

New Jersey State Tax news

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Director Bryan Sworn In



Michael J. Bryan was sworn in as Director of the Division of Taxation on January 15, 2013, by the Honorable Judge Patrick DeAlmeida while the Director's wife, Rebecca Bryan, looked on.

What's New for Tax Year 2012

New Jersey income tax return processing will start January 30 due to delayed opening of tax season for Federal returns.

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

- **Alternative Business Calculation Adjustment** — Beginning with tax year 2012, taxpayers who have losses in certain business-related categories of income can utilize those losses to calculate

an adjustment to their taxable income ("Alternative Business Calculation Adjustment"). In addition, taxpayers can carry forward unused losses in those categories for a period of 20 years to calculate future adjustments. This change applies to residents, nonresidents, and estates and trusts.

Income/losses in the following four categories are included in the calculation of the adjustment: net profits from business; net gains or net income from rents, royalties, patents, and copyrights; distributive share of partnership income; and net pro rata share of

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S corporation income. Taxpayers with income and/or losses in any of these categories must complete two new return schedules: Schedule NJ-BUS-1, Business Income Summary Schedule, and Schedule NJ-BUS-2, Alternative Business Calculation Adjustment, to calculate the amount of their adjustment or loss carryforward. The percentage used to calculate the adjustment is being phased in over five years. The percentage will increase from 10 percent for tax year 2012 to 50 percent for tax year 2016 and after.

NOTE: The Alternative Business Calculation Adjustment does not change the way income is reported on the New Jersey income tax return. **A net loss in any category of income cannot be reported as such on Form NJ-1040, Form NJ-1040NR, or Form NJ-1041.** When reporting income on the return, a net loss in one category of income cannot be applied against income or gains in another, and no carryback or carryforward of losses is allowed.

- **Use Tax** — A new worksheet has been developed (Worksheet G, Use Tax Calculation) to make it easier for New Jersey residents to determine the amount to report on Line 45, Use Tax Due on Internet, Mail-Order, or Other Out-of-State Purchases.
- **Deceased Taxpayers** — A new oval has been added below the signature line that must be filled in if a copy of a deceased taxpayer's death certificate is enclosed with the return. This oval should be filled in and a copy of the death certificate enclosed only if there is a refund due and the check needs to be issued to the decedent's surviving spouse/civil union partner or estate.
- **Designated Contributions** — Three new funds have been added to the list of organizations to which taxpayers can contribute on the New Jersey tax return. To donate to the new funds, taxpayers must specify the "code number" at the "Other Designated Contribution" line. The new funds that have been added for 2012 are: Boys and Girls Clubs in New Jersey Fund (12), NJ National Guard State Family Readiness Council Fund (13), and American Red Cross-NJ Fund (14).
- **Credit for Excess UI/WF/SWF; DI; FLI Withheld** — For 2012, the maximum employee unemployment insurance/workforce development partnership fund/supplemental workforce fund contribution was \$128.78, the maximum employee disability insurance contribution was \$60.60, and the maximum employee family leave insurance contribution was \$24.24. Taxpayers with two or more employers who have contributed more than the maximum amount(s), must complete Form NJ-2450 to claim credit on their New Jersey tax return for the excess withheld.
- **Roth IRAs** — Taxpayers who converted an existing IRA to a rollover Roth IRA during tax year 2010 and made a Federal election to report the income in equal installments in 2011 and 2012 must report one-half of the amount that is taxable for New Jersey purposes on their income tax return for 2012.

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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
Director:** Michael J. Bryan

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- **Credit for Taxes Paid to Other Jurisdictions** — The Philadelphia nonresident wage tax rate for 2012 is 3.4985% (.034985).

Property Tax Relief Programs

- **Homestead Benefit Program** — Information about the 2012 Homestead Benefit Program is not yet available.

Homeowners. New Jersey residents who owned and occupied a home in New Jersey that was their principal residence on October 1, 2012, may be eligible for a homestead benefit provided the 2012 property taxes were paid and certain income limits are met. *The homestead benefit application for homeowners is not included in the NJ-1040 booklet.*

Information about the 2012 homestead benefit will be posted on our [Web site](#) as it becomes available.

Tenants. There is no tenant rebate application available for 2012 since tenant rebates for 2009 through 2011 were suspended by the State Budget.

- **2012 Property Tax Reimbursement (Senior Freeze)** — The property tax reimbursement application has been redesigned for tax year 2012 to make it easier for New Jersey residents to complete. In addition, the method of reporting pension and retirement benefits (including IRA and annuity income) for property tax reimbursement purposes has changed as a result of a recent court decision.

With very few exceptions, all income received during the year, including income which is not

required to be reported on Form NJ-1040, must be taken into account to determine eligibility for the property tax reimbursement. For residents applying for reimbursements for tax year 2012, total annual income must be:

2011: \$80,000 or less, and

2012: \$82,880 or less

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

NOTE: Eligibility requirements, including income limits, and benefits available under this program are subject to change by the State Budget. The eligibility requirements and benefit amounts for 2012 property tax reimbursements will not be finalized until the completion of the State Budget that must be adopted by July 1, 2013. □

**GROSS INCOME TAX
2012 NJ-2450
Correction**

The printed version of Form NJ-2450, Employee's Claim for Credit for Excess UI/WF/SWF, Disability Insurance, and/or Family Leave Insurance Contributions for Calendar Year 2012, that appears in the 2012 New Jersey resident return instruction booklet contains incorrect line number references. The instructions at Lines 4, 5, and 6 of Form NJ-2450 that indicate where to enter excess UI/WF/SWF, disability insurance, and family leave insurance contribution amounts on the Form NJ-1040 resident return list the wrong line numbers.

