

New Jersey State Tax news

A Quarterly Newsletter

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What's New for Tax Year 2008

There have been some important changes affecting the preparation of New Jersey income tax returns and applications for New Jersey's property tax relief programs this year:

Income Tax

- **Earned Income Tax Credit**— The amount of the New Jersey earned income tax credit (NJEITC) will be equal to 22.5% of the applicant's Federal earned income tax credit. Eligible residents must file a New Jersey resident income tax return to receive the NJEITC, even if they are not required to file a return because their gross income is below New Jersey's minimum filing threshold.

The New Jersey credit will increase to 25% of the Federal credit amount for tax year 2009 and subsequent years.

- **Federal Economic Stimulus Payments** — For New Jersey gross income tax purposes the treatment of the Federal economic stimulus payments to individuals corresponds to the Federal treatment. The payments are not considered taxable income and should not be reported on the 2008 New Jersey income tax return.
- **Dependents' Information** — Residents must indicate on their New Jersey gross income tax return whether or not each dependent listed on the return has health insurance coverage on the date the return is filed.
- **Designated Contribution** — The New Jersey Veterans Haven Support Program Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To

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

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

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

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donate to the new fund, taxpayers must specify code number "08" at the "Other Designated Contribution" line.

- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2008 is .037242 from January 1 to June 30, 2008, and .035392 from July 1 to December 31, 2008.
- **Fiduciary and Partnership Extension Period Now Five Months** — New Jersey is following the Federal decision to change the extension period for certain returns to help individuals better meet their filing obligations. The extension period for Forms NJ-1041 and NJ-1065 is reduced from six months to five months for taxpayers with return years ending on or after September 30, 2008. This change eases the burden on taxpayers who must report information from Schedule K-1 and similar documents on their individual New Jersey income tax returns.

Property Tax Relief Programs

- **Homestead Rebate Program** — The Homestead Rebate Program provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or tenant on October 1, 2008. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

Tenants who meet the eligibility requirements use the application

in the New Jersey income tax booklet, Form TR-1040, to apply for the homestead rebate for tenants.

Homeowners do not use the application in the income tax booklet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone. More information will be posted to our Web site as it becomes available.

- **2008 Property Tax Reimbursement** — The income eligibility limits for the Property Tax Reimbursement (PTR) Program have been increased for tax year 2007 and after (P.L. 2008, c.119, signed into law on December 18, 2008). For residents applying for reimbursements for tax year 2008, total annual income must be:

2008: \$70,000 or less, and

2007: \$60,000 or less

These limits apply regardless of marital/civil union status. However, if the status is married/CU couple, combined income of both spouses/CU partners must be reported.

For tax year 2009, the income limit will increase to \$80,000 or less for all applicants whether single or married/civil union couple. For tax year 2010 and after, the income eligibility will increase annually by the amount of the maximum Social Security benefit cost-of-living increase for that year.

Benefits available under this program are subject to change.

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

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- 2007 Property Tax Reimbursement** — The change in the income limits for 2007 affects senior and disabled residents who were not eligible for a 2007 reimbursement application because their total 2007 income was above the old income limits for 2007 (less than \$45,135 for single applicants and less than \$55,344 (combined income) for married/civil union couples). Provided they meet all the other eligibility requirements, applicants who now qualify for a 2007 reimbursement solely because of the increase in the income limits for 2007 have until March 31, 2009, to file a reimbursement application for 2007. For residents who qualified under the old income limits, the filing deadline for 2007 PTR applications was October 31, 2008.

Employer Withholdings

- Electronic Filing Mandate** — Beginning with the quarter ending March 31, 2009, the use of paper returns will be eliminated and Forms NJ-500/NJ-927, NJ-927-W, NJ-927H, and WR-30 must be filed electronically. More information will be posted to our Web site as it becomes available.
- Family Leave Insurance** — Beginning on July 1, 2009, New Jersey employees will be eligible to receive up to six weeks of paid leave for the birth or adoption of a child or to care for a sick family member. The program will be funded by a payroll deduction which began on January 1, 2009. Workers will contribute at the rate of 0.09% on the first \$28,900 (taxable wage base) in wages earned

during the year. The contribution rate will increase to 0.12% of the taxable wage base for tax year 2010 and subsequent years. □

**LOCAL PROPERTY TAX
Tax Assessor
Certificates**

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

Thirteen persons passed the September 20, 2008, C.T.A. exam. They are as follows:

Bergen County: Dipak Oza, East Rutherford Borough; Daniel S. Skiba, Jr., Elmwood Park Borough.

Burlington County: Eileen R. Carlos, Tabernacle Township; Bruce T. Carroll, Mount Laurel Township.

Cape May County: Dianne R. Kelly, Lower Township; John Snyder, Upper Township.

Mercer County: Donald E. Frackiewicz, Trenton City.

Middlesex County: David P. Jasko, Spotswood Borough.

Monmouth County: Mark J. Fitzpatrick, Neptune Township.

Morris County: Carlos Carrero, Boonton Township.

Ocean County: Timothy B. Hogan, Point Pleasant Borough; Sharon A. Sulecki, Ship Bottom Borough.

Somerset County: Joseph A. Murray, Jr., Raritan Borough.

The next C.T.A. examination is scheduled for March 28, 2009. The deadline to file applications for this exam is February 26, 2009. The filing fee is \$10. If you have any questions regarding this exam, please contact Anna Auletta-Smilek at 609-292-7813 or write to Property Administration, P.O. Box 251, Trenton, NJ 08695-0251.

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

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

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

**LOCAL PROPERTY TAX****Tax Assessors' Calendar****January 1–**

- Hearings of added and omitted assessment appeals completed by County Tax Board.
- One copy each of Farmland Assessment application, Form FA-1, sent to County Tax Administrator by assessor.

January 10 (before)–

- Taxpayer to give assessor notice of depreciation to structure occurring after October 1 and before January 1 for valuation by assessor as of January 1.

January 10–

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax

deductions filed with County Tax Board.

- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.

- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” filed with County Tax Board by assessor.

January 25–

- Assessor’s schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

February 1 (before)–

- Notices of current assessment and preceding year’s taxes mailed to each taxpayer by assessor.

February 1–

- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors’ office hours furnished to Director, Division of Taxation, by County Tax Administrator.
- Annual Post-Tax Year Statement (Form PD-5) forwarded to recipients of prior year’s property tax deduction by collector.

February 1 (after)–

- Assessor or County Tax Board to notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer shall have 45 days to file an appeal upon issuance of a notification of a change in assessment.

February 10–

- Certification of bulk mailing of notifications of assessment by assessor filed with County Tax Board. If bulk mailing completed by County Tax Board, certification filed with the County Tax Administrator “within 10 days” of the date the bulk mailing was completed.

February 15 (on or before)–

- FA-1 forms forwarded by County Tax Administrator to Property Administration in district order.

March 1–

- Post-Tax Year Statement, Form PD-5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; two copies to Director, Division of Local Government Services; and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county; Director, Division of Taxation; Tax Court; and two copies to Director, Division of Local Government Services. □

Current Amnesty Programs

Connecticut is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

CT May 1 – June 25 www.ct.gov/drs/site/default.asp



Criminal Enforcement

Criminal enforcement over the past several months included:

- On August 11, 2008, a Monmouth County Grand Jury returned a 19-count indictment against Brian McGuire and his wife Benedette. This indictment follows a criminal investigation which was conducted by the Monmouth County Prosecutor's Office in conjunction with the Office of Criminal Investigation (OCI). The investigation revealed that between November 2004 and July 2007, Brian McGuire, President and Chief Operating Officer of Kaibobo Enterprises Corporation, stole \$724,432.69 from the company's operating account. Kaibobo Enterprises Corporation conducts business under the name "Resources Payroll Company," a payroll tax processing service which processes payroll and remits withheld payroll taxes to

the appropriate taxing authorities. Brian McGuire is charged with second-degree misapplication of entrusted property, second-degree theft by failure to make required disposition, and second-degree failure to turn over collected withheld taxes. Both Brian and Benedette are charged with third-degree failure to file returns, filing a fraudulent return, and failure to pay or turn over taxes for multiple years.

