New Jersey State Tax news

A Quarterly Newsletter ISSN 1073-6808

Volume 33, Number 3
Fall 2004

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Some tax practitioners are now required to use electronic filing for their clients' 2004 New Jersey income tax returns.

More information inside...

Preparer Sentenced to Prison for Tax Fraud

A joint-agency investigation with the Division of Criminal Justice aimed at targeting tax fraud has uncovered the largest "tax refund fraud" scheme investigated in State history by the Division of Taxation. The investigation resulted in the filing of criminal charges against Rosa M. Castro, a tax preparer from Clifton, New Jersey. The charges allege that she has prepared close to 2,000 fraudulent New Jersey gross income tax returns seeking over $1,000,000 in illegal refunds.

The tax fraud investigation was initiated by the Division of Revenue which, in February of 2003, identified 21 suspicious tax returns bearing certain similarities. The investigation conducted by the Division of Taxation identified 1,978 fictitious and/or fraudulent New Jersey gross income tax returns allegedly prepared and filed by Rosa Castro for herself, family members, friends, and others using actual and fictitious names and social security numbers. Two types of fraud have been identified, including "Earned Income Tax Credit" fraud and "Refund" fraud. Undercover investigators were able to meet with Rosa Castro at her home office. During these meetings, Rosa Castro prepared false and fraudulent tax returns utilizing fictitious information on behalf of the undercover investigators.

On March 1, 2004, agents from the Division of Criminal Justice and the Division of Taxation executed a search warrant at the residence of Rosa M. Castro which resulted in the seizure of records relating to refund fraud and the preparation of false and fraudulent New Jersey gross income tax returns. Ms. Castro was charged in a complaint summons with theft by deception (second degree) and filing false and fraudulent tax returns (third degree). Bail was set at $50,000 with no 10% option.

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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
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

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As part of a plea agreement, Rosa Castro entered guilty pleas in Passaic County to the charges on June 30, 2004. On August 20, 2004, Ms. Castro was sentenced to five years in State prison and ordered to make restitution of $141,354. In addition, Ms. Castro, who is on Federal probation for having committed similar crimes in the 1990s, faces revocation of her Federal probation and incarceration for the balance of her Federal sentence. The investigation is continuing and additional charges may be forthcoming for others that conspired with, and/or received monies as a result of Rosa Castro's actions.

This case represents only the most visible of a number of initiatives the Division of Taxation has undertaken to combat tax refund and tax credit fraud. In addition to investigating and prosecuting preparers of fraudulent returns and the recipients of fraudulent refunds, the Division also employs a sophisticated system of internal controls to identify questionable refund applications and prevent the issuance of funds to which the applicants are not entitled, while insuring the timely payment of legitimate refunds.

This is another example of outstanding cooperation between agencies to level the playing field for New Jersey's taxpayers and to insure that the State's financial resources are protected from those seeking to personally profit by fraud at the expense of honest taxpayers. ❑

CORPORATION BUSINESS TAX

New Jersey Throw Out

Regulation 18:7-8.7(d) details the Division's interpretation of the "throw-out" provision of the Business Tax Reform Act of 2002.

Receipts sourced to a state, a possession or a territory of the United States or the District of Columbia, or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction of the allocation factor.

Recently the Division has received inquiries regarding how this provision would apply to sales sourced to states which do not impose corporate income or franchise taxes as well as to sales sourced to states where the taxpayer is protected from taxation by Pub. L. 86-272. The question becomes whether or not the taxpayer is subject to tax.

In the case of sales to a state or jurisdiction which does not impose a tax, such as Nevada, the taxpayer clearly would not be subject to a tax, so any sales sourced to that jurisdiction would be thrown out of the receipts fraction denominator.

In situations where a corporation is sourcing receipts to a state where the taxpayer is immune from income taxation due to Pub. L. 86-272, the question becomes whether the state subjects the taxpayer to tax based on business presence or business activity. These types of taxes can include net worth taxes or gross receipts taxes. Therefore, a corporation taxpayer selling into a

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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.htm

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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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state that imposes only a net income tax, and whose activity is limited to solicitation of sale of tangible personal property, is therefore immune from taxation and is required to "throw out" those receipts sourced to that state from the New Jersey receipts fraction denominator. However, if the same state, in addition to its corporate income tax, imposed an apportioned net worth tax, the receipts sourced to that state and subject to the net worth tax would not be "thrown out" of the New Jersey denominator. ❑

Order Package NJX Online

The New Jersey Division of Taxation has automated the ordering and payment process for *Package NJX*. The materials can only be ordered and paid for online through our secure server. Payment must be made by electronic check (e-check).

Three *Package NJX* products are being offered for 2004:

- **Printed Version ($25.00) —** Reproducible tax forms and instructions printed on loose-leaf pages that are hole-punched to fit a standard 3-ring binder.
- **CD-ROM Version ($15.00) —** Tax forms and instructions plus various tax information publications such as *New Jersey State Tax News, Division of Taxation Annual Report*, etc.
- **3-Ring Binder ($10.00) —** Standard 3-ring binder to hold printed version. (Binder does not include printed version of *Package NJX*, which must be purchased separately.)

Anyone who purchased *Package NJX* materials last year will receive a notice from the Division of Taxation that contains their ID number and a temporary password as well as instructions for ordering online as a "Registered User." Those who did not order last year and who want to purchase *2004 Package NJX* materials should follow the instructions for "New User."

The *2004 Package NJX* materials are expected to be shipped by January 31, 2005. To ensure timely delivery, orders and payments must be submitted by December 22, 2004.

Order 2004 Package NJX ❑

Tax Assessor Certificates

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

Seven persons passed the March 27, 2004, CTA exam. They are:

Bergen County: Deborah Claire Boyle, New Milford Borough; Edward H. Hynes, Upper Saddle River Borough.

Hunterdon County: Glenn A. Stives, Raritan Township.

Middlesex County: Celeste P. Florek, Old Bridge Township.

Monmouth County: William J. FitzPatrick, Avon-by-the-Sea Borough.

Morris County: Kathleen Minahan, Dover Town.

Ocean County: Irene F. Raftery, Brick Township.