The instructions for Lines 4, 5, and 6 of Form NJ-2450 should read as follows:

4. Deduct Line 3 Col. A from Line 2 Col. A. Enter on Page 3, **Line 52 of the NJ-1040.**
5. Deduct Line 3 Col. B from Line 2 Col. B. Enter on Page 3, **Line 53 of the NJ-1040.**
6. Deduct Line 3 Col. C from Line 2 Col. C. Enter on Page 3, **Line 54 of the NJ-1040.**

Taxpayers who use the printed Form NJ-2450 contained in the NJ-1040 resident return booklet must be careful to enter any excess contribution amounts on the correct lines of Form NJ-1040.

Nonresident taxpayers who complete Form NJ-2450 must enter the amount of excess contributions on the nonresident return as follows: UI/WF/SWF on Line 48, Form NJ-1040NR, disability insurance on Line 49, Form NJ-1040NR, and

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Interest 6.25%

The interest rate assessed on amounts due for the period January 1, 2013 – December 31, 2013, will be 6.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/08	10.50%
4/1/08	9.00%
1/1/09	7.00%
1/1/10	6.25%
1/1/11	6.25%
1/1/12	6.25%
1/1/13	6.25%

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family leave insurance on Line 50, Form NJ-1040NR.

A corrected version of the [2012 Form NJ-2450](#) is available on the Division's Web site. □

CORPORATION BUSINESS TAX

Electronic Filing for CBT Returns

In November 2012, the New Jersey Division of Revenue and Enterprise Services began offering an enhanced electronic filing service to the business community for New Jersey corporation business tax (CBT) returns. The system, which is based on Federal/State Modernized e-File (MeF) program, will support the submission and processing of most CBT schedules and forms.

Authorized E-File providers, also known as Electronic Return Originators (EROs) can submit returns to the MeF system for processing. New Jersey returns can be submitted with a Federal return, or as a "State Only" submission. New Jersey will accept returns electronically from any IRS approved software provider.

For 2012, Form CBT-100 and Form CBT-100S returns, as well as most related schedules, can be filed electronically. In addition to accepting returns for tax year 2012, the New Jersey CBT E-File system will also allow the processing of 2011 filings. Electronic filing for CBT returns first became available in June 2012 for the 2011 tax year, and to date almost 1,600 returns for 2011 have been filed.

As of January 2013, software products from three developers have passed the testing procedures

established by the Division of Revenue and Enterprise Services for participating in CBT E-File for 2012: Thomson Reuters (2 products), Online Taxes, and TaxSlayer. Three additional developers are currently in the process of testing their CBT E-File products, and two others have expressed interest in developing a product. □

LOCAL PROPERTY TAX

Tax Assessors' Calendar

January 1-

- Taxing district to file duplicate of tax map approved in the prior year with county clerk or county register of deeds.
- Hearings of added and omitted assessment appeals completed by County Tax Board.
- County Tax Administrator to provide copies of Form EA-4 to assessors of municipalities having adopted tax agreement ordinances pursuant to P.L. 1991, c.441.
- One copy of each Farmland Assessment application (Form FA-1) filed with County Tax Board by

assessor for tax administrator's review.

January 10 (before)-

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

January 10-

- Copies of Initial and Further Statements filed with County Tax Board by assessor.
- Duplicate copy of municipal tax map filed with County Tax Board by assessor.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board by assessor.
- Assessment List and duplicates filed with County Tax Board by assessor.
- Forms CNC-1 and CNC-2, assessed value of new construction/improvements, local municipal purpose rate, and allowable municipal budget cap increase, provided to County Tax Administrator by assessor.

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Update:

NJ/NY Cooperative Interstate Tax Program

The New Jersey/New York Cooperative Interstate Tax Program ended on December 31, 2010. Since that date, any interstate returns/payments received by the New Jersey Division of Taxation have been forwarded to the State of New York. Effective September 1, 2012, interstate returns and payments that include New York tax will no longer be sent to New York. All sales tax payments will be applied to New Jersey sales tax accounts. If a business erroneously submits an interstate return and payment with New York tax to the New Jersey Division of Taxation on or after September 1, 2012, the business must apply for a refund of this overpayment using a Claim for Refund ([Form A-3730](#)).



assessors' calendar - from page 4

- “U.E.Z. Exemption Report” and “Five-Year Limited Exemption Report” filed with County Tax Board by assessor.
- Two copies of Form SR-3A filed with County Tax Board by assessor.

January 25–

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

February 1 (before)–

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

February 1–

- MOD IV Master file sent to Property Administration via appropriate medium.
- Form EA-4 (part A) for properties subject to tax agreements under P.L. 1991, c.441 to be completed by assessor and forwarded to County Tax Administrator.
- Assessors’ office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Amount to which each qualified Highlands municipality is entitled certified to Division of Taxation

and State Treasurer by County Tax Board.

February 1 (after)–

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

February 10–

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

March 1–

- County Tax Administrator to submit copy of equalization table to: County Tax Board; each assessor; Division of Taxation; Director, Local Government Services (two copies); and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board. □

Criminal Enforcement

Criminal enforcement over the past several months included:

- On July 30, 2012, Marcus Shelton of Brooklyn, New York, pled guilty to possession of untaxed tobacco products. He was sentenced to 45 days in jail and fined \$250.
- The Office of Criminal Investigation (OCI), along with the National White Collar Crime

Center (NW3C) and the Burlington County Prosecutor’s Office, sponsored an intelligence-sharing conference relative to Interstate 95 cigarette smuggling activity. Over 130 law enforcement officers from 43 law enforcement agencies from Virginia to Maine attended. The primary purposes were to develop a standard intelligence-gathering tool which NW3C can utilize as a U.S. Department of Justice-approved intelligence agency and to discuss smuggler tradecraft as uncovered by the law enforcement personnel in attendance.

