indicates an intent for billboards to be permanently affixed to the land.” In final summary, the judge held that outdoor billboard signs are taxable as real property.

Tax-Sale Certificates Fraud/Mutual Mistake – Appellate Division: *Simon et al. v. Deptford Township*, Supreme Court of New Jersey, A-5879-91T3; decided March 14, 1994.

Where no representations were made regarding the property for which the tax-sale certificate was issued, the doctrine of mutual mistake should not ap-

ply. Since the tax collector testified that she was not aware of any environmental problems and the purchaser subsequently discovered that the property had been used as a landfill, there was nothing to suggest a misrepresentation, deliberate concealment or non-disclosure by the tax collector, or that the township deliberately kept the tax collector in the dark concerning the problems at the property and, therefore, the purchaser’s fraud claim was properly dismissed.

In Our Legislature

Corporation Business Tax

Surtax Discontinued—P.L. 1994, c.3 (signed into law on March 7, 1994) eliminates the surtax effective January 1, 1994, and provides a formula for determining an adjusted surtax rate for taxpayers with accounting periods ending between 1/1/94 and 6/30/94.

Gross Income Tax

Decrease in Tax Rate—P.L. 1994, c.2 (signed into law on March 7, 1994) reduces gross income tax rates 5% for all taxpayers.

This bill is effective for tax years beginning January 1, 1994 and thereafter.

Increase in Income Threshold—P.L. 1994, c.8 (signed into law on March 16, 1994) increases the income threshold for qualifying for exemption from income tax. For single individuals, estates and trusts, and married couples filing jointly, the income threshold is increased from \$3,000 to \$7,500. For a married person filing separately, the threshold is increased from \$1,500 to \$3,750.

The bill is effective for tax years beginning on and after January 1, 1994.

tax calendar

july

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

July 11

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

July 15

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

continued

July 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer’s semi-monthly, monthly and quarterly returns

July 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor’s monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber’s monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

July 20 - continued

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-20 New Jersey/New York Combined State Sales and Use Tax—Quarterly return

ST-50 Sales and Use Tax—Quarterly return

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

July 25

PPT-40 Petroleum Products Gross Receipts Tax—Quarterly return



august

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

August 1

NJ-500 Gross Income Tax—Employer's semi-monthly and semiannual returns

August 10

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

August 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending April 30

continued

August 15 - continued

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

August 22

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

continued

August 22 - continued

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

August 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

August 31

NJ-500 Gross Income Tax—Employer's semi-monthly return

september

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

September 12

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

September 15

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

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

continued

September 15 - continued

NJ-500 Gross Income Tax—Employer's semi-monthly and monthly returns
NJ-1040ES Gross Income Tax—Declaration of Estimated Tax for calendar filers

September 20

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

continued

September 20 - continued

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

September 26

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

September 30

NJ-500 Gross Income Tax—Employer's semi-monthly return

from the director's desk

Refinancing of Motor Vehicles

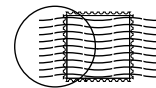
What are the tax implications of automobile dealers entering into refinancing agreements with customers? When a customer transfers a motor vehicle to the dealer who pays off the current loan, and then the dealer transfers ownership back to the customer to enter into a new financing agreement at a lower rate, the dealer would treat the transaction as a trade-in where the customer "buys back" the vehicle for the same amount as the trade-in allowance. The New Jersey Sales and Use Tax Act recognizes an exemption for security transactions. The distinction between a completed sale and a sale for financing purposes is based upon economic realities and the intent of the parties. This transaction would qualify for exemption as a financing arrangement. (See N.J.S.A. 54:32B-2(e)(3)(G) and *Monmouth Airlines, Inc. v. Taxation Division Director*, 2 NJ Tax 47, 1980.)

New Bulletins

The Division is currently working on a new publication. The *Business Incentive Tax Package Packet* will be comprised of a series of Technical Bulletins on the various laws that make up the Business Incentive Tax Package. All persons on our mailing list will receive this publication when available.

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