- On Wednesday, August 13, 2008, Joao Salvador was indicted for filing false New Jersey gross income tax returns for years 2001 through 2007. He filed his returns using W-2s issued from his business, a construction company, knowing he did not remit the withholdings. Count one of the indictment was for third-degree filing or preparing a false or fraudulent tax return for years 2001 through 2007. Count two of the indictment was third-degree failure to file returns or reports: he did not file Form NJ-927 employer reports for years 2001 through 2007. Count three was failing to remit taxes he withheld from his employees for years 2001 through 2007.
- On September 2, 2008, a State Grand Jury returned separate indictments charging a father and son with failing to pay State sales tax collected from customers at their used car dealerships. Anthony Foti, owner of AN-JO Car Company, Inc., formerly located at 2023 Route 9 in Toms River, failed to remit to the State more than \$75,000 in sales tax between the years 2000 and 2004. Anthony Foti also failed to file corporation business tax returns and his personal income tax returns for that period. Anthony J. Foti Jr.,

owner of Wheels Are Us Auto Sales, located at 819 Route 35 in Middletown, failed to remit to the State more than \$37,000 in sales tax between the years 2006 and 2008. He also failed to file his personal income tax returns for the same period.

- On September 9, 2008, a cigarette compliance inspection was conducted by OCI personnel with the assistance of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Paterson Police Department Narcotics Unit at China Garden Restaurant in Paterson, New Jersey. The inspection resulted in a seizure of 3,298.5 cartons of contraband cigarettes, as well as the confiscation of \$42,875 by the Paterson Police Department. The cigarette seizure represents a product value of \$224,265.02, with an aggregate cigarette and sales tax loss to the State of New Jersey of \$100,634.93. The owner of the establishment, Fen Shou Chen of New York, New York, was arrested at the scene and charged with multiple fourth-degree criminal offenses. Mr. Chen has also been convicted of similar cigarette-related offenses in Paterson Municipal Court in 2003, 2005, and 2007 and may be subjected to Federal prosecution in this matter.
- On September 23, 2008, Wallace M. Omodeo of Bloomingdale, New Jersey, was indicted in Passaic County Superior Court on five (5) counts of failure to file tax returns (N.J.S.A. 54:52-8). Each count pertains to a year in which the defendant failed to file his State income tax return, and

Interest 7.00%

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

The assessed interest rate history is listed below.

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

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includes the tax years of 2003, 2004, 2005, 2006, and 2007. The defendant concurrently has multiple judgments placed against him by the Division of Taxation for various unpaid business-related tax liabilities, the existence of which was cited in the grand jury testimony. This case is being prosecuted by the Passaic County Prosecutor's Office.

- On October 7, 2008, Gilroy Campbell was served with a warrant in Atlantic City pursuant to his arrest on August 22, 2008, for the sale of untaxed cigarettes and possession of pirated/counterfeit DVD movies and music CDs. Investigation into this matter revealed that Campbell was operating a business not registered with the Division of Taxation. He was charged with the following offenses: failure to register with the Division of Taxation (N.J.S.A. 54:52-13), failure to file tax returns (N.J.S.A. 54:52-8), failure to maintain books and records (N.J.S.A. 54:52-12), failure to collect sales tax (N.J.S.A. 54:52-14), the sale of untaxed cigarettes (N.J.S.A. 54:40A-28), selling sound recording/audio visual work which did not conspicuously disclose the true name and address of the manufacturer (N.J.S.A. 2C:21-21(4)), and possession of items bearing a counterfeit mark (N.J.S.A. 2C:21-32(c)). Bail was set at \$100,000, no 10%. He was taken to the Atlantic County Prosecutor's Office for processing. Gilroy Campbell has several prior convictions for possession/distribution of CDs, as well as possession of a weapon and sexual assault. He was also directly linked to Wheels of Soul, an outlaw motorcycle gang with a chapter in the Atlantic City area.
- On October 7, 2008, Larry Huffin of Atlantic City, New Jersey, was observed selling cigarettes to individuals on the street. He was arrested and transported to the Atlantic County Prosecutor's Office for processing. He had in his possession a total of 13.2 cartons of import-stamped Newport cigarettes. A total of \$630 was seized from his person. Huffin admitted to purchasing the cigarettes online. He was charged with the following disorderly persons offenses: possession of untaxed cigarettes (N.J.S.A. 54:52-18), failure to keep records (N.J.S.A. 54:52-6k), and engaging with an unlicensed dealer (N.J.S.A. 54:52-17a). He has no prior convictions.
- On October 24, 2008, Robert Parrish, 44, of Neptune, New Jersey, was sentenced to five years' probation, conditioned on his serving 200 days in the Mercer County Jail, by Superior Court Judge Thomas P. Kelly in Mercer County. Parrish also must pay restitution in an amount to be determined following a hearing. Parrish was indicted in June 2006 along with New Africa Day Care Center, Inc., which operated at 372 South Orange Avenue; its

executive director, Muslimah Suluki, 60, who is Parrish's mother; and her ex-husband, Mahdi Suluki, a consultant and board member of New Africa. Parrish, who diverted thousands of dollars in State funding from the day care center for his personal use, was found guilty in July 2008 as an accomplice of third-degree charges of theft by failure to make a required disposition of property, misconduct by a corporate official, and failure to file a State income tax return for 2002. The verdict followed a five-day trial.

- On October 28, 2008, a joint inspection was coordinated by OCI with the Newark Police Department Vice Unit, ATF, and the United States Postal Inspection Services at New Food King Chinese Restaurant in Newark, New Jersey. The location had been the scene of previous contraband cigarette seizures and arrests, and the sale of contraband cigarettes and "loosies" (single cigarettes) had recently been observed there. This inspection resulted in the arrest of the restaurant owner, Qiu Shi Wu of New York, New York, and the seizure of 155.3 cartons of contraband cigarettes and 18 counterfeit New Jersey cigarette stamps. The overwhelming majority of these seized items were found in the subject's apartment across the street from the restaurant, and were secured after obtaining a "Consent to Search" from the subject. The subject was charged with multiple indictable disorderly persons and civil offenses by both Newark Police and OCI, and will be prosecuted in Essex County Superior Court.

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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- On December 2, 2008, four Paterson men were indicted for allegedly conspiring to steal \$272,000 by filing more than 117 fraudulent State tax returns. Wilyn Caceres, 32, was charged with second-degree conspiracy, money laundering, and receiving stolen property; Jason Perez, 23, was charged with second-degree conspiracy and receiving stolen property; Lisaldo Ramon Espinal, 24, was charged with second-degree conspiracy and third-degree receiving stolen property; and Miguel A. Hernandez, 20, was charged with second-degree conspiracy and third-degree receiving stolen property. The tax refund scheme was uncovered in August 2007, when an abnormal pattern involving the refund checks was detected. Investigation proved that the W-2s used were fraudulent. The refund checks, which ranged from \$1,500 to \$3,676, were cashed by Caceres at a bank branch office in Passaic where he worked or were deposited by him into a series of accounts he opened there using stolen or fraudulent identification information. The defendants

withdrew money from those accounts and an account opened by Perez at another bank where refund checks were also deposited in the form of cash, ATM withdrawals, debit charges, and checks. Sizeable transfers were also made among the various accounts.

