

# New Jersey State Tax news

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## What's New for Tax Year 2006

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

- **Practitioners' E-File Mandate** — Tax practitioners who prepared 100 or more 2005 New Jersey resident income tax returns must use one of the New Jersey electronic filing methods (NJ WebFile or NJ E-File) to file all 2006 New Jersey resident income tax returns and to pay any tax on behalf of their clients. 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.

A [list](#) of links to materials relating to this requirement appears on page 17.

- **NJ TeleFile Discontinued** — The NJ TeleFile System that allowed taxpayers to file their returns by phone has been discontinued. Taxpayers who want to file their returns electronically can use NJ WebFile, the Division's free Internet filing program, or approved vendor software. For information on New Jersey's electronic filing methods, go to:

[www.njfastfile.com](http://www.njfastfile.com)

- **Earned Income Tax Credit Schedule** — The Earned Income Tax Credit Schedule no longer appears on page 3 of Form NJ-1040 but is now included in the instruction booklet instead. Eligible taxpayers must complete the schedule to calculate the amount of their New Jersey earned income tax credit. Taxpayers who asked the Internal Revenue Service to calculate their Federal earned income credit must fill in the oval at Line 50, Form NJ-1040 instead of entering a credit amount.
- **Designated Contribution** — In addition to the charitable funds listed on the return, taxpayers may designate a contribution to one of seven other funds. The new fund added for 2006 is the World Trade Center Scholarship Fund (07).
- **Sheltered Workshop Tax Credit** — Certain taxpayers that employ qualified handicapped person(s) in a "sheltered workshop" arrangement may be eligible for a credit. Eligible taxpayers must complete Form GIT-317 to calculate the amount of their credit.
- **Use Tax Due on Out-of-State Purchases** — The New Jersey sales and use tax rate increased from 6% to 7% on all retail sales of taxable merchandise or services occurring on or after July 15, 2006. When calculating

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what's new for 2006 - from page 1

the exact amount of use tax due on their out-of-State purchases to report on Form NJ-1040, taxpayers must use the rate in effect at the time of the purchase.

- **Total Property Taxes Paid** — Taxpayers are now required to enter on Line 36a of their resident income tax return the total property taxes due and paid during 2006 on their qualified principal residence in New Jersey. For tenants, 18% of the rent paid during the year is considered property taxes paid.
- **Homeowner on October 1, 2006** — Taxpayers who owned, occupied, and paid property taxes on a home in New Jersey that was their principal residence on October 1, 2006, must fill in the oval at Line 36b, Form NJ-1040. Taxpayers who were tenants on October 1, 2006, or who were not homeowners on October 1, 2006, do not fill in the oval.
- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2006 is .037716.

**Property Tax Relief Programs**

- **Homestead Rebate Program** — The Homestead Rebate Program (previously referred to as the FAIR rebate) provides rebates for New Jersey homeowners and tenants who meet the eligibility requirements. How you apply for the rebate is determined by whether you were a homeowner or a tenant on October 1, 2006. Homeowners and tenants file different applications.

Benefits available under this program are subject to change.

**Tenants** who meet the eligibility requirements use the application in the New Jersey income tax return packet, Form TR-1040, to apply for the homestead rebate for tenants.

**Homeowners** do not use the application in the income tax return packet. Applications for the homeowner rebate are expected to be mailed at the end of April, and homeowners will apply either online or by phone.

- **Property Tax Reimbursement — Income Limits.** Residents applying for reimbursements for tax year 2006 must have total annual income *less than*:

- 2006:** \$43,693 if single, or \$53,576 (combined income) if married, and
- 2005:** \$41,972 if single, or \$51,466 (combined income) if married.

Benefits available under this program are subject to change. □

**Urban Enterprise Zones**

**Clarification**

An article in the summer 2006 issue of the *New Jersey State Tax News* entitled “FY 2007 Budget Legislation” contained a section about Urban Enterprise Zones which described the procedural changes affecting the sales tax exemption for purchases made by qualified urban enterprise zone businesses. Effective July 15, 2006, only a “small qualified business” (annual gross receipts less than \$1 million in the prior annual tax period) is exempt from paying sales tax at the time of

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

**Division of Taxation  
Acting Director:**

Maureen Adams

**News Coordinators for This Issue:**

<i>Audit</i>	Peggy Cook
<i>Compliance</i>	Marita Sciarrotta
<i>Crim. Investigation</i>	Richard Mawer
<i>Property Admin.</i>	Holly Reinson
<i>Technical Services</i>	Beth Chambers
<i>Legislation</i>	John Kelly

**Contributors:** Carol E. Bell, Beth A. Berniker, William G. Bittner, William J. Bryan, Toni Bushelli, Barry Fulmer, Susan J. Kane, Elizabeth J. Lipari, Dana Max, Suzanne Miller, Patrick J. Ryan, Marita Sciarrotta, Carol M. Trovato, and Fred M. Wagner.

**Staff:** J. Donald Byrnes, Lauren D. Higgins, Maria E. Likakis, Terry A. McWilliams, Sara E. Murphey, Kelly J. Warboys.

**Editor:** Sheri B. Silverstein



*clarification - from page 2*

purchase; other qualified urban enterprise zone businesses must pay the tax at the time of purchase and apply for a refund.

The article stated that for purposes of determining whether annual gross receipts are less than \$1 million in the prior annual tax period “a business may use its gross receipts from sales as reported for sales tax in the prior year.” However, the gross receipts of a business for the prior annual tax period are to be determined from the following sources:

- If the business is a corporation, the amount reported on Schedule A, Line 1 of the prior year (2005) New Jersey Corporation Business Tax Return (Form CBT-100 or CBT-100S).
- If the business is a partnership, the amount reported on Line 1c of Federal Form 1065 submitted with the prior year (2005) New Jersey Partnership Return (Form NJ-1065).
- If the business is a sole proprietorship, the amount reported on Federal Schedule C, Part 1, Line 3 submitted with the prior year (2005) New Jersey gross income tax return (Form NJ-1040).
- Other: if the above classifications are not applicable, the appropriate tax return information (e.g., foreign state tax return). □

## Order Package NJX Online

The 2006 Package NJX can be ordered online through our automated ordering and payment system. Payment must be made by electronic check (e-check).

For 2006, only the NJX Plus CD-ROM (\$20) is available for purchase. The CD-ROM contains tax forms and instructions, publications such as *New Jersey State Tax News* and *Division of Taxation Annual Report*, as well as other New Jersey tax information. The printed version of *Package NJX* has been discontinued for the 2006 tax year. For tax years 2007 and after *Package NJX* will be discontinued completely.

Anyone who purchased *Package NJX* materials last year should have received a notice from the Division of Taxation with instructions for ordering online as a “Registered User.” Those who did not order last year and wish to purchase the 2006 NJX CD-ROM must follow the instructions for “New User.”

[Order 2006 Package NJX](#) □

### INHERITANCE/ESTATE TAX

## Waivers for Brokerage Accounts

The New Jersey inheritance and estate tax statutes provide that property which belongs to or stands in the name of a resident decedent may not be transferred without the written consent of the Director, Division of Taxation. The taxes remain a lien until paid on all the property of a decedent.

The Division has received numerous inquiries regarding the tax waiver requirements for brokerage accounts.

An inheritance/estate tax waiver is required for all brokerage accounts belonging to or standing individually or jointly in the name of a resident decedent. A tax waiver is required if the brokerage firm has

an office in New Jersey regardless of where the account was opened.

Assets held in a brokerage account which are registered in “street name” may be bought and sold without the necessity of first obtaining a tax waiver. The assets must remain in the account and nothing may be transferred or released to the estate or beneficiaries until a tax waiver is obtained.

In those situations where an account passes to a decedent’s surviving spouse, child, stepchild, legally adopted child, issue of any child or legally adopted child, parent, grandparent, or surviving domestic partner, and the taxable estate plus adjusted taxable gifts as determined under the provisions of the Internal Revenue Code in effect on December 31, 2001, does not exceed \$675,000, Form L-8 may generally be used. Form L-8 is an affidavit and self-executing tax waiver which is filed directly with the brokerage firm.

The blanket waiver provisions of N.J.A.C. 18:26-11.16 are applicable to brokerage accounts. Assets valued at one-half the value of an account on the decedent’s date of death must be retained and may not be released without a tax waiver. The remainder of the account may be released without a tax waiver.

### Example:

The decedent held a brokerage account which contained 1,000 shares of XYZ Corporation stock valued at \$100,000 on his date of death.

- a. If three months after the decedent’s death the account is valued at \$200,000, assets valued at

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*brokerage waivers - from page 3*

\$150,000 may be released without a tax waiver. Assets valued at \$50,000 must be retained pending receipt of a tax waiver.

- b. If three months after the decedent's death the account is valued at \$60,000, assets valued at \$10,000 may be released without a tax waiver. Assets valued at \$50,000 must be retained pending receipt of a tax waiver.
- c. If three months after the decedent's death the account is valued at \$40,000, no assets may be released without a tax waiver.

Questions regarding tax waivers may be sent to: Inheritance and Estate Tax Section, Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08695-0249. The Inheritance and Estate Tax Section may be reached by phone at 609-292-5033. □

### **INHERITANCE/ESTATE TAX** ***Family Limited Partnership Valuations***

The Division has received an increasing number of inquiries related to the valuation of family limited partnerships for New Jersey inheritance and estate tax purposes.

A family limited partnership is defined by the Division as a limited partnership in which more than 50% of the partners are related by blood or marriage and which does not have a true business purpose. The partnership may or may not hold an interest in another partnership or other asset which has a true business purpose. One indicia of a true business purpose is that the family limited

partnership has and engages in business or commercial transactions with customers, clients, persons or entities other than the partners, their family members, or other related individuals or entities.

For inheritance tax purposes an interest in a family limited partnership is valued at the value of the underlying assets on the decedent's date of death. Discounts are not allowed unless the Director, Division of Taxation (Director), determines that they are warranted by the nature and risk associated with the underlying assets.