The next examination is scheduled for March 19, 2005. The deadline to file applications for this exam is February 17, 2005. The filing fee is $10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. ❑

LOCAL PROPERTY TAX

Tax Assessors' Calendar

October 1 –

- All real property in taxing district valued for tax purposes (pretax year).
- $250 Veteran's property tax deduction eligibility established (pretax year).
- $250 real property tax deduction for senior citizens, disabled persons, or surviving spouses eligibility established (pretax year).

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Interest 7.00%

The interest rate assessed on amounts due for the period January 1, 2004 – December 31, 2004, will be 7.00%.

The assessed interest rate history is listed below.

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

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- Agricultural land values for farmland assessment under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee.
- 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.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the 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 2005 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 has included:

- On March 1, 2004, Hiteshkum Patel of Edison, New Jersey, was arrested by police at the Delaware Memorial Bridge, Pennsville Township, New Jersey, attempting to smuggle 239 cartons of Delaware-stamped cigarettes into New Jersey. The Office of Criminal Investigation (OCI) determined that Patel owns stores in Newark, Linden, and Irvington. OCI seized 32 cartons of Delaware-stamped cigarettes and 157 untaxed tobacco products from the Newark store, 119.1 cartons of Delaware-stamped cigarettes from the Linden store, and 3 cartons of Delaware-stamped cigarettes from the Irvington store. The repeated offenses have resulted in a joint investigation with the Bureau of Alcohol, Tobacco, Firearms, and Explosives
- On March 23, 2004, confirmation was received from Superior Court – Hudson County, that John Drzymkowski of Berkeley Heights, New Jersey, was admitted into the Pretrial Intervention Program (a supervision program for first-time offenders charged with nonviolent crimes) for a term of 36 months and ordered to make restitution of $331,039.36 pursuant to his guilty plea on July 28, 2003, to one count of failing to file tax returns. The charges involve $301,000 in petroleum products gross receipts tax which Drymco, Inc., a now-defunct heating oil company collected on diesel fuel sales in 1999 and 2000. This matter was prosecuted by the State Attorney General.
- On March 24, 2004, Wifki A. Seed of West New York, New Jersey, the manager of a convenience store in Newark, was found in possession of 856 counterfeit New Jersey cigarette tax stamps along with 110 cartons of untaxed cigarettes. He was in the process of applying the counterfeit stamps to packs that appear to have had another state's stamp removed. A computer, printer, and other counterfeiting paraphernalia were seized from the subject's residence. The investigation is continuing.
- On April 7, 2004, Lan Fang Zhang and Min Liang Yu, both of New York City, were arrested by OCI while loading a van with untaxed cigarettes from a storage unit at the U-Store-It facility in Jersey City, New Jersey. The cartons consisted of counterfeit/trademark violation Newports as well as illegal Chinese and British import cigarettes. 14,757 cartons of cigarettes, two vans, three cell phones, $550 in cash, documents, and ledgers were

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seized. The subjects were held in the Hudson County Jail on $100,000 bail each. Taxation's Facilities Management Activity assisted in securing this large volume of contraband. The tax loss averted was $353,881.

- On April 13, 2004, a grand jury indicted Lamine Ouattara of East Orange on charges of theft by deception, impersonation, and theft of identity arising from his filing of multiple fraudulent 2002 New Jersey gross income tax returns and subsequent receipt of $9,300 in refunds. Ouattara created fictitious identities and claimed the Earned Income Tax Credit on the returns. The case is a joint investigation with the Essex County Prosecutor's Office and the East Orange Police Department.

- On April 13, 2004, OCI arrested Ming Gan Zhang of New York in possession of 2,354.4 cartons of untaxed cigarettes in a van and storage unit at U-Store-It, Jersey City, New Jersey. The cigarettes were counterfeit/trademark violation Marlboro and Newport, and Chinese imports. The van, two cell phones, and $707 were also seized. Zhang was held on $100,000 bail. The tax loss averted was $56,458.50.

- On April 20, 2004, Gary Dewayne Dennington pled guilty in United States District Court, Beaumont, Texas, to six counts of mail fraud. Dennington, a Federal prison inmate in Beaumont, prepared counterfeit W-2 forms and filed fraudulent New Jersey gross income tax returns for the years 1998, 1999, and 2002 to claim refunds, but security procedures in place blocked his receipt of the funds. This case is a joint investigation with the Federal Bureau of Investigation in Beaumont, Texas.

- On April 22, 2004, a State Grand Jury in Trenton, New Jersey, indicted Oscar Kirkconnell of Elizabeth, New Jersey, on charges of theft, misapplication and failure to pay over $88,308.44 in sales tax collected, filing fraudulent sales tax returns, and failure to maintain records from January 1, 1999, to September 30, 2002, in connection with Kirkconnell's go-go bar in Elizabeth. The Elizabeth Police Department assisted in the investigation. The matter was presented to the grand jury by the State Office of the Attorney General. This case is part of the Division of Taxation's program of progressive enforcement, utilized in cases in which taxpayers fail to comply with the Division's civil audit, enforcement, and educational outreach programs. In this case, a civil audit in 1998 resulted in a $19,000 sales tax assessment against this taxpayer, which was not satisfied until the business was seized by the Division's Compliance Activity.

- On April 22, 2004, Norman D. Levine of Manchester was indicted by a Monmouth County Grand Jury on charges of possession and sale of untaxed cigarettes. Levine was arrested by OCI in December 2003 after an investigation identified Levine as the recipient of untaxed cigarettes by way of a FedEx shipment from Virginia. Levine appeared in court in Maryland on December 12, 2003, in a case stemming from a previous arrest. Immediately after pleading guilty to a felony count of transportation/possession of contraband cigarettes, Levine was followed by agents of the Maryland Comptroller of the Treasury to Virginia and North Carolina where they observed him purchasing cigarettes again and shipping them from Virginia Beach to a New Jersey business. OCI surveillance led to the arrest of Levine after he took possession of the cigarettes and was placing them in a storage unit in Neptune Township. Levine was actively engaged in a mail-order business with his own Internet site, keeping in contact with his customers via e-mail. The storage unit was set up much like a shipping facility to support his illegal enterprise. There he categorized and stored numerous brands of cigarettes, preparing them for shipment in specially manufactured,

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Hurricane/Flood Disaster Relief

For information on tax relief for those affected by the July 2004 flooding in Burlington and Camden counties in New Jersey, go to: **www.state.nj.us/treasury/taxation/floodrelief.htm**

For information on NJ tax relief for Florida hurricane victims, go to: **www.state.nj.us/treasury/taxation/floridarelief.htm**

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unmarked shipping boxes. A total of 754 cartons of contraband cigarettes were seized; 457 cartons were in the delivery that had been observed, and the remainder was found in his storage unit. A combination of Delaware tax stamped, Virginia tax stamped, and unstamped cigarettes (from North Carolina) were seized along with $2,138 in cash and a 1998 Mercury. Levine was charged with transportation and sale of untaxed cigarettes and possession of more than 20,000 unstamped cigarettes, and released on $25,000 bail.

