

New Jersey State Tax news

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What's New for Tax Year 2010

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

- **Form 1099-G** — The State of New Jersey is no longer mailing Form 1099-G, *Certain Government Payments*, to report the amount of a State tax refund a taxpayer received. State income tax refunds may be taxable income for Federal purposes for individuals who itemized their deductions on their Federal tax return in the previous year. Taxpayers who need this information to complete their Federal return will be able to view or print their 1099-G information from the Division's Web site.

- **Property Tax Deduction/Credit for Homeowners and Tenants Temporary Deduction Limitations Expire.** Eligibility for the property tax deduction is not limited by income. Residents who meet the requirements may be able to deduct up to 100% of property taxes due and paid or up to \$10,000, whichever is less. (For tenants, 18% of rent paid is considered property taxes.) The temporary income eligibility and benefit amount limitations for the property tax deduction that were in effect for tax year 2009 were for one year only.

New Form for Credit

Only Filers. Most New Jersey residents claim the property tax deduction or credit on their resident income tax return (Form NJ-1040). However, certain residents who are not required to file a tax return but are eligible for the property tax credit can use the new Property Tax Credit Application (Form NJ-1040-H) instead of Form NJ-1040 to apply for the credit. Filers can use Form NJ-1040-H **only** if they:

1. Were 65 years of age or older, blind, or disabled on December 31, 2010, **and**
2. Had New Jersey gross income for 2010 of \$20,000 or less (\$10,000 or less if filing status is single or married/CU partner, filing separate return), **and**
3. Have not filed and will not file a 2010 New Jersey resident income tax return, **and**
4. Were **not** a New Jersey homeowner on October 1, 2010.

Residents who owned and occupied their principal residence in New Jersey *on October 1, 2010*, should not file Form NJ-1040-H even if they meet the requirements in paragraphs 1–3. The property tax credit for these homeowners will automatically be included with their homestead benefit,

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provided they file a homestead benefit application.

- **Earned Income Tax Credit** — The amount of the NJEITC is equal to 20% of the applicant's Federal earned income tax credit.
- **Family Leave Insurance** — Excess family leave insurance contributions can be claimed as a credit on Form NJ-1040. The maximum contribution for 2010 was \$35.64. Taxpayers who had more than the maximum amount withheld by two or more employers must enclose a completed Form NJ-2450 with their return to claim the credit.
- **Designated Contributions** — Two new funds have been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to these funds, taxpayers must specify the "code number" at the "Other Designated Contribution" line. The new funds are: Community Food Pantry Fund (09) and Cat and Dog Spay/Neuter Fund (10).
- **Roth IRAs** — Taxpayers who converted a traditional IRA to a Roth IRA during 2010 and made a Federal election to report the income resulting from the conversion in equal amounts in 2011 and 2012, must report the amount that is taxable for New Jersey in equal installments in 2011 and 2012. If a taxpayer elected to include the entire amount of income from the conversion on the 2010 Federal return, the entire amount that is taxable for New Jersey purposes must be reported on the 2010 New Jersey return.

- **Tax Rates** — The New Jersey gross income tax rates have reverted to the rates that were in effect for 2008. (Rates were temporarily increased for 2009 on income over \$400,000.)
- **Commuter Transportation Benefits** — The maximum commuter transportation benefit is \$2,760.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate is 3.4997% from January 1 to June 30, 2010, and 3.4985% from July 1 to December 31, 2010.
- **Filing Deadline** — The due date is April 18, 2011, for calendar year taxpayers instead of April 15 because of the Emancipation Day holiday in the District of Columbia. This is the same day the Federal Form 1040 is due.

Property Tax Relief Programs

- **Homestead Benefit (Rebate) Program** — Information about the 2010 Homestead Benefit (Rebate) Program is not yet available.

Tenants. The new Form NJ-1040-H, Property Tax Credit Application, is not a tenant rebate application. Tenant rebates were suspended for 2009. As a result, no 2010 tenant rebate application is enclosed in the NJ-1040 packet.

Homeowners. New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2010, may be eligible for a homestead benefit provided the 2010 property taxes were paid and certain income limits are met. The homestead benefit application for

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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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homeowners is *not* included in the NJ-1040 booklet.

Information will be posted on our [Web site](#) as it becomes available.

Benefits available under this program are subject to change.

- **2010 Property Tax Reimbursement** — With very few exceptions, all income received during the year, including income which is not required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2010, total annual income must be:

2010: \$80,000 or less, and

2009: \$80,000 or less

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

Budgetary constraints limited the PTR benefits paid for 2009 to the previous year's benefit level for established participants and did not provide reimbursements to first-time applicants. Applicants who filed 2009 applications as first-time filers but who did not receive a check should submit a 2010 application if they meet the requirements.

