

New Jersey State Tax news

Volume 40, Number 2-4
Winter 2011/2012

A Quarterly Newsletter

ISSN 1073-6808



inside

<i>division/irs cooperation</i>	1
<i>what's new for tax year 2011</i>	1
<i>state safeguards federal tax info.</i> ..	3
<i>safe deposit box release</i>	4
<i>e-file mandate clarification</i>	4
<i>ota accepting sales tax cases</i>	4
<i>request a speaker from taxation</i> ..	5
<i>small business workshops</i>	5
<i>oci agents complete training</i>	5
<i>interest rate 6.25%</i>	6
<i>tax deductions certified</i>	6
<i>tax assessor certificates</i>	6
<i>tax assessors' calendar</i>	7
<i>public auction information</i>	8
<i>criminal enforcement</i>	8
<i>enforcement summary stats</i>	8
<i>practitioners' e-file mandate</i>	13
<i>current amnesty program</i>	15
<i>tax briefs</i>	16
<i>in our courts</i>	23
<i>in our legislature</i>	28
<i>tax calendar</i>	32
<i>important phone numbers</i>	32

Division and IRS Expand Cooperation on Criminal Matters



Victor Lessof, IRS Special Agent in Charge for New Jersey (left); Charles Giblin, Special Agent in Charge of the Division of Taxation's Office of Criminal Investigation (center); and Michael Bryan, Director of the Division of Taxation (right) sign Memorandum of Understanding.

The Division of Taxation's Office of Criminal Investigation and the Internal Revenue Service are expanding their cooperation on criminal investigations to ensure their investigative resources are used efficiently and violations of both Federal and State tax laws are successfully prosecuted. The agencies signed a Memorandum of Understanding outlining their new areas of cooperation and information sharing at the Division of Taxation's office in Trenton on October 19, 2011. The memorandum was signed on behalf of the IRS by Victor Lessof, Special Agent in Charge for New Jersey; Charles Giblin, Special Agent in Charge of Taxation's Office of Criminal Investigation; and Michael Bryan, Director of the Division of Taxation. □

What's New for Tax Year 2011

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

continued on page 2

what's new - from page 1

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** — To calculate the correct amount of property taxes paid on their New Jersey principal residence homeowners must know whether they received a homestead benefit during 2011, the amount of the benefit, and whether the benefit was paid as a credit on their 2011 property tax bill or in the form of a check. For tenants, 18% of the rent paid during the year is considered property taxes paid. Qualified residents should review the instructions in the [NJ-1040](#) booklet for determining the amount of property taxes due and paid for 2011 (to be reported on Line 36a).
- **Designated Contribution** — The New Jersey Lung Cancer Research Fund has been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new fund, taxpayers must specify code number "11" at the "Other Designated Contribution" line.
- **Roth IRA Conversions During Tax Year 2010** — Taxpayers who converted an existing IRA to a rollover Roth IRA during tax year 2010 and made a Federal election to report the income in equal installments in 2011 and 2012 must report one-half of the amount that is taxable for New Jersey purposes on their income tax return for 2011.

- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2011, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$125.80, the maximum employee disability insurance contribution was \$148.00, and the maximum employee family leave insurance contribution was \$17.76. Taxpayers with two or more employers who have contributed more than the maximum amount(s), must complete Form NJ-2450 to claim credit on their New Jersey tax return for the excess withheld.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2011 is 3.4985%.
- **Filing Deadline** — The due date is April 17, 2012, 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.
- **Online Refund Status Inquiry** — Taxpayers who are owed a refund from the State of New Jersey can now check the status of their refund on the Division's [Web site](#).

Property Tax Relief Programs

- **Homestead Benefit Program** — New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2011, may be eligible for a homestead benefit provided the 2011 property taxes were paid and they meet certain income limits. Eligibility requirements, including income limits,

continued on page 3

New Jersey State Tax news

is published quarterly by the:

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

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

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

Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

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

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

News Coordinators for This Issue:

<i>Audit</i>	Diane Gay
<i>Compliance</i>	Valerie Lawrence
<i>Criminal Investigation</i>	Rose Tuthill
<i>Conference and Appeals</i>	William Bittner
<i>Legislation</i>	John Kelly
<i>Property Admin.</i>	Michael Vrancik
<i>Regulatory Services</i>	Dorothy Aicher Elizabeth Lipari

Contributors: Jeff Adams, Pamela Allen, David Bahney, Marlene Barnhart, Carol Bell, Beth Berniker, Michael Birnie, Marianne Cawley, Paul Cox, Kevin Curry, Gary DalCorso, Gary Dallet, Thaedra Frangos, Eric Friedmann, Charles GIBLIN, Russell Glenn, Susan Greitz, Nicole Hines, Blake Hoffman, Marianne Joralemon, Donald Krulewicz, Marijane LaMattina, Jessica Lanna, Debra Lewaine, John McCormack, Suzanne Miller, Michael Mullane, Trygve Myklebust, Maryanna Paolinie, Will Pena, Charles Peters, Lee Roach, Patrick Ryan, Andrew Staltari, and Fred M. Wagner.

Staff: Lauren D. Higgins, Terry A. McWilliams, and Sara E. Murphey.

Editor: Linda B. Hickey



what's new - from page 2

and benefits available under this program are subject to change by the State Budget.

Information about the 2011 home-
stead benefit will be posted on our
[Web site](#) as it becomes available.

- **2011 Property Tax Reimbursement (Senior Freeze)** — 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 2011, total annual income must be:

2011: \$80,000 or less, and

2010: \$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.

Eligibility requirements, including income limits, and benefits available under this program are subject to change by the State Budget. The eligibility requirements and benefit amounts for 2011 property tax reimbursements will not be finalized until the completion of the State Budget that must be adopted by July 1, 2012. □

Taxation Safeguards its Federal Tax Information

In March 2011, the Division of Taxation, the Office of Treasury Technology, and the Office of Information Technology were reviewed by Internal Revenue Service (IRS) specialists on their use of confidential Federal tax information (FTI). The IRS has established requirements for the safe handling of FTI.

FTI includes Federal tax returns or Federal information returns filed by a taxpayer, including any schedules, forms, attachments, and amendments. Anything the IRS collects and uses to determine a taxpayer's liability or potential liability is also considered FTI. This includes, but is not limited to, information forms such as W-2s or 1099s, social security numbers, and employer identification numbers.

The IRS Safeguards Program requires that each agency receiving confidential Federal tax data have internal systems developed for the proper use of that data, ensuring that it is treated with the highest level of confidentiality protections that are both feasible and available.

The Division had not been through such an extensive review for three years. In addition, the IRS revised its standards to create stricter guidelines to protect confidential tax information. With the help and cooperation provided by the Disclosure Unit, the Division is working towards meeting the new compliance goals.

Because of the nature of its mission, the Division maintains files that contain highly confidential personal and financial information about

individuals, businesses, and other entities, all paying various taxes to the State. In order to maintain public confidence in the Division, it is critical that the privacy rights of taxpayers be respected and protected. It is the responsibility of each employee of the Division to take scrupulous care to ensure the absolute confidentiality and integrity of the Division's records.

All Division employees are required to sign an "Agreement to Adhere to Secrecy Provisions of the State Tax Uniform Procedure Law" and to adhere to the applicable Internal Revenue Code as it applies to confidential tax data. (See the Internal Revenue Code, Subtitle F, Chapter 75, Subchapter A, Part I, Sections 7213, 7231A, and 7431 and U.S.C. Title 18, Part I, Chapter 93, Public Officers And Employees, Section 1905.)

The penalties for violation of these laws are severe. Unauthorized disclosure (providing tax information to someone who is not entitled to it) and/or use of tax information is defined in N.J.S.A. 54:50-8 as being a crime of the fourth degree. The statute also defines unauthorized examination of tax information as a disorderly persons offense.

The Federal criminal penalty for unauthorized access to FTI is one year in prison, a \$1,000 fine, and the cost of prosecution. Unauthorized disclosure has a more severe criminal penalty: five years in prison, a \$5,000 fine, and the cost of prosecution.

Both sets of requirements restrict the disclosure, redisclosure, and use of tax information to authorized personnel for authorized purposes only.

continued on page 4

safeguarding tax info - from pg. 3

This includes the restriction against browsing, which is accessing any tax information by any means for any reason other than to perform an official duty. □

Safe Deposit Box Release

R.S. 54:35-19 provides that the contents of a safe deposit box standing in the name of a decedent either individually, jointly, or otherwise may not be released without at least a 10-day notice to the Director, Division of Taxation, of the intended delivery and the retention of sufficient assets to pay any tax and interest that may be assessed on the assets. The statute provides that the Director may examine the assets of a decedent contained in a safe deposit box.

In 1992 the Division determined that it would no longer inventory safe deposit boxes held by a decedent at the time of his or her death. Since

September 30, 1992, the Director has issued a blanket waiver that is reissued every five years.

On December 12, 2011, the Director reissued the blanket waiver authorizing the immediate release of the contents of a safe deposit box for the period from January 1, 2012, to January 1, 2017. See below. □

GROSS INCOME TAX

Clarification: Practitioners' E-File Mandate

The following is provided to clarify information published in the winter 2010 issue of the New Jersey State Tax News regarding the practitioners' e-file mandate.

For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must

use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. □

OTA Accepting Certain Sales and Use Tax Cases

Since its creation last year, the Office of the Taxpayer Advocate (OTA) has been assisting taxpayers with problems involving individual gross income tax. Beginning October 1, 2011, OTA is no longer limiting cases by tax type, provided they meet the [case acceptance guidelines](#).

Cases the OTA will not accept include inquiries concerning delinquency and/or deficiency notices, questions regarding the filing of sales and use tax returns, and PIN (Personal Identification Number) requests.

Inquiries concerning delinquency and/or deficiency notices should be directed to the e-mail address, phone number, or mailing address on the notice.

For questions regarding the filing of sales and use tax returns, [e-mail](#) the Division or call the Customer Service Center at 609-292-6400.

To: All Banks, Trust Companies, Savings Institutions, Safe Deposit Companies, Savings and Loan Associations, or Other Institutions:

The Director, Division of Taxation, Department of the Treasury of the State of New Jersey, hereby waives the requirements of Revised Statutes 54:35-19 with respect to the issuance of the ten days notice and retention of assets for the opening of safe deposit boxes standing in the name of decedents either individually, jointly, or otherwise, or to which they had access and consents to release of the contents thereof.

This waiver is effective January 1, 2012 and shall expire January 1, 2017 unless cancelled by prior notice.

The institution releasing the contents of safe deposit boxes should keep the original of this letter for its own records.

Michael Bryan
Acting Director
Division of Taxation



OTA accepting s&u cases - from pg. 4

PIN requests can be made on the Division of Revenue's Web site at: <https://www.state.nj.us/treas/revenue/requestpin.shtml>

Answers to frequently asked questions about sales and use tax can be found on the Division's Web site at: www.state.nj.us/treasury/taxation/emailfaqs.shtml#Submit

The OTA is not intended as a substitute for, or to circumvent or replace, established procedures or the formal appeal process. It is only when those procedures don't work properly that the OTA can intercede. Taxpayers who have tried to resolve their tax problem with the Division on their own but have not been successful can ask the OTA to intercede on their behalf. The OTA will work with appropriate Division personnel and the taxpayer (or their representative) to resolve issues as quickly as possible.

Additional information about the Office of the Taxpayer Advocate, can be found on the Division's Web site at: www.taxpayeradvocate.nj.gov

The Office of the Taxpayer Advocate can be contacted via e-mail at: nj.taxpayeradvocate@treas.state.nj.us □

Request a Speaker From Taxation

For over 20 years the Division of Taxation has provided speakers for events sponsored by civic and/or professional organizations. Division representatives are available to speak to groups of 15 or more on many New Jersey tax topics including: New Jersey property tax relief programs, which includes the Homestead Benefit Program and the Property Tax Reimbursement

Program (often referred to as the Senior Freeze); business tax responsibilities; New Jersey gross income tax; and New Jersey sales and use tax. Information presented at these events can be customized for a specific group. Presentations have been made to groups that include both tax professionals and individual taxpayers.

If you are interested in requesting a Division speaker for an upcoming event, contact us at least 30 days prior to the event to ensure that we can meet your needs. Requests for speakers must be submitted via the Division's Web site at: <https://www.state.nj.us/treas/taxation/contactus/tytoutreach.shtml> □

Small Business Workshops

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

The small business workshops include the following topics:

- How to register a business with the Division of Taxation, Division of Revenue, and Department of Labor and Workforce Development.
- Types of business ownership and the tax consequences of each type.
- Filing sales and use tax returns.
- Meeting employer responsibilities.
- Reporting business income.

- What is taxable and what is exempt for New Jersey sales tax purposes.
- Procedures for collecting and remitting various New Jersey taxes.