- On April 22, 2004, confirmation was received that Antonio Couso of Wayne, New Jersey, who had pled guilty to one count of possession of counterfeit stamped cigarettes in the Bergen County Superior Court, was sentenced to three years' probation, thirty days' community service, one day's jail credit, and $155 in fees and costs.

- On April 29, 2004, Jeffre and Cynthia Levy of Cherry Hill, New Jersey, were charged with failing to pay the State almost $170,000 in sales tax collected from customers and income tax withheld from employees of several janitorial businesses the husband and wife couple operated between 1994 and 2001. A joint investigation conducted by the Camden County Prosecutor's Office and the Division of Taxation's Office of Criminal Investigation revealed that the couple attempted to hide the diversion of funds by conducting business through a succession of business entities: Executive Maintenance Company, Executive Maintenance, Inc., and Executive Maintenance Industries, Inc., all located in Cherry Hill, New Jersey.

- On May 21, 2004, Philip McKeaney of Cherry Hill, New Jersey, was sentenced to jail for seven years and ordered to pay over one million dollars in restitution as a result of pleading guilty to charges of insurance fraud and failure to pay various State taxes. McKeaney, through his insurance brokerage company, defrauded clients of over $1.6 million by failing to provide medical insurance coverage for their employees. McKeaney diverted some of the stolen funds to his data processing business, Cambria Corporation, which was found to have failed to remit New Jersey gross income tax and Department of Labor withholdings that totaled $72,343. Michael Evangelista, president of Cambria, was sentenced to five years' probation and full restitution of the tax.

- On June 8, 2004, three executives of JCA Associates, Inc., a Burlington County-based engineering firm, pled guilty to filing false and fraudulent corporation business tax returns to conceal illegal campaign contributions. As a result Mark Neisser, President, Henry Chudzinski, Director of Marketing, and William Vuokoder, CFO will all have to resign and divest themselves of any associations with JCA, its subsidiaries, or any entity that has a business relationship with the firm. The resignations and divestitures will be for terms ranging from two to five years. JCA will also pay a $100,000 fine.

- On June 8, 2004, Mitesh "Gary" Shah was arrested at his retail store in Middletown Township, New Jersey, after execution of a

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Enforcement Summary Statistics

Second Quarter 2004

Following is a summary of enforcement actions for the quarter ending June 30, 2004.

• Certificates of Debt:	
Total Number	2,598
Total Amount	$31,823,231
• Jeopardy Assessments	361
• Jeopardy Seizures	0
• Seizures	57
• Auctions	11
• Referrals to the Attorney General's Office	523

For more detailed enforcement information, visit our Web site at:
www.state.nj.us/treasury/taxation/jdgdiscl.htm

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search warrant by the Middletown Township Police Department and OCI resulted in the discovery of 26.8 cartons of unstamped cigarettes obtained via the Internet, 1,752 other tobacco products on which tax had not been paid, and 30 bags of heroin. Shah had been on probation as a result of his prior arrest by OCI in a cigarette counterfeiting case.

- On June 18, 2004, in Superior Court – Hudson County, Ivo Perez of Paramus, New Jersey, was sentenced to five years' probation and restitution totaling $141,417 pursuant to his guilty plea to charges of failure to file sales and use tax returns and failure to pay over $72,639.80 in sales and use tax from October 1996 to December 2001 at his vehicle rental business, Metro Rental Services Inc., North Bergen, New Jersey. A plea agreement requires that Perez also file and pay delinquent sales tax, gross income tax withholding and corporation business tax returns and turn over the books and records of his businesses. This investigation was conducted in cooperation with the Division of Taxation's Field Investigations Branch and was prosecuted by the State Attorney General.

- On June 23, 2004, in Newark Municipal Court, Miguel A. Puca of Newark, New Jersey, was charged with failing to file motor fuels tax returns and failure to pay $60,397 in motor fuels tax from April 2003 to April 2004 in connection with retail sales of diesel fuel to trucking companies. This case was based on a letter from the owner of a local gas station who complained that the subject was harming legitimate businesses by evading the motor fuels tax.

- One hundred twenty-three (123) complaints alleging tax evasion were evaluated from April through June 2004 in the Office of Criminal Investigation.

- During the same period, one hundred forty-seven (147) charges were filed in court and thirty-one (31) arrests were made in thirty (30) cases involving violations of the Cigarette Tax Act. Items seized were: 18,113.2 cartons of untaxed cigarettes having a total value of $1,050,056.60 and including 225.5 cartons bearing counterfeit New Jersey tax revenue stamps, and three vehicles. ❑

Tax Briefs

Administration

Business Registration Requirements — N.J.S.A. 52:32-44, as amended by P.L. 2004, c.57, bars a "contracting agency" from entering into any contract with a "business organization" (denoted as a "contractor" or "subcontractor") for the providing of goods or services or to construct a construction project, unless the contracting agency has been provided with a copy of the business registration of the contractor (and any subcontractor as the case may be) by the contractor. No contractor under any contract with a contracting agency may contract with a subcontractor to carry out the terms of the contract with the agency, unless the subcontractor first provides proof of its valid business registration to the contractor.

The law defines "contracting agency" as meaning "the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by the Legislative Branch or the Judicial Branch, or any independent State authority, commission, instrumentality or agency or any State college or university, any county college, or any local unit." "Local Unit" includes county and municipal governments, private firms providing water supply and wastewater treatment services, and incorporated nonprofit associations providing wastewater treatment services to a city of the first class.

All business organizations normally register with the State by completing and filing a Business Registration Application (Form NJ-REG) which can be found on the Division of Revenue's Web site at: www.state.nj.us./njbgs/revprnt.htm.

Individuals having no sales, business tax, or employer obligations with the State of New Jersey, but still doing business with an in-state contracting agency as defined, should still complete the Certification and Registration for Individuals Contracting With State Agencies (Form NJ-REG-A). Form NJ-REG-A is available on the Division of Revenue's Web site at: www.state.nj.us/treasury/revenue/pdforms/rega.pdf.

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Corporation Business Tax

S Corporation Member of LLC — If a single member of a single-member LLC is considered a corporation for Federal purposes, the member corporation will be subject to New Jersey corporation business tax. An S corporation shall be considered a C corporation for New Jersey corporation business tax purposes unless it elects New Jersey S corporation status. A C corporation is required to file a New Jersey Corporation Business Tax Return, (Form CBT-100), an annual report, and pay all applicable fees and taxes.

A Federally recognized S corporation may elect to be a New Jersey S corporation as long as it is registered as a foreign corporation authorized to do business in New Jersey. The corporation must properly complete and file a New Jersey S Corporation Election (Form CBT-2553) to request recognition as an S corporation for New Jersey corporation business tax purposes. Approved New Jersey S corporations must complete and file an S Corporation Business Tax Return, (Form CBT-100S), along with the annual report.

Despite having no income, any corporation subject to New Jersey corporation business tax must pay no less than the minimum tax when filing its corporation business tax return unless specifically exempted by law, N.J.S.A. 54:10A-5(e). The minimum tax for a corporation is $500 unless it is part of a controlled or affiliated group having $5,000,000 or more in payroll; then the minimum tax is $2,000.

Gross Income Tax

Resident Aliens — The New Jersey Gross Income Tax Act does not distinguish between aliens and citizens. Therefore, an alien working in New Jersey will be subject to New Jersey tax as either a resident or a nonresident of New Jersey.

N.J.S.A. 54A:1-2(m)(2) defines a resident taxpayer to include an individual who is not domiciled in New Jersey, but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the tax year in New Jersey, unless such individual is in the United States Armed Forces. All income, including wages, earned by a resident taxpayer of New Jersey, even if they are an alien, is subject to New Jersey gross income tax even though such income is exempt from Federal income tax. Nonresidents are subject to tax only on income derived from sources within New Jersey.

The same would be true despite the existence of a tax treaty between the alien's country of domicile and the United States, unless such treaty specifically exempts the alien from all tax obligations rather than providing an exemption solely from Federal tax obligations.

Employer-Provided Commuter Transportation Benefits — The Division responded to an inquiry regarding employer-provided commuter transportation benefits and whether employees can make a pretax deduction to pay for non-employer-provided section 132 transportation benefits.

The statute provides for employer-provided commuter transportation benefits and it does not allow employees to make a pretax deduction on their own accord as stated at N.J.S.A. 54A:6-23(c), which states that "the exclusion provided by subsection a. of this section shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee."

Therefore, employees cannot make a pretax deduction to pay for non-employer-provided commuter transportation expenses.

Motor Fuels Tax

Tax on Stolen Motor Fuel — The Division responded to a question regarding the motor fuels tax on stolen motor fuel. The taxpayer asked if New Jersey gives any kind of tax allowance on motor fuels tax for "driveaways" in which the purchaser of the motor fuel drives away without paying.

The theft of motor fuels is treated as a sale of motor fuel as set forth at N.J.S.A. 54:39-7, which states that "…'Sale' means and includes, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In every case where fuels are exchanged, given, stolen or otherwise disposed of, they shall be deemed to have been sold.…"

The regulations also define a theft as a sale as set forth at N.J.A.C. 18:18-1.1, which states that "…'Sale' means, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In every case where fuels are exchanged, given, stolen, or otherwise disposed of, they shall be deemed to have been sold.…"

Therefore, since the sale of motor fuel is defined to include the theft

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of motor fuel, New Jersey does not provide an allowance or percentage on a motor fuels tax return to compensate the seller for tax on stolen motor fuel.

Stolen motor fuel is treated as if it were sold for motor fuels tax purposes.

Sales and Use Tax

Canine Dental Cleaning — Professional cleaning of a dog's teeth is considered a medical-surgical procedure when performed under anesthesia. It is done in order to remove tartar from the teeth and to examine the dog's mouth for signs of gum disease, loose or broken teeth, and other oral conditions requiring further surgery, medical treatment, or monitoring. The professional cleaning under anesthesia is therefore part of the "practice of veterinary medicine, surgery and dentistry," as defined in N.J.A.C. 13:44-3.1, and as used in the regulations of the State Board of Medical Examiners governing the veterinary profession. N.J.A.C. 13:44-1.1 et seq. This service is treated the same as other veterinary diagnostic and surgical procedures. It is deemed not to fall within any of the categories of services enumerated as taxable in N.J.S.A. 54:32B-3 and is therefore exempt from sales and use tax.

Because of concerns for the groomers' safety, it is unlikely that pet groomers regularly perform nonprofessional dental cleaning services, which would be limited to lightly scrubbing a dog's teeth with a washcloth or soft brush, as pet owners might do at home. Pet groomers bathe dogs, cut their fur, clip their nails, and brush and groom their fur. If they also use dips, flea sprays, tick applications, and other pesticides as part of their grooming services, they are subject to the training and licensing requirements of the Department of Environmental Protection regarding the commercial use of pesticides. N.J.A.C. 7:30-6.3(a)8 vi. But, as service providers not schooled and trained in medicine, they would not be qualified to administer the anesthesia necessary in order to perform a professional dental cleaning service, which is not deemed to be a "grooming" service for the purposes of the Sales and Use Tax Act.

Gap Insurance — The Division responded to an inquiry concerning whether the cost for a debt cancellation contract is taxable under the Sales and Use Tax Act when it is included in the amount financed by the lessee or purchaser.

The inquirer markets a product called Guaranteed Auto Protection (GAP) coverage. This product provides protection to a consumer who finances a vehicle in the event the vehicle is totaled and the settlement amount paid by the primary insurance carrier is not enough to cover the value of the loan balance. This is often the case in the first few years of a loan, especially when the consumer has a very small down payment. This product can be marketed in two ways:

- An insurance product — the product is marketed to consumers by auto dealers or directly by an insurance company. The cost of the insurance is paid as a premium and the borrower makes claims to the insurance company itself; or
- A debt cancellation contract — the product is marketed to consumers through auto dealers on behalf of the lenders who are the insured and who enter into a contractual agreement with the borrower (for a fee) to waive any further indebtedness of the borrower in the event the vehicle is totaled. These waivers are backed up by insurance indemnification between the lenders and an insurance company.

