

18:2-4.11 Foreign postmark

If the envelope or wrapper containing the document or payment is mailed from a foreign country and received by the Division, the date of the official postmark stamped on the envelope or wrapper will be deemed to be the date of filing or payment. The envelope or wrapper must be properly addressed, have sufficient postage prepaid and bear a date stamped by such foreign country's official postal service which is within the prescribed period or on or before the prescribed date for filing or paying (including any valid extensions of time).

18:2-4.12 Weekend and holiday

For purposes of this subchapter, when the last day prescribed (including any extensions of time) for filing a document, making a payment, or performing any act falls on a Saturday, Sunday or a day which is a legal holiday in the State of New Jersey, the performance of such acts will be considered timely if performed on the next succeeding business day.

18:2-4.13 Express delivery

Where delivery of documents and payments is made by Federal Express, United Parcel Service, or similar service, such documents shall be deemed filed, or the payments shall be deemed paid, one day prior to the date upon which such documents and payments are received by the Division of Revenue. Such documents or payments shall be delivered to the Division of Revenue, 160 South Broad Street (Livingston Street entrance), Trenton, New Jersey 08646.

New Rule, R.1999 d.217, effective July 19, 1999.
See: 31 N.J.R. 1166(a), 31 N.J.R. 1941(a).

SUBCHAPTER 5. REFUNDS**Authority**

N.J.S.A. 54:50-1 and 54:49-12.5.

Source and Effective Date

1996 d.54, effective February 5, 1996.
See: 27 N.J.R. 4163(a), 27 N.J.R. 892(a).

18:2-5.1 Purpose

This subchapter provides rules for the administration of refund procedures pursuant to the applicable provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

18:2-5.2 Claims for refund; when allowed

(a) Taxpayers may claim a refund for overpayment of taxes by filing a return or a Claim for Refund form (A-3730).

(b) For claims accruing prior to July 1, 1993, any taxpayer may file a claim for refund within two years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is imposed by the law imposing a particular tax statute.

(c) For claims accruing on and after July 1, 1993, any taxpayer may file a claim for refund within four years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is fixed by the law imposing a particular tax statute. All claims barred by the applicable statute of limitations on July 1, 1993 shall continue to be barred.

(d) The statute of limitations period for filing a claim for refund of gross income tax is three years after the return is filed or two years after the tax is paid, whichever is later.

(e) The Transfer Inheritance Tax Law generally provides for a three year statute of limitations on applications for refunds. See N.J.A.C. 18:26-10.12.

18:2-5.3 Claim not required or permitted until final determination

(a) No claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director, or after appeal proceedings have been commenced, until such protest or appeal has been finally determined. Should the protest or appeal with respect to a tax paid be finally determined in favor of the taxpayer, then the refund claim shall be processed by the Director in accordance with the Director's final determination after protest or the judgment of the Tax Court upon appeal.

(b) The provision in (a) above, not permitting or requiring refund claims to be filed, does not apply to any tax paid which is not implicated by, or the subject of, a protest duly filed with the Director, or appeal proceedings duly commenced in the Tax Court. In the case of such taxes paid, a refund claim may be filed pursuant to N.J.S.A. 54:49-14 and N.J.A.C. 18:2-5.2.

18:2-5.4 Credit against outstanding tax liabilities

(a) In examining a claim for refund, if it is determined that there has been an overpayment of tax, the amount of the overpayment and interest on the overpayment, if any, will be credited against any outstanding State tax liability of the taxpayer. If there is no outstanding State tax liability, the taxpayer will be entitled to a refund of the overpayment and interest on the overpayment, if any.

(b) Refunds or credits of erroneous or illegal tax payments for which no refund claims have been filed will be made strictly according to the provisions of N.J.S.A. 54:49-16.

18:2-5.5 Items previously assessed

Except as provided by N.J.A.C. 18:2-5.7, no claim for refund shall be permitted for items which were previously the subject of an assessment by the Director where the taxpayer was permitted 90 days to protest the assessment pursuant to N.J.S.A. 54:49-18, or similar provisions of any particular tax statute. Failure to timely protest the assessment shall be deemed a waiver of the taxpayer's right for review of that item.

18:2-5.6 Appeal

The taxpayer will be notified if a claim for refund is rejected. The taxpayer may appeal a refund determination under the procedures of N.J.A.C. 18:1-1.8.

18:2-5.7 Extension of time; sales and use tax exception

(a) If a taxpