

**BY THE COURT**

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In the Matter of the General Assignment	:	
For the Benefit of Creditors of:	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: PROBATE PART
Gift Box Corporation,	:	MORRIS COUNTY
	:	
Assignor,	:	DOCKET NO.: MRS-P-1128-2014
	:	
to	:	<u>Civil Action</u>
	:	
Stephen B. Ravin, Esq.,	:	<b>OPINION</b>
	:	
Assignee.	:	
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Decided: July 15, 2020

Stephen B. Ravin for Assignee (Saul Ewing, LLP, attorneys).

Gregory VanDyck for New Jersey Division of Taxation (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

NOVIN, J.T.C. (t/a)

This matter comes before the court on motion of Stephen B. Ravin, Esq., assignee for the benefit of creditors of Gift Box Corporation of America (“Assignee”), seeking to declare as unenforceable New Jersey corporation business tax and gross income tax obligations of assignor, Gift Box Corporation of America (“Gift Box” or “Assignor”), and to expunge the statutory liens arising therefrom. The New Jersey Division of Taxation (“Taxation”) opposes Assignee’s motion, in part.<sup>1</sup>

<sup>1</sup> Taxation concedes that it did not file a certificate of debt, nor institute an action for recovery of Gift Box’s corporation business tax debt and thus, the limitations period imposed under N.J.S.A. 54:10A-31 applies to and “voids CBT claims ten years after such filing.” Therefore, Taxation does not oppose Assignee’s motion arising from Gift Box’s corporation business tax debt.



For the reasons stated more fully below, the court finds that under the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-16, a statutory lien arises in favor of the State of New Jersey (the “State”) on all property of a taxpayer as a result of nonpayment of any corporation business tax, including fees, interests, and penalties. However, when Taxation has failed to file a certificate of debt, or commence an action for the recovery of a corporation business tax debt within ten years from January 1 of the year next succeeding the year in which said tax was due, N.J.S.A. 54:10A-31 invalidates the statutory lien imposed under N.J.S.A. 54:10A-16 and renders the corporation business tax debt not payable.

Moreover, the court concludes that under the State Tax Uniform Procedure Law, N.J.S.A. 54:49-1, the State has a statutory lien on all taxpayer property for any taxes, fees, interest and penalties due and owing the State.<sup>2</sup> However, the New Jersey Gross Income Tax Act imposes limitations and restrictions on the State’s ability to collect and recover gross income tax debt from taxpayers. Specifically, N.J.S.A. 54A:9-12 imposes a six-year limitations period on Taxation to file a certificate of debt or institute an action for recovery of a gross income tax debt from a taxpayer. Reading the State Tax Uniform Procedure Law and the New Jersey Gross Income Tax Act in pari materia, the court concludes that when Taxation has failed to file a certificate of debt, or institute an action against a taxpayer for recovery of a gross income tax debt within the six-year period following the notice of assessment and demand for payment, the statutory lien arising under N.J.S.A. 54:49-1 will be rendered no longer valid.

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<sup>2</sup> N.J.S.A. 54:48-1 states that N.J.S.A. 54:48-1 to 54-6 shall be known as the “State Uniform Tax Procedure Law.” However, the New Jersey Gross Income Tax Act, N.J.S.A. 54A:9-1, refers to those provisions as the “State Tax Uniform Procedure Law.” Therefore, for purposes of consistency in this opinion, the court will refer to the State Uniform Tax Procedure Law as the State Tax Uniform Procedure Law.



Significantly, unlike the Corporation Business Tax Act, N.J.S.A. 54:10A-31, neither the Gross Income Tax Act nor the State Tax Uniform Procedure Law contain any prohibition on a taxpayer's repayment of a gross income tax debt after expiration of the applicable limitations period. Thus, although the State's statutory lien on Gift Box's property is rendered invalid as a result of Taxation's failure to file a certificate of debt or institute an action for recovery under N.J.S.A. 54A:9-12, the State is not proscribed from "participating in a dividend of said estate" of Gift Box in accordance with the gross income tax proof of claim filed by Taxation with Assignee under N.J.S.A. 2A:19-8, as a general unsecured creditor.

As a result, the court grants, in part, and denies, in part, Assignee's motion. The Assignee's motion is granted insofar that the court finds the State's statutory liens against Gift Box's property arising under N.J.S.A. 54:10A-16 and N.J.S.A. 54:49-1 are invalid. Moreover, the court concludes that application of N.J.S.A. 54:10A-31 prohibits payment by Assignee to Taxation of any part of Gift Box's corporation business tax debt. However, the court denies Assignee's motion insofar that it seeks to wholly discharge and expunge Gift Box's gross income tax debt to the State and thus, permits Taxation to participate or receive a dividend from Gift Box's estate, as a general unsecured creditor.

### **I. Factual Findings and Procedural History**

In accordance with R. 1:7-4(a), the court makes the following findings of fact based on the certifications and exhibits of the parties.

On or about April 28, 2014, Gift Box executed a Deed of Assignment for the Benefit of Creditors ("Deed of Assignment"), naming Stephen B. Ravin, Esq., as assignee. The Deed of



Assignment was recorded with the register of deeds in Morris County and filed with the Morris County Surrogate on April 29, 2014.

In response to receipt of notice of the Deed of Assignment, Taxation submitted two proofs of claim (the “Proofs of Claim”). The first Proof of Claim alleged that Gift Box owed gross income tax - employer withholding (“GIT-ER”) for the tax year 1992 in the sum of \$25,530.29. Taxation asserted that the GIT-ER debt was a preferential statutory lien claim. Taxation’s second Proof of Claim alleged that Gift Box owed corporation business taxes (“CBT”) for the tax year ending June 30, 1986 in the sum of \$14,684.13. Taxation asserted that Gift Box’s CBT debt amounted to a general unsecured claim.