The sale of GAP insurance by the licensed insurance company to the automobile dealer-lessor or to the creditor financial institution is viewed as an exempt insurance service transaction. Therefore, the premiums paid by the insured to the licensed insurer are not subject to sales and use tax. N.J.S.A. 54:32B-2(e)(4)(A).

However, if the insured automobile dealer or financial institution then contracts with a particular customer for an extra amount of money in exchange for either waiving a GAP deficiency or assigning rights under the policy to the lessee, this additional billing is not deemed to be the sale of an "insurance service." It is simply an increase in the taxable lease receipt and is therefore included in the tax base for purposes of computing the lessor's use tax liability under the lease-payment method. N.J.S.A. 54:32B-2(d).

Parasailing — The Division received an inquiry concerning the taxability of parasailing. Customers go out on a boat manned with a captain and crew member and either parasail, observe, or sightsee under their supervision and control.

The charge for parasailing is not subject to sales tax. Under the

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circumstances described above, the charge is not for either an admission to a place of amusement or a rental of tangible property. Rather, it is similar to a charge for sightseeing or transportation, which is exempt from tax in New Jersey. ❑

In Our Courts

Corporation Business Tax

Interest-Free Loans – *Metro Touch, Inc. v. Director, Division of Taxation*, decided Letter Opinion March 26, 2004, and Formal Opinion May 11, 2004; Tax Court No. 004359-2002.

In 1996, Ida Shapiro owned 100% of the corporate stock of plaintiff Metro Touch, Inc. Shapiro also owned 75% of the corporate stock of Perfect Host, Inc. as well as a 75% ownership interest in its successor, Perfect Host, LLC. In 1997, Shapiro's ownership interest in Perfect Host, LLC decreased to 49.3097%.

Since January 1, 1996, Metro Touch's balance sheet reflected non-interest-bearing loans to Perfect Host, Inc. or Perfect Host, LLC. The Division therefore imputed interest income to Metro Touch pursuant to N.J.S.A. 54:10A-10 of the Corporation Business Tax Act (CBTA).

N.J.S.A. 54:10A-10a permits the Division to make adjustments to and redetermine a corporation's income where the income is improperly or inaccurately reflected. Additionally, N.J.S.A. 54:10A-10b allows the Division to include in a corporation's income the "fair profits" from a transaction where it is determined that the transaction was entered into at less than a fair price for the direct or indirect benefit of a shareholder. Under the regulations, N.J.A.C. 18:7-5.10(a)(5) provides that interest should be charged on loans between related parties.

Relying on guidance from Federal court decisions, the Court found that marketplace loans would not be made on an interest-free basis and as a result the loans in question were at less than a fair price and resulted in plaintiff's income being improperly or inaccurately reflected. Furthermore, the Court determined that the Division's imputation of interest income was not dependent on the two entities being controlled by the same person or persons because the statutory standard is whether the arrangement benefits a shareholder directly or indirectly. Therefore, the Court upheld the Division's assessment finding it neither arbitrary nor unreasonable and a proper exercise of his discretion under the statute and regulation. The Court also noted that N.J.A.C. 18:7-5.10(b) "represents a reasonable exercise by the Director of the discretion granted to him by the Legislature."

Metro Touch, Inc. did not appeal the Tax Court's decision.

Real Estate Investment Trust – *UNB Investment Company, Inc. v. Director, Division of Taxation*, decided May 12, 2004; Tax Court No. 004760-2003.

Bridgewater Mortgage Company, Inc. (BMC) is a wholly owned subsidiary of plaintiff (UNB), a New Jersey corporation. BMC qualifies as a real estate investment trust (REIT) under both Federal income tax law and the New Jersey Corporation Business Tax Act (CBTA).

In 1997, BMC paid an $11.7 million dividend to UNB, which BMC deducted on its corporation business tax (CBT) return when it computed taxable income. UNB reported the dividend as dividend income on its CBT return and then excluded the dividend pursuant to N.J.S.A. 54:10A-4(k)(5), which provided for a 100% dividends-received deduction from 80% or more owned subsidiaries.

The Division acknowledged that BMC's deduction from taxable income for dividends paid was proper as it was in accordance with the *Corporate Property Investors* decision, where the Court held that for New Jersey CBT purposes a REIT is permitted the same dividends-paid deduction as is

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Current Amnesty Programs

Mississippi is conducting a tax amnesty program. 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 site listed below.

MS	Sep 1 – Dec 31	www.mstc.state.ms.us/amnesty.htm

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permitted under Federal income tax law. However, the Division denied UNB's N.J.S.A. 54:10A-4(k)(5) dividends-received deduction as a logical consequence of the *Corporate Property Investors* decision. The Division recognized that Internal Revenue Code §243(a) generally permitted corporations to deduct dividends received; however, Internal Revenue Code §857(c) denied this deduction where dividends were received from REITs.

In analyzing the legislative history and case law, the Court concluded that the Division's interpretation of the CBTA was reasonable and made with sufficient statutory authority; however, the Court voided the assessment because of the Division's failure to promulgate a regulation addressing this issue pursuant to the Administrative Procedure Act (APA). The Court reasoned that the denial of the deduction was consistent with the legislative intent to attract REITs into New Jersey, did not result in the double taxation of dividends, and was consistent with the entire statutory scheme. Regardless, the Court found that the statute was ambiguous, that the Division's determination was not obviously inferable from the statute, and that the Division's determination was in the nature of interpretation of law or general policy. Therefore, the Court concluded that the Division's determination constituted a rule that must be formally promulgated pursuant to the APA. The Court also rejected the argument that a regulation was not needed because under N.J.S.A. 54:10A-10 the Director is granted the authority to make adjustments to income amounts to correct distortions of income, or where income was improperly or inaccurately reflected. The Court concluded that dividends had been properly reported and deducted on UNB's CBT return, and that owning a REIT cannot be regarded as conducting business to distort income.

The Director did not appeal the Tax Court's decision.