In those cases where a Federal estate tax return is required to be filed and where there is a Federal estate tax consequence, the discounts, if any, permitted by the IRS will generally be permitted for New Jersey estate tax purposes unless the Director deems them to be excessive. In other cases:

1. If an interest in a family limited partnership was created or funded within one year of a decedent's death, the value of the interest is presumed to be the value of the underlying assets on the decedent's date of death unless conclusive proof to the contrary is submitted which clearly indicates a different value. Discounts are not permitted unless the Director determines that they are warranted by the interest in the partnership and/or the nature and risk associated with the underlying assets. Discounts totaling more than 10% are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.
2. If an interest in a family limited partnership was created or funded

more than one year prior to a decedent's death, the interest is valued based upon the interest in the partnership and the value of the underlying assets on the decedent's date of death. Discounts totaling more than 10% are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.

3. If the Simplified Tax System is used, an interest in a family limited partnership is valued at the value of the underlying assets on the decedent's date of death. Discounts are not permitted unless the Director determines that they are warranted by the nature and risk associated with the underlying assets. □

### **SALES AND USE TAX**

## ***Compliance Agreements***

Sales and Use Tax Compliance Agreements (SUTCAs) are formal, individualized agreements between the Division of Taxation and the taxpayer. SUTCAs allow the use of an "effective tax rate" to calculate sales and use taxes owed. SUTCAs generally have a term of three years or less. Conditions under which the agreement may require modification or termination are agreed upon by both parties. Upon request to enter the program, the Division will determine if the taxpayer is qualified to participate and then conduct an audit to establish the "effective tax rate." A taxpayer is eligible if they:

1. Are required to file and remit any New Jersey sales and use tax returns and payments;

*continued on page 5*



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2. Demonstrate a willingness and ability to understand and comply with tax laws;
3. Maintain an acceptable system of internal controls and business records; and
4. Have maintained a good filing record for all taxes and are currently in good standing.

If the taxpayer is qualified for the program, the taxpayer will be able to apply the agreed upon “effective tax rate” to applicable purchases made during each filing period. The “effective tax rate” is determined by calculating the ratio of the base period taxable purchases to the base period total purchases. Some of the benefits offered to both the Division and the taxpayer include:

1. Eliminates the need to pay the sales tax at the time of purchase or compute and remit the use tax on a transaction-by-transaction basis;
2. Predictability and consistency of approach in tax reporting;
3. Decisions regarding tax compliance are made by in-house and/or outside tax experts as opposed to nontax personnel;
4. Increased accuracy in sales and use tax budgeting and more certainty and consistency of sales and use tax expenses;
5. Development of cooperative relationship with the Division of Taxation;
6. Reduced audit costs;
7. Increased confidence in reported taxes;
8. Redirection of staff to other audit candidates; and

9. Timely receipt of sales and use taxes.

The Division will not enter into agreements with taxpayers that:

1. Have failed to correct improper reporting methods;
2. Filed for bankruptcy or are controlled by a company that has filed for bankruptcy;
3. Maintain inadequate books and records and have poor internal controls; or
4. Are involved in or have been involved in an ongoing criminal investigation.

Upon approval of the agreement the taxpayer will receive a Direct Pay (Audit) Certificate (ST-6X). Purchases that will be excluded by the agreement include but are not limited to:

1. Resale and inventory purchases;
2. Utility and telecommunications services;
3. Meals and lodging;
4. Motor vehicles, vessels, and aircraft;
5. Items on which the Division and the taxpayer do not agree.

Large volume purchases made for a business’s own use on an ongoing basis and capital assets may be included in an SUTCA. As a part of this agreement the Division agrees to waive the audit process and the taxpayer agrees to waive all rights to refund claims. However, the taxpayer can file a refund claim for overpayments or amounts erroneously paid to vendors for items outside the agreement. The agreement can be terminated by either party with a 90-day written notice. The Division may terminate the agreement and conduct an audit if the

taxpayer fails to fulfill the terms of the agreement and the failure is materially adverse to the Division. Legislative changes to the sales and use tax statutes may require modification of an agreement. Listed below are additional examples of conditions necessitating modification:

1. Merger or acquisition;
2. Significant start-up or closing costs of facilities;
3. Significant changes involving business activities;
4. Adoption of cost containment programs; or
5. Significant financial or accounting changes.

While there is no “true-up” conducted at the end of the agreement, the Division will perform at least one interim review and a final review of procedures and sample transactions to determine if the taxpayer is in compliance with the

*continued on page 6*

### **Interest 11.25%**

The interest rate assessed on amounts due for the period January 1, 2007 – December 31, 2007, will be 11.25%.

The assessed interest rate history is listed below.

<b>Effective Date</b>	<b>Interest Rate</b>
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%
10/1/06	11.25%
1/1/07	11.25%



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agreement. The final verification can be done by the taxpayer separately or in conjunction with the Division. □

### **CORPORATION BUSINESS TAX *Business Tax Credits***

Entities subject to corporation business tax may qualify for one or more of the following tax credits:

- Urban Enterprise Zone Employees Tax Credit
- Urban Enterprise Zone Investment Tax Credit
- Redevelopment Authority Project Tax Credit
- Recycling Equipment Tax Credit
- New Jobs Investment Tax Credit
- Manufacturing Equipment and Employment Investment Tax Credit

- Research and Development Tax Credit
- Smart Moves for Business Program Tax Credit (Commuter Benefits)
- Small New Jersey-Based High-Technology Business Investment Tax Credit
- HMO Assistance Fund Tax Credit
- Neighborhood Revitalization State Tax Credit
- Effluent Equipment Tax Credit
- Economic Recovery Tax Credit
- Remediation Tax Credit
- AMA Tax Credit
- Business Retention and Relocation Tax Credit
- Sheltered Workshop Tax Credit
- Film Production Tax Credit

Guidelines pertaining to these credits may be found in subchapter 3 of the New Jersey Administrative Code, Chapter 7, Title 18 (Currently

N.J.A.C. 18:7-3.17 through 18:7-3.28). See also Schedule A-3 of the CBT-100 and instruction 46 in the CBT-100 instruction booklet. □

### **LOCAL PROPERTY TAX *PAMS Testing and Training Planned***

For the past 18 months, staff from the Division of Taxation's Local Property Tax Branch, the Division of Local Government Services, the Office of Information Technology, contractor Tyler Technologies, and volunteer assessors, collectors, and tax administrators have been working diligently through the development of New Jersey's new Property Assessment Management System (PAMS). They are now looking ahead to the fourth quarter of 2007, when PAMS is scheduled to be implemented in the first three counties.

Results of the behind-the-scenes work will take center stage as the project moves into testing, training, and preparations for going live in the three early implementation counties: Camden, Hunterdon, and Salem. These counties will be increasingly engaged in PAMS activities beginning in the spring.

Because PAMS is an integrated system using an Oracle database, users will have access to information from one source. As the PAMS system becomes populated with more data, users will be able to find information that in the past would have required research in several files, books, and individual computer systems.

In addition, each office — tax administrator, collector, and assessor

### ***Sales Tax Information***

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

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%, effective July 15, 2006. The rate change affects all retail sales of taxable merchandise or services. For more information on the rate increase visit: [Information for all Sales and Use Tax Vendors](#)

Additional provisions of P.L. 2006, c.44, effective October 1, 2006, extended the sales and use tax to new services, limited some existing exclusions and exemptions, and encompassed product categories that have come into being with new technologies. More information is available at: [Information Regarding Sales and Use Tax Changes Effective October 1, 2006](#)



*PAMS testing and training - from page 6*

— will be able to work independently according to their own work calendar, and yet PAMS will assist in coordinating information between offices: integrated, yet independent.

New capabilities will require new ways of thinking about business processes; however, training and communication channels will be in place to help users prepare for the new system.

For more information on the PAMS project, visit the Division's Web site at:

[www.state.nj.us/treasury/taxation/pamsvol/pams.shtml](http://www.state.nj.us/treasury/taxation/pamsvol/pams.shtml) □

## **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 September 30, 2006, C.T.A. exam. They are:

**Bergen County:** Christopher W. Eilert, Wallington Borough; Raymond A. Koski, Fort Lee Borough; James W. Nall, Franklin Lakes Borough; Patrick G. Wilkins, Teaneck Township.

**Cape May County:** Steven A. Henderson, Stone Harbor Borough; Margaret G. Slavin, Middle Township.

**Middlesex County:** Ronald L. Hatt, Woodbridge Township; Raymond M. Matyskiel, Woodbridge Township.

**Monmouth County:** Gregory K. Lewit, Red Bank Borough.

**Morris County:** Robert H. Scrivens, III, Washington Township.

**Sussex County:** Michael B. Crane, Andover Borough.

The next examination is scheduled for March 24, 2007. The deadline to file applications for this exam is February 22, 2007. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

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

### **December 1 (on or before)–**

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

### **December 1–**

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in base year and assessed value changes of such

parcels in current year attributable to successful appeals, revaluations, or reassessments.

### **December 20–**

- County Tax Board certifies to Director, Division of Taxation the aggregate decline, if any, in the true value of vacant land, comparing current year to base year.

### **December 31 (on or before)–**

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2007 must be filed with assessor during the pretax year, thereafter with collector during the tax year.

### **January 1–**

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

### **January 10 (before)–**

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

### **January 10–**

- Copies of Initial Statement and Further Statement filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.



assessors' calendar - from page 7

- 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.
- Assessor to provide Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" and Five-Year Limited Exemption Report with County Tax Board.

**January 25-**

- Assessor's schedule of hours and appointment availability given to

County Tax Administrator and posted in the municipal building.

**February 1 (prior)-**

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

**February 1-**

- After February 1, the assessor or County Tax Board shall notify each taxpayer by mail within 30 days of any change to the assessment. A taxpayer will have 45 days to file an appeal upon issuance of a notification of a change in assessment.
- MOD IV Master file sent to Property Administration via appropriate medium.
- Assessors' office hours furnished to Director, Division of Taxation, by County Tax Administrator.

- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

**February 10-**

- Certification by assessor filed with the County Tax Board or, if completed by County Tax Board, filed with the County Tax Administrator, "within 10 days" of the date the bulk mailing of notifications of assessment was completed.

**February 15 (on or before)-**

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

**March 1-**


- Post-Tax Year Statement, PD-5, filed with tax collector by all recipients of property tax deduction.

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



**NJWebFile**  
Use your computer to file your return. Visit [www.njfastfile.com](http://www.njfastfile.com) to prepare your return on our secure Internet site. There's nothing to buy and there are no filing fees.



**NJE-File**  
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.



**NJTeleFile**  
Call 1-888-235-FILE (3453). Fill out the NJTeleFile Worksheet in your tax package. If you use a Touch-tone phone to call our toll-free number to file your return.

[www.njfastfile.com](http://www.njfastfile.com)

**NJFastFile**  
the way to a faster refund.



**DISCONTINUED**



*assessors' calendar - from page 8*

- County Tax Administrator to submit equalization table to County Tax Board; each assessor; Division of Taxation; Director, 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, to the Director of the Division of Taxation, to the Tax Court, and two copies to the Director of the Division of Local Government Services. □

## **Criminal Enforcement**

Criminal Enforcement over the past several months included:

- On March 26, 2006, in Hackensack, Superior Court – Bergen County confirmed that Francisco P. Delgado, 60, of Clifton, New Jersey, entered a plea of guilty to charges of failing to file domestic security fee returns in 2003, and failing to pay \$2,572 sales tax and \$1,902 domestic security fee. These counts were contained in an indictment which charged Delgado as the responsible person of Estrella Rental Car Incorporated, in Paterson, New Jersey. Delgado was also charged with making false statements in documents submitted to the Division of Motor Vehicles and with presenting false documents for filing with the Division of Motor Vehicles. This was a joint investigation by the

Office of Criminal Investigation (OCI) and the Bergen County Sheriff's Office, which commenced after Delgado was arrested by the Sheriff's Office for selling "international driver's licenses" to illegal aliens. The "international driver's license" is similar in appearance to a legitimate driver's license, but is not issued by or honored by any government agency. On June 16, 2006, Delgado was sentenced to three years' probation and ordered to pay restitution of \$6,000 in tax, penalty, and interest. This case marked the first criminal prosecution for violations involving the domestic security fee, which was instituted after the September 11, 2001, terrorist attacks to fund New Jersey counter-terrorism operations. The fee is collected by vehicle rental businesses at the current rate of \$5 per day per vehicle rented. This case was prosecuted by the Bergen County Prosecutor's Office.

- On April 3, 2006, in Trenton, Anthony Howlen, 40, of Trenton, New Jersey, was arrested by the Trenton Police Department and charged with selling cigarettes not bearing the required revenue stamp, possessing cigarettes not bearing the required revenue stamp, failure to keep records required by law with intent to evade tax, and failure to obtain a New Jersey cigarette consumer license. On April 8, 2006, Trenton Police arrested Willie I. Howlen, 35, of Morrisville, Pennsylvania (believed to be Anthony Howlen's brother), and charged him with possession of 17.8 cartons of cigarettes not bearing required revenue stamps. (Willie

Howlen had previously been arrested by OCI and Trenton Police in March 2006 and charged with sale and possession of 22.8 cartons of untaxed cigarettes; these charges are still pending.) These enforcement actions by the Trenton Police were the result of OCI's efforts to deal with street sales of untaxed cigarettes by enlisting the cooperation of local police and providing them with the necessary information.

- On April 19, 2006, in Toms River, an Ocean County Grand Jury returned a six-count indictment against Charles G. Skoog, formerly of Brick, New Jersey, charging him with second-degree theft by deception, second-degree insurance fraud (two counts), third-degree filing false or fraudulent New Jersey gross income tax returns, third-degree failure to pay New Jersey gross income tax, and fourth-degree workers' compensation fraud. It is alleged in the indictment that Charles Skoog had been employed between 1999 and 2004 in various capacities by businesses controlled by his son, Erik G. Skoog. During this time his employment status was disguised by his son so that Charles Skoog could collect social security disability payments and workers' compensation payments that he was not entitled to. Through this scheme, Charles Skoog received over \$180,000 in fraudulently obtained disability income, failed to report this illegal income on his New Jersey gross income tax returns, and failed to pay the tax due on the

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unreported income. The indictment also accused Erik Skoog of two counts of second-degree insurance fraud and one count of second-degree theft by deception for his part in the alleged scheme. This investigation was jointly conducted by the Ocean County Prosecutor's Office, OCI, and the Social Security Administration.

- On May 4, 2006, in Superior Court – Monmouth County, Freehold, Joseph W. Hughes pled guilty to one count of second-degree theft by deception and one count each of filing false tax returns and failing to pay tax in the amount \$120,229.50. In June of 2005, a Monmouth County Grand Jury handed up a 27-count indictment charging Hughes, the former pastor of The Church of the Holy Cross in Rumson, New

Jersey, with the theft \$2,032,422 from the church, and tax-related charges for filing false New Jersey State tax returns and failure to pay tax. Hughes wrote and endorsed checks to cash and wrote checks to cover personal expenses against church bank accounts between 1997 and 2004. Hughes waived his right to a restitution hearing and agreed to pay the \$120,229.50 in back taxes. On June 2, 2006, Hughes was sentenced to five years in State prison. This case was a joint investigation by OCI and the Monmouth County Prosecutor's Office.

- On May 4, 2006, in Camden, OCI and the Camden County Sheriff's Office executed a search warrant on a private residence which had been the subject of complaints from licensed cigarette retailers. The retailers alleged that large

quantities of untaxed cigarettes were being sold to consumers from the residence, causing substantial harm to nearby legitimate businesses. New Jersey State Police assisted in the investigation by providing an undercover trooper who purchased several packs of untaxed cigarettes at the residence. As a result of the search warrant, 5.7 cartons of untaxed cigarettes bearing Delaware tax stamps were seized and resident Iris M. Acevedo, 55, was charged in Camden Municipal Court with possession of untaxed cigarettes, engaging in activity for which a license is required without first having obtained a license, and failure to keep records required by law.

- On May 18, 2006, in Newark, police seized 117 cartons of untaxed cigarettes and charged Aku

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### **Enforcement Summary Statistics Second Quarter 2006**

Following is a summary of enforcement actions for the quarter ending June 30, 2006.

• Certificates of Debt:		• Jeopardy Seizures	1
Total Number	3,573	• Seizures	91
Total Amount	\$40,626,665.08	• Auctions	3
• Jeopardy Assessments	238	• Referrals to the Attorney General's Office	884

### **Third Quarter 2006**

Following is a summary of enforcement actions for the quarter ending September 30, 2006.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	1,730	• Seizures	69
Total Amount	\$33,998,559.53	• Auctions	3
• Jeopardy Assessments	289	• Referrals to the Attorney General's Office	590

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

[www.state.nj.us/treasury/taxation/jdgdisc1.shtml](http://www.state.nj.us/treasury/taxation/jdgdisc1.shtml)



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Muhamad, 36, and Cornell Braxton, 26, both of Newark, with sales of untaxed cigarettes and conspiracy. On May 23, 2006, in Atlantic City, police, assisted by OCI, seized 12.3 packs of untaxed cigarettes from Anthony Minor, 43, of Atlantic City. Minor was charged with engaging in conduct requiring registration without having done so, sale of unstamped cigarettes, failure to file returns or reports, and possession of untaxed cigarettes. At the time of Minor's arrest he was carrying business cards reading "Omar's Cig Sales, 432-3294 after 2:00PM." This is Minor's second arrest for selling untaxed cigarettes. He was arrested by OCI in December 2005, and was fined \$1,000. These enforcement actions were the result of OCI's efforts to deal with street sales of untaxed cigarettes by enlisting the cooperation of local police and providing them with the necessary information.

- On June 3, 2006, in Newark, Victor Sanks, 41, of East Stroudsburg, Pennsylvania, was indicted by an Essex County Grand Jury on charges of failure to turn over sales tax collected, failure to collect \$13,582.48 in sales tax, failure to pay a total amount of sales tax of \$80,248.22, and failure to file sales tax returns from 2002 and 2005 in connection with Scratch Records, a retail DVD and CD store in Irvington. This case was a joint investigation by New Jersey State Police, Irvington Police, and OCI, and is being prosecuted by the Essex County Prosecutor's Office.

- On June 9, 2006, in Superior Court – Ocean County, Richard Carroll, 48, Brick, New Jersey, was sentenced to five years in State prison, immediately remanded to the custody of the Department of Corrections, and ordered to pay restitution of \$12,342.60 sales tax plus penalty and interest pursuant to his guilty plea to charges of selling unstamped cigarettes and failure to maintain records between 2001 and 2004 at Towne Stationery, a convenience store in Toms River. This case was investigated jointly by OCI and the Dover Township Police and prosecuted by the Ocean County Prosecutor's Office, and resulted from numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. Carroll had previously pled guilty in municipal court to possession of untaxed cigarettes in May 2002 and November 2002.
- On June 14, 2006, a State Grand Jury indicted Muslimah Suluki, 58, College Park, Georgia, for failure to file New Jersey gross income tax (GIT) returns for 2001, 2002, and 2003; indicted her son, Robert Parish, 42, Neptune, for failure to file New Jersey GIT returns for 2002 and 2003; and indicted her ex-husband, Mahdi Suluki, 64, East Orange, for failure to file a New Jersey GIT return for 2003, in connection with the operation of New Africa Day Care Center Inc. The corporation and individuals were also indicted on theft and other charges for diverting more than \$200,000 in State funding from the day care center for

personal use, including purchases of two Jaguars and vacations in Chicago and Hyannis Port, Massachusetts. In addition to Federal funds, New Africa received Abbott preschool funding. At the time of the indictment, New Jersey Department of Education (DOE) acting commissioner Lucille E. Davy stated, "For the past four years, DOE has been working to improve the quality of our Abbott preschool program, provide better state and district oversight and increase the level of fiscal accountability to which we hold the vendors," and State Attorney General Zulima Farber noted, "We allege that these defendants stole State funds that were intended to help young children in disadvantaged school districts. They violated the law and they violated the trust that the State and their community placed in them." This case was a joint investigation by the Division of Criminal Justice – Special Prosecutions Bureau and the Division of Taxation – OCI, and was presented to the grand jury by the State Office of the Attorney General.