Assignee assembled and reviewed the claims submitted by Gift Box’s creditors (in the aggregate, the “Creditors”) and conferred with Gift Box’s bookkeeper about the amounts allegedly due and owing. Based on a review of the claims, and a comparison thereof to the books and records of Gift Box, Assignee determined that certain claims should be reduced, removed, or expunged and thus, Assignee filed the instant motion.<sup>3</sup>

Assignee asserts that under the New Jersey Gross Income Act, N.J.S.A. 54A:1-1 to 54A:12-6 (“Gross Income Tax Act”), and the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 to -41 (“Corporation Business Tax Act”), Taxation is barred from collection of and

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<sup>3</sup> Assignee filed the motion with the Morris County Surrogate on May 20, 2015. Taxation filed opposition on July 31, 2015, and the Assignee filed a reply on August 13, 2015. However, for unexplained reasons, the motion was not heard. Then, on November 26, 2018, Assignee submitted an unsigned duplicate copy of the motion (the “Duplicate”). Again, for unexplained reasons, the Duplicate was not stamped filed and was not heard. After receiving the original motion and Duplicate this year and confirming with the parties that the motion remained unresolved, the court scheduled the motion for disposition, affording the parties an opportunity to submit supplemental briefs.



recovery on both the GIT-ER and CBT debts because the applicable limitations periods have run. Assignee argues that N.J.S.A. 54:10A-31 bars payment of and cancels the CBT tax due when Taxation has failed to file a certificate of debt or institute an action for recovery of the unpaid CBT taxes within ten years from the date taxpayer filed its return. Assignee further contends that N.J.S.A. 54A:9-12(c) and (e) bar collection and enforcement of the GIT-ER debt unless Taxation has filed a certificate of debt or instituted an action for recovery of the unpaid GIT-ER taxes within six years from issuance of the notice of assessment and demand for payment of tax. Thus, Assignee maintains that as a result of the lapse in the limitations periods without the filing of a certificate of debt or institution of an action for recovery, the State's statutory liens, under N.J.S.A. 54:10A-16 and N.J.S.A. 54:49-1, must be discharged and the tax debts expunged.

In response, Taxation concedes that Gift Box filed "all . . . relevant CBT returns . . . and [N.J.S.A. 54:10A-31 as] a statute of repose voids [the] CBT claims ten years after such filing." Therefore, "Taxation does not object to the Assignee's motion" insofar that it seeks to bar collection and payment of Gift Box's CBT debt and to discharge or expunge the statutory lien created under N.J.S.A. 54:10A-16.

However, Taxation opposes Assignee's motion with respect to Gift Box's GIT-ER debt and the statutory lien created under N.J.S.A. 54:49-1. Taxation argues that Assignee "incorrectly conflates the validity of Taxation's claim for GIT-ER with the enforceability of this tax debt." Although Taxation readily concedes that it failed to file a certificate of debt or institute an action for recovery of the GIT-ER debt against Gift Box within the six-year period under N.J.S.A. 54A:9-12, Taxation charges that "even without undertaking any collection activity, the lien of the underlying GIT-ER liability is not negated because a [certificate of debt was not filed as it] is



merely an administrative mechanism filed to assist in the collection of the underlying fixed tax debt.” Thus, Taxation maintains that N.J.S.A. 54A:9-12 does not invalidate the statutory lien arising under N.J.S.A. 54:49-1, rather it submits that “[w]hile the affirmative enforceability of this claim may be extinguished, the claim itself is extant.” As a result, even if the personal obligation of the debtor has expired, the statutory lien under N.J.S.A. 54:49-1 “lives on” and should enjoy preference in any distribution.

Assignee and Taxation agree that Gift Box’s CBT return for the tax period ending June 30, 1986 was timely filed. Assignee and Taxation further acknowledge that, in the twenty-eight-year period following Gift Box’s filing of the CBT return, Taxation did not file a certificate of debt, nor institute a collection action against Gift Box to recover the unpaid CBT tax, additions to tax, penalties, or interest. Additionally, Assignee and Taxation agree that Gift Box’s GIT-ER return for the 1992 tax year was filed timely, that Taxation issued a notice of assessment on or about April 14, 1993 and served a demand for payment of the GIT-ER tax on Gift Box in or about June 1993. Additionally, Assignee and Taxation further stipulate that in the approximately twenty-one-year period following issuance of the notice of assessment and demand for payment, Taxation did not file a certificate of debt, nor institute any collection action against Gift Box to recover the unpaid GIT-ER taxes, additions to tax, penalties, or interest. Thus, it was not until sometime in 2014, following Assignee’s recording of the Deed of Assignment, that Taxation filed its Proofs of Claim seeking to recover the outstanding CBT and GIT-ER debts.



## **II. Conclusions of Law**

### **A. Assignee's duties and responsibilities**

An Assignment for the Benefit of Creditors proceeding is a “state court-administered liquidation proceeding similar to a Chapter 7 bankruptcy whereby an individual, corporation, or partnership in financial distress can liquidate its assets in an orderly fashion to equitably pay its creditors.” 44 New Jersey Practice, Debtor-Creditor Law and Practice § 3.1, at 109 (Michael D. Sirota & Michael S. Meisel) (2000) (citing Gilroy v. Somerville Woolen Mills, 67 N.J. Eq. 479 (Ch. 1904)). In New Jersey such proceedings are governed by N.J.S.A. 2A:19-1 to -50 (the “ABC Statute”), whose stated goal is to treat all creditors equally and avoid any disproportionate payments to a favored creditor. See N.J.S.A. 2A:19-2.

In an Assignment for the Benefit of Creditors proceeding, an “individual, partnership or corporation, known as the assignor, voluntarily assign[s] by transfer or conveyance all of the assets in trust to an independent third party, known as the assignee.” 44 New Jersey Practice at 110. Upon receiving the general assignment, the assignee is responsible for recording it with the register of deeds and filing same with the surrogate, in the county where the assignor resides. See N.J.S.A. 2A:19-7. Moreover, the assignee must affix to the general assignment an inventory of the assignor's estate, along with a list of creditors setting forth the amount of their claims. See N.J.S.A. 2A:19-5. The assignee must publish notice of the general assignment at least four times during four consecutive calendar weeks and within thirty days following execution of the general assignment, must mail written notice of the assignment to every creditor of the assignor. See N.J.S.A. 2A:19-8. Within “3 months from the date of the general assignment,” each creditor must



present the assignee with all claims against the assignor’s estate or be “barred from participating in a dividend of said estate.” N.J.S.A. 2A:19-8.

In carrying out its duties, the assignee is charged with administering the assignor’s estate and “stands in the shoes’ of the assignor with general powers to act in his stead as his ‘successor’.”

In Re Gen. Assignment for the Benefit of Creditors of Brill’s Hardware Co., 67 N.J. Super. 289, 291 (Cty. Ct. 1961) (quoting N.J.S.A. 2A:19-13). The ABC Statute grants the assignee the:

full power and authority to dispose of all of the assignor’s property . . . , as the assignor had at the time of the general assignment. He may sue for and recover in his own name everything belonging or appertaining to the estate. He may compromise, settle, and compound all claims, disputes, and litigations of the assignor, refer the same to arbitration, agree with any person concerning the same, redeem all mortgages and conditional contracts, and generally act as and do whatsoever the assignor have lawfully done in the premises.

