

New Jersey State Tax News

Spring 1997

inside

<i>not too late to telefile</i>	1
<i>federal "check the box"</i>	2
<i>division receives check</i>	2
<i>check your form nj-1040</i>	3
<i>organization chart</i>	4
<i>attorney audit project</i>	5
<i>hon. mary r. "polly" hamill</i> ..	6
<i>interest rate 11.25%</i>	6
<i>clarification</i>	7
<i>frank higgins</i>	7
<i>extensions to file</i>	7
<i>employer provided meals</i>	8
<i>educational assistance plans</i> ..	8
<i>gambling winnings & losses</i> ..	8
<i>class "a" beneficiaries</i>	8
<i>appraiser licenses</i>	9
<i>assessment administration</i> ..	10
<i>tax assessors' calendar</i>	10
<i>tax assessor certificates</i>	11
<i>criminal enforcement</i>	11
<i>enforcement summary</i>	13
<i>tax briefs</i>	14
<i>in our courts</i>	16
<i>seized business list</i>	17
<i>auctioned business list</i>	18
<i>in our legislature</i>	21
<i>tax calendar</i>	22
<i>from the director's desk</i>	24

In the center of this issue:

- Index for 1996 (Volume 25)
- List of 1996 tax legislation

Division Gets \$260,448



Director Richard D. Gardiner shows Supervising Auditor Joseph O'Gorman and Supervising Special Agent Albert Lugg a check for \$260,448.59 received as the result of an investigation of the bootleg motor fuels industry. Garey S. Chin, Assistant Special Agent in charge of the FBI in New Jersey looks on. For complete story see page 2.

Not Too Late to TeleFile

One million taxpayers statewide are eligible to file their 1996 State income tax this year by Touch-tone phone. Information packets and worksheets for the new Tele-File program were mailed to eligible taxpayers, offering major benefits, including tax refunds mailed within two weeks of filing.

Richard D. Gardiner, Director, New Jersey Division of Taxation, noted that the TeleFile packet includes a simple worksheet for the taxpayer to prepare before calling the toll-free TeleFile number.

important phone numbers

Tax Hotline	609-588-2200
Automated Tax Info	800-323-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-588-4500
Alcoholic Bev. Tax	609-984-4121
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
Tax. Registration	609-292-1730

<http://www.state.nj.us/treasury/taxation/>

continued on page 2

not too late to telefile - from page 1

Based on information provided from the worksheet, TeleFile will perform all of the math calculations and advise the taxpayer of the amount of the refund or taxes due, over the phone.

It is estimated that a toll-free TeleFile call will require less than ten minutes to complete, with no forms to mail in or other papers to fill out. Each taxpayer will receive a personal confirmation number during the TeleFile call, which will verify that the return was successfully filed, and tax refunds will be mailed within two weeks.

Taxpayers can access NJ TeleFile by calling 1-888-235-FILE from any Touch-tone phone within New Jersey 24 hours a day, 7 days a week during the tax filing period, which ends April 15. The New Jersey Division of Taxation began accepting TeleFile calls January 15.

“TeleFile is part of our continuing effort to make State income tax filing easier and simpler,” said Richard D. Gardiner, Director of the Division of Taxation. “I strongly encourage all eligible New Jersey taxpayers to TeleFile.”

It is anticipated that up to 15% of taxpayers eligible to use NJ TeleFile may not receive their packets due to change of address or other circumstances. Taxpayers can use the 1-888-235-FILE toll-free number to inquire whether they were included in the group of one million taxpayers selected to use TeleFile. □

Federal “Check the Box” Entity Classification

The Internal Revenue Service has issued final regulations effective January 1, 1997 that permit unincorporated entities that are not required to be treated as a corporation for Federal tax purposes (referred to as “eligible entities”) to choose whether to be taxed as partnerships or corporations. Federally, an eligible entity with at least two members can be classified as either a partnership or an association, and an eligible entity with a single member can be classified as an association and taxed as a corporation or can be disregarded as an entity separate from its owner.

In reporting business income to New Jersey, unincorporated entities having at least two members must file *either* a CBT-100 if they are corporations as defined at N.J.S.A. 54:10A-4(c) or if the entity has elected for Federal purposes to be taxed as a corporation and will file the Federal 1120 Corporation Tax Return. *Or*, if the eligible entity has chosen for Federal purposes to be taxed as a partnership and will file the Federal 1065 US Partnership Return of Income, it will also file for New Jersey purposes a New Jersey partnership return, NJ-1065.

Since the New Jersey Gross Income Tax Law requires that taxpayers use the same accounting methods as for Federal income tax purposes, the individual owner(s) in filing their personal gross income tax returns must report the income from those entities which have elected to be taxed as a partnership for Federal purposes in

the same manner as on the NJ-1065. Single owner entities authorized to do business in New Jersey which are not taxed as corporations for New Jersey purposes will be treated as sole proprietorships. □

Division Receives Forfeiture Check For \$260,448.54

The Division of Taxation has received a \$260,448.54 check from the Federal Bureau of

continued on page 5

New Jersey State Tax NEWS

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**New Jersey Division of Taxation
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Taxpayer Services Branch
Office of Communication
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✓**Check Your Form NJ-1040**

Errors in return preparation account for a large number of the delays that occur in the processing of returns and refunds. To ensure that returns are processed in a timely and efficient manner, we offer the following helpful hints.

Like the 1995 return, the 1996 New Jersey Resident Income Tax Return, Form NJ-1040, is in a scannable format that enables automated processing equipment to electronically capture income tax information directly from the return. By checking the items listed below, you will reduce the chance of error and speed the tax return processing time.

- | | |
|---|--|
| <ul style="list-style-type: none"> ✓ Use the correct form. Form NJ-1040 should be used by part-year residents as well as full-year residents. Use only a 1996 return for the 1996 tax year. ✓ Read the instruction booklet before completing the return. ✓ File only original forms. The Division is unable to scan photocopies of tax returns. ✓ Use only blue or black ink when completing forms. ✓ Enter all numbers within the red boxes. Do not use dollar signs or dashes. ✓ Make no entry on unused lines or lines where the amount to be reported is zero or less, except for Line 40, Use Tax Due. If no use tax is owed, enter "0.00" on Line 40. ✓ Check name, address, social security number and county/municipality code for accuracy when using the label or writing information on the return. ✓ Enter last name first when writing information on the tax return. This requirement differs from the Federal return. ✓ Check only one filing status box. ✓ Use the "State wages" figure(s) from the W-2(s), not the Federal figure. | <ul style="list-style-type: none"> ✓ Check the instruction booklet to determine eligibility for the new property tax deduction or credit. ✓ Locate the correct column for filing status in the Tax Table when calculating the New Jersey tax liability on Line 37. ✓ Request a refund by completing Line 58. ✓ Check arithmetic. ✓ Return is signed and dated. Both spouses must sign a joint return. ✓ Homestead Property Tax Rebate Application. An incomplete application may delay any rebate. ✓ Enclose all supporting documents and schedules with the return. Do not staple, paper clip or tape anything to the tax return. ✓ Any balance due. Return the payment voucher with the payment. Write the social security number on the check. ✓ Use the small window envelope to mail the payment voucher with any balance of tax due. ✓ Use the large envelope to mail Form NJ-1040 and/or HR-1040 with related enclosures. On the flap of the large envelope you will find three address labels. Choose the label that applies. ✓ Keep a copy of the return together with all supporting documents or schedules. |
|---|--|

If you need additional assistance in completing the New Jersey tax return, visit one of our regional offices or call the Tax Hotline at (609) 588-2200.

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division receives check - from page 2

Investigation as part of New Jersey's share of Federal forfeiture money stemming from Operation Red Daisy, a joint Federal-State investigation of the bootleg motor fuels industry.

Taxation Director Richard D. Gardiner, who accepted the check on January 28, 1997, noted that in 1991, as part of the investigation, the FBI, the Internal Revenue Service, and personnel from the Division and the Pennsylvania Department of Revenue set up undercover fuel businesses in the two states.

Division investigators operated businesses known as RJR Management, Fuel Services of America and Ruz Fuel in Ewing Township for almost two years.

"We're very proud of the role Division investigators played in this operation and we're very pleased to share in this forfeiture money," Gardiner said.

In 1992, when approximately 150 Operation Red Daisy search and seizure warrants were executed throughout the United States, millions of dollars was seized from bank accounts, safe deposit boxes, residences and businesses.

Some of these assets have been surrendered as part of plea agreements and indictments. Under Federal law, the money is forfeited to a special fund administered by the Department of Justice and shared among state, county and local agencies who participate in joint investigations.

Gardiner said today's check brings the total New Jersey has received in forfeiture funds from Operation Red Daisy to more than \$300,000.

Additional checks are expected as the investigation and prosecutions progress.

"By law, the money must be used to enhance our investigative and law enforcement capabilities or to pay the costs associated with other investigations," Gardiner said.

He noted that the Division has already purchased a state-of-the-art radio transmission system for use by investigators and plans to upgrade the Investigations Branch computer system in the near future.

All expenditures of funds under the forfeiture-sharing program must be approved by the State Attorney General, he added. □

Attorney Audit Project Begins

A joint project by the New Jersey Division of Taxation and the Internal Revenue Service was launched in January. Letters were sent from the Directors of IRS and NJ Division of Taxation to approximately 400 New Jersey attorneys who have failed to file and/or pay their Federal and State personal income taxes describing the delinquencies and giving the recipient 30 days to either pay what he or she owes, file delinquent tax returns or resolve any discrepancies in the agencies' records.

