

New Jersey State Tax news

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inside

<i>more choosing paperless filing</i>	1
<i>partnership filing requirements</i> ..	2
<i>inheritance/estate tax refunds</i>	3
<i>out-of-state auto dealers</i>	4
<i>zero emission vehicles</i>	4
<i>tax assessors' calendar</i>	4
<i>tax assessor certificates</i>	5
<i>interest rate 8.00%</i>	5
<i>criminal enforcement</i>	6
<i>enforcement summary stats</i>	6
<i>tax briefs</i>	9
<i>in our courts</i>	11
<i>in our legislature</i>	13
<i>tax calendar</i>	13
<i>from the director's desk</i>	14

In this issue:

- [Index for 2004 \(Vol. 33\)](#)
- [List of 2004 Tax Legislation](#)
- [Division Organization Chart](#)

More Taxpayers Choosing Paperless Filing

Electronic filing — either online or by phone — is replacing the traditional paper return for many New Jersey business taxpayers as well as for individuals filing New Jersey income tax returns.

Electronic filing is faster, easier, and more secure than paper. Taxpayers have fewer chances to make mistakes, and they receive immediate confirmation that their return and payment have been submitted. The State benefits from electronic filing in reduced processing and mailing costs.

Individual Income Tax

The number of individual taxpayers choosing to file paperless income tax returns has grown exponentially since the option was first offered for tax year 1995. The number of returns filed electronically for 2004 had reached 1.7 million by the April 15 filing deadline. This represents a 48% increase over 2003, when the number of paperless returns filed first topped 1 million.

New Jersey's three user-friendly "FastFile" systems include NJ TeleFile, NJ WebFile, and NJ ELF, which enable taxpayers to submit paperless returns by phone, via the Internet, or through use of a computer software package. Filers who use NJ FastFile receive their refunds more quickly and can choose to have

their refunds directly deposited into a bank account, an option which is not available when filing a paper return. For more information, visit www.njfastfile.com

Business Taxes

Paperless filing for business taxes has shown strong growth over the past year as well, in part because electronic returns and payments are now mandatory in certain cases. Most sales and use tax filers, certain partnerships, as well as all taxpayers responsible for filing returns for: domestic security fee, State

continued on page 2



important phone numbers

Customer Service Ctr ..	609-292-6400
Automated Tax Info	1-800-323-4400
.....	609-826-4400
FAIR Rebate Hotline	
Homeowners	1-888-238-1233
Tenants	609-292-6400
Property Tax Reimbursement	
Hotline	1-800-882-6597
Earned Income Tax Credit	
Hotline	1-888-895-9179
NJ TaxFax	609-826-4500
Business Paperless Telefiling	
System	1-877-829-2866
Speaker Programs	609-984-4101
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



paperless filing - from page 1

hotel/motel occupancy fee and municipal occupancy tax, motor vehicle tire fee, cosmetic medical procedures gross receipts tax, and 9-1-1 system and emergency response fee are required to file and pay electronically. The Division encourages all business taxpayers to file and pay electronically whenever possible, even if they are not yet required to do so.

Online filing for sales and use tax returns was introduced in 1997 for a limited number of filers. The system was gradually expanded so that now anyone filing either a monthly (Form ST-51) or quarterly (Form ST-50) sales and use tax return can file and pay online.

In December 2003 the Division began to phase out paper sales and use tax returns and notified certain taxpayers that they were required to file and pay electronically. At the same time, the Division added sales and use tax returns to the Business Paperless Telefiling System so that taxpayers would be able to file by phone as well as online. The phase-out of paper sales and use tax returns is continuing, and beginning with monthly returns for August 2005 (due September 20, 2005), *all* taxpayers will be required to file their ST-50/51 returns and make the related payments electronically.

In January 2004 some 20,000 businesses filed their 4th quarter sales and use tax returns either online or by phone. By April 2005 that number had increased fivefold to over 107,000.

Employers and others who withhold New Jersey gross income tax are also filing electronically with increasing frequency. The number of

Form NJ-927/NJ-927-W withholding returns filed online more than doubled between January 2004 when almost 10,000 returns were filed online and April 2005 when over 27,000 online returns were filed. Plans are being made to implement mandatory paperless filing and payment for employer withholding returns, and telefiling (by phone) will also be introduced.

An overview of the paperless filing and payment methods available to business taxpayers can be found in the Division of Revenue's [Guide to Electronic Filing and Payment Services](#).

To file online or to obtain worksheets and instructions for filing by phone through the Business Paperless Telefiling System, go to: www.state.nj.us/treasury/taxation/online.shtml

To file by phone through the Business Paperless Telefiling System call 1-877-829-2866 from a Touch-tone phone. The system currently accepts returns for sales and use tax, domestic security fee, motor vehicle tire fee, cosmetic medical procedures gross receipts tax, and 9-1-1 system and emergency response fee. □

Partnership Filing Requirements

Entities classified as partnerships for Federal income tax purposes that have a New Jersey resident partner or that have income or loss derived from New Jersey sources must file a New Jersey Partnership Return, Form NJ-1065, along with the Partners Directory. Partnerships that have ten or more partners are required to file the return

continued on page 3

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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.

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partnership filing - from page 2

electronically. The return is due on or before the 15th day of the fourth month following the close of each taxable year.

Additionally, partnerships that are not classified as a qualified investment partnership, an investment club, or listed on a United States national stock exchange are required to remit tax pursuant to N.J.S.A. 10A-15.11, which is based upon the nonresident partners' share of New Jersey entire net income. The nonresident partners are then credited with their proportional amount of the tax paid by the partnership. The tax is due on or before the 15th day of the fourth month succeeding the close of each privilege period.

Entities classified as partnerships for Federal income tax purposes, other than investment clubs, that have income or loss derived from New Jersey sources and that have more than two owners are subject to a filing fee. The entity shall make a payment of \$150 for each owner up to a maximum of \$250,000. The filing fee is due on or before the 15th day of the fourth month succeeding the close of each privilege period. An installment payment for the next year equal to 50% of the filing fee is also required at the same time. No installment payment is due in a partnership's final year.

The filing fee, installment payment, and tax are reported on the Partnership Return Voucher, Form PART-100. If you file Form PART-200-T, Partnership Tentative Return and Application for Extension of Time to File, you must still file Form PART-100 when you file Form NJ-1065.

For tax years beginning on or after January 1, 2004, if assets were placed in service on or after January 1, 2004, and the Federal 50% Special Depreciation Allowance or Section 179 expense was deducted, a New Jersey depreciation adjustment is required. The adjustment is calculated on Worksheet GIT-DEP. Worksheet GIT-DEP must be submitted with the partnership return, Form NJ-1065.

The partnership is to furnish all partners with a copy of their New Jersey Schedule NJK-1 on or before the due date of the partnership return (Form NJ-1065). Schedule NJK-1 provides each partner with information regarding that partner's share of partnership income or loss and for nonresidents, the amount of tax paid on their behalf. □

Inheritance and Estate Tax Refunds

R.S. 54:35-10 and N.J.A.C. 18:26-10.12(a) provide that all applications for a refund of inheritance taxes paid are to be made within three years from the date of payment or from the date of any final determination of a court of competent jurisdiction which establishes the fact that the decedent had no legal or equitable interest in the property on which the tax was assessed, whichever is later, but in no event shall a refund be made where such final determination occurs more than 20 years after the date of the decedent's death.