To attend a workshop, interested parties must register with the contact person listed for each event. The contact person can also provide the time of the workshop, parking information, and directions to the location. The Division does not manage the registration process.

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

OCI Special Agents Complete Investigator Training

In January of 2011, Acting Director Michael Bryan administered the oath of office to four new special agents in the Office of Criminal Investigation: Audrey Boyd-Iovinno, Nicole Schwartz, Ryan Villaroman, and Bruce Stuck.

The four special agent recruits were assigned to complete the Basic Course for Investigators, conducted at the New Jersey Division of Criminal Justice Academy at Sea Girt. In accordance with the provisions of the Police Training Act, this training is mandatory for sworn State and county criminal investigators.

The Basic Course for Investigators, which runs for nearly six months, consists of an intense physical and



oci special agents - from page 5

academic regimen. Instructors are drawn from across New Jersey's law enforcement community and include Marijane LaMattina, who is a firearms instructor at the academy. The curriculum includes criminal and constitutional law, arrest, search and seizure, the criminal justice system, investigative techniques, and review and interrogation. Instruction is also provided on additional specialized subjects such as homeland security, electronic surveillance, defensive tactics, and other lessons that build basic skills for a successful criminal investigator.

In a class of 28, Special Agent Bruce Stuck graduated at the top of the class academically and Special Agent Ryan Villaroman was second. All four OCI special agents received high scores in firearms, academics, leadership, and physical conditioning.

Additionally, OCI worked with the Department of Criminal Justice in 2010 to design a modified classroom

curriculum for auditors and investigators assigned to OCI in order to develop their skills in investigative techniques, courtroom testimony, and report writing.

OCI's auditors and investigators who do not have prior law enforcement experience attend the modified classroom sessions, which are held at the New Jersey Division of Criminal Justice Academy during the same training cycle as the Basic Course for Investigators. These auditors and investigators are responsible for passing all written exams administered during the training cycle, but do not participate in physical conditioning, defensive tactics, or firearms. To date, eight members of OCI have completed the modified training course. □

LOCAL PROPERTY TAX **Tax Deductions Certified**

The 2011 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses/civil union partners, and veterans was delivered to the State Treasurer on September 15, 2011.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2011.

The total amount of property tax deductions for senior and disabled persons and surviving spouses/civil union partners for 2011 was \$16,808,740. That amount represents a decrease of 6.7% from 2010. The total number of property tax deductions for senior and disabled

citizens and surviving spouses/civil union partners for 2011 was 65,893. When compared to tax year 2010, the number of deductions decreased 4%.

For tax year 2011, the amount of veterans' deductions was \$62,961,561. That amount represents a decrease of 3% from 2010. The total number of veterans' deductions for 2011 was 248,744. When compared to tax year 2010, the number of deductions decreased 3%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of P.L. 1997, c.30. □

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.

Eleven persons passed the March 26, 2011, C.T.A. exam. They are:

Atlantic County: Shana W. Kestrel, Somers Point Borough.

Burlington County: William A. Mancuso, Bordentown Township.

Gloucester County: Jeffrey J. Taylor, East Greenwich Township; Albert R. Crosby, Washington Township; James Grandrimo, Jr., Washington Township.

Hunterdon County: Richard Serrano, High Bridge Borough.

Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2012 – December 31, 2012, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
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%
1/1/12	6.25%



tax assessor certificates - from page 6

Middlesex County: Christopher M. Efstathiou, East Brunswick Township.

Morris County: Jeffrey L. Lauver, Denville Township; Thomas W. DeKorte, Kinnelon Borough.

Ocean County: Charles P. Tivenan, Esq., Brick Township; Leonard A. Molinari, Jackson Township.

Five persons passed the September 24, 2011 C.T.A. exam. They are:

Cape May County: Jay L. Laubengeyer, Woodbine Borough.

Essex County: Romal D. Bullock, East Orange City.

Monmouth County: Gail A. Scaglione, Middletown Township; William C. Shapiro, Howell Township.

Passaic County: William A. Yirce Jr., North Haledon Borough.

The next C.T.A. examination is scheduled for March 24, 2012. The deadline to file applications for this exam was February 23, 2012. The filing fee is \$10. If you have any questions regarding this exam, please contact Christopher Beitz at 609-341-2708 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251.

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

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.

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



assessors' calendar - from page 7

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 2011 must file a Post-Tax Year Statement, Form PD-5, with tax collector as to 2011 income and anticipated income for 2012.

- 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. □

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.

Criminal Enforcement

Criminal enforcement over the past several months included:

- On January 28, 2011, in Monmouth County Superior Court, Judge Richard W. English sentenced Larry Kushner, of Long Branch, New Jersey, to seven years in prison. Kushner entered guilty pleas to theft by failure to make required disposition of property received and failure to file a 2005 gross income tax return. Kushner agreed to pay \$1.1 million in restitution to

seven victims. Kushner told the victims the money they invested in his business, Foreclosure 911, would be used to buy foreclosed properties in New Jersey, Delaware, and Pennsylvania. Instead, the money was used for personal expenses and travel. This investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- On February 28, 2011, and March 1, 2011, a total of seven search warrants were executed in

continued on page 9

**Enforcement Summary Statistics
First Quarter 2011**

Following is a summary of enforcement actions for the quarter ending March 31, 2011.

	Number	Amount
• Bank Levies	1,428	\$ 3,924,299
• Certificates of Debt	4,196	58,831,360
• Seizures	81	1,014,221
• Auctions	6	75,690

Second Quarter 2011

Following is a summary of enforcement actions for the quarter ending June 30, 2011.

	Number	Amount
• Bank Levies	1,909	\$ 5,638,813
• Certificates of Debt	4,628	63,224,749
• Seizures	116	1,198,379
• Auctions	6	220,876

Third Quarter 2011

Following is a summary of enforcement actions for the quarter ending September 30, 2011.

	Number	Amount
• Bank Levies	1,347	\$ 3,456,821
• Certificates of Debt	3,883	58,744,211
• Seizures	69	1,043,824
• Auctions	1	121,000



criminal enforcement - from page 8

Bergen and Passaic Counties by the Office of Criminal Investigation (OCI) in connection with an arrest warrant that had been issued for Jean Sawits, of Lodi, New Jersey. Sawits had been charged by an OCI special agent with violating multiple indictable Title 54 statutes for engaging in sales of contraband cigarettes to businesses and individuals primarily in Paterson, New Jersey, and was arrested by OCI at her residence without incident. A total of 1,735.8 cartons of contraband cigarettes and \$2,719 in U.S. currency were seized as a result of the search warrants. Sawits was remanded to the Bergen County Jail with bail set at \$50,000, no 10%.

- On March 23, 2011, in Mercer County Superior Court, George Makris, former owner of Serefeim, LLC, t/a The Jersey Diner, in Bridgewater, New Jersey, pled guilty to third-degree misapplication of entrusted funds (sales and use tax and employee withholdings) and third-degree filing false or fraudulent returns. Makris was scheduled to be sentenced on August 3, 2011. Recommended sentencing was five years' probation, mandatory restitution of approximately \$83,000 payable at a rate of \$500 per month, a lump-sum payment of \$10,000 at the day of sentencing, and 25 hours' community service.
- On April 1, 2011, in Trenton Municipal Court, Vincent Mayo, of Trenton, New Jersey, was sentenced to 30 days in the Mercer County Correction Center for possession of contraband cigarettes. Mayo had been arrested by

an OCI special agent on January 4, 2011, in Trenton. Mayo was on probation at the time of his arrest with two active warrants. His sentence was in addition to a 400-day jail sentence on unrelated charges.

- On April 1, 2011, Miroslaw Sapinski along with his wife Grayzna Sapinski, Stanislaw Zbronski, and Waclaw Jeziorski were arrested for contraband cigarette trafficking in Passaic, New Jersey. On May 14, 2011, Sapinski et al. appeared in Passaic County Superior Court. The Court sentenced Sapinski, a multiple offender, to three years in the New Jersey State Prison as a result of his guilty plea to a second-degree count of conspiracy. Part of the plea agreement required Sapinski to forfeit to the State of New Jersey \$24,903.42 in U.S. currency seized by OCI at the time of his arrest and one 1997 Toyota Camry. Grayzna Sapinski appeared in Passaic County Superior Court and the Court permitted the defendant to enter the Pre-Trial Intervention Program. Part of the plea agreement required Sapinski to forfeit \$66,612.78 and one 2001 Chrysler minivan to the State. Stanislaw Zbronski, also of Passaic, New Jersey, was sentenced to 295 days in the Passaic County Jail. Part of the plea agreement required Zbronski to forfeit \$149 to the State. Zbronski is in the U.S. illegally and will be deported to Poland by U.S. Immigration and Customs Enforcement. A fourth defendant, Waclaw Jeziorski of Wallington, New Jersey, was sentenced to 100 hours of community service. Part of the plea agreement required Jeziorski to forfeit \$2,141 to the State.

- On April 4, 2011, Min Qin Yang t/a Golden Garden Restaurant pled guilty to possession of contraband cigarettes in Elizabeth Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$2,571 in seized U.S. currency to the State. OCI had worked to stop an activity where the take-out business delivered contraband cigarettes with Chinese food deliveries.
- On April 12, 2011, Kalpesh Patel t/a Hillsborough Convenience Store of Hillsborough, New Jersey, pled guilty to possession of contraband cigarettes in Hillsborough Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$4,970 in seized U.S. currency to the State.
- On April 13, 2011, Rameshchandra Patel t/a Griffins Deli of Ewing Township, New Jersey, pled guilty to possession of contraband cigarettes in Ewing Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$1,565 in seized U.S. currency to the State.
- On April 18, 2011, in Monmouth County Superior Court, Christopher Elia pled guilty to second-degree theft by deception and third-degree failure to pay taxes. This plea was based on a 14-count Grand Jury indictment on September 13, 2010. The investigation revealed that 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 to collect contributions but did not transfer the funds to any legitimate charities. Instead the funds

continued on page 10

criminal enforcement - from pg. 9

were used for personal expenses, including extensive gambling debts. This investigation was conducted by the Monmouth County Prosecutor's Office and the Office of Criminal Investigation.

- On April 19, 2011, Yarin Montilla t/a Dominican Deli Grocery LLC of Elizabeth, New Jersey, pled guilty to possession of contraband cigarettes in Elizabeth Municipal Court. The Court imposed \$408 in fines, fees, and costs and forfeited \$1,169 in seized U.S. currency to the State.
- On April 21, 2011, Christ Townsend of Pine Hill, New Jersey, was sentenced to one year of supervised probation by the Camden County Superior Court. The Court imposed \$158 in fines, fees, and costs. The Court

also forfeited the \$605 seized by OCI's Special Agents at the time of his arrest.

- On April 25, 2011, Xiangguang Zhang t/a Jade Garden of Elizabeth, New Jersey, pled guilty to failure to examine contraband cigarettes found in his possession. The Court imposed \$288 in fines and fees and ordered \$4,620 in seized U.S. currency to be forfeited to the State.
- On April 27, 2011, a Bergen County Grand Jury returned a 25-count indictment against 12 persons for allegedly engaging in an elaborate mortgage fraud scheme involving Paragon Federal Credit Union located in Montvale, New Jersey. All were indicted for conspiring to commit the crime of theft by deception and various other charges.

The investigation was initiated by representatives of Paragon Federal Credit Union. During a routine audit of Paragon Federal Credit Union's residential mortgage loans, bank investigators discovered that an unusual amount of residential mortgage loans were delinquent and promptly notified the Bergen County Prosecutor's Office, White Collar Crimes Unit. Detectives uncovered a fraud scheme being perpetrated by the Paragon Federal Credit Union loan coordinator with mortgage brokers from AOR Consultants or Apex Consultants, and an appraiser of Lighthouse Appraisals, LLC. Credit union membership, mortgage application, property appraisal, and personal income and expense documents were fraudulently prepared by the

continued on page 11

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

NJWebFile

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



NJE-File

Use tax software or ask your tax preparer. See a tax preparer to have your income tax return filed electronically. You can also do it yourself through an online tax preparation Web site or off-the-shelf tax software.



www.njfastfile.com

NJFastFile
the way to a faster refund.





criminal enforcement - from page 10

coconspirators in order for the individuals to be approved for mortgage loans with Paragon Federal Credit Union. Over \$3,000,000 of residential mortgage loans currently in default was processed in this manner.

This indictment was the result of an ongoing investigation by members of the Bergen County Prosecutor's Office, White Collar Crimes Unit, the United States Secret Service – New Jersey, and the Office of Criminal Investigation.