"If they didn't respond within 30 days, members of our joint task force followed up with phone calls and personal visits," said the IRS District Director.

Although the 400 lawyers represent only 1.8 percent of the attorneys licensed in New Jersey, the project involves significant

amounts of money owed to both the Federal and State governments.

"Attorneys, as officers of the Court, take an oath to uphold the law, not break it. They know full well that they must comply with State and Federal tax laws," the IRS District Director said.

The attorneys project is the most recent initiative resulting from a formal agreement between the IRS and the New Jersey Division of Taxation to promote voluntary compliance with State and Federal tax laws by combining efforts, resources and personnel.

A similar joint project conducted two years ago, which used computer cross-checking to identify delinquent or deficient certified public accountants and public accountants in New Jersey, resulted in the collection of more than \$4 million in overdue Federal and State income taxes, interest and penalties.

"An even more positive result of that effort is the fact that when the records of the CPAs and PAs who were identified during the project were rechecked after this past April 15 filing deadline, more than 85% of them were continuing to be taxpayers in good standing," said Richard D. Gardiner, NJ Division of Taxation Director.

The IRS District Director said that the New Jersey accountants and attorneys projects are part of an on-going, cooperative effort by the IRS and many state tax agencies to improve the nation's overall tax compliance level, which is now approximately 83 percent.

The remaining 17 percent repre-

continued on page 6

attorney audit project - from pg. 5

sents a “tax gap” of more than \$150 billion each year in money not received due to non-compliance and fraud.

“We see this as a matter of fairness to all taxpayers, not as an unfair targeting of any one profession. Non-compliance by any group of taxpayers increases the burden on all taxpayers. The many citizens who do pay their taxes have a right to expect others to pay their fair share,” the IRS District Director said.

All tax liabilities paid as a result of this joint effort will be subject to the normal interest and penalties imposed under Federal and State law.

“New Jersey’s Tax Amnesty program ended on June 1,” said Gardiner. “These attorneys could have come forward during that period and at least addressed their State income tax problems without penalties and interest.

“They didn’t choose to do that for whatever reason, so now they’re going to have to pay the full amount of the back taxes they owe, the normal fines and penalties, and the additional 5% penalty New Jersey has assessed on all State liabilities that were unresolved under Amnesty,” he said.

The two directors stressed that while the initial focus of the attorney project is State and Federal personal income taxes, all

items of tax compliance will be addressed, including corporate, business or withholding taxes owed by the individuals’ employers, law firms or partnerships.

Attorneys who fail to respond to the tax agencies face possible sanctions, including temporary or permanent prohibition from practice before the IRS, and/or criminal investigation by the tax agencies. □

Honorable Mary R. “Polly” Hamill, Tax Court Judge

The Division recognizes the recent loss of the Honorable Mary R. “Polly” Hamill, Judge of the Tax Court of New Jersey.

Following is an excerpt of the Honorable Joseph C. Small’s memories of Judge Hamill reprinted from a memorial brochure with Judge Small’s permission.

“In the dozen or so years that Polly Hamill was in the Attorney General’s office she handled the state’s most significant tax cases. I mention just three of them: *Salorio v. Glaser*, 93 N.J. 447 (1983) in which Polly was able to secure from the Supreme Court of New Jersey a ruling on retroactivity of unconstitutional state taxes.

“In *Amerada Hess v. Director*, 490 U.S. 66 (1989) Polly won a favorable interpretation with regard to the New Jersey Corporation Business Tax treatment of federal windfall profits taxes.

“Finally, in *Allied Signal v. Director*, 504 U.S. 768 (1992) Polly failed by the slimmest of margins

(5 to 4) to persuade the Supreme Court of the United States to make fundamental changes in the way states tax the investment income of non-resident corporations.

“A little more than three years ago Polly became a Judge of the Tax Court of New Jersey. In her brief tenure she authored twenty published and many unpublished opinions. Her thinking and writing brought order to the complicated and often incomprehensible body of state and local tax law. Her opinions will be studied and cited as authority on New Jersey tax law for years to come.

“Polly had a true calling to the law, to New Jersey tax law, to the bench. Those of us who were privileged to have called her colleague and friend miss her now, will think of her often, and will treasure our all too brief acquaintance forever.” □

Interest 11.25% for First Quarter

The interest rate assessed on amounts due for the first quarter of 1997 is 11.25%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/95	11.5%
7/1/95	11.5%
10/1/95	11.5%
1/1/96	11.75%
4/1/96	11.75%
7/1/96	11.75%
10/1/96	11.75%
1/1/97	11.25%

Clarification Estate or Trust Income

The Division in an earlier *State Tax News* article, Volume 25, Number 4 issued guidelines on how and where to report income received by a beneficiary of an estate or trust. The Division's long-standing position on what income is subject to the gross income tax for either a resident or nonresident beneficiary, has not changed, only the return line on which such income is to be reported has changed.

The intent of the previous article was to inform taxpayers that the income they receive from an estate or trust which is subject to the New Jersey gross income tax is to be netted into the category "Net income derived through estates or trusts" and reported on the "Other income" line on the return. Tax exempt interest or gains received by the estate or trust that flow through to the beneficiary retain their tax exempt character.

Taxpayers must include a copy of the Federal K-1 or a schedule detailing the income received from estates or trusts with their New Jersey tax return. □

Frank Higgins, State Tax News Coordinator

Supervising Auditor Francis J. Higgins passed away on November 30, 1996. Frank served the Division of Taxation in various capacities throughout his 35 years of service, holding positions ranging from Auditor III to Conferee, to Supervising Auditor. Frank also served as Audit's News

Coordinator for the *New Jersey State Tax News*.

Frank was an avid golfer and a member of several service organizations in the Trenton area. He will be missed by his friends and co-workers in the Division and the tax practitioner community. □

GROSS INCOME TAX Extensions to File

The April 15 deadline for filing the New Jersey income tax return is fast approaching. If you need more time to file, there are two ways to request an extension.

A four-month extension of time to file the New Jersey income tax return may be granted if at least 80% of the tax liability computed when filing the return (Form NJ-1040 or Form NJ-1040NR) is paid by the original due date, **and**

1. A copy of the Federal Application for Automatic Extension is enclosed with the final return and the box at the top of the NJ-1040 or NJ-1040NR is checked;
- or**
2. If no Federal extension is filed, an Application for Extension of Time to File New Jersey Gross Income Tax Return (Form NJ-630) is filed by the original due date of the return.

Tax may be paid using any or all of three methods: employer withholdings, estimated payments, or a payment made with Form NJ-630. If a payment by April 15 is necessary to satisfy the 80% requirement, Form NJ-630 must be filed and payment remitted even if a Federal extension was requested. When filing Form NJ-630, 100% of any balance due of the estimated tax (as determined on Form NJ-

630) must be paid with the extension request.

Be sure to file the income tax return by the extended due date. If the return is late, or the payment requirements have not been met, the extension will be retroactively denied and penalty and interest charges will be imposed from the original due date of the return.

No matter which method is used to request an extension of time to file the New Jersey income tax return, this request is for an extension of time to file, *not* an extension of time to pay tax due.

Form NJ-630 is available in all New Jersey resident and nonresident income tax return instruction booklets. This year it is a card size form located in the perforated packet folded inside the front cover of the booklet. Form NJ-630 is also available through the Division's Automated Tax Information System by calling 1-800-323-4400, NJ TaxFax service by calling 609-588-4500 from your fax machine's phone, and on the Division's home page on the World Wide Web, which can be accessed via your computer at:

<http://www.state.nj.us/treasury/taxation/>

Reminder

Taxpayers who file Form NJ-630 and make a payment to the Division of Taxation are reminded to report any payments made with Form NJ-630 on the Estimated Tax Payments Line, i.e.,

Line 44, Form NJ-1040;
Line 24, Form NJ-1040NR;
Line 24, Form NJ-1041; and
Line 20, Form NJ-1080-C

GROSS INCOME TAX
**Employer
 Provided Meals**

For New Jersey gross income tax purposes, the value of employer provided meals which are furnished to an employee on the employer's premises and for the employer's convenience is not deemed to be salaries, wages or other remuneration received for services rendered and is not includible in the employee's gross income. Nor is the value of employer provided lodging which the employee is required to accept on the employer's business premises as a condition of employment includible. Consequently, the amount shown as New Jersey gross income on Form W-2 should not include the cost of such meals or lodging. □

GROSS INCOME TAX
**Educational
 Assistance Plans**

Several taxpayers have questioned what effect, if any, the retroactive reinstatement of the Federal income tax exclusion for employer-provided educational assistance plans will have in New Jersey.

The Division has replied that there is no provision in the Gross Income Tax Act similar to the Federal provision regarding educational assistance plans. Consequently, the reinstatement of the Federal exclusion does not change the treatment of such plans under the Act.

For New Jersey gross income tax purposes, unless the tuition pay

ments made by the employer are for courses that are job related the payments are subject to withholding and must be included in the employee's gross income. To be considered job related the course must:

1. Maintain or improve skills required by the employee in the employee's trade, business, or employment;
2. Meet the express requirements of the employer; or
3. Meet the requirements of applicable law or regulations imposed as a condition of the retention of the employee's salary status or employment.

