

from the director's desk

Because this is the first issue of the *State Tax News* to be published solely in electronic format, I'd like to point out some new features in our newsletter. The electronic version will include the same mix of articles, tax briefs, and summaries of court decisions as before, but this format allows us to include links to sources on our Web site that are being updated on an ongoing basis — giving you access to up-to-the-minute information. For example, clicking on the link at the end of the Municipal Occupancy Tax article on page 5 will take you to the most recent listing of municipalities that have adopted ordinances imposing the new tax.

Enhancements can also be found in the tax calendar. In the printed version space limitations allowed us to include filing due dates for the current calendar quarter only. Now, you can link to a listing of due dates for the entire year. And, although the online *State Tax News* looks the same as the paper version (even if you print it out to read later instead of online), the table of contents allows you to navigate quickly through the issue to articles that interest you.

To be notified by e-mail when future issues of the *State Tax News* and other Division of Taxation publications become available online, subscribe to our online information service, *NJ Tax E-News*, at: www.state.nj.us/treasury/taxation/listservice.htm. Subscribers to *NJ Tax E-News* can also receive information on New Jersey income tax, property tax relief programs, and sales tax.

The Division of Taxation would like to thank the many faithful *State Tax News* subscribers for their support and interest. We hope that you continue to enjoy the *State Tax News* in its electronic format.

Robert K. Thompson

New Jersey State Tax news

Volume 32, Number 3
Fall 2003

A Quarterly Newsletter

ISSN 1073-6808



inside

<i>hotel/motel occupancy fee</i>	1
<i>murphy, deputy director</i>	3
<i>billing changes</i>	4
<i>municipal occupancy tax</i>	5
<i>interest rate 7.25%</i>	5
<i>new realty transfer fees</i>	6
<i>nj & irs combat tax abuse</i>	6
<i>notice to cigarette licensees</i>	7
<i>current amnesty programs</i>	7
<i>practitioner institutes</i>	8
<i>outdoor advertising fee</i>	8
<i>tax fraud</i>	10
<i>regular place of business</i>	11
<i>assignment of lottery winnings</i> ..	11
<i>tax assessor certificates</i>	12
<i>tax assessors' calendar</i>	12
<i>criminal enforcement</i>	13
<i>enforcement summary stats</i>	14
<i>tax briefs</i>	15
<i>in our courts</i>	16
<i>in our legislature</i>	21
<i>tax calendar</i>	22
<i>package njx for 2003</i>	22

Hotel/Motel Occupancy Fee

Recently enacted legislation (P.L. 2003, c.114) imposes a 7% State Occupancy Fee on the rent for every occupancy of a room in a hotel, motel, or similar facility in most New Jersey municipalities, between August 1, 2003, and June 30, 2004. For occupancies on and after July 1, 2004, the fee is reduced to 5%. A hotel/motel is a building regularly used and kept open for the lodging of guests, including bed and breakfasts, inns, etc. The State Occupancy Fee is imposed on the room rentals that are currently subject to the 6% New Jersey sales tax and is in addition to the sales tax.

Special Transitional Option

The State Occupancy Fee, as well as the Municipal Occupancy Tax, if applicable (see below), must be charged and collected on the rental of rooms on and after August 1, 2003, regardless of whether the customer contracted for, placed a deposit, or prepaid for the room prior to that date.

However, for transitional purposes only, on occupancies where the customer has contracted for, placed a deposit, or prepaid for the room at a specific room rate prior to August 1, 2003, the lodging facility may, at its option, renegotiate the customer's room rate so that the additional occupancy fee/tax is not required to be collected from the customer. If the facility opts to renegotiate the room rate, it is responsible for remit-

ting the occupancy fee/tax based on the renegotiated room rate.

If a guest has only made a reservation for a room occupancy on or after August 1, 2003, without placing a deposit, the transitional option is not applicable and the occupancy fee/tax will be due on the reservation rate.

Special Rate Provisions

Since Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood already impose local taxes or fees on hotel/motel occupancies, the new State Occupancy Fee is imposed at a lower rate in those areas:

continued on page 2



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400
NJ SAVER Hotline 609-826-4282
Property Tax Reimbursement
Hotline 1-800-882-6597
Speaker Programs 609-984-4101
NJ TaxFax 609-826-4500
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



occupancy fee - from page 1

	State Occupancy Fee
Newark	1%
Jersey City	1%
Atlantic City	1%
The Wildwoods	3.15%

On and after July 1, 2004, when the general State Occupancy Fee rate is reduced from 7% to 5%, the State Occupancy Fee in Newark, Jersey City, Atlantic City, and the Wildwoods remains at the above rates.

Municipal Occupancy Tax

In addition, between August 1, 2003, and June 30, 2004, any New Jersey municipality, *other than* Newark, Jersey City, Atlantic City, Wildwood, Wildwood Crest, and North Wildwood, may adopt an ordinance which imposes a uniform municipal tax on occupancies in that municipality, which can be less than or equal to 1%. For occupancies on and after July 1, 2004, the municipal tax may be imposed at a rate less than or equal to 3%.

During 2003, once an *adopted* ordinance is received by the Division of Taxation, the Municipal Occupancy Tax will be effective on the first day of the first full month following 30 days after transmittal of the adopted ordinance. The Municipal Occupancy Tax will be reported and paid to the Division of Taxation in the same manner as the State Occupancy Fee.

Sample Municipal Ordinance. The New Jersey League of Municipalities has drafted a sample ordinance, which can be found at: www.njslom.org/ml070203b.html

Adopted Municipal Ordinances must be sent to: New Jersey Division of Taxation, Technical Services Activity, PO Box 255, Trenton, NJ 08695-0255.

Exemptions From the Fee/Tax

No State Occupancy Fee is imposed on the rental of a room where the purchaser, user, or consumer is a New Jersey State or Federal agency, instrumentality, or political subdivision, or the United Nations, or any other international organization of which the United States is a member.

NOTE: Other exempt organizations such as religious, educational, and charitable organizations, which may qualify for exemption from New Jersey sales and use tax on purchases are *not* exempt from the State Occupancy Fee or the Municipal Occupancy Tax which may be imposed by the municipalities. Exempt organizations, which by law are not required to collect sales tax on occupancies which are directly related to their organizational purposes, are also not required to collect the State Occupancy Fee or Municipal Occupancy Tax (e.g., Y.M.C.A.).

For purposes of administration, the same exemptions that exist for the State Occupancy Fee are also applicable to the Municipal Occupancy Tax. Therefore, governmental entities, as described above, are also exempt from the Municipal Occupancy Tax. Other exempt organizations are subject to both the State Occupancy Fee and the Municipal Occupancy Tax.

The occupancy fee/tax is not imposed on the charge for the rental of a room in a hotel/motel for the *purpose of assembly* (e.g., a meeting, seminar, wedding, etc.).

The occupancy fee/tax is not imposed on the rental of a room to a *permanent resident*, which is a person who rents a room or rooms for at least 90 consecutive days. As with the exemp-

New Jersey State Tax *news*

is published quarterly by the:

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

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

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

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

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

Division of Taxation Director:
Robert K. Thompson

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continued on page 3



occupancy fee - from page 2

tion from New Jersey sales tax, if the guest contracts up front by written contract for an occupancy in excess of 90 consecutive days, the facility is not required to bill the occupancy fee/tax. If the guest vacates prior to the 90 days, the entire period of occupancy is subject to both the sales tax and the occupancy fee/tax.

Filing and Payment

The State Occupancy Fee, as well as the Municipal Occupancy Tax, if applicable, is collected from the customer by the hotel and reported and paid to the New Jersey Division of Taxation. The first return/remittance for the State Occupancy Fee was due on September 20, 2003. A new monthly return (HM-100) will be sent to the facility, along with filing and payment instructions.

Campgrounds

The occupancy fee/tax is imposed on hotel room occupancies currently

subject to the New Jersey sales tax. Campsites are treated as the rental of *real property*, which is not subject to New Jersey sales tax and, therefore, also not subject to the occupancy fee/tax. The rental of a trailer or a cabin that is not real property is subject to sales tax; however, it is taxable as the rental of tangible personal property, *not* as a hotel occupancy. Therefore, such rentals are also not subject to the occupancy fee/tax.

“Breakfast-Included” Occupancies

There are several types of lodging facilities (e.g., bed and breakfasts and hotel/motel chain facilities) which provide guests with breakfast (whether continental or full service) as part of the amount charged for the accommodation. Thus, the rent for an occupancy in such facilities includes breakfast, just as it may also include free parking, use of fitness facilities, afternoon snacks, and various other amenities, all of which

are provided by the facility as part of the occupancy.

The total amount charged to the guest is currently subject to New Jersey sales tax. The law specifies that the occupancy fee/tax is based on the same amount charged for an occupancy that is currently subject to sales tax. Therefore, for “breakfast-included” occupancies, the total amount charged to the guest is also subject to the occupancy fee/tax.

Package Deals

Tour Operators. A tour operator may sell packages which include accommodations, as well as other components, such as meals, tickets, admissions, transportation, discounts, etc. When a tour operator contracts with third parties to provide all of the components of the package, the operator pays any sales tax due and includes the tax expense in the package price charged to the customer. Thus, packages are sold which *include* any applicable taxes and fees that were paid by the operator. The tour operator must pay the occupancy fee/tax on the purchase of accommodations in a lodging facility.

The new occupancy fee/tax is treated in the same manner as taxes, gratuities, and other fees are currently treated in a package deal; it is part of the tour operator’s expense, which is passed along to the customer as part of the package price.

Packages Sold by Lodging Facilities.

A hotel may also sell packages which include accommodations at its facility, as well as other components, such as meals, tickets, admissions, transportation, discounts, etc. The packages are generally sold *including* any applicable taxes and fees.

J. Robert Murphy, Deputy Director

J. Robert Murphy, former deputy director of the Division of Taxation, passed away on September 19, 2003. Mr. Murphy began his state service in 1970, after retiring from a distinguished career with the Internal Revenue Service, to undertake the restructuring of the Division. The restructuring reorganized the Division from ten separate bureaus to three major activities and created the basis of the organizational structure of the Division of Taxation as we know it today. The elimination of specialized bureaus gave the Division the opportunity to cross-train professional employees to meet peak work loads and resulted in increased productivity and great cost savings.

Mr. Murphy received a B.S. from Seton Hall University and served as a first lieutenant in the U.S. Army with an honorable discharge in September 1945. He was a lecturer and author and served on the executive boards of the National Tobacco Tax Association and the National Association of Tax Administrators. He is survived by his wife of 55 years, Veronice Short Murphy, his children, Patricia and Robert Murphy and Colleen Ker, his son-in-law, Richard Ker, and his grandchildren, Catherine, Elizabeth and Jacqueline Ker and Austin and Erin Murphy.

occupancy fee - from page 3

For purposes of computing the amount subject to the occupancy fee/tax on a package sold by the hotel, the hotel may deduct any amounts it actually pays to an unrelated third party for the various components of the package, as well as any pass-through of applicable taxes and other fees. Thus, if a hotel contracts with other businesses to provide meals and tickets to an attraction as part of a package, the occupancy fee/tax base will not include the amounts paid for meals and tickets, including applicable taxes. The balance of the package price is deemed to relate to the room occupancy and the occupancy fee/tax is due based upon that amount.

If the lodging facility itself provides meals as part of a package, and the customer has the option of the same package without meals for a lower price, the amount paid by the customer for the meals portion is not subject to the occupancy fee/tax.

Customer Billing Guidelines

The State Occupancy Fee and the Municipal Occupancy Tax are imposed directly on the customer and must be separately stated on any bill, invoice, or other document given to the customer. A vendor may not advertise that the fee/tax is not due, that it will pay the fee/tax for the customer, or that the fee/tax will be refunded to the customer.

Reference

The State Occupancy Fee and the Municipal Occupancy Tax should be referred to as the New Jersey State Occupancy Fee and the Municipal Occupancy Tax.

Inquiries

Inquiries concerning the State Occupancy Fee or Municipal

Occupancy Tax should be directed in writing to: New Jersey Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, NJ 08695-0269; or via e-mail to: taxation@tax.state.nj.us

Questions concerning the municipal ordinance should be directed to the municipality.

Allocation

The State Occupancy Fee is allocated in varying percentages to the following: the New Jersey State Council on the Arts, the New Jersey Historical Commission, the New Jersey Commerce & Economic Growth Commission, and the New Jersey Cultural Trust. The Municipal Occupancy Tax is distributed back to the municipality. □

Billing & Enforcement Changes on the Way

New Billing Procedure

Plans are underway to eliminate the issuance of Statements of Account (the first notice sent to taxpayers). Instead, the first notice will be a bill and it will show *two* "Amount Due" figures.

The first Amount Due will be good only through the "Pay By" date shown on the bill and will be comprised of:

- Tax
- Interest
- Late filing penalty (5% per month to 25%), and
- Amnesty penalty if applicable

Any bill not paid by the Pay By date indicated will be subject to the second Amount Due. In addition to the items listed above, the second Amount Due will include a late payment penalty of 5%.

Interest will continue to accrue on the liability until paid, and additional penalties and fees may be assessed as allowed by law.

This is not an increase in the penalties assessed, or a shortening of the time allowed for payment before the imposition of the late payment penalty. It is merely the collapsing of two separate notices (the Statement of Account and the first bill) into one notice.

Referral Cost Recovery Fee

Beginning sometime in November 2003, the Division will be imposing a Referral Cost Recovery Fee as authorized by N.J.S.A. 54:49-12.3 and N.J.A.C. 18:2-2.5(d). In cases where any State tax remains unpaid and the Division refers a taxpayer's account to an outside debt collection agency, a Referral Cost Recovery Fee in the amount of 10% of the amount referred will be assessed. This fee will be in addition to any interest or penalties imposed.

\$100 Late Filing Penalty

The Division of Taxation will begin imposing the \$100 per month late filing penalty as authorized by N.J.S.A. 54:49-4. The law provides that this penalty may be imposed for each month (or fraction thereof) that a return is late. It will be assessed in addition to the late filing penalty of 5% per month of the underpayment (up to 25%) and, where applicable, the 5% late payment penalty, the referral cost recovery fee, and the cost of collection fee.

The \$100 per month penalty will be applicable to business tax delinquencies, including but not limited to gross income tax-employer, corporation business tax, and sales and use tax filings due after December 31, 2003.

continued on page 5



billing changes - from page 4

The penalty will *not* be imposed if:

- The taxpayer pays the bill within 30 days of the date on the notice; **and**
- The taxpayer has not previously received 3 delinquency notices for any business tax return due on or after December 31, 2003.

The penalty *will* be imposed if:

- The delinquency is not satisfied within 45 days of the date on the notice; **or**
- The taxpayer previously received 3 prior delinquency notices for any business tax return on which the \$100 per month penalty was imposed. □

Municipal Occupancy Tax

As authorized by P.L. 2003, c.114, the following municipalities have adopted an ordinance imposing a 1% Municipal Occupancy Tax. On and after the effective date, lodging facilities in these municipalities will collect the tax on the rental of a room in a hotel or similar facility in New Jersey, as described in the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-2. The Municipal Occupancy Tax is in addition to the State Occupancy Fee, which was effective for room occupancies on and after August 1, 2003.

Effective September 1, 2003

East Brunswick Township
Edison Township
Gloucester City
Hanover Township
Mount Olive Township
Princeton Borough
Secaucus Town
Vernon Township

West Orange Township
West Windsor Township

Effective October 1, 2003

Bordentown Township
Branchburg Township
Clifton City
East Windsor Township
Eatontown Borough
Elizabeth City
Elmwood Park Borough
Fair Lawn Borough
Florence Township
Fort Lee Borough
Galloway Township
Green Brook Township
Hasbrouck Heights Borough
Lawrence Township
Little Ferry Borough
Lyndhurst Township
Mahwah Township
Montville Township
Morristown
Mount Arlington Borough
Mount Laurel Township
New Brunswick City
North Bergen Township
Parsippany-Troy Hills Township
Plainsboro Township
Point Pleasant Beach Borough
Rochelle Park Township
Rockaway Borough
Saddle Brook Township
South Plainfield Borough
Spring Lake Borough
Stockton Borough
Totowa Borough
Weehawken Township
Woodbridge Township
Woodcliff Lake Borough

Effective November 1, 2003

Absecon City
Belleville Township
Bernards Township
Brooklawn Borough
Buena Vista Township
Burlington Township
Carlstadt Borough
Carteret Borough

Cherry Hill Township
Cinnaminson Township
Clark Township
Colts Neck Township
Denville Township
Eastampton Township
East Rutherford Borough
Fairfield Township
Florham Park Borough
Franklin Township (Hunterdon)
Franklin Township (Somerset)
Frenchtown
Hopewell Township
Irvington Township
Lakehurst Borough
Livingston Township
Long Branch City
Monroe Township
Morris Township
Ocean Township
Paramus Borough
Park Ridge Borough
Piscataway Township
Rahway Township
Rockaway Township
Roxbury Township
Rutherford Borough

continued on page 6

Interest 7.25%

The interest rate assessed on amounts due for the period January 1, 2003 – December 31, 2003, will be 7.25%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
1/1/99	10.75%
1/1/00	11.50%
1/1/01	12.50%
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%



occupancy tax - from page 5

- Sayreville Borough
- South Brunswick Township
- South Hackensack Township
- South River Township
- Teaneck Township
- Tenafly Borough
- Trenton City
- Union Township
- Voorhees Township
- Washington Township (Warren)
- Wayne Township
- Westampton Township
- Wrightstown Borough

Effective December 1, 2003

- Carney's Point
- Clinton Township
- Hackensack City
- Lebanon Borough
- Maple Shade Township
- Millburn Township
- New Providence Borough
- Pequannock Township
- Ramsey Borough
- Tinton Falls Borough

To view the most current list of municipalities that have adopted this ordinance, visit www.state.nj.us/treasury/taxation/munitaxlist.shtml □

New Realty Transfer Fees

New legislation (P.L. 2003, c.113) adopted June 30, 2003, and signed into law on July 1, 2003, amends the Realty Transfer Fee law (N.J.S.A. 46:15-5 et seq.) and provides for the imposition of new transfer fees on the sale of real estate. The new Realty Transfer Fee rates must be calculated on all deeds physically submitted or delivered to the county recording officer on or after Monday, July 14, 2003, regardless of the date on which the deed was executed or mailed for recording.