- On April 28, 2011, Andy Jimenez t/a Valerio Inc. of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$1,841 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On April 28, 2011, Coleman O'Koro t/a Brothers Food Market of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$594 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On May 2, 2011, Sara Velasquez t/a Sarita Market Shop LLC of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. He agreed to forfeit \$3,143 in U.S. currency to the State. The Elizabeth Municipal Court imposed \$408 in fines, fees, and costs.
- On May 3, 2011, Rajai Mashal t/a Mashal Mini Market of Haledon, New Jersey, pled guilty to possession of untaxed goods.

The Haledon Municipal Court imposed fines, fees, and costs of \$1,316.

- On May 4, 2011, Phuc Vuong, of Camden, New Jersey, was arrested by OCI along with Tran Hao of Camden, after the delivery of unstamped Vietnamese cigarettes by an undercover U.S. postal inspector. Postal inspectors had previously tracked the unlawful product. A total of 406.6 cartons of cigarettes and \$350 in U.S. currency were seized. Bail for both subjects was set at \$150,000, no 10%. Indictable charges of possession of more than 2,000 cigarettes, no licenses with intent to evade, and no records with intent to evade were filed in Camden County Superior Court.

On May 27, 2011, an additional 672 cartons of unstamped Vietnamese cigarettes were seized from Vuong. The second shipment was intercepted by the U.S. Postal Inspector and turned over to OCI for seizure in this ongoing investigation.

- On May 4, 2011, Hung Tran, of Pennsauken, New Jersey, was arrested by OCI after a search warrant was executed at his residence. Tran had made purchases in Camden City at another residence where OCI investigators and Camden County

Sheriff's Officers observed other contraband sales and possession. 25 cartons of both unstamped domestic and imported Vietnamese cigarettes were seized. A total of \$5,752 was seized from the premises along with two vehicles.

- On May 5, 2011, Dorian Munoz, owner of Spartan Cutting Edge Landscaping and Brookside Landscape, was indicted in the Superior Court of New Jersey, Law Division, on eight counts of failure to file sales and use tax and gross income tax returns, failure to pay sales and use tax in the approximate amount of \$40,744 and gross income tax to New Jersey, as well as filing false or fraudulent sales and use tax returns for tax years 2001 through 2007. All counts are third-degree crimes.
- On May 12, 2011, Aiman M. Muheisen t/a Valero Gas Station in Little Ferry, New Jersey, pled guilty to possession of untaxed goods and failure to examine in the Little Ferry Court. 18.4 cartons of counterfeit-stamped cigarettes were seized from the location. The Court imposed fines, fees, and costs in the amount of \$868.
- On May 17, 2011, Vinaykumar Trivedi t/a Two Lucky Convenience Store appeared before

continued on page 12

**New Jersey tax forms at your fingertips!
From your fax machine's phone, dial**

609-826-4500

NJ TaxFax

**NJ Tax Forms & Publications
24 Hours – 7 Days a Week**



criminal enforcement - from pg. 11

Hillside Municipal Court Judge Lara DiFarbrizio and pled guilty to possession of untaxed cigarettes. He was fined a total of \$658.

- On May 18, 2011, a search warrant was executed by OCI at a residence in North Brunswick, New Jersey. Arrested at the residence were Victor Madera, his wife, Angiolina, and their sons Harold and Charlie Madera. Seized from the residence were \$109,353 in U.S. currency and an additional \$14,504.18 from various bank accounts, along with 13 cartons of contraband cigarettes, a plastic utility box containing paraphernalia used to affix New Jersey counterfeit tax stamps (glue, tape, scissors, brass pads, iron) and two cigarette stamps. Also seized were two vehicles: a Volvo containing the 13 cartons seized, and a Honda Odyssey. Another search warrant was executed on their storage unit located at a Public Storage facility in North Brunswick, New Jersey. Seized from the unit were 69 cartons of contraband cigarettes containing unstamped and New Jersey counterfeit-stamped cigarettes and plastic bags used to contain the cigarettes. The defendants were brought to the North Brunswick Police Department where they were processed. Madera was issued bail of \$75,000, no 10%; the other three defendants were issued bail of \$50,000, no 10%. This was a three-month investigation initiated by OCI and conducted with the assistance of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). During surveillance performed by OCI and ATF, the defendants were observed trafficking contraband cigarettes and storing them at their residence and storage unit.
- On May 23, 2011, Sandeep and Mandip Kaur t/a Crown of Dickson St. of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. The defendants agreed to forfeit \$975 in U.S. currency to the State. The Court imposed fines totaling \$408.
- On May 23, 2011, German Alvarez t/a San Juan Mini Market of Elizabeth, New Jersey, pled guilty to possession of untaxed goods. The defendant agreed to forfeit \$3,048 in U.S. currency to the State. The Court imposed fines totaling \$408.
- On May 24, 2011, Zhi Zheng, t/a New Chinese Gourmet, of Elizabeth, New Jersey, pled guilty to possession of untaxed cigarettes and accepted full responsibility for the contraband cigarettes. Seized were 170.2 cartons of cigarettes and \$20,123 in U.S. currency. The cigarettes and cash seized were forfeited to the State.
- During the reporting period, in Camden County Superior Court, Robert G. Burk, of Camden, New Jersey, was sentenced to 12 months' probation and 50 hours of community service for possession of untaxed cigarettes that occurred in 2009. Burk was arrested at the time of the offense and was found with two cartons of Delaware-stamped cigarettes, nine suspected counterfeit DVDs, and \$184.90 in U.S. currency, which were all seized. In Court, Burk pled guilty and the items seized were forfeited to the State.
- On May 24, 2011, Luis R. Forty t/a 40's Wholesale of Vineland, New Jersey, pled guilty to possession of untaxed goods and failure to obtain a cigarette license. The Vineland Municipal Court imposed fines, fees, and costs of \$816.
- On June 1, 2011, Juan Cabrera t/a Duarte's Deli of Harrison, New Jersey, pled guilty to possession of contraband cigarettes and sale of loose cigarettes. The Harrison Municipal Court imposed fines, fees, and costs of \$1,268 and forfeited the cigarettes to the State.
- On June 2, 2011, Ericka Rangel t/a Lurenjem Deli & Grocery pled guilty to possession of contraband cigarettes and failure to display license. The Newark Municipal Court imposed \$816 in fines, fees, and costs.
- On June 3, 2011, James Gillespie, 46, of Williamstown, was sentenced to five years in State prison by Judge Irvin J. Snyder in Camden County for failing to turn over \$487,975 in State and Federal payroll taxes on behalf of employees of his patient transportation company. He pled guilty on February 14, 2011, to charges of second-degree theft by failure to make required disposition of property received and second-degree misapplication of entrusted property and property of government. In pleading guilty, Gillespie admitted that from 2001 through 2006 he failed to remit payroll taxes withheld from employees of his company, Wellness Enterprises Corp., totaling \$487,975, which consisted of \$105,440 due the State of New Jersey and \$382,535

continued on page 13



criminal enforcement - from page 12

due the Internal Revenue Service. Wellness Enterprises, which was based in Cedar Brook and did business as Excel Medical Transportation Services, provided nonemergency patient transportation services to hospitals, nursing homes, assisted living programs, and private residences. Gillespie entered a civil consent judgment to pay a total of \$582,740 to the Division of Taxation and the U.S. Treasury, representing the back payroll taxes owed by his company, plus penalties and interest of \$94,765 to be paid to the State.

- On June 9, 2011, Bhavesh Patel t/a Long Valley of Washington Township, Morris County, New Jersey, pled guilty to possession of contraband cigarettes. The Washington Township Municipal Court imposed \$408 in fines, fees, and costs and forfeited \$1,294 in U.S. currency to the State.
- On June 16, 2011, the Grand Jury for the State of New Jersey returned a three-count indictment

against Ashok Patel. This indictment follows a criminal investigation which was conducted by OCI's Financial Investigation Unit. This investigation was referred by OCI's Special Investigations Unit. The investigation revealed that sales and use tax for the years 2004–2007 was underreported by Ashok Patel, owner of A&D Family Deli. Patel was indicted on third-degree misapplication of entrusted property, third-degree theft by failure to make required disposition of property received, and third-degree failure to pay or turn over New Jersey sales and use tax.

- On June 23, 2011, Wilyn Caceres and Lisaldo Espinal were each sentenced to six years in State prison for their participation in a tax refund fraud scheme. Wilyn Caceres, Jason Perez, Lisaldo Espinal, and Miguel Hernandez were indicted in December 2008 for allegedly conspiring to steal \$272,000 by filing more than 117 fraudulent State tax returns. All four entered guilty pleas to charges of conspiracy, money

laundering, and receiving stolen property. The tax refund scheme was uncovered in August 2007, when an abnormal pattern involving the refund checks was detected. An 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. Miguel Hernandez was sentenced to one year of incarceration in October 2009. Jason Perez was scheduled for an October 2011 sentencing. This investigation was initiated and conducted by OCI.

- On June 27, 2011, Foad Salib t/a Minas Grocery of Elizabeth, New Jersey, pled guilty to possession of contraband cigarettes and untaxed tobacco products. The Court imposed fines, fees, and penalties of \$1,158 and forfeited \$1,194.30 as well as the unstamped cigarettes and untaxed tobacco products to the State.
- On June 27, 2011, a Monmouth County Grand Jury returned a 100-count indictment charging seven defendants with various crimes relating to a multimillion-dollar mortgage refinance fraud

Practitioners' E-File Mandate

For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. At this time, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust). Although the fiduciary returns are currently not filed electronically, preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. A tax preparer is liable for a penalty of \$50 for each return he or she fails to file electronically when required to do so.

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

continued on page 14

criminal enforcement - from pg. 13

scheme that victimized dozens of homeowners throughout New Jersey and New York. An investigation by the Monmouth County Prosecutor's Office revealed a mortgage fraud scheme perpetrated by associates of Hawthorne Capital Corporation that resulted in losses to homeowners and financial institutions. Funds that were intended to pay off the homeowners' original mortgages were significantly delayed, or in other instances, the payoffs never occurred, leaving the homeowners with two mortgages attached to their properties. Additionally, the identities of homeowners who had only completed an initial application for refinance were stolen and illegally used to cause financial lending institutions to fund refinances that never actually occurred. In total, the amount of calculated theft perpetrated by the defendants exceeded \$7.5 million. Frederick Tropeano of Holmdel, New Jersey, was identified in the investigation as the person responsible for the daily operations at Hawthorne Capital. Frederick Tropeano was indicted on charges of theft, attempted theft, conspiracy, financial facilitation of criminal activity, impersonation-theft of identity, uttering a forged instrument, insurance fraud, and three counts each of failing to file returns and failure to pay or turn over taxes for tax years 2008, 2009, and 2010.

- On June 28, 2011, Hugo Castaneda-Tapia t/a Latino Mini Market of Bound Brook, New Jersey, pled guilty to possession of contraband cigarettes. The Court imposed fines, fees, and penalties of \$408 and forfeited \$1,353 and

the counterfeit-stamped cigarettes to the State.

- On June 28, 2011, Victor Camachoduran t/a Centro America Sport of Bound Brook, New Jersey, pled guilty to possession of contraband cigarettes. The Court imposed fines, fees, and penalties of \$408 and forfeited to the State \$1,398 as well as the unstamped cigarettes, which were purchased over the Internet.
- In the Camden Superior Court, Harry Marrow of the City of Camden, who was previously arrested by OCI Special Agents for selling contraband cigarettes, was found guilty and sentenced to one year of supervised probation. The \$213 in currency was forfeited and the defendant was assessed \$158 in fees. In the same Court, Khalif Banks, also of Camden, who was arrested by OCI Special Agents for selling contraband cigarettes, was found guilty and sentenced to 2 years' supervised probation, 50 hours of community service, and assessed \$150 in fees. The \$275.75 in currency that was seized during the arrest was forfeited to the State. A third subject, John Demby, was also found guilty of selling contraband cigarettes and was sentenced to 12 months' supervised probation and \$158 in fees. The \$32 in U.S. currency that was seized during his arrest was also forfeited. These subjects were arrested in an OCI sting operation along with three others who were conducting an "open-air cigarette market" in a shopping center on Mt. Ephraim Avenue in Camden City.
- On June 29, 2011, Hung Tran of Pennsauken, New Jersey, appeared before the Municipal

Court of Pennsauken and pled guilty to possession of Vietnamese cigarettes, which were received via mail order. After a search warrant was executed in Camden County, the subject was arrested at his residence based on a sale to an undercover operative. The subject paid \$408 in fines, fees, and costs. The Court awarded the State \$4,752 that was seized by the Office of Criminal Investigation (OCI), which will be revenue shared with Camden County for their assistance.