[N.J.S.A. 2A:19-13.]

Moreover, an assignee is viewed as an agent of the creditors and owes a duty to “represent the assignor’s entire credit constituency.” 44 New Jersey Practice, at 118; see also N.J.S.A. 2A:19-

14. The ABC Statute provides that the assignee shall:

at all times be the representative of the creditors of the assignor, and shall have the same power to set aside conveyances, and to recover or reach assets for the benefit of the holder of a judgment and levy against the assignor and his property at the date of the assignment.

[Ibid.]

Here, Assignee is acting in that dual role, on the one hand, standing in the shoes of Gift Box, and on the other hand, serving as fiduciary to Gift Box’s creditors, charged with maximizing the estate to be distributed. See N.J.S.A. 2A:19-14. Accordingly, the court finds that Assignee, stands in the shoes of Gift Box, is statutorily authorized and empowered to raise any affirmative





defenses that Gift Box possessed to Taxation's Proofs of Claim, and is permitted to assert an alleged lapse in the limitations period to claims Assignee believes are no longer valid or unenforceable. See N.J.S.A. 2A:19-13; N.J.S.A. 2A:19-14.

#### B. Collection, enforcement, and liens

The remedies afforded by our Legislature to Taxation for the assessment, collection and recovery of outstanding tax liabilities are not limited to issuance of a notice of assessment or arbitrary assessment, demand for payment of tax, and imposition of penalties and interest. See N.J.S.A. 54:49-3 to -7. The State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 to 54-6 ("State Tax Uniform Procedure Law"), "prescribes the method of imposing assessments and collecting them." C.J. Kowasaki, Inc. v. State, Div. of Taxation, 13 N.J. Tax 160, 166 (Tax 1993). The State Tax Uniform Procedure Law describes its purpose as providing:

a uniform procedure to be followed by taxpayers in relation to any state taxes and to afford uniform remedies and procedures which may be resorted to by the state in the collection of any of its taxes

[N.J.S.A. 54:48-3.]

Thus, the "statutory scheme relating to the imposition of state tax liability differentiates between [the assessment of the] tax liability and collection of taxes." C.J. Kowassaki, Inc., 13 N.J. Tax at 165.

#### 1. Tax liens

Generally, the New Jersey judicial system has recognized three distinct types of liens: (1) common law, (2) equitable, and (3) statutory. Camden County Welfare Bd. v. Federal Deposit Ins. Corp., 1 N.J. Super. 532, 545 (Ch. Div. 1948); J. T. Evans Co. v. Fanelli, 59 N.J. Super. 19, 22 (Law. Div. 1959).



Here, the liens at issue are statutory liens. A statutory lien must be expressly authorized by the Legislature and must strictly follow the methods prescribed under the statutory scheme. Stated differently, the “character and content [of statutory liens] are fixed by the Legislature.” Friedman v. Stein, 4 N.J. 34, 42 (1950). Moreover, a statutory lien will attach to and bind only the statutorily designated property without the need for judicial action and may be imposed by the concomitant failure of a party to perform or undertake some act. See Ferrante v. Foley, 49 N.J. 432, 437 (1967) (concluding that under the Garage Keeper’s Lien Act, N.J.S.A. 2A:44-21, a garage keeper “can claim only the statutory lien on [the] motor vehicles which it worked.”); Kessler v. Tarrats, 191 N.J. Super. 273 (Ch. Div. 1983), aff’d, 194 N.J. Super. 136 (App. Div. 1984) (concluding that the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f(f), by its express terms affords the State a priority lien over all other claims or liens, including the municipality’s lien for unpaid real estate taxes.); Danesi v. Am. Mfrs. Mut. Ins. Co., 189 N.J. Super. 160, 165 (App. Div. 1983), certif. denied, 94 N.J. 544 (1983) (concluding that under the Workers’ Compensation Act, the “failure to perfect the [statutory] lien does not alter plaintiff’s statutory obligation to reimburse his employer or its worker’s compensation insurance carrier.”)

However, it is well-settled that a statutory lien is “separate and distinct from the underlying debt; the lien affords a cumulative remedy for the enforcement of the debt.” Friedman v. Stein, 4 N.J. 34, 41 (1950) (emphasis added). As expressed by our Appellate Division, a statutorily fashioned lien provides:

a measure of security to insure payment of the underlying obligation -- the reimbursement. This lien is distinct from the obligation it secures. When the lien is perfected it becomes security for the payment of the underlying obligation to reimburse rather than creating the underlying obligation. This is so because the very nature of a lien is security for the performance of some act or



obligation. Failure to perfect the lien generally does not affect the underlying obligation intended to be secured thereby.

[Danesi, 189 N.J. Super. at 165-166 (internal citations omitted) (emphasis added).]

Thus, when enacting the Corporation Business Tax Act and the State Tax Uniform Procedure Law, our Legislature afforded the State a statutory lien on all taxpayer property arising from the failure to pay taxes imposed under law, including penalties and interest arising therefrom. See N.J.S.A. 54:10A-16; N.J.S.A. 54:49-1.

## 2. Certificates of debt

One of the “additional” collection procedures afforded Taxation under the State Tax Uniform Procedure Law is the filing of a certificate of debt. N.J.S.A. 54:49-12 provides that:

As an additional remedy, the Director of the Division of Taxation may issue a certificate to the Clerk of the Superior Court that any person is indebted under such State tax law in such an amount as shall be stated in the certificate . . . Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon his record of docketed judgments the name of such person, and of the State, the address of the place of business where such tax liability was incurred, if shown in the certificate, the amount of the debt so certified, a short name of the tax, and the date of making such entries. The making of the entries shall have the same force and effect as the entry of a docketed judgment in the office of such clerk, and the director shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to the taxpayer's right of appeal.

[N.J.S.A. 54:49-12.]