Subjectivity – *Home Impressions, Inc. v. Director, Division of Taxation*, decided June 7, 2004; Tax Court No. 000099-2003.

Plaintiff (Home Impressions) is a North Carolina corporation that did not own, rent, or maintain property in New Jersey. Independent sales contractors solicited orders in New Jersey from potential customers of Home Impressions' tangible products and then forwarded orders for approval to Home Impressions' principal place of business in North Carolina. Products were later shipped to the customers from Home Impressions' Virginia distribution center.

The Division determined that Home Impressions was required to file corporation business tax (CBT) returns because it was subject to the minimum flat tax. Home Impressions claimed that it did not have to file income tax returns because it was protected by Pub. L. 86-272.

The Court's analysis commenced with first determining whether the instant tax violated either the Commerce Clause or Due Process Clause of the Federal Constitution. In *Quill*, the United States Supreme Court ruled that the solicitation of orders satisfied the minimum contacts requirement of the Due Process Clause. Therefore, the Court opined that solicitation by Home Impressions' independent contractors was sufficient. Addressing Commerce Clause concerns, the Court found that the standard was whether taxpayer's activities created a substantial nexus with the taxing state. Substantial nexus, in turn, requires physical presence. The Court found that the physical presence of the independent contractors in New Jersey constituted the substantial nexus required by the Commerce Clause. As stated in the United States Supreme Court decision in *Scripto*, the fact that independent contractors are not traditional employees is not a distinction of any constitutional significance.

As there was no constitutional impediment, the Court turned to the issue of whether the minimum flat tax conflicted with Pub. L. 86-272. In pertinent part, Pub. L. 86-272 provides that a state may not impose a net income tax on income derived within the state where the only business activity in the state is the solicitation of orders for tangible personalty, where the orders are sent outside the state for approval, and where the products are shipped into the state from a point outside the state. Home Impressions claimed that despite its label as a franchise tax, the CBT minimum flat tax is in reality based on income.

The Court ruled that Pub. L. 86-272 did not protect foreign corporations from the CBT minimum flat tax because this tax is not based on net income. The Court relied on New Jersey case law that the imposition of a reporting requirement on foreign corporations did not conflict with Pub. L. 86-272 and that Pub. L. 86-272 did not apply to the net worth

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portion of the CBT. It should be noted that prior to the CBT minimum flat tax, the amount of CBT liability was measured by both net worth and net income. The Court reasoned that the Director was using the activity of Home Impressions in New Jersey as a reporting requirement and not as a means of calculating the amount of minimum flat tax due.

Insurance Tax

Retaliatory Tax – *Pruco Life Insurance Company v. Director, Division of Taxation*, decided March 23, 2004; Tax Court No. 004058-2003.

Plaintiff (Pruco) is an Arizona corporation and a wholly owned subsidiary of the Prudential Insurance Company of America, a New Jersey insurance company. Pruco's principal office is located in Newark, New Jersey.

In 1998 and 1999, Pruco filed returns but did not report any retaliatory tax obligation to New Jersey, arguing that the N.J.S.A. 54:18A-6 cap applied to both the New Jersey tax obligation and Arizona tax obligation in the calculation of determining retaliatory tax due to New Jersey. The cap statute functions to limit New Jersey tax liability where New Jersey premiums exceed 12.5% of total worldwide premiums. If this threshold is met, then the tax is applied to 12.5% of the worldwide premiums. Although the Division acknowledged that the 12.5% cap applied, the Division assessed retaliatory tax because Pruco is a foreign corporation. In determining the amount of retaliatory tax liability, the Division calculated the tax that would be due under the tax laws of Arizona and subtracted the amount of New Jersey tax due using the 12.5% cap.

Relying on its recent decision in *American Fire and Casualty Company & West American Insurance Company* (See *New Jersey State Tax News*, Summer 2004), the Court rejected Pruco's first two arguments. First, the Court found that calculating the retaliatory tax involved a mathematical calculation comparing the actual tax obligation due in New Jersey under New Jersey law with the actual tax obligation that would be due in Arizona pursuant to Arizona law. Therefore, Pruco's arguments relating to statutory interpretation as well as the policies and purposes of the cap and retaliatory tax statutes were rejected. Secondly, the Court rejected Pruco's constitutional challenge that the Division's interpretation converted the retaliatory tax into a revenue measure rather than a regulatory measure and was an equal protection violation. As in *American Fire and Casualty Company*, the Court found that the application of the two statutes served a legitimate State interest and that the Legislature could have determined that the statutes as applied reasonably furthered or fulfilled that State interest.

Plaintiff also challenged the assessment, asserting that the Division was not in compliance with the Administrative Procedure Act (APA) because the Division's policy for applying the cap and retaliatory tax statutes was not embodied in any official promulgation and therefore reflected rulemaking. After weighing and analyzing the six *Metromedia* factors along with the *Airwork Service Division* decision, the Court determined that the Division's interpretation and application of the N.J.S.A. 17B:23-5 retaliatory tax statute together with the N.J.S.A. 54:18A-6 cap statute did not constitute rulemaking activities under *Metromedia* and therefore did not violate the APA.

Pruco Life Insurance Company has appealed the Tax Court's decision.

Local Property Tax

Exemption Status – *Congregation Ahavath Torah v. City of Englewood*, decided January 23, 2004; Tax Court No. 004020-1999.

Plaintiff Congregation Ahavath Torah appeals a judgment of the Bergen County Board of Taxation applicable to tax year 1999 which denied a property tax exemption for the home of the church's cantor. Plaintiff Congregation Ahavath Torah claims the building occupied by the cantor is entitled to exemption pursuant to N.J.S.A. 54:4-3.6 because the "Parsonage Exemption" allows an exemption of up to two buildings "actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State."

Plaintiff is a religious corporation of the State of New Jersey which owns two residential properties in Englewood. One of the properties is a parsonage for the synagogue's rabbi and is exempt without dispute. At issue is whether 157 Van Nostrand Avenue (Block 2911, Lot 20), which is used as a residence for the synagogue's cantor, has exempt status.