- July 27, 2011, the Office of Criminal Investigation (OCI) received the following information from the State Grand Jury for Monmouth County, which returned a 10-count indictment against Paul Chemidlin on June 3, 2011. This indictment follows a criminal investigation which was conducted by the Monmouth County Prosecutor's Office in conjunction with OCI. The investigation revealed that Paul Chemidlin was engaged in illegal gambling and financial activity, which included money laundering and tax evasion. Chemidlin was indicted on second-degree conspiracy, third-degree promoting gambling, third-degree terroristic threats, second-degree theft by extortion, third-degree possession of a controlled dangerous substance, second-degree theft by deception, second-degree financial facilitation of criminal activity, and third-degree failure to file New Jersey tax returns.
- On July 28, 2011, Ramon Gomez was found guilty in the United States District Court for the Eastern District of North Carolina on

continued on page 15



criminal enforcement - from page 14

all counts related to contraband cigarette smuggling and will be deported after he completes his sentence. The Office of Criminal Investigation participated with the Bureau of Alcohol, Tobacco, Firearms and Explosives out of North Carolina in pursuing this subject who was smuggling into New Jersey.

- The Federation of Tax Administrators Suspicious Filers group announced the sentencing of Marvin Berkowitz, a repeat offender who has filed fraudulent returns in multiple states for two decades. Berkowitz was sentenced by a Federal Judge to 18 years and 4 months in Federal prison and must pay restitution to the victimized tax agencies of \$10.232 million, much of which is expected to come out of seized bank accounts. The Suspicious Filers group learned to spot many of Berkowitz's submissions and shared information on a real-time basis, helping impede the success of his schemes. One of the Office of Criminal Investigation's auditors had uncovered the Berkowitz scheme in New Jersey, and information was supplied through the Division's disclosure officer to assist in the Federal prosecution.

- Members of OCI's Special Investigations Unit (SIU), in response to Hurricane Irene, conducted facility assessments and continuity of operation evaluation for the Division of Taxation. All Division executives were continuously provided situational reports from the New Jersey State Police's Regional Operations and Intelligence Center (ROIC) and New Jersey's Office of Emergency Management (NJOEM) so as to gauge the disaster's effect on Division operations and personnel.
- On August 1, 2011, the State Grand Jury of the Superior Court of the State of New Jersey in Trenton returned a three-count indictment against Michael L. Meglino, Jr. and his wife, Susan Gisela Hernandez Meglino. The indictment is a result of a joint criminal investigation conducted by the Division of Criminal Justice's Office of the Insurance Fraud Prosecutor and the Division of Taxation's Office of Criminal Investigation. The investigation concluded that Michael Meglino misappropriated funds of the Oak Hollow Condominium Association in 2005 and 2006, which coincided with the period he was the president of the condominium association. Mr. Meglino was indicted on one count of third-degree theft by deception.

Meglino and his wife, Susan Meglino, were also indicted for third-degree filing a false and fraudulent New Jersey tax return and third-degree failure to pay tax.

- On August 25, 2011, Ahmad Rafei, owner of Star's General Supply, of Paterson, New Jersey applied for and received Pre-Trial Intervention (PTI) as a first-time offender in the Passaic County Superior Court. Rafei was arrested by a special agent from the Office of Criminal Investigation (OCI) for possession of untaxed other tobacco products. The Court, however, did agree to the civil forfeiture of the vehicle involved. The Passaic County Prosecutor's Office (PCPO) agreed to sell back the vehicle to Rafei for \$2,500 and the proceeds will be shared between PCPO and OCI. The subject must complete one year of unsupervised probation with no violations to successfully complete the PTI program.
- On September 19, 2011, Omar Nijim of Brooklyn, New York, was found guilty in the United States District Court in the Eastern District of North Carolina on one count of conspiracy to traffic in contraband cigarettes. An OCI special agent was a witness in this trial and had coordinated OCI's role in this joint operation with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) when Nijim traveled to New Jersey and New York to sell contraband cigarettes in December 2009 and January 2010. Nijim awaits sentencing. OCI will prepare a loss of revenue report for the U.S. District

Current Amnesty Program

The following jurisdiction 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.

OH

10/1/11 – 5/1/13

<http://tax.ohio.gov/>

criminal enforcement - from pg. 15

Court for restitution as part of the sentencing.

- On September 28, 2011, in the Superior Court of Mercer County, George Makris, the former owner of The Jersey Diner, was sentenced to five years' probation as a result of his guilty plea to misapplication of entrusted property (sales taxes) and filing false and fraudulent returns. As a result of the civil consent judgment signed by Makris, he is required to pay restitution in the amount of \$83,831.49, payable at \$500 per month to the State of New Jersey. During the sentencing, Makris made a payment of \$10,000. Makris was also ordered to perform 25 hours of community service. This case was prosecuted by the Mercer County Prosecutor and the Office of Criminal Investigation.
- Blessing Iwarimie's Pre-Trial Intervention (PTI) was revoked for failure to comply with her agreed upon payment schedule to the Division of Taxation. Blessing Iwarimie was entered into the State's PTI program for her part in the theft of monies in the Mustapha case in 2005.
- The Office of Criminal Investigation and Field Investigations-Newark jointly canvassed the Avenel Flea Market. Also assisting in the canvass was local law enforcement, the Recording Industry Association of America, and Stumar Investigations, which resulted in the seizure of pirated and counterfeit CDs, DVDs, counterfeit goods, and accessories. The Division received over \$9,000 involving eleven jeopardy assessments. Additionally, many

businesses completed the application to register with the State for tax purposes. This was the first time OCI has worked jointly with Field Investigations and local law enforcement on such a canvass, and the combined efforts sent a strong message about the importance of compliance.

- On September 30, 2011, Mercer County Prosecutor, Joseph L. Bocchini, Jr., announced that a joint investigation, conducted by his Economic Crime Unit (ECU) and the Office of Criminal Investigation, resulted in the arrest of David D. Murray of Hardwick, New Jersey. Murray was taken into custody at his Warren County residence by members of the Mercer County Prosecutor's Office with assistance from the New Jersey State Police. Murray is the owner of five Dunkin' Donuts establishments in Warren County. The investigation revealed that, between December 4, 2009, and August 31, 2011, Murray collected sales tax at his businesses and failed to remit those taxes to the State, representing a loss in tax revenue of approximately \$156,500 to the State of New Jersey. Murray was charged with theft by failure to make required disposition of property received and misapplication of entrusted property and property of government or financial institution. Both are second-degree crimes, each carrying a maximum penalty of 10 years in prison and a \$150,000 fine. Mercer County Superior Court Judge Thomas W. Summers, Jr., set bail for Murray at \$35,000. This investigation was a result of the actions of OCI's new Technical Enforcement Unit.

- During July 2010 – June 2011, the Office of Criminal Investigation's Special Frauds Unit identified and prevented the issuance of over \$7 million in fraudulent refunds. Losses are prevented through twice weekly manual reviews of the lists of refunds that are earmarked to be mailed out. These manual efforts extend beyond the scope of the automatic system checks that the Division already has in place.
- During the months of July, August, and September, 2011, the Special Frauds Activity identified 2,080 fraudulent refunds totaling \$3,227,009.46 of total gross income revenue protected. There were 197 checks totaling \$340,761 that were not issued, and 314 direct deposits stopped in the amount of \$465,637.35. Another 460 refund requests, totaling \$816,107, were identified as fraudulent, and 413 refund requests identified through the paid preparer edit totaling \$737,505 were subsequently denied. Utilizing an additional edit program, 897 refund requests totaling \$1,188,389 were identified as American Bankers Association routing fraud, reviewed, and denied. There were 128 returns referred by the Division of Revenue, totaling \$285,118. An additional 20 returns were stopped through a suspicious filer program totaling \$33,587. □

Tax Briefs

**Corporation Business Tax
Federal Small Employer Health
Insurance Premium Credit** — The Federal small employer health

continued on page 17

tax briefs - from page 16

insurance premium credit that was created as part of the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, was enacted March 23, 2010. Several taxpayers have inquired whether New Jersey conforms to this credit for corporation business tax purposes.

The PPACA created Internal Revenue Code §45R. The new small business tax credit is effective for amounts paid or incurred after December 31, 2009, and applies to the determination of alternative minimum tax credits after that date and their carryback. Small businesses that currently provide health care for their workers could receive immediate help with their premium costs, and additional firms that initiate coverage for tax years beginning in 2010 could receive the tax assistance. To be eligible, small employers would have to contribute at least 50% of the cost of premiums towards a qualified health plan or 50% of a benchmark premium. The Internal Revenue Service provides further guidance on who is eligible for Federal tax purposes on their Web site at www.irs.gov. Taxpayers who take the credit will have to reduce their health premium expense deduction by the amount of the credit under IRC §45R.

For New Jersey corporation business tax purposes, entire net income is deemed to be equal to the amount of income taxable for Federal purposes before the net operating loss deduction and special deductions. N.J.S.A 54:10A-4(k).

If the taxpayer corporation elects the Federal credit and expense reduction, then it must use the reduced expenses for New Jersey purposes when the credit is not recognized in

New Jersey since items reported on Line 28, Schedule A, Form CBT-100 must be the same as those reported to the IRS for Federal tax purposes.

Therefore, the small employer health insurance premium credit is not available for New Jersey corporation business tax purposes. Where a taxpayer takes this credit for Federal purposes, the taxpayer must report the reduced expenses on New Jersey Form CBT-100 even though the taxpayer could not claim the small employer health insurance credit for New Jersey purposes.

Gross Income Tax Cafeteria Plans and Certain Adult “Dependents” — The Division received an inquiry from an employer about providing cafeteria plan health insurance coverage to qualifying “dependents” up to age 27. The employer’s inquiry was prompted by the impact of the Federal Affordable Care Act. The employer’s health insurance cafeteria plan was a salary reduction plan.

For New Jersey gross income tax purposes, benefits provided through a “cafeteria plan” salary reduction are generally treated as income taxable to the employee. In other words, the employee is taxed on the wage amount before any deduction for the health plan coverage. This is because the New Jersey Gross Income Tax Act does not have a cafeteria plan section that provides a tax exclusion for a salary reduction benefit. For further details on the gross income tax treatment of cafeteria plan benefits, see Technical Bulletin [TB-39\(R\)](#), *Cafeteria Plans*.

Calculation of Nonresident Partner’s Share of Tax — A partner in a partnership questioned the Division about getting “inequitable” results

when she multiplied the amount from Column H, Partners Directory, Form NJ-1065, by the corporation allocation factor, which is the calculation method that is required by the instructions with regard to Column I, Partners Directory, Form NJ-1065.

For New Jersey purposes, the partnership must net the partner’s Federal income together and multiply that amount by the partnership’s corporation allocation factor (Schedule J, Form NJ-1065) to determine the partner’s share of tax that is required to be remitted by the partnership, as set forth in the instructions for Form NJ-1065. Sometimes the tax remittance required for the nonresident partner is accurate with regard to the gross income tax required to be paid by the partner, and other times it is not accurate and the partner may need to apply for a refund on Form NJ-1040NR.

For example, a partnership with a loss from New Jersey sources for reporting purposes, may have positive net Federal income. In this situation, the partnership may be required to remit tax on behalf of the nonresident partner that is more than the actual gross income tax owed by the partner. On a different set of facts, the tax remitted may be less than the actual tax owed by the nonresident partner.

Employer-Paid Health Insurance — The Division received an inquiry from an employer about a change to its health insurance coverage in response to the Federal Affordable Care Act. The change was to the employer paid health insurance coverage for qualifying children up to age 27. The employer asked whether coverage (paid by the employer) for

continued on page 18

a qualifying 26-year-old child was a nontaxable benefit for purposes of the gross income tax. The employer also asked for clarification about continuing to provide health insurance for the spouse of the employee.

For New Jersey gross income tax purposes, the benefit of health insurance coverage for a qualifying child up to age 27, or a spouse, *paid directly by the employer*, is not taxable wage income for the employee. However, if benefit coverage is paid by the employee through a cafeteria plan deduction from wages, the wage deduction or reduction amount is generally taxable for gross income tax purposes. See N.J.S.A. 54A:6-21.

Federal Small Employer Health Insurance Premium Credit — Several taxpayers inquired whether New Jersey allows a credit for gross income tax purposes similar to the Federal credit allowed under the Patient Protection and Affordable Care Act (PPACA).

The PPACA created Internal Revenue Code §45R. The new small business tax credit is effective for amounts paid or incurred after December 31, 2009, and applies to the determination of alternative minimum tax credits after that date and their carryback. To be eligible, small employers have to contribute at least 50% of the cost of premiums towards a qualified health plan or 50% of a benchmark premium. Taxpayers who take the credit will have to reduce their health premium expense deduction by the amount of the credit under IRC §45R.

New Jersey does not have a similar health care credit. Therefore, the small employer health insurance

credit is not available for New Jersey gross income tax purposes. A taxpayer's accounting method for New Jersey gross income tax purposes must be the same as that used for Federal income tax purposes. N.J.S.A. 54A:8-3(c). Therefore, where a taxpayer took this credit for Federal purposes, thus reporting reduced expenses on the Federal return, the taxpayer's New Jersey gross income tax return must also reflect the reduced expenses.