However, a certificate of debt is not an assessment of tax, nor a judgment. See C.J. Kowasaki, Inc., 13 N.J. Tax at 164-166; Millwork Installation, Inc. v. State Dep't of the Treasury, Div. of Taxation, 25 N.J. Tax 452, 462 (Tax 2010). Rather, a certificate of debt is a mechanism



authorized by our Legislature permitting the recording of an instrument with the Clerk of the Superior Court thereby affording public notice that the individual or entity named in the certificate of debt is indebted to the State in the amount set forth therein. Our courts have observed that “[i]t is a device for collecting taxes, not an independent determination of tax liability . . . Its purpose is to give the Director [of the Division of Taxation] a tool for imposing a lien on a delinquent taxpayer's property.” C.J. Kawasaki, Inc., 13 N.J. Tax at 169 (emphasis added).

Thus, a certificate of debt is one of the remedies available to Taxation in attempting to collect an outstanding tax liability. However, as stated above, it is also the vehicle that Taxation uses to perfect the lien on the delinquent taxpayer’s property, thereby affording the public with notice of the State’s lien and “facilitate[ing] the Director's collection of the debt.” Millwork Installation, Inc., 25 N.J. Tax at 463; see also C.J. Kawasaki, Inc., 13 N.J. Tax at 169. Absent the recordation of a certificate of debt or a judgment, no public notice is afforded that the State is asserting its right to a statutory lien upon the property of a taxpayer.

Although the State Tax Uniform Procedure Law was enacted to offer a general framework for Taxation’s assessment and collection of taxes, it is not the only statutory provision delineating the parameters of Taxation’s assessment, collection, and enforcement authority. See N.J.S.A. 54A:9-4(a) (under the Gross Income Tax Act, Taxation is permitted to make an assessment of tax “within 3 years after the return was filed. . . .”); N.J.S.A. 54:32B-19 (under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 to -29, when a return “is not filed, or . . . filed [with] incorrect or insufficient [information],” Taxation is permitted to determine the tax from “such information as may be available.”).



### 3. Actions for recovery

In addition to recording a certificate of debt, Taxation may also institute “in any court of competent jurisdiction . . . an action in debt in the name of the State.” N.J.S.A. 54:49-1. However, our Legislature specifically delineated time periods within which “the Attorney General at the instance of the director” may sue to recover the amount of unpaid taxes due and owing under the Corporation Business Tax Act and the Gross Income Tax Act. See N.J.S.A. 54:10A-31; N.J.S.A. 54A:9-12(e).<sup>4</sup>

#### C. Corporation Business Tax Act

The New Jersey Corporation Business Tax Act provides that:

The tax imposed by this act shall constitute a lien on all of the taxpayer’s property and franchises on and after January 1 of the year next succeeding the year in which it is due and payable, and all interest, penalties and costs of collection which fall due or accrue shall be added to and become a part of such lien.

[N.J.S.A. 54:10A-16 (emphasis added).]

The lien attaches on January 1 of the year next succeeding the year in which the CBT was due. See N.J.S.A. 54:10A-16. Thus, the lien may not arise until several months after the taxpayer’s CBT obligation was due. For instance, in New Jersey, corporation business tax returns are due by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the corporation’s accounting period. Thus, the

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<sup>4</sup> Although recording a certificate of debt and judgment both implicate the provisions of N.J.S.A. 54A:9-12(g), our courts have long held that a certificate of debt and a judgment are not identical. See Millwork Installation, Inc. v. State Dep’t of the Treasury, Div. of Taxation, 25 N.J. Tax 452, 462 (2010). A certificate of debt is viewed as a “collection tool to enforce a fixed and final assessment of taxes . . . .” Ibid. (citing C.J. Kowasaki, Inc. v. State, Div. of Taxation, 13 N.J. Tax 160, 164-66 (Tax 1993)). On the other hand, a judgment is “entered by a court with jurisdiction to resolve a dispute between parties with competing legal claims.” Id. at 463. Significantly however, entry of a “[c]ertificate of [d]ebt in the record of docketed judgments of the Superior Court Clerk does not transform the [c]ertificate of [d]ebt into an adjudication of claims by a court.” Ibid.



State's lien on a corporate taxpayer filing its corporation business tax return on April 15, for the preceding calendar year, will not attach until January 1 of the next succeeding year. Moreover, once the lien has attached it will "continue and remain a lien on all of the taxpayer's property and franchises until the expiration of 10 years after January 1 of the year in which they became or become due and payable." N.J.S.A. 54:10A-16 (emphasis added).

The provisions of N.J.S.A. 54:10A-16 parallel N.J.S.A. 54:10A-31, providing that:

[w]hen a corporation franchise tax return shall have been duly filed in accordance with the provisions of this act . . . no tax shall be assessable or payable after ten years from the date of such filing . . . The director is hereby authorized to cancel all assessments of taxes, interest and penalties, the collection of which is barred by the limitations herein provided and to destroy returns and records relating thereto which are rendered useless by the provisions of this act.

[N.J.S.A. 54:10A-31.]

Thus, N.J.S.A. 54:10A-31 unambiguously imposes a ten-year limitations period on the assessment and payment of any Corporation Business Tax Act obligation from the date the taxpayer's corporate franchise tax return is filed. Moreover, the lien shall remain fixed on the property of the debtor for ten years after January 1 of the next succeeding year in which the CBT tax became due. See N.J.S.A. 54:10A-16. Accordingly, if Taxation fails to record a certificate of debt or institute an action for recovery of the unpaid CBT tax within the ten-year limitations period, our Legislature directed Taxation to take necessary action to cancel any assessment and lien, and to destroy all records and returns of the taxpayer.



Thus, the Corporation Business Tax Act is a statute of repose.<sup>5</sup> However, in crafting the Corporation Business Tax Act our Legislature provided an exception to application of the ten-year limitations period. When Taxation has recorded a certificate of debt or judgment with the Clerk of the Superior Court within the ten-year limitations period, the Legislature stated that N.J.S.A. 54:10A-31 shall not affect Taxation’s ability to assess or enforce collection of the CBT tax, penalty or interest due. N.J.S.A. 54:10A-31 provides that:

Nothing herein contained, however, shall affect the rights of the State (a) under any certificate of debt, decree or judgment for taxes, interest and penalties duly recorded with the Clerk of the Superior Court, or with any county clerk; or (b) to assess and enforce collection of any tax, interest and penalties pursuant to the terms of any bond or other agreement securing the payment of such tax, interest and penalties.

[N.J.S.A. 54:10A-31.]

Thus, when Taxation has recorded a certificate of debt or instituted an action for recovery of the outstanding CBT debt within the ten-year limitations period, such action not only affords the public notice of the State’s statutory lien claims, but preserves Taxation’s right to continue to pursue assessment and collection activities against the taxpayer.

