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# New Jersey State Tax News

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*A quarterly Newsletter of tax items of interest,  
published by the New Jersey Division of Taxation*



## HELPFUL TELEPHONE NUMBERS

New Jersey Division of Taxation  
50 Barrack St., CN 269, Trenton, NJ 08646-0269

Taxpayer Information Service..... (609) 588-2200 / 1-800-323-4400  
• Speaker & Seminar Programs..... (609) 588-3179

Alcoholic Beverage Tax..... (609) 984-4121  
Corporate Mergers, Withdrawals & Dissolutions..... (609) 292-5323  
Corporate Tax Liens..... (609) 292-5271  
Director's Office..... (609) 292-5185  
Internal Security Unit..... (609) 292-9952  
Local Property Tax, Information..... (609) 292-7221  
Motor Fuels Tax, Refunds..... (609) 984-2530  
Public Utility Tax, Information..... (609) 633-2576  
Taxpayer Registration..... (609) 292-1730  
Transfer Inheritance Tax, Information..... (609) 292-5033, 292-5035 or 292-7147

## Regional Offices

(For assistance, taxpayers should visit the nearest  
office listed below or call 609-588-2200.)

<u>Regional Office</u>	<u>Address</u>
Fair Lawn	22-08 Route 208, South Fair Lawn
Newark	124 Halsey St., 2nd Floor Newark
Northfield	1915-A New Road (Route 9) Northfield
Sea Girt	2100 Highway 35, Suite C Sea Girt
Trenton	50 Barrack St., Trenton
Turnersville	390 Hurffville-Cross Keys Road Center Square Shopping Center P.O. Box 8410, Turnersville
Vineland	80 South Main Road, Suite 112 Vineland

# APRIL, MAY, JUNE 1993

remittances must be received by due date.)

## May 1993 (cont.)

- 20 **New Jersey/New York Combined State Sales and Use Tax** - Monthly remittance for sales tax collected in previous month (Form ST-21).
- 20 **Sales and Use Tax** - Monthly remittance for sales tax collected in previous month (Form ST-51).
- 20 **Spill Compensation and Control Tax** - Monthly return for previous month's activity (Form SCC-5).
- 20 **Tobacco Products Wholesale Sales and Use Tax** - Monthly return (Form TP-20) with payment for previous month's activity.
- 22 **Motor Fuels Tax** - Monthly report of gallons of fuel sold or used. (Distributors use Form GA-1D and jobbers use Form GA-1J). Monthly report (Form MFT-10) by seller-user of special fuels for sales and/or use in the previous month.
- 25 **Petroleum Products Gross Receipts Tax** - Monthly remittance for previous month's activity (Form PPT-41).
- 31 **Gross Income Tax** - Employer's semimonthly deposit of withholdings (Form NJ-500-S).

## June 1993

- 10 **Cigarette Tax** - Informational report by wholesalers for previous month's purchases and sales (Form CWIP-1 and CWIP-2).
- 15 **Corporation Business Tax** - Annual return for accounting period ending February 28 (Form CBT-100). Installment payment of estimated tax for fourth, sixth, ninth, or twelfth month of current tax year (Form CBT-150).
- 15 **Gross Income Tax** - Employer's semimonthly (Form NJ-500-S) or monthly (Form NJ-500) deposit of withholdings.
- 20 **Cigarette Tax** - Monthly report of cigarettes sold or used by distributors, manufacturers, representatives, and consumers (Form CR-1 or CNR-1).
- 20 **Combined Atlantic City Luxury Tax/State Sales Tax** - Monthly return (Form ST-250) for Atlantic City luxury tax collected for previous month.
- 20 **Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax** - Monthly return (Form UZ-50) for reporting sales and use tax collected at reduced rate for the previous month under the Urban Enterprise Zones Act.
- 20 **New Jersey/New York Combined State Sales and Use Tax** - Monthly remittance (Form ST-21) for sales tax collected in previous month.
- 20 **Sales and Use Tax** - Monthly remittance for sales tax collected in previous month (Form ST-51).
- 20 **Spill Compensation and Control Tax** - Monthly return for previous month's activity (Form SCC-5).
- 20 **Tobacco Products Wholesale Sales and Use Tax** - Monthly return (Form TP-20) with payment for previous month's activity.
- 22 **Motor Fuels Tax** - Monthly report of gallons of fuel sold or used. (Distributors use Form GA-1D and jobbers use Form GA-1J). Monthly report (Form MFT-10) by seller-user of special fuels for sales and/or use in the previous month.
- 25 **Petroleum Products Gross Receipts Tax** - Monthly remittance for previous month's activity (Form PPT-41).
- 30 **Gross Income Tax** - Employer's semimonthly deposit of withholdings (NJ-500-S).