Municipal Bond Derived Income — The Division was asked about the gross income tax treatment of income derived from municipal bonds received during tax year 2011.

The Division explained that interest income received from the bonds of a New Jersey municipality is exempt, while interest income received from the bonds of any other state's municipality is taxable. See N.J.S.A. 54A:6-14. Concerning capital gain income derived from municipal bonds, the Division similarly explained that income derived from New Jersey municipal bonds is exempt while income derived from the bonds of other states' municipalities is taxable. The Division also clarified that with respect to taxable capital gain income, the New Jersey Gross Income Tax Act does *not* have a special lower rate of tax.

Partnership Investment Club — A partner in an investment club partnership wrote to the Division asking about the consequences of the club's increasing to 10 "individual" members. More specifically, the partner asked whether having 10 members would cause the club to "lose exemption." The Division replied that having 10 individual members would not cause the club to lose certain exemptions.

Investment club partnerships that meet certain statutory criteria are exempt from the requirement to pay filing fees for the partners and the nonresident partner tax. To qualify for these exemptions, the investment club must meet these criteria: (1) it must be classified as a partnership for Federal income tax purposes; (2) all of the owners must be individuals; (3) all of the assets must be securities, cash, or cash equivalents; (4) the total value of the market assets must not exceed the lesser of \$42,400 per owner or \$302,300 (for tax year 2010, with amounts subject to annual inflation adjustments); and (5) the entity is not required to be registered with the Federal Securities and Exchange Commission (SEC).

The Division explained that the qualifying criteria do not include a limit on the number of individual partners. A resident partner of the club is subject to gross income tax on the partner's income derived through the partnership. Details on the partnership filing fee and nonresident partner tax are available in Technical Bulletin [TB-55\(R\)](#), *Partnership Filing Fee and Nonresident Partner Tax*.

Requirement to File Quarterly NJ-927 Withholding Tax Form — A business inquired about whether it was required to file Forms NJ-927 and WR-30 for employees on a quarterly basis even if it did not withhold any New Jersey gross income tax during that calendar quarter.

The Division responded that for New Jersey gross income tax purposes, all employers required to deduct and withhold gross income tax from employee wages must file quarterly income tax remittance returns. See

continued on page 19

tax briefs - from page 18

N.J.S.A. 54A:7-4(a). Employers who did not withhold any gross income tax during a particular calendar quarter are still required to file a return for that quarter as required under N.J.A.C. 18:35-7.3(a)(1).

Therefore, the employer is required to file a quarterly return if it has employees subject to New Jersey gross income tax, even if it did not withhold any New Jersey gross income tax during that calendar quarter.

Requirement for Tax Preparers to File Returns Electronically — For the 2011 taxable year and later, tax preparers that reasonably expect to prepare 11 or more New Jersey individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods to file those returns for which an electronic filing option is available. N.J.S.A. 54A:8-6.1. Currently, there is no electronic filing option available for a New Jersey fiduciary return, Form NJ-1041 (or Form NJ-1041SB for a small business trust).

Preparers must include the number of fiduciary returns they expect to prepare when determining whether they must file all other returns electronically. Additional information is available on the Division's Web site at: www.state.nj.us/treasury/taxation/efilemandate.shtml

Treatment of Key Employee Life Insurance for S Corporation — Several taxpayers have inquired about the taxability of proceeds from a key employee life insurance policy owned by an S corporation. Specifically, the taxpayers asked whether New Jersey follows the Federal treatment of the proceeds and whether they should be reported on

Schedule NJ-K-1 (Form CBT-100S). Under the scenario as presented, the S corporation collected the proceeds of the policy, and the policy and proceeds met the requirement for exclusion from income on the Federal level.

The Federal treatment was set forth in IRS Revenue Ruling 2008-42, which concluded that premiums paid by the S corporation on an employer-owned life insurance contract, of which it is directly or indirectly a beneficiary, do not reduce the S corporation's Accumulated Adjustments Account (AAA). Benefits received because of the death of the insured from an employer-owned life insurance contract that meets an income exception under IRC Section 101(j)(2) do not increase the S corporation's AAA. The exempt income is reported in the Federal Other Adjustments Account (OAA).

For New Jersey gross income tax purposes, any adjustments for New Jersey tax-exempt income earned by the S corporation, which would include the life insurance proceeds in addition to any other reductions made to the Federal AAA or Federal OAA, must be made to the New Jersey AAA, provided that these reductions have not already been taken into consideration in calculating S corporation income. (N.J.A.C. 18:35-1.5(e)(2)(i) and (ii))

Although the life insurance proceeds are generally exempt from Federal and State income tax when received by the S corporation, a distribution of the proceeds may be taxable to the shareholder when the distribution is made from New Jersey Earnings and Profits or is in excess of New Jersey Adjusted Stock Basis.

For New Jersey gross income tax purposes, the ordering rules for distributions when Federal OAA is present are as follows: (1) New Jersey Accumulated Adjustments Account (NJ AAA); (2) New Jersey Earnings and Profits (NJ E&P); and (3) New Jersey Adjusted Stock Basis. Distributions from NJ E&P are taxed as dividends since this account represents the S corporation's earnings that were accumulated while it was a C corporation. Distributions that are in excess of the shareholder's New Jersey Adjusted Stock Basis are taxed as capital gains. See N.J.A.C. 18:35-1.5(e)–18:35-1.5(l).

Schedule NJ-K-1 requires the shareholder to report the total distribution received from the S corporation. The distribution is then deducted from the NJ AAA and NJ E&P balances on the NJ-K-1.

Any capital gain that results from the S corporation distribution is reported on Schedule B of the New Jersey resident income tax return (Form NJ-1040) or Part I of the nonresident income tax return (Form NJ-1040NR).

Inheritance/Estate Tax Mutually Acknowledged Child Requirements — A taxpayer inquired about the relevant circumstances establishing a “mutually acknowledged child” relationship under N.J.S.A. 54:34-2.1 and N.J.A.C. 18:26-2.6 for transfer inheritance and estate tax purposes.

N.J.S.A. 54:34-2.1 in pertinent part states:

The transfer of property passing to any child to whom the decedent for not less than ten

tax briefs - from page 19

years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for ten years thereafter, shall be taxed at the same rates and with the same exemptions as the transfer of property passing to a child of said decedent born in lawful wedlock.

The relevant regulation (N.J.A.C. 18:26-1.1) describes a mutually acknowledged child as:

Any child to whom decedent for not less than 10 years prior to the transfer stood in the mutually acknowledged relationship of a parent, provided the relationship began at or before the child's fifteenth birthday and was continuous for 10 years thereafter. This applies to persons who were taken into the household and reared as children of the decedent, but who were never legally adopted by the decedent.

N.J.A.C. 18:26-2.6(a) lists the information requirements that must be submitted to the Division of Taxation to prove that a person is a mutually acknowledged child. The claim on behalf of such a transferee must include the following information:

1. The date and age the child was first taken into the household and mutually acknowledged child relationship assumed.
2. The period of time the relationship continued, with the dates given.

3. A complete statement of circumstances whereby the child was taken into the household.
4. The source and cost of the child's support.
5. The child's parentage indicating whether such parents are alive and their address or if deceased, the date of death and their legal domicile at death.
6. The person who was established as the parent of the child when the child registered at school. The person who signed the child's report cards and similar documents. The person who claimed the child as a dependent for Federal income tax purposes and the relationship claimed on the return of such individual.
7. The affidavits of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to them.
8. Any other details which will support the claim that a mutually acknowledged relationship of parent and child existed.

Sales and Use Tax

Game Truck — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a game truck which is a mobile video game theater which can be used for birthday parties, special occasions, school, and corporate functions. The game truck with attendant is provided at the location of the event and the participants play video games for a specified length of time.

The Sales and Use Tax Act imposes tax on any admission charge to or for the use of any place of amusement in New Jersey or to any entertainment event or sporting activity which

takes place in this State. N.J.S.A. 54:32B-3(e).

A per head charge to enter the game truck is taxable as an admission charge. However, a flat rate for the game truck for a certain number of hours which includes an attendant is not subject to sales tax.

Indoor Mini-Car Racing Track —

A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a charge to enter an indoor mini-car racing track facility.

The Sales and Use Tax Act imposes tax on any admission charge to or for the use of any place of amusement in New Jersey or to any entertainment event or sporting activity which takes place in this State. N.J.S.A. 54:32B-3(e). Therefore, a charge to enter an indoor mini-car racing track facility is subject to sales tax. However, a charge for a participant to race their own car is not subject to sales tax.

Natural Gas Purchased for Generation of Electricity —

A taxpayer inquired about the taxability of the purchase of natural gas used to generate electricity that is sold for resale.

The New Jersey Sales and Use Tax Act states that receipts from the purchase or use of "[n]atural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous

tax briefs - from page 20

to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity..." are exempt from sales and use tax. N.J.S.A. 54:32B-8.46b.(1).

Therefore, a wholesale producer of electricity may claim the above exemption to purchase natural gas to generate electricity that is sold for resale by issuing a properly completed Exempt Use Certificate (Form ST-4) to the natural gas provider.

Online Vouchers — The Division has received an inquiry as to whether sales tax is applicable to the sale of online vouchers by a taxpayer. The taxpayer is a marketing Web site that sells discounted "deals" for its contracted retailers. Retailers advertising on the site offer specified goods or services to visitors of the site at a discount when purchased within a short period of time, which can vary (e.g., days, hours). Upon purchase, the customer receives a voucher for the specified good or service that may be redeemed with the retailer within prescribed time periods, terms, and conditions. Although the online vouchers have limitations and generally can only be used for the purchase of specific identified products, they are not viewed as pre-purchases of goods or services. Therefore, the sale of an online voucher is not subject to sales tax at the time of its purchase.

As the goods or services are not being purchased and resold by the taxpayer, the sale of the voucher does not result in a transfer of title or possession of the related inventory or resources. Participating retailers agree to share a portion of the face value of the voucher with the taxpayer for its marketing services.

Upon redemption, if the goods or services are subject to sales tax (e.g., meals), the face value of the voucher is subject to sales tax in addition to any excess amount charged over the voucher amount. For purposes of the New Jersey Sales and Use Tax Act, sales tax must be charged on the total "receipt" from a retail sale; i.e., the actual amount of the sales price paid to the retailer. See N.J.S.A. 54:32B-2(d) and N.J.S.A. 54:32B-2(oo). When the voucher is redeemed, the retailer must charge tax on the discounted price payable to the retailer at the face value of the voucher, not on the original price before the reduction. The reduced price is the "receipt" on which the sales tax is calculated.

Sales Lead Generator — A taxpayer inquired about the application of the New Jersey Sales and Use Tax Act to a charge by a sales lead generator to a car dealership.

A car dealership contracts with a sales lead generator. The sales lead generator agrees to list the car dealer's inventory on their Web site and make it searchable by prospective car buyers. The sales lead generator agrees to collect prospective buyers' information and verify the accuracy of the information. The car dealership is then provided with the sales lead information via e-mail or fax. The information collected by the sales lead generator is not exclusive and may be provided to any or all of the participating car dealerships that have the same inventory or as designated by the search criteria. The sales lead generator charges for its service either per sales lead or as a flat monthly fee.

On and after October 1, 2006, sales and use tax is imposed on "information services." N.J.S.A. 54:32B-3(b)

(12). The law defines "information services" as the furnishing of information of any kind, which has been collected, compiled, or analyzed by the seller, and provided through any means or method, other than personal or individual information which is not incorporated into reports furnished to other people. N.J.S.A. 54:32B-2(yy).

A list containing names, addresses, phone numbers, e-mail addresses, and vehicle descriptions that prospective customers are interested in is a sales lead, which meets the definition of information services as referenced above. Since this information was collected and may be provided to all participating car dealerships that have the same make and model in their inventory, the information is not "personal or individual."

Therefore, a charge for sales leads is subject to tax as an information service. The Division has determined that the method of billing, whether per sales lead or a flat monthly fee, does not affect the taxability. Even where a sales lead generator's service is combined with Web site advertising or space, the true object of the overall service remains the provision of sales leads.

Shed and Gazebo Installation — A taxpayer inquired whether charges to install a shed or gazebo are subject to sales or use tax.

The Division responded that the Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to

continued on page 22

tax briefs - from page 21

tax. N.J.S.A. 54:32B-3(b)(4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property on real property is also subject to tax. N.J.S.A. 54:32B-3(b)(4). A "capital improvement" occurs when tangible personal property is permanently affixed to real property (land or buildings) and becomes a permanent part of the real property. To qualify as a capital improvement, the installation must increase the capital value of the property or significantly increase the useful life of the property. If the work performed on the real property results in an exempt capital improvement, the installer does not collect sales tax on the labor portion of the bill, provided the property owner provides the installer with a properly completed Certificate of Exempt Capital Improvement (Form ST-8).