- On December 3, 2008, in the Weehawken Municipal Court, Thuyai Nguyen, owner of Aivan II Wine & Liquors, pled guilty to criminal possession of untaxed cigarettes and was fined \$1,000 plus court costs. She was also assessed a civil penalty of \$1,695 for accepting delivery of untaxed cigarettes. The total amount paid was \$2,886. Charges stemmed from a September 2008 investigation in which the Aivan II Wine & Liquors offered for sale 67.8 cartons of cigarettes affixed with counterfeit New Jersey tax stamps, Virginia tax stamps, Kentucky tax stamps, and a small quantity without tax stamps. □

Tax Briefs

Gross Income Tax

Cancellation of Debt — An individual asked whether “forgiveness

of debt” related to a mortgage on a personal residence repossessed by the lender results in income for gross income tax purposes. The Division replied that this type of income is not subject to the gross income tax.

The New Jersey Gross Income Tax Act only taxes specifically identified classes of income. Discharge of indebtedness is not specifically included in the taxable categories of income. Therefore, cancellation of debt or discharge of indebtedness income “received” in connection with foreclosure and forfeiture of a personal residence is not subject to New Jersey gross income tax.

Deferred Compensation Paid to a Nonresident

— A taxpayer recently asked the Division to explain whether an employer has a responsibility to withhold New Jersey gross income tax on deferred compensation paid to a nonresident under a nonqualified deferred compensation plan.

With regard to nonresidents, contributions to a nonqualified deferred compensation plan, except as described below, are taxable as wages if they are received for any occupation or from services performed in New Jersey. New Jersey

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Enforcement Summary Statistics

Third Quarter 2008

Following is a summary of enforcement actions for the quarter ending September 30, 2008.

• Bank Levies	1,599	• Seizures	125
• Certificates of Debt:		• Auctions	8
Total Number	7,354		
Total Amount	\$69,140,778		

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

www.state.nj.us/treasury/taxation/jdgdisc.html



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income tax must be withheld by the employer.

To qualify for New Jersey income tax deferral at the time of contribution, the plan must be a nonqualified, unfunded, deferred compensation plan that is set up for the bonuses and compensation of highly compensated employees. The deferral must be agreed to before compensation is earned. The employee cannot control the percentage of income deferred or eliminate deferral entirely. Also, the promise to pay the deferred compensation must be a contractual obligation not evidenced by notes or secured in any way, and the deferral amount cannot be unconditionally placed in trust or escrow for the

benefit of the employee (no constructive receipt).

At distribution, if contributions were included in the nonresident's taxable income when made, only amounts in excess of the contributions are taxable and require withholding by the employer. However, under N.J.S.A. 54A:5-8(b), if any distribution payments are considered pension income (reported on Federal Form 1099-R), they are not taxable to a nonresident and no New Jersey income tax should be withheld.

Nonresident Seaman or Waterway Worker — On November 9, 2000, P.L. 106-489 was signed into law preempting the state taxation of wages earned by interstate waterway workers. This Federal law provides

that a licensed pilot or other worker “on a vessel operating on the navigable waters of more than one State” shall be subject to the income tax laws only in the state in which he or she resides.

New Jersey's policy has been that income attributable to a nonresident seaman's employment on ships operating exclusively between New Jersey ports and foreign ports, or ports of other states, is not considered to be New Jersey source income. Also, a seaman who is in New Jersey simply because his ship entered a New Jersey port for the purpose of foreign or interstate trade is not subject to gross income tax for income earned during that period. Residents, however, are taxed on their full income no matter where earned. The New Jersey treatment is consistent with P.L. 106-489.