Rates: The Realty Transfer Fee rates on standard transactions and on new construction will be calculated as follows:

1. For each \$500 of consideration or fractional part not in excess of \$150,000, a supplemental fee of \$.25.
2. For each \$500 of consideration or fractional part in excess of \$150,000, but not in excess of \$200,000, a supplemental fee of \$.85.
3. For each \$500 of consideration or fractional part in excess of \$200,000, a supplemental fee of \$1.40.

Calculation: The Realty Transfer Fee should now be calculated as follows:

1. \$2.00 ($\$1.75 + \$.25$)/\$500 of consideration or fractional part not in excess of \$150,000.
2. \$3.35 ($\$1.75 + \$.75 + \$.85$)/\$500 of consideration or fractional part in excess of \$150,000 but not in excess of \$200,000.
3. \$3.90 ($\$1.75 + \$.75 + \1.40)/\$500 of consideration or fractional part in excess of \$200,000.

The new law does not increase the Realty Transfer Fee rates on transfers by senior citizens, blind persons, disabled persons, and on the transfer of property that is low- and moderate-income housing. The Affidavit of Consideration must still be recorded with all deeds claiming a partial exemption from the Realty Transfer Fee. However, deeds transferring new construction will no longer be required to file an Affidavit of Consideration. Transfers of new construction should now include a cover letter stating that the

property is new construction or the deed should clearly indicate on the first page that the property is new construction to ensure the proper distribution of funds.

Proceeds of the supplemental fees collected by the county recording officer will be accounted for and remitted to the County Treasurer, who will retain \$.25 of the supplemental fee for each \$500 of consideration for the purposes set forth in the new law. The balance will be remitted to the State Treasurer on the tenth day of each month following the month of collection. □

NJ & IRS Partner to Combat Tax Abuse

Tax officials from New Jersey and seven other jurisdictions (California, Louisiana, Maryland, Massachusetts, New York, Virginia, and the District of Columbia) joined Internal Revenue Service (IRS) Commissioner Mark W. Everson in Washington, D.C. recently to announce the establishment of a new, nationwide partnership to combat abusive tax avoidance. Under agreements with individual states, the IRS will share information about abusive tax avoidance schemes and those taxpayers who engage in such transactions.

Forty states (including New Jersey) and the District of Columbia have already signed the Abusive Tax Avoidance Transactions (ATAT) memorandum of understanding with the IRS, and more states are expected to sign the agreement in the future. Under the partnership, the IRS will then exchange information with participating states about abu-



tax abuse - from page 6

sive tax avoidance leads. The states and the IRS will share information about any resulting tax adjustments, thus avoiding duplication and reducing the need for taxpayer examinations by both a state and the IRS.

“This is just one more example of the IRS and the New Jersey Division of Taxation working together to ensure that all taxpayers pay their fair share and that the costs of good tax enforcement are borne by those who are truly noncompliant. It further highlights the fact that taxpayers that use high-priced tax preparers are held to the same standard as all others,” said Robert K. Thompson, Director, Division of Taxation.

Earlier this year the Division announced that New Jersey taxpayers participating in the Internal Revenue Service’s Offshore Voluntary Compliance Initiative for those using illegal tax shelters could avoid State prosecution if they amend their New Jersey income tax returns and remit to the State by October 15, 2003, all taxes, penalties, and inter-

est due. Those interested in taking advantage of the Offshore Voluntary Compliance Initiative and correcting unreported income tax liabilities to New Jersey should write to:

NEW JERSEY DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
PO BOX 288
TRENTON, NJ 08695-0288

or call 609-292-2163. □

**CIGARETTE TAX
Notice to Licensees**

The following is the text of a bulletin regarding changes in the New Jersey cigarette tax that was recently sent to all cigarette distributors, wholesalers, and retailers:

Recently, Governor James E. McGreevey signed legislation raising the excise tax on cigarettes from \$1.50 to \$2.05 per pack **effective July 1, 2003**, an increase of 55 cents per pack of 20. The new tax rate applies to all New Jersey tax stamps, floor stock, and to all cigarettes in the possession of any licensed distributor, wholesaler, or retailer licensed by the State of New Jersey on July 1.

On June 30, 2003, at midnight, every pack of cigarettes held for sale by New Jersey licensees bearing an excise tax stamp is subject to the additional tax. In order to account for the additional tax, you must complete an inventory of all affixed and unaffixed excise tax stamps and remit the tax using the Cigarette Floor Tax Return. Please read the form carefully and complete it before moving or selling any cigarettes on July 1, 2003. This report and the additional tax due can be filed any time after July 1, but must be submitted no later than September 1, 2003, to the New Jersey Division of Revenue, Floor Tax Unit, PO Box 250, Trenton, NJ 08646-0250.

The Director’s office may elect to do a physical inventory at selected distributor, wholesaler, and/or retailer locations on or about July 1.

All cigarettes stamped on or after July 1, 2003, must be stamped with either an old stamp that has been inventoried and listed on the Floor Tax Return, or a new stamp to evidence payment of the increased tax. The new stamps will be available for

continued on page 8

Current Amnesty Programs

Several states, as well as New York City, are conducting tax amnesty programs. During the designated amnesty periods, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web sites listed below.

Arizona	Sep 1 – Oct 31	www.taxamnesty.az.gov/
Florida	Jul 1 – Oct 31	sun6.dms.state.fl.us/dor/amnesty/
Illinois	Oct 1 – Nov 17	www.revenue.state.il.us/Amnesty/
Kansas	Oct 1 – Nov 30	www.ksrevenue.org/amnesty/
Maine	Sep 1 – Nov 30	www.state.me.us/revenue/amnesty/homepage.htm
Missouri	Aug 1 – Oct 31	www.dor.mo.gov/tax/amnesty/
New York City	Oct 20 – Jan 23	home.nyc.gov/html/dof/html/txamn.html
North Dakota	Oct 1 – Jan 31	www.state.nd.us/taxdpt/amnesty/
Virginia	Sep 2 – Nov 3	www.vataxamnesty.com

notice to licensees - from page 7

purchase at the new rate when available.

Cigarette distributors need to be aware that they will need to proportionally increase their surety bond if they wish to continue to have the ability to purchase the same quantity of stamps on credit. Failure to do so will necessitate stamp purchases by cash for any purchase order in excess of a distributor's credit limit.

For those retail dealers who have multiple locations, you may file a consolidated Floor Tax Return in the same manner as you do for sales and use tax. You must complete the reverse side of the Floor Tax Return listing the cigarette tax license number, location, and quantity of cigarettes on hand being reported for each location.

Should you have any questions regarding the above, please contact Henry Ryan, Cigarette Tax, at 609-984-4108. We ask for your usual cooperation to help make this a smooth transition." □

Practitioner Institutes

New Jersey commercial tax preparers are invited to the Practitioner Institutes sponsored by the New Jersey Division of Taxation, the Internal Revenue Service, the Accounting, Financial and Tax Professionals of New Jersey (formerly the NJAPA), and cooperating colleges. The one-day institutes are geared toward the intermediate and advanced tax preparer.

The topics presented by the New Jersey Division of Taxation are:

- New Jersey Gross Income Tax Update and Review
- Corporation Business Tax
- Dissolving a Corporation
- Audit and Sales Tax
- Inheritance Tax Update
- Doing Business with the State of New Jersey (including Property Tax Relief Program Update and Review)

The topics presented by Internal Revenue Service are:

- Taxpayer Advocate's Office
- Key Messages for Practitioners (E-File/EFTPS)
- EITC and Child Tax Credit
- Jobs Growth and Tax Relief Act of 2003
- Tax Issues and Divorce Matters

This year there will be six (6) seminars compared to the eight (8) held in previous years. All sessions begin at 9:00 a.m., conclude at 4:00 p.m., and include lunch. Registration desks will open 30 minutes before the beginning of the session, and coffee will be served. Six (6) CPE credits will be issued in taxation to those who complete the session.

The preregistration fee for commercial tax preparers is \$90 (\$15 for full-time students, ID required). Those who register at the door will be required to pay a \$100 fee. In order to qualify for the lower remittances, payment must be received no later than one week before the scheduled seminar. There will be no refunds; however, you can reschedule for another location. The locations, dates, and registration form appear on the next page. □

Outdoor Advertising Fee

On July 1, 2003, P.L. 2003, c.124 imposed a fee of 6% on the gross amounts collected by a retail seller of billboard advertising space. For purposes of this legislation, the retail seller is the licensee, which is the entity authorized to sell advertising space on billboards pursuant to N.J.S.A. 27:5-5 et seq.