In addition to the above, successful completion of the course must not be required to meet the minimum requirements for employment. □

GROSS INCOME TAX
**Gambling Winnings
 and Losses Update**

As a result of the article which appeared in the Fall, 1996 issue of the *State Tax News* concerning gambling winnings and losses a number of taxpayers have asked for more information concerning the requirements for substantiating gambling losses used to offset winnings reported on their New Jersey Gross Income Tax Return.

As was indicated in the article evidence of losses may take several forms. With respect to winnings or losses resulting from casino gambling the article stated that the Division would not accept

letters from casinos which purport to "rate" the gambling activity of an individual or "estimate" losses.

As a clarification of this position the Division **will accept as part of the proofs of wins and losses** a schedule from the casinos detailing slot play and letters from the casinos rating an individual's wins and losses from table play. The Division will also accept records from the casinos detailing an individual's casino credit history, i.e. markers.

Taxpayers should also maintain other evidential material and/or records of gambling wins and losses as was required in the Division's previous *State Tax News* pronouncement.

Taxpayers should continue to keep evidential material for a period of six years after the filing of the New Jersey Gross Income Tax Return for that period. □

INHERITANCE/ESTATE TAX
**Class "A"
 Beneficiaries**

There is still some confusion regarding provisions for the expeditious transfer of a decedent's assets when the beneficiaries are Class "A."

When Class "A" beneficiaries became fully exempt from Inheritance Tax in 1988, the Division developed Forms L-8 and L-9 to enable these beneficiaries to have quick access to particular assets. The Form L-8 is used with bank accounts, securities, deposits in credit unions, etc. Form L-9 is used in transferring real estate

class "a" beneficiaries - from page 8

under specific conditions.

The Form L-8 is a self executing waiver. Class "A" beneficiaries for whom the form may be used include:

1. A surviving spouse in estates having a date of death on or after January 1, 1985.
2. A child, grandchild, adopted child, issue of an adopted child, stepchild, parent or grandparent in estates having a date of death on or after July 1, 1988.

The only step-relative for whom the Form L-8 may be used is a stepchild. A step-parent, step-grandparent or a step-grandchild is not a Class "A" beneficiary and cannot use the form.

The Form L-8 may not be used by a brother, sister, daughter-in-law or son-in-law as they are not Class "A" beneficiaries.

The Form L-8 may not be used by a person claiming to be a "mutually acknowledged child" of the decedent.

A Class "A" beneficiary may execute the Form L-8 where under the terms of an account or instrument and applicable State law the Class "A" beneficiary has the right of survivorship or is the named beneficiary. Where assets

were held in the name of the decedent alone and are passing to a Class "A" beneficiary under the terms of the decedent's will or the laws of intestacy, the executor or administrator may execute the Form L-8 provided that letters testamentary or letters of administration are attached and made part of the form. A separate Form L-8 is required for each institution and for each beneficiary.

The Form L-8 may be obtained and completed at the institution having control of the asset. It is filed directly with the bank, transfer agent, credit union, etc.

The Form L-9, unlike the Form L-8, is a request for a waiver and is not actually the instrument which may be used as the basis for releasing control of a decedent's assets. It is an application for a waiver releasing a resident decedent's New Jersey real estate. The Form L-9 is submitted, together with a copy of the decedent's will, to the Inheritance Tax Branch in Trenton. If warranted, the Branch will issue the desired waiver.

The Form L-9 may only be used when all of the following conditions are met:

1. The decedent at death was a resident of the State of New Jersey.
2. The decedent died on or after

July 1, 1988
(January 1, 1985 if the entire estate passes to a surviving spouse).

3. All beneficiaries of the estate are Class "A."
4. The estate is untaxable.
5. The only reason to file an Inheritance Tax return would be to secure a waiver for New Jersey real estate.

Forms L-8 and L-9 may be obtained from the Inheritance Tax Branch in Trenton or from any Division of Taxation office. Division offices are located throughout the State. □

LOCAL PROPERTY TAX ***Appraiser Licenses*** ***Not Required for*** ***Assessors***

Attorney General's Opinion #97-0003, dated January 7, 1997, addressed the question of whether in order to carry out their assessment duties certified municipal tax assessors must now be licensed as real estate appraisers per L.1995, c.349, (N.J.S.A. 45:14F-21(c) as amended), effective January 4, 1997.

The conclusion of the Attorney General was that the appraiser licensing law is not applicable to assessors.

According to the recent Opinion, local assessors' appraisals do not fall within the meaning of real estate "appraisal assignment" defined in the Real Estate Appraisers Act at N.J.S.A. 45:14F-2 in that they are not contractual but statutory. Further, the office of tax assessor is legislative in nature and

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appraiser licenses - from page 9

is regulated by an existing statutory scheme which provides qualification and education prerequisites, ethical and disciplinary standards, and several levels of supervision where the imposition of a second body of regulatory provisions would be unnecessary and unduly burdensome. The assessor as an appointed official performing the governmental function of assessing property for taxation is also distinguished from the real estate appraiser as an independent professional occupation. Finally, the intent of the Legislature to exclude assessors from the licensing requirement is indicated by their specific exemption in an earlier but similar version of the law and by the fact that dual compliance with the both laws would create conflicts as to jurisdiction and other matters.

However, licensing requirements would apply if appraisals are conducted outside the scope of an assessor's statutory duty. □

LOCAL PROPERTY TAX Assessment Administration

Richard D. Gardiner, Director, Division of Taxation, has directed Local Property Tax resources to focus on improving property tax administration in New Jersey. Some targeted areas will be clarifying responsibilities and obtaining greater accountability among the various State, county and municipal levels of property tax administration.

The Division is supporting a legislative proposal to require continuing education to remain certified as an assessor. Also favored is the establishment of a process where

assessors will receive input from the county tax boards for the purpose of enhancing operations and resolving problems.

Staff of the Local Property Tax office will be taking a more active role in monitoring assessment compliance to meet the Director's objectives. Efforts are also ongoing to update the Assessors' Handbook and rules under which county boards of taxation operate.

The cooperation and participation of everyone involved in administering the property tax will be needed to achieve these objectives. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court.
- County budgets certified to County Tax Boards.
- Percentage level of taxable value of real property set by County Tax Board resolution.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.

April 10-

- Copy of County Tax Board resolution of real property taxable value percentage level mailed to assessors, municipal clerks, and Director, Taxation.

April 15-

- Form SR-3A filed with Property Administration by County Tax Boards.

May 1-

- Extended deadline for filing Annual Post-Tax Year Statement, Form PD5, with collector where taxpayer's illness prevented required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and Taxation Director's certification of 2nd class railroad property.
- General tax rates certified by County Tax Boards.

May 23-

- Table of Aggregates signed and transmitted to Taxation and Local Government Services Directors, State Auditor, municipal clerks and clerk of board of freeholders by County Tax Board.

June 1-

- Assessors' Property Tax Deduction Disallowance Notices, Form PD4, sent.
- Collectors' Property Tax Deduction Disallowance Notices, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 for taxpayers granted a medical extension sent.
- Repayment of disallowed property tax deductions previously granted required. Nonpayments become liens.

June 3-

- Corrected Tax Duplicates sent by County Tax Board to tax collectors for billing purposes.

continued on page 11

tax assessors' calendar - from page 10

June 5—

- Certification of Property Tax Deductions, Form PD65.10, and Certification of Veterans' Deductions, Form VE-WVE-1, completed and forwarded by collector to County Tax Board.

2nd Monday in June—

- Assessors' report, description and valuation of railroad property not used for railroad purposes to Director, Taxation.

June 15—

- Total number and dollar amount summary of senior citizen, disabled, surviving spouse and veterans' property tax deductions allowed by each district certified to Director, Taxation. □

Fourteen persons passed the examination for the tax assessor certificate held on September 28, 1996 and became certified tax assessors on December 6, 1996.

Bergen County: Stephen P. Dougherty, Elmwood Park Borough.

Burlington County: Linda D. Stewart, Bordentown City.

Cumberland County: Lisa J. Perella, Vineland City.

Essex County: Arnold J. Kozeniesky, Cedar Grove Township.

Gloucester County: Diane A. Kusmanick, Deptford Township.

Hudson County: Joseph G. Nichols, Bayonne City.

Hunterdon County:

Harrie E. Copeland, III, Delaware Township.

Mercer County: Tina M.

Meheski-Wysocke, Trenton City.

Monmouth County: Debra J.

Piscitelli, Marlboro Township.

Morris County: James B. Kreitz,

Lincoln Park Borough; Dolores Pecorari, Washington Township.

Ocean County: Susan A.

Metcalf, Berkeley Township.

Sussex County: David Centrelli,

Newton Town.

Union County: Annmarie Switzer,

Westfield Town. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 5, 1996, General Machine & Instrument Co., Inc. and its responsible officers Richard Pessolano and Warren Kaye were indicted by a State Grand Jury for failing to remit

continued on page 12

LOCAL PROPERTY TAX

Tax Assessor Certificates

The tax assessor examination is held in accordance with the Assessor Certification and Tenure Act, which requires that anyone taking office as a tax assessor after July 1, 1971 must hold a tax assessor certificate.