- On August 20, 2012, an OCI special agent arrested Chaudry Iqbal of Atlantic City based on outstanding warrants from prior OCI cases. An inspection of Hajiwala LLC of Atlantic City resulted in the seizure of 11.8 cartons of Virginia-stamped cigarettes along with 101 counterfeit DVDs and several boxes of Black Ant and Street Overlord, so-called street supplements, which contain prescription legend drugs, as well as some pills believed to be a controlled dangerous substance. Iqbal was charged previously by OCI on March 12, 2012, for contraband cigarettes. He failed to appear on those matters. A total of \$2,583 in U.S. currency was seized. The Atlantic City Court set bail based on the special agent’s arrest of Iqbal at \$12,000, no 10%. He was incarcerated pending the posting of bail.
- OCI is coordinating with U.S. Customs & Border Protection, and an investigation by OCI special agents resulted in the seizure of 400 cartons of contraband

Public Auction Information

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



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cigarettes (unstamped) illegally imported for sale into New Jersey. OCI continues its aggressive enforcement against illegal imports.

- On August 23, 2012, Frank Johnson of New York, New York, was indicted by a Gloucester County Grand Jury for contraband cigarette smuggling of 292 cartons of Virginia-stamped cigarettes after his arrest by OCI special agents in October 2011. Two other individuals arrested at the same time were not indicted as Johnson took responsibility for the cigarettes.
- Wawa finalized their transition this month from nonresident to resident New Jersey cigarette distributor. Though Wawa's new Carney's Point, New Jersey, facility has been up and running with logistics partner McLane, OCI personnel were present at their Wawa, Pennsylvania, location, along with an auditor from the Pennsylvania Department of Revenue, to wrap up nonresident operations. OCI coordinates with other revenue law enforcement agencies to ensure smooth transitions with industries regulated by the Division.

- Ocean County Prosecutor Marlene Lynch Ford announced on August 29, 2012, the arrest of a Wall Township developer, several of his family members, and a business associate in connection with a mortgage fraud investigation conducted over the past year, dubbed "Operation Family Affair." The following people were taken into custody: Christopher "Chris" Colatrella, John T. Colatrella, Alexis Colatrella, Vincent Veritas, Delores Cittadino, and Martin Damato. These defendants are charged with theft by deception and/or conspiracy. It is alleged that Chris Colatrella sold condominium units located at 114 Center Street in Lakehurst, New Jersey, which were owned by his company, CMC Holdings, to the above-referenced family members and business associates. These individuals obtained mortgage loans in order to purchase these properties, and it is alleged they falsified and misrepresented their employment, income, and assets on the applications in order to obtain approval for the loans. All of the condo units involved in these transactions subsequently went into foreclosure, causing substantial financial loss to the

lender. However, as the initial seller of these properties, Chris Colatrella allegedly realized receipts in excess of \$2 million. An auditor from OCI participated in this investigation.

- On September 14, 2012, Dorian Munoz, pursuant to his guilty plea, was sentenced by the Honorable N. Peter Conforti in Sussex County Superior Court to five years' probation and ordered to pay restitution in the amount of \$40,744 to the State of New Jersey. Mr. Munoz pled guilty to theft by failure to make required disposition of property received (3rd degree) and failure to pay or turn over sales and use taxes (3rd degree) while operating the business Spartan Cutting Edge Landscaping, Inc.
- On September 14, 2012, Wayne Dunich-Kolb pled guilty in the Mercer County Courthouse before the Honorable Thomas M. Brown to theft by failure to make required disposition of property received. Mr. Kolb, acting as a tax preparer, failed to remit his clients' payments of sales taxes, payroll taxes, and withholdings to the State of New Jersey, New York State, and the IRS. Instead, he deposited their payments into his personal bank accounts. At the time of his sentencing on November 16, 2012, Mr. Kolb was required to pay restitution in the amount of \$189,789.07, including \$129,278.73 to the State of New Jersey, \$7,151.47 to the State of New York, and \$53,358.87 to the IRS. Also, as a result of the plea agreement Mr. Kolb is required to file credible and honest New Jersey resident income tax returns

Enforcement Summary Statistics

Third Quarter 2012

Following is a summary of enforcement actions for the quarter ending September 30, 2012.

	Number	Amount
• Bank Levies	1,028	\$ 3,159,060
• Certificates of Debt	2,825	40,471,210
• Seizures	150	1,362,273
• Auctions	12	158,304
• Warrants of Satisfaction	4,480	

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for tax years 2005 to the present. He is to cease preparing tax returns other than his own. This was a joint investigation with IRS Criminal Investigations and was conducted by members of OCI's Financial Investigations Unit.

- On September 26, 2012, Adebowale Sheba and Johnson Coker were sentenced to five years each in State prison. Adebowale Sheba pled guilty on June 28, 2012, to two counts of second-degree theft by deception. Sheba will be ordered to pay restitution to the lenders for mortgage fraud in an amount to be determined by the Court. Johnson Coker pled guilty on June 28, 2012, to one count of second-degree conspiracy and third-degree receipt of stolen property. Coker was ordered to pay restitution of \$55,206 to the State. The financial investigation was conducted by an auditor of OCI's Special Frauds Unit.
- OCI continues to see an increase in other tobacco products being

smuggled into New Jersey and sold at retail stores. There has also been a large increase in other tobacco products and synthetic marijuana being stored and sold together. OCI special agents have charged a record number of retailers and individuals and continue to seize these untaxed cigars and loose tobacco along with the currency connected to the criminal activity, successfully moving for forfeiture in the courts. □

Tax Briefs

Administration

Bulk Sales Notification Requirements: Federal Foreclosure and Transfer of U.S. Marshal's Deed Exempt — The Division received an inquiry concerning whether the bulk sales requirements of N.J.S.A. 54:50-38 apply in the context of Federal judicial foreclosures. The Division replied that such foreclosures are exempt from the bulk sales requirements.