- On June 28, 2006, in Trenton, a Mercer County Grand Jury indicted Tormu E. Prall, 33, of Trenton, on charges of possession of untaxed cigarettes, failure to maintain records with intent to evade tax, possession of illegal video tapes with intent to sell, failure to pay tax with intent to evade, failure to file tax returns with intent to evade, and violation of the counterfeit recording Anti-Piracy Act. On January 26, 2006, Prall was arrested by the Office of Criminal Investigation

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(OCI) for possession of 70 cartons of untaxed cigarettes in Trenton on September 2, 2005. At the time of his arrest on January 26, Prall was in possession of an additional 37 cartons of untaxed cigarettes. Search warrants were then executed on Prall's house in Trenton and two motor vehicles, resulting in the seizure of an additional 140 cartons of untaxed cigarettes, \$3,300 in cash, and several hundred DVDs, CDs, and video games. A 1995 Lexus was also seized along with computer hard drives, CD/DVD burners, and a large quantity of blank CDs and DVDs. Prall is free on \$75,000 bail. This was a joint investigation by OCI and the Mercer County Prosecutor's Office, with assistance from the Trenton Police Department. The investigation was begun by OCI in response to numerous complaints from the Trenton Downtown Association and its members concerning the sale of untaxed cigarettes on street corners and at bus stops.

- On July 17, 2006, in Trenton, a State Grand Jury handed up a two-count indictment charging Mack Barden of Paterson with one count of money laundering and one count of theft by deception, both second-degree crimes. Barden filed 418 fictitious State income tax returns and 120 fictitious homestead rebate applications for tax years 1996 through 2004. The returns were filed either in the name of Mack Barden or variations. In many instances the W-2 attached to the return was altered to agree with either the name or the social security

number used on the returns. All of the refunds and rebates were mailed to a post office box and a mail box leased by Barden. Barden then cashed or deposited 418 tax refund checks totaling \$197,837.05 and 120 homestead rebates totaling \$12,198.70. The amount of the theft totaled \$210,035.75. Barden was arrested on July 20, 2006, and bail was set at \$100,000 cash. He was remanded to the Passaic County Jail. This case was a joint investigation with the Division of Criminal Justice and was presented to the grand jury by the Office of the Attorney General.

- On July 25, 2006, the Monmouth County Prosecutor's Office confirmed that in Superior Court – Monmouth County, Lisa A. Gordon, 38, of Beachwood, pled guilty to the second-degree crime of theft of movable property and one count of failure to file a New Jersey gross income tax return for tax year 2000. In June 2005 a Monmouth County Grand Jury
- During the July 2006 reporting period, Eric E. Ford, 39, and Ed King Jr., 66, both of Trenton, were charged by OCI with possession of untaxed cigarettes and

handed up a seven-count indictment of Lisa Gordon and her husband, Christopher, charging that in 2000 and 2001 they embezzled more than \$400,000 from her employer, the Jewish Community Center in Ocean Township. The investigation established that the Gordons used these funds to gamble in Atlantic City in addition to purchasing automobiles and property. The plea was entered by Lisa Gordon only. The Monmouth County Prosecutor's Office will recommend at the time of sentencing that the remaining charges against Lisa Gordon and all charges against her husband be dropped. This was a joint investigation by OCI and the Monmouth County Prosecutor's Office.

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## Pay NJ Taxes Electronically

### Electronic Check (E-Check)

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

A sample electronic check form with the following fields: Payee Name (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), Date, Amount (1234.56), Routing Number (080000000), Account Number (XXXXXXXXXX), and a note: "Do not include the check number".

**Make a payment directly  
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[www.officialpayments.com](http://www.officialpayments.com)



\* Fee of 2.49% of tax payment applies.



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related offenses in separate incidents after they were stopped by Trenton Police as part of the continuing cooperative effort by the police department and the Division of Taxation to address the problem of untaxed cigarettes being sold on the streets by unlicensed vendors, causing injury to legitimate retailers.

- On August 10, 2006, in North Bergen, the New Jersey State Police, as part of an ongoing joint investigation with OCI, arrested Maria A. Barahona, 36, of North Bergen, and Gerardo J. Rodriguez, 20, of Brooklyn, New York, while they were loading untaxed cigarettes into a storage unit. A consensual search of the storage unit and searches pursuant to warrant of Barahona's house and safe deposit box were conducted by OCI, the State Police, and the Hudson County Prosecutor's Office, resulting in the seizure of 1,066 cartons of cigarettes bearing counterfeit tax stamps, one Lexus, one Dodge Caravan, and \$28,000 in cash. Both suspects were charged by OCI with forging or counterfeiting cigarette tax stamps, engaging in conduct requiring licensure without license with intent to evade tax, possession of 2,000 or more unstamped cigarettes, and transporting unstamped cigarettes.
- On August 18, 2006, in Trenton, as part of an investigation begun by OCI in response to complaints by local businesses concerning the sale of untaxed cigarettes on street corners, the Trenton Police Department arrested the

following eight people who were then charged by OCI in complaints filed in Trenton Municipal Court: Willie I. Howlen, 35, Levittown, Pennsylvania, sale of untaxed cigarettes; Jamar Adams, 27, Trenton, failure to obtain registration or license with intent to evade tax; Nely Ramos, 39, Trenton, possession of untaxed cigarettes; Dweli Koom, 19, Trenton, possession of untaxed cigarettes; Larry Howlen, 21, Trenton, possession of untaxed cigarettes; Jesse Evans, 42, Trenton, possession of untaxed cigarettes; Benjamin Bethea, 37, Trenton, possession of untaxed cigarettes; and Andre Howlen, 20, Trenton, possession of untaxed cigarettes. Seized were 54.8 cartons of untaxed cigarettes, \$2,833 in cash, a 1994 Oldsmobile that had been used to transport untaxed cigarettes, and 15 counterfeit DVDs and 27 counterfeit CDs being offered for retail sale. The Trenton Police Metro District, which is responsible for patrolling downtown Trenton, Tactical Anti-Crime Unit 1, Regional Violent Crime Interdiction Task Force, and the Vice Enforcement Unit assisted OCI investigators. Metro officers closed off North Broad Street between West Hanover and West State Streets while the enforcement operation was conducted.

- On August 22, 2006, in Jersey City Municipal Court, Afzal Sheikh, 52, of Jersey City, was fined a total of \$3,000 after he pled guilty to possession of untaxed goods and failure to maintain required records, as a result of the seizure of 22.1 cartons of untaxed cigarettes from Sheikh's

store on May 12, 2006.

The sentencing judge imposed an initial fine of \$1,500. OCI's case agent made the Court aware that in 1996 this taxpayer pled guilty to misapplication of \$45,000 in sales tax collected by his corporation, Ehsan Corp., and had made full restitution and served three years' probation. As a result of this information, in the present case the judge invoked the provisions of N.J.S.A. 2C:43-3, which allows for fines to be doubled in the case of a second or subsequent conviction for any State tax offense, and increased the fine to \$3,000.

- On September 1, and September 13, 2006, acting on information provided by a citizen who stated he was aware of OCI's recent initiative in response to complaints by local businesses concerning the sale of untaxed cigarettes in Trenton, OCI seized a total of 52 cartons of untaxed cigarettes, including two cartons bearing counterfeit tax stamps, from three Trenton stores. Fausto Gomez, proprietor of Espinal Grocery; Reginald Gilbert, owner of Tyrone's Deli; and Luther P. Mills, owner of M&M Deli, were charged in Trenton Municipal Court with possession of untaxed cigarettes and related offenses. Gilbert was also charged with failure to file sales and use tax returns.
- On September 14, 2006, Brenda J. McGinty pled guilty in Mercer County Superior Court to one count of theft by deception, a second-degree crime, and one count of failure to file a New Jersey gross income tax return for

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tax year 2002. Brenda McGinty, the bookkeeper for a Mercer County business, had been indicted on November 17, 2004, for embezzling \$1,085,457.50 from the business. The embezzlement took place over the three-year period from 2001 through 2003. As part of the plea agreement, Brenda McGinty, a Pennsylvania resident, will have 60 days from date of sentencing to file New Jersey nonresident returns for the above-mentioned tax years. This investigation was a joint investigation with the Mercer County Prosecutor's Office.

- On October 6, 2006, in Superior Court – Hudson County, Manuel Mier, 50, of Hillside, New Jersey, was sentenced to five years' probation, conditioned on his serving 364 days in county jail and paying the Division of Taxation \$523,385 in unpaid taxes, interest, and penalties for cheating the State out of taxes owed by his gas station and trucking companies. The sentencing judge said Mier could be ordered to serve five years in prison if he does not make full payment. Mier brought a \$300,000 check to the Court on October 6, 2006, and must make regular payments until the amount is paid in full. Mier pled guilty on January 29, 2005, to charges of failure to file New Jersey motor fuels tax returns and failure to turn over taxes. Mier admitted that he cheated the State out of \$277,000 in tax revenues. The balance of the amount that the judge ordered Mier to pay is interest and penalties. The charges resulted from a joint investigation by the Division of

Taxation and the Division of Criminal Justice. The joint-agency investigation determined that Mier failed to file returns for and remit \$95,909 in motor fuels taxes collected through the sale of gasoline and diesel fuels at his service station in North Bergen, 76 Tonnelle Friendly Service LTD, from September 1997 through February 2000. Additionally, the State's accusation charged that Mier and his wife had an ownership interest in two waste disposal trucking companies located in North Bergen and Newark — Leticia, Inc. and L&M Services, Inc. — which failed to remit more than \$181,199 in State use taxes. The investigation was coordinated by OCI and the Division of Criminal Justice – Financial Crimes Bureau.