NJ TeleFile

The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the conditions below, you may qualify to TeleFile your 1996 income tax return/homestead rebate application. To find out, call

1-888-235-FILE

Full year New Jersey resident during 1996

Not 65 years of age or older as of December 31, 1996

Only income from wages, interest, and/or dividends

Same filing status as on your 1995 NJ return

Not blind or disabled as of December 31, 1996

Total income of \$75,000, or less

criminal enforcement - from pg. 11

income tax withholdings of nearly \$58,000 to the State and for misconduct by a corporate official. Mr. Pessolano was also indicted for the failure to file personal income tax returns for two years and corporate business tax returns for General Machine and for NC Fabritech, Inc., a related corporation.

- Thomas Grossi and Robert Lisa were indicted on December 9, 1996 by a Hudson County Grand Jury on various charges relating to forgery and tampering with public records. These individuals are alleged to have signed another person's name to corporation business and income tax returns.
- Sheryl Terbecki pled guilty on November 18, 1996 in Ocean County Superior Court to one count of failing to file a 1991 NJ income tax return and to one count of theft by deception. Terbecki, who was indicted in February 1996, must make restitution to the State in the amount of \$12,172 for tax, penalty and interest resulting from the failure to file income tax returns and report the illegal income obtained from 1991 through 1994. She must also make restitution to the victims of the money stolen during this period. This case was conducted as a joint investigation with the Ocean County Prosecutor's office.
- The principals of two cases who had previously pled guilty were sentenced during the month. William Becker of Camden County had pled guilty to filing a false and fraudulent 1990 NJ income tax return and failing to file a 1994 State income tax return. The unreported income was derived from the sale of cars for which Becker had illegally obtained the title. He will serve four years imprisonment on each count that he had pled guilty and must make restitution to the State in the amount of \$3,900 for tax, penalty and interest. He must also make restitution to his former employer in the amount of \$106,650. Additional information regarding this case may be found in the Summer 1996 and Winter 1996 issues of the *State Tax News*.
- Larry Ansell and Michael Gohar of Emerald Hotels had pled guilty to failing to remit sales tax, employee income tax withholdings and corporate business taxes for a chain of hotels they operated. Each was sentenced to five years probation and ordered to make restitution to the State of tax, penalty and interest totaling nearly \$2.8 million. To date, they have made restitution payments totaling \$650,000. In addition, they were ordered to complete 800 hours of community service. Gohar was also assessed penalties unrelated to the tax charges totaling \$450,000 which are to be paid to the court. Additional information regarding this case may be found in the Summer 1996 issue of the *State Tax News*.
- The Division received a letter of appreciation from Michael Lynch, Lakewood Township Chief of Police, regarding the assistance provided by Special Agent Ron Wysiekierski in thwarting a multi-state narcotics network. This investigation involved many agencies including the Federal Bureau of Investigation, Ocean and Monmouth county prosecutor's offices, US Postal Service, the California Division of Criminal Justice, and Long Branch, Neptune City and Tinton Falls police. Arrests have been made and the investigation is ongoing.
- Robert Russo was sentenced in the Massachusetts District Court to 14 months incarceration and ordered to pay restitution to New Jersey in the amount of \$2,871. In a scheme to obtain tax refunds, Mr. Russo created bogus W-2 forms and used them to file false and fraudulent income tax returns. He victimized numerous states by collecting illegal tax refunds totaling \$98,050.
- Patricia A. Rouse and her husband Fred D. Rouse were indicted by a Camden County Grand Jury on October 31, 1996 on one count of filing a fraudulent 1994 New Jersey income tax return. The Rouses failed to report \$24,425 of the income that Mrs. Rouse embezzled from her employer. The couple was also indicted on other counts relating to the \$77,000 embezzlement, including theft by deception, forgery, and falsifying or tampering with records.

continued on page 13

New Jersey State Tax News

1996 (Volume 25)

INDEX

	No.	Page		No.	Page
AMNESTY			GENERAL		
Amnesty Generates \$359 Million	3	1	Compliance Efforts Continuing	1	2
New Jersey Declares Tax Amnesty	1	1	Cooperative Agreement on Domicile	4	2
Tax Amnesty Outreach Program	2	8	Division on the World Wide Web	3	3
Tax Amnesty Program; Credit Card Payment System for State Taxes (Legislature)	2	18	ELF Program to Expand in '96	3	4
			Index for State Tax News - 1995 (Volume 24)	1	insert
			Legislation: Synopsis of 1995 Tax Laws	1	insert
			New Jersey Taxation Home Page	1	24
			Publication Order Form (PUB-100)	2	8
			Publication Order Form (PUB-100) - Insert	2	11
CONFERENCE & APPEALS			GROSS INCOME TAX		
Protest Issues	2	7	Assignment of Lottery Winnings	4	19
Samuel Sciarrotta Retires	4	11	Checkoff for "Battleship New Jersey Memorial Fund" (Legislature)	1	20
			Credit for Taxes Paid to Another Jurisdiction (Courts)	1	18
CORPORATION BUSINESS TAX			Disposition of Partnership Income (Courts)	1	17
Allocation	1	11	Domicile	3	6
Allocation (Regular Place of Business)	2	14	Employer Income Tax Filing Changes	2	1
Corporate Seminars Offered	2	4	Employer Group-Term Life Insurance Payments	2	14
Corporation Tax Credit (MEEITC)	1	3	Estate or Trust Income	4	8
Delivery Services	1	4	Gambling Winnings or Losses	3	7
Entire Controversy Doctrine (Courts)	3	15	Head of Household Filing Status	4	7
Federal Modified Accelerated Cost Recovery	3	12	Local Payroll Taxes (Legislature)	3	21
Forgiveness of Debt	4	15	Net Gain from Disposition of Property (Courts)	1	18
IC-DISC Unable to Elect New Jersey S Corporation Status	4	16	New Imaging System for Returns	1	6
Interest Owed to Certain Related Parties, Limitation on Deduction Repealed	1	11	Nonresident Composite Return	4	5
Interest Owed to Stockholders (Legislature)	1	19	Package NJX (1996)	4	8
Joint Ventures	1	4	Property Tax Deduction/Credit Calculation	4	3
LIFO Recapture	1	4	Property Tax Deduction/Credit, New	3	1
Manufacturing Equipment and Employment Investment Tax Credit (MEEITC)	1	12	Property Tax Deduction, New (Legislature)	3	21
Net Operating Loss After Merger	1	3	Revised Due Dates for NJ-941/NJ-941-W	3	24
New Jobs Investment Tax Credit	4	16	Sale of Partnership Interest (Courts)	1	17
New York State Surcharges	4	16	Set-off for Expenses Paid by Medicaid (Legislature)	1	20
Nexus Schedule	3	5	Severance Pay	1	12
REITs May Deduct Dividends Paid to Shareholders (Courts)	3	16	Spousal Liability For Tax After Divorce	4	19
Reporting Refunds of State Tax	2	5	Tax Return Signature Requirement (Legislature)	2	18
Section 8 Credit	3	5	TeleFile Pilot Program Launched	1	6
S Corporation Reform	4	7	TeleFile Program Expands	4	1
Subsidiary's Gain Subject to Tax (Courts)	4	22	Withholding on Wages Paid to Household Employees	3	13
Tax Clearance Certificate Required for Mergers	3	13			

INDEX (continued)

	No.	Page		No.	Page
HOMESTEAD REBATE			Correction	3	9
Rebate Checks Issued July 31	3	3	New Jersey Urban Redevelopment Act		
New Rebate InfoLine	3	24	(Legislature)	3	21
			Reimbursements Certified	4	12
			Summary of 1995 Court Decisions	1	7
INHERITANCE TAX			Tax Assessor Certificates	3	10
Changing Domicile	2	6	Tax Assessors' Calendar	1	8
CPA Prepared Returns	3	8	Tax Assessors' Calendar	2	10
Domicile, definition and guidelines	1	5	Tax Assessors' Calendar	3	9
Inter Vivos Transfers (Courts)	3	20	Tax Assessors' Calendar	4	12
Nonresident Ratio Tax	4	9	Tax Maps, New Rules for	3	9
Timely Filing of Complaint (Courts)	4	22	Taxes to be Paid Before Further Appeal (Courts)	3	19
			Veterans' Organizations and Tax Exempt Status		
			(Legislature)	4	25
LITTER CONTROL TAX					
Tax Extended (Legislature)	1	20	MISCELLANEOUS		
"Food for Human Consumption," Definition of			Attempt to Bribe Division Auditor	4	3
(Courts)	3	16	Business Employment Incentive Program		
			(Legislature)	3	22
LOCAL PROPERTY TAX			Business Relocation Assistance Grant Program		
Active Service Dates for Veterans' Property			(Legislature)	3	21
Tax Benefits Amended (Legislature)	1	21	Child Support Enforcement (Legislature)	1	21
Appeal of Assessments (Courts)	1	19	Criminal Enforcement	1	9
Audits Yield Over \$400,000	4	11	Criminal Enforcement	2	12
Business Retention Act (Courts)	4	23	Criminal Enforcement	3	10
Changes to Mod IV Program	4	11	Criminal Enforcement	4	13
Contaminated Property Tax Exemption			Enforcement Summary		
(Legislature)	1	20	—Quarter Ending December 31, 1995	1	11
County Tax Board Members Confirmed	2	10	—Quarter Ending March 31, 1996	2	13
Deduction Form Distribution (Legislature)	1	20	—Quarter Ending June 30, 1996	3	12
Deductions for Co-op, Mutual Housing			—Quarter Ending September 30, 1996	4	15
Residents	3	9	Foreign Professional Legal Corporations		
Denial of 100% Veterans' Exemption (Courts)	3	17	(Legislature)	1	22
Denial of Parsonage Exemption (Courts)	4	23	Gardiner Elected NESTOA President	4	3
Disabled Vet's Exemption Prorated	2	9	Interest 11.75% for First Quarter 1996	1	3
Dismissal for Failure to Prosecute (Courts)	2	17	Interest 11.75% for Second Quarter 1996	2	4
"Effective" Property Tax Rates	2	8	Interest 11.75% for Third Quarter 1996	3	4
Exempt Status of Nonprofit Organization			Interest 11.75% for Fourth Quarter 1996	4	5
(Courts)	1	18	New Capital Sources Partnership (Legislature)	1	21
Farmland Acreage	4	11	New Jersey Business Corporation Act		
Farmland Assessment Act Amended			(Legislature)	1	21
(Legislature)	1	20	Penalties for Selling Tobacco Products to		
F.E.A.C. Adopts Values for 1997	4	11	Minors (Legislature)	1	21
General Tax Rate (Legislature)	1	20	Sale of Tobacco Products (Legislature)	1	21
Greenhouse Assessed as Real Property (Courts)	3	18	Seizures & Auctions—Oct. – Dec. 1995	1	13
Improper Bidding Process in Bulk Sale of			Seizures & Auctions—Jan. – Mar. 1996	2	15
Tax Sale Certificates (Courts)	4	24	Seizures & Auctions—Apr. – June 1996	3	14
Ivan Haftkowycz Retires	4	12	Seizures & Auctions—July – Sept. 1996	4	17
Mobile Home Service Fee	4	19	State Mandate Legislation (Legislature)	3	21
New Jersey Property Valued at \$496 Billion	2	9	Taxpayers' Bill of Rights Violation (Courts)	4	24