Benefits available under this program are subject to change. □

MOTOR FUEL TAX Changes in Administration

New Jersey recently enacted motor fuel tax legislation that takes effect on January 1, 2011, and significantly changes the system by which motor fuel taxes are administered; but current tax rates remain unchanged. The tax rate for gasoline remains at \$0.105 per gallon, the tax rate for diesel fuel remains at \$0.135 per gallon, and the tax rate for liquefied petroleum gas (LPG) used as a motor fuel remains at \$0.0525 per gallon.

Under the new law, all fuel, except dyed fuel, will be taxed as it is removed from the terminal, otherwise known as "at the rack." Dyed diesel fuel or dyed kerosene that is dyed pursuant to either United States Environmental Protection Agency rules or Internal Revenue Service rules will not be taxed as it is removed from the terminal.

Suppliers of motor fuels removed from the terminal system collect the tax and remit it on or before the 22nd day of the month following the removal. Suppliers with terminals located outside New Jersey may elect to have all removals from the out-of-State terminals treated as if they were removed from terminals within New Jersey and collect the tax on those removals. Those wishing to make this election must file Form SMF-2, Notice of Election.

The law allows certain distributors of motor fuels to make an election as to the timing of the remittance of the tax to their suppliers. Distributors who qualify for the election may delay remittance of the amount of tax due to their suppliers until the 20th day of the month following

the purchase. Elective distributors must make remittances to their suppliers by electronic funds transfer. In order for a distributor to qualify for delayed remittance to its suppliers, the distributor must complete Form DMF-2, Application for Recognition as a Qualified Distributor, and agree to the conditions listed on that form.

The law contains a dyed fuel provision which prohibits the use of dyed fuel to operate or maintain a motor vehicle on any public highway in New Jersey except for uses which are lawful under the Federal Internal Revenue Code (IRC). Any person and any officer, employee, or agent of any person who participates in any act that violates the dyed fuel provisions of the law will be jointly and severally liable for the tax and penalties. The penalties imposed will be the same as imposed pursuant to IRC Section 6715.

Under the new law, current license holders will have their licenses automatically converted to new licenses. The new licenses will expire on the same date as their current license. Some current license holders will not be required to be licensed under the new law. An individual whose license is not converted to a license appropriate for his particular needs must file Form MFA-3, Change of Status Request, before December 15, 2010.

Taxes must be paid on untaxed fuel held in inventory as of the close of business on December 31, 2010. A FloorStock Tax Return, Form MFA-10, is due by January 31, 2011; however, the tax is not due until July 1, 2011. If the tax is paid on or before January 31, 2011, a 10% early payment discount is offered.

motor fuel tax - from page 3

Additional information including license applications, tax returns, and other forms are available on the Division's Web site at: www.state.nj.us/treasury/taxation/motorfuels.shtml □

CORPORATION BUSINESS TAX

Payments on Behalf of Nonconsenting Shareholders

Under the New Jersey Corporation Business Tax Act, a Federal S corporation may elect to be treated as a New Jersey S corporation by timely and properly filing a New Jersey S Corporation or New Jersey QSSS Election, [Form CBT-2553](#), with the New Jersey Division of Revenue. For the New Jersey S election to be valid, the corporation and all present shareholders, referred to as "initial shareholders," must consent to the election and to the jurisdictional requirements of the State.

Under New Jersey corporation business tax regulation 18:7-20.1(c), Form CBT-2553 must also be filed by the corporation to report any new shareholders. A new shareholder is a shareholder who did not previously own any shares of the S corporation's stock and acquired the stock (either existing shares or shares issued at a later date) subsequent to the initial New Jersey S corporation election.

An initial shareholder's initial consent remains in effect as long as they are a shareholder regardless of changes to their stock ownership percentage or New Jersey residency status. Changes for existing shareholders, including address changes, are to be reported on Form CBT-2553.

New shareholders who sign the Shareholder's Consent Statement are "consenting shareholders." A consenting nonresident shareholder is responsible for making proper and timely tax payments and may be subject to penalties and interest on any tax paid after the due date of their nonresident income tax return.

New shareholders who do not sign the Shareholder's Consent Statement are referred to as "nonconsenting shareholders." Under 54:10A-5.23 of the Corporation Business Tax Act, the corporation is required to make payment of gross income tax on behalf of nonconsenting shareholders. The payment amount is calculated at the highest marginal income tax rate on the pro rata share of S corporation income allocated to New Jersey for each nonconsenting shareholder

and must be submitted with Form NJ-1040-SC. The S corporation form and instructions are available on the [Division's Web site](#). This payment method and form is *not* to be used for consenting shareholders. Payments made for a consenting shareholder will not be credited to a consenting shareholder's income tax return and the corporation will need to file a refund request on Form A-1730 for the return of erroneous payments.