# NEW JERSEY TAX CALENDAR

(Note: To avoid penalty and interest, all returns

## April 1993

- Apr. 10 Cigarette Tax** - Informational report by wholesalers for previous month's purchases and sales (Form CWIP-1 and CWIP-2).
- Apr. 15 Corporation Business Tax** - Annual return for accounting period ending December 31 (Form CBT-100). Installment payment of estimated tax for fourth, sixth, ninth, or twelfth month of current tax year (Form CBT-150).
- Apr. 15 Gross Income Tax** - 1991 returns due for all individuals and fiduciaries (Form NJ-1040 and 1041). Individual installment of estimated tax (Form NJ-1040-ES). Employer's semimonthly (Form NJ-500-S), monthly or quarterly (Form NJ-500) deposit of withholdings.
- Apr. 20 Cigarette Tax** - Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers (Form CR-1 or CNR-1).
- Apr. 20 Combined Atlantic City Luxury Tax/State Sales Tax** - Monthly return (Form ST-250) for Atlantic City luxury tax collected for previous month.
- Apr. 20 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax** - Monthly return (Form UZ-50) for reporting sales and use tax collected at reduced rate for the previous month under the Urban Enterprise Zones Act.
- Apr. 20 New Jersey/New York Combined State Sales and Use Tax** - Quarterly return (Form ST-20) for sales tax collected in previous quarter.
- Apr. 20 Sales and Use Tax** - Quarterly return (Form ST-50) for sales tax collected in previous quarter.
- Apr. 20 Spill Compensation and Control Tax** - Monthly return for previous month's activity (Form SCC-5).
- Apr. 20 Tobacco Products Wholesale Sales and Use Tax** - Monthly return (Form TP-20) with payment for previous month's activity.
- Apr. 22 Motor Fuels Tax** - Monthly report of gallons of fuel sold or used. (Distributors use Form GA-1D and jobbers use Form GA-1J). Monthly report (Form MFT-10) by seller-user of special fuels for sales and/or use in the previous month.
- Apr. 25 Petroleum Products Gross Receipts Tax** - Quarterly return (Form PPT-40) for tax due from previous quarter.
- Apr. 30 Gross Income Tax** - Employer's semimonthly deposit of withholdings (Form NJ-500-S); or monthly, quarterly deposit (Form NJ-500).

## May 1993

- May 10 Cigarette Tax** - Informational report by wholesalers for previous month's purchases and sales (Form CWIP-1 and CWIP-2).
- May 15 Corporation Business Tax** - Annual return for accounting period ending January 31 (Form CBT-100). Installment payment of estimated tax for fourth, sixth, ninth, or twelfth month of current tax year (Form CBT-150).
- May 15 Gross Income Tax** - Employer's semimonthly (Form NJ-500-S) or monthly (Form NJ-500) deposit of withholdings.
- May 20 Cigarette Tax** - Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers (Form CR-1 or CNR-1).
- May 20 Combined Atlantic City Luxury Tax/State Sales Tax** - Monthly return (Form ST-250) for Atlantic City luxury tax collected for previous month.
- May 20 Combined State Sales and Use Tax/Urban Enterprise Zone Sales Tax** - Monthly return (Form UZ-50) for reporting sales and use tax collected at reduced rate for the previous month under the Urban Enterprise Zones Act.

The Division denied the deduction, citing N.J.A.C. 18:7-5.13(b). The court rejected the plaintiff's assertion that the plain meaning of N.J.S.A. 54:10A-4(k)(6) permitted the deduction and found nothing in the legislative history to indicate an intent to extend the net operating loss (NOL) from a merged corporation to a survivor corporation in a merger.

N.J.S.A. 54:10A-4(k)(6)(A) and (B) permitted NOL carryforwards limited to a single taxpaying entity and did not permit one taxable entity to assume the tax deductions of another entity after a statutory merger, according to the court. N.J.S.A. 54:10A-4(k)(6)(D) added further restrictions without implicitly authorizing NOL carryforwards in merger situations.

The court found that Federal case law, Internal Revenue Code and New Jersey Business Corporation Act provisions were not applicable. Finally, the court ruled that N.J.A.C. 18:7-5.13(b), adopted in 1986, was effective for tax years ending after June 30, 1984, as a valid interpretation of the statute.

**Richard's Auto City, Inc. v. Director, Division of Taxation** - No. 12-25-2933-90CB (Tax Court, November 25, 1992).

**GROSS INCOME TAX - Calculating Credit for Taxes Paid to New York on S Corporation Income** - Taxpayers received a notice of adjustment from the Division of Taxation based on a miscalculation of the credit for tax paid to New York on income from a Subchapter S corporation.

At issue was whether an S corporation distribution made in 1987 was from current or prior earnings of the corporation.

The credit is allowed only for taxes paid to the other jurisdiction in the same year. The credit cannot be allowed on prior earnings because the S corporation earnings for prior years were taxed in prior years.

The Division of Taxation had applied a "first in, first out" (FIFO) treatment to determine whether the 1987 distribution was from current or prior year earnings. The taxpayer contended that a "last in, first out" (LIFO) treatment should have been applied.

However, in this instance, the corporation had made the 1987 distribution prior to year end and the corporation had accumulated earnings in excess of the distribution.

Thus, the Division contended, logical accounting principles dictated that the distribution had been made from prior earnings.

The Tax Court rejected the taxpayers' arguments and upheld the assessment, along with the use of a LIFO treatment of the corporation's earnings. The court explained that the Laurites had failed to demonstrate that the income at issue was distributed from current earnings.