The full-time, permanent cantor lives in the subject property. He performs a variety of services for the

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congregation including: directing liturgical prayer, conducting various prayer services, assisting in the daily services, participating in weddings and funerals, and reading or chanting from the sacred texts on holidays. Members of this congregation are not allowed to perform duties of a cantor without the cantor's consent. The parties agree that the rabbi's residence is exempt under the statute. However, they disagree about whether the cantor's role is such that a residence set aside by the synagogue for the use of the cantor qualifies for exemption.

Decisions interpreting the Parsonage Exemption undertake a factual inquiry to determine whether the individual in question serves a congregation in a way that is consistent with the concept of an officiating clergy. The cases look to the character and extent of activities within the religious organization. *Friends of Ahi Ezer Congregation, Inc. v. Long Branch City,* 16 N.J. Tax 591 (Tax 1997), *Shrine of Our Lady of Fatima v. Mantua,* 12 N.J. Tax 392 (Tax 1992). The decision examined many factors to determine if an individual is an officiant within the meaning of the Parsonage Exemption, and it is clear that it is not status or title, but services performed that determine if the exemption will apply. The Appellate Division, in *St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals,* 18 N.J. Super 552 (App. Div. 1952), explained that the Parsonage Exemption requires that an "officiating clergyman" when associated with "parsonage" must be a pastor installed over a parish, church, or congregation. When he is an "officiating clergyman of any religious corporation" he must be serving the needs of a reasonably localized and established congregation.

New Jersey's Parsonage Exemption recognizes that more than one individual with a congregation may be considered officiating clergy under the statute, as evidenced by the 1962 amendment to N.J.S.A. 54:4-3.6, which increased the number of exempt buildings from one to two. The allowance contemplates that two persons may each have officiating clergy duties, either simultaneously or at different times. Federal Courts have recognized that Judaism assigns ministerial functions to both rabbis and cantors. Also, the courts have qualified cantors under the Federal exemptions applicable to members of the clergy.

In this case, the criteria established in *St. Matthew's* and subsequent New Jersey cases supports the interpretation of the exemption statute that permits both rabbis and cantors to qualify as officiating clergy. The Court entered a judgment in favor of the plaintiff allowing the Parsonage Exemption for the residence occupied by the cantor.

Farmland Assessment – *Alexandria Township v. Philip and Joan Orban and Thomas Pajak, et al.,* decided May 4, 2004.

The issue before the Tax Court on cross-motions for summary judgment is whether the failure to establish and file a woodland management plan pursuant to N.J.S.A. 54:4-23.3(a) before January 1, two years before the year for which farmland assessment is sought, will result in the denial of farmland assessment.

N.J.S.A. 54:4-23.6 provides that, in order to qualify for farmland assessment, the land must be actively devoted to agricultural or horticultural use for "at least two successive years immediately preceding the tax year for which the valuation…is requested." For example, where an

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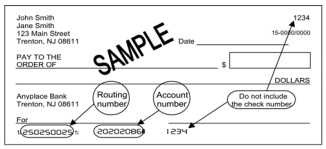

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application for farmland assessment is made for the year 2003, the land must be actively devoted to agricultural or horticultural use during the entire period of the calendar years 2001 and 2002. N.J.A.C. 18:15-6.2(a)(6) defines "Devoted to agricultural or horticultural use" as "land in which trees and forest products are produced for sale and such land is in compliance with the written approved woodland management plan."

Philip and Joan Orban purchased a parcel of property in Alexandria Township. In May of 2000, the Orbans commenced work on a woodland management plan so that the property could qualify for farmland assessment. John Perry, a registered forester, was hired by Mr. Orban on December 19, 2000, to review the woodland management activities which Mr. Orban had performed since May of 2000. Mr. Perry confirmed that Mr. Orban had been complying with the woodland plan and was involved in the active management of the woodland plan.

Mr. Perry then prepared a written woodland management plan, which was filed by Mr. Orban with the Department of Environmental Protection and the assessor of Alexandria Township on May 26, 2001. During 2001, hardwood trees were sold producing an income in excess of $6,000. In 2002, additional trees were cut and sold in accordance with the woodland plan, producing an income in excess of $6,000. Timely applications for farmland assessment under the woodland management plan were filed on or before August 1, 2001, and August 1, 2002.

The assessor denied farmland assessment for the year 2003 based upon the fact that the formal woodland management plan was not filed until May of 2001. It is the position of the tax assessor that he cannot grant an application for farmland assessment unless the formal plan is filed two full calendar years before the tax year for which farmland assessment is sought.

The township contends that since the woodland management plan was not in effect for two consecutive full years prior to the year for which farmland assessment is sought, the subject property is not entitled to farmland assessment. Property owners, to the contrary, contend that "actively devoted to agricultural or horticultural use" does not require that a woodland management plan be written and filed with a municipality on or before January 1 two years preceding the year in which farmland assessment for the woodlot is sought. Owners contend that so long as their activities conformed to a woodland management plan filed after their activities commenced, they meet the standards of the statute.

On January 13, 2003, a portion of the parcel was sold to Thomas and Susan Pajak. On March 28, 2003, the Orbans and the Pajaks filed tax appeals with the Hunterdon County Board of Taxation appealing the denial of farmland assessment for the year 2003. On June 13, 2003, the County Board granted the farmland assessment on the properties. On July 28, 2003, Alexandria Township filed appeals with the Tax Court seeking to reverse the County Board's determinations granting farmland assessment for the properties. On February 11, 2004, the township filed this motion for summary judgment, and on March 3, 2004, the property owners filed a cross-motion for summary judgment

In this case, taxpayers seek farmland assessment for tax year 2003, thus N.J.S.A. 54:4-23.6 requires the land to have been actively devoted to agricultural or horticultural use for the two preceding years, 2002 and 2001. N.J.A.C. 18:15-3.1. The Court cited the cases of *Mt. Hope Mining Co. v. Rockaway Twp.*, 8 N.J. Tax 570, 575 (Tax 1986), *Clearview Estates, Inc. v. Mt. Lakes Borough*, 188 N.J. Super. 99 (App. Div. 1982), and *Green Pond Corp. v. Rockaway Twp.*, 2 N.J. Tax 273 (Tax 1981) and statutes to indicate that the use must be during the entire two full calendar years preceding the year for which farmland assessment is sought.