As an alternative, a New Jersey electing S corporation may file a New Jersey Income Tax Nonresident Composite Return, Form NJ-1080C, on behalf of qualified nonresident individual shareholders, including nonconsenting shareholders, who have elected to participate in a composite return. The corporation can submit a written request to Individual Tax Audit Branch – Composite Returns, P.O. Box 288, Trenton, NJ 08695, to allow a non-qualified nonresident shareholder to participate on the composite return. Form NJ-1080C and instructions, including filing and timely payment requirements, are available on the [Division's Web site](#). □

NY/NJ Cooperative Interstate Tax Program

The 1986 Reciprocal Agreement between the State of New Jersey and the State of New York providing Cooperative Tax Administration is ending. As a result, New Jersey vendors participating in the program will no longer file ST-20/21 returns to report New York sales tax, and New York participants will no longer file ST-100.4/101.4/809.4/810.4 forms to report New Jersey sales and use taxes. For more information see:

New Jersey-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfonj.pdf

New York State-based vendors: www.state.nj.us/treasury/taxation/pdf/istinfony.pdf



**INHERITANCE/ESTATE TAX
QTIP Elections for
Decedents Dying
in 2010**

The Division has received numerous inquiries related to its policy regarding qualified terminable interest property (QTIP) elections for decedents dying in 2010. Although there is, of course, the possibility that Congress may reinstate it, the Federal estate tax is currently suspended for decedents dying in 2010.

Since the revision of the New Jersey estate tax in 2002, it has been the Division’s policy that in an estate where a Federal estate tax return is not filed and not required to be filed, the estate representative may for New Jersey estate tax purposes make a QTIP election in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, and the terms of the decedent’s will or other controlling document.

In those cases where a Federal estate tax return is not filed and not required to be filed and the estate representative decides to make a QTIP election for New Jersey estate tax purposes, the property for which the QTIP election is made is includable in the estate of the surviving spouse in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001. In those cases where the estate representative decides not to make a QTIP election for New Jersey purposes, the property is normally not includable in the estate of the surviving spouse in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001.

There has been no change in the Division’s policy as it relates to QTIP elections for decedents dying in 2010.

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

an effort to foster a true “team” approach. Lee will now head up a recently established “Special Frauds Unit” within OCI augmented with additional auditors and investigative resources.

Special Agent Charles Peters of the Office of Criminal Investigation has been nominated by the Postal Inspector in Charge of the Newark Division of the U.S. Postal Service for the Federal Law Enforcement Foundation’s “Investigator of the Year” award for his work as part of a Federal task force investigating contraband cigarette smuggling. The nomination read in part:

... Postal Inspector Richard Lennon; Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent Robert Caprioglio; New Jersey Treasury Special Agent Charles Peters; Internal Revenue Service – Criminal Investigations Special Agent Ken Long; and Assistant U.S. Attorney Ronald Chillemi, District of New Jersey, collaborated on this joint investigation involving an internet cigarette distributor based in Salamanca, NY on the Seneca Indian Reservation. Their investigation focused on the criminal conduct of Joseph and Rita Roosa, the subjects responsible for the day-to-day operations of All American Tobacco. While All American Tobacco is purportedly owned by Donald John, a Native American, its day-to-day activities were actually controlled by Rita and Joseph Roosa of Allegany, NY. In a 24-month period (May 2004

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2011 – December 31, 2011, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
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%
1/1/10	6.25%
1/1/11	6.25%

OCI Staff Honored

Lee Roach, an auditor with the Office of Criminal Investigation (OCI), was honored as the New Jersey State Treasurer’s You Matter! Award recipient for October for her work with OCI’s “Loss Prevention Project.” The project, which started in late 2006, continues to pay dividends to New Jersey. Since its inception, the project has stopped thousands of fraudulent refund checks totaling in excess of \$20 million. Lee regularly communicates with other branches in the Division of Taxation, as well as with the New Jersey Division of Revenue, U.S. Postal Service Inspectors, out-of-State District Attorneys and law enforcement agencies, and other state revenue agencies in