Licensees are responsible for remitting the Outdoor Advertising Fee on the gross amounts collected from selling advertising space on billboards. "Gross amounts" do not include fees received by an advertising agency or broker that is not related to the retail seller (licensee).

In the situation where an advertising agency or broker is involved, the advertising agency or broker will be considered an agent of the customer and thus not responsible for the Outdoor Advertising Fee, unless the advertising agency or broker is itself a licensee and is directly selling billboard advertising space.

Although this fee is imposed on the retail seller, there is nothing in the law that prohibits the retail seller from passing on this cost to the customer. If the Outdoor Advertising Fee is separately stated on the invoice or bill provided to the customer, it should be labeled accordingly, "Outdoor Advertising Fee," and not as a tax. The retail seller may not in any way mislead the customer or misrepresent that the Outdoor Advertising Fee is anything more than a reimbursement of the fee imposed on the retail seller and not a tax on the customer.

continued on page 10



2003 Practitioner Institutes Schedule

DATE	CITY	LOCATION	COORDINATOR
Oct. 22	Sewell	GLOUCESTER COUNTY COLLEGE Allied Health Building – Room 500	Nancy Ritchie (609) 387-2127
Nov. 1	Randolph	COUNTY COLLEGE OF MORRIS Auditorium – Student Center	Frank Cerny (973) 777-1124
Nov. 10	Trenton	COLLEGE OF NEW JERSEY Student Center – Room 202 West	John Duffy (609) 586-1990
Nov. 12	Union	KEAN UNIVERSITY University Center – Room 228	Alice Weinstein (973) 379-3275
Nov. 13	Montclair	MONTCLAIR UNIVERSITY Student Center	Chris DiCicco (201) 445-1027
Nov. 14	Lakewood	GEORGIAN COURT COLLEGE The Casino (Gym)	Joseph Mastromonaco (732) 240-7355

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City	State
Zip Code	
E-mail Address: _____	
College Location	Amount Remitted
_____	_____

advertising fee - from page 8

A license is required to sell or rent billboard advertising pursuant to N.J.S.A. 27:5-5 et seq. Therefore, if a license is required by the Department of Transportation to sell advertising space on a particular outdoor sign, then the gross receipts from the sale of advertising space on such sign are subject to the 6% Outdoor Advertising Fee. However, if a license is not required, then the gross receipts for the sale of space on that sign are not subject to the Outdoor Advertising Fee.

The fees will be reported and paid on a quarterly basis on the New Jersey Outdoor Advertising Fee Return (Form OA-100). The first return was due October 15, 2003, for the period July 1, 2003, to September 30, 2003. For more information on the Outdoor Advertising Fee, including Form OA-100 and instructions, visit: www.state.nj.us/treasury/taxation/outdoorfeeinfo.shtml □

ENFORCEMENT

Tax Fraud Results in Prison Sentence

John Tredy, the former controller of a Bergen County tire and automobile repair business, has been sentenced by Superior Court Judge Joseph Conte to a four-year prison term for stealing more than \$1.2 million in State sales and employee withholding taxes. Because the criminal sentence does not resolve any tax debt, liability, or restitution owed to the New Jersey Division of Taxation, the Division has obtained a judgment against Tredy and will pursue any tax liabilities, penalties, and interest via separate civil proceedings.

State Attorney General Peter C. Harvey, who announced Tredy's sentencing, stated that the Division of Criminal Justice—Special Prosecutions Bureau, along with the Division of Taxation, share the goal of "investigating, prosecuting, and convicting tax cheats who steal from the State of New Jersey." He also stated that tax fraud cases will be fully prosecuted, and that unpaid taxes will be recovered and paid to the State treasury.

State Treasurer John E. McCormac added, "There is a new resolve to combat the criminal evasion of taxes. We are confident that our joint efforts will result in the improved recovery of taxes due and a higher rate of voluntary compliance."

Tredy was indicted by a State Grand Jury on October 23, 2002. The indictment identified Tredy as the former controller of the T.&S. Tire Service Corporation (doing business as Bergen Tire) with retail shops in Carlstadt and Wayne. Bergen Tire is privately owned with administrative offices located in Saddle Brook. The investigation determined that the owners had entrusted Tredy with complete financial control of the company, and had no knowledge about the alleged theft of tax revenues. They discharged Tredy from the controller position once the allegations came to light. Tredy plead guilty to second-degree charges of theft by deception and misapplication of entrusted property.

The indictment charged that between June 1994 and August 2000 Tredy collected and failed to turn over to the State a total of \$1,060,000 in collected sales taxes and \$101,000 in employee withholding taxes. During this period, Bergen Tire paid no State sales or

employee withholding taxes even though the funds were collected. From December 1999 through August 2000 Tredy engaged in other acts of theft, including a scheme in which he allegedly obtained more than \$300,000 by double-billing scores of Bergen Tire customers by utilizing credit card numbers to double-bill credit companies for services purchased from the retail stores.

The joint investigation by the Division of Criminal Justice—Special Prosecutions Bureau and the Division of Taxation determined that Tredy, to avoid detection of his failure to remit tax payments, enlisted the cooperation of Kevin Dolan, a tax investigator with the Division of Taxation. Dolan was charged with, and plead guilty to, receiving nearly \$10,000 in gifts from Tredy (a third-degree charge of gifts to a public servant). Dolan was sentenced to two years' probation and was forever barred from holding government employment.

Criminal Justice Director Vaughn L. McKoy said, "We are watching and we are acting. We are watching government programs, elected officials, and corrupt businesspersons who would misuse their office or government relationships for personal gain and greed. This investigation and prosecution was aggressively pursued by the Division of Criminal Justice—Special Prosecutions Bureau and the Division of Taxation."

The investigation was coordinated by Deputy Attorney General William Porter (Division of Criminal Justice—Special Prosecutions Bureau) and conducted by Detective Myles Cappiello and Detective Gerald Nachurski (New Jersey State

continued on page 11

tax fraud - from page 10

Police Official Corruption Unit). Additional investigative support was provided by Pete Richards, Jack Grady, and Carolyn Fox (Division of Taxation, Office of Criminal Investigation). □

CORPORATION BUSINESS TAX ***Regular Place of Business***

As part of the Business Tax Reform Act (BTRA) of 2002, a “throwout” receipts factor apportionment rule was adopted for corporation business tax purposes. Under a “throwout” system, receipts which are sourced to taxing jurisdictions where the taxpayer does not file and pay a franchise or income tax type of tax would be excluded from New Jersey’s receipts fraction denominator. The adoption of this “throwout” provision has *not* eliminated the requirement that in order for a corporation to allocate (apportion) business activity away from New Jersey, it must maintain a “regular place of business” outside of New Jersey.

A “regular place of business” is defined as any bona fide office (other than statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied, and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance.

In order to satisfy the maintenance requirement, the taxpayer must be directly responsible for the expenses incurred for that regular place of business. The location must be either owned or rented in its own name and not through a related person or entity. This requirement has been reviewed by several court cases. In

Hoeganaes Corp. v. Director, Division of Taxation, 145 N.J. Super. 352 (App. Div. 1976) the Court held that an out-of-State employee’s home did not constitute a “regular place of business.” In *Rocappi, Inc. v. Director, Division of Taxation*, 182 N.J. Super. 163, N.J. Tax 311 (Tax 1981) the Court held that a salesman’s use of an out-of-State office maintained by its parent corporation did not qualify, and in *Shelter Development Corp. v. Director, Division of Taxation*, 6 N.J. Tax 547 (Tax 1984) that an out-of-State office leased by a taxpayer’s parent company and used by the taxpayer did not constitute a “regular place of business.”

A regular employee is one who is in attendance during normal business hours performing duties on behalf of the taxpayer that are of a significant nature. The employee must be under the direction and control of the taxpayer. The courts have reviewed this requirement as well. In three related cases, *River Systems, Inc., Rubachem International, Ltd., and Rubachem, Inc. v. Director, Division of Taxation*, 19 N.J. Tax 599 (Tax 2001) (which was affirmed by the Appellate Division of the Superior Court on March 14, 2003) the Court ruled that employees who are on the payroll of other companies or are employed in an employee leasing arrangement are not regular employees of the taxpayer and do not satisfy the requirement that a regular employee occupy and use the out-of-State office during normal working hours.

When a corporation has nexus and is paying corporate taxes to other taxing jurisdiction(s) but does not maintain a regular place of business outside of New Jersey, it is entitled to relief from double taxation. Regulation 18:7-8.3 allows a taxpayer

who is not entitled to allocate (apportion) to take a credit against its New Jersey corporation business tax liability for taxes paid to another jurisdiction on income taxed by both that jurisdiction and New Jersey. □

GROSS INCOME TAX

Assignment of NJ Lottery Winnings

The New Jersey Gross Income Tax Act at N.J.S.A. at 54A:6-11 provides that gross income shall not include lottery winnings from the New Jersey lottery. Likewise, if a New Jersey lottery winner sells the right to collect the winnings, the proceeds from the sale are also exempt from New Jersey income tax. *McCauley v. Director, Division of Taxation*, No. 005061-98 (Tax Court, November 20, 2001).