The bulk sales law, N.J.S.A. 54:50-38, requires the purchaser of any

business assets to notify the State at least 10 business days in advance of the transfer. An escrow account is established for the seller's tax liabilities to the Division of Taxation. After final payments of State tax debts are remitted to the State, the Division will authorize the release of the remaining portion, if any, in escrow to the seller by issuing the Division's clearance letter.

In view of the holding in *New Jersey Hotel Holdings, Inc. v. Director, Div. of Taxation*, 15 N.J. Tax 428 (Tax 1996), the Division of Taxation has exempted sheriff's sales in foreclosure from the bulk sales requirements of N.J.S.A. 54:50-38.

Federal law provides that for lien purposes a Federal court judgment must be treated the same as a State court judgment. 28 U.S.C. §1962, The Uniform Enforcement of Foreign Judgments Act, adopted by the New Jersey Legislature and codified at N.J.S.A. 2A:49A-25 et seq., provides that a foreign judgment refers to any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the State of New Jersey. See N.J.S.A. 2A:49A-26. When read together, these provisions indicate that there is no basis to distinguish between a sheriff's sale and a foreclosure in Federal court.

Under the bulk sales law there is no distinction between a State court foreclosure judgment and a Federal foreclosure judgment for enforcement purposes; so there is no basis to make a distinction between a State sheriff's deed and a U.S. Marshal's deed. Therefore, the exemption from the bulk sales requirements for sheriff's sales will also apply to U.S. Marshal's deeds transferred in

Practitioners' E-File Mandate

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

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

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Federal foreclosures. The transfer of a deed in lieu of foreclosure, however, is subject to the bulk sales notification requirements of N.J.S.A. 54:50-38. See *New Jersey Hotel Holdings, Inc. v. Director, Div. of Taxation*, 15 N.J. Tax 428 (Tax 1996).

Corporation Business Tax Partnerships and the Grow New Jersey Tax Credit — A taxpayer inquired about the Grow New Jersey Assistance Program established under N.J.S.A. 34:1B-244 that is effective in 2012. The program allows the New Jersey Economic Development Authority to grant tax credits to businesses that meet the eligibility qualifications of the grant program. The taxpayer specifically asked how a partnership can take this tax credit if it is only applicable to entities subject to the New Jersey

corporation business tax and to insurance companies.

The Division responded that under the Grow New Jersey Assistance Program “business” means a corporation that is subject to the tax imposed pursuant to N.J.S.A. 54:10A-5, a corporation that is subject to the tax imposed under N.J.S.A. 54:18A-2, N.J.S.A. 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5, or a partnership, an S corporation, or a limited liability corporation. A business also includes an affiliate of the business if that business applies for a credit based upon any capital investment made by, or full-time employees of, an affiliate. N.J.S.A. 34:1B-243.

Pursuant to N.J.S.A. 34:1B-247(c) (2), a business that is a partnership may not claim the credit directly, but the amount of the credit shall be allocated to partners of the partnership

in proportion to their share of the partnership. If a corporation or an insurance company is a partner in a partnership that is claiming the Grow New Jersey Tax Credit, such corporation or insurance company can claim their share of the credit against their corporation business tax or insurance premiums tax. Therefore, the credit flows through to the partners and is applied to the appropriate tax.

Sales and Use Tax

Billing by a Contractor for the Performance of a Taxable Service — A landscaper inquired about how to charge and collect tax from a customer for a taxable tree installation service. The landscaper purchases a tree for \$100 and pays \$7 in sales tax. The landscaper separately charges the customer for materials

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



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



NJE-File

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



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the way to a faster refund.



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and labor. The landscaper typically charges \$200 for tree installation services. The landscaper inquired whether he could put his profit in the materials portion of the bill so that his labor charge would not be increased, allowing him to inflate his normal profit margin.

The Division responded that under the Sales and Use Tax Act, sales of materials and supplies to contractors are taxable because the contractor is considered the final consumer (or end user) of these items. A contractor is not considered a retailer or reseller of materials. Thus, when a contractor performs work on the real property of a customer, he should not charge the customer sales tax on the cost of materials and supplies used for the job. In other words, a contractor should not be charging a property owner tax on the materials portion of the bill whether the service performed is an exempt capital improvement, a taxable capital improvement, a repair, or a maintenance service. The only time

that the customer will pay tax on the materials charge is when the bill is stated as a lump sum for a taxable job without separating the charge for materials from the charge for labor.

If the contractor chooses to separately itemize the materials and labor portion of the bill for a taxable service transaction, the only amount deductible from the taxable receipt for sales tax purposes is the separately stated pass-through of the actual cost of materials. This amount may include the sales tax paid by the contractor when the materials and supplies were purchased. The remainder of the customer's bill relates to the labor and is subject to sales tax. Thus, tax is charged on the "profit" if the job is a taxable service transaction.

Therefore, if the landscaper chooses to separately charge for labor and materials when performing a taxable job, he should charge the customer \$107 for materials. This amount is not subject to tax. The remainder of the customer's bill is deemed to be for labor and is subject to sales tax.