OCI staff honored - from page 5

– May 2006), the Roosa’s moved approximately \$15 million through All American Tobacco bank accounts with the proceeds derived from the sale of the untaxed cigarettes. After accepting a plea of guilty to Trafficking of Contraband Cigarettes, the Roosa’s agreed to forfeit four commercial properties valued at approximately \$2.5 million to the U.S. Government. Several co-conspirators in New Jersey, arrested in April 2007, purchased approximately \$5 million of untaxed cigarettes from All American Tobacco. The New Jersey targets then resold those cigarettes to restaurants in New Jersey, thereby defrauding the State of New Jersey out of millions of dollars in tax revenue. Search warrants were executed on three New Jersey residences, two Chinese restaurants, two storage facilities, and a Bank of America safety deposit box. Among the items seized were approximately \$100,000 in cash, jewelry, numerous documents and over 50 cases of contraband cigarettes. All American Tobacco ceased business operations in

October 2008. In 2010, the co-conspirators were sentenced to 15–30 months incarceration and ordered to pay a combined total of approximately \$4.1 million in restitution. □

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 Statements 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 by assessor.
- 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 office 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.

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Public Auction Information

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

Enforcement Summary Statistics Third Quarter 2010

Following is a summary of enforcement actions for the quarter ending September 30, 2010.

	Number	Amount
• Bank Levies	1,245	\$ 4,194,313
• Certificates of Debt	4,449	79,299,678
• Seizures	84	767,852
• Auctions	6	36,600



assessors' calendar - from page 6

February 1–

- Form EA-4 (part A) for properties under Chapter 441 tax agreements to be completed by assessor and forwarded to County Tax Administrator.
- 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. Taxpayer has 45 days to file an appeal upon issuance of notice of a change in assessment.

February 10–

- Certification of bulk mailing of Notification of Assessment filed with the County Tax Board by assessor. If bulk mailing completed by County Tax Board, certification prepared by 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–

- Recipients of a property tax deduction for tax year 2010 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2010 income and anticipated income for 2011.
- 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. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On July 26, 2010, a special agent and investigator from the Office of Criminal Investigation (OCI) conducted an inspection of E.J. Abreu Supermarket of Perth Amboy, New Jersey, and as a result, a total of 37,685 untaxed cigars, 5.3 cartons of counterfeit New Jersey tax-stamped cigarettes, 96 counterfeit U.S. postal stamps, and 20 pirated DVDs were seized. OCI also seized \$1,000 in U.S. currency for forfeiture. The counterfeit U.S. postal stamps were turned over to U.S. postal inspectors for their action. Charges were brought for possession of untaxed goods on the contraband cigarettes and DVDs and for copyright violations on the DVDs.
- On August 24, 2010, a special agent arrested Rajesh Sanghavi

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criminal enforcement - from pg. 7

t/a Rajmital of Voorhees, New Jersey, for violations of the Tobacco Products Wholesale Sales and Use Tax Act. Originally, Sanghavi's vehicle was seized by the Office of Criminal Investigation (OCI) from a motor vehicle stop by a Voorhees Township police officer when he observed a case of product labeled as cigarettes. The investigation leading up to the arrest culminated in the execution of two search warrants, one arrest warrant, and a court order freezing six bank accounts. Over \$32,000 in U.S. currency and 51,182 in Indian rupees were seized along with a large amount of business records. Two storage units were filled with tobacco products with values estimated at close to half a million dollars. The investigation continues as the evidence is examined. Sanghavi's

bail was set at \$65,000 with the requirement that his passport be turned over to OCI. The Camden County Prosecutor's Office will prosecute this matter.

- On September 9, 2010, a Passaic County Grand Jury indicted four subjects in the matter of Miroslaw Sapinski, et al. The investigation was a long-term operation that identified Sapinski, a persistent offender dealing in contraband cigarettes and untaxed liquor, who had been arrested and charged six times previously by the Office of Criminal Investigation (OCI). As a result, Sapinski, his wife, and coconspirators Waclaw Jeziorski and Josef Babon have all been indicted on various contraband cigarette counts and money laundering. For the first time the Racketeer Influenced and Corrupt Organization (RICO) Act has been applied to individuals

involved in contraband cigarette activity. A civil forfeiture action against Sapinski's and his wife's assets, including their home, has been initiated. The Passaic County Prosecutor's Office is prosecuting this case for OCI.

- On September 13, 2010, a Monmouth County Grand Jury returned a 14-count indictment against Christopher Elia. This indictment resulted from a criminal investigation which was conducted jointly by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation. The investigation revealed that Christopher Elia operated N.L.E.O.A. Publications, collecting charitable contributions from a large number of donors. Elia used the names of legitimate charitable organizations in order

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How to Get Your NJ Income Tax Refund **FASTER!**



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the way to a faster refund.