**Laurite v. Director, Division of Taxation** - 12 N.J. Tax 483 (Tax Court, June 1992).

**LOCAL PROPERTY TAX - Extensions for Certain Revaluations - P.L. 1993, c. 101** (approved April 3, 1993) permits municipalities to spread over a three-year period the tax impact of extreme increases in tax assessments resulting from revaluation. The law restricts a municipal revaluation relief program to "areas in need of rehabilitation" and defines a "revaluation relief credit" as an exemption to bring the legislation under the tax abatement and exemption provisions for areas in need of rehabilitation permitted by the New Jersey Constitution.

## **IN OUR COURTS**

**CORPORATION BUSINESS TAX - Division's Section 8 Computation Was Fair - Kettler Realty Corporation**, a New Jersey corporation authorized to do business in Virginia and having New Jersey and Virginia source income from investment real estate, contested a New Jersey Corporation Business Tax deficiency assessment for 1983 to 1985. The Division had determined that taxpayer did not maintain a regular place of business in Virginia and had allocated 100 percent of its income to New Jersey, but provided a credit under N.J.S.A. 54:10A-8 for corporate income tax paid to Virginia.

The Division included in taxpayer's income capital gain income from the sale of a Virginia commercial building owned by the taxpayer. Kettler contends that this income should have been excluded from the New Jersey return and modified by the credit.

The court determined that the issue was not whether the taxpayer maintained a regular place of business in Virginia, but rather the fairness of the Division's Section 8 adjustment. The court said the fairness can be judged by comparing the methods used by the taxpayer and the Division with the three-factor allocation formula. The court found that since the Division followed the dictates of Section 8 and derived a New Jersey income tax lower than would have resulted from application of the allocation formula, the Division could not be said to have acted unfairly.

**Kettler Realty Corporation v. Director, Division of Taxation - No. 07-14-8867-90CB** (Tax Court, June 30 1992).

**CORPORATION BUSINESS TAX - N.J.A.C. 18:7-5.13(b) Upheld - Richard's Auto City, Inc.**, an auto dealership, merged with Richard Catena, Inc., its leasing entity, with Richard's Auto City as the surviving corporation. The operations of the two corporations continued essentially the same after the merger except that the former corporate entity of Richard Catena, Inc. was a leasing department of Richard's Auto City, Inc.

In 1986, Richard's Auto City, Inc. claimed as a deduction the net operating losses of \$1,574, 294 incurred by Richard Catena, Inc. during the tax years before the merger.

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**SALES AND USE TAX - Computer Services** - The Division answered questions from a computer store owner who asked whether sales tax would be applicable to the following situations:

- Rental of personal computer time for customers to do their own takes on a do-it-yourself basis. PC workstations are available that customers use and pay for the time they used/rented the computer for. Answer: Rentals (28 days or less) are subject to sales tax under N.J.S.A. 54:32B-3(a).

- Consulting services to personal computer users on how to use various software or how to accomplish their tasks.

Answer: Consulting services are not taxable under the sales tax law. See N.J.S.A. 54:32B-2(e)(4)(a).

- Sending and receiving faxes.

Answer: Fax transmission services are subject to sales tax under N.J.S.A. 54:32B-3(f).

- Small-volume copying and printing services.

Answer: Copying and printing services are taxable under N.J.S.A. 54:32B-3(a) or 3(b)(1).

- Customized programming services.

Answer: Programming services are not taxable. See N.J.S.A. 54:32B-2(e)(4)(A).

- Sales of computer hardware, software (canned) and peripherals. Answer: All of these sales would be taxable under N.J.S.A. 54:32B-3(a).

**SALES AND USE TAX - Hazardous Materials Spill** - A labor charge made for cleaning up a hazardous material spill (hazardous materials as designated under New Jersey Department of Environmental Protection regulations) is not subject to sales tax in New Jersey. However, equipment purchases, equipment rentals and materials used in the cleanup would be subject to sales tax.

## HERE AND THERE

### IN OUR LEGISLATURE

**GROSS INCOME TAX - Ride-Sharing Program Incentives** - P.L. 1993, c. 108 (approved April 16, 1993) provides employee tax incentives for participation in the ride-sharing program to be instituted under the "New Jersey Traffic Congestion and Air-Pollution Control Act" (P.L. 1992, c. 32; C.27:26A-1 et seq.). The law requires that up to \$720 per year in employer-provided commuter benefits be excluded from the employee's income for State gross income tax purposes. The dollar amount, which is subject to inflationary adjustments, is keyed to allowances set forth in the "National Energy Policy Act," P.L. 102-486.

## **TAX BRIEFS**

**CORPORATION BUSINESS TAX - Allocation** - A business asks if allocation is permitted for a New Jersey corporation that:

- 1) Maintains a regular place of business in New Jersey.
- 2) Maintains an office in Pennsylvania for the purpose of leasing trailers, tractors and drivers, as well as employing drivers.
- 3). Files a Pennsylvania Corporate Tax Return and pays taxes to Pennsylvania.

The Division replied that a corporation may allocate if it maintains a regular place of business outside the State (N.J.S.A. 54:10A-6). A regular place of business is defined in N.J.A.C. 18:7-7.2(a) as "any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance." (Factors in making the determination are listed in the regulation.)