R.S. 54:38-3, N.J.A.C. 18:26-3.9(a), and N.J.A.C. 18:26-3A.12(a) provide that all applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the

Director within three years from the date of payment.

The inheritance and estate tax statutes and regulations provide that the date of payment or a court determination (inheritance tax) is the date that must be used in determining whether an inheritance or estate tax refund request is made in a timely manner.

Example 1

Payment	7/1/01
Return Filed	9/1/01
Notice of Assessment	11/1/01
Refund Request	8/1/04

The refund request would be denied as it was made more than three years after the payment.

Example 2

Payment	9/1/01
Return Filed	4/1/01
Notice of Assessment	7/1/01
Refund Request	8/1/04

The refund request would be accepted for consideration as it was made within three years of the payment.

Example 3

Payment	3/1/01
Payment	9/1/01
Return Filed	3/1/01
Notice of Assessment	7/1/01
Refund Request	8/1/04

The refund request would be accepted for consideration as it was made within three years of a payment. However, the refund would be limited to the amount of the 9/1/01 payment.

Example 4

Payment	7/1/01
Inheritance Tax Return Filed	9/1/01
Notice of Assessment	11/1/01
Court Final Determination – No legal/equitable interest	12/1/01
Refund Request	8/1/04

continued on page 4



inheritance/estate tax - from pg. 3

The refund request would be accepted for consideration as it was made within three years of the date on which the court made a final determination that the decedent had no legal or equitable interest in the property on which inheritance tax was assessed.

After final assessment of the New Jersey inheritance or estate tax has been made, any amount determined to be overpaid will be refunded in the due course of business without the necessity of an Application for Refund being filed provided that the overpayment or court determination (inheritance tax) was made within three years of the date on which the audit is completed by the Division.

□

MOTOR VEHICLE TIRE FEE ***Out-of-State Auto Dealers***

The new motor vehicle tire fee is imposed at \$1.50 per tire on sales of new tires, including those that are a component part of a vehicle sold or leased, if the transaction is subject to New Jersey sales tax. The Division's position is that an out-of-State auto dealer or leasing company registered to collect and remit the use tax on behalf of its New Jersey customers is not required to collect the New Jersey motor vehicle tire fee with respect to motor vehicles sold or leased from a location outside New Jersey. Thus, such out-of-State dealers and lessors can complete and return the Subjectivity Waiver and they will be removed from the taxpayer list. The waiver is available at www.state.nj.us/treasury/taxation/tirefee.shtml □

SALES AND USE TAX ***Zero Emission Vehicles***

P.L. 2003, c.266 created an exemption from sales tax for sales of zero emission vehicles sold on or after May 1, 2004. "Zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board standards for the applicable model year. The list of qualifying vehicles is available on the Division's Web site at www.state.nj.us/treasury/taxation/zeroemission.shtml

Even without exemption from sales tax, the number of sales of ultra low emission (ULE) vehicles may reach 100,000 for the year 2004 as car manufacturers make "ULE" a standard or low-cost feature in an increasing number of vehicle models. Section 5 of P.L. 2003, c.266 establishes the Low Emission Vehicle Review Commission. One of the functions of the Commission is to make recommendations on any additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or "advanced technology partial zero emission vehicles." □

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

April 1-

- Deadline for appeals of assessed valuations to County Tax Boards by taxpayers and taxing districts and for appeals of assessed valuations over \$750,000 to Tax Court. Deadline extended to 45 days from date the taxing district completes bulk mailing of notifications of assessment, whichever is later.

- If appeal or complaint is filed April 1 or during the 19 days next preceding April 1, taxpayer or taxing district has 20 days from date of service of appeal petition or complaint to file cross petition with County Tax Board or counterclaim with Tax Court.
- Property Tax Deduction Disallowance Notice, Form PD4, for nonfiling Post-Tax Year Statement or income over \$10,000 sent by collector.
- County Boards of Taxation to establish the percentage level of taxable value of real property.

April 10-

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

April 15-

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

May 1-

- Assessor shall identify and certify to County Tax Board residential properties.
- County Tax Boards receive certification of REAP aid due to each local unit for that tax year.
- Extended deadline for filing (with the collector) Annual Post-Tax Year Statement, Form PD5, where taxpayer's illness or medical problem prevented the required March 1 filing.

May 20-

- Table of Aggregates completed by County Tax Board from assessors' Tax Duplicates and

continued on page 5



assessors' calendar - from page 4

Taxation Director's certification of 2nd class railroad property.

- The tax credit rate is calculated by dividing the total REAP aid by total taxable value of qualified residential property.
- General tax rates certified by County Tax Boards.

May 23-

- Members of the County Board of Taxation shall sign the Table of Aggregates and transmit it to the County Treasurer who shall file, print in its entirety, and transmit certified copy to the Director of the Division of Taxation, the State Auditor, the Director of the Division of Local Government Services in the Department of Community Affairs, the clerk of the board of freeholders, and the clerk of each municipality in the county.

June 1-

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

June 3-

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

June 5-

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

2nd Monday in June-

- If Director, Division of Taxation, requires, assessors shall report to the Director the description and valuation of railroad property not used for railroad purposes.

June 15-

- County Tax Board to certify to Director, Division of Taxation, total number and dollar amount summary of senior citizen, disabled, surviving spouse, and veterans' property tax deductions allowed and disallowed by each district. □

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.

Nine persons passed the September 18, 2004, C.T.A. exam and received Tax Assessor Certificates dated January 1, 2005. They are:

Hudson County: Roxanne Addie Haynes, Jersey City.

Mercer County: Christopher B. Cuccia, Lawrence Township; John P. Greenbaun, Hopewell Township.

Monmouth County:

George D. Lockwood, Aberdeen Township.

Morris County: Ann Marie Obiedzinski, Chester Borough.

Ocean County: Christine E. Allen, Lacey Township; John E. Butow, Point Pleasant Beach Borough; Edward R. Seeger, Jr., Little Egg Harbor Township.

Salem County: Cynthia A. Strang, Elmer Borough.

The next examination is scheduled for September 24, 2005. The deadline to file applications for this exam is August 25, 2005. The filing fee is \$10. For applications, or if you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

Interest 8.00%

The interest rate assessed on amounts due for the period January 1, 2005 – December 31, 2005, will be 8.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
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%
1/1/04	7.00%
1/1/05	8.00%



Criminal Enforcement

Criminal Enforcement over the past several months included:

- As part of a cooperative enforcement effort by the Office of Criminal Investigation (OCI) and the Division of Taxation's Audit Services Branch, OCI conducted inspections of cigarette retailers Watchung Liquors, Inc., in Plainfield, New Jersey, and Sufi & Gupta, Inc., a gas station in Fort Lee, New Jersey, based on information from Audit Services that the subjects had filed 2004 cigarette floor tax returns, but were not licensed to sell cigarettes. Inspections were also conducted at F&M Food Market and at Family Food Center in Camden, and at Chin's Caribbean American Store, Inc., in Irvington after auditors observed contraband cigarettes during floor tax audits. (A floor tax return is required from all cigarette wholesalers and retailers for the purpose of paying the additional tax due on cigarette inventory held on July 1, 2004, when the tax was raised from \$20.50 per carton to \$24 per carton.) OCI investigations resulted in the seizure of

30.9 cartons of untaxed cigarettes, including 27.2 cartons bearing counterfeit New Jersey cigarette tax stamps, and determined that several of the retailers were selling cigarettes without a current license as a result of the License Suppression Project, which ensures that no cigarette or motor fuel industry licenses can be renewed if the applicant has outstanding liabilities in any State tax. The subjects were charged in the appropriate municipal courts.