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to collect contributions but did not transfer the funds he collected to any legitimate charities. Instead, he used the funds to pay personal expenses, including extensive gambling debts. Elia was indicted on the following charges: second-degree conspiracy, third-degree promoting gambling, second-degree theft by deception, second-degree misconduct by a corporate official, fourth-degree falsifying records, first-degree financial facilitation of criminal activity, third-degree filing a fraudulent return, third-degree failure to file a return, and third-degree failure to pay or turn over taxes.

- On September 14, 2010, Larry Kushner of Long Branch entered guilty pleas to theft by failure to make required disposition of property received and failure to file a tax return. Kushner agreed to pay \$1.1 million in restitution to seven victims. Kushner had told victims that the money they invested in his business, Foreclosure 911, would be used to buy foreclosed properties in New Jersey, Delaware, and Pennsylvania, but instead he used the money for personal expenses and vacations. Kushner will be sentenced on January 7, 2011, by State Superior Court Judge Richard W. English. This investigation was conducted by the Monmouth County Prosecutor's Office in conjunction with the Office of Criminal Investigation.
- On September 14, 2010, Miguel Rodriguez t/a All Brothers Liquors of Newark, New Jersey, was the target of a joint operation with the New York State Department of Taxation and Finance's

Criminal Investigation Division and the Bronx District Attorney's Office, with the assistance of the Essex County Prosecutor's Office. A search by the Office of Criminal Investigation (OCI) resulted in the seizure of 1 roll of counterfeit U.S. postage stamps, \$5,305 in U.S. currency subject to forfeiture, 6.4 cartons of counterfeit New Jersey-stamped cigarettes, 3,653 untaxed cigars, and 70 pouches of RYO cigarette tobacco and/or chewing tobacco from the premises. Additionally, OCI found evidence that the business was manufacturing fraudulent invoices to give the appearance that the wholesale tobacco products tax was paid.

- On September 14, 2010, Bhajan Singh was arrested at his gas station in New York City and was charged in a joint investigation dealing with counterfeit cigarette tax stamps and the sale and transportation of contraband cigarettes with the New York Department of Taxation and Finance's Criminal Investigation Division and the Bronx District Attorney's Office. A search warrant was executed on a residence in Carteret, New Jersey, where a total of 220 cartons of counterfeit-stamped cigarettes were seized, 90 of which were bearing counterfeit New Jersey tax stamps with the remainder bearing counterfeit

New York tax stamps.

There was a cash seizure of \$46,000 from the residence along with narcotics and other counterfeit goods.

- On September 23, 2010, Rebecca Cirillo appeared before Judge Richard W. English in Monmouth County Superior Court and pled guilty to theft by deception and filing fraudulent returns for the years 2005, 2006, and 2007. Under the plea agreement the State recommended that she be sentenced to five years in State prison conditioned upon the entry of a civil judgment in the amount of \$290,949.12. Cirillo will also be required to file amended tax returns for the years 2005, 2006, and 2007. Cirillo used her position as bookkeeper to embezzle money from her employer, Ansonge Unlimited, Inc., by writing checks to herself or to "cash." She then attempted to cover up her actions by making false entries into Quickbooks, the accounting system used by Ansonge Unlimited, Inc.
- On October 25, 2010, Anthony J. Foti, of Ogdensburg, New York, was sentenced to five years in State prison by Mercer County Superior Court Judge Gerald J. Council for failing to pay the

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criminal enforcement - from pg. 9

State of New Jersey thousands of dollars in sales tax he collected from customers at his car dealership, AN-JO Car Company, Inc., in Toms River between 2000 and 2004. Foti was ordered to pay restitution in the amount of \$192,017 which consisted of \$79,347 in sales tax, \$92,239 in interest, and \$23,931 in penalties. On October 4, 2010, Foti, formerly of Brick, New Jersey, pled guilty to theft by failure to make required disposition of property and failure to remit sales tax, both second-degree offenses. A judgment was placed on Foti's property located in Ogdensburg, Saint Lawrence County, New York, for the sum of \$192,017.49.

- The Office of Criminal Investigation's Special Frauds Unit prevented the issuance of 996 fraudulent refund claims totaling \$1,880,043 for the period July 2010 through October 2010. In addition, OCI issued assessments based on refunds found to be fraudulently obtained. □

Tax Briefs

Gross Income Tax

Deduction for Parking Expenses —

A taxpayer wrote to the Division asking about her payroll deduction for the costs of parking near her place of employment, which for Federal income tax purposes is treated as a "pretax" contribution. The Division responded that the deduction cannot be treated as a pretax contribution for New Jersey gross income tax purposes.