It is assumed that the corporation in this case is responsible for the ownership or rental expenses of the office and that an employee of the corporation would be in attendance in this type of office. Therefore, it would appear that the corporation is maintaining a regular place of business outside of New Jersey and would be entitled to allocate. However, a field office that is not regularly maintained, occupied and used in the taxpayer's business would not constitute a regular place of business under N.J.A.C. 18:7-7.2(a)4.iv.

**GROSS INCOME TAX - Tug Boat Workers** - A taxpayer asked for clarification of income taxes imposed on individuals who work on tug boats that travel between States and foreign countries. The Division pointed out that the full amount of compensation received by a nonresident seaman is includable in New Jersey source income if this compensation were earned for services rendered as an employee on a vessel operating exclusively within New Jersey.

Residents are taxed on their full income no matter where earned. Where income to a nonresident seaman is attributable to employment on ships operating exclusively between New Jersey ports and foreign ports, or ports of other states, it is not considered to be New Jersey source income.

A seaman who is in New Jersey simply because his ship has entered a New Jersey port for the purpose of foreign or interstate trade is not subject to the gross income tax for income earned during that period.

For a nonresident seaman employed on a vessel operating between New Jersey and New York, income is derived partly in each State. Thus, one half of such income is deemed to be derived from New Jersey sources and is subject to the gross income tax.



## 1992 TAX LAWS

CH.	DATE	SYNOPSIS	R.S.	BILL
11	May 21	Reduces the sales and use tax rate from 7% to 6% on July 1, 1992.	54:32B-3	A-1
16	June 10	"Economic Recovery Fund Act"	34:1-10	S-2
23	June 22	Revises motor fuels tax enforcement laws	54:39-57.1	A-44 (3R)
24	June 26	Excludes certain business property from local property tax	54:4-1.13	S-332 (1R) /WGR
32	June 30	Enacts "Traffic Congestion and Air Pollution Control Act"	27:26A-1	S-35 (3R)
39	June 30	Provides estate tax installment payment at time of federal estate tax filing	54:38-5	A-1516 (1R)
75	July 31	Establishes "State Revenue Forecasting Advisory Commission"	52:9H-31	S-583 (1R)
112	Sept. 29	Provides for a one-time tax refund for the Vietnam Veterans' Memorial and Agent Orange Funds	T&E	S-42 (1R)
140	Nov. 16	Requires that certain tax payments be made by electronic funds transfer	54:48-4.1	A-1473 (1R)
148	Nov. 20	Eliminates imposition of State share of realty transfer fee in certain cases	13:19-16.1	S-1168 (1R)
150	Nov. 24	Postpones for 4 years "sunset" provision of tax on sale of litter-generating products	13:1E-99.1	A-805/764 Acs
165	Dec. 2	"Tourism Improvement and Development District Act"	40:54D-1	A-1053 Acs (1R)
172	Dec. 8	Authorizes use of private collection agents for State taxes	54:49-12.2	A-19 (1R)
173	Dec. 10	Provides that certain unclaimed funds be retained by counties	46:30B-74	S-48 Scs
175	Dec. 10	Establishes "Taxpayers' Bill of Rights"	54:49-15.1	A-385/ 1474 (1R)
188	Dec. 16	Establishes new and increases various existing fees to fund alcoholic beverage law enforcement	54:49-15.1	A-1863 Aca
204	Dec. 24	Permits certain qualified investment funds to invest in financial futures	54A:6-14.1	A-1276 Sca
10	Jan. 15, 1993	Exempts from the sales and use tax coin-paid charges subject to the local calling rate for coin-operated telecommunications devices ; provides special tax table	54:32B-2	A-1133 (1R)

County	Name/Address	Seizure Date	Business type & est. amt. owed*	Status
Atlantic	BGR, Inc., t/a Entertainers Club, 169 Westminster Ave., Atlantic City	3/31/93	Bar \$25,228	Closed
Bergen	Remodelers Supply & Design Center, Inc., t/a International Kitchen & Bath Gallery, 474 Cedar Lane, Teaneck	1/26/93	Remodeling/supplies; showroom & offices \$30,635	Closed
Burlington	Colin F. Tait, Inc., 40B Route 38, Hainesport	11/24/93	Appliances \$90,843	Reopened 2/24/93
Burlington	Fred S. Meeks, 615 Garfield Ave., Palmyra	2/9/93	Auto repair \$24,584	Reopened 2/19/93
Burlington	Mohan Village Paint & Hardware Co., Inc., Marlton Square Shopping Center, Route 70, Marlton	2/17/93	Hardware \$19,906	Reopened 2/19/93
Camden	Erlton Liquors of Cherry Hill, Inc., t/a Erlton Liquor Store, 811 Route 70, Cherry Hill	1/20/93	Liquor store, \$49,723	Bankrupt 1/27/93
Essex	Central Auto Collision, 167 Central Ave., East Orange	2/2/93	Garage, auto body repair \$34,557	Reopened 2/18/93
Gloucester	Eunice Warner, t/a Peachtree Kennels, Fish Pond Road, Glassboro	01/14/93	Dog kennel and grooming \$23,853	Reopened 1/29/93
Hudson	B&S Service of Bayonne, Inc., 687 Avenue A, Bayonne	2/8/93	Service station, auto repair \$32,796	Reopened 2/10/93
Hudson	Outrider Enterprises, Inc., t/a Domino's Pizza, 1259 Patterson Plank Road, Secaucus	3/25/93	Pizza parlor \$179,860	Closed
Monmouth	Sea Girt Ocean View, t/a Yankee Clipper, 1 Chicago Blvd., Sea Girt	2/11/93	Restaurant \$61,500	Reopened 2/11/93
Ocean	Moynalty, Inc., t/a Cedar Gate Inn, 292 Princeton Ave., Brick	11/18/92	Liquor store, bar \$377,039	Closed
Ocean	Ocean Gate Auto Body Specialist, Inc., 1001 Ocean Gate Ave., Ocean Gate	3/9/93	Auto body repair \$43,328	Closed
Sussex	McGuigan Wine & Spirit Co., Inc., t/a Hampton Liquor Locker, Route 206 North Ames Shopping Center, Newton	3/24/93	Liquor store, \$42,954	Closed