In *McCauley*, plaintiff won a New Jersey Pick-6 State lottery prize that was payable in 20 installments from 1987 to 2006. After receiving seven payments, plaintiff assigned the next five installments to a corporation in exchange for \$200,000. Pursuant to the State Lottery statutes, the agreement was conditioned upon a judicial order indicating that the State acknowledged and permitted the assignment and would direct the payments to the assignee. The order was granted. Thereafter, plaintiff received the \$200,000, but did not report the income on his 1994 New Jersey gross income tax return. The Director determined that the \$200,000 was includable in gross income as a gain from the disposition of property under N.J.S.A. 54A:5-1c. The Tax Court disagreed, holding that proceeds from the

continued on page 12

lottery winnings - from pg. 11

assignment of State lottery winnings are exempt from New Jersey gross income tax.

The Court found it “difficult to articulate a basis for providing an exemption for lottery prizes, but not for proceeds from the assignment of lottery prizes.” The Court relied on the following in support of its decision in *McCauley*: (1) in enacting N.J.S.A. 54A:6-11, which exempts New Jersey lottery winnings from New Jersey gross income tax, the Legislature’s interest was to encourage lottery ticket sales by allowing this exemption to benefit lottery prize winners. (2) In encouraging other particular investments (i.e., dispositions of government obligations that generate tax-free income) the statute exempted both the interest and the gain on disposition of such obligations. (3) There would be no double exemption for lottery winnings in an assignment because the character of the income is different in the hands of the assignee here (a corporation that is not subject to gross income tax). (4) Only the state of Oregon had addressed this issue and held that the exemption extends to the proceeds of an assignment. (Since January 1, 1998, Oregon has taxed winnings from the Oregon Lottery that exceed \$600 per winning ticket.) □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Eighteen persons passed the Tax Assessor Certification examination held on March 29, 2003, and received Tax Assessor Certificates dated July 1, 2003. They are as follows:

Burlington County: Chris Czvornyck, Mount Laurel Township.

Camden County: Darlene D. Campbell, Gibbsboro Borough.

Essex County: Thomas L. Small, Maplewood Township.

Hunterdon County: Edward G. Cahill, Clinton Township.

Middlesex County: JoAnn Ghigliotty Jimenez, Perth Amboy City; Nancy J. McCarthy, Sayreville Borough.

Monmouth County: Donna J. Taylor, Upper Freehold Township.

Morris County: Brien Danko, Washington Township.

Ocean County: Susan A. Galgano, Stafford Township; Tracy Ann Hafner, Little Egg Harbor

Township; Walter R. Higgins, Ship Bottom Borough; Carol T. Rado, Lacey Township; P. G. Waxman, Lakewood Township.

Somerset County: Robert C. Heuner, Somerville Borough.

Union County: Joseph G. Colacitti, Elizabeth City; Christopher R. Duryee, Roselle Park Borough.

Commonwealth of Pennsylvania: Stephen Douglas White, Millcreek Township, Erie County; Robert George Engel II, Mount Pleasant Township, Washington County.

The next examination is scheduled for March 27, 2004. The deadline to file applications for this exam is February 26, 2004. Call or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813. □

LOCAL PROPERTY TAX Tax Assessors’ Calendar

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- Veteran’s property tax deduction eligibility established, pretax year (\$250 for tax year 2004).
- \$250 real property tax deduction for senior citizens, disabled persons, surviving spouses eligibility established (pretax year).
- Agricultural land values for farmland assessment published by State Farmland Evaluation Advisory Committee.

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assessors' calendar - from page 12

- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.

November 1 –

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15 –

- Deadline for taxing districts' appeals of Table of Equalized Valuations to N.J. Tax Court.

December 1 –

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

December 31 –

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2004 must be filed with

assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- Dr. Samuel Evenstein, a chiropractor from Edison, New Jersey, entered the State of New Jersey's Pretrial Intervention (PTI) Program for first-time offenders. Dr. Evenstein had previously entered a guilty plea to a three-count accusation of failure to pay New Jersey gross income tax, a crime of the third degree. The case arose from the failure of Dr. Evenstein to report in excess of \$800,000 of taxable income for the years 1997, 1998, and 1999 and his failure to pay New Jersey gross income tax on the unreported income. As a condition of successfully completing the Pretrial Intervention Program, Dr. Evenstein will have to make full restitution of the unpaid New Jersey gross income tax together with the statutory penalties and interest that have accrued. This case was a joint investigation by the Office of Criminal Investigation (OCI) and the New Jersey Division of Criminal Justice-Office of the Insurance Fraud Prosecutor.
- On March 31, 2003, Carmello Mami, Richard Mami, and Arthur Rose entered guilty pleas to various third-degree charges that included promoting prostitution, conspiracy, money laundering, and the failure to pay New Jersey gross income tax and corporation

business tax. Carmello Mami and Richard Mami were the operators of a health club known as Eve's Garden of Eden in Red Bank, New Jersey, and Arthur Rose was their accountant and business associate. The subjects were indicted on October 1, 2002, and the matter was scheduled for trial in May of this year. A total of 95 witnesses from around the country were scheduled to testify at the trial. As a result of the plea agreements reached with the defendants, all personal and corporate tax liabilities will be satisfied, and Arthur Rose will lose his Certified Public Accountant status. On May 9, 2003, Carmello Mami and Richard Mami were sentenced to a three-year period of probation. On May 16, 2003, Arthur Rose was sentenced to a two-year period of probation and all parties were ordered to make restitution of all personal and corporate tax liabilities. This investigation was initiated in 1999 by the Red Bank Police Department based on allegations of prostitution at the health club. The investigation expanded to include the Bayshore Narcotics Task Force, the Middletown Police Department, the Monmouth County Prosecutor's Office, and the Division of Taxation.

- On April 1, 2003, John R. and Kathleen A. Bukowiec, husband and wife from Howell, New Jersey, were indicted by a State Grand Jury on various third-degree charges of Medicaid fraud, theft by deception, and filing false and fraudulent New Jersey gross income tax returns.

criminal enforcement - from pg.13

The indictment alleges that the Bukowiecs misrepresented their earnings on applications for Medicaid benefits and New Jersey gross income tax returns. In addition, it is alleged that they fraudulently received unemployment benefits and failed to report weekly "off-the-books" earnings of \$700 per week received from Michael Stavitski, a Monmouth County pharmacist currently under indictment for submitting \$1.3 million in fraudulent billings to the Medicaid program.

- On April 2, 2003, Harvey Schneider, Jr. and Shore Transmissions, L.L.C. were indicted by a State Grand Jury on various third-degree charges of theft by deception, theft by failure to make required disposition of property received, misapplication of entrusted property, failure to file New Jersey sales tax returns, and failure to pay or turn over New Jersey sales tax collected. The charges stem from the operation of a transmission repair business in Point Pleasant, New Jersey, by the corporation and Mr. Schneider, the responsible corporate officer. In addition to

the charges associated with the tax violations, there are also charges associated with consumer fraud wherein Mr. Schneider failed to make repairs, or misrepresented work performed, and fraudulently billed customers.

- On April 22, 2003, Jia Feng Wang of Los Angeles, California, was found in possession of 22,500 cartons of suspected counterfeit brands of Philip Morris cigarettes. The brands were Marlboro and Marlboro Lights. Hamilton Township (Atlantic County) Police Department observed a large Ryder truck operating in and around the Hamilton Township Mall. Upon investigation, the vehicle was found to contain the above cigarettes. The Office of Criminal Investigation (OCI) confirmed the products were counterfeit. The subject was charged by OCI with possession of 1,000 or more items bearing a counterfeit mark (second-degree crime), transportation of untaxed cigarettes, and other related charges. The street value is approximately \$1,141,200. The subject was held on \$100,000 bail and on a Department of Homeland Security/Immigration and Customs

Enforcement retainer. OCI, in cooperation with the Federal government, is continuing the interstate transportation investigation.

- OCI played an integral role in a Multi-State/Federal Task Force that was created to deter smuggling of contraband cigarettes from Virginia to the Northeast states. The Task Force operated under the auspices of the US Attorney's Office for the Eastern District of Virginia. This successful operation resulted in the arrest of twelve individuals for trafficking in contraband cigarettes. This investigation began with an advertisement in a local Arabic language newspaper offering the sale of cigarettes and with New York State operating the undercover sting in Virginia. New Jersey personnel participated in surveillance and arrested a trafficker as part of the operation. That one arrest resulted in 2,520 cartons of contraband cigarettes being seized, as well as information leading to a tax stamp counterfeiting operation.
- On May 27, 2003, Donna L. Burke of Toms River, New Jersey, plead guilty to one count of misapplication of entrusted

continued on page 15

Enforcement Summary Statistics **Second Quarter 2003**

Following is a summary of enforcement actions for the quarter ending June 30, 2003.