The deduction amount does *not* qualify for tax exclusion under the provisions of the Gross Income Tax Act. More specifically, although the Gross Income Tax Act has exclusions for qualifying commuter transportation benefits, the New Jersey exclusions are not exactly the same as the Federal exclusions for commuter benefits. One important difference is that for gross income tax purposes, benefits are *not* excludable if they are provided pursuant to a salary reduction agreement. N.J.S.A. 54A:6-23.c. provides: "The exclusion provided by subsection a. of this section shall not apply to

any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee."

Married Couple Filing as Qualified Joint Venture —

A married couple wrote to the Division asking about the New Jersey gross income tax treatment of a "qualified joint venture." The Small Business and Work Opportunity Act of 2007, effective for tax years beginning after December 31, 2006, provides for a "qualified joint venture" whose only members are a husband and wife filing a joint return and who did not need to file as a partnership for Federal tax purposes.

For New Jersey gross income tax purposes, there is no provision similar to IRC section 761(f) that allows a husband and wife to engage in a qualified joint venture and to make an election to be treated as a sole proprietorship and not be treated as a partnership.

On the other hand, New Jersey allows all business entities that qualify for and elect to be treated as partnerships for Federal income tax purposes to be treated as partnerships for New Jersey income tax purposes. If these entities are not treated as partnerships for Federal tax purposes, they are not treated as partnerships for New Jersey tax purposes. Therefore, taxpayers in New Jersey may use the same reporting category for New Jersey gross income tax (partnership income or sole proprietorship income) as for Federal income tax purposes with regard to a qualified joint venture.

Practitioners' E-File Mandate

For the 2010 taxable year and later, any tax practitioner who reasonably expects to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

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

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If a married couple qualifies and files a Federal election to be treated as a qualified joint venture for Federal income tax purposes, they may receive similar treatment for New Jersey income tax purposes. The husband and wife members of the qualified joint venture are permitted to report their respective joint venture income as business income on their New Jersey income tax return. They will not be required to file a partnership return because they are not considered to be a partnership for Federal income tax purposes.

Sales and Use Tax

Correction: Safe Deposit Box Repair — In the [Spring 2005 issue](#) of the *New Jersey State Tax News*, the Division addressed the purchase of locksmith services by safe deposit box owners who held the boxes out for “rentals.” The article stated that locksmith services such as key replacement, box drilling, or other general repairs performed upon the boxes are exempt from sales tax. The Division’s reasoning was that those services were performed upon inventory held for rental and concluded that the use of a Resale Certificate (Form ST-3) was appropriate.

The Division has reevaluated its statements in that article and has concluded that since safe deposit box rentals are not true rentals of boxes but rather are the provision of safe deposit box *services*, the boxes themselves are not being resold. See N.J.S.A.54:32B-3(b)(3). Thus, the resale exemption is not applicable to the purchase of such services and tax must be imposed.

Spray-On Tanner — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to the purchase of spray-on tanner by a tanning salon.

Tanning services, which include spray-on tanning, are subject to New Jersey sales tax. N.J.S.A. 54:32B-3(b)(8). The Division determined that a tanning salon may purchase spray-on tanner with a resale certificate because it is transferred to the customer in the performance of the taxable tanning service and it is intended to remain with the customer. N.J.S.A. 54:32B-2(e)(1)(B).

Spray-on tanning, however, is not subject to the Federal excise tax imposed on an “indoor tanning service.” For more information on the Federal excise tax imposed on tanning service providers, visit the Division’s Web site at: www.state.nj.us/treasury/taxation/taxtanpro.shtml □

In Our Courts

Corporation Business Tax Interest Add-Back and Depreciation – *Beneficial New Jersey, Inc. v. Director, Division of Taxation*, decided August 31, 2010; Tax Court No. 009886-2007.

Interest Add-Back. HSBC Finance Corporation (HSBC) was the parent of Beneficial New Jersey, Inc. (BNJ), a Delaware corporation. BNJ was a consumer finance operating lending company that held a sales finance license and a New Jersey lender license to make consumer loans as well as first and second mortgage loans to New Jersey customers. BNJ’s retail branch lending operations were located in New Jersey. In order to finance these loans, BNJ borrowed money from HSBC, which

borrowed funds from unrelated third parties. HSBC charged interest on the loans to BNJ at the maximum Applicable Federal Rate. BNJ deducted the interest payments associated with these loans to arrive at New Jersey entire net income on its corporation business tax returns.

HSBC did not file New Jersey corporation business tax returns for tax years 2002–2004. After auditing BNJ, the Division effectively disallowed BNJ’s interest deductions for tax years 2002–2004 by adding them back pursuant to N.J.S.A. 54:10A-4(k)(2)(I). This statute provides that entire net income will be determined without excluding, deducting, or providing a credit for interest paid, accrued, or incurred to a related member; however, the statute also provides for five exceptions to this rule. BNJ claimed that they were entitled to the “three percent” exception, the “guarantee” exception, and the “unreasonable” exception.