INDEX (continued)

	No.	Page		No.	Page
PARTNERSHIPS					
Filing NJ-1065 Information on Diskette	2	4	Motor Vehicle Equipment Purchases by Disabled Veterans	1	16
			Promotional Materials, Distribution of Radio & Television Broadcast Production Equipment, Exemption for (Legislature)	2	16
SALES AND USE TAX					
Agreement with U.S. Customs Service	4	8	Refinishing Hardwood Floors Taxable (Courts)	4	25
American Indian Sales	4	20	Rental Car Repair	1	16
Beauty Salon Sales	4	20	Senior Citizen Clubs	3	15
Bulk Sales (Courts)	2	17	Tax on Telephone "Yellow Pages" Ads Repealed	2	4
Carnival Rides and Nonprofits	3	7	"Tax Free" Shopping	3	15
Changes in Filing Requirements	2	2	Telephone Answering Service	4	9
Commercial Fishing Head Boats, Exemption for (Courts)	1	19	Transfer of Motor Vehicle Subject to Lien	1	15
Corporate Purchasing Cards	2	5	Use of Motor Vehicle Parts	1	16
Database, Sale of	2	16	Use Tax Applicable to Tangible Personal Property For Employee Programs (Courts)	3	20
Diplomatic Tax Exemption	1	12	Use Tax Notification	4	21
Embroidery Services	1	16	UNCLAIMED PROPERTY		
Hair Growth Product	4	20	Unclaimed Property (Legislature)	1	21
Home Warranty Repairs	3	13	URBAN ENTERPRISE ZONES		
Hospital Cafeteria Sales	4	20	New Zones Designated (Legislature)	1	22
Leased Hotel Room, Permanent Resident	3	13			
Military Motor Vehicle Sales	4	20			
Motor Vehicle Raffle by Exempt Organization	2	16			

*Legend for 1996 Tax Laws

ABT	=	Alcoholic Beverage Tax
ACC	=	Atlantic City Casino Control Commission
ALL	=	All Taxes Administered by the Division
CBT	=	Corporation Business Tax
FBT	=	Financial Business Tax
GIT	=	Gross Income Tax
LIT	=	Litter Control Tax
LPT	=	Local Property Tax
MFT	=	Motor Fuels Tax
MIS	=	Miscellaneous
S&U	=	Sales and Use Tax

1996 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
2	2-29-96	Provides for a State tax amnesty period and appropriates funds to the Division to administer the program.	ALL	A-1420 (1R)
10	3-28-96	Changes current law concerning the written verification of gross income tax returns so that such returns may be filed by telephone using a Touch-tone telephone keypad.	GIT	S-489 (1R)
24	5-8-96	Implements the constitutional amendment approved by the voters which prohibits laws and regulations that impose unfunded mandates on counties, municipalities, and school districts.	MIS	S-2 (1R)
25	5-9-96	Establishes a Business Relocation Assistance Grant Program within the Department of Commerce and Economic Development to encourage economic development and job creation in this State.	MIS	A-1414 (1R)
26	5-9-96	Establishes the Business Employment Incentive Program to be administered by the Economic Development Authority to make direct payments in the form of grants to attract businesses creating new jobs in the State.	MIS	A-1415 (1R)
33	6-17-96	Extends the expiration date and limits enactment of certain payroll taxes under the "Local Tax Authorization Act."	GIT	A-1566 (1R)
60	7-4-96	Provides a gross income tax deduction that phases in over three years to reach a maximum of up to \$10,000 for property taxes paid by homeowners, or the rental equivalent thereof paid by tenants, on a taxpayer's principal residence in this State.	GIT	S-1 SCS
62	7-12-96	Creates the New Jersey Redevelopment Authority (NJRA) to assist in the revitalization of New Jersey's urban areas.	LPT	S-800 (3R)
82	7-25-96	Permits war veterans' organizations to conduct certain income-producing activities and retain property tax exempt status.	LPT	A-1576
121	11-1-96	Repeals mandatory employer trip reduction programs and authorizes tax benefits for voluntary programs.	MIS	SCS for S-498 and 927 (2R)
Public Question No. 2	11-5-96	Amends Article VIII, Section II, of the State Constitution to dedicate 4% of the annual revenue from the Corporation Business Tax, or any other State law of similar effect, to fund hazardous discharge cleanup, underground storage tank improvements and surface water quality projects.	MIS	SCS for SCR Nos. 41 and 60
124	11-6-96	Provides for the remediation and redevelopment of municipal solid waste landfill sites under the terms and conditions of a redevelopment agreement negotiated by a developer and the State.	MIS	S-294 (1R)

criminal enforcement - from page 12

- On November 18, 1996, the appellate court upheld the decision of the lower court in four of the five areas Richard Manthey had appealed. Mr. Manthey had originally been found guilty on six counts relating to his failure to turn over to the State sales tax collected and income tax withheld. As a result of this decision, the original seven year jail sentence which was stayed pending his appeal may begin.
- Afzal M. Sheikh, president of Ehsan Corp., was sentenced on October 4, 1996 in the Hudson County Superior Court on one count of misapplication of entrusted property. The property consisted of \$45,000 of unremitted sales tax collected at the liquor store/deli that he operated in Jersey City. Prior to the sentencing, Sheikh paid the full amount of tax outstanding. Collection of the accrued penalty and interest will be subject to civil collection.
- On October 18, 1996, Melvin Shaw was sentenced to five years imprisonment for failure to remit \$36,005 in sales tax which he had collected from the sales of luxury automobiles from 1991 to 1994 at his dealership located in Berlin Borough, Camden County, New Jersey. Shaw was also sentenced to serve an additional five years for several counts of failure to deliver motor vehicle titles to customers and for defrauding customers and individuals who believed they were investing in his business. The State has obtained a judgment

against Shaw in the amount of \$50,301 for tax, penalty and interest due as of the date Shaw was sentenced. Additional interest will accrue until the entire liability is satisfied.

- Seven guilty pleas were entered in municipal courts throughout the State during this period by individuals and businesses for noncompliance with the cigarette tax law. In three additional cases, businesses were found guilty of accepting untaxed cigarettes and selling cigarettes without a license. These ten cases resulted in the imposition of fines and penalties totaling \$9,119 and the awarding of nearly \$73,000 of seized cigarettes to the State. Two of the defendants also received multi-year supervised probation. In one case, the probation was granted with the conditions of obtaining legitimate employment, submitting to drug testing and remaining arrest free.

In addition, charges were filed for violations of transporting, possessing, and selling untaxed cigarettes as well as licensing violations in municipal court for eleven cases. The value of the assets seized for these cases totaled \$25,614. □

Enforcement Summary

Civil Collection Actions Quarter Ending - December 31, 1996

Following is a summary of enforcement actions for the quarter ending December 31, 1996.

Certificates of Debt

During the quarter ended December 31, 1996, the Division filed 3,130 Certificates of Debt in New Jersey Superior Court. These COD's, which have the same force and effect as docketed judgments, totaled \$30.7 million.

Levies

\$88,301.29 was collected by levying against payments made under State contracts to satisfy debts owed by State vendors.

Jeopardy Assessments

When a vendor is found to have failed to register his or her business or failed to collect and remit sales taxes or file tax returns, the Division of Taxation has the authority to make an immediate, on-site assessment of tax due (referred to as a "jeopardy assessment") and may seize all available assets to satisfy the on-site tax assessment.