- On October 1, 2004, in Superior Court – Passaic County, Dipan P. Patel of North Bergen, New Jersey, was sentenced to four years' probation and ordered to pay a fine of \$625 pursuant to his guilty plea to charges of sale of untaxed cigarettes and failing to maintain books and records with intent to evade tax. Patel had been arrested by OCI on January 14, 2004, in Totowa, New Jersey, during a joint investigation with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, in which Patel sold Virginia-stamped and unstamped cigarettes to an undercover operative on two separate occasions.

- On October 8, 2004, Richard J. Nardone, 46, of San Diego, California, pled guilty to charges of filing false and fraudulent New Jersey income tax returns, failure to pay New Jersey gross income tax with intent to evade, and misconduct by a corporate official. Nardone's sister, Donna M. Januik, 51, of Union County, pled guilty to filing false and fraudulent New Jersey income tax returns and failure to pay New Jersey gross income tax with intent to evade. Nardone and Januik were charged via a State Grand Jury indictment returned on February 10, 2004. At the guilty plea hearing, Nardone admitted that between January 1, 1998, and May 31, 1999, he transferred and withdrew large sums of money from his chiropractic business and from related medical treatment, diagnostic, and rehabilitation facilities he owned, operated, or controlled. Nardone and Januik were scheduled to appear on December 3 for sentencing.
- On October 15, 2004, an Appellate Court decision was rendered that is of importance to criminal tax prosecutions. The decision,

continued on page 7

Enforcement Summary Statistics Fourth Quarter 2004

Following is a summary of enforcement actions for the quarter ending December 31, 2004.

• Certificates of Debt:		• Jeopardy Seizures	70
Total Number	3,175	• Seizures	47
Total Amount	\$37,094,859	• Auctions	3
• Jeopardy Assessments	346	• Referrals to the Attorney General's Office	453

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

www.state.nj.us/treasury/taxation/jdgdisc1.shtml



criminal enforcement - from page 6

State of New Jersey v. Larry Barasch, explores and defines the burden of proof required in a criminal tax case. The defendant argued that his conviction on a charge of second-degree failure to remit taxes collected or withheld, N.J.S.A. 54:52-15, must be reversed because the jury instructions were faulty. He argued that more specific criminal intent is required, and the jury should have been advised that a crime is committed only if the defendant purposely failed to pay the taxes in order to avoid or evade his responsibilities. When dealing with a failure to collect the tax, as contrasted with the failure to remit the tax after its collection, the Legislature has provided that criminal culpability requires “the intent to evade, avoid, or otherwise not make timely payment of any tax.” The Legislature provides, however, that after the tax is collected criminal culpability requires “purposely failing to turn over the taxes to the Director in the manner and at the time prescribed by law.” Accordingly, criminal conduct occurs when the person “purposely fails to turn over the taxes to the Director in the manner and at the time prescribed.” It is not necessary for the State to prove that the failure to remit the collected or withheld tax was with the purpose to evade or avoid payment.

- On October 22, 2004, the president of a Linden, New Jersey, luxury used car dealership, Hisham Sadek, was sentenced to a five-year term of probation and ordered to make restitution in the amount of \$340,200. The

sentencing was the result of Mr. Sadek’s having pled guilty to charges arising from a scheme uncovered by the Office of Criminal Investigation to evade turning over \$350,000 in sales tax collected from customers and filing fraudulent tax returns under the New Jersey Tax Amnesty Program indicating no liability. The dealership, Auto Village, Inc., and Mr. Sadek had failed to file New Jersey sales tax returns for the year 1994. Mr. Sadek instructed his Certified Public Accountant to take advantage of the 1996 amnesty legislation by preparing sales tax returns reporting no sales tax had been collected for the period. Our investigation revealed that the business had collected sales tax in excess of \$90,000 during the amnesty period. The investigation also revealed that fraudulent sales tax returns were filed for the periods after amnesty and that sales tax in excess of \$350,000 was in fact collected by Auto Village, Inc., but not turned over to the State. Although originally accepted into the Tax Amnesty Program, which would have precluded criminal prosecution for tax liabilities truthfully disclosed by the taxpayer, the corporation, Mr. Sadek, and the accountant were prosecuted after the investigation determined the returns filed under amnesty were fraudulent. Auto Village, Inc., pled guilty to purposely failing to turn over taxes (2nd degree), Hisham Sadek pled guilty to misapplication of property withheld for the benefit of the government (3rd degree), and the accountant with having participated in the scheme to evade taxes. This case was

prosecuted by the State Office of the Attorney General.

- On October 27, 2004, OCI assisted the Bergen County Prosecutor’s Office in the execution of search warrants at gas stations in Upper Saddle River, Ridgewood, Wallington, and Lodi in an investigation of the use of fraudulent credit cards by the operators of these gas stations to purchase large quantities of cigarettes, which were then resold to consumers through the gas stations. OCI personnel are providing assistance in determining via stamp numbers the probable origin of cigarettes found on the premises, and in examination of business records to determine whether the records provide evidence of an illegal source of cigarettes. The investigation of possible sales tax and motor fuels tax violations is also continuing.
- On October 29, 2004, in Superior Court – Burlington County, Mt. Holly, New Jersey, Nhi L. Wiget, 47, of South El Monte, California, was sentenced to five years in State prison, and Kenny Choi, 41, of Pomona, New Jersey, was sentenced to three years in State prison, and both were ordered to pay restitution of cigarette tax and sales tax to the State in the amount of \$797,946.49 as a result of their guilty pleas on March 29, 2004, to charges of failure to pay tax and possession of counterfeit cigarettes. Wiget and Choi had been arrested by Mansfield Township Police and OCI on October 15, 2003, in possession of 33,550 cartons of untaxed cigarettes with a retail

continued on page 8



criminal enforcement - from pg. 7

value of \$1,946,235.50. Investigation by OCI established that the cigarettes were determined to be counterfeit (verified by samples submitted to Lorillard Tobacco Company). At the conclusion of the sentencing hearing, Wiget and Choi were immediately remanded to the custody of the Department of Corrections to begin serving their prison terms. This case was prosecuted by the Burlington County Prosecutor's Office.

- Between November 24 and December 21, 2004, in Secaucus, New Jersey, OCI seized approximately 28,664 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by unidentified Internet vendors for delivery to customers. The approximate value of these seizures is as follows:

Retail value \$1,783,474.08

Tax loss averted:

Cigarette \$687,936.00

Sales & Use 100,897.28

Total \$788,833.28

These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection, as a result of information developed by the U.S. Postal Inspection Service, with critical assistance from Facilities Management. The investigation is continuing.

- On November 30, 2004, in Lodi, New Jersey, OCI executed a search warrant on a storage unit and seized 9,097 cartons of

untaxed cigarettes. 8,947 cartons were counterfeit Newport cigarettes labeled in violation of the New Jersey Trademark Counterfeiting Act. 150 cartons were of a Chinese brand of cigarettes.