\*Estimated amount owed is amount of the judgment filed against the taxpayer by the Division of Taxation. This includes state taxes (primarily sales or gross income tax withholding) plus penalty, interest and cost of collection.

**Certificates of Debt** - After demands for payment were unsuccessful, the Division entered 802 Certificates of Debt in Superior Court totaling \$29.5 million. A certificate of debt has the same force and effect as a docketed judgment, which places a lien on any property a taxpayer owns. This action prevents a taxpayer from transferring or selling the property until the lien is satisfied.

**Contact and Demand** - Prior to the filing of Certificates of Debt, the Division collected \$33.5 million through normal collection procedures, including field visits, phone contacts and payment demand letters.

**Levies** - The Division collected \$1.6 million by levying against 320 bank accounts. Once a judgment is placed against a taxpayer, the Division can serve warrants on banks against taxpayer accounts to collect the taxes due.

**Settlements** - Another \$1.9 million was collected by closing 160 cases just before seizure in which the taxpayer paid taxes due rather than have his or her business closed.

**Tax Seizures** - After the Division has exhausted all other means to collect the state taxes due from vendors that cannot or will not pay, the business can be "seized" (closed) until some arrangement is made for payment. When a seizure occurs, the Division closes the business and seizes any tangible assets such as inventory, machinery, furniture, etc.

If the liability of the closed firm is not resolved, the Division can sell the business assets at public auction after 30 days. If the amounts realized from the auction are not enough to satisfy the entire debt, the investigators can seize the personal assets of the responsible officers where trust funds (sales tax or gross income withholding taxes) are involved.

A total of 21 businesses were scheduled for seizure during the quarter ending March 1993. Of these, 14 businesses were actually closed and seven were left open, resulting in collections of nearly \$400,000. A listing of seized businesses follows:

### **DIVISION OF TAXATION SEIZURES** **(JANUARY-MARCH 1993)**

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

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guilty to charges stemming from a February 1991 indictment. The former securities investor, stockbroker, and land developer pleaded guilty to 19 counts, including fraud, forgery and theft, along with failing to file gross income tax returns for 1987 and 1988. The investigation that led to the indictment and plea revealed that Friedland owed income tax of \$5,220 for 1987 and \$19,591 for 1988.

**Feb. 2 - Mercon Industries, Inc.**, formerly of Pennsauken, Camden County, and the corporate president, John A. Mercer of Atco, also Camden County, pleaded guilty to charges of failing to file sales tax and gross income tax withholding returns and failing to remit \$107,447 of sales tax and \$147,900 of gross income taxes due from May 1, 1984, to September 15, 1986.

**Feb. 2 - Mark Grubman**, president of Vintage Investments, Inc. and Sea Island Properties & Investments, Inc., both of Asbury Park, Monmouth County, pleaded guilty to charges of failing to remit sales tax from July 1, 1990, to June 30, 1992. In one case, Vintage had operated a nightclub, trading as the "Fast Lane," which had not registered with the Division of Taxation and had failed to remit \$70,000 in sales tax. In the other matter, Sea Island had operated a nightclub, trading as "T-Birds," and failed to remit about \$25,000 during that same period. The pleas were the result of a joint investigation with the State Police Alcohol Beverage Control Enforcement Unit and the Division of Criminal Justice.

**Feb. 2 - Tsunami, Inc.**, a corporation controlled by Doctors Aristotle Lekakor and Frank Vozos, pleaded guilty to charges stemming from their failure to remit about \$50,000 in sales tax from July 1, 1990, to March 31, 1991. The corporation operated a night club, "The Tsunami Club," in Long Branch, Monmouth County. This plea was the result of a joint investigation with the State Police Alcohol Beverage Control Enforcement Unit and the Division of Criminal Justice.

**Feb. 19 - Gutwein-Guenther Enterprises, Inc.**, entered into a plea agreement. The corporation had operated a restaurant in Oaklyn, Camden County, which had failed to remit sales tax or gross income tax withholdings for the period June 30, 1989, to December 31, 1990. As part of the plea, the corporation pleaded guilty to charges of misapplication of entrusted funds and paid \$82,278 to cover the unremitted tax.