- One hundred eighty-three (183) complaints alleging tax evasion were evaluated from April through June 2006 in the Office of Criminal Investigation.
- During the same period, one hundred thirty (130) charges were filed in court and twenty-six (26) arrests were made in forty-one (41) cases involving violations of the Cigarette Tax Act. Seized were 1,059.3 cartons of untaxed cigarettes, having a total value of \$65,909.65 and including 535.5 cartons bearing counterfeit New Jersey cigarette tax stamps.
- Eighty-two (82) complaints alleging tax evasion were evaluated from July through September 2006 in the Office of Criminal Investigation.
- During the same period, seventy-four (74) charges were filed in

court and twenty-two (22) arrests were made in forty-nine (49) cases involving violations of the Cigarette Tax Act. Seized were 1,847.9 cartons of untaxed cigarettes, having a total value of \$118,063.69 and including 1,493.7 cartons bearing counterfeit New Jersey cigarette tax stamps. □

## **Tax Briefs**

### **Corporation Business Tax**

#### ***Investment Company Deductions***

**Test** — An inquiry was received relating to certain expenses incurred by a corporation (whose shares are publicly traded) to comply with requirements of the Securities and Exchange Commission and the provisions of the Sarbanes-Oxley Act of 2002 (SOA). The corporation engages an independent auditor to audit and report to shareholders on its operations, financial records, and activities and prescribed areas. As a result the corporation's Federal income tax return will reflect deductions for incurred professional fees to independent auditors, SOA related compliance expenses, and 10-K filing fees to provide the required reports by virtue of the corporate existence as a publicly traded corporation. Deductions for annual franchise taxes imposed by the state of domicile and New Jersey will also be reflected on the return.

The issue is whether the professional fees and franchise taxes reported as deductions on the corporation's current Federal corporation income tax return are qualifying deductions under N.J.A.C. 18:7-1.15(f)1.iii. That section reads as follows: "iii. (Deductions): For

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purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.”

The rule requires that the deductions must be “for holding, investing and reinvesting in cash and/or investment assets.” Thus, it would appear that the expenses paid for Sarbanes Oxley compliance, S.E.C. compliance, and State tax expenses are expenses paid by taxpayers regardless of what activities are engaged in by the corporations. Such payments are not unique to investment companies; they are paid whether the corporation is a manufacturer or any other type of corporation. As a result, these expenses would rightly fall in the category of the 10% of expenses that are not distinctively considered investment expenses but are common administrative expenses to any corporation regardless of its business activity. “Exemptions from tax are strictly construed and granted only when clear and unambiguous.” *Middlesex Water Co. v. Director, Division Taxation*, 3 N. J. Tax 233, at 240 (1981). Accordingly, the expenses in question do not qualify for the deductions portion of the business test.

**LLC Filing Requirements** — A limited liability company (LLC) with two members is treated as a partnership for New Jersey tax purposes if it is treated as such for Federal purposes. An LLC that is recognized as a partnership and that has a New Jersey resident member or any income or loss derived from New

Jersey sources must file a New Jersey partnership return, Form NJ-1065, pursuant to N.J.S.A. 54A:8-6. An LLC is not subject to corporation business tax in New Jersey unless it is treated as a corporation for Federal purposes.

**QSSS Filing Requirements** — To maintain the separate entity principle, every qualified New Jersey Subchapter S Subsidiary (QSSS) must complete and file a CBT-100S and pay the minimum tax. Income and loss from the QSSS “roll up” into the parent’s return.

For a taxpayer that is a member of an affiliated or controlled group pursuant to sections 1504 or 1563 of the Federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax is \$2,000.

Furthermore, N.J.A.C. 18:7-3.4(i) provides: “If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax.”

**Realty Transfer Fee Purchase of Commercial Real Estate** — Partnership A owns Class 4A (commercial) real property. For

purposes of this example, assume that consideration for the sale/transfer or the equalized assessed value of A’s property exceeds \$1,000,000. Partnership B owns an 80% interest in Partnership A, and Partnership C owns a 20% interest. Entities W, X, Y, and Z each own a 25% interest in Partnership B. Partnership B “distributes” its 80% controlling interest in Partnership A equally to W, X, Y, and Z so that each owns a 20% interest in Partnership A. Does this transaction represent a transfer of a controlling interest (in Partnership A) from Partnership B to W, X, Y, and Z that would be subject to the 1% Realty Transfer Tax?

N.J.S.A. 54:15C-1a(2) states, in part, “Sale or transfer of a controlling interest subject to taxation pursuant to paragraph (1) of this subsection may be accomplished by one purchaser *or may be made by a group of purchasers acting in concert*. Purchasers who are related parties are presumed, unless shown to the contrary, to be *acting in concert*.” In the example above, W, X, Y, and Z together own an 80% interest in Partnership B, regardless of the percentages each of them individually may own. Accordingly, the presumption is that W, X, Y, and Z have acted in concert to acquire Partnership B’s controlling interest in

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Partnership A. Therefore, on the facts presented, the Division believes that the Realty Transfer Tax applies to the transfer of Partnership B's controlling interest in Partnership A to W, X, Y, and Z.

### Sales and Use Tax

**Armored Car Services** — On and after October 1, 2006, P.L. 2006, c.44, imposes tax on "investigation and security services." See N.J.S.A. 54:32B-3(b)(11). The definition of investigation and security services includes armored car services (N.J.S.A. 54:32B-2(xx)).

Armored car services are sourced for sales tax purposes where the customer makes first use of the service; i.e., where the service originates is "first use." N.J.S.A. 54:32B-3.1. For example, if the service originates in New Jersey and the protected goods are delivered out of State, New Jersey tax is applicable. Conversely, if the service originates out of State and the goods are delivered to New Jersey, New Jersey tax does not apply.

**Baked Waffles** — The Division received an inquiry concerning the taxability of a baked waffle on a stick dipped in chocolate and coated with toppings (e.g., sprinkles, coconut, or peanuts).

N.J.S.A. 54:32B-3(c)(1) imposes sales tax on the sale of "prepared food." Prepared food is defined to include food items that are a result of the combination of two or more food ingredients by the seller to make a single item.

Since a baked waffle on a stick dipped in chocolate and coated with toppings meets this definition, it is

taxable as a prepared food. N.J.S.A. 54:32B-3(c)(1).

**Exemption Certificates and "Good Faith" Requirement** — Prior to October 1, 2005, a seller who accepted in good faith any exemption certificate which upon its face disclosed a proper basis for exemption was relieved of any liability for collection or payment of tax on transactions covered by the certificate. N.J.A.C. 18:24-10.3. The seller must not have known, or had reason to have known, that any information on the face of the exemption was false or misleading. N.J.A.C. 18:24-10.4(a). The vendor was presumed to be familiar with the law and the regulations pertaining to his business, and to know when he could issue or accept exemption certificates. N.J.A.C. 18:24-10.4(b).

Effective October 1, 2005, the Streamlined Sales and Use Tax Agreement became effective in New Jersey and made several changes to the Sales and Use Tax Act. In particular, the "good faith" requirement was relaxed. Absent fraud or collusion, sellers who accept a properly completed exemption certificate are relieved of liability for improperly claimed exemptions. The exemption certificate must contain specific identifying information about the purchaser and the type of exemption claimed, e.g., resale or manufacturing.

The Division will continue to allow the use of the current exemption forms (ST-3, ST-4, ST-5, ST-6, ST-7, ST-8, ST-10, ST-13) and the relaxed good faith requirement will apply for all purchaser or use exemptions for transactions occurring on and after October 1, 2005. The Streamlined Sales and Use Tax Certificate of Exemption may also be used as

documentation for an exemption. It can be found on the Division's Web site at:

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

**Horse Boarding** — The service of boarding horses is deemed to be "storing all tangible personal property not held for sale in the regular course of business" and is therefore taxable pursuant to N.J.S.A. 54:32B-3(b)(3). The horse-boarding business must be registered as a vendor and must collect New Jersey sales tax on its charges. It may claim a resale exemption when purchasing feed for the horses that it boards. Separately itemizing the charges for feeding a customer's horse has no practical effect. If the business charges customers for the feed, the charge is taxable under N.J.S.A. 54:32B-3(a). If the feeding is included in the boarding charge, the entire charge is taxable as a service under N.J.S.A. 54:32B-3(b)(3).

If a customer simply rents a horse stall without receiving other services, the transaction is treated as a rental of storage space, which is now taxable pursuant to N.J.S.A. 54:32B-3(b)(3). Rentals of stalls and other storage space were nontaxable prior to a change in the Sales and Use Tax Act effective October 1, 2006.

If a horse is being boarded and services are provided in connection with the boarding (e.g., feeding, grooming), the boarding charge is taxable under N.J.S.A. 54:32B-3(b)(3). Separately stating a charge for the stall rental will have no effect on taxability since *both* the boarding service and the stall rental are now taxable.

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A business that is engaged primarily in boarding horses is not a "farming enterprise" for purposes of the Sales and Use Tax Act because it is not primarily engaged in producing an agricultural product. Therefore, although it may be viewed as a farm for property tax assessment purposes, it does not qualify for the farming use exemption from sales tax and may not use a Form ST-7 (Farmer's Exemption Certificate) when making purchases.

**Prepaid Telephone Calling Cards/ Prepaid Internet Access Cards** — Sales tax must be collected on retail sales of prepaid telephone calling cards (landline and cellular), including the recharging of such cards. N.J.S.A. 54:32B-3(g). A prepaid calling arrangement is defined as the right to exclusively purchase telecommunications services which give the customer the ability to make a call using an access number or an authorization code. N.J.S.A. 54:32B-2(11). Under the law, the customer is considered to be purchasing such services in advance of using them. Thus, sales tax must be charged on retail sales of prepaid telephone calling cards to end users regardless of whether anything tangible is shipped.