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<sup>5</sup> A statute of repose is a legislative creation, not existing under common law, fixing both the beginning and end of the time that a party is afforded to institute an action. R.A.C. v. P.J.S., Jr., 192 N.J. 81, 96 (2007). After expiration of the proscribed period, the “cause of action literally ceases to exist no matter when the harm arose.” Cyktor v. Aspen Manor Condo. Ass’n, 359 N.J. Super. 459, 473 (App. Div. 2003). A statute of repose “bears no [causal] relationship to when the injury occurs or the cause of action accrues and confers immunity on a defendant after running its course.” R.A.C., 192 N.J. at 96 (internal citations omitted). A statute of repose is mainly concerned with the “fairness to a defendant,” the belief that there comes a time when the defendant ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations.” Id. at 96-7 (quoting Rosenberg, 61 N.J. at 201).



Here, the parties agree that Gift Box timely filed its CBT return for the tax period ending June 30, 1986 but failed to pay the CBT taxes due and owing. Moreover, Assignee and Taxation agree that in the ten-year period following the filing, Taxation did not record a certificate of debt, nor institute any action to collect or recover the unpaid CBT taxes, additions to tax, penalties, or interest.

As a result, the lien created under N.J.S.A. 54:10A-16 attached to Gift Box's property on or about January 1, 1987 and remained a lien on Gift Box's property until December 31, 1996. However, as a result of Taxation's failure to perfect its lien by recording a certificate of debt or instituting an action for recovery of the unpaid CBT taxes on or before December 31, 1996, N.J.S.A. 54:10A-31 will operate to preclude Taxation from collecting from Assignee, and prevent Assignee from making payment to Taxation on account of Gift Box's CBT debt. Moreover, because no certificate of debt or action for recovery of the unpaid CBT taxes was instituted by Taxation within the ten-year limitations period, the statutory lien on Gift Box's property under N.J.S.A. 54:10A-16 is rendered invalid.

#### D. Gross Income Tax Act

Unlike the statutory lien on Gift Box's property under the Corporation Business Tax Act, the statutory lien stemming from Gift Box's GIT-ER debt arises under the State Tax Uniform Procedure Law. The State Tax Uniform Procedure Law provides, in part, that:

taxes, fees, interest and penalties imposed by any such State tax law . . . , shall be a personal debt of the taxpayer to the State, recoverable in any court of competent jurisdiction in an action in debt in the name of the State. Such debt, whether sued upon or not, shall be a lien on all the property of the debtor except as against an innocent purchaser for value in the usual course of business and without notice thereof, and except as may be provided to the contrary in any





other law, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency, or otherwise.

[N.J.S.A. 54:49-1 (emphasis added).]

Thus, under the State Tax Uniform Procedure Law, a preferential statutory lien arises on all property of a taxpayer as a result of the nonpayment of any taxes, fees, interest and penalties imposed under our state tax laws.

1. Controlling law

Taxation first argues that because the statutory lien on Gift Box's property arises under the State Tax Uniform Procedure Law, N.J.S.A. 54:49-1, it is controlling without consideration of the provisions of the Gross Income Tax Act. Taxation maintains that under the State Tax Uniform Procedure Law, the tax debt is a personal obligation of Gift Box and therefore, Taxation enjoys a preferential lien on all of Gift Box's property, even if Taxation fails to institute litigation or record a certificate of debt.

Conversely, Assignee asserts that the lien arising under N.J.S.A. 54:49-1 must be considered along with the provisions of the Gross Income Tax Act, which impose a strict six-year limitations period on Taxation to record a certificate of debt or institute an action for recovery. See N.J.S.A. 54A:9-12(c) and (e). Thus, Assignee maintains that because Taxation failed to, within the six-year period, record a certificate of debt or institute an action for recovery against Gift Box, the preferential statutory lien arising under N.J.S.A. 54:49-1 must be expunged. Moreover, because Taxation is precluded from instituting a collection action against Gift Box for the outstanding GIT-ER debt, Assignee asserts that the GIT-ER debt must be discharged.

The court finds that Taxation's argument ignores the plain language and intent of the State Tax Uniform Procedure Law and the Gross Income Tax Act. The State Tax Uniform Procedure



Law expressly states that its provisions shall apply “except as may be provided to the contrary in any other law. . . .” N.J.S.A. 54:49-1. Moreover, in drafting the Gross Income Tax Act, our Legislature stated that the provisions of the State Tax Uniform Procedure Law will apply only to the extent they do not conflict with the provisions of the Gross Income Tax Act. See N.J.S.A. 54A:9-1. Specifically, N.J.S.A. 54A:9-1 provides that the Gross Income Tax Act “shall be governed in all respects by the provisions of the State Tax Uniform Procedure Law . . . except only to the extent that a specific provision of this act may be in conflict therewith.” N.J.S.A. 54A:9-1 (emphasis added). Therefore, in conducting the inquiry into whether Taxation is barred from recovering Gift Box’s GIT-ER debt and whether the lien existing on Gift Box’s property must be expunged, the court must not only examine the applicable provisions of the State Tax Uniform Procedure Law, but also examine how those provisions may be altered or modified in light of any conflicting provisions under the Gross Income Tax Act.

The State Tax Uniform Procedure Law was enacted to provide “a uniform procedure to be followed by taxpayers in relation to any state taxes and to afford remedies and procedures.” N.J.S.A. 54:48-3 (emphasis added). Thus, the State Tax Uniform Procedure Law was designed for broad application, establishing protocols, practices, and remedies for all state tax matters.

In contrast, the Gross Income Tax Act represented a deviation from the traditional system of income taxation, designed to impose a direct tax on income for individuals, estates and trusts. See Smith v. Dir., Div. of Taxation, 108 N.J. 19, 32 (1987). The Gross Income Tax Act sought to impose a tax on “some income on a net basis and other income on a gross basis.” Ibid. Moreover, the legislative history of the Gross Income Tax Act demonstrates that “the Legislature intended to and did reject the federal income tax model in favor of a gross income tax act in order to avoid tax



loopholes available under the federal tax laws.” Ibid. Thus, our Legislature crafted the Gross Income Tax Act as a comprehensive statutory scheme with characteristics unlike other statutory provisions.