Retail value \$566,015.34

Tax loss averted:

Cigarette \$218,328.00

Sales & Use 32,021.44

Total \$250,349.44

The Bergen County Prosecutor's Office assisted in obtaining and executing this search warrant.

- On November 30, 2004, in Trenton, New Jersey, a State Grand Jury indicted Michael Buonopane, 44, of Rumson, New Jersey, for failing to remit almost \$5 million in taxes (consisting of \$2,014,386 in sales and use tax collected from customers, \$106,013.51 in State gross income tax, \$653,965.41 in State unemployment and disability contributions, and \$2,074,362.16 in Federal taxes withheld from the wages of employees) and for failing to file 31 corporation business tax returns in connection with the operation of Mr. Good Lube, Inc., and seven other corporations which provided retail automobile maintenance and car wash services at 20 locations in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties between 1999 and 2004. This case was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, which initiated the inquiry, and was presented to the grand jury by the

New Jersey Office of the Attorney General.

- On December 7, 2004, in Superior Court – Camden County, Jeffre Levy and Cynthia Levy of Cherry Hill, New Jersey, were sentenced for tax fraud. The sentencing stems from the criminal complaint filed against the Levys which alleges that between 1994 and 2001 the couple collected sales tax from customers of their janitorial companies and withheld income tax from their employees' wages, but failed to file returns and forward the taxes to the State. A joint investigation conducted by the Camden County Prosecutor's Office and the New Jersey Division of Taxation's Office of Criminal Investigation revealed that the Levys attempted to hide the diversion of funds by operating through a succession of business entities: Executive Maintenance Company, Executive Maintenance, Inc., and Executive Maintenance Industries, Inc. The companies, all located in Cherry Hill, New Jersey, were owned by one or both of the Levys. On September 22, 2004, Jeffre and Cynthia Levy pled guilty to purposely failing to turn over taxes to the State. Jeffre Levy, 41, and Cynthia Levy, 48, admitted before Superior Court Judge David G. Eynon to keeping approximately \$170,000 in sales and income tax proceeds from their janitorial companies and failing to forward the money to the State as required. The Levys attempted to evade the payment of the taxes by operating a business for a relatively short period of time before forming a



criminal enforcement - from page 8

successor business which would also fail to comply with the tax laws of this State. The Levys, owners of commercial cleaning businesses, will now be cleaning Camden County after being sentenced under the Sheriff's Labor Assistance Program (SLAP). Jeffrey Levy was sentenced to three years' probation and 60 days in the SLAP Program. Cynthia Levy was sentenced to two years' probation and 30 days in the SLAP Program. In addition, they both signed consent judgments requiring them to pay almost \$400,000 in taxes, penalties, and interest.

- On December 20, 2004, the Office of Criminal Investigation created the TIP (Tobacco Interdiction Program) hotline, a 24-hour hotline for reporting suspected cigarette tax violations. Anyone with information regarding untaxed, smuggled, or counterfeit cigarettes or Internet sales of cigarettes is encouraged to call the TIP hotline at 609-984-1225.
- One hundred ninety-nine (199) complaints alleging tax evasion were evaluated from October through December 2004 in the Office of Criminal Investigation.
- During the same period, ninety (90) charges were filed in court

and twenty-one (21) arrests were made in thirty (30) cases involving violations of the Cigarette Tax Act. A total of 37,945.1 cartons of untaxed cigarettes, having a total value of \$2,360,944.12 and including 106.6 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

Attorney Fee

Notice for 2004 Fee — The New Jersey Medical Care Access and Responsibility and Patients First Act was signed into law on June 7, 2004, as P.L. 2004, c.17. The Act provides for a comprehensive set of reforms affecting the tort liability system, health care system, and medical malpractice liability insurance carriers to ensure that health care services continue to be available and accessible to residents of the State.

The Act also establishes a fund called the "Medical Malpractice Liability Insurance Premium Assistance Fund." Revenues generated for this fund will be used for a variety of health care purposes, including providing relief towards the payment of medical malpractice liability insurance premiums to certain health care providers in this State and providing payments to hospitals as charity care subsidies.

The fund receives revenues from annual \$75 fee charges to all State physicians, podiatrists, chiropractors, dentists, optometrists, and attorneys, along with an annual \$3 per employee charge for all employers subject to the unemployment compensation law. The New Jersey Division of Taxation is charged with the responsibility of assessing the annual \$75 fee on attorneys. The fee expires in three years. Fees will be collected for the years 2004, 2005, and 2006.

The annual \$75 fee applies to all attorneys licensed to practice law in New Jersey except those attorneys:

1. Constitutionally or statutorily barred from the practice of law.
2. That can show that they do not maintain a bona fide office in New Jersey for the practice of law. A bona fide office is a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to conduct law-related business.
3. Who have retired completely from the practice of law.
4. On full-time duty in the armed forces, VISTA, or the Peace Corps and not engaged in the practice of law.
5. Ineligible to practice law because they have not made their New Jersey Lawyers' Fund for Client Protection payment.
6. Newly admitted to the bar that have not practiced law for at least one year.

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An exemption claim may be verified with information maintained by the New Jersey Lawyers' Fund for Client Protection with respect to attorneys qualified to practice law in New Jersey.

The Division of Taxation sent a notice and remittance invoice for the 2004 calendar year to each person licensed to practice law in New Jersey during the last week in November or the first two weeks in December 2004. Attorneys on record with the New Jersey Supreme Court as qualified for an exemption may not receive a notice and invoice. Payment of the \$75 fee or claim of exemption is due within 30 days of the date of the notice. Make check or money order payable to "State of New Jersey - ATF" and mail to the Division of Taxation, Revenue Processing Center, PO Box 645, Trenton, NJ 08646-0645.

Information on P.L. 2004, c.17 can be found at www.njleg.state.nj.us. Click on Chapter Laws under the heading "Laws and Constitution" in the left-hand column. The fee imposition can be found on page 12, subsection 27 (N.J.S.A. 17:30D-29).

Inquiries regarding this fee may be directed to the New Jersey Division of Taxation Customer Service Center at 609-292-6400, or by e-mail to the Division at nj.taxation@treas.state.nj.us

Corporation Business Tax

Gross Profit: Alternative Minimum Assessment (AMA) — It is possible to have an AMA of \$0 if the taxpayer's gross profits and gross receipts are under the AMA thresholds. For a taxpayer using the gross profits method, if the corporation's

gross profits are less than or equal to \$1,000,000, the AMA based on gross profits is zero. For a taxpayer using the gross receipts method, if the corporation's gross receipts are less than or equal to \$2,000,000, the AMA based on gross receipts is zero.

Corporations are not liable for the AMA if they have New Jersey gross receipts of less than \$2.36 million or New Jersey gross profits of less than \$1.18 million.

Gross Income Tax

Gifts-in-Kind — A gift-in-kind is typically an item or a service donated to a charitable organization. The New Jersey Gross Income Tax Act does not allow a taxpayer to deduct charitable contributions, whether those donations are made in cash or as gifts-in-kind.

The only deduction from New Jersey gross income tax for charitable contributions is for qualified conservation contributions. A qualified conservation contribution means a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. For New Jersey income tax purposes, taxpayers are allowed a deduction against gross income for a qualified conservation contribution if qualified under the Federal I.R.C. Section 170(h).

Motor Vehicle Tire Fee

Sales to Nonresidents — The motor vehicle tire fee of \$1.50 per tire is due on all sales of new tires that are subject to New Jersey sales tax. The fee is also imposed on tires sold as part of a motor vehicle.