Thus, charges to install sheds and gazebos are subject to tax if they are not permanently attached to the real property as the statute requires. An exempt capital improvement would result if the shed or gazebo is permanently attached to the real property (e.g., secured to cement footings).

Shipping Merchandise Via New Jersey to a Nonresident Member of the Military Stationed Overseas

— A taxpayer inquired about the following scenario:

A taxpayer is a member of the military stationed overseas whose home of record is not New Jersey. The taxpayer purchased a computer over the Internet but the seller of the computer will not ship to an Army Post Office (APO) address. The seller informed the taxpayer that the computer will be shipped to

a company in New Jersey who will remail the tangible personal property to the taxpayer's APO address. Since the computer is being shipped to New Jersey, the taxpayer inquired whether the seller should charge and collect New Jersey sales tax.

In general, registered businesses who sell taxable items or services must collect and remit New Jersey sales tax whenever such sales are completed by delivery of the item(s) to a New Jersey location. However, the sale of the property is not subject to New Jersey sales or use tax if the property is delivered by the seller to a freight forwarding company. Items that are normally taxable when sold and delivered to a New Jersey location are not subject to New Jersey sales tax when they are shipped to a destination outside this State. Freight forwarding companies act as intermediaries between shippers and the carriers which transport the goods by rail, motor, or water to the consignee. The shipment of taxable tangible personal property by a registered seller to a freight forwarding company is deemed to be an out-of-State shipment insofar as the seller is concerned. In this instance, an exemption certificate is not required in order to document an out-of-State sale. Instead, the seller should retain a copy of the invoice stating that the property was delivered to a freight forwarder for further shipment overseas as evidence of the exemption.

Unless the seller delivers the computer to a freight forwarding company the Sales and Use Tax Act does not contain an exemption for tangible personal property delivered to a location in this State.

Subsidized Employee Cafeteria

— A taxpayer inquired about the sales tax consequences when an employer

pays subsidies to a food service company to reduce the cost of food to its employees.

The Division responded that if a subsidy is paid by an employer *in addition* to a specified amount paid by the employees, both amounts are taxed as "receipts from the sale of prepared food." N.J.S.A. 54:32B-3(c)(1); N.J.A.C. 18:24-12.6(d). For example, an employer pays \$0.50 to a caterer for each sale of prepared food to its employees. The employees will pay any amount due which exceeds the \$0.50 paid by the employer.

If the amount is paid as a "management fee" (guarantee of profit or cost reimbursement made by the employer), the fee is not subject to tax where a reasonable charge is made to the employee for the prepared food.

Terminaling Service — A taxpayer inquired about the taxability of a charge for a "terminaling service" which is described as the storage of a customer's fuel inventory in a tank. Customers can drive up to a terminal and withdraw from their inventory and load stored fuel into their truck for delivery to a gas station.

The New Jersey Sales and Use Tax Act states that storing all tangible personal property not held for sale in the regular course of business and furnishing of space for storage of tangible personal property by a person engaged in the business of furnishing space for such storage is subject to sales tax. N.J.S.A. 54:32B-3(b)(3). "Space for storage" means secure areas, such as rooms, units, compartments or containers, whether accessible from outside or from within a building, that are designated for the use of a customer and wherein the customer has free

continued on page 23

tax briefs - from page 22

access within reasonable business hours, or upon reasonable notice to the furnisher of space for storage, to store and retrieve property. Space for storage does not include the lease or rental of an entire building, such as a warehouse or airplane hanger. N.J.S.A. 54:32B-3(b)(3). For more information on storage see publication [ANJ-26](#), *Space for Storage*. The storage of goods held as inventory is not taxable. N.J.S.A. 54:32B-3(b)(3). Therefore, a charge for a “terminaling service” as described above is not subject to sales tax because it involves the storage of inventory that will be sold in the regular course of business. The customer should issue the seller a properly completed resale certificate to document that the terminaling service is not subject to sales tax. □

In Our Courts

Corporation Business Tax

Entire Net Income – *International Business Machines Corporation & Crestron Electronics, Inc. v. Director, Division of Taxation*, decided January 26, 2011; Tax Court Nos. 011630-2008 and 011795-2009.

At issue is whether a corporation’s entire net income includes Internal Revenue Code (IRC) §114 extraterritorial income during the tax years 2002–2005. In 2000, IRC §114 was enacted to provide that extraterritorial income was not included in gross income for Federal income tax purposes. Extraterritorial income was defined by IRC §114 as “gross income of the taxpayer attributable to foreign trading gross receipts.” Under Federal law, both plaintiffs first reported their extraterritorial income on Line 1 of their Federal

returns (Form 1120). Thereafter, the extraterritorial income was excluded pursuant to IRC §114(a) to arrive at taxable income before net operating loss deduction and special deductions (Line 28 of Federal Form 1120).

In calculating New Jersey entire net income, the Division determined that IRC §114 income was not excludable because income from sources outside the United States that was not included in Federal taxable income must be added back to Federal taxable income to calculate the corporation’s entire net income. N.J.S.A. 54:10A-4(k) defined entire net income as follows:

“Entire net income” shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

For the purpose of this act, the amount of a taxpayer’s entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report ... to the United States Treasury Department for the purpose of computing its Federal income tax.

This statute continues and thereafter states that the determination of entire net income shall be without the exclusion, deduction or credit of numerous items that are both additions and subtractions to Federal taxable income. These items are listed in N.J.S.A. 54:10A-4(k)(2)(A) through

(J). However, the extraterritorial income exclusion from Federal taxable income is not contained therein as an adjustment.

Interpreting the plain meaning of the statute, the Court determined that the broad definition of entire net income in the statute’s first paragraph is limited by the second paragraph. If the first paragraph stood alone, then the Court noted that extraterritorial income would be included in entire net income and the Division would prevail. However, the first paragraph must be read in conjunction with the second paragraph that couples entire net income under the Corporation Business Tax Act with Line 28 of Federal Form 1120, “taxable income before net operating loss deduction and special deductions.” Therefore, the starting point is Line 28, which is then adjusted for items that are detailed in N.J.S.A. §54:10A-4(k)(2)(A) through (J) to arrive at entire net income. As extraterritorial income was not included as an adjustment, the Court concluded that extraterritorial income was therefore not included in entire net income for corporation business tax purposes. The Court noted that the Legislature could have amended the statute.

Untimely Refund Claim – *General Motors Acceptance Corporation v. Director, Division of Taxation*, decided April 1, 2011; Docket No. A-3505-09T3.

On September 14, 2001, General Motors Acceptance Corporation (GMAC) filed its 2000 corporation business tax return and paid the tax due. On the return, GMAC mistakenly reported a 50% dividends received deduction rather than a 100% dividends received deduction

continued on page 24

in our courts - from page 23

for dividends received from its 100% owned foreign subsidiary.

The Internal Revenue Service audited GMAC's 2000 consolidated return and determined that GMAC owed more tax due to Federal adjustments, unrelated to the dividends received deduction, for that year. When GMAC prepared the revenue agent report (RAR) disclosing to New Jersey the Federal adjustments, which resulted in its owing additional corporation business tax, GMAC discovered the mischaracterization of its percentage ownership in the subject foreign subsidiary at less than 80% rather than 100% and reporting a 50% dividends received deduction rather than a 100% dividends received deduction.

On November 10, 2005, GMAC filed a 2000 amended corporation business tax return incorporating the RAR and at the same time offsetting \$992,280 attributable to the additional dividends received deduction from the amount of additional tax due attributable to the RAR. On January 26, 2006, the Division issued a notice of assessment that denied the proposed offset.

GMAC claimed that it should be allowed to adjust its tax liability for the dividends received deduction because: (1) it is entitled to an offset under N.J.S.A. 54:49-16(b); (2) it is entitled to an offset under the doctrine of equitable recoupment; and (3) equity and justice permit an offset.

The Appellate Division determined that the refund claim was untimely under N.J.S.A. 54:49-14(a) because the November 10, 2005, amended return was beyond four years from the September 14, 2001, payment.

The Appellate Division found that where there is a Federal adjustment, N.J.S.A. 54:10A-13 grants the taxpayer an extension of four years to file a refund claim attributable to the Federal adjustment. GMAC did not suggest that the dividends received deduction was related to the Federal adjustment, and the overpayment occurred from GMAC's mistake in the percentage of ownership. Therefore, GMAC was not entitled to an N.J.S.A. 54:10A-13 extended four-year period to file a refund claim.

Addressing GMAC's offset claim pursuant to N.J.S.A. 54:49-16(b), the Appellate Division found that, in general, this statute permits an offset of a deficiency assessment for taxes erroneously or illegally collected or paid under mistake of fact or law in certain circumstances that did not exist in this case. This offset provision is applicable during the time period that a corporation business tax deficiency assessment may be made, which is generally four years under N.J.S.A. 54:49-6(b). The Appellate Division determined that the claim was beyond the four-year statute of limitations for assessments, the four-year extension of N.J.S.A. 54:10A-13 was inapplicable, and noted that the complaint was not filed during the time that a deficiency assessment of tax could be made. Therefore, N.J.S.A. 54:49-16(b) provided no basis to permit an offset. In addition, the Appellate Division noted that the Federal audit resulted in an increase of corporation business tax rather than a finding that the State erroneously or illegally collected taxes from GMAC.

The Appellate Division determined that GMAC was not entitled to an offset under the doctrine of equitable recoupment. There are three elements of equitable recoupment:

(1) there must be a single transaction; (2) there must be an identity of interest among parties; and (3) a need to balance the equities must exist. The first element of equitable recoupment was not satisfied because recoupment was not a result of the audit of GMAC and therefore did not result from the same transaction. As to the third element, the equities were neutral at best. The fact that GMAC was a sophisticated taxpayer and that statutes of limitations are associated with fairness weighed against GMAC.

In affirming the Tax Court's decision, the Appellate Division did not discuss other contentions presented by GMAC stating that they were without sufficient merit to warrant a discussion in a written opinion.

Untimely Refund, Doctrine of Equitable Recoupment – *General Motors Acceptance Corporation, a Delaware Corporation, v. Director, Division of Taxation*, Supreme Court of New Jersey No. C-38 September Term 2011, decided September 9, 2011.

The New Jersey Supreme Court denied General Motors Acceptance Corporation's (GMAC) petition for certification.

The Appellate Division, No. A-3505-09T3, decided April 1, 2011, affirmed the Tax Court decision, 26 NJ Tax 93 (2010), which granted the Director's summary judgment motion.

On September 14, 2001, GMAC filed its 2000 corporation business tax (CBT) return and paid the tax due. On the return, GMAC mistakenly reported a 50% dividends received deduction rather than a

continued on page 25

in our courts - from page 24

100% dividends received deduction for dividends received from its 100% owned foreign subsidiary.

The Internal Revenue Service audited GMAC's 2000 consolidated return and determined that GMAC owed more tax due to Federal adjustments, unrelated to the dividends received deduction, for the 2000 tax year. When GMAC prepared the revenue agent report (RAR) disclosing to New Jersey the Federal adjustments, which resulted in its owing additional CBT, GMAC discovered the mischaracterization of its percentage ownership in the subject foreign subsidiary at less than 80% rather than 100% and reporting a 50% dividends received deduction rather than a 100% dividends received deduction.

On November 10, 2005, GMAC filed a 2000 amended CBT return incorporating the RAR and at the same time offsetting the additional amount attributable to the additional dividends received deduction from the amount of additional tax due attributable to the RAR. On January 26, 2006, the Division issued a notice of assessment that denied the proposed offset.

GMAC claimed that it should be allowed to adjust its tax liability for the dividends received deduction because: (1) it is entitled to an offset under N.J.S.A. 54:49-16(b); (2) it is entitled to an offset under the doctrine of equitable recoupment; and (3) that equity and justice permit an offset.

The Appellate Division determined that the refund claim was untimely under N.J.S.A. 54:49-14(a) because the November 10, 2005, amended return was beyond four years from

the September 14, 2001, payment. The Appellate Division found that where there is a Federal adjustment, N.J.S.A. 54:10A-13 grants the taxpayer an extension of four years to file a refund claim attributable to the Federal adjustment. GMAC did not suggest that the dividends received deduction was related to the Federal adjustment and the overpayment occurred from GMAC's mistake in the percentage of ownership. Therefore, GMAC was not entitled to an extended four-year period to file a refund claim.