In enacting the Gross Income Tax Act, our Legislature imposed certain restrictions and limitations on Taxation’s collection and enforcement capabilities. The Legislature afforded Taxation a six-year period following issuance of the notice of assessment and demand for payment to issue a certificate of debt.<sup>6</sup> See N.J.S.A. 54A:9-12(c). The Gross Income Tax Act states that:

If any person liable under this act for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within 10 days after the notice and demand therefor is given to such person under subsection (b), the director may within 6 years after the date of such assessment issue a certificate of debt, pursuant to the State Tax Uniform Procedure Law. . . .

[N.J.S.A. 54A:9-12(c) (emphasis added).]

In addition, the Gross Income Tax Act limits the time Taxation may institute an action for recovery of a gross income tax debt. Under the Gross Income Tax Act, Taxation must institute an action for recovery of an unpaid gross income tax debt within six years following the notice of assessment and demand for payment. See N.J.S.A. 54A:9-12(e). N.J.S.A. 54A:9-12(e) provides that:

Action may be brought by the Attorney General at the instance of the director in the name of the State to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this act within 6 years prior to the date the action is commenced.

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<sup>6</sup> A certificate of debt is “a device for collecting taxes, not an independent determination of tax liability. It has no meaning except as it relates to an already ascertained tax liability. Its purpose is to give the Director a tool for imposing a lien on a delinquent taxpayer's property.” C.J. Kowasaki, Inc., 13 N.J. Tax at 169 (emphasis added).



[N.J.S.A. 54A:9-12(e) (emphasis added).]

However, in contrast to N.J.S.A. 54:10A-16, which expressly bars Taxation from attempting to collect and accepting payment of a corporate business tax debt after expiration of the ten-year limitations period, the Gross Income Tax Act contains no analogous provision. Rather, the consequences of Taxation’s failure to file a certificate of debt or institute an action for recovery against a taxpayer within six years following assessment and demand for payment of a Gross Income Tax Act debt is more imprecise.

Accordingly, the court’s inquiry centers upon what consequence, if any, did the Legislature intend for Taxation to face as a result of its failure to file a certificate of debt or institute an action for recovery within the six-year period following notice of assessment and demand for payment of a gross income tax debt.

## 2. Statutory interpretation and in pari materia

When faced with a statutory ambiguity, courts will generally “defer to the interpretation that an agency gives to a statute that agency is charged with enforcing.” Koch v. Dir. Div. of Taxation, 157 N.J. 1, 8 (1999) (citing Smith v. Dir., Div. of Taxation, 108 N.J. 19, 25 (1987)). Our courts have further recognized that Taxation’s “interpretation of the operative law is entitled to prevail, so long as it is not plainly unreasonable.” Metromedia, Inc. v. Dir., Div. of Taxation, 97 N.J. 313, 327 (1984) (citing New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562-63 (1978)). Thus, the courts have shown deference to Taxation’s “expertise, particularly in specialized and complex areas of the [Gross Income Tax] Act.” Koch, 157 N.J. at 8 (citing Metromedia, 97 N.J. at 327). Yet such deference is not absolute, “as the courts remain the ‘final



authorities' on issues of statutory construction.” Ibid. (quoting N.J. Guild of Hearing Aid Dispensers, 75 N.J. at 575).

Our Supreme Court has stated that a “statute's plain language . . . is the best indicator of the Legislature's intent.” Waksal v. Dir., Div. of Taxation, 215 N.J. 224, 232 (2013) (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)). However, when “the plain language of a statute creates uncertainties or ambiguities, a reviewing court must examine the legislative intent underlying the statute and ‘construe the statute in a way that will best effectuate [that] intent.’” New Jersey State League of Municipalities v. Dep't. of Cmty. Affairs, 158 N.J. 211, 224 (1999) (internal citation omitted). In seeking to construe statutory language, the court must “effectuat[e] the legislative plan as it may be gathered from the enactment read in full light of its history, purpose and context.” Koch, 157 N.J. at 7 (quoting State v. Haliski, 140 N.J. 1, 9 (1995)). The court’s paramount responsibility is to “interpret the statute sensibly, [and] consistent with a common-sense understanding of its underlying subject matter.” Musikoff v. Jay Parrino's the Mint, L.L.C., 172 N.J. 133, 141 (2002). A statutory interpretation which renders part of a statute meaningless must be avoided at all costs. See Hoffman v. Hock, 8 N.J. 397, 406 (1952); Disposmatic Corp. v. Kearny, 162 N.J. Super. 489, 493-94 (1978).

In seeking to discern legislative intent, our courts have relied on extrinsic information such as a statute's history or its underlying purposes and goals. See Clymer v. Summit Bancorp., 171 N.J. 57, 66 (2002) (citing Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000)). Additionally, the court may examine statutes in pari materia with the ambiguous provisions of the statute. See Clifton v. Passaic Cty. Bd. of Taxation, 28 N.J. 411, 421 (1958); Richard’s Auto City v. Dir., Div. of Taxation, 140 N.J. 523, 540 (1995) (internal citation omitted) (stating that “statutes



are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.”). “[T]he most convincing evidence which justifies utilization of an in pari materia interpretation of two statutes is identity of purpose. . . .” Disposmatic Corp., 162 N.J. Super. at 493-494.

Here, the statutes at issue are the Gross Income Tax Act and the State Tax Uniform Procedure Law. The Gross Income Tax Act was enacted to impose a direct tax on the gross income of individuals, estates or trusts. The State Tax Uniform Procedure Law was enacted to govern the administration of a variety of New Jersey tax statutes including, but not limited to, the Gross Income Tax Act, the Corporation Business Tax Act, the Sales and Use Tax Act, N.J.S.A. 54:32B-1 to -55, and the Transfer Inheritance Tax Act, N.J.S.A. 54:33-1 to -14. As stated above, when enacting the Gross Income Tax Act, our Legislature provided that the “taxes imposed by this [Gross Income Tax] act shall be governed in all respects by the provisions of the State Tax Uniform Procedure Law . . . except only to the extent that a specific provision of [the Gross Income Tax Act] may be in conflict therewith.” N.J.S.A. 54A:9-1. Thus, the court finds that the State Tax Uniform Procedure Law and the Gross Income Tax Act can be read in pari materia, but as expressed by the Legislature, the Gross Income Tax Act shall govern in the case of any inconsistency. See Clifton v. Passaic County Board of Taxation, 28 N.J. at 421 (stating, “[s]tatutes in pari materia, that is, those which relate to the same matter or subject, although some may be special and some general, are to be construed together as a unitary and harmonious whole, in order that each may be fully effective.”); see also Marino v. Marino, 200 N.J. 315, 330 (2009) (stating, “[s]tatutes are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.”).