If an out-of-State resident comes into New Jersey, purchases a tire, and takes delivery here, the fee must

be collected since New Jersey sales tax would apply. For sales to customers that take delivery out of State, a New Jersey tire seller will have documentation that the tires were delivered out of State (invoice, shipping document, etc.). There is no specific exemption form for the sale of tires delivered outside of New Jersey, but such sales are not subject to sales tax or the tire fee.

Sales and Use Tax

Safe Deposit Box Repair — The rental of safe deposit boxes is subject to sales tax under N.J.S.A. 54:32B-3(b)(3). The taxpayer inquired whether the purchase of locksmith services to replace keys, drill boxes, or otherwise make repairs to boxes is exempt from sales tax.

The New Jersey Sales and Use Tax Act provides for the imposition of sales tax on the repair or servicing of tangible personal property "not held for sale in the regular course of business..." N.J.S.A. 54:32B-3(b)(2). Since the repairs at issue are to be performed upon the safe deposit boxes that are held in inventory and offered as rentals, there is no sales tax imposed for repair services. A properly completed Resale Certificate (Form ST-3) must be issued to claim the exemption. The purchaser checks the box at (5)(b) on the form.

Wireless Enhanced Services — The Division responded to an inquiry concerning the taxability of "wireless enhanced services." These products are peripheral-type services that wireless customers can subscribe to on either a monthly basis or a usage basis. Customers may acquire a permanent copy of a song,

tax briefs - from page 10

movie, or video game by “downloading it” onto their cell phone. The New Jersey Sales and Use Tax Act defines “telecommunications” as the act or privilege of originating or receiving messages or information through the use of any kind of one-way or two-way communication, including mobile telecommunications service, and all services and equipment provided in connection therewith or by means thereof. N.J.S.A. 54:32B-2(cc).

The Division views wireless enhanced downloads as electronically transmitted products rather than as services. Sales tax is not imposed on goods that are delivered solely by electronic means. Therefore, it is the Division’s position that the following are not subject to sales tax when downloaded to the customer’s cellular telephone:

1. Ring tones
2. Digitized music
3. Video game downloads

On the other hand, text-messaging charges that allow users to send and receive word messages are directly related to “the act or privilege of originating or receiving messages or information”; therefore, text messaging charges are subject to tax. □

In Our Courts

Corporation Business Tax

Net Operating Losses – A.H. Robins Company, Inc. v. Director, Division of Taxation, decided December 7, 2004; Supreme Court of New Jersey No. A-96 September Term 2003.

The Chapter 11 Reorganization Plan granted A.H. Robins (Robins), the surviving entity in the bankruptcy,

the rights and property of the company that initially filed for bankruptcy. One of those assets was a multi-million dollar New Jersey corporation business tax (CBT) net operating loss (NOL). Therefore, Robins filed a CBT refund claim that utilized the NOL. In accordance with N.J.S.A. 54:10A-4.5, which permits NOLs to be used only by the corporation that incurs the loss, the Director denied the refund because the surviving corporation was a different corporation than the entity that incurred the loss and that was later dissolved.

The New Jersey Supreme Court unanimously affirmed the Appellate Division’s decision for substantially the reasons contained in the Appellate Division’s opinion. Previously, the Appellate Division affirmed the Tax Court’s decision upholding the Director based on the New Jersey Supreme Court’s decision in *Richards Auto City, Inc.* Also, the Appellate Division affirmed the Tax Court’s ruling that N.J.S.A. 54:10A-4.5 was constitutional despite its retroactivity provision.

Property Tax Relief Programs

Homestead Rebate: Good Cause – Evelyn N. Bonda v. Director, Division of Taxation, decided November 17, 2004; Tax Court No. 006258-2003.

Bonda is a 72-year-old taxpayer who has a “wide array of medical conditions: a chronic thyroid condition, bipolar disorder, hyper-somnolence, narcolepsy and signs of low-level myocardial injury.” She was on social security disability from 1989 until she turned age 65, and claimed she has no one except her elderly brother who holds power of attorney over her affairs and resides in California.

Bonda filed her 2001 New Jersey income tax return on December 22, 2002. In the process of filing her return, she alleges that she requested two extensions to file her Federal income tax return. Although she produced evidence of a first extension to August 15, 2002, she was unable to produce any documentary evidence of a second extension. On April 30, 2003, Bonda received a final determination letter denying her homestead rebate request due to an untimely filing and stating that an appeal must be sent to and received by the Tax Court within 90 days from the date of the letter. On June 12, 2003, Bonda directed a letter indicating an intention to appeal to the Division of Taxation, but not to the Tax Court. On July 18, 2003, Bonda received a letter from the Division indicating that more time would be required to process her correspondence due to the mail volume. Bonda contacted the Tax Court Management Office on September 11, 2003, and discovered that the Tax Court did not receive her papers. On September 19, 2003, Bonda was admitted into an inpatient epilepsy-monitoring program. Bonda testified that she filed with the Tax Court on September 30, 2003.

As a general rule, the homestead rebate application must be filed with the New Jersey income tax return. If a taxpayer is granted either a State or Federal income tax extension, then the rebate application is also extended. Here, Bonda undisputedly filed her rebate application on December 22, 2002, which was after the August 15, 2002, extension. As Bonda could not produce evidence of a subsequent extension, the Court

in our courts - from page 11

ruled that the rebate application was untimely.

In the case of an untimely filing, N.J.S.A. 54:4-3.87 permits the Division to extend the time period for a reasonable period where good cause is shown. In *Hovland*, the Tax Court found that good cause existed where Hovland was diagnosed with cancer of the spine and continuously hospitalized with severe pain. When Hovland returned from the hospital, he completed his application and submitted it one day late. Although Hovland was married, it was found that his wife only took care of their simple financial affairs. Applying the good cause standard to the present case, the Court ruled that Bonda did not present sufficient evidence of a medical inability to timely file the application and, therefore, did not meet the good cause standard required to extend the filing deadline.

Addressing the issue of the timeliness of Bonda's appeal to the Tax Court, the Court stated that a complaint involving the homestead rebate or NJ SAVER claim must be filed within 90 days of the issuance of the Director's denial. The Court noted that on very rare occasions the Tax Court has allowed a tolling of the statute of limitations. Although it was sympathetic to taxpayer's medical conditions, the Court ruled that these circumstances do not warrant a tolling of the filing deadline. Therefore, the Court dismissed the complaint as untimely.

Sales and Use Tax

Derivative Exemption – *Sodexho Operations, LLC v. Director, Division of Taxation*, decided November 30, 2004; Appellate Division No. A-1460-03T2.

Sodexho provided management services for the food and cleaning service departments of various

hospitals and other institutions that qualified as tax-exempt organizations under the Sales and Use Tax Act. As part of the management services, Sodexho purchased supplies for use in the cleaning department, various paper goods for the food service departments, and furniture and materials to renovate the cafeterias and dining rooms.

At trial, Sodexho claimed that these purchases were not subject to sales and use tax because either it acted as a procurement agent for the tax-exempt organizations and therefore is entitled to a derivative exemption, or because these purchases are for resale to the tax-exempt organizations. The Tax Court rejected both of Sodexho's arguments. The Court determined that Sodexho's agency relationship with the tax-exempt organizations was not sufficient for Sodexho to stand in the shoes of the organizations to qualify for the organizations' tax exemption had the organizations purchased the items directly. Secondly, the Court determined that the resale exemption did not apply because Sodexho's purchases were incidental to the true object of providing management services.