The Division makes jeopardy assessments when there is a danger that a non-compliant vendor will discontinue operations, remove his or her business property and flee the State. This remedy is often necessary in cases involving transient vendors, out-of-State businesses operating in New Jersey, or vendors operating from non-fixed locations, such as roadside sales, flea markets or trade shows.

If the liability is not resolved, the seized property can be sold at public auction and the proceeds used to satisfy the tax debt.

For the quarter ending December 31, 1996, \$367,086 was collected from jeopardy assessments, and the assets of 11 businesses were seized.

enforcement summary - from pg. 13

Seizures

When a liability, for which the Division of Taxation has secured judgments, cannot or will not be satisfied by a taxpayer and all other means of collection of the debt have been exhausted, seizure of the business and personal assets will take place. Field Investigators will close a business, seizing any tangible assets including licenses, inventory, machinery, furniture, vehicles, etc., until arrangements are made for payment of the debt.

For the quarter ending December 31, 1996, property of 23 businesses was seized. Some businesses were able to reopen, others remain closed. A listing of these seizures appears on pages 17.

Auctions

If the liability of a business seized by the Division is not satisfied or resolved, the business will remain closed. To satisfy the debt, the Division can sell the business assets at a public auction.

During the quarter ending December 31, 1996, three auctions were held by the Division. A listing follows on page 18.

In the event an auction does not net enough monies to resolve the debt, the Division will execute against the personal assets of any of the business's responsible officers. Responsible officers are held personally liable for the trust fund portion of the debt which includes, but is not limited to, sales tax, withholding tax and motor fuels tax.

Referrals to Attorney General

In cases where the Division has exhausted its administrative remedies without success, referrals are

made to the Office of the Attorney General. During the quarter ending December 31, 1996, 436 such cases were referred to the Attorney General's office for additional collection.

Together, the Division's Referral Group and the Attorney General's Collection Unit have collected \$786,524 in revenue during the fourth quarter of 1996 and \$2,131,752 throughout the first six months of this fiscal year from cases like these.

Liquor License Program

Under a recently enacted State law, applicants for renewal or transfer of a liquor license must receive a certificate of tax clearance from the Division. This program was in effect in seven New Jersey counties in 1996 and added seven additional counties in 1997. The program will be in effect in all 21 New Jersey Counties in 1998.

In addition, the Division is conducting special investigations and audits of liquor license holders. In the past year, the Division has assessed more than \$56 million from holders of the various types of licenses subject to audit and collected \$64.4 million. Richard D. Gardiner, Division of Taxation Director said he expects to collect a total of \$150 million during the three-year program.

During the quarter ending December 31, 1996, 148 notifications of liquor license transfer were received by the Division's Bulk Sales section. Forty-one (41) audits relating to this project and previously requested were completed; assessments from these audits totaled \$2,045,502. □

Tax Briefs

Gross Income Tax

Health Insurance Premium Paid By Employee — The Division responded to an inquiry regarding the taxability of the portion of health insurance premium contributions paid by employees in the following circumstances:

Employees may choose whether or not to have coverage under the company's health insurance plan. An employee who elects coverage must contribute 20% of the cost of the premium. This 20% contribution is deducted from the employee's pay. No part of the health benefit can be converted to cash, and there are no flexible spending provisions. For Federal tax purposes, the 20% contribution is treated as nontaxable under 26 U.S.C §125.

For New Jersey gross income tax purposes, the amounts contributed by the employees are not excludable from the employee's income. Since the employees participating in the plan have elected coverage, the amounts they contribute toward health coverage are treated as taxable wage income under N.J.S.A. 54A:5-1a. and should be included in the New Jersey wages reported on their W-2 forms. These amounts are deemed to be constructively received by the employees, although not actually included in their paycheck.

Personal Liability of Responsible Persons for Gross Income Tax Withheld by Employer

— A corporate officer, a member of a partnership or an employee may in some circumstances be held personally liable for gross income tax that should have been withheld

continued on page 15

tax briefs - from page 14

from employees and remitted by their business. The determination of personal liability depends on the specific facts.

For purposes of determining liability for unintentional failure to pay tax withheld, willful failure to withhold and remit the tax, or failure to file required returns, the Gross Income Tax Act defines the responsible persons to include:

An individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation) or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. [N.J.S.A. 54:A:9-6(1).]

Thus, for gross income tax purposes, the persons who can be held liable for tax that should be withheld from employees and remitted to the State include (in addition to a sole proprietor, partnership or corporation which has employees) an officer or employee or partner who has a duty to perform certain functions in carrying out the employer's responsibilities under the Gross Income Tax Act, but instead, did not carry out this responsibility correctly.

In those instances when the issue of personal liability for gross income withholding taxes has been litigated, the court has made a detailed analysis of the facts, closely examining a corporate officer's actual functions, in order to determine whether the officer was under a duty to withhold and remit gross income tax on behalf

of the employer-corporation. For example, in *Cooperstein v. State of New Jersey, Division of Taxation*, 14 N.J. Tax 192 (App. Div. 1994), certif. den. 140 N.J. 329 (1995), the Appellate Division determined that while the nominal chief executive of the corporation had general authority to supervise business affairs and to sign checks, he did not actually perform these functions. Therefore, he was not deemed to be "under a duty" to withhold and remit gross income tax on behalf of the corporation, and was not personally liable for its unpaid gross income withholding taxes. In *Lorenzo v. Director, Division of Taxation*, 14 N.J. Tax 577 (Tax Ct. 1995), the president and majority shareholder of a corporation was held not to be personally liable for the company's failure to remit gross income tax withheld from employees. An immigrant illiterate in English, he worked for the company as a laborer and supervisor of laborers. Although he had "paper" authority as president of the corporation, his actual duties had nothing to do with taxes.

Sales and Use Tax

Hostess Credit — The Division received an inquiry concerning the sales tax consequences when a New Jersey "hostess" holds a show in her home on behalf of a direct marketing company representative and receives a hostess credit based on the sales volume, which can only be used to select merchandise from the company's catalog.

The New Jersey Sales and Use Tax Act defines "sale" as any transfer of title or possession or both,... for a consideration...." N.J.S.A. 54:32B2(f). The New Jersey Tax Court has held that although the

consideration for the sale does not have to be received in cash or its equivalent, it **does** have to have a value in the marketplace. *Burger King Corp. v. Director, Division of Taxation*, 9 N.J. Tax 251 (Tax Ct. 1987), aff'd. 224 N.J. Super. 628 (App. Div. 1988).

The law provides a definition for "receipt," which is "the amount of the sales price of any property...valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser..." In interpreting this definition, the Court held that a coupon, which was used as credit against the sale price of a product so as to render it "free" to the customer, was not subject to tax because it did not have a monetary value in the marketplace. Instead, the value of the coupon was treated as a discount against the purchase price, which was not part of the taxable receipt. This is distinguishable from a manufacturer's coupon, where the manufacturer actually reimburses the retailer with monetary value for the coupon amount.

Since the hostess credit in this case can only be used towards the purchase or in exchange for company products (i.e. it has no monetary value in the marketplace), it is similar to a non-reimbursable store coupon, which is treated as a discount for New Jersey sales tax purposes. Therefore, the hostess does not owe sales tax on the products received in exchange for the hostess credit. To the extent that the purchases exceed the value of the credit, that

continued on page 16

tax briefs - from page 15

amount is subject to tax.

Trade-In Credit: Leases v. Sales

— The Sales & Use Tax Act allows a trade-in credit for property of the same kind that is not tangible property purchased for lease, accepted in part payment and intended for resale by the vendor. N.J.S.A. 54:32B-2(d). In addition, the lessor is deemed the retail purchaser of leased property. N.J.S.A. 54:32b-2(e).

Since the lessor is considered an ultimate consumer under the lease law, when a customer is entering into a **lease** transaction, the value of any vehicle that is traded in, whether leased or owned by the customer, cannot be used to reduce the amount upon which the lessor is required to pay the lessor's use tax. A trade-in deduction in this case could only apply with respect to the transaction in which the lessor acquired the property intended for lease to the customer...but the statute specifically denies a trade-in credit for this transaction.

If a customer is entering into a **sale** transaction, and is trading in a **leased** vehicle, whether the sales tax receipt can be reduced depends upon the chain of title of the trade-in. If the customer exercises the lease purchase option, and pays New Jersey sales tax on the buyout, then he is entitled to a trade-in credit pursuant to the statute.

However, if the customer does not take title to the leased vehicle, but rather *assigns* the right to buy the vehicle to the dealer, who then pays off the lease and takes title, the customer is **not** entitled to a trade-in credit for sales tax

purposes. In this situation, the customer merely sold the dealer the intangible right to acquire property, and did not transfer the property itself in exchange for credit.

The following chart illustrates the availability of a trade-in credit:

Trade-in Owned Vehicle

Buy new car — Credit Available
Lease new car — No Credit

Trade-in Leased Vehicle

Customer buyout:

Buy new car — Credit Available
Lease new car — No Credit

Dealer assignment:

Buy new car — No Credit
Lease new car — No Credit

In Our Courts

Gross Income Tax

Credit for Tax Paid to Other Jurisdiction - Income from Non-New Jersey S Corporation — *Sutkowski v. Director, Division of Taxation*, decided December 20, 1996; Tax Court; No. 008632-94.