• Certificates of Debt:	• Jeopardy Seizures	1	
Total Number	2,746	• Seizures	46
Total Amount	\$40,889,793	• Auctions	2
• Jeopardy Assessments	442	• Referrals to the Attorney General's Office	599

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

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

criminal enforcement - from page 14

property (second degree). Ms. Burke had been indicted by a State Grand Jury on various charges involving the collection and failure to remit New Jersey sales tax collected from the customers of Buddy Motors, Inc. Ms. Burke, as president of the defunct used car dealership in Burlington, New Jersey, was responsible for the failure to remit New Jersey sales tax in the amount of \$227,242.86. Ms. Burke was scheduled to be sentenced in August 2003.

- On May 27, 2003, in Superior Court – Mercer County, Carl Monto of Toms River, New Jersey, entered a plea of guilty to one count of theft by failure to make required disposition of property received, and one count of failure to file a tax return with respect to \$100,454.83 in New Jersey motor fuels tax. Mr. Monto collected and failed to remit the tax on the retail sale of diesel fuel from January to September 1997 at a truck stop which Monto, as responsible person of Courtesy Truck Stop, Inc., operated in Jersey City, New Jersey. Mr. Monto faces a maximum of 15 years' imprisonment and \$107,500 in fines when he is sentenced. Sentencing was scheduled for September 2003. This case was a joint investigation by the Office of Criminal Investigation and the New Jersey State Police Organized Crime Unit, and was prosecuted by the State Attorney General's Office.
- On June 9, 2003, Keyur Patel of Newark, Delaware, was arrested on the New Jersey Turnpike subsequent to a motor vehicle

stop wherein New Jersey State Police observed 569 cartons of Delaware stamped cigarettes in the rear of the vehicle in plain view. The subject was charged by OCI with possession of untaxed goods, no invoices, no consumer license, and transportation of untaxed cigarettes.

- On June 16, 2003, Richard Lugero, a former resident of Millstone Township, New Jersey, plead guilty to failure to pay gross income tax with intent to evade, theft by failure to make required disposition, and theft by deception, all third-degree crimes. On the basis of a joint investigation between the Office of Criminal Investigation and the Monmouth County Prosecutor's Office, Mr. Lugero had been indicted by a Monmouth County Grand Jury on counts of failing to file income tax returns, filing false and fraudulent returns, theft by illegal retention, and theft by deception. It was alleged that Mr. Lugero derived his income by acquiring goods and services by defrauding various creditors and businesses. Sentencing was scheduled for August 2003.
- One hundred twenty-three (123) complaints alleging tax evasion were evaluated from April through June 2003 in the Office of Criminal Investigation.
- During the same period, forty-five (45) charges were filed in court on twenty-six (26) cases for violation of the Cigarette Tax Act. Of the twenty-six (26) cases, five (5) involved counterfeit tax stamp investigations and twelve (12) arrests were made. □

Tax Briefs

Gross Income Tax

New Jersey/Pennsylvania Income Tax Withholding — Pennsylvania residents who receive wage compensation from New Jersey sources are not subject to New Jersey income tax on those earnings. Under the State of New Jersey and the Commonwealth of Pennsylvania Reciprocal Personal Income Tax Agreement, a New Jersey employer is not permitted to withhold New Jersey income tax from wages paid to its Pennsylvania resident employees who file Form NJ-165, Employee's Certificate of Non-Residence in New Jersey, with their employer. The reverse holds true for Pennsylvania employers with New Jersey resident employees. However, withholding Pennsylvania Personal Income Tax from a Pennsylvania resident's salary is left to the discretion of the New Jersey employer once the employee has filed a Certificate of Non-Residence in New Jersey.

Sales and Use Tax

Exempt Organizations and Hotel Charges — The Division replied to a sales and use tax inquiry regarding whether an organization that has been granted sales tax exemption in New Jersey is required to pay sales tax on charges for food, meeting rooms, hotel rooms, AV (audio-visual) equipment, etc., made by a hotel to members of the organization.

An exempt organization is exempt from paying sales tax on the above expenses at a hotel, so long as the organization issues the hotel a valid ST-5 Exempt Organization Certificate and payment is made *directly with organizational funds*. N.J.A.C.

continued on page 16

tax briefs - from page 15

18:24-9.12(a)(3). The sales tax exemption does not apply when payment is made with personal funds (cash, personal check, credit card, etc.) of an organization member even though he or she may be reimbursed later by the exempt organization.

A hotel would be correct in charging organization members sales tax where the organization required its members to pay for the room and apply for reimbursement. In order for the exemption to apply, payment must be made with organizational funds at the point of purchase.

Finally, note that rentals of real property for purposes of assembly are not subject to sales tax. Thus, charges for occupying a meeting room are exempt from tax. If the charge for the meeting room is billed with the charge for a taxable item or service and the amount is stated as one lump sum, the entire amount is subject to sales tax.

Sales of Advertising Material — The Division responded to an inquiry regarding the sales or use tax that applies where advertising material (brochures) is purchased from an out-of-State vendor. The items were shipped to the taxpayer's office in New Jersey, and then sent to a direct-mail house in New Jersey for distribution across the country. The ultimate users across the country received the items free of charge.

Advertising or promotional tangible personal property mailed or otherwise sent without charge to recipient individuals or companies and any related direct-mail processing services delivered in New Jersey are subject to sales tax. However, the New Jersey Sales and Use Tax Act

exempts from tax the portion of tangible personal property distributed to out-of-State recipients and the portion of receipts for processing services in connection with distribution to out-of-State recipients. N.J.S.A. 54:32B-8.39.

This exemption applies "to receipts from charges for the printing or production of advertising and promotional materials whether prepared in, or shipped into New Jersey after preparation and stored for subsequent shipment to out-of-State customers." N.J.S.A. 54:32B-8.39. Thus, the total cost of the brochures can be allocated based on in-State versus out-of-State delivery, with tax due on the in-State portion.

The exemption also applies "to receipts from charges for all processing services for distribution to out-of-State recipients, including but not limited to the following: preparing and maintaining mailing lists, addressing, separating, folding, inserting, sorting and packaging advertising or promotional material and transporting to the point of shipment by mail service or other carrier." N.J.S.A. 54:32B-8.39.

Where the *purchaser of advertising or promotional material* takes delivery of such property in this State, he may issue the vendor an Exempt Use Certificate (Form ST-4) in lieu of paying sales tax. The purchaser is then liable for use tax on that portion of the advertising or promotional material delivered to recipients in New Jersey or otherwise used or consumed by him in New Jersey. Tax also applies where the purchaser has advertising material delivered to addresses in New Jersey from a location outside the State. Delivery to addresses in New Jersey is considered a use by the purchaser in this State.

The *purchaser of direct-mail services* may issue an Exempt Use Certificate (Form ST-4) to the vendor in lieu of sales tax on that portion of both the property which the vendor will deliver to recipients outside New Jersey and the related processing service. The vendor must collect sales tax on the portion of the advertising or promotional material delivered to recipients in New Jersey, and also collect sales tax on the direct-mail service charge that relates to in-State delivery of the material.

In conclusion, the portion of the brochures distributed to New Jersey recipients and the portion of receipts for processing services in connection with distribution to New Jersey recipients are subject to sales tax. Therefore, the taxpayer is responsible for sales or use tax on the charge for the brochures delivered to New Jersey, including the corresponding direct-mail services. □

In Our Courts

Administration

Responsible Person — *David Lee v. Director, Division of Taxation*, decided May 15, 2003; Appellate Division No. A-3784-01T2.

The Appellate Division upheld the Tax Court's determination that plaintiff (Lee) was liable as the responsible person for sales and use taxes of the corporation Exterior Power Sweeping (EPS) for substantially the reasons and conclusions expressed by the Tax Court below.

Lee was the owner, president, and sole officer of EPS until the termination of the business. EPS ceased business operations in September 1989, and was dissolved in 1991. In

continued on page 17

in our courts - from page 16

1991, the Division assessed sales and use tax against the corporation for the period October 1, 1983, to June 30, 1989. Sales and use tax returns were not filed with the Division for that period, nor were they filed thereafter. EPS protested the assessment and the Division issued a Final Determination in 1993. EPS filed a complaint with Tax Court that vacated the assessment in 1997. The Division appealed, and the Appellate Division reversed the Tax Court on April 30, 1999. On May 21, 1999, the Division issued a Notice of Finding of Responsible Person Status to Mr. Lee for the sales and use tax liabilities of EPS.

Lee did not really dispute that he was a responsible person of EPS; however, he claimed that the responsible person notice was inequitable and barred by either laches, or estoppel, or both. The Tax Court would not set aside the assessment on the basis of laches or estoppel. The Tax Court found that Lee was chargeable with knowledge of the statutes and his admitted actual knowledge renders less forceful his equitable arguments. Lee did not demonstrate detrimental reliance on any action or inaction of the Division, and failed to demonstrate that the Division deferred sending the responsible person notice to him so that interest would accrue. Furthermore, the Tax Court noted that there is a general reluctance of the courts to grant estoppel against a public official entity.