On appeal, the Appellate Division affirmed the Tax Court substantially for the reasons stated in the Tax Court opinion. □

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In Our Legislature

Gross Income Tax

Exclusion of Certain Military Housing Allowances From Gross Income — P.L. 2005, c.63, enacted April 7, 2005, and applicable immediately to tax years beginning on or after January 1, 2004, amends the Gross Income Tax Act by excluding from gross income the housing and subsistence allowances given to National Guard members on active duty and members of the active and reserve components of the United States Armed Forces.

Local Property Tax

County Boards of Taxation — P.L. 2005, c.44, enacted March 21, 2005, and effective immediately, increases the membership of County Boards of Taxation.

Expansion of Eligibility for Veteran's Property Tax Deduction

— P.L. 2005, c.64, enacted April 7, 2005, expands the definition of “veterans” who are eligible for various benefits. It includes “Operation Northern Watch” and “Operation Southern Watch,” occurring on or after August 27, 1992, among those operations that constitute “active service in time of war.” Participants in these operations are now eligible for the \$250 annual property tax deduction or the property tax exemption for 100% disabled veterans. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) 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.

[2004](#) [2005](#)

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

[2004](#) [2005](#)

- **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.

[2004](#) [2005](#) □

from the director's desk

NJ Tax Relief for April 2005 Storm Victims

Nine New Jersey counties that were struck by storms and flooding April 1–3, 2005, have been declared a Presidential Disaster Area. The counties are: Bergen, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Sussex, and Warren.

The New Jersey Division of Taxation will follow the guidelines provided by the Internal Revenue Service for special tax relief for New Jersey taxpayers in the disaster area. Any qualified taxpayer granted additional time by the IRS to file Federal tax returns or to make tax payments will receive the same treatment for New Jersey tax purposes. Affected taxpayers include businesses and individuals located in the disaster area, those whose tax records are in the disaster area, and relief workers.

Affected taxpayers have until June 20, 2005, to file New Jersey returns and submit payments for any return and/or payment, including estimated payments, that have either an original or extended due date between April 1, 2005, and June 20, 2005. To qualify for this relief, taxpayers must identify themselves by writing “Presidential Disaster Area: Storms and Floods-NJ,” on their returns and payments.

Information on Federal tax relief for those in Presidential Disaster Areas is available on the [IRS Web site](#). Also see “Presidential Disaster Relief Areas” in the [Winter 2004](#) issue of *New Jersey State Tax News*.

For additional information about New Jersey tax relief for April 2005 storm victims, contact the Division of Taxation’s Customer Service Center at 609-292-6400 or send us an [e-mail](#).



New Jersey State Tax News
2004 (Volume 33)
INDEX

	No.	Page		No.	Page
9-1-1 SYSTEM AND EMERGENCY RESPONSE FEE			Immune Activity: Contract Carrier	4	10
Mobile Telecommunications Fee (Legislature)	2	18	Interest-Free Loans (Courts)	3	10
ADMINISTRATION			LLC, S Corporation Member of Minimum Tax and Affiliated or Controlled Groups	3	8
Bank Account Information (Legislature)	2	16		2	9
Business Registration Requirements	3	7	Net Operating Loss Changes (Legislature)	4	10
Contractor Registration Changes (Legislature)	2	16		2	17
EFT Payment Options	4	3	Nexus on Immune Activity	1	7
Electronic Funds Transfer (Legislature)	2	16	Nonprofit Corporations: Residential Homeowners' Association	4	10
Electronic Filing Required for Some Tax Practitioners	3	17	Professional Corporation Fees	2	9
License Suspension of Tax-Noncompliant Businesses (Legislature)	2	17	Real Estate Investment Trust (Courts)	3	10
Practitioners' E-File Mandate	4	3,11	Receipts Fraction: Dock Sales Outside New Jersey	4	11
Report for Study Commission on Discrimination (Legislature)	2	17	Refund Regulation, Examples Under S Corporation Member of LLC	4	9
Time Period to File Complaint (Courts)	2	11		3	8
Timeliness of Protest (Courts)	1	9	Subjectivity (Courts)	3	11
			Throw Out, New Jersey	3	2
			Trade Show Nexus	4	12
CASINO TAXES			COSMETIC MEDICAL PROCEDURES		
Casino Reinvestment Development Act Changes (Legislature)	3	16	GROSS RECEIPTS TAX		
Phase-Out of Casino Complimentaries Tax (Legislature)	3	16	Cosmetic Medical Procedures Tax (Legislature)	2	17
CIGARETTE TAX			ENFORCEMENT		
Cigarette Purchases via Internet or Telephone (Courts)	2	11	Criminal Enforcement	1	4
	2	12		2	6
Packaging Requirements (Legislature)	2	17		3	4
Rate Increase (Legislature)	2	17		4	6
TIP Hotline	4	5	Enforcement and Prosecution	1	13
CORPORATION BUSINESS TAX			Enforcement Summary		
Allocation of Freight Revenues	2	9	—Fourth Quarter 2003	1	6
Alternative Minimum Assessment (AMA), Correction	2	9	—First Quarter 2004	2	6
Credit Unions	4	9	—Second Quarter 2004	3	6
Decoupling (Legislature)	2	17	—Third Quarter 2004	4	8
Extraterritorial Income Exclusion	1	7	Preparer Sentenced to Prison for Tax Fraud	3	1
Federal Renewal Community Employment Credit	1	7	"Son of BOSS" Tax Shelters	2	20
Homeowners' Association, Nonprofit Corporations: Residential	4	10	ENVIRONMENTAL TAXES		
			Aid to Highlands Region (Legislature)	3	15
			Air Toxics Surcharge (Legislature)	2	18
			Spill Compensation and Control Tax Changes (Legislature)	2	17

INDEX (continued)