Addressing GMAC's offset claim pursuant to N.J.S.A. 54:49-16(b), the Appellate Division found that, in general, this statute permits an offset of a deficiency assessment for taxes erroneously or illegally collected or paid under mistake of fact or law in certain circumstances that did not exist in this case. This offset provision is applicable during the time period that a CBT deficiency tax assessment may be made, which is generally four years under N.J.S.A. 54:49-6(b). The Appellate Division determined that the claim was beyond the four-year statute of limitations for assessments, the four-year extension of N.J.S.A. 54:10A-13 was inapplicable, and noted that the complaint was not filed during the time that a deficiency assessment of tax could be made. Therefore, N.J.S.A. 54:49-16(b) provides no basis to permit an offset. In addition, the Appellate Division noted that the Federal audit resulted in an increase of CBT rather than a finding that the State erroneously or illegally collected taxes from GMAC.

The Appellate Division determined that GMAC was not entitled to an offset under the doctrine of equitable recoupment. There are three elements of equitable recoupment:

(1) there must be a single transaction, (2) there must be an identity of interest among parties, and (3) a need to balance the equities must exist. The first element of equitable recoupment was not satisfied because recoupment is not a result of the audit of GMAC and therefore did not result from the same transaction. As to the third element, the equities were neutral at best. The fact that GMAC was a sophisticated taxpayer and that statutes of limitations are associated with fairness weighed against GMAC.

Gross Income Tax

Nonbusiness Bad Debt – *Harlan W. Waksal v. Director, Division of Taxation*, Superior Court of New Jersey Appellate Division, Docket No. A-6062-09T4, decided October 31, 2011.

The Appellate Division decision affirmed the Tax Court decision, Docket No. 001191-2009 (2010), which affirmed the final assessment of the Director.

In January 2002 the taxpayer loaned money to his brother, who in turn signed a promissory note and agreed to repay the loan on or before January 31, 2004. The taxpayer's brother then defaulted on the loan. As a result, on the Federal individual income tax return the taxpayer reported the loan amount as a short-term capital loss. The taxpayer also reported the same amount as a loss from the sale, exchange, or other disposition of property on the 2004 New Jersey gross income tax return.

In the ruling, the Appellate Division held that the "worthless debt, although treated as a loss from the sale or exchange of a capital asset held for not more than one year..."

continued on page 26

in our courts - from page 25

under §166(d)(1)(b) of the Internal Revenue Code, does not fit the statutory rubric of “sale, exchange or other disposition of property” found in N.J.S.A. 54A:5-1(c).

Therefore, the taxpayer’s loss from the nonbusiness bad debt could not be used to offset other gains derived from the sale, exchange, or other disposition of property under N.J.S.A. 54A:5-1(c).

Local Property Tax

Farmland Assessment – *Atlantic Coast LEH, LLC, v. Township of Little Egg Harbor*; decided July 26, 2011; Tax Court.

This case concerns the issue of whether a remote twelve-acre predominantly vacant plot of land located in Little Egg Harbor Township qualifies for preferential reduced farm assessment under the Farmland Assessment Act of 1964. The property owner, Atlantic Coast LEH, LLC, pays an out-of-State beekeeper to maintain beehives on the property for the production of honey, wax, and other products. The Farmland Assessment Act defines agricultural use to include beekeeping (N.J.S.A. 54:4-23.3). However, there is a dual use to the property, as the owner also collects rent for an operating cell phone tower that occupies less than an acre of land but stretches approximately twenty-five stories into the sky.

In 2003, Atlantic Coast contacted Wilson’s Honey, LLC, located in upstate New York, to set up eight beehives on the subject property. The hives were fenced in with the cell tower but the bees foraged on blueberry bushes, clover, and knapweed scattered over the entire 12.24 acres that comprise the subject property.

From 2003 to present, Wilson’s Honey purchased products created from the bees for amounts that barely satisfied statutory gross sales requirements for farmland qualification. The property averaged \$535 for the two years preceding the tax years at issue. Wilson’s Honey paid Atlantic Coast at least \$550 per year for the apiary products. Atlantic Coast paid Wilson’s Honey annually for the care of the bees on the property. There was no evidence, however, how often Wilson’s employees traveled from New York to tend the bees and to collect their products.

Atlantic Coast applied for farmland assessment for the subject property for tax years 2006 through 2009, and each time the assessor denied the claim. For tax year 2006, the assessor determined that the area was less than five acres and that the land had not been devoted to agricultural use for the two years prior to 2006. For tax year 2007, the assessor determined that the gross sales from apiary products did not exceed \$500 dollars and that the principal use of the property was for a “radio station.” There is no evidence that a radio station ever operated on the property. In 2008, the assessor denied the property for the same reasons and the assessor’s denial for 2009 is not in the record. Atlantic Coast filed appeals for each year with the Ocean County Board of Taxation, which upheld the assessor’s determinations. The taxpayer then filed complaints with the Tax Court of New Jersey.

The municipality does not dispute that the subject property exceeds five acres. Also, the parties are in agreement that apiary activity took place. The municipality does not dispute the fact that the plaintiff has met the gross income requirements

for the subject property. The fact that the beekeeping was not profitable does not disqualify the subject property from farmland assessment. Finally, the municipality does not dispute that the entire twelve acres were used for apiary activity and Atlantic Coast’s beekeeping activity, by itself, satisfies the statutory requirement for farmland assessment. However, the problem is that the property is also devoted to the operation of a cell phone tower that generates income for the property owner.

The Tax Court of New Jersey noted the following decisions when reviewing this matter. In *Township of Wantage v. Rivlin Corp.*, 23 N.J. Tax 441, 446 (Tax 2007) the Court stated: “Where the entire parcel seeking farmland assessment qualification also was used for other purposes, the court must determine if the agricultural or horticultural use is the dominant use of the property.” If the use of the property is predominantly for a purpose other than farmland assessment, the property is not entitled to farmland assessment.

The dominant use test was first applied in *City of East Orange v. Township of Livingston*, 102 N.J. Super. 512 (Law Div. 1968), aff’d, 54 N.J. 96 (1969). Judge Handler concluded that there can be multiple, simultaneous uses of property; however, “depending upon the particular lands involved, one use tends to become dominant.” The Court further explained: “even though the agricultural use is ‘active’ in the literal sense...compliance with this single (gross sales) criterion does not render the water reserve as land devoted to agricultural use.”

continued on page 27

in our courts - from page 26

Several additional court cases were cited where the dominant use of the subject property was not intended for agricultural or horticultural use.

Atlantic Coast's history with the property reveals an intention to construct a cell tower for commercial use and represents a significant capital expenditure. Also, the operation of the cell phone tower dominates the beekeeping activity on the property. The 290-foot cell phone tower overrides the physical aspects of the property. Although beekeeping is being carried out, the cellular tower dwarfs the beehives. Because the apiary activities are subordinate to the taxpayer's nonagricultural exploitation of the property, the assessor correctly denied the plaintiff's right to farmland assessment for the years in question.

Sales and Use Tax

Books and Records – *Ellgen Landscape & Construction, Inc. v. Director, Division of Taxation*, decided June 17, 2011; Tax Court No. 011636-2008.

Ellgen Landscaping and Construction, Inc. is a retail garden center located in Bernardsville, New Jersey. It sells fruits, vegetables, and construction/landscaping materials and also provides landscaping services.

At issue is whether the taxpayer maintained adequate books and records and whether the Division's auditor erred in disregarding the taxpayer's records.

The auditor determined that the gross receipts on Ellgen's sales and use tax and corporation business tax returns did not match. In addition, the taxpayer acknowledged that its bank deposit receipts did not match

the amounts on either its sales and use tax or corporation business tax returns. The auditor therefore determined that a markup analysis was appropriate.

The taxpayer countered that the auditor used a markup analysis that deviates from what is normal or expected and that the auditor ignored Ellgen's annual summaries, improperly used sale prices instead of purchase prices when calculating use tax, arbitrarily categorized sales as taxable or nontaxable, used an inflated markup figure, and incorrectly allocated income to Ellgen's different lines of business.

In *Yilmaz, Inc. v. Director, Division of Taxation*, 22 N.J. Tax 204, 236 (Tax 2005), aff'd, 390 N.J. Super, 440 (App. Div. 2007) the taxpayer is charged with providing "cogent evidence that is definitive, positive and certain in quality and quantity to overcome the presumption" of the Director. "Naked assertions of the taxpayer, without supporting records or documentation, are insufficient to rebut the Director's presumption."

Although N.J.A.C. 18:24-2.4(a) states "where summary records are maintained... the seller may dispose of individual sales slips... or cash register tapes", the court in *Charley O's, Inc. v. Director, Division of Taxation*, 23 N.J. Tax 171, 187 (Tax 2006) found that, "if an auditor has reason to believe that a taxpayer's summary records are inaccurate, and no cash register tapes are available, the use of the markup analysis is appropriate."

Judge Bianco opined, "Accordingly, the court concludes that Ellgen failed to meet its burden since it did not provide any cogent evidence, in the form of cash register receipts,

purchase journals, general ledgers, or paid bills, and it did not provide documentation demonstrating that its two part-time workers were independent contractors, rather than employees. Although Ellgen provided the Director with summary records of cash receipts, the court is satisfied with the Director's determination that these records were unreliable thereby warranting a markup analysis. Likewise Ellgen's tax return, which contains a deduction labeled 'outside casual labor', is unsubstantiated and does not prove that Ellgen remitted withholdings."

Judge Bianco granted summary judgment in favor of the Director.

Charges for Transportation and Disposal of Septic Waste – *English Sewage Disposal, Inc. v. Director, Division of Taxation*, decided April 11, 2011; Docket No. 007870-2008.

The Tax Court granted the Director's motion for summary judgment, concluding that plaintiff's invoices for per-gallon charges to its customers, said to represent charges for the transportation and disposal of septic waste, are subject to sales tax and therefore not exempt under N.J.S.A. 54:32B-8.11.

The Court found that: (a) the transportation costs were not separately stated; (b) under the "predominant purpose test" the transportation is incidental to the service being rendered and the service for which the customer employed plaintiff to perform; i.e., pumping the septic tank, servicing the tank itself (though not mentioned in the opinion), and removal of septic waste from the premises; and (c) plaintiff is not excused by N.J.S.A. 54:49-11(b)

continued on page 28



in our courts - from page 27

from payment of penalty and interest on the assessment, as the advice rendered by the Division was issued to a completely separate entity, even though plaintiff was a successor to the entity to which the advice was rendered and the accountant was the same for both entities. Furthermore, copies of the letters requesting the Division's advice were unavailable, so there is no frame of reference for the basis of the Division's advice. □

In Our Legislature **Cigarette Tax**

Forfeiture of Contraband Tobacco Products and Cigarettes — See Tobacco Products Tax.

Corporation Business Tax
Single Sales Fraction Formula for Income Allocation — P.L. 2011, c.59, signed into law on April 28, 2011, and effective immediately, except section 2, which will apply to privilege periods beginning on or after January 1, 2012, modifies the formula used to determine the portion of the income of a corporation subject to tax by New Jersey from a three-factor formula to a single (sales) factor formula and establishes a specialized sales fraction formula for airlines that are subject to taxation.

Under the old law, New Jersey employed a formula that apportioned a share of a corporation's income to the State based on: (1) a weighted average of a corporation's property in the State over the corporation's total property, representing 25% of the apportionment; (2) a corporation's sales in the State over the corporation's total sales, representing 50% of the apportionment; and (3) the corporation's payroll in the State

over the corporation's total payroll, accounting for the remaining 25% of the apportionment.

Pursuant to the new law, this change is phased in over three years, commencing with privilege periods beginning on or after January 1, 2012, but before January 1, 2013. For that year, the sales fraction will account for 70% of the apportionment and the property and payroll fractions will each account for 15% of the apportionment. For privilege periods beginning on or after January 1, 2013, but before January 1, 2014, the sales fraction will increase to 90% and the property and payroll fractions will each account for 5% of the apportionment. For privilege periods beginning on or after January 1, 2014, the sales fraction will account for 100% of the apportionment.

The new law institutes a sales fraction for airlines determined as the ratio of an airline's revenue miles in this State divided by an airline's total revenue miles. Previously, the sales fraction for airlines was determined based on the ratio of departures from New Jersey to total departures, weighted as to cost and value of aircraft by type.

Research and Development Tax Credit — P.L. 2011, c.83, signed into law on June 30, 2011, effective immediately, and applicable to privilege periods beginning on or after January 1, 2012, removes a restriction on the application of the research and development tax credit. The credit had been limited to 50% of the liability otherwise due for the tax period.

The research and development tax credit remains equal to 10% of the increase in "qualified research expenses" (research performed by or for the taxpayer) in a tax year over

a base amount, plus 10% of the "basic research payments" (university research funded by the taxpayer) in a tax period. The credit is limited to expenditures made in New Jersey. The new law does not affect the allowance of the credit.

The new law retains the restriction that the credit may not reduce the tax liability to less than the statutory minimum and retains the Director's prerogative as to prioritization of corporation business tax credits.