## **CIVIL COLLECTION ACTIONS**

Compliance Activity personnel collected a total of \$37.4 million for the quarter ending March 1993. Following is a summary of enforcement actions:

## **CORPORATE SURTAX OF 0.375% IMPOSED**

A surtax of 0.375% is being levied on corporate net income for the tax year 1993 by the New Jersey Division of Taxation under P.L. 1986, c. 144. The surtax affects returns covering the accounting or privilege periods ending on or after July 31, 1993, but not later than June 30, 1994 (the 1993 CBT return).

The 0.375% surtax, which is in addition to the 9% franchise tax paid by taxpayers under N.J.S.A. 54:10A-5(c), represents no change from the surtax for tax year 1992. This is also the sixth and final certification year under provisions of P.L. 1986, c. 144.

The surtax is subject to all the penalty and interest provisions related to estimated tax payments, late payments and late filings.

If you desire additional information, contact the Division of Taxation, Taxpayer Services Branch, CN 281, Trenton, NJ 08646, or call (609) 588-2200.

## **DIVISION OF TAXATION ENFORCEMENT SUMMARY FOR JANUARY-MARCH 1993**

### **CRIMINAL ACTIONS**

**Jan. 19** - William J. Duffy of Hammonton, Atlantic County, was sentenced to five years' probation and ordered to make full restitution of the tax. He earlier had pleaded guilty to charges of failing to file gross income tax returns for 1990 and 1991 and failing to remit the tax of \$4,205.

**Jan. 27** - Morgan Tracy, trading as "Morgan Gallery" of New Brunswick, Middlesex County, pleaded guilty to charges of failing to remit \$10,700 in sales tax for the period June 30, 1987, to June 30, 1990.

**Jan. 29** - Joseph Mannino of Somerdale, Camden County, owner/operator of "Joe's Pizza" in Medford, who had previously been found guilty of failing to remit sales tax, was ordered to make restitution of \$41,591 in sales tax and pay \$60 to the Violent Crimes Compensation Board, to serve 364 days in jail, to render 100 hours of community service and to serve five years' probation.

**Feb. 16** - Anaconda, Inc., trading as "Spanky McFarland," a bar and restaurant in Ocean Township, Ocean County, and the corporate president, Joseph P. Miller, of Spring Lake, Monmouth County, were indicted for allegedly failing to remit \$98,068 of sales tax and \$7,638 of gross income tax withholding for the period April 15, 1989, to July 15, 1992.

**Feb. 18** - Robert Friedland of Hamilton Township, Mercer County, pleaded

## UNDERPAYMENT INTEREST 11.0% FOR SECOND QUARTER OF 1993

All New Jersey taxes were amended by the Amnesty Law (P.L. 1987, c. 76) on December 9, 1987, to incorporate the interest rate imposed for underpayments by N.J.S.A. 54:48-2 of the State Tax Uniform Procedure Law. From December 9, 1987 through June 30, 1993, interest was based on the average predominant prime rate as quoted by commercial banks to large businesses as of the first business day of the calendar quarter immediately preceding the quarter within which the tax or payment became due. The applicable rate was adjusted on the first business day of each quarter thereafter over the life of the debt.

(IMPORTANT: Please note that the computation of interest has been changed by the Taxpayers' Bill of Rights effective July 1, 1993. This change is explained under "Penalty and Interest," page 95.) Thus, the following interest rates apply only to underpayments during the following periods:

**For payments and tax due on and after 12/9/87 through 6/30/93:**

Beginning of Quarter in which Payment Comes Due	Prime Rate on First Business Day of Preceding Quarter		Interest Rate Added by Statute		Interest Rate Used to End of Quarter
January 1, 1988	8.75%	+	5%	=	13.75%
April 1, 1988	8.75%	+	5%	=	13.75%
July 1, 1988	8.50%	+	5%	=	13.50%
October 1, 1988	9.00%	+	5%	=	14.00%
January 1, 1989	10.00%	+	5%	=	15.00%
April 1, 1989	10.50%	+	5%	=	15.50%
July 1, 1989	11.50%	+	5%	=	16.50%
October 1, 1989	11.00%	+	5%	=	16.00%
January 1, 1990	10.50%	+	5%	=	15.50%
April 1, 1990	10.50%	+	5%	=	15.50%
July 1, 1990	10.00%	+	5%	=	15.00%
October 1, 1990	10.00%	+	5%	=	15.00%
January 1, 1991	10.00%	+	5%	=	15.00%
April 1, 1991	9.50%	+	5%	=	14.50%
July 1, 1991	9.00%	+	5%	=	14.00%
October 1, 1991	8.50%	+	5%	=	13.50%
January 1, 1992	8.00%	+	5%	=	13.00%
April 1, 1992	6.50%	+	5%	=	11.50%
July 1, 1992	6.50%	+	5%	=	11.50%
October 1, 1992	6.50%	+	5%	=	11.50%
January 1, 1993	6.00%	+	5%	=	11.00%
April 1, 1993	6.00%	+	5%	=	11.00%

municipalities in a county of the sixth class (Cape May County) to create 1) a tourism improvement and development district; and 2) an authority to undertake tourism projects, such as convention center facilities.