Sales Tax Information

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

[Streamlined Sales and Use Tax](#)

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

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

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

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

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

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

Qualified Conservation Contribution — An individual taxpayer posed a question concerning the gross income tax deduction for a “qualified conservation contribution.” Under N.J.S.A. 54A:3-6, a taxpayer is allowed a deduction against gross income for a qualified conservation contribution, as defined under Section 170(h) of the Federal Internal Revenue Code. For the Federal conservation contribution, the individual was specifically allowed to “carry over” the deduction to a subsequent tax year. The individual asked whether the carryover was allowed for the New Jersey gross income tax deduction.

The New Jersey deduction provision states, “The amount of the deduction in a taxable year shall be equal to the amount of the contribution allowed in the taxable year as a deduction... for federal income tax purposes.”

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Based on this provision and specific statements in the legislative history referring to a carryover of the deduction, the Division determined that the legislature intended that the New Jersey deduction carry over to subsequent tax years, to the extent allowed to the individual for Federal income tax purposes.

Property Tax Relief Programs

Tenant Homestead Rebate — The Division of Taxation was asked why tenants residing in dwelling units which do not contain separate kitchens and bathrooms cannot receive a rebate under the New Jersey Homestead Rebate Program.

The Homestead Rebate Program is established by law in accordance with N.J.S.A. 54:4-8.57 et seq., and provides specific rebate qualifications and amounts. A tenant is eligible for a New Jersey tenant homestead rebate if the person is domiciled in New Jersey and meets all of the following conditions: (1) the person rented and occupied a dwelling in New Jersey that was the principal residence on October 1 of the tax year; (2) the principal residence is subject to local property taxes, and property taxes were paid on the residence through rent; (3) the principal residence is a full living unit with its own separate kitchen and bathroom; and (4) the person and spouse/civil union partner, if any, had gross income (for 2007) of \$100,000 or less.

The purpose of providing a rebate to tenants in a full living unit with its own separate kitchen and bathroom is that long-term tenants generally pay property tax for a home through rent, as opposed to transients living

in an arrangement such as a rooming house, hotel, or motel. The property tax rebate law imposes the kitchen and bathroom requirement as a means to limit the rebate to permanent or long-term residents.

Sales and Use Tax

Cooperative Maintenance Fees — A representative of a cooperative (co-op) housing facility raised questions concerning sales tax and fees paid by residents of the co-op facility. The residents pay a maintenance fee that is used to pay property tax, mortgage, utilities, capital improvement, and other operating costs. The co-op charges an additional fee to help cover the costs of the co-op's tennis courts, exercise rooms, and swimming pools.

The Division explained that while the shareholders' maintenance fee paid to the co-op was not subject to sales tax, when the co-op pays for taxable services those services are subject to sales tax. For example, when the co-op hires a contractor to provide repair or maintenance services for the co-op property, the contractor must charge sales tax to the co-op.

Since the sales tax law now imposes sales tax on certain membership fees, this raises a question concerning the additional fee for the use of the tennis courts, exercise rooms, and swimming pools. If only certain

residents of the housing community pay the separately stated membership fee for access to or use of the athletic facility, sales tax is due. However, if all of the residents are assessed a fee which allows them access to or use of the facility as part of the community or association fees, which are required as a condition of ownership, New Jersey sales tax is not due. In order for the membership fee to be exempt from tax, all residents of the community must be paying the membership fee as part of their annual or monthly community fees.

For additional information on the sales tax treatment of taxable membership fees, visit the Division's Web site at: www.state.nj.us/treasury/taxation/membership.shtml □

In Our Courts

Gross Income Tax

Alimony, Credit for Taxes Paid to Other Jurisdictions — *Sylvester L. & Yongjie Tuohy v. Director, Division of Taxation*, Docket No. 000033-2008, decided August 18, 2008.

At issue was a resident's proper calculation of the credit for taxes paid to other jurisdictions under N.J.S.A. 54A:4-1. The taxpayer challenged the Director's method for calculating the credit for taxes paid to New York

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and the effect that alimony paid had on the calculation.

N.J.S.A. 54A:4-1 defines the parameters of the credit:

(a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act...