Lee also claimed that the May 21, 1999, responsible person notice was untimely due to the three-year statute of limitation period. Although no returns were ever filed, he alleged that the providing of information to

the Division during the audit was a *de facto* filing of those returns. The Tax Court rejected the theory of *de facto* filing. However, the Tax Court stated that even if it accepted *de facto* filing, the statute did not limit the time period to collect taxes from a responsible person that were determined to be due within three years of the alleged *de facto* filing date.

Corporation Business Tax Change of Filing Status – *Chemical New Jersey Holdings, Inc. v. Director, Division of Taxation*, decided April 25, 2003; Tax Court No. 000213-2001.

In 1992 and 1993, plaintiff (Chemical) filed corporation business tax returns as an investment company. In 1999, the Division assessed additional tax after it determined that

Chemical failed to qualify as an investment company. After receiving its Final Determination, Chemical timely appealed to the Tax Court in February 2001 on the basis that it was denied its status as an investment company. Approximately one year later, Chemical filed an amended complaint retracting its initial claim and alleged that its filing status should be as a financial business corporation. Chemical never filed returns as a financial business corporation for either year at issue.

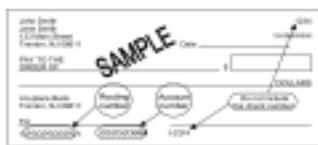
In its previous September 2002 bench decision, the Court decided that (1) the Division's assessment was timely, (2) the doctrine of equitable recoupment was inapplicable

continued on page 18

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* Fee of 2.5% of tax payment applies.

in our courts - from page 17

because the case did not involve an effort to set off or credit previous tax payments against the assessment, and (3) Chemical could not obtain a refund as the time period for refund claims had expired before Chemical alleged its status as a financial business corporation.

The Court was left to decide the sole issue of whether Chemical could change its filing status by asserting that it was a financial business corporation more than seven years after it filed its return as an investment company. After determining that it had jurisdiction to decide whether the assessment could be challenged on those grounds, the Court noted that the issue was analogous to a local property tax appeal where the claim for farmland assessment is different than the claim contained in the application for farmland assessment. In those cases, the Tax Court consistently held that an applicant is bound by the application unless there was a timely amendment. The Court stated that the rationale was that the initial filing was regarded as establishing the basis for government examination and that the government was limited to a statutory period to analyze, inspect, and investigate the taxpayer's filing. Therefore, the Court held that Chemical could not circumvent the statutory requirement that it file timely amended returns as a financial business corporation within the statutory period for refunds by claiming that it was entitled to a different filing status in the Tax Court appeal. The Court noted that plaintiffs could assert alternative legal theories subject to the considerations of due process and unfair prejudice; however, the Court determined that a change in filing status was not sim-

ply an alternative legal theory because filing status controlled the entire taxing process.

Recoupment of Erroneous Refund – *Lenox, Incorporated v. Director, Division of Taxation*, decided December 4, 2002; Tax Court No. 007049-98 and 007050-98.

On July 8, 1992, the Division issued plaintiff a refund check based upon refund claims and a Form IRA-100 report of IRS changes, neither of which was timely filed as determined by the Tax Court. (See *Lenox, Incorporated v. Director, Division of Taxation*, decided April 20, 2001; Tax Court No. 007049-98 and 007050-98, summarized in the spring 2003 issue of *New Jersey State Tax News*, Vol. 32, No. 1, page 12.)

In December 1996, the Division issued plaintiff a Notice of Erroneous Refund requesting that the refund be returned due to the untimely filing of the refund claims and the Form IRA-100 report of changes made by the IRS. Plaintiff refused to return the refund claiming that the Division has neither statutory nor inherent authority to recover the refund; the refund recovery is equivalent to a tax assessment that would be barred by the statute of limitations; due to the four and one-half years between the date of payment of the refund and the request for its return that the recovery is barred by laches or estoppel; and that by issuing the refund the Division waived defenses to the timeliness of the refund claims.

The Tax Court relied on *Playmate Toys* where the Appellate Division held that the Division had inherent authority to recoup erroneous refunds. In affirming the Appellate

Division's decision, the NJ Supreme Court added that the Division's powers were not "boundless" and that here the Division's recovery was similar to the correction of a clerical error rather than an error in judgment.

After reviewing other court cases, the Tax Court defined the term "error in judgment" as used in *Playmate Toys* to "refer only to an erroneous final determination of the merits of a taxpayer's liability for tax, resulting from a mistaken interpretation of substantive law or a misunderstanding of the facts relating to the determination." Therefore, the Court ruled that the Division's error as to the timeliness of plaintiff's filing the IRA-100 and refund claim was a clerical error. Consequently, the Court held that plaintiff must return the erroneous refund with interest from the date plaintiff received the Notice of Erroneous Refund. The Court reasoned that the term "clerical error" should be broadly construed so that the Division may protect the public fisc and promote public interest.

Gross Income Tax
S Corporations and Charitable Contributions – *Myron and Elaine Adler v. Director, Division of Taxation*, decided March 24, 2003; Tax Court No. 002025-2001.

Plaintiffs (Adlers) were shareholders of Myron Corporation, which was organized for tax purposes as an S corporation. In 1994 and 1995, Myron Corporation made charitable contributions to qualified charitable organizations. The Division determined that the charitable contribution deductions for purposes of determining Myron Corporation's

continued on page 19

in our courts - from page 18

corporation business tax liability were proper. However, the Division disallowed the deductions of Myron Corporation's charitable contributions in calculating the Adlers' share of S corporation income for gross income tax liability purposes.

The Tax Court ruled that the statute's express language permitted the Adlers to deduct Myron's charitable contributions in determining their share of S corporation income. The Court found that N.J.S.A. 54A:5-10 provided that a shareholder's share of S corporation income for gross income tax purposes was to be calculated in accordance with I.R.C. 1366. In turn, I.R.C. 1366 stated that deductions pursuant to I.R.C. 702(a)(4) are included in determining an S corporation shareholder's Federal income tax liability. Finally, I.R.C. 702(a)(4) permitted partners to deduct qualified charitable contributions in determining their distributive share of partnership income. Even though I.R.C. 702(a)(4) stated partners, it was found to be applicable to S corporation shareholders because of the specific I.R.C. 1366 reference.

Sales and Use Tax

Derivative Exemption – *Sodexho Operations, LLC v. Director, Division of Taxation*, decided August 13, 2003; Tax Court No. 001793-2001.

Sodexho contracted to provide management services for the food and cleaning service departments of various hospitals and other institutions that qualified as tax-exempt organizations for sales and use tax purposes. As part of the management services, Sodexho purchased supplies for use in the cleaning department; various paper goods such as

plates, cups, napkins, straws, and utensils for the food service department; and furniture and materials to renovate the cafeteria and coffee shops. Sodexho claims that these purchases are not subject to sales and use tax because it acted as an agent for the tax-exempt organizations, and therefore is entitled to a derivative exemption. Alternatively, Sodexho argues that all the purchases are exempt as a purchase for resale to the tax-exempt organizations, and that the furniture and material purchases are exempt because Sodexho should be considered a contractor.

In addressing the issue of derivative exemption, the Court reviewed the New Jersey Sales and Use Tax Act and case law. The Court found that there was no express statutory authorization to permit Sodexho to use the exempt organizations' sales and use tax exemption, nor did New Jersey case law exist regarding this issue. After discussing both state and Federal case law, the Court determined that United States Supreme Court decisions dealing with the extension of sovereign immunity to government contractors were applicable to resolving Sodexho's claim of derivative exemption. The Court decided that in order for Sodexho to be entitled to the exempt organizations' tax exemption, Sodexho must meet the Supreme Court standard as stated in *United States v. New Mexico* that Sodexho and the exempt organization "cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." The Court determined that although an agency relationship existed between Sodexho and the exempt organizations, the evidence indicated that Sodexho retained substantial elements of discretion and

control while performing its management services, and that it operated an independent business in pursuit of its own profit-making purposes and objectives. Consequently, the Court held that Sodexho could not use the exempt organizations' tax exemption, as it could be viewed as a separate entity. The Court noted that even though the ultimate burden of the tax would fall upon the tax-exempt organizations, that that fact does not affect its decision.