Purchase of Handheld Radios by Security Guard Company to be Used on the Premises of a Client — A security guard company inquired whether their purchase of handheld radios to be used by security guard employees on the premises of a client is subject to sales and use tax. The company provides taxable security guard services for the client. The security guard company leases the handheld radios from a leasing company and the security guard company's client reimburses them for the monthly lease. Since the security guard company is charged sales tax on the monthly lease by the leasing company, they inquired whether they should charge tax on the reimbursement bill to the client.

The Division responded as follows:

The definition of "sales price" which is set forth at N.J.S.A. 54:32B-2(oo) (1) (*italics added*) states that:

- (1) Sales price is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) The seller's cost of the property sold;
- (B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and *any other expense of the seller*;...

Pay NJ Taxes Online

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

Select "Electronic Services" to make a payment directly from your bank account (E-Check) or to pay by credit card.

Although a seller may generally purchase goods and services that will be resold to their customer without the payment of tax by issuing a resale certificate to the seller, under the above facts the security guard company is not reselling the radios to the client. Instead, the security guard company is using the radios in the performance of the security service and, therefore, the security guard company must pay tax when leasing the radios from the leasing company. N.J.S.A. 54:32B-2(f); N.J.S.A. 54:32B-3(a). Since the radios will be used by security guard employees on the premises of the client, the lease of the radios is an expense that the security guard company incurs in order to provide the security service (e.g., an overhead expense of the seller). The charge for the radios to the client becomes part of the receipt for the taxable security service and is therefore subject to tax (e.g., the charge to the client for the radios follows the taxability of the service provided). Thus, since the transaction is for a taxable security service, then the charge for the radios is also subject to tax. N.J.S.A. 54:32B-3(b) (11); N.J.S.A. 54:32B-2(xx). This is the case whether the amount is stated as a pass-through, a markup, or as one lump-sum charge coupled with the charge for the taxable security service.

Purchase of Washers and Dryers by a Taxpayer That Manufactures, Sells, and Rents Linens — A taxpayer that manufactures, sells, and rents linens inquired whether they are required to pay sales tax on the purchase of washers and dryers used in their business.

The Sales and Use Tax Act provides an exemption for sales of machinery, apparatus, or equipment for use directly and primarily in the production of tangible property by manufacturing, processing, assembling, or refining. N.J.S.A. 54:32B-8.13(a). Tangible personal property is used “directly” in the production process only when it is used to initiate, sustain, or terminate the process of transforming raw materials into finished products. N.J.A.C. 18:24-4.4(c). According to N.J.A.C. 18:24-4.4(b), “production is limited to those operations commencing with the introduction of raw materials into a systematic series of manufacturing, processing, assembling, or refining operations, and ceases when the product is in the form in which it will be sold to the ultimate consumer...” Thus, production begins with the introduction of raw materials into the process and ceases when the product is in the form in which it will be sold to the ultimate consumer. “Primarily” means that the manufacturer uses the tangible personal property more than 50% of the time directly in manufacturing, processing, assembling, or refining. N.J.A.C. 18:24-4.4(d).

The Division responded that the exemption would apply if the taxpayer uses the washers and dryers more than 50% of the time to launder newly manufactured linens since the linens are not in the form which they will be sold to the ultimate consumer until they are laundered. On the other hand, the exemption does not apply if the taxpayer uses the washers and dryers more than 50% of the time in the regular laundering of rented items. □

In Our Courts

Administration

Interest – *IGT (as Successor-In-Interest to Anchor Coin, Inc.) v. Director, Division of Taxation*, decided July 13, 2012; New Jersey Tax Court, Docket No. 006886-2010.

On July 26, 2006, the Division issued a corporation business tax assessment that included the application of the throwout provision and other adjustments. But for the adjustments attributable to the throwout provision the plaintiff (IGT) would have been entitled to a refund.

On October 23, 2006, IGT filed a timely protest challenging the throwout adjustment and related penalties. On February 25, 2010, the Division issued a final determination upholding the throwout adjustments. Plaintiff filed a complaint with the Tax Court. Thereafter, the parties agreed that IGT would be refunded \$41,498 with interest.

The issue in this case concerns the proper date from which interest on the agreed refund should be paid.

IGT’s position is that its entitlement to the refund matured on October 23, 2006, when it filed its protest challenging the throwout adjustments because it would have been entitled to a refund had those adjustments not been made. Plaintiff contends that it could not file a refund claim because N.J.S.A. 54:49-14a states that a taxpayer may not file a refund claim when a protest has been filed. The Division’s position is that entitlement to a refund would not have matured until the final determination was issued because N.J.S.A. 54:49-14a disallows the filing of a refund claim until the “protest or appeal has been finally determined.”



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N.J.S.A. 54:19-15.1 provides in pertinent part that:

Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund or requested adjustment, the date of the payment of the tax, or the due date of the report or the return thereof; ...

The Court determined that the statutes did not directly address the facts of this case; however, the Court opined that IGT's position best comported with the controlling statutes. Therefore, the Court concluded that IGT effectively filed a refund claim on October 23, 2006, when it made clear in its protest that it was not challenging the adjustments that were not related to the throwout adjustments.

The Court also noted that the prohibition in N.J.S.A. 54:49-14a against filing a refund claim after a protest has been filed or appeal proceedings have commenced until the protest or appeal has been finally determined only covers situations where the refund claim would concern the same adjustments in the protest or appeal.

Gross Income Tax

Qualified Small Business Stock – *Emilia A. Aciu v. Director, Division of Taxation*, decided October 9,

2012; New Jersey Tax Court, Docket No. 020999-2010.