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

When calculating his taxes paid to New York, the taxpayer overstated the numerator of his credit fraction by not including a reduction for alimony, an allowable deduction on the taxpayer's New York nonresident return.

N.J.A.C. 18:35-4.1(a)3 establishes a formula to determine the amount of credit for taxes paid to a foreign jurisdiction. Under N.J.A.C. 18:35-4.1(a)10 a taxpayer may "not include in the numerator in the credit fraction any income, which has been excluded or deducted from the taxable gross income of other jurisdiction(s) or which has not been taxed by other jurisdiction(s)."

The Court granted the Director's motion for summary judgment on the basis of the decision in *Ambrose v. Director*, 198 N.J. Super. 546 (App. Div. 1985).

Credit for Taxes Paid to Other Jurisdictions – *Teimouraz & Nana Vassilidze v. Director*, Division of Taxation, Docket No. 010946-2007, decided October 24, 2008.

The issue was whether the credit for taxes paid provision established in N.J.S.A. 54A:4-1 was available to a resident of New Jersey who paid income taxes to Pennsylvania on wage income.

The taxpayer filed a 2003 Pennsylvania income tax return reporting the wages Dr. Vassilidze earned in that state. Pennsylvania withholding was taken out of Dr. Vassilidze's paychecks in an amount equal to the calculated Pennsylvania tax balance due. Hence, the Pennsylvania return was filed reflecting a zero balance due.

N.J.S.A. 54A:4-1 allows a credit for taxes paid only in those circumstances in which an income tax is "imposed" by a foreign jurisdiction.

N.J.A.C. 18:35-4.1(a)7 provides:

As a result of the Reciprocal Personal Income Tax Agreement between the Commonwealth of Pennsylvania and the State of New Jersey, wages, salaries and other compensation paid to New Jersey residents employed in Pennsylvania are not subject to Pennsylvania income tax. Thus, a New Jersey resident may not claim a credit for taxes paid to Pennsylvania on employee compensation.

The Court affirmed the Director's assessment, noting:

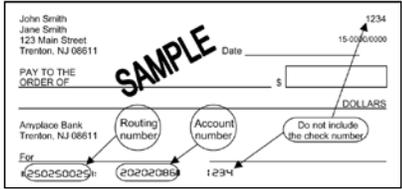
Pennsylvania law excludes in plain terms the employment income of New Jersey residents from income tax. Pennsylvania issued instructions to the income tax return used by plaintiffs informing New Jersey residents that the

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compensation they earn in Pennsylvania is not subject to income tax in that State. It was despite these official efforts, not because of them, that plaintiffs voluntarily paid income tax to Pennsylvania. The Legislature did not intend for N.J.S.A. 54A:4-1 to apply when taxpayers voluntarily pay income tax to a State that has relinquished any claim to the tax and made public efforts to inform taxpayers that the tax is not due. □

**In Our Legislature
Corporation Business Tax**

Net Operating Loss Carryover Period Extended — P.L. 2008, c.102, signed into law November 24, 2008,

extended the net operating loss carryover period under the corporation business tax. The law provides that a net operating loss for any privilege period ending after June 30, 2009, shall be a net operating loss carryover to each of the 20 privilege periods following the period of the loss. This 20-year carryover applies only to net operating losses accruing for privilege periods ending after June 30, 2009. Net operating losses accruing for privilege periods ending on or before June 30, 2009, continue to have a net operating loss carryover to each of the seven privilege periods following the period of the loss.

Throwout Rule and Regular Place of Business Requirements Eliminated — P.L. 2008, c.120, signed on December 19, 2008, applicable to privilege periods beginning on or after July 1, 2010, eliminates the throwout provision of the

apportionment formula for corporation business tax. It also removes the “regular place of business” requirement for taxpayers to allocate income. To allocate less than 100% of income to New Jersey, a taxpayer will no longer be required to show a regular place of business exists outside of the State.