Turning to the alternative argument that Sodexho's purchases are exempt as the purchases were for purposes of resale to the exempt organizations, the Court stated that N.J.S.A. 54:32B-2(e)(1) excludes from tax a sale for resale of tangible personalty "either as such or as converted into or as a component part of a product produced for sale by the purchaser." In addressing the issue of whether tangible personalty or services were sold to the exempt organizations "as such," the Court found that it needed to determine what was the true or real object sought by the buyer, and whether the tangible personalty was a critical element of the transaction. The Court opined that the true object of the agreements between the parties was for Sodexho's expertise in providing management services, and that the purchase of tangible personalty was merely incidental to providing these management services, such as training the tax-exempt organizations' employees and determining appropriate inventory levels, as well as convenience for the tax-exempt organizations. The Court concluded that the purchases could not be exempt as converted into or as a component part of a product

continued on page 20

in our courts - from page 19

produced by Sodexho for sale to the tax-exempt organizations because Sodexho did not produce a product. The Court stated that the fact that Sodexho was reimbursed by the tax-exempt organizations for the cost of most of the items was not determinative to the issue of whether there was a resale. Finally, the Court found that language contained in the agreements between the parties contradicted that there was a sale to the tax-exempt organizations where the agreement stated that the inventory shall remain the property of Sodexho, Sodexho would absorb the cost, and after a time period the tax-exempt organizations would not have to pay for the materials.

Finally, the Court addressed Sodexho's claim that the furniture and material purchases are exempt because it should be considered a contractor. The Court ruled that Sodexho was not a contractor as it did not produce evidence that qualified itself for the statutory definition of contractor. Furthermore, the Court determined that the true object of these purchases was for Sodexho to earn its management fees, and for the tax-exempt organizations not to terminate the agreements.

Exemption for Production Equipment and the Catalyst Exemption – *Atlantic City Linen Supply, Inc. v. Director, Division of Taxation*, decided April 26, 2002; Tax Court No. 001617-2001.

Plaintiff (Atlantic City) operates a commercial laundry. Employees sort the soiled laundry by hand and process it in loads of approximately 125 pounds into a continuous batch washer, which is a computer-controlled machine. This machine is

approximately 60 feet long and 10 feet high. It is capable of performing 75 different chemical processes with various chemicals that break the surface tension of the water, allowing the water to suspend and flush away soil from the fabric, break up soil trapped in the fabric, dissolve organic oils and fatty acids, and produce soaps that enable the removal of items from linen causing the items to be dissolved in the surrounding water, and oxidizing organic compounds, and neutralizing any remaining chemicals. Different types of laundry are processed using different concentrations of chemicals, varying water temperatures, and different timing of passage through the continuous batch washer. After the washing process, the laundry is pressed dry at approximately 360 degrees Fahrenheit by other special high-capacity machinery. Finally, the laundry is folded, bundled, weighed, and returned to the customer. Atlantic City serves 12 casinos as well as other customers.

Atlantic City alleged its purchases of equipment as well as parts therefor are exempt from sales and use tax under N.J.S.A. 54:32B-8.13, which provides an exemption for, *inter alia*, equipment and machinery for use or consumption directly and primarily in the production of tangible personal property by processing. The Court found that the equipment at issue satisfied the statutory requirements that it be equipment or machinery used directly and primarily in processing. However, the Court stated that there is also a requirement that the equipment produce tangible personal property, which issue is discussed below.

Atlantic City also sought exemption from sales and use tax on its purchases of chemicals pursuant to N.J.S.A. 54:32B-8.20, which grants an exemption for chemicals and catalysts that induce or cause a refining or chemical process where the chemicals are an integral or essential part of the processing operation, but are not a component part of the finished product. The Court determined that Atlantic City did use chemicals that were used to induce or cause a chemical or refining process. However, the Court stated that the statute also required that there be a finished product.

The Court ruled that the statutory and regulatory requirements of producing tangible personalty and a finished product both contemplate the creation of a new product or a substantial change in form, composition, or character, or a change resulting in the transformation of property into a different or substantially more usable product, but that it did not include the furnishing of a service. Here, the Court ruled that Atlantic City's equipment is used to perform the operation of transforming dirty, soiled, stained laundry into clean, pressed, and folded laundry. Although this cleaned laundry was found to be more usable, the Court reasoned that this was not the kind of transformation either the legislation or the regulations intended. Furthermore, the Court found that no product, within the statutory meaning, was the result of this process. The Court concluded that the predominant use of Atlantic City's equipment was in connection with the performance of a service, not the production of a product. Therefore, Atlantic City was denied a sales and use tax exemption on both its purchases of equipment and chemicals. □

In Our Legislature

Cigarette Tax

Rate Increases — P.L. 2003, c.115 (signed into law on July 1, 2003) increases the cigarette tax from \$.075 to \$.1025 per cigarette (from \$1.50 to \$2.05 per pack of 20). It also specifies that an additional amount of the cigarette tax revenue is to be appropriated for health programs each year. This act took effect immediately.

Miscellaneous

Nursing Home Assessment — P.L. 2003, c.105 (signed into law on July 1, 2003), known as the Nursing Home Quality of Care Improvement Fund Act, imposes an assessment payable by nursing homes to the Division of Taxation in order to attract Federal matching funds to improve nursing home services. The aggregate amount of this assessment paid by all nursing homes combined shall not exceed 6% of the annual revenues received by all of the nursing homes (in accordance with Federal regulations).

This act took effect July 1, 2003; however, implementation of the assessment will not commence until 30 days after Federal approval of any necessary amendments in the State's plan for distribution of the proceeds of the Nursing Home Quality of Care Improvement Fund established under the act.

Hospital Debts — P.L. 2003, c.112 (signed into law on July 1, 2003) creates a Hospital Care Payment Commission to which hospitals may assign their claims for unpaid patient accounts. One of the ways the debts can be collected is through use of the existing SOIL (Set-Off of Individual Liability) program, which offsets certain debts against income tax and certain other tax rebates,

refunds, and benefits that would otherwise be due to the debtor. The funds collected will be deposited in the newly created New Jersey Hospital Care Payment Fund, and then paid 50% to each participating hospital and 50% to the State after administration expenses are paid. This law took effect on July 31, 2003.

Hotel/Motel Occupancy Fee — P.L. 2003, c.114 (signed into law on July 1, 2003) imposes a 7% State occupancy fee on the rental of a room in a hotel, motel, or similar facility in most New Jersey municipalities between August 1, 2003, and June 30, 2004. For occupancies on and after July 1, 2004, the fee is reduced to 5%. It also authorizes most New Jersey municipalities to impose a uniform municipal tax on occupancies in that municipality. Between August 1, 2003, and June 30, 2004, the optional municipal tax can be less than or equal to 1%. For occupancies on and after July 1, 2004, the municipal tax may be imposed at a rate of less than or equal to 3%. The legislation makes special rate provisions for those municipalities that already impose local taxes or fees on hotel/motel occupancies. This law took effect immediately.

Casino Taxes and Fees — P.L. 2003, c.116 (signed into law on July 1, 2003) imposes on casino licensees a 4.25% tax on the value of rooms, food, beverages, and entertainment that are provided at no cost or reduced price. It also imposes an 8% tax on casino service industry multi-casino progressive slot machine revenue. In addition, Chapter 116 imposes, for State fiscal years 2004 through 2006, a 7.5% tax on the adjusted net income of casino licensees in calendar year 2002. It

also imposes a fee of \$3.00 per day on each casino hotel room that is occupied by a guest and increases the minimum casino parking fee in Atlantic City to \$3.00 per day. This law took effect immediately.

Outdoor Advertising Fee — P.L. 2003, c.124 (signed into law on July 2, 2003) imposes a 6% fee on the gross amount collected by retail sellers for billboard advertising space in New Jersey. The fee is imposed directly on the retail seller of the advertising space and must be reported and paid on a quarterly basis. This act took effect immediately and applies to billboard advertising fees collected for any period on or after July 1, 2003, through June 30, 2004.

Realty Transfer Fee

Supplemental Fee — P.L. 2003, c.113, (signed into law on July 1, 2003) imposes a new, graduated, supplemental fee on transfers of realty that is payable by the grantor to the county in which the deed is recorded. The new law does not increase the realty transfer fee rates on transfers by senior citizens, blind or disabled persons, and on the transfer of property that is low- and moderate-income housing. This act took effect on July 14, 2003.

Sales and Use Tax

Rentals Between Closely Related Entities Exempt — P.L. 2003, c.136 (signed into law on August 1, 2003) provides that receipts from the rental of tangible personal property on which sales tax was paid or use tax obligations have been satisfied between related persons not engaged in the regular trade or business of renting that property to other persons are exempt from sales and use

continued on page 22

in our legislature - from page 21

tax. For this purpose, “related persons” means persons that are 80% or more owned by each other, or by the same third party. This law took effect immediately but will remain inoperative until November 1, 2003.

Concession Stand Sales in Veterans’ Homes Exempt — P.L. 2003, c.165 (signed into law on August 31, 2003) exempts from sales and use tax retail sales made at concession stands (canteens) that are located in State-owned and operated residential veterans’ homes. This act took

effect immediately, and applies to sales made on or after December 1, 2003. □

Tax Calendar

The following three calendars provide listings of filing and payment dates (July 1, 2003 – June 30, 2004) 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.

- **[Alphabetical Summary of Due Dates by Tax Type](#)**
- **[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 \$20,000 or more. □

Package NJX for 2003

Decisions regarding the publication of *Package NJX* are pending. Continue to check here www.state.nj.us/treasury/taxation/pdf/other_forms/03ordrfm.pdf for updates.