Reading the State Tax Uniform Procedure Law and the Gross Income Tax Act together, the court finds that our Legislature intended for a preferential lien to arise in favor of the State on all taxpayer property resulting from an unpaid gross income tax obligation, ten days following notice of assessment and demand for payment. See N.J.S.A. 54:49-1; N.J.S.A. 54A:9-1.

However, neither the State Tax Uniform Procedure Law, nor the Gross Income Tax Act clearly delineate how that preferential lien becomes perfected or choate.<sup>7</sup> Moreover, the court’s review of the respective statutory schemes reveal that the State Tax Uniform Procedure Law and the Gross Income Tax Act are not in alignment on the issue of perfection. The State Tax Uniform Procedure Law does not require the filing of any instrument as a prerequisite to perfecting the State’s lien. See N.J.S.A. 54:49-1. In contrast, the Gross Income Tax Act contemplates the filing of a certificate of debt or a judgment as a prerequisite for the State’s lien to be perfected. See N.J.S.A. 54A:9-12(g). Specifically, N.J.S.A. 54A:9-12(g) provides that “within 20 years from the date of the filing or from the date of the last extension of the lien, the lien may be extended. . . .” (emphasis added). Thus, with a debt arising under the Gross Income Tax Act, our Legislature seemingly contemplated there would be a filing to perfect the State’s lien, either by recording a certificate of debt or a judgment on a recovery action.

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<sup>7</sup> A “state lien is said to be specific and perfected (or choate) when ‘there is nothing more to be done -- when the identity of the lienor, the property subject to the lien, and the amount of the lien are established.’” Continental Finance, Inc. v. Cambridge Lee Metal Co., 56 N.J. 148, 151 (1970) (quoting United States v. Equitable Life Assur. Soc., 384 U.S. 323, 327-328 (1966)). When the lien is choate “it becomes security for the payment of the underlying obligation to reimburse rather than creating the underlying obligation. This is so because the very nature of a lien is security for the performance of some act or obligation. Failure to perfect the lien generally does not affect the underlying obligation intended to be secured thereby.” Danesi, 189 N.J. Super. at 166 (internal citations omitted).



Moreover, our Legislature envisioned that Taxation could extend the State’s preferential lien by filing a new certificate of debt or re-filing the judgment with the county recording officer within twenty years from the date of the initial filing. See N.J.S.A. 54A:9-12(g). N.J.S.A. 54A:9-12(g) states, in part, that:

Within 20 years from the date of the filing or from the date of the last extension of the lien, the lien may be extended by the filing of a new warrant with the county recording officer.

[N.J.S.A. 54A:9-12(g) (emphasis added).]

Additionally, the Legislature further authorized Taxation to “release any property from the lien” when the State’s interests will not be “jeopardized,” by recording a release “in the office of any recording officer in which such warrant has been filed.” N.J.S.A. 54A:9-12(g) (emphasis added). Thus, in crafting the Gross Income Tax Act, our Legislature viewed the lien as having been filed with the county recording officer and permitted Taxation to release such lien by filing a warrant of satisfaction with said office.

The foregoing provisions demonstrate to the court that our Legislature intended for a preferential lien to automatically arise in favor of the State as a result of the nonpayment of a gross income tax obligation, however State action beyond assessment and demand for payment is required to perfect the State’s lien. That said, the court views the Gross Income Tax Act as requiring Taxation, within the six-year period following notice of assessment and demand for payment, to record a certificate of debt or judgment to perfect the State’s lien on the taxpayer’s property. Once perfected, the lien can be renewed or extended by Taxation within a twenty-year period by recording a new certificate of debt or renewal of the judgment. In sum, reading the State Tax Uniform Procedure Law and the Gross Income Tax Act in pari materia, the court concludes





that our Legislature intended to confer the State with a preferential lien on all taxpayer property ten days following notice of assessment and demand for payment of a gross income tax obligation. However, in order to perfect such lien, the Legislature required Taxation, within the six-year period following the date when such lien arose, to file a certificate of debt or institute an action for recovery against the taxpayer. See N.J.S.A. 54A:9-12(g). Thus, the failure of Taxation to record a certificate of debt or institute an action for recovery will result in the invalidation of the preferential lien after expiration of the six-year limitations period.

### 3. Extinguishment of debt

Finally, Taxation maintains that because the State Tax Uniform Procedure Law states that a tax debt is a personal obligation of the taxpayer and a preferential lien on all of the taxpayer's property, whether sued upon or not, its lien upon Gift Box's property remains valid and that it is entitled to preference in any distribution. Taxation asserts that the lien "lives on" and is not negated by Taxation's failure to issue a certificate of debt or institute an action for recovery. As support for this theory, Taxation relies principally on Hollings v. Hollings, 8 N.J. Super. 552 (Ch. Div. 1950), aff'd, 12 N.J. Super. 57 (App. Div. 1951).

In Hollings, plaintiff purchased real property subject to a recorded mortgage and received credit against the property's purchase price in the amount of the outstanding balance due under the note. 8 N.J. Super. at 553. However, plaintiff did not assume liability for, and made no payment under the note. After several years elapsed, plaintiff instituted an action to quiet title and discharge the mortgage on the property without satisfying the note. The trial court concluded that because plaintiff received credit against the property's purchase price for the outstanding balance due under the note and title to the property was subject to a recorded mortgage lien when plaintiff acquired



it, “there arose, in equity, an implied assumption of it.” Id. at 555. However, the trial court observed that due to expiration of the applicable contractual limitations period “the [note] debt . . . secured by the mortgage is not collectible. . . .” Id. at 555. Thus, the focus of the trial court’s analysis centered on whether plaintiff was entitled to affirmative relief quieting title and discharging the mortgage. Ultimately, the trial court denied relief to the plaintiff, determining that the “statute of limitations is available only as a defense and not as a cause of action . . . It is to be used as a shield, not as a sword.” Id. at 557.

In affirming the trial court’s opinion, the Appellate Division reasoned that under equity “a moral obligation to pay a just debt survives the limitation period.” Hollings, 12 N.J. Super. at 59. The court viewed plaintiff as “a grantee under a moral obligation to pay the mortgage debt.” Ibid. The court determined that “a mortgagor or a grantee morally obligated to pay the mortgage debt barred by limitations must do equity by tendering its payment before seeking affirmative equitable relief in an action to quiet title.” Id. at 60. In sum, the statute of limitations will preclude the remedy, but will not extinguish the obligation of the debtor.