Judge Menyuk granted the Division's motion for summary judgment.

On her originally filed New Jersey resident income tax return, the taxpayer reported the sale of 16,970 shares of common stock in Vision Research. She reported a gain of \$11,776,851 on New Jersey Schedule B.

The taxpayer filed an amended NJ-1040 after realizing that the stock was a "qualified small business stock." IRC §1202 allows for a 50 percent exclusion from the gain on the sale of a qualified small business stock held for more than five years. The Division disallowed the exclusion because it is not authorized under the Gross Income Tax Act.

Plaintiff argued that N.J.S.A. 54A:5-1(c) provides for the incorporation of Federal tax principles and concepts in the calculation of net gains on the disposition of property and that the Federal exclusion allowed by IRC §1202 should be applied.

The judge stated that "Section 5-1(c) explicitly incorporates three federal tax concepts that are to be used in determining net gains from the disposition of property: (1) the method of accounting used for federal income tax purposes; (2) the use of the federal adjusted basis; and (3)

the exclusion of gains to the extent federal rules require nonrecognition." She went on to say that the "plain words of 5-1(c) do not require the exclusion of half the gain on a sale of qualified small business stock. IRC §1202 is not a method of accounting, it does not affect the calculation of the basis of the VR shares, and it is not concerned with the recognition or nonrecognition of income."

S Corporation Credit Limitation

– *Svetozar Beljakovic, et al. v. Director, Division of Taxation*, decided August 1, 2012; New Jersey Tax Court, Docket No. 004551-2010.

Judge Narayanan denied the Division's motion for summary judgment and granted the plaintiff's motion.

Taxpayer is a resident of New Jersey who was a 100% shareholder of an electing New Jersey S corporation. The S corporation did business in New York State and New York City but did not maintain a regular place of business outside New Jersey. The S corporation filed a New York State corporate return reporting the minimum franchise tax and a New York City corporate return and paid \$26,499. Because the S corporation did not have a regular place of business outside New Jersey, pursuant to N.J.S.A. 54:10A-6 it was required to allocate 100% of its income to New Jersey on Form CBT-100S.

The taxpayer reported S corporation income of \$510,328 (the pro rata share of the S corporation's income allocated to New York) on his individual New York State IT-203 return and paid tax to New York State of \$34,390. On his NJ-1040 the taxpayer claimed credit for the income taxes paid to New York State.

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The Division disallowed the credit in accordance with N.J.S.A. 54A:4-1(c), which provides that no credit is allowed for S corporation income allocated to New Jersey, which in this case was 100%.

The Court began by affirming that the purpose of N.J.S.A. 54A:4-1 is to prevent multiple taxation of the same income, then rejected the Division's argument that N.J.S.A. 54A:4-1(c) prohibits the credit for taxes paid for S corporation income allocated 100% to New Jersey. The Court determined that the plaintiffs were entitled to a credit for S corporation income allocated or sourced outside New Jersey and not for income properly allocated to New Jersey.

In rejecting the Division's other arguments, the Court found that both Section 8 relief available under the Corporation Business Tax Act for income tax imposed by other states, and the references to "foreign State" or "another State" in N.J.A.C. 18:7-8.3(b) include political subdivisions. To do otherwise would lead to the conclusion that "the GIT credit would never be available for S corporation income allocated to a taxing jurisdiction which is not a State. Such a construction would clearly violate N.J.S.A. 54A:4-1(a) which grants the resident credit for any income taxes paid to 'another state... or political subdivision of such state' as well as the Director's own regulation which reads, 'N.J.S.A. 54A:4-1(b),(c), and (d) provide for a limitation on the credit for tax paid to another state or political subdivision.' N.J.A.C. 18:35-4.1(a) (3) (emphasis added)."

Claim of Right Doctrine – *Joseph J. Murphy and Diane Fitzmyer-Murphy v. Director, Division of*

Taxation, decided July 24, 2012; New Jersey Tax Court, Docket No. 005608-2011.

Judge DeAlmeida granted the Division's motion for summary judgment upholding a refund denial of \$157,535 for tax year 2005.

On their 2005 NJ-1040, the Murphys reported wages in the amount of \$4,142,000 from Mr. Murphy's employer and dividends of \$381,558. In 2008, Mr. Murphy reached an agreement with the Federal government to pay \$10,000,000 to the Federal government and bankruptcy trustees due to an ongoing investigation of fraudulent reporting by the company for which Mr. Murphy had worked. Mr. Murphy was not charged with any crime. The payments were made in 2008.

That year, the Murphys filed an amended 2005 NJ-1040, reducing their income by the amount of the payments made to the Federal government and claiming a refund of \$157,535. The claim for refund was denied. Plaintiffs filed a protest on January 27, 2010, and argued the "claim of right doctrine" during the hearing. On January 21, 2011, the Director issued a final determination rejecting the refund request, maintaining that the claim of right doctrine requires that money that is repaid only be used as a deduction in the year of repayment.

The Court found that N.J.S.A. 54A:5-2 did not permit a 2008 event (the repayment), whether it is a loss, a deduction, or some other legally significant transaction, to be applied to offset 2005 income. The denial of the refund was upheld.

The Murphys have appealed this decision to the New Jersey Appellate Division.

Workmen's Compensation – *Fred-eric J. Sa v. Director, Division of Taxation*, decided May 31, 2012; New Jersey Tax Court, Docket No. 000047-2011.

Judge Narayanan denied the Division's motion for summary judgment and granted the plaintiff's motion.