	No.	Page		No.	Page
GENERAL					
Division Organization Chart	1	insert	Tax on High-Income Taxpayers, Increased (Legislature)	2	18
EFT Payment Options	4	3	Tax Rate Used on Form NJ-1080C	4	3
Flood Relief	2	1	Tuition Reimbursement	1	7
Hurricane/Flood Disaster Relief	3	5	HOTEL/MOTEL OCCUPANCIES		
Index for <i>State Tax News</i> 2003 (Vol. 32)	1	insert	Hotel Occupancy Fee, Tax Rates	2	3
Legislation: Synopsis of 2003 Tax Laws	1	insert	INHERITANCE/ESTATE TAX		
Order <i>Package NJX</i> Online	3	3	Affidavit Requesting Tax Waiver	2	4
Timeliness of Protest (Courts)	1	9	Estates and Trusts Changes (Legislature)	3	15
What's New for Tax Year 2004	4	1	Restricted Payment of Life Insurance Benefits	2	10
GROSS INCOME TAX			INSURANCE PREMIUMS TAX		
Basis in Partnership Interest (Courts)	1	10	Retaliatory Tax (Courts)	2	14
Commuter Transportation Benefits, Employer-Provided	3	8		3	12
Decoupling (Legislature)	2	17	LITTER CONTROL FEE		
Disaster Relief Areas, Presidential	4	4	Roll Stock Exclusion	1	8
E-File Mandate, Practitioners'	4	3,11	Wholesaler-to-Wholesaler Deduction	2	10
Electronic Filing Hits Milestone	1	1	LOCAL PROPERTY TAX		
Electronic Filing Required for Some Tax Practitioners	3	17	County Tax Board Judgments	4	5
Employer-Provided Commuter Transportation Benefits	3	8	Denial of Tax Exemption (Courts)	4	13
Employer Withholding Rates, New	2	3	Exemption Status (Courts)	3	12
Estimated Tax on Income From Sale of Real Property by Nonresidents (Legislature)	2	18	Farmland Assessment (Courts)	3	13
Estimated Tax on Nonresidents' Sale of Real Property (Legislature)	4	17	Historic Site Property Tax Exemption, Changes in (Legislature)	4	17
Form NJ-1080C, Tax Rate Used on	4	3	Judgments, County Tax Board	4	5
Gain on Sale of Rental Real Estate Not Held by a Business Entity (Courts)	2	12	Omitted Added and Added Assessments (Courts)	2	14
Investment Clubs	1	2	Property Appraisal Course Credits, Reciprocity for	2	3
IRC Section 721(a)	1	7	Property Tax Convention Task Force (Legislature)	2	18
Military Stipend	4	12	Tax Assessor Certificates	1	2
New Employer Withholding Rates	2	3		3	3
NJ FastFile	4	18	Tax Assessor Recertification	2	4
PA Income Tax, Obligation to Withhold	1	7	Tax Assessors' Calendar — Second Quarter 2004	1	2
Partnership Interest, Basis in (Courts)	1	10	— Third Quarter 2004	2	5
Practitioners' E-File Mandate	4	3,11	— Fourth Quarter 2004	3	3
Presidential Disaster Relief Areas	4	4	— First Quarter 2005	4	5
Resident Aliens	3	8	Tax Exemption, Denial of (Courts)	4	13
Sale, Exchange, or Other Disposition of Property (Courts)	4	15			
Sale of Rental Real Estate Not Held by a Business Entity, Gain on	2	12			
Severance Payments (Courts)	2	13			
"Son of BOSS" Tax Shelters	2	20			

INDEX *(continued)*

	No.	Page		No.	Page
MISCELLANEOUS			REALTY TRANSFER FEE		
Amnesty Programs in Other States	2	10	General Purpose Fee Added (Legislature)	2	19
	3	10	Revisions (Legislature)	4	17
	4	9	SALES AND USE TAX		
Health Enterprise Zones (Legislature)	3	15	Canine Dental Cleaning	3	9
HMO Assessment (Legislature)	2	18	Catering Services, Personal Chef and	2	11
Interest 7.00% for 2004	1	3	Chemical and Catalyst Exemption (Courts)	1	10
	2	5		2	16
	3	3	Cigarette Purchases via Internet or		
Interest 8.00% for 2005	4	4	Telephone (Courts)	2	11
Local Tax Changes (Legislature)	4	17		2	12
MOTOR FUELS TAX			Cut Fees, Restocking and	4	13
Racing Gasoline	4	12	Early Termination Fee: Wireless Service	4	13
Tax on Stolen Motor Fuel	3	8	Electricity Sales, Natural Gas and	1	8
MOTOR VEHICLE TIRE FEE			Floor Covering Materials (Courts)	1	11
Motor Vehicle Tire Fee (Legislature)	2	18	Gap Insurance	3	9
OUTDOOR ADVERTISING FEE			Natural Gas and Electricity Sales	1	8
Exempt Organizations	1	8	Parasailing	3	9
Fee Changes (Legislature)	2	18	Personal Chef and Catering Services	2	11
PARTNERSHIPS			Refunds (Courts)	2	16
Investment Clubs	1	2	Restocking and Cut Fees	4	13
Limited Liability Company With No Income	2	10	“Restocking” Fee	2	11
PROPERTY TAX RELIEF PROGRAMS			Travel Agent Sales	2	11
Benefits Increased	2	19	Whitening Products, Sales of	1	9
Changes to Rebate Programs	2	1	Wireless Service, Early Termination Fee	4	12
Payment Dates, 2003 Homestead/NJ SAVER			Wrapping Supplies Exemption (Courts)	4	16
Rebate	2	2	TRANSITIONAL ENERGY FACILITY		
Property Tax Reimbursement Filing			ASSESSMENT		
Deadline Extended	2	3	Phase-Out Schedule (Legislature)	2	19
PROPERTY TAX RELIEF PROGRAMS			SPILL COMPENSATION & CONTROL TAX		
Benefits Increased	2	19	Spill Compensation and Control Tax		
Changes to Rebate Programs	2	1	Changes (Legislature)	2	17
Payment Dates, 2003 Homestead/NJ SAVER			URBAN ENTERPRISE ZONES		
Rebate	2	2	New Zone Created (Legislature)	2	19
Property Tax Reimbursement Filing					
Deadline Extended	2	3			

2004 TAX LAWS

CH.	DATE	SYNOPSIS	TAX*	BILL
17	6/07/04	Creates a Medical Malpractice Liability Insurance Premium Assistance Fund comprised of the following revenues: \$3 per employee surcharge for employers subject to the unemployment compensation law; \$75 annual charge on each physician, podiatrist, chiropractor, dentist, optometrist, and lawyer licensed in the State.	MIS	ACS for A-50(2R)
40	6/28/04	Folds the NJ SAVER Rebate Program into the Homestead Rebate Program; increases property tax relief benefits to New Jersey homeowners and tenants; and increases gross income tax rate for taxpayers with taxable income over \$500,000.	GIT PTRP	A-100(1R)
42	6/29/04	Revises outdoor advertising law and local tax treatment of certain outdoor advertising signs.	MIS	A-3101(1R)
43	6/29/04	Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges and modifies the annual rates.	PUT	A-3102
46	6/29/04	Imposes a fee of \$1.50 on the sale of new motor vehicle tires.	TIR	ACS for A-3106
47	6/29/04	Limits the application of net operating loss deductions under the corporation business tax for privilege periods beginning in calendar years 2004 and 2005 to up to 50% of entire net income.	CBT	A-3110
48	6/29/04	Imposes a fee of \$.90 on mobile telecommunications and telephone exchange customers for funding certain costs of the 9-1-1 system and certain other emergency response systems.	ERF	A-3112(1R)
49	6/29/04	Establishes a special interim assessment on health maintenance organizations and requires a comparative study of the equity of the various taxes imposed on all health care insurance companies.	MIS	A-3116
50	6/29/04	Increases the tax rate imposed on hazardous substance transfers and discharges.	SCC	A-3117(1R)
51	6/29/04	Imposes annual air toxics surcharge ranging from \$.10 to \$10 per pound of toxic substance based on emissions at certain facilities.	ENV	A-3118(1R)
52	6/29/04	Lowers the threshold for requiring that taxpayers make State tax payments by electronic funds transfer to \$10,000.	ALL	A-3119
53	6/29/04	Imposes a 6% gross receipts tax on certain cosmetic medical procedures.	CMPT	A-3125