This court finds the facts and holding in Hollings inapposite to the instant matter. In Hollings the mortgage was recorded, the purchaser acquired title to the property with knowledge of the recorded mortgage and the purchaser received credit against the property’s purchase price for the outstanding balance due under the note. Moreover, the court expressly acknowledged that the debt due and owing under the note was unenforceable as a result of expiration of the applicable limitations period. However, applying principles of equity, the court declined to discharge the recorded mortgage and directed the purchaser to first tender payment for the outstanding balance due before seeking affirmative relief from the court in an action to quiet title.



Conversely, in the instant matter, during the twenty-one-year period following Taxation's issuance of a notice of assessment and demand for payment of GIT-ER to Gift Box, Taxation sat motionless, undertaking no action. Significantly, within the six-year period imposed under N.J.S.A. 54A:9-12, Taxation failed to record a certificate of debt or institute an action for recovery of the gross income tax debt against Gift Box. In sum, contrary to the facts in Hollings where the mortgage and security interest in the property were timely perfected by being recorded in the county recording office, here there was twenty-one years of inaction by Taxation without recording a certificate of debt or institution of an action for recovery against Gift Box. Thus, for the reasons expressed above, the State's preferential lien is no longer valid.

Importantly however, Taxation's failure to perfect its statutory preferential lien under N.J.S.A. 54A:9-12 does not result in the extinguishment of the underlying gross income tax obligation intended to be secured. Stated differently, expiration of the six-year limitations period without recording a certificate of debt or instituting an action for recovery will not render the gross income tax debt invalid, rather only the statutory lien which arose under N.J.S.A. 54:49-1 is rendered invalid. See Huertas v. Galaxy Asset Mgmt., 641 F.3d 28, 32 (3d Cir. 2011).

The United States Supreme Court, our federal courts, and New Jersey state courts have long recognized that "a debt obligation is not extinguished by the expiration of the statute of limitations. . . ." Huertas, 641 F.3d at 32. In Mascot Oil Co. v. United States, 42 F.2d 309, 311 (U.S. Ct. Cl. 1930), aff'd, 282 U.S. 434 (1931), the court observed that "the statute of limitations or other bar against a remedy for the collection of a debt does not extinguish the liability therefor." Moreover, "[u]nder New Jersey law, the expiration of the statute of limitations does not extinguish a debt but merely renders it 'unenforceable in a court of law.'" Genova v. Total Card, Inc., 193 F.



Supp. 3d 360, 366 (Dist. Ct. 2016) (citing Huertas at 32). See also R.A.C. v. P.J.S., Jr., 192 N.J. 81, 98 (2007) (concluding that “[w]hen a procedural statute of limitations runs its course, only the remedy is barred, not the common law right.”); Hollings v. Hollings, 8 N.J. Super. 552, 557 (Ch. Div. 1950) (concluding that a statute of limitations is a “bar to the remedy only, and does not extinguish, or even impair, the obligation of the debtor”), aff’d, 12 N.J. Super. 57 (App. Div. 1951).

Here, Taxation timely filed its GIT-ER Proof of Claim with Assignee in accordance with the ABC Statute. See N.J.S.A. 2A:19-8 (stating “that all claims of creditors against the estate must be presented under oath to the assignee within 3 months from the date of the general assignment. . . .”) However, a proof of claim is not a lawsuit, nor does it amount to a threat to institute legal action, rather it is a written statement that a debt exists. See In re Dunaway, 531 B.R. 267, 272 (2015). Importantly, the ABC Statute contains no prohibition against a creditor filing a proof of claim on an unsecured, stale debt. Thus, Taxation’s filing of the GIT-ER Proof of Claim amounted to Taxation’s statement that Gift Box is indebted to the State and asserted its right to payment on such debt. Accordingly, “until adjudicated time-barred, a stale claim filed after the expiration of the applicable statute of limitations is nonetheless valid.” Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 500 (2006).

Moreover, although the Corporation Business Tax Act specifically prohibits payment of and collection by Taxation of a corporate business tax debt following expiration of the ten-year limitations period under N.J.S.A. 54:10A-31, there is no such corresponding provision under the Gross Income Tax Act. Despite expiration of the limitations period, under the Gross Income Tax Act Taxation is not barred from receiving payment from a debtor on account of a gross income tax debt. Thus, Assignee’s assertion of a limitations defense in response to the State’s preferential



lien claim under N.J.S.A. 54:49-1 does not render Gift Box's underlying GIT-ER debt invalid. Although the limitations defense renders the statutory lien invalid, Gift Box's gross income tax debt continues to exist. Accordingly, Taxation may participate in or receive a dividend from the estate of Gift Box as a general unsecured creditor arising from Gift Box's GIT-ER debt.

### **III. Conclusion**

For the above stated reasons, the court finds that under the Corporation Business Tax Act, N.J.S.A. 54:10A-16, a statutory lien arises in favor of the State on all taxpayer property from any corporation business tax due and payable, including fees, interests, and penalties. However, when Taxation has failed to file a certificate of debt, or to commence an action for the recovery of the corporation business tax debt within ten years from January 1 of the year next succeeding the year in which said tax was due, N.J.S.A. 54:10A-31 will invalidate the statutory lien imposed under N.J.S.A. 54:10A-16 and render the corporation business tax debt not payable.

Moreover, under the State Tax Uniform Procedure Law, the State is afforded a statutory lien on all taxpayer property for any taxes, fees, interest and penalties due and owing. However, the Gross Income Tax Act imposes limitations and restrictions on the lien and the State's ability to collect and recover gross income tax debts from taxpayers. Specifically, N.J.S.A. 54A:9-12 imposes a six-year limitations period on Taxation to file a certificate of debt or institute an action for recovery of a gross income tax debt from a taxpayer. Reading the State Tax Uniform Procedure Law and the Gross Income Tax Act in pari materia, the court concludes that when Taxation has failed to file a certificate of debt, or institute an action against a taxpayer for recovery of a gross income tax debt within the prescribed six-year limitations period, the statutory lien created under N.J.S.A. 54:49-1 will be rendered invalid. However, the gross income tax debt is not extinguished



and nothing contained under the Gross Income Tax Act will preclude Taxation from receiving payment on account of such debt. Accordingly, Taxation may participate in or receive a dividend from the estate of Gift Box as a general unsecured creditor on account of its GIT-ER debt.