Under the three percent exception, BNJ must prove, among other things, that “the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.” The Court first determined that the phrase “rate of tax” does not mean the tax rate as BNJ claimed, but is the effective tax rate, which is the “allocation factor times the tax rate percentage” as per the Division’s regulation. As BNJ was a 100% New Jersey allocator, its effective New Jersey tax rate was 9% (1H 9%). Therefore, HSBC’s effective tax rate in another jurisdiction must be at least 6% (9% less 3%) for the exception to apply. It was undisputed that HSBC’s effective

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tax rate in any other state was below 6% even though some of the other states' tax rates were above 6%. Consequently, the Court ruled that BNJ did not qualify for the three percent exception.

BNJ offered a funding agreement dated December 30, 2005, as proof that it met the guarantee exception, where the taxpayer guarantees the debt on which the interest is required and interest is directly paid, accrued, or incurred to an independent lender. In denying BNJ the guarantee exception, the Court determined that: (1) the agreement did not explicitly contain the word "guarantee"; (2) either BNJ or HSBC could withdraw from the agreement at any time for any reason; (3) BNJ did not produce documents evidencing its role as guarantor of HSBC loans to third parties; and (4) the agreement was between HSBC and BNJ and did not include any third-party lenders as parties.

Finally, the Court addressed the unreasonable exception which required that BNJ prove that the disallowance of the interest deduction was unreasonable. Although the Court found that the term "unreasonable" was undefined, the Court ruled that BNJ qualified for the unreasonable exception based upon common sense and an analysis of the totality of the circumstances. The Court found that the related party loans had economic substance and that the transactions had business purpose. HSBC received more favorable interest rates from third-party lenders than could its subsidiaries. In practice, the money HSBC borrowed was lent to its subsidiaries, not just to BNJ. HSBC paid taxes on income, including BNJ's interest payments,

in 17 jurisdictions. Consequently, BNJ was not required to add back the interest deductions it paid to HSBC.

Depreciation. The Division determined that during tax years 2000 and 2001 BNJ should have used the accelerated method rather than the straight-line method of depreciation for assets placed in service after 1993. The Court ruled that the statute clearly required the accelerated method. BNJ argued that the Division's failure to correct depreciation deductions prior to 2000 was a tacit affirmation of the same. The Court ruled that "[e]ach tax year stands on its own, and the Director is not estopped from making adjustments (for one year) that were negligently permitted in previous years."

Sales and Use Tax

Definition of Newspaper – *ADVO, Inc. v. Director, Division of Taxation*, decided October 28, 2010; Tax Court Docket No. 000131-2008.

The Tax Court granted plaintiff's motion for summary judgment and denied the Director's cross-motion, finding that plaintiff's "Shop Wise" publication constituted a newspaper within the meaning of N.J.S.A. 54:32B-8.30. Therefore, receipts from the sale of advertising in the publication were exempt from sales tax. The Division's regulation N.J.A.C. 18:24-1.2 (2007) was controlling, and the Director's refund denial was reversed.

At issue was whether plaintiff's weekly distributed, four-page publication entitled "Shop Wise" met the definition of a newspaper and whether the advertising revenue was entitled to an exemption. The Director concluded that although "Shop Wise" contained articles on one page of its four-page publication, it was a

direct-mail advertising publication and not a newspaper as contemplated under the statute. The Director argued that plaintiff's publication did not contain "information of general interest/current events" which comprises a bona fide newspaper. The Director did not dispute that plaintiff satisfied the requirement under N.J.A.C. 18:24-1.2(a) that no more than 90% of the printed area of the publication consist of advertising.

The Court concluded that plaintiff satisfied the pertinent elements of N.J.A.C. 18:24-1.2 with its publication of "Shop Wise" and must only have "generally conformed" to qualify as a newspaper. N.J.A.C. 18:24-1.2 was amended (effective in 2009) to change the definition of a newspaper in regard to the exemption statute.

Proper Party to File for Refund Claim – *RCN Telecom Services, Inc. f/k/a Freedom New York, LLC v. Director, Division of Taxation*, decided June 14, 2010; Tax Court No. 000161-2007.

In 2001, Freedom New York, LLC (Freedom) filed a timely sales tax refund claim pertaining to sales tax paid from December 1998 through December 1999 on purchases of machinery, equipment, and apparatus (MEA) claiming exemption from sales and use tax under N.J.S.A. 54:32B-8.13(c). Prior to 2000, Freedom was doing business as RCN Telecom Services, Inc. (RCN Telecom) and RCN Telecom was the purchaser of the MEA. At issue was whether Freedom or RCN Telecom was the proper party to file the refund claim and whether the requirements for exemption under N.J.S.A. 54:32B-8.13(c) were met.