Wildwood, Wildwood Crest and North Wildwood have adopted ordinances creating a tourism improvement and development district and authorizing the Tourism Sales Tax.

**Tourism Related Sales Tax** - To provide funding for tourism projects, the law authorizes the municipalities to levy an additional 2% Tourism Sales on "predominantly tourism related sales" that occur within the municipalities. "Predominantly tourism related sales" include the following items (if also taxable under the Sales and Use Tax Act):

- Hotel, motel and boarding-house lodging;
- Food and drink sold by restaurants, taverns and other similar establishments, for consumption on or off premises (including mobile vendors and other sellers of prepared food), or by caterers (but not including vending machine sales); and
- Admission charges to any place of amusement, including charges for admission to amusement rides, sporting events and exhibitions, dramatic or musical arts performances, motion picture theaters, and cover charges in nightclubs and cabarets.

**Registration** - Businesses subject to the Tourism Sales Tax must register with the Division of Taxation to collect the tax and receive the appropriate return forms and a Tourism Sales Tax Certificate of Authority. This new Certificate of Authority must be displayed at the place of business together with the Sales Tax Certificate of Authority.

**Remitting Sales Tax** - Businesses collecting the 2% Tourism Sales Tax must file the Cape May Tourism Sales Tax Return (Form ST-350) monthly and will no longer file the Sales and Use Tax Monthly Remittance (Form ST-51) and Sales and Use Tax Quarterly Return (Form ST-50) except for this third quarter due October 20, 1993.

**Tourism Development Fee** - The new law also authorizes Wildwood, Wildwood Crest and North Wildwood to impose and collect a Tourism Development Fee on certain businesses not subject to the Tourism Sales Tax. The schedule of rates is established by each municipality and will be collected by the municipality annually.

Taxpayers with questions should call the New Jersey Tax Hotline at (609) 588-2200 to speak to a Division representative.

## **DIVISION OF TAXATION ADOPTS VOLUNTARY DISCLOSURE POLICY**

*The following Voluntary Disclosure Policy has been adopted by the New Jersey Division of Taxation:*

The Division will accept delinquent tax returns from any taxpayer who willingly comes forward and produces the delinquent returns and full payment of the liability plus interest. In these instances, the taxpayer will not be prosecuted criminally and will avoid the imposition of civil penalties. This presupposes that the taxpayer contacts the Division prior to any contact by the Division of the taxpayer for returns, the conducting of an audit, a subjectivity inquiry, or any civil or criminal investigation.

Failure to contact the Division first will result in the imposition of full penalty and interest charges and criminal prosecution if warranted when the Division makes contact and determines that a taxpayer was responsible for the filing of a return.

The Division is currently working on a number of tape matches aimed at ferreting out individuals who have failed to file New Jersey Gross Income Tax returns. These tape matches are first conducted on a limited basis to test the value of the tape source for results. Once found to be an effective tool, wider usage of the matches is planned. The Division has a large number of sources that will be tested over the next 18 months that extend to businesses as well as individuals.

## **WILDWOODS TO COLLECT 2% TOURISM SALES TAX**

*The following notice was sent to businesses in Wildwood, Wildwood Crest and North Wildwood by the Division of Taxation on May 24, 1993:*

Effective August 1, 1993, certain businesses in Wildwood, Wildwood Crest and North Wildwood will be required to collect an additional 2% Tourism Sales Tax. The tax is in addition to the 6% State sales tax. Sales of the items listed later in this article will be subject to a total sales tax of 8%.

Revenues from the Tourism Sales Tax will be used to finance convention center activities and projects in the "Tourism Improvement and Development District" that has been established under P.L. 1992, c. 165.

(NOTE: In the Winter 1992 issue of State Tax News (Vol. 21, No. 4), the article headlined, "Tourism Improvement Act Authorizes 2% Sales Tax.," contains an error. The last sentence on page 77 is incorrect in stating that sales of items subject to this new tax are those made between May 1 and September 30. The tax is effective year-round.)

This new law authorizes any two or more contiguous (neighboring)



### **Appeal Rights**

If you disagree with a determination made by the Division, you may request an informal administrative conference with the Conference and Appeals Branch of the Division of Taxation. You may have an attorney and/or accountant with you at the conference. The Taxpayers' Bill of Rights increases the time to appeal from 30 days to 90 days.

### **Penalty and Interest**

New provisions lower the interest rates and ensure that the first notice sent by the Division is the "best deal" for all taxpayers.

- **First Bill the Cheapest** - For return periods ending on and after July 1, 1993, generally there will be no late payment penalty imposed on the first notification of an underpayment. However, the late filing (5% per month up to 25%) will be imposed.

- **New Interest Calculation** - For return periods beginning on and after July 1, 1993, the annual interest rate is 3% above the prime rate. Interest is imposed for every month or fraction of a month the tax is unpaid. Interest will no longer be compounded daily, but it will be compounded annually at the end of each year. For return periods beginning before July 1, 1993, interest at 5% above the prime rate, compounded daily, will be calculated up to June 30, 1993. The new interest rates will then be assessed on the outstanding balances as of July 1, 1993, until the debt is paid.