The charge for Internet use is not subject to sales and use tax. Therefore, the sale of prepaid Internet access cards, which allow customers to log onto the Internet for a set amount of time from any computer, is not subject to sales tax.

**Streamlined Sales and Use Tax Agreement Registration** — The Streamlined Sales and Use Tax Agreement (SSUTA) contains a provision permitting the creation of a

Central Registration Online System. Central registration constitutes registration with New Jersey and every SSUTA member state, including those that join after the seller registers. By registering through this system, sellers agree to collect and remit tax on all sales sourced to any member state. This central registration system may be used as an alternative to the methods currently available for registering with the State of New Jersey: online through the Division of Revenue's Web site or by completing and filing Form NJ-REG contained in the New Jersey Complete Registration Package (NJ REG).

Vendors that are registered with the State of New Jersey for sales tax purposes have the same responsibility for the collection of the New Jersey tax whether they registered directly with New Jersey or through the Central Registration Online System. Sales of taxable goods and services in New Jersey are subject to New Jersey sales tax if the goods are

picked up or delivered in New Jersey, unless a specific statutory exemption applies (e.g., resale, exempt organization, or various specific exempt uses). If the customer does not take possession of the goods in New Jersey, but instead requests shipment by the seller to an out-of-State address, the transaction is not treated as a New Jersey sale, and no New Jersey sales tax is due. The taxability of the transaction is determined by the laws of the state in which the purchaser or the purchaser's agent takes possession of the merchandise.

**Vending Machine Sales** — The question was raised as to how the Streamlined Sales and Use Tax Agreement (SSUTA) affected the taxability of vending machine sales.

Legislation that conformed New Jersey's Sales and Use Tax Act to the requirements of the SSUTA, effective October 1, 2005, did not affect vending machine sales. See P.L. 2005, c.126. New Jersey continues

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

The New Jersey Division of Taxation requires any tax practitioner who prepared or filed 100 or more 2005 New Jersey resident income tax returns (Form NJ-1040) to file all their clients' 2006 New Jersey resident income tax returns electronically. More information is available at:

[E-File Mandate](#)  
[Frequently Asked Questions](#)  
[Opt Out Request Form, NJ-1040-O](#)  
[Requirements for Using Opt Out Form](#)

If you have questions concerning the E-File Mandate, call the Division of Taxation at 609-943-5000 or [e-mail us](mailto:nj.taxation@treas.state.nj.us) at [nj.taxation@treas.state.nj.us](mailto:nj.taxation@treas.state.nj.us)

to tax vending machine sales as they have always been taxed, as stated in the law at N.J.S.A. 54:32B-3(c)(2).

The gross receipts from all sales of tangible personal property (other than food and drink) such as toys, laundry detergent, cigarettes, nail clippers, barrettes, and bobby pins sold through coin-operated vending machines are taxable. Sales of items that are exempt by law, such as clothing and footwear (e.g., shoe laces and bathing caps), as well as sales of any items for 25 cents or less, are not taxable and should be deducted from gross receipts before calculating the tax.

To calculate the tax due on receipts from the sale of taxable nonfood items, multiply the total gross receipts (less exempt sales if any) by the current sales tax rate (7%).

To calculate the tax due on receipts from the sale of food and beverages, the taxable amount is the wholesale price, which is defined as 70% of the retail vending machine selling price.

The vending machine operator may purchase all items to be sold through coin-operated vending machines without paying New Jersey sales tax by issuing a New Jersey Resale Certificate (Form ST-3) to its supplier. For more information on vending machine sales see publication ANJ-16, *Vending Machines & New Jersey Sales Tax*, which is available on the Division's Web site at: [www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj16.pdf](http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj16.pdf) □

## In Our Courts

### Cash Audit

**Methodology** – *Charley O's Inc., t/a Scotty's Steakhouse v. Director, Division of Taxation*, decided July 12, 2006; Tax Court No. 0002836-2002.

The Division conducted an audit of plaintiff's (Charley O's) restaurant. The auditor requested various documents to verify that the filed returns were reported correctly. Charley O's accountant provided sales journals as well as cash disbursement journals and other records, but not cash register tapes. Therefore, the auditor commenced a markup analysis.

The Court found that the auditor's supervisor directed him to stop the markup analysis and use the CBT reported gross sales before the markup analysis was completed. The CBT returns reported larger amounts of gross sales than did the sales tax returns. In determining purchases, the Court found that the auditor had some purchase information but had to plug in a number of \$231,109 to result in total audited purchases of \$383,888 for the test year. The auditor stated that he did not audit the CBT returns because he was directed to accept them as filed. Additionally, the auditor did not look at Charley O's cash receipts and cash disbursements journal.

The auditor also prepared a summary of Charley O's bank account deposits for the test period from Charley O's bank statements. Testimony indicated that the auditor was cognizant that Charley O's maintained bank accounts for deposits from the proceeds of its various credit cards but was not aware that funds were transferred from these

accounts into Charley O's operating bank account.

Charley O's claimed that it provided their representative (accountant) with bank statements, cash register tapes, and other records for purposes of the audit and that the accountant stated that he would protest the audit. The accountant never filed a protest and ran into his own legal troubles that resulted in his incarceration. Additionally, the accountant did not return all the records to Charley O's that were allegedly provided to him. Therefore, Charley O's engaged another firm who filed an untimely protest. The Conference and Appeals Branch (CAB) allowed the untimely protest due to the unusual circumstances surrounding the accountant's failure to protest in combination with his incarceration.

At CAB, Charley O's presented unsigned amended CBT returns that it had prepared for all the years at issue. Essentially, the amended returns reported reduced amounts of gross receipts and indicated that Charley O's had overpaid CBT taxes. The amended returns gross receipts were based upon the original cash receipts journal and the original cash disbursements journal and were intended to support the sales and use tax return gross receipts. The CAB upheld the audit assessment pursuant to its Final Determination. Subsequently, Charley O's filed signed amended returns with the Division and timely appealed the Final Determination to the Tax Court.

After the filing of the appeal, attorneys for both parties agreed that the Division would review the audit. The auditor and his new supervisor spent almost two days reexamining

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Charley O's records and a spreadsheet reconciling gross receipts and bank deposits ("spreadsheet") with the sales and use tax returns. The Division's auditor and his supervisor were both satisfied with the spreadsheet analysis reflecting that \$21,260.10 in sales tax was due, which was less than the \$77,609.99 previously determined. However, the auditor's supervisor recommended the spreadsheet analysis to his manager, who rejected it because there were no register tapes through which the receipts journal could be verified.

The Court found that the Division had no authority to accept the gross receipts on the CBT returns rather than the sales tax returns. The Court ruled that the Division's audit methodology was aberrant in that the auditor stopped the markup analysis and accepted CBT gross sales for sales tax purposes by increasing Charley O's purchases by an arbitrary amount that when multiplied by the markup produced estimated gross receipts in conformance with the gross receipts reported on the CBT return for the test year. Therefore, the Court concluded that the correct sales and use tax assessment was \$21,260.10 as determined on the spreadsheet and agreed to be correct by the Division's auditor and his supervisor. Moreover, the Court found that Charley O's provided a "convincing demonstration" that cash receipts and disbursement journal entries corresponded with various bank statements and also correlated to the spreadsheet.

The Court also found that Charley O's cash receipts and cash disbursements journal were summary records that were adequate

records for sales tax purposes pursuant to the Division's own regulations. The Court cited N.J.A.C. 18:24-2.4(a) stating that a taxpayer may dispose of individual sales slips, invoices, receipts, statements, memoranda of price, or cash register tapes when a taxpayer maintains summary records. Therefore, the Court opined that cash register tapes are not absolutely required by the regulations when verifiable summary records are available. The register tapes may be helpful when an auditor believes the summary records are inaccurate and the auditor may perform a markup analysis in that situation when there are no cash register tapes available. Additionally, the Court opined that if the auditor had completed the markup analysis, then it would have been difficult to find fault with the Division's methodology.

**Corporation Business Tax Public Utility Exemption – *Delmarva Power & Light Co., v. Division of Taxation*, decided July 14, 2006; Tax Court Nos. 000343-1999 and 001433-2000.**

During the period at issue, 1994–1997, plaintiff (Delmarva) was engaged in the business of making wholesale sales of electricity through an association of seven utilities located in Maryland, New Jersey, and Pennsylvania to New Jersey regulated public utilities which, in turn, sold the electricity to New Jersey retail customers. Delmarva did not have a retail service area and hence had no retail sales in New Jersey.

Delmarva had nuclear generation capacity in New Jersey that was provided by the Salem Nuclear Generation Station, which was owned by Delmarva and New Jersey public

utilities as tenants in common. This facility and others were connected by the Lower Delaware Valley Transmission System that included the Salem conductor and Salem switching station, which both intersected with and extended over New Jersey public streets, highways, and roads. Delmarva's generation and transmission facilities were owned and operated on an integrated basis with those of an association. Although Delmarva was regulated by the Federal Energy Regulatory Commission, it did not apply to the New Jersey Board of Public Utility (BPU) Commissioners for designation as a public utility in New Jersey.

Delmarva filed corporation business tax (CBT) returns and paid taxes in each year from 1994–1997. Subsequently, Delmarva timely filed amended returns claiming a refund of all CBT paid during those years on the basis that it was exempt from CBT because it was subject to the franchise and gross receipts tax (F&GRT). The F&GRT Act levies an excise tax on the gross receipts of electric power corporations that use or occupy public streets, highways, roads, or other public places in New Jersey; however, the F&GRT exempts sales to other public utilities.