2004 TAX LAWS *(continued)*

CH.	DATE	SYNOPSIS	TAX*	BILL
55	6/29/04	Requires the payment of estimated gross income tax on income from the sale of real property in this State by nonresidents.	GIT	A-3128
56	6/29/04	Requires the use of an electronic reporting system for the Division of Taxation to obtain information from financial institutions regarding accounts of tax debtors.	MIS	A-3129
57	6/29/04	Expands business registration verification program for contractors doing business with the State to include local government contracts, and requires contractors and their affiliates to collect State sales and use tax.	MIS	A-3130(1R)
58	6/29/04	Establishes a State tax clearance process for certain business operators that use State licenses to conduct business and for other holders of licenses from State agencies.	MIS	A-3131
65	6/30/04	Decouples corporation business tax and gross income tax from changes in Federal depreciation and certain expense deductions; provides incentives for business relocation and retention.	CBT GIT	ACS for A-3111
66	6/30/04	Imposes a "general purpose fee" on the transfer of property valued at more than \$350,000 and a fee on the purchase of residential property for over \$1 million; clarifies provisions governing realty transfer fees.	RTF	A-3115
67	6/30/04	Increases the cigarette tax by \$.35 per pack.	CIG	A-3113(1R)
75	7/1/04	Authorizes an additional urban enterprise zone in New Brunswick.	S&U	A-263
79	7/2/04	Permits Secretary of State to request and requires the Division of Taxation to prepare a report containing certain basic information for the Governor's Study Commission on Discrimination in State Employment and Contracting.	MIS	S-1498(2R)
85	7/7/04	Establishes a Property Tax Convention Task Force and appropriates \$250,000 to fund its activities.	LPT	A-97
96	7/9/04	Prohibits the sale of cigarettes in packs of less than 20.	CIG	A-1770(1R)
120	8/10/04	Establishes the "Highlands Water Protection and Planning Act" to protect and preserve the drinking water and natural resources of the New Jersey Highlands Region.	ENV	S-1(1R)
128	8/30/04	Transfers administration of certain casino taxes and fees to the Casino Control Commission and provides for phase-out of the casino complimentary tax.	CAS	A-3120(1R)

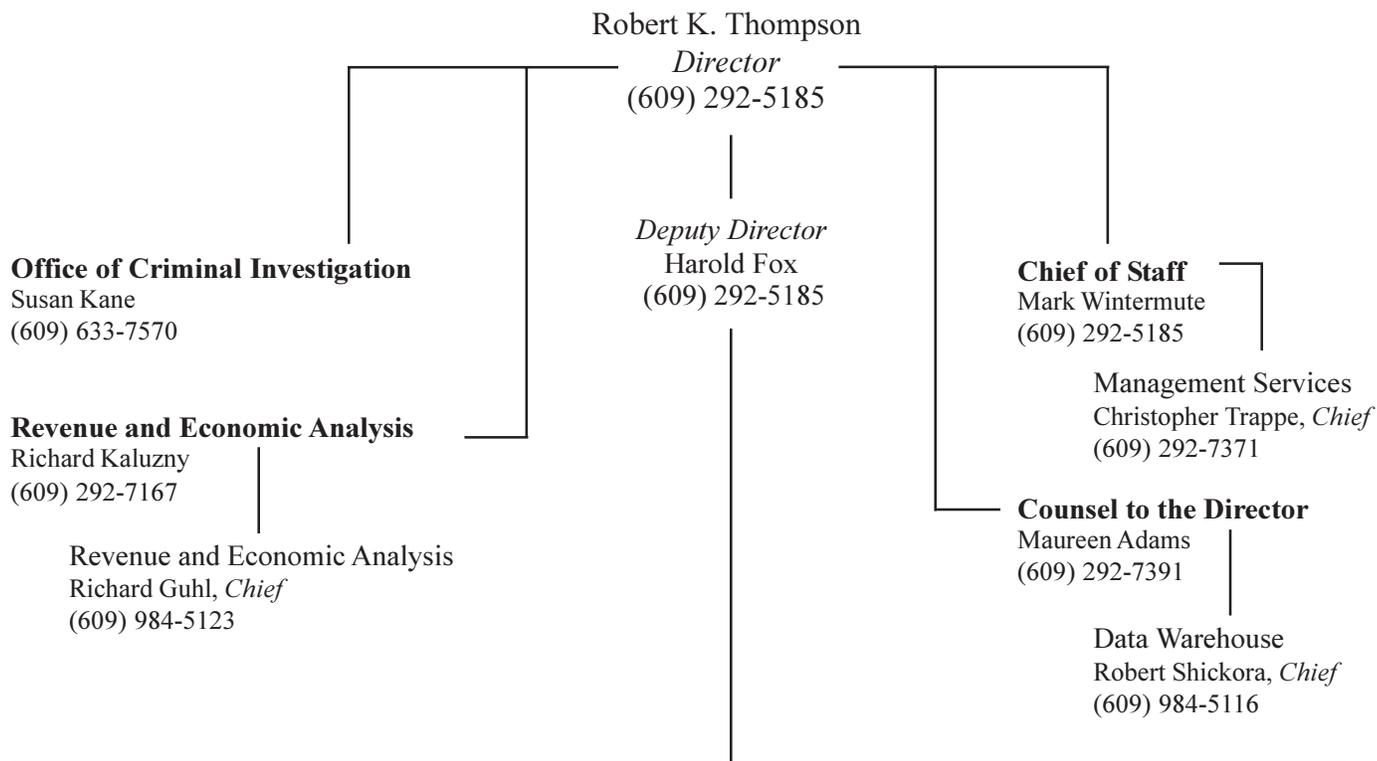
2004 TAX LAWS *(continued)*

129	8/25/04	Extends the investment alternative tax obligation of casino licensees to 50 years, adds five districts under Casino Reinvestment Development Authority (CRDA) Urban Revitalization Act, and allows grants to the Authority for 20 years from certain sales tax revenues.	CAS	ACS for A-3121
132	8/31/04	Revises the way estates and trusts must be administered in New Jersey.	TIT/ET	S-708(1R)
139	9/02/04	Creates Health Enterprise Zones in certain municipalities to encourage establishment of certain primary care practices in medically underserved areas.	GIT LPT	A-2638(2R)
181	12/22/04	Repeals the December 31, 2004, expiration of certain municipalities' authority to impose parking and payroll taxes.	MIS	S-2037(1R)
183	12/22/04	Revises qualifications required to obtain a property tax exemption as a historic site.	LPT	A-2697(2R)

*Legend for 2004 Tax Laws

ABT = Alcoholic Beverage Tax	LIT = Litter Control Fee
ALL = All Taxes Administered by the Division	LPT = Local Property Tax
CAS = Casino Taxes and Fees	MFT = Motor Fuels Tax
CBT = Corporation Business Tax	MIS = Miscellaneous
CIG = Cigarette Tax	PPT = Petroleum Products Gross Receipts Tax
CMC = Cape May County Tourism Sales Tax	PTRP = Property Tax Relief Programs
CMPT = Cosmetic Medical Procedures Gross Receipts Tax	PUT = Public Utility Taxes
ENV = Environmental Taxes	RTF = Realty Transfer Fee
ERF = 9-1-1 System & Emergency Response Fee	S&U = Sales and Use Tax
FBT = Financial Business Tax	SCC = Spill Compensation & Control Tax
GIT = Gross Income Tax	TIR = Motor Vehicle Tire Fee
HMO = Hotel Motel Occupancies	TIT/ET = Transfer Inheritance & Estate Tax
IPT = Insurance Premiums Tax	TPT = Tobacco Products Tax

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