- **Interest Paid on Refunds for All Taxes** - Interest at the prime rate, compounded annually, will be paid on refunds made by the Division six months after the filing date, the due date of the return, the date the refund claim was filed or the date the tax was paid (whichever is later). This provision applies to all New Jersey taxes administered by the Division and will affect tax returns due on and after January 1, 1994.

### **For More Information**

For more information about the Taxpayers' Bill of Rights, call the Division's automated information and assistance service at 800-323-4400 and request the following Taxpayers' Bill of Rights Information sheets:

**TBR-1, Your Interview Rights; TBR-2, The Audit Process; TBR-3, The Collection Process; TBR-4, Postmark Date; TBR-5, General Rights; TBR-6, Uniform Tax Procedures; TBR-7, General Billing Procedures; TBR-8, Penalty and Interest Rules; TBR-9, Appeal Rights; TBR-10, Refund Rights.**

For general State tax questions, call the Division's Tax Hotline at (609) 588-2200, or write to the Division of Taxation, Taxpayer Services Branch, Office of Communication, CN 281, Trenton, NJ 08646-0281.

recording will be made available to you for a small fee.

- **Registered or Certified Mail** - All notices of assessment related to final audits and all "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

- **Payment Agreements** - The Director of the Division of Taxation has the authority to enter into payment agreements with taxpayers. Request for payment agreements will be reviewed on a case-by-case basis. If a payment agreement is set up for you, it will include your unpaid tax, any penalties you owe and interest. You should be aware that although a payment agreement extends the time to pay your liability, interest continues until the liability is paid in full.

- **Legal Action Against the Division** - If a Division employee knowingly and recklessly disregards any tax law or fails to release a lien, a taxpayer may sue for damages.

- **Award of Court Costs** - You may be awarded up to \$15,000 in court costs if the Tax Court determines that the Division initiated court proceedings without reasonable cause. Likewise, the Division can recover costs if you initiate proceedings without basis.

### **Tax Returns and Refunds**

The new law provides consistent treatment for assessments and refunds. A taxpayer has always had the right to claim a refund for overpayment of taxes by filing a return. The Taxpayers' Bill of Rights standardizes the time for claiming a refund for most taxes administered by the Division of Taxation. It also establishes a consistent treatment of postmark date for all State taxes.

- **Standardized Time for Refunds and Assessments** - There is a four-year statute of limitations (time allowed by law) for both refunds and assessments for tax returns with an original due date on and after July 1, 1993, except where a shorter time period is specified in the tax law (i.e., income tax). If you and the Division sign an agreement extending an assessment period, the time for filing a refund claim is also extended.

- **Postmark Date** - All New Jersey returns postmarked on or before the due date of the return are considered to have been filed on time. Tax returns postmarked after the due date are considered to be late. When a return is postmarked after the due date, the filing date for that return is the date the return was received by the Division, not the postmark date of the return. Interest on unpaid liabilities is assessed from the due date of the return.

### **Tax Assessment**

The Taxpayers' Bill of Rights standardizes the time period for assessing unpaid taxes. In general, the Division has four years from the date you filed your return to assess additional taxes. There is no time limit if you did not file your tax return, or if you file a false or fraudulent return.

# TAXPAYERS' BILL OF RIGHTS ENSURES FAIR TREATMENT

The New Jersey Taxpayers' Bill of Rights ensures that 1) all taxpayers are accorded the basic rights of fair and equitable treatment under the law; and 2) all taxpayers receive the information and assistance they need to understand and meet their State tax responsibilities. This bill also establishes taxpayers' rights and obligations regarding Division of Taxation procedures for refunds, collections and appeals.

As pointed out in the last issue of State Tax News, some of the provisions became effective January 1, 1993, while most other provisions are effective July 1, 1993. This article gives you an overview of how the Taxpayers' Bill of Rights legislation will affect you in your dealings with the Division.

## AN OVERVIEW

### Improved Service

- **Taxpayers' Right to Know** - As a taxpayer, you have the right to obtain information about:
  - the tax implications of any situation or transaction
  - your tax liability and how it was determined
  - any notice you receive from the Division
  - your responsibilities and rights
- **Responsiveness** - The Division of Taxation will respond to your questions within a reasonable time period.
- **Statements and Notices** - All notices you receive from the Division will clearly identify the purpose of the communication and tell you how you should respond to the statement or notice.
- **Information Provided to Taxpayers** - The Division has prepared statements that explain in simple, non-technical terms taxpayers' rights and procedures to follow when disagreeing with assessments or protesting actions of the Division. This information will be available to all taxpayers dealing with the Division.
- **Reliance on the Division's Written Advice** - Penalties and interest will be waived if you can show that you reasonably relied on erroneous written advice from the Division, provided the advice was not the result of your failure to provide adequate or accurate information.

### General Rights

- **Interview Rights** - You may have an attorney and/or accountant with you at any conference. Either you or the Division may record the interview, if prior notice has been given. If the Division records the interview, a copy of the

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