Taxpayer is a resident of New Jersey who was injured in the line of duty while working for the Union Township Police Department. During 2006 and 2007 Mr. Sa was absent from work for extended periods due to surgeries related to his injuries. He received his full salary during those periods.

Mr. Sa reported the full amount of wages he received from Union Township on his 2006 and 2007 NJ-1040s. Mr. Sa later amended the returns reducing the wages by the wage amounts he received during his absences. For 2006, he reduced his wages by \$29,173 (the amount of pay he received during his time out of work from March 2, 2006, to July 23, 2006). For 2007, Mr. Sa reduced his wages by \$6,665 (the amount of pay he received during his time out of work from October 15, 2007, to November 11, 2007.)

Per the collective bargaining agreement between Union Township and its Police Department, Mr. Sa was entitled to his regular pay while on leave. The Township was reimbursed by its insurance company at the rate of \$650 per week which was the amount Mr. Sa would have been able to collect under the Workmen's Compensation Act.

The Court found that the portion of the payments which were reimbursed to Union Township was

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excludable from Mr. Sa's income because it represents an amount received as workmen's compensation under the Workmen's Compensation Act.

Therefore, Mr. Sa was able to deduct \$650 per week for the period from March 2, 2006, through July 23, 2006, but not his full pay. However, for tax year 2007, no deduction was granted since no documentation from the Township was provided to show reimbursements from the insurance company.

**Local Property Tax
Disabled Veteran's Property Tax
Exemption** – *R.J. Wellington & C.A. Pangilinan v. Township of Hillsborough*, decided October 24, 2012; Tax Court.

Plaintiff, R.J. Wellington, disputed the municipal assessor's denial of his claim for a disabled veteran's property tax exemption. Reginald Wellington was a member of the United States Navy from September 24, 1997, until September 24, 1999, the date on which he was honorably discharged. Wellington was stationed with the Marine Corps during Operation Northern Watch and Southern Watch, in which the U.S. enforced a no-fly zone and United Nations sanctions in Iraq. Wellington's job was to test chemical agents being used by the enemy and to develop protection for members of the U.S. military in service in the Arabian Peninsula. The U.S. military determined that as a result of his exposure to enemy chemical agents, Wellington developed multiple sclerosis and lost use of his hands and feet. The U.S. Department of Veterans Affairs declared Wellington 100% permanently disabled as a result of his military service.

Wellington purchased a residence in Hillsborough Township on May 19, 2007. The deed showed that he owned the property jointly with the right of survivorship with plaintiff Catherine A. Pangilinan, his former wife. On March 9, 2009, Wellington filed a claim with the Hillsborough Township tax assessor for a tax exemption for the residence pursuant to N.J.S.A. 54:4-3.30, which provides an exemption from local property taxes for the dwelling house and lot of any citizen and resident of this State honorably discharged from active military service, in time of war, who has 100% permanent service-related disability. On March 24, 2009, the tax assessor denied Wellington's exemption claim for two reasons: (1) Wellington did not serve a minimum of 14 days "in the actual combat zone" and (2) Wellington held only partial ownership of the property.

The denial notice provides that pursuant to N.J.S.A. 54:3-21, plaintiff's time to appeal to the County Board of Taxation expired April 1, 2009, or, if the denial was issued "too late" to file an appeal by April 1, then the plaintiff was entitled to file an appeal by April 1, 2010. Wellington met neither appeal deadline and instead filed a petition of appeal with the Somerset County Board of Taxation on March 28, 2011. On June 5, 2011, the County Board issued a judgment denying the exemption for the tax year 2011. On August 11, 2011, Wellington filed a complaint with the State Tax Court challenging the County Board's judgment as well as disputing the property's value.

On March 2, 2012, the municipality moved for summary judgment in its favor. The township argued that Wellington did not suffer a disability as a result of "active service in time

of war" since his disability arose in the United States and not in the actual "combat zone." Additionally, the joint ownership of his residence with his former wife precludes an exemption. The municipality also argued that Wellington cannot seek relief in the Court without having first filed a written exemption claim with the tax assessor for tax year 2011.

On May 10, 2012, Wellington opposed the municipality's motion and cross-moved for summary judgment in his favor on the exemption claim. Wellington argued that his military service in California satisfies the criteria for an exemption set forth in N.J.S.A. 54:4-3.30 and N.J.S.A. 54:4-8.10 because the legislature does not specify a geographical limitation on eligibility for service-related disabilities arising from Operation Northern Watch and Southern Watch. He contended that the "theater of operation" of that conflict was brought to him in California when dangerous weapons were removed from the battlefield and delivered to his laboratory. In addition, Wellington argued that nothing in the statute requires a written application to be filed with the tax assessor or precludes the award of an exemption to a disabled veteran who jointly owns his residence with another person.

The pivotal question before the Court was whether Wellington's 100% permanent disability arose "from active service, in time of war." The Court noted that the statutory language for Northern Watch and Southern Watch does not establish a strict geographic service requirement like the Peacekeeping Missions, but rather requires service "in the theater of operation,

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including in the Arabian peninsula and the Persian Gulf and in direct support of that operation,” but not limited to those areas. Therefore, the fact that Wellington’s disability arose from service in California does not, in itself, exclude him from eligibility for exemption. The Court reasoned further that plaintiff was no less endangered by Iraqi chemical weapons at his California lab than servicemen and women on the actual battlefield. He suffered permanent disability through contact with those weapons. Under the facts of this case plaintiff falls within the parameters of the exemption.

The Court, citing *Hennefeld v. Twp. of Montclair*, 22 N.J. Tax 166 (2005), found that Wellington is entitled to an exemption in a percentage that reflects his proportionate share of ownership in the subject property. The township’s motion for summary judgment was denied. Wellington’s motion for summary judgment was granted in part. The Court will enter an order declaring Mr. Wellington eligible for the subject property for tax year 2011.