Plaintiff was the sole shareholder of a New York S corporation. New Jersey did not recognize S corporations until 1994. Therefore, for New Jersey gross income tax purposes, a distribution that was made to plaintiff during 1991 was taxable by New Jersey as dividend income for 1991. However, this distribution was not taxable by New York for 1991 because it was not part of plaintiff's pro rata share of the S corporation's income in that year. New York taxed plaintiff on the income realized by the S corporation, which was allocated to plaintiff in 1991, but was not yet distributed to him during that year.

At issue was whether, in calculating credit for taxes paid to New York, plaintiff could include the 1991 S corporation distributions as income taxed by New York State in 1991. The Court concluded that because this distribution was subject to New Jersey tax but not to New York tax in 1991, it was includable in the denominator, but not in the numerator, of the fraction used in determining the maximum credit allowed:

Income subject to tax by other jurisdiction
Entire New Jersey income

Local Property Tax

Lacked Standing To Intervene

In Appeal — *Mobil Administrative Service Co., Plaintiff, v. Mansfield Township, Defendant*, decided May 20, 1996; Tax Court of New Jersey; Docket No. 005824-95.

In June, 1995, Mobil filed complaint with Tax Court appealing a Judgment of the Warren County Board of Taxation affirming the 1995 assessment on its property. On August 30, 1995, Mobil entered into a contract to sell the property to Zeta Consumer Products Corp. The Contract of Sale made no reference to the pending appeal and provided that local property taxes would be apportioned as of the closing date, September 27, 1995.

continued on page 19

Division of Taxation Seizures (October – December 1996)

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

County	Name/Address	Seizure Date	Business Type	Status
Burlington	Chateau Silvano Rt. 541 Medford	10/22/96	Restaurant/Cocktail lounge	Closed Liquor license seized
	Jerry S. Andrews 26 High St. Mount Holly	11/14/96	Chiropractic office	Closed Motor vehicle seized
	Ernst A. Flake 807 Eugenia Dr. Medford	11/26/96	NA	Motor vehicle seized
Camden	Old Grads (Whiznmarr, Inc.) 712 Whitehorse Pike Oaklyn	10/23/96	Social club	Liquor license seized
	Michelle Pryn d/b/a Pixel Perfect 6525 S. Crescent Rd. Pennsauken	11/12/96	Video reproduction	Motor vehicle seized
Hudson	Freddie's Lounge 103-105 Monticello Ave. Jersey City	11/11/96	Tavern	Closed Liquor license seized
Mercer	H&M Auto Brokers 620 Calhoun St. Trenton	11/21/96	Used car dealership	Motor vehicles seized
	Nassau Communications Route 31 Pennington	12/5/96	Print shop	Closed
	Joseph E. Pintinalli 19 Pintinalli Dr. Trenton	12/10/96	NA	Automobile seized
Middlesex	A-1 Service Co. 1830 Rt. 35 Sayreville	10/2/96	Appliance service and repair shop	Closed
	KMT Lock 24 Barton St. Edison	10/24/96	Mobile lock repair shop	Closed
	Convenience Plus 262 Ryders Lane Heritage Plaza Milltown	12/13/96	Liquor store	Liquor license seized
Monmouth	New Club Caribbean 27 Atkins Ave. Neptune	10/24/96	Nightclub/Package goods store	Closed
	Castaways 1313 Memorial Dr. Asbury Park	10/24/96	Restaurant	Closed

taxation seizures - continued from page 17

County	Name/Address	Seizure Date	Business Type	Status
Monmouth	Frank's Brookside Inn 1 Wilson Ave. Englishtown	12/5/96	Restaurant/Bar	Closed Liquor license seized
Morris	Mario's Famous Pizzeria and Restaurant 140 Route 10 Randolph	11/19/96	Restaurant	Closed
Ocean	Antonio's 1635 Bay Ave. Pt. Pleasant	10/16/96	Pizzeria	Closed
Passaic	Ramon Sotomayor d/b/a Question Mark Bar 20 VanHouton Ave. Paterson	11/21/96	Tavern	Liquor license seized
	Betzaida Gonzalez d/b/a Lorenzo's Bar 482 Main St. Paterson	11/21/96	Tavern	Liquor license seized
Sussex	Drew Mountain Auto Repair Sussex	11/13/96	Auto repair shop	Closed
Union	Trembley Auto Body 1677 Bridge St. Rahway	10/29/96	Auto repair and sales	Closed
	Next Exit Hand Car Wash 1574 Main St. Rahway	10/29/96	Car wash	Closed
Warren	Oraco, Inc. d/b/a The Oxford House 31 Wall St. Oxford	11/12/96	Tavern	Liquor license seized

***Division of Taxation Auctions
(October – December 1996)***

County	Name/Address	Auction Date	Business Type	Assets Auctioned
Atlantic	Uncle Mike's Country Pine Inn Mays Landing	10/7/96	Bar	Liquor license
Camden	Steven Hoerst t/a Hoerst Landscaping Voorhees	10/19/96	Landscaping	Vehicle and equipment
Mercer	Michael Sbarro Sbarro's Famous Hot Dogs Trenton	10/3/96	Luncheonette	Business contents

in our courts - from page 16

Zeta, by letter dated December 22, 1995, advised Mobil's attorneys that it wished to be involved in settlement of the appeal. In January, Zeta requested from Mobil a copy of the appeal complaint and wanted to discuss "joint prosecution of the case." They also contacted Mansfield Township requesting a meeting to discuss the 1995 assessment. On March 5, 1996, Zeta filed its motion to intervene.

Between January 24, 1996 and March 13, 1996, Mobil and Mansfield Township reached a settlement reducing the 1995 assessment. A Stipulation of Settlement was submitted March 29, 1996 but not processed pending decision of Zeta's motion. The motion would be granted only if Zeta had standing to intervene, and such intervention did not violate statute of limitations or filing deadline, and the application satisfied the requirements of R. 4.33.1 which provides "Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Tax Court determined that Zeta lacked standing to intervene and the motion was denied. As of the appeal deadlines Zeta was not a taxpayer within the meaning of the appeal statute, had no interest in the subject property and no obligation to pay property taxes

assessed to the property. Zeta contended such denial violated its constitutional right to protect and assert its interest in the property. The contention has no merit. When the requirements of due process were satisfied regarding a prior property owner then due process was satisfied as to a successor in title. Zeta's failure to include provisions in the Contract of Sale requiring its consent to the resolution of any tax appeal to protect its interest cannot be remedied by intervening in Mobil's appeal.

Additionally, the Court offered an analysis on other legal issues concerning Zeta's motion, specifically the statute of limitations for property tax appeals and the application's compliance with the four criteria to satisfy R. 4.33.1.

Local Assessor's C.T.A. Suspended – *N.J. Division of Taxation, Petitioner v. David M. Gill, Respondent*, decided December 9, 1996; Director's Hearing; Richard D. Gardiner, Director, Division of Taxation.

David M. Gill, certified tax assessor in Milford, West Amwell, Belvidere, Frelinghuysen, Hardwick and Pahaquarry, recently had his Tax Assessor's Certificate suspended pursuant to N.J.S.A. 54:1-35.29 for not filing N.J. Gross Income Tax Returns for 1988, 1989, 1990, 1993, 1994 and 1995.

N.J.S.A. 54:1-35.29 authorizes the Director to revoke or suspend any Tax Assessor Certificate for "dishonest practices, or willful or intentional failure, neglect or refusal to comply with the constitution and laws relating to the assessment

and collection of taxes, or other good cause."

Failing to file State income tax returns is a disorderly persons offense under N.J.S.A. 54:52-6a if failure was reckless or negligent, or a crime of the third degree under N.J.S.A. 54:52-8 if the intent was to "defraud the State or to evade, avoid or otherwise not make timely payment of any tax...."

Investigation by the Division's Internal Security Unit resulted in Gill's submitting delinquent NJ-1040 returns in September 1996 including \$1,270.12 in gross income tax payments. However, after review by the Gross Income Tax Audit Branch, Gill was assessed an additional \$2,939.39 in tax, penalty and interest. The Internal Security Unit's review of the records as well as Gill's own testimony evidenced no previous requests for filing extension, mitigating circumstances or attempted compliance. In imposing the suspension, Director Gardiner exhorted that this be a warning to all holders of Tax

continued on page 20

Electronic Filing

- ◆ Are you filing Federal income tax returns electronically?
- ◆ Would you like to file New Jersey income tax returns electronically?

The New Jersey Division of Taxation accepts electronically filed income tax returns.

For additional information, call the Division's Hotline at (609) 588-2200 or write New Jersey Division of Taxation, ELF, CN 191, Trenton, NJ 08646-0191.

in our courts - from page 19

Assessor Certificates to conduct their professional and personal tax matters so as to promote public confidence in the integrity of the tax system.

Omitted Added & Omitted Assessments Denied – 200 43rd Street, L.L.C., Plaintiff v. Union City, Defendant decided October 18, 1996; Tax Court of New Jersey; Docket Nos. 1021-96, 1019-96.

Taxpayer appealed Hudson County Tax Board's judgments for a 1994 omitted added assessment and a 1995 omitted assessment on a 24-unit residential condominium to the New Jersey Tax Court. The omitted assessment and the added assessment procedures, N.J.S.A. 54:4-63.31 & .12 et seq. and N.J.S.A. 54:4-63.1 et seq., allow for the taxing of property omitted from assessment through oversight and of property newly constructed or which loses exemption after October 1, respectively. Union City's assessor had valued the land at \$237,500 for 1992 but had given the improvements zero value because a DEP moratorium on sewer connections for new construction had prevented completion of the living units and issuance of the certificate of occupancy. The '92 land and improvement values remained in place for tax years 1993-1995.