Minimum Tax — P.L. 2011, c.84, signed into law on June 30, 2011, and effective immediately, decreases the minimum tax on New Jersey subchapter S corporations by 25% for taxable periods beginning on or after January 1, 2012, as follows:

New Jersey Gross Receipts	Minimum Tax*
Less than \$100,000	\$ 375.00
\$100,000 or more, but less than \$250,000	562.50
\$250,000 or more, but less than \$500,000	750.00
\$500,000 or more, but less than \$1,000,000	1,125.00
\$1,000,000 or more	1,500.00

*The minimum tax of New Jersey subchapter S corporations that are members of affiliated or controlled groups with total payrolls of \$5,000,000 or more will remain \$2,000 annually.

Gross Income Tax
Checkoff for Boys and Girls Clubs in New Jersey Fund — P.L. 2011, c.57, signed into law on April 20, 2011, effective immediately, and applicable to taxable years beginning on or after January 1, 2012, establishes the Boys and Girls Clubs in New Jersey Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns in support of New Jersey's Boys and Girls Clubs.

continued on page 29



in our legislature - from page 28

Alternative Business Income or Loss Calculation — P.L. 2011, c.60, signed into law on April 28, 2011, effective immediately, and applicable to taxable years beginning on or after January 1, 2012, establishes an alternative calculation that permits taxpayers who generate income from different types of business entities to offset gains from one type of business with losses from another, and permits taxpayers to carry forward business-related losses for a period of up to 20 taxable years.

Gains and losses derived from one or more of the following business-related categories of gross income may be netted: net profits from business; net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of S corporation income. Thus, a taxpayer who sustains a loss from a sole proprietorship may apply that loss against income derived from a partnership, subchapter S corporation, or rents and royalties, but is prohibited from applying those losses from those categories of income to income that is not related to the taxpayer's conduct of the taxpayer's own business, including salaries and wages, disposition of property, and interest and dividends.

The law provides that net losses from business-related categories of income may be carried forward and applied against income in future taxable years. The law limits the application of net losses which are carried forward to gains and losses from the same business-related categories of income from which the net loss is derived, and allows the losses to be carried forward for a period of

up to 20 taxable years following the year the net loss occurs.

The changes are phased in over five years beginning with tax year 2012.

Checkoff for NJ National Guard State Family Readiness Council Fund — P.L. 2011, c.117, signed into law on August 19, 2011, effective immediately, and applicable to tax years 2012 and after, establishes the NJ National Guard State Family Readiness Council Fund. It gives New Jersey taxpayers the opportunity to make voluntary contributions on their State gross income tax returns to support members of the New Jersey National Guard and their families in need of assistance.

Senior Gold Prescription Discount Program — P.L. 2011, c.131, signed into law on September 16, 2011, and effective immediately, requires the Division of Taxation to prominently display the eligibility requirements for and benefits available under the Senior Gold Prescription Discount Program in the gross income tax return instruction booklet for tax years 2011 and after.

Insurance Premiums Tax Surplus Lines — P.L. 2011, c.119, signed into law on August 19, 2011, and effective July 21, 2011, revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance. These revisions are intended to bring "the surplus lines law," P.L. 1960, c.32 (N.J.S.A. 17:22-6.40 et seq.), into compliance with the Federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), which was part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the NRRRA, the ability to share surplus lines insurance premium tax

revenue will be suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

A state that does not join such an agreement may collect 100% of the taxes due from insureds located in its state, otherwise known as "home-state insureds" (as detailed in the law). Accordingly, this bill authorizes the Commissioner of Banking and Insurance to enter into compacts or agreements with other states with respect to such collections.

Miscellaneous

Employee Leasing Companies — P.L. 2011, c.118, signed into law on August 19, 2011, and effective 12 months following enactment, makes various changes to several laws that affect the regulation and business operations of employee leasing companies, or professional employer organizations (PEOs).

Employee leasing companies are business entities that manage human resources, employee benefits, health insurance, and payroll and workers' compensation for small businesses. Companies contract with an employee leasing company to assist them with employee-related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims, allowing the client companies to concentrate on the operational aspects of their businesses. Employee leasing companies are not temporary employment agencies; employee leasing companies become "co-employers" of the employees of the businesses to which they provide services. Employee leasing companies are regulated

in our legislature - from page 29

by the Department of Labor and Workforce Development pursuant to P.L. 2001, c.260 (N.J.S.A. 34:8-67 et seq.).

Specifically, the New Jersey employee leasing company statute (1) establishes a limited registration process for certain small, out-of-State employee leasing companies; (2) makes several changes to the financial test for Department of Labor and Workforce Development registration of employee leasing companies; (3) allows for the electronic filing of compliance documents; and (4) clarifies certain responsibilities, rights, and liabilities of employee leasing companies, client companies, and covered employees, as well as a host of other provisions affecting these entities. The Act also supplements the Sales and Use Tax Act, P.L. 1966, c.32 (N.J.S.A. 54:32B-1 et seq.) to clarify and allocate the tax liabilities of client companies and employee leasing companies if the tax were to be applied prospectively to services provided by client companies or to services provided by employee leasing companies. Also, this bill similarly clarifies and allocates tax liabilities of a per-employee tax or payroll tax imposed on a client company or an employee leasing company. Lastly, the new law clarifies that a tax credit or economic benefit or incentive available to employers accrues to a client company employer with an agreement with an employee leasing company.

Moratorium on Imposition of Fees on Nonresidential Construction Projects — P.L. 2011, c.122, signed into law on August 24, 2011, and effective immediately, extends for two years, until July 1, 2013, the

moratorium on the imposition of fees on nonresidential construction projects.

The fees, known as Statewide non-residential development fees, were enacted as part of a revision of the Fair Housing Act, pursuant to P.L. 2008, c.46. A moratorium was placed on the imposition of the fees until July 1, 2010, pursuant to the Economic Stimulus Act of 2009, P.L. 2009, c.90, and extended again by this statute. Any monies paid during the period from July 1, 2010, to the present must be repaid. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

Uniform Application for Small Businesses Seeking Financial Assistance — P.L. 2011, c.123, signed into law on September 1, 2011, and effective immediately, requires the Department of State, in consultation with the New Jersey Economic Development Authority, to establish and maintain a program to assist small businesses in identifying financial assistance programs offered by any State agency for which the business may be eligible. A uniform application will be devised for the purpose of gathering basic operational and financial information from small businesses seeking assistance under this program, and any additional information as deemed necessary by the Department.

Exemption From Bulk Sale Notification Requirements — P.L. 2011, c.124, signed into law on September 14, 2011, effective immediately, and retroactive to August 1, 2007, exempts certain sales of real property from the bulk sale notification

requirements that are used to administer State taxes.

Under the bulk sales law, the purchaser of business assets must notify the Director of the sale at least 10 days before the transfer of goods or payment or the purchaser can become liable for taxes owed by the seller. The Director must respond within that 10-day timeframe. If the Director notifies the purchaser that the seller owes State taxes, the purchaser must escrow any sums owed to the State. If the purchaser fails to notify the Director, the purchaser can be held liable for any taxes of the seller. If the Director fails to respond to the notice within the allowed time, the sale can continue and the purchaser has no liability for the seller's taxes.

The Act provides an exemption from the bulk sale notification requirements for sales of a simple dwelling house, seasonal rental, or lease of real property if the seller, transferor, or assignor is an "individual," "estate," or "trust" for gross income tax purposes.

However, bulk sales law provisions still apply if the seller, transferor, or assignor is a business entity, including but not limited to a corporation or a partnership.

Multiple Taxes

Urban Transit Hub Tax Credit Act and the New Jersey Economic Stimulus Act of 2009 Expanded — P.L. 2011, c.89, signed into law on July 26, 2011, and effective immediately, expands the Urban Transit Hub Tax Credit Act (UTHTCA) and the New Jersey Economic Stimulus Act of 2009 (Stimulus Act) to include certain mixed-use projects as creditable investments and to change



in our legislature - from page 30

the manner in which the tax credits under the UTHTCA are treated by eligible businesses.

Currently, under the UTHTCA a business may receive tax credits of up to 100% of its qualified capital investment in a business facility that (1) is located in an urban transit hub (i.e., an “urban aid” municipality, served by a commuter rail station, in which at least 30% of real property value is exempt from property taxes); and (2) employs at least 250 persons at the facility. Annually, for 10 years, the business may apply a credit equal to 10% of the amount of the investment against corporation business tax, insurance premiums tax, or gross income tax liability. A tenant in these qualified business facilities may also be allowed credits if the tenant occupies space in the facility that proportionally represents at least \$17.5 million of the capital investment in the facility and employs at least 250 persons in the facility. For a business or a tenant to be eligible for the credit, the owner of the facility has to have made or acquired capital investments in the facility of not less than \$50 million.

Capital Investment

Under a separate but similar urban transit hub tax credit program enacted as part of the Stimulus Act, a developer could receive tax credits of up to 20% of its capital investment in a qualified residential project located in an urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

With the enactment of the new law, credits of up to 35% of an eligible applicant’s capital investment in a mixed-use project comprising both a qualified business facility and a

qualified residential project, neither of which by itself satisfies the total investment minimum of \$50 million, subject to certain restrictions as set forth in the Act, is allowed.

Carryforward Credits for Urban Transit Hub Tax Credit Recipients

UTHTCA recipients may now (1) carry forward the credits into no more than 20 subsequent tax accounting or privilege periods with a limit on the amount allowed in any fiscal year to \$150 million; and (2) increase from 20% to 35% the proportion of the cost of capital invested in a qualified residential project located within an urban transit hub that they can receive as a tax credit. The definition of “urban transit hub” now includes any rail spur located adjacent to or within a one mile radius surrounding the entrance to property for loading and unloading freight cars on trains.

Job Relocation Within the State No Longer a Factor

The New Jersey Economic Development Authority (EDA) can no longer consider the relocation of a job within the State as a factor in making its determination of whether a capital investment would yield a net positive benefit to the State, unless the business proposes to transfer existing jobs as part of a consolidation of business operations from two or more locations and municipalities. Previously, the EDA considered a job relocated within the State as a new job and therefore, creating a benefit.

Municipalities to Determine Percentage for Occupancy by Low- or Moderate-Income Households Within an Urban Transit Hub

Finally, for the purposes of mixed-use projects or qualified residential projects where a business receives an

urban transit hub tax credit, the amended bill allows eligible municipalities under the UTHTCA to determine the amount of the percentage, up to 20% of the total, of newly constructed residential units set aside for occupancy by low- or moderate-income households within an urban transit hub.

Tobacco Products Tax Forfeiture of Contraband Tobacco Products and Cigarettes

— P.L. 2011, c.80, signed into law on June 29, 2011, and effective immediately, amends the Tobacco Products Wholesale Sales and Use Tax Act, Cigarette Tax Act, and related criminal statutes. The new law supplements and makes a number of changes to P.L. 1990, c.39 (N.J.S.A. 54:40B-1, et seq.), and P.L. 1948, c.65 (N.J.S.A. 2C:64-1), respectively.

The law provides that all tobacco products subject to the tax imposed under P.L. 1990, c.39, on which the tax has not been paid as required found in any place in the State are declared to be, prima facie, contraband goods and may be seized by the Director, Division of Taxation, the Director’s agents or employees, or by any peace officer of the State, when so ordered by the Director, without a warrant. The Director may authorize the use for law enforcement purposes of any untaxed tobacco products forfeited.

In addition, the Director may order the return of any seized tobacco product where there is reason to believe, upon the presentation of satisfactory proof, that the owner has not willfully or intentionally evaded any tax imposed under P.L. 1990, c.39.



in our legislature - from page 31

Although the Director may order the destruction of any tobacco product, as an alternative to destruction the Director may resell any untaxed tobacco product to the manufacturer of that tobacco product, but such tobacco product shall be resold only for export or destruction.

All unstamped cigarettes forfeited to the State under this law will be destroyed. However, the Director may, prior to the destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such cigarettes in order to assist the Director in any investigation regarding such cigarettes.

The seizure of any unstamped or illegally stamped cigarettes or any other contraband cigarettes under the provisions of the law does not relieve any person from a fine, imprisonment, or other penalty for violation of any of the provisions of the law. The Director, the Director’s agents or employees, or any peace officer of the State, when directed to do so, will not be responsible in any court for the seizure or the confiscation of unstamped or illegally stamped packages of cigarettes. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2011 (January 1, 2011 – December 31, 2011) and tax year 2012 (January 1, 2012 – December 31, 2012) 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.

[2011](#) [2012](#)

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

[2011](#) [2012](#)

- **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.

[2011](#) [2012](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ...1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement Hotline.....1-800-882-6597
- Earned Income Tax Credit Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System1-877-829-2866
- 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