**Cigarette Tax
Implementation of Encrypted Counterfeit-Resistant Revenue Stamps**

— P.L. 2008, c.98, signed into law on October 31, 2008, and effective immediately, permits implementation of encrypted, counterfeit-resistant stamps for cigarettes sold in the State. The Director, Division of Taxation, is required to provide a report to the Governor and Legislature on or before the 240th day after enactment to detail the effectiveness of the measures.

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How to
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Use your computer to file your return. Visit www.njfastfile.com to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.

NJE-File



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Miscellaneous

InvestNJ Business Grant Program Established — P.L. 2008, c.112, signed into law on December 9, 2008, establishes the InvestNJ Business Grant Program, which is designed to boost certain capital investment and job creation in the State. This short-term initiative is being administered by the Economic Development Authority (EDA). To obtain information on this program, contact the EDA’s Call Center at 1-866-534-7789.

Property Tax Relief Programs Income Eligibility Limits for Senior Freeze Increased — P.L. 2008, c.119, approved December 18, 2008, and effective immediately, modifies the definition of who constitutes an “eligible claimant” under the Property Tax Reimbursement Program (often referred to as the Senior Freeze Program). The legislation increases the income eligibility limits from \$45,135, if single, and \$55,344 for married couples to \$60,000 in tax year 2007; to \$70,000 in tax year 2008; and to \$80,000 in tax year 2009, whether single or married.

The legislation also provides that for tax years 2008 and after the total of all property tax relief benefits received (property tax reimbursement, homestead rebate, property tax deduction for senior/disabled persons, and property tax deduction for veterans) cannot exceed the amount of property taxes paid on the applicant’s principal residence for the same year.

Sales and Use Tax Changes in Urban Enterprise Zone Sales Tax Rebate Program — P.L. 2008, c.118, approved on December 17, 2008, and effective in relation

to purchases made on or after February 1, 2009, amends the definition of “small business” applicable to the UEZ sales tax rebate program by raising the maximum annual gross receipts threshold from less than \$3 million to less than \$10 million. “Small businesses” are an exception to the requirement that qualified UEZ businesses claiming exemption from sales tax on purchases for their own use in the zone must first pay the tax at the point of purchase and then apply for a refund of the tax paid. “Small businesses,” as defined in the Act, may instead claim the exemption at the point of sale.

Conformance with Streamlined Sales Tax Agreement — P.L. 2008, c.123, enacted on December 19, 2008, makes revisions to a number of aspects of the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) in an effort to conform New Jersey’s law with various provisions of the Streamlined Sales and Use Tax Agreement of which New Jersey is a member. Areas of change include telecommunications, direct mail, sales price, fur clothing, and the medical exemption. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2008 (January 1, 2008 – December 31, 2008) and tax year 2009 (January 1, 2009 – December 31, 2009) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer

to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2008](#) [2009](#)

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

[2008](#) [2009](#)

- **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.

[2008](#) [2009](#) □



*important
phone
numbers*

Customer Service Ctr.... 609-292-6400
Automated Tax Info ...1-800-323-4400
..... 609-826-4400
Homestead Rebate Hotline
for Homeowners 1-888-238-1233
Homestead Rebate Hotline
for Tenants1-888-213-8623
Property Tax Reimbursement
Hotline.....1-800-882-6597
Earned Income Tax Credit
Information..... 609-292-6400
NJ TaxFax 609-826-4500
Business Paperless Telefiling
System1-877-829-2866
Speaker Programs 609-984-4101
Alcoholic Bev. Tax 609-588-3932
Corp. Liens, Mergers, Withdrawals
& Dissolutions..... 609-292-5323
Director’s Office 609-292-5185
Inheritance Tax..... 609-292-5033
Local Property Tax..... 609-292-7974
Motor Fuels Tax
Refunds 609-588-3688
Public Utility Tax..... 609-584-4337