In deciding whether or not the F&GRT applied to Delmarva, the Court did not find it determinative whether Delmarva was a New Jersey public utility or that Delmarva did not apply to the BPU for designation as a public utility in New Jersey. The Court opined that Delmarva's 1% ownership in the Salem plant, its New Jersey property valued between \$150 and \$170 million and its receipts of as much

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as \$27 million from wholesale sales of electricity to New Jersey public utilities was sufficient to make it a taxpayer for purposes of the F&GRT Act.

The Court ruled that a taxpayer engaged in utility businesses, like Delmarva, would be exempt from CBT pursuant to N.J.S.A. 54:10A-3(f) if it was subject to the F&GRT, a tax based upon gross receipts. Delmarva's F&GRT returns indicated zero tax liability for all years at issue because its only energy sales in New Jersey were wholesale sales to other public utilities, which sales were excluded from the tax base of the F&GRT. Therefore, the Court opined that Delmarva was not "subject to tax" under the F&GRT from 1994–1997 as it did not owe F&GRT. Moreover, the Court stated that there was no basis for arguing that "subject to tax" did not mean "liable for tax." Delmarva's F&GRT tax base was zero and therefore its gross receipts were not subject to F&GRT.

The Court held that N.J.S.A. 54:10A-3(f), for the period 1994–1997, required that a corporation engaged in a utility business in New Jersey be liable for F&GRT in order to be exempt from CBT. Accordingly, Delmarva was not exempt from CBT. Furthermore, the Court found that it was not unconstitutional to impose CBT on Delmarva because of the way it conducts business in New Jersey and reasoned that a sensible reading of the CBT and F&GRT would not support the conclusion that Delmarva would be exempt from both taxes.

**Financial Business Corporation –**  
*Chemical New Jersey Holdings, Inc.*

*v. Director, Division of Taxation*, decided July 31, 2006; Tax Court No. 000213-2001.

On remand from the Appellate Division, the Tax Court was to determine whether plaintiff (Chemical) met the statutory requirements to be taxed as a financial business corporation for the 1992 and 1993 tax years.

Chemical claimed that it met the statutory and regulatory requirements to file its 1992 and 1993 returns as a financial business corporation as a result of its making \$75 million of interest-bearing loans in 1990 and 1991 to its wholly-owned subsidiary, Chemical Bank New Jersey, N.A. (Chemical Bank) that remained outstanding during the tax years at issue. The loans were unsecured and subordinated to other creditors' claims. Chemical Bank needed the loan so that it would have additional capital to satisfy regulatory minimums for its capital ratios that were requested by the Office of the Comptroller of the Currency (Comptroller). In a November 7, 1994, letter, Chemical Bank requested approval from the Comptroller to repay \$75 million to Chemical and included a pro forma capital ratio computation. The Comptroller granted approval for payment and Chemical Bank repaid the \$75 million to Chemical in December 1994. In a November 2000 letter to the Division of Taxation in support of the proposition that Chemical was an investment company, Chemical stated that the transaction between itself and Chemical Bank was not a loan but a capital contribution and, therefore, should be considered investment assets.

Chemical borrowed the funds to make the aforementioned loan from its parent. Chemical charged inter-

est at 10.25% per annum, which was approximately 2% in excess of the interest rate Chemical paid to its parent. Chemical's 1992 and 1993 corporation business tax (CBT) returns indicated that 88% and 86% of its total investment income was the result of the interest received on the Chemical Bank loan. Chemical provided no evidence that would support it was involved with any other loans to qualify it as a financial business corporation.

The Court ruled that under N.J.S.A. 54:10A-4(m) a bank holding company engaged in activities that are "in substantial competition with the business of national banks" could qualify as a financial business corporation if the loan constituted moneyed capital with the object of making a profit. Therefore, the first issue addressed was whether national banks would make loans that were similar to or competitive with Chemical's loan to Chemical Bank in 1992 and 1993. The Court found that Chemical presented no evidence that Chemical Bank could have obtained a loan with similar terms from a national bank or that national banks would have made loans on the same terms. Consequently, the Court concluded that Chemical failed to prove by a preponderance of the evidence that national banks would have competed for loans similar to the loan at issue; a loan that was unsecured, subordinated to all of the borrower's other debts, and required approval by the Comptroller for repayment. The Court did not address the second prong of whether the loan constituted moneyed capital with the object of making a profit.

Chemical appealed this decision.

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**Nexus** – *Lanco, Inc. v. Director, Division of Taxation*, decided October 12, 2006; Supreme Court of New Jersey No. A-89 September Term 2005.

In a unanimous decision, with one Justice not participating, the New Jersey Supreme Court affirmed the Appellate Division's decision that a foreign corporation is subject to corporation business tax when it derives income from a licensing agreement with a company conducting retail operations in New Jersey notwithstanding the foreign corporation's lack of physical presence in New Jersey. The New Jersey Supreme Court acknowledged the split of authority among the states, but believed that the *Quill* sales and use tax decision did not create a universal physical presence requirement under the Commerce Clause. Additionally, the remand of this case to the Tax Court for further proceedings was also affirmed.

### Gross Income Tax

**Domicile** – *Groudin v. Director, Division of Taxation*, decided August 3, 2006; Appellate Division No. A-5370-04T3, Tax Court decided May 27, 2005, No. 000220-2003.

The Superior Court affirmed substantially for the reasons stated by Judge Kahn in his written decision of May 27, 2005.

Although the taxpayers maintained an apartment in Lithuania, the country of which the wife was a citizen and the husband was a dual citizen, the taxpayers did not abandon their New Jersey domicile for the tax year in question. The evidence showed that the taxpayers used their New Jersey address for their Federal and State tax returns, place of business,

and marriage license. They claimed a deduction for property taxes and mortgage interest for the New Jersey residence. They claimed and received an NJ SAVER rebate. They maintained bank and other financial accounts, and the husband maintained a driver's license in New Jersey. Although it was not clear whether the wife was a New Jersey domiciliary or resident, she attested to the New Jersey address on their joint tax returns and listed that address on her application for a marriage license. Therefore, despite their argument that they intended to make Lithuania their permanent home, the overwhelming evidence supported a finding that the taxpayers did not abandon their New Jersey domicile.

**Domicile** – *Samuelsson v. Director, Division of Taxation*, decided May 10, 2005; Tax Court No. 03615-04.

Up until the 1998–1999 hockey season, Kjell Samuelsson played hockey for the Philadelphia Flyers, a professional ice hockey team in the National Hockey League (NHL). Mr. and Mrs. Samuelsson owned a home in Voorhees, New Jersey.

In October 1998, Kjell Samuelsson signed a one-year contract (1998–1999 season) to play hockey for the Tampa Bay Lightning of the NHL. The Samuelssons rented a home in Tampa, Florida. The Samuelssons testified that they removed all of their furniture from the house in New Jersey and, at the expense of the Tampa Bay Lightning, moved all their possessions to a rental home in Tampa and a storage facility, also in Florida. They listed their New Jersey home for sale, yet they did not sell it. Mrs. Samuelsson testified that she looked to purchase a home

in Tampa; however, she did not want to purchase a house before they sold their house in Voorhees, New Jersey.

Kjell Samuelsson, at age 41, retired from hockey at the end of the 1998–1999 season. The Samuelsson family spent the summer of 1999 in Sweden visiting relatives and returned to their New Jersey home in September 1999. In November 1999, Kjell Samuelsson was employed as an assistant coach with the Trenton Titans minor league hockey team, an affiliate of the Philadelphia Flyers hockey team of the NHL.

The Court stated that the issue was “Did the Samuelssons abandon their New Jersey domicile in 1998 and resume it in the fall of 1999 or were the Samuelssons New Jersey domiciliaries throughout the (entire) period.”

In order to abandon their New Jersey domicile, the Samuelssons would have had to acquire a Florida domicile in the fall of 1998.

The Court found that the facts supporting the Samuelssons' acquisition of a Florida domicile and the abandonment of their New Jersey domicile were:

1. They moved all of their furniture and belongings to Florida.
2. They listed their New Jersey house for sale.
3. They did not rent out their New Jersey house.
4. Mrs. Samuelsson looked for a house to purchase in Florida.
5. They sadly said farewell to their friends in New Jersey.

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6. They enrolled their children in school in Florida.
7. They closed their New Jersey bank accounts and opened accounts in Florida.
8. Mr. Samuelsson got a Florida driver's license and registered his car in Florida.

The facts supporting the argument that the Samuelssons never abandoned their New Jersey domicile are as follows:

1. They never sold their New Jersey home.
2. They returned to their New Jersey home within one year of moving to Florida.
3. They never purchased, but only rented, a home in Florida.
4. Mr. Samuelsson worked in Florida for less than one year — when he left New Jersey, he was working in Philadelphia; when he returned he worked in Trenton and Philadelphia.
5. Mrs. Samuelsson did not change her voter registration or driver's license to Florida.

The Court determined the key issue to be what the Samuelssons' intention was when they moved from New Jersey to Tampa in the fall of 1998.

In *Lyon v. Glaser*, 60 N.J. 259 (1972), the New Jersey Supreme Court wrote:

“Domicile is very much a matter of the mind—of intention. It has been said that concurrence, even for a moment, of physical presence at a dwell-

ing place with the intention of making it a permanent abode, effects a change of domicile. And once established, the domicile continues until a new one is found to have been acquired through an application of the same tests.”

The Court found that, although Mr. Samuelsson's contract was for less than one year and it was uncertain where he would work after the end of the contract, he had no reason at the time of signing the contract and moving to Florida to believe that he would be in New Jersey rather than Florida or Pittsburgh at the end of the year. Mr. Samuelsson's decision to return to New Jersey was only made after he had abandoned his New Jersey domicile as a result of his declining skills as a hockey player, which became evident during the 1998–1999 season, and his inability to secure a coaching position in Florida.

The Court stated that the Samuelssons had abandoned their New Jersey domicile for Florida when they moved in the fall of 1998. The fact that after that abandonment they returned to New Jersey is a result of facts and circumstances which arose during the 1998–1999 season, after they had abandoned their New Jersey domicile. The fact that the Samuelssons were domiciled in New Jersey up to the fall of 1998 and after the fall of 1999 does not mean that they could not abandon and then reestablish that New Jersey domicile.