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Initially, Freedom purchased real estate and MEA because it planned to set up a telecommunications network in northern New Jersey. In 2000, RCN and its affiliates filed for Chapter 11 bankruptcy and Freedom abandoned the New Jersey project. Subsequently, Freedom installed all the MEA at issue in its New York telecommunications system.

Copies of the MEA purchase invoices and checks revealed that RCN Operating Services, Inc. (RCN Operating) paid the vendors and that the purchases were billed and shipped to various RCN affiliates, subsidiaries, and locations. Freedom, RCN Telecom, and RCN Operating were wholly owned subsidiaries of RCN Corporation (RCN).

RCN Operating was found by the Court to be the special purpose payment agent for RCN as well as its affiliates and subsidiaries. The Court ruled that a customer who paid the tax is eligible for a refund. A customer is one who purchases property. The Court concluded that Freedom/RCN Telecom was a customer and may file the refund claim even though the vendors were paid by the related corporate entity, RCN Operating Services.

In order to qualify for exemption, N.J.S.A. 54:32B-8.13(c) requires that the MEA be sold to a service provider who is subject to the jurisdiction of the Board of Public Utilities or the Federal Communications Commission (FCC) for use directly and primarily in receiving at destination or initiating, transmitting, and switching telephone, telegraph,

or interactive telecommunications service for sale to the general public. Although the Court ruled that RCN Telecom was a service provider subject to the jurisdiction of the FCC, the Court determined that neither the certification of RCN Telecom's vice president nor the invoices provided an indication or description of the primary and nonprimary uses of the MEA sufficient for the Court to determine whether the MEA qualifies for the exemption. Therefore, the Court concluded there was a genuine issue of material fact that would require a hearing and evidence. □

In Our Legislature **Motor Fuel Tax**

Technical Amendments — P.L. 2010, c.79, signed into law on October 1, 2010, and effective immediately, makes a number of purely technical corrections, clarifies licensing requirements and fees, assures that heating oil dealers are not required to be licensed as motor fuel tax dealers, and clarifies that fuel transporters are not among those required to precollect the tax. These changes were critical in the implementation of the Motor Fuel Tax Act, P.L. 2010, c.22.

Sales and Use Tax

Fort Monmouth Economic Revitalization Authority Act — P.L. 2010, c.51, was signed into law on August 17, 2010, and became effective 45 days after its enactment, except that section 25 takes effect on the date that the authority assumes all of the powers, rights, assets, and duties of the predecessor authority.

This Act creates a new redevelopment agency, the Fort Monmouth Economic Revitalization Authority (FMERA), requires the New Jersey Economic Development Authority (EDA) to engage in new duties, and creates several special-purpose districts. FMERA, which is in but not of the New Jersey Department of the Treasury, is responsible for the implementation of the revitalization effort. The new law expands the powers of the EDA as the appropriate State agency to assist in plans for that redevelopment.

The Act provides for the creation of special improvement districts, transportation districts, and infrastructure districts. Within the district, at the discretion of the EDA, there may be a 50% reduction to the State's sales and use tax on the receipts of retail sales. However, the sales of motor vehicles, alcoholic beverages, cigarettes, and energy (natural gas and electricity) are excluded from the 50% reduction so the tax is at the 7% rate.

The law further provides that the authority may adopt a resolution to levy and collect a franchise assessment within an infrastructure district not to exceed an amount equivalent to 50% of the tax imposed under the Sales and Use Tax Act with the intention of devoting the proceeds from those assessments to purposes of the district. □



Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2010 (January 1, 2010 – December 31, 2010) and tax year 2011 (January 1, 2011 – December 31, 2011) 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.

[2010](#) [2011](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2010](#) [2011](#)

- 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.

[2010](#) [2011](#) □



important phone numbers

Customer Service Ctr....	609-292-6400
Automated Tax Info ...	1-800-323-4400
.....	609-826-4400
Homestead Benefit Hotline for Homeowners	1-888-238-1233
Homestead Benefit Hotline for Tenants	1-888-213-8623
Property Tax Reimbursement Hotline	1-800-882-6597
Earned Income Tax Credit Information.....	609-292-6400
NJ TaxFax	609-826-4500
Business Paperless Telefiling System	1-877-829-2866
Speaker Programs	609-984-4101
Alcoholic Bev. Tax	609-633-7068
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	609-633-8878
Public Utility Tax.....	609-633-0013