In January 1994, the sewer moratorium ended and in October 1995 the assessor made omitted added assessments for the improvements for 1994 and 1995. A certificate of occupancy was issued in March 1996 indicating that the property was considered substantially ready for its intended use. When the

taxing district acknowledged that added assessments were improper as no additions were made to the property in 1994 and 1995 only their standing as omitted assessments was reviewed by the Tax Court.

Canceling the omitted/added assessments for '94 and '95, the Tax Court held that omitted assessment procedures may not be used to correct errors in assessors' value determinations, nor to increase value because the basis of the prior assessment no longer existed. Although Union City's assessor could have partially valued the incomplete improvement and then made an added assessment when substantially completed, he decided to assign zero value to the buildings due to the sewer ban. The assessor's nonassessment of the improvements was not oversight but a deliberate judgment that they had no value.

Sales And Use Tax Nonresident's Exemption on Purchase of Motor Vehicle – *Furmato v. Division of Taxation*, decided July 24, 1996; Tax Court of New Jersey; Docket No. 7210-94.

At issue was whether the purchaser of a motor vehicle in New Jersey was entitled to an exemption from sales tax as a nonresident of this State.

At the time of the purchase in 1993, Furmato certified that he was a nonresident, and therefore the dealer did not charge him sales tax on the automobile. The Division later assessed sales tax, based on its determination that Furmato was a resident.

Furmato, who had been a resident of New Jersey for many years, had moved to Florida in 1990. However, he and his wife returned to the State each year since then, living for approximately five months every year in a house that had been in the wife's family for many years, which had become hers some time before Mr. Furmato's purchase of the automobile, and which the two of them furnished and maintained jointly. Mr. Furmato had a telephone listing at the New Jersey location and received mail there, and he and his wife had a checking account at a New Jersey financial institution.

The Tax Court strictly construed the sales tax exemption for purchases of motor vehicles by nonresidents provided by N.J.S.A. 54:32B-10(a), and determined that Furmato did not qualify as a "nonresident," as defined by the administrative regulation, N.J.A.C. 18:24-7.8(b)(1), clarifying the scope of the statutory exemption. The regulation makes it clear that the buyer of a motor vehicle is a "resident" if he "maintains a place of abode in New Jersey...other than a temporary or transient basis." The Court found that, because Furmato had been returning to New Jersey to spend several months at the house every year since 1990, his maintenance of the place of abode in this State was more than just temporary or transient.

The Court also pointed out that the fact that Furmato had paid use tax on the car to Florida did not alter his liability for sales tax to New Jersey. Once he paid the sales tax properly due to New Jersey, he would be able to present docu-

continued on page 21

in our courts - from page 20

mentary evidence of that payment to Florida, in order to claim a credit under Florida use tax law for the sales tax paid to New Jersey. □

In Our Legislature

Miscellaneous

Mandatory Employer Trip Reduction Programs Repealed — P.L. 1996, c.121 (signed into law on November 1, 1996) repeals mandatory employer trip reduction programs and authorizes tax benefits for voluntary programs. The tax benefit provisions are set forth in Sections 6 and 7 of the Act.

Section 6 amends C.27:26A-15 which allows employers a credit based upon the cost of "commuter transportation benefits" provided to employees. In general, the credit allowed is equal to 10% of the cost of such benefits, but not in excess of a per employee limit determined by multiplying \$100 by the number of employees participating in alternative means of commuting to work.

However, under this legislation, an employer which filed a certified compliance plan with the Department of Transportation required by Section 5 of P.L. 1992, c.32 (C.27:26A-5) on or before May 31, 1996, will be allowed a credit equal to 15% of the

commuter transportation cost subject to a per employee limit of \$150. This one-time increase applies to accounting periods that end on or after July 31, 1996, but not later than June 30, 1997.

Section 7 amends C.54A:6-23 of the Gross Income Tax Act by increasing the exclusion for employer-provided commuter transportation benefits from \$720 to \$1,000 for tax years beginning on and after January 1, 1997. (The Director is required to annually adjust the limit based upon the change in the average consumer price index for all urban consumers in the New York, Northeastern New Jersey and the Philadelphia areas.)

The legislation also extends the expiration date of the employer credits from accounting periods ending on December 31, 2004 to accounting periods ending on December 31, 2007. This legislation is effective immediately.

Municipal Landfill Site Closure, Remediation and Redevelopment Act — P.L. 1996, c.124 (signed into law on November 6, 1996) provides for the remediation and redevelopment of municipal solid waste landfill sites under the terms and conditions of a redevelopment agreement negotiated by a developer and the State.

Under a redevelopment agreement, an eligible developer who closes and remediates the municipal solid waste landfill would be eligible for reimbursement of 75 percent of the costs of closure and remediation of the municipal solid waste

landfill after the site is redeveloped, from payments derived from one half of the sales tax collected on non-exempt sales generated from any business located on the site.

To receive the reimbursement, a developer must submit an application, in writing, to the Director of the Division of Taxation for review and certification after the project is complete. The Director must review the request for certification on a timely basis. The Director is required to certify a developer to be eligible for the reimbursement if: (1) a place of business is located in the area subject to the redevelopment agreement for the purpose of making retail sales; (2) non-exempt items are regularly exhibited and offered for retail sale at that location; (3) the place of business is not utilized primarily for the purpose of catalog or mail order sales; and (4) the developer has entered into a memorandum of agreement with the Commissioner of Environmental Protection for the sound and proper closure and remediation of the municipal solid waste landfill located on the site of the redevelopment project and is in compliance with the memorandum of agreement.

The Act creates in the Department of Treasury a special fund to be known as the Municipal Landfill Closure and Remediation Fund and provides that upon approval of the certification for reimbursement by the Director, a special account be created for that developer. This legislation is effective immediately.

continued on page 22

in our legislature - from page 21

Resolution to Fund Environmental Remediation Activities — Public Question No. 2 (approved by the voters on November 5, 1996) amends Article VIII, Section II, of the State Constitution to provide that an amount equivalent to 4% of the revenue annually derived from the Corporation Business Tax, or any other State

law of similar effect, be deposited in a special account which could be appropriated by the Legislature only for the following purposes and in the following manner:

- (1) a minimum of one-half for funding the costs incurred by the State relating to hazardous discharge remediations;
- (2) a minimum of one-third, dedicated until December 31, 2008,

for funding or financing loans and grants for underground storage tank upgrades, replacements, closures and remediations; and

- (3) a minimum of one-sixth, or a minimum of \$5 million, whichever is less, for funding costs related to water quality monitoring, watershed planning, and nonpoint source water pollution prevention.

□

tax calendar

april

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

April 10

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

April 15

- CBT-100/ CBT-100S** Corporation Business Tax—Annual return for accounting period ending December 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- HR-1040** Homestead Property Tax Rebate—Application

continued

April 15 - continued

- NJ-1040** Gross Income Tax—Resident return for calendar year filers
- NJ-1040NR** Gross Income Tax—Nonresident return for calendar year filers
- NJ-1041** Gross Income Tax—Fiduciary return for calendar year filers
- NJ-1065** Gross Income Tax—Partnership return for calendar year filers
- NJ-1040ES** Gross Income Tax—Declaration of Estimated Tax, Voucher 1 for calendar year filers

April 21

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

continued

April 21 - continued

- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return
- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Whole-sale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

April 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

April 30

- NJ-941 & NJ-941-W** Gross Income Tax—Employer's quarterly return

may

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

May 12

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

May 15

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

CBT-150 Corporation Business Tax—Installment payment of

continued

May 15 - continued

NJ-500

estimated tax for 4th, 6th, 9th or 12th month of current tax year
Gross Income Tax—Employer's monthly remittance

May 20

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

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

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

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

SCC-5 Spill Compensation and Control Tax—Monthly return

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

continued

May 20 - continued

ST-51 Sales and Use Tax—Monthly return

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

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

ST-451 Sales and Use Tax—Salem County—Monthly Return

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

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

May 27

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

june

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

June 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

June 16

CBT-100 Corporation Business Tax—Annual return for accounting period ending February 28

continued

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

NJ-500 Gross Income Tax—Employer's monthly remittance

June 20

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

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

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

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

SCC-5 Spill Compensation and Control Tax—Monthly return

continued

June 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly return

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

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

ST-451 Sales and Use Tax—Salem County—Monthly Return

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

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

June 25

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

June 16 - continued

from the director's desk



NJ TeleFiling By Practitioners

You can TeleFile a New Jersey income tax return for your client provided you have and maintain a Power of Attorney Form for that taxpayer in your file.

If you use your power of attorney to TeleFile for a client, enter the information from the TeleFile worksheet as prompted by the system. At

the voice signature prompt, speak the taxpayer's name, state that you have power of attorney for the taxpayer, then give your name and Federal ID#.

As with any TeleFile return, the TeleFile worksheet (with confirmation number provided by the TeleFile system included) becomes the taxpayer's proof of filing.

.. NJ TeleFile: 1-888-235-FILE ..

Refunds mailed within two weeks of filing.

For additional information on NJ TeleFiling
call 609-588-2200.