Property Tax Relief Programs
Property Tax Reimbursement (Senior Freeze) – *Rita J. Hawe v. Director, Division of Taxation*, decided May 29, 2012; New Jersey Tax Court, Docket No. 019191-2011.

The Tax Court held that, for the purposes of N.J.S.A. 54:4-8.67, annual income does not include distributions from an annuity that represent a taxpayer’s original investment. Only the interest generated by the annuity is to be included in income when determining eligibility for a property tax reimbursement benefit. □

In Our Legislature

Alcoholic Beverage Tax

Microbreweries and Brewpubs — P.L. 2012, c.47, signed into law on September 19, 2012, and effective immediately, revises N.J.S.A. 33:1-10 regarding limited breweries, commonly known as microbreweries, and restricted breweries, commonly known as brewpubs.

The law now permits limited breweries to sell and distribute their products to a consumer on the licensed premises of the brewery: (1) for consumption on the premises only in connection with a tour of the brewery; (2) in an amount of up to 15.5 fluid gallons for consumption off the licensed premises; and (3) for sampling only if the brewery has obtained an annual permit from the Director of the Division of Alcoholic Beverage Control (ABC). These licensees are prohibited from selling food or operating a restaurant on the licensed premises.

Each year a restricted brewery may produce up to 10,000 barrels of malt alcoholic beverages. The fee for a restricted brewery license is \$1,250 to brew 1,000 barrels annually. The fee for each additional 1,000 barrels is \$250. A restricted brewery may sell its products to the public through the three-tier system described in the Act. A licensee may also offer samples of its products at charitable or civic events off the licensed premises if the licensee obtains an annual permit issued by the Director of the ABC.

A single licensee may acquire up to 10 restricted brewery licenses. A restaurant with a restricted brewery license is now permitted to sell malt alcoholic beverages produced by the restricted brewery for consumption off the licensed premises.

The Act creates an “at rest” provision applicable to holders of plenary brewery licenses and limited brewery licenses. Those licensees may deliver their malt alcoholic beverage products from inventory in a warehouse located within the State. These “at rest” provisions allow for employees of the ABC and other law enforcement officials to conduct certain inspections to ensure compliance with current law. The “at rest” provisions also enable applicable tax collection administration.

Miscellaneous

Urban Transit Hub Tax Credit Caps Increased — P.L. 2012, c.35, signed into law on August 7, 2012, and effective immediately, amends the Urban Transit Hub Tax Credit Act to increase the cap on the total amount of tax credits authorized under the Act by \$250 million to a total of \$1.75 billion. It also extends the application deadline to July 1, 2014, to maintain consistency with the Grow New Jersey Assistance Act, except that the deadline for applications for tax credits for wind energy facilities established under P.L. 2010, c.57 (N.J.S.A. 34:1B-209.4) is not extended.

The Act also restores the cap to \$200 million for the Grow New Jersey Assistance Program (N.J.S.A. 34:1B-247).

Sales and Use Tax

Rebate for Off-Track Wagering Facilities — P.L. 2012, c.40, signed into law on August 7, 2012, and effective immediately, establishes a grant program to provide a one-time rebate of the sales and use tax paid for the purchase of certain materials and supplies used for the construction of certain off-track wagering facilities.



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The amount of the rebate is equal to the sales and use tax collected from the retail sale or use of construction materials and construction supplies used by (1) a contractor of a person who is, as of January 1, 2012, a lessee of a racetrack owned by the New Jersey Sports and Exposition Authority (NJSEA), or (2) a contractor of certain joint ventures for the construction of an off-track wagering facility licensed by the New Jersey Racing Commission in accordance with applicable law.

The contractor purchasing the construction materials and construction supplies is responsible for completing a form or certification identifying the type and location of the construction, the construction materials and supplies purchased, and the purchase price and sales tax paid. This document must be filed with the Director on a quarterly basis.

The State Treasurer is responsible for establishing a special nonlapsing account in the General Fund for purposes of receiving amounts equal to the taxes collected in connection with eligible purchases, and is responsible for paying amounts credited to the account to eligible lessees or joint ventures upon certification from the NJSEA that the construction of the off-track wagering facility is complete.

A lessee or joint venture will not be allowed more than one grant for the construction of each off-track wagering facility nor will a grant be paid for the construction of an otherwise eligible facility that is completed after June 30, 2022. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2012 (January 1, 2012 – December 31, 2012) and tax year 2013 (January 1, 2013 – December 31, 2013) 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.

[2012](#) [2013](#)

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

[2012](#) [2013](#)

- **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.

[2012](#) [2013](#) □



important phone numbers

- Customer Service Ctr.... 609-292-6400
- Automated Tax Info ... 1-800-323-4400
- 609-826-4400
- Homestead Benefit Hotline for Homeowners..... 1-888-238-1233
- Property Tax Reimbursement Hotline 1-800-882-6597
- Earned Income Tax Credit Information..... 609-292-6400
- NJ TaxFax 609-826-4500
- Business Paperless Telefiling System 1-877-829-2866 (609-341-4800 as of Feb. 1, 2013)
- Alcoholic Bev. Tax 609-633-7068
- Corp. Liens, Mergers, Withdrawals & Dissolutions..... 609-292-5323
- Director’s Office 609-292-5185
- Inheritance Tax..... 609-292-5033
- Local Property Tax..... 609-292-7974
- Motor Fuels Tax Refunds 609-633-8878
- Public Utility Tax..... 609-633-2634