Judgment was entered in favor of plaintiffs, dismissing the Director's assessment of taxes based on a conclusion that the plaintiffs were full-year residents for 1999. The Court

found that during 1999, the Samuelssons were part-year residents beginning in September, and that the Samuelssons had filed returns claiming part-year residency from July 1, 1999, to December 31, 1999. Thus, the Samuelssons were not residents of New Jersey during the first half of 1999, and Mr. Samuelsson's salary earned during that period, except for those few dates when he actually played hockey in New Jersey, was not subject to the New Jersey gross income tax. See N.J.A.C. 18:35-5.1 (relating to New Jersey source income for members of professional athletic teams).

**Statute of Limitation on Refunds** — *Mints v. Director, Division of Taxation*, decided August 23, 2006; Tax Court No. 005360-2005.

In this case, the taxpayer had not filed New Jersey gross income tax returns stating that Division of Taxation employees had verbally told him it was not necessary to file until he had all the necessary information to file his NJ-1040 returns. The Division denied making such statements to the taxpayer.

When the taxpayer filed his NJ-1040 returns, the Division of Taxation granted him a partial refund based on a subsequent change of income by the Federal Government. Per N.J.S.A. 54A: 9-8(c), if a taxpayer is required to report a change in Federal income for Federal tax purposes, to be eligible for a refund such change shall be filed with the Director within two years from the time of the Federal notice of change or correction. The taxpayer had filed his NJ-1040 returns within two years of the Federal change. However, the

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taxpayer was seeking that portion of his refund relating not to the Federal change, but to the original filing of his return that was out of statute for New Jersey gross income tax purposes.

Judge Small stated "In tax matters, strict adherence to deadlines are essential and claims or appeals filed even one day late are late." *FMC Stores v. Morris Plains*, 100 N.J. 418, 426 (1985). "Estoppel is rarely invoked against the government especially in tax matters." *Black Whale v. Director*, 15 N.J. Tax 338, 354-56 (Tax 1995). "Tax consequences must follow what a taxpayer did, not what he could, should, or might have done." *General Trading v. Director*, 83 N.J. 122, 136-38 (1980). And "Just as the government is required to turn square corners when dealing with its citizens, *FMC v. Morris Plains, supra*, taxpayers who seek refunds must comply with the government's procedural requirement for obtaining those refunds both as to time and other formalities."

Judge Small further opined, "I understand the unfortunate situation Mr. Mints finds himself in and the equities of his argument; however, our laws with respect to time limitations for filing tax refund claims, the prosecution of crimes, or assessment of taxes (as examples) embody a legislative determination that at some point the values of repose, certainty, and finality outweigh getting to the correct substantive result."

In a letter decision, Judge Small has entered judgment in favor of the Director in this matter.

**Trust Income** – *Kushner v. Director, Division of Taxation*, decided June 15, 2005; Tax Court No. 002867-2002.

The Tax Court granted summary judgment for the plaintiff, thereby overturning the Division's assessment.

The specific question addressed was whether the distributive share of partnership income received by a trust of which the taxpayer was the sole beneficiary should be treated on the trust's beneficiary gross income tax return as distributive share of partnership income under N.J.S.A. 54A:5-1(k) or income from a trust or estate under N.J.S.A. 54A:5-1(h).

For tax years 1994 and 1995 the receipts from a trust that were required to be distributed to a beneficiary retained their character and could be netted against losses of similarly characterized income.

The gross income tax instructions were changed for the 1996 tax filings so that receipts distributed to a beneficiary were now to be reported as trust income on the "Other Income" line of the NJ-1040. The instant case deals with a 1996 NJ-1040 filing.

The Court stated, that when changing positions, a letter in the *State Tax News* did not amount to sufficient authority to change tax return instructions under the Administrative Procedures Act and *Metromedia v. Director*, 97 N.J. 313 (1984).

Judge Small held that the Division was well within its authority to change the way trust income was to be reported, and in fact the 1999 partnership regulations accomplished the "sufficient authority" premises to enact the change. The

only problem is the instant case deals with a tax year 1996 NJ-1040 return filed in 1997, while the revised partnership regulations were enacted in 1999.

## **Insurance Tax**

**Retaliatory Tax** – *American Fire and Casualty Company v. Director, Division of Taxation*, decided October 19, 2006; Supreme Court of New Jersey A-134 September Term 2004.

At issue was the determination of the proper method of calculating a foreign company's retaliatory tax obligation pursuant to N.J.S.A. 17:32-15 when the N.J.S.A. 54:18A-6 premium tax cap statute is applicable.

In general, both domestic and foreign insurance companies are subject to a 2.1% tax rate on their New Jersey taxable premiums. However, the premium tax cap statute allows either a domestic or foreign company to pay tax on only 12.5% of its worldwide premiums if its New Jersey premiums account for more than 12.5% of its total worldwide premiums. This tax cap statute was enacted in 1945 and is unique to New Jersey. A foreign insurer is also subjected to a provision that requires it to pay retaliatory tax if its home state's own tax and other obligations would be higher than the tax and other obligations calculated to be due to New Jersey. In 1981, the United States Supreme Court upheld the constitutionality of retaliatory taxation as to insurance companies in *Western & Southern Insurance Co.*

In a four to three decision, the New Jersey Supreme Court decided that the benefits received from the premium tax cap are not included in a

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foreign insurer's retaliatory tax calculation. Therefore, majority determined that foreign insurers must pay retaliatory tax to New Jersey to the extent their home state imposed a higher tax rate than New Jersey's tax rate. The majority stated that their interpretation was a harmonization of the statutes and was not a decision on constitutional grounds. The three-member dissent believed that the foreign insurers should be taxed in New Jersey the same way New Jersey insurers would be taxed in their state. Consequently, the dissent would not have permitted New Jersey's premium tax cap to effectively reduce the amount of retaliatory tax unless the insured's home state had a similar provision(s).

### Litter Tax

**Paper Products** – *Random House, Inc. v. Director, Division of Taxation*, decided August 23, 2006; Appellate Division No. A-1359-05T5.

The Appellate Division affirmed the Tax Court's decision that Random House's sales of books to wholesalers, distributors, and retailers from 1993 to 2000 were not "litter-generating products" and were therefore not subject to the litter control tax.

### Sales and Use Tax

**Wrapping Supplies Exemption** – *Quest Diagnostics, Inc. v. Director, Division of Taxation*, decided August 2, 2006; Appellate Division No. A-901-04T2.

Plaintiff (Quest) purchases and then provides vacutainers to physicians at no charge for their use in collecting samples of human blood and other bodily fluids that are prescribed. Vacutainers are test tubes that are sealed with a vacuum inside and each one contains a chemical essential to the sample for testing purposes. When drawing blood, the physician inserts a needle into the patient's arm and punctures the vacutainer's rubber top with the other end of the needle causing blood to be drawn through the needle into the vacutainer. After the sample collection process is completed, the physician places the vacutainer in a courier box from which Quest or a competitor collects the vacutainer. Quest also maintains a center for patients whose physicians do not collect samples in their own offices.

Quest operates a medical testing laboratory that performs and provides test results. Quest, as does its competitors, provides testing services for both its own supplied vacutainers as well as competitor supplied vacutainers. The vacutainers are destroyed after testing and are never reused.

When the vacutainers were acquired, Quest paid sales tax on the purchase price. Pursuant to an internal audit, Quest determined that the vacutainers should be exempt from sales tax. Quest claims that the product qualifies for the N.J.S.A. 54:32B-8.15 exemption from sales and use tax because they are nonreturnable containers or other wrapping supplies. In general, N.J.S.A. 54:32B-8.15 (8.15) provides an exemption for the sales or use of wrapping supplies including cartons, nonreturnable containers, etc. and all other wrapping supplies that are used incidentally in the delivery of personal property.

The Tax Court previously ruled that the vacutainers were neither other wrapping supplies nor nonreturnable containers and thus were subject to sales and use tax. On Quest's appeal, the Appellate Division (AD) affirmed without adopting the Tax Court's full analysis. The AD stated that the vacutainers are returnable containers even though they are not reusable; however, it opined that the vacutainers were neither containers nor wrapping materials entitled to exemption based upon the objectives of the N.J.S.A. 54:32B-8.15 legislation. The AD noted that the words of this statute as applied to these facts demonstrated the inherent ambiguities in the statute. Therefore, the AD focused on the principle of narrow construction where N.J.S.A. 54:32B-8.15 was ambiguous. □

## Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2006 (January 1, 2006 – December 31, 2006) and tax year 2007 (January 1, 2007 – December 31, 2007) 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.

[2006](#)      [2007](#)

- Alphabetical Summary of Due Dates by Tax Type**

[2006](#)      [2007](#)

- 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.

[2006](#)      [2007](#) □



### *important phone numbers*

**Customer Service Ctr .. 609-292-6400**  
**Automated Tax Info 1-800-323-4400**  
 ..... 609-826-4400  
**Homestead (FAIR) Rebate**  
**Hotline ..... 1-888-238-1233**  
**Property Tax Reimbursement**  
**Hotline ..... 1-800-882-6597**  
**Earned Income Tax Credit**  
**Information ..... 609-292-6400**  
**NJ TaxFax ..... 609-826-4500**  
**Business Paperless Telefiling**  
**System ..... 1-877-829-2866**  
**Speaker Programs ..... 609-984-4101**  
**Alcoholic Bev. Tax ..... 609-984-4123**  
**Corp. Liens, Mergers, Withdrawals**  
**& Dissolutions ..... 609-292-5323**  
**Director’s Office ..... 609-292-5185**  
**Inheritance Tax ..... 609-292-5033**  
**Local Property Tax ..... 609-292-7221**  
**Motor Fuels Tax**  
**Refunds ..... 609-292-7018**  
**Public Utility Tax ..... 609-633-2576**