Amended regulations were adopted effective October 6, 1997, so that they would comply with N.J.S.A. 54:4-23.3 as amended by P.L. 1986,

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c.201 and P.L. 1995, c.276. Prior to 1986, the statute did not require a written woodland management plan. The 1986 amendments to the statute were intended to provide a reasonable means of eliminating the widespread practice of indiscriminate cutting of woodlands to meet the earned income requirements of farmland assessment.

Land on which trees and forest products are produced for sale is "actively devoted to agricultural or horticultural use" when it is in compliance with a written approved woodland management plan. N.J.A.C. 18:15-6.2. A woodland management plan was written by Forester John Perry and filed by the defendants on May 26, 2001. Taxpayers maintain that even though the woodland management plan was not written and filed until May 26, 2001, the activities were taking place on the land from January 1, 2001, in accordance with good forestry management and the implementation of the woodland plan that was later filed and approved. However, N.J.A.C. 18:15-6.2 requires the plan to be a "written approved management plan." Since the plan in this case was not written or filed until May 26, 2001, the land does not meet the definition of actively devoted to agricultural or horticultural use for the full year 2001. Since it was not actively devoted to horticultural use for all of 2001, it cannot qualify for farmland assessment in 2003.

The Court held that in order to be in compliance with a plan, a plan must be drawn up, submitted, and approved *prior* to the activities undertaken in accordance with that plan. Accordingly, a woodland management plan must be filed by January 1 two years prior to the year for which farmland assessment as a woodlot is sought.

F.M.C. Stores v. Morris Plains, 100 N.J. 418 (1985) stands for two propositions that: (1) filing deadlines are to be strictly construed, and (2) in dealing with taxpayers, the government must turn square corners. Having an ambiguous date on which a woodland management plan can be filed complies with neither of these principles, and although the result in this case may hurt the taxpayer, it is essential in construing beneficial tax provisions that clear lines be drawn so that both taxpayer and municipality can be on adequate notice and make adequate plans for the tax base and so that taxes due can be anticipated.

The township's motions for summary judgment are granted and taxpayer's cross-motions are denied as moot. ❑

In Our Legislature

Environmental Taxes

Aid to Highlands Region — P.L. 2004, c.120, enacted on August 10, 2004, and effective immediately, establishes a Highlands Municipal Property Tax Stabilization Board which will establish procedures for determining the valuation base of a qualified Highlands municipality and determine the amounts needed to compensate a municipality for the decline in vacant land value resulting from implementation of the Highlands Water Protection and Planning Act. It will use information provided by the Division of Taxation, which, in turn, will receive information from county boards of taxation based on reports they receive from municipal tax assessors. The Act establishes a fund to be used in providing State aid to qualified Highlands municipalities.

Health Enterprise Zones

P.L. 2004, c.139, was enacted on September 2, 2004, and will become effective March 2, 2005, except that the gross income tax deduction provision will apply to entire tax years after enactment, i.e. beginning January 1, 2005. This Act creates "health enterprise zones" (HEZ) in communities which, based on their economic status and the extent of professional health services available, have been designated as "underserved areas." It provides that qualified primary care physicians and dentists practicing in or within 5 miles of an HEZ will be allowed to deduct from gross income the portion of their net income allocable to qualified receipts of their practice in that geographic area. The Act also allows municipalities to exempt from real property tax structures housing a primary medical or dental care practice located in a HEZ. The amount of such exemption will be available as a rebate if the medical or dental care provider is a tenant, rather than owner, of the structure.

Inheritance/Estate Tax

Estates and Trusts Changes — P.L. 2004, c.132, enacted on August 31, 2004, and effective on the 180th day following enactment, makes important changes in the way estates and trusts must be administered in this State. It clarifies the meaning of critical terms, clarifies when "writings intended as wills" will be allowed, and makes changes in the provisions governing intestate succession.

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Miscellaneous

Phase-Out of Casino Complimentaries Tax — P.L. 2004, c.128, enacted on August 30, 2004, and effective immediately, provides for the gradual phase-out of the tax on casino "complimentaries" until the tax expires on June 30, 2009. It also transfers from the Division of Taxation to the Casino Control Commission the responsibility for administering the casino complimentaries tax, the casino adjusted net income tax, the multi-casino slot machine tax, the casino parking fee, and the $3 casino hotel occupancy fee.

Casino Reinvestment Development Act Changes — P.L. 2004, c.129, enacted on August 25, 2004, and effective immediately, extends the investment alternative tax obligation of casino licensees from 35 to 50 years, authorizes the Casino Reinvestment Development Authority to approve five additional "entertainment retail districts," and allows for grants to the Authority for 20 years from sales tax revenue generated in entertainment districts. ❑

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 $20,000 or more.

  2004 2005 ❑

from the director's desk

Electronic Filing Required for Some Tax Practitioners

All practitioners (firms and individuals) who prepared 200 or more 2003 New Jersey income tax resident returns are required to use one of the three NJ FastFile options — NJ WebFile, NJ TeleFile, or NJ ELF — to file 2004 New Jersey income tax resident returns for their clients. Practitioners who filed fewer than 200 New Jersey resident returns in 2003 are not required to file electronically for the 2004 tax year, but are strongly encouraged to do so.

Electronic filing benefits everyone — taxpayers, practitioners, and State government. Faster refunds, direct deposit, postdated payments, more accurate processing, and greater security of sensitive information are just some of the advantages offered by New Jersey's electronic tax filing systems. Practitioners who file their clients' State income tax returns electronically are providing them with the best possible service.

The 2004 "Opt Out" form (NJ-1040-O) for taxpayers who choose not to have their NJ-1040 filed electronically has recently been posted to our Web site at: www.state.nj.us/treasury/taxation/pdf/041040opt.pdf For more information on the Opt-Out Form, go to: www.state.nj.us/treasury/taxation/pdf/optoutmemo.pdf

Electronic filing fees are not subject to sales tax if included in the full invoice for a tax filing prepared by a tax practitioner. The electronic filing fee will be treated as part of the exempt professional service. Tax practitioners may state that the fee for electronic filing is included in the service charge.

For more information on this electronic filing requirement go to: www.state.nj.us/treasury/taxation/pdf/1040efiling.pdf

Additional information will be provided as the 2004 income tax filing season approaches. If you have questions you would like us to address, email them to us at taxation@tax.state.nj.us. Please enter "Practitioner E-Filing Requirement" on the subject line of your message.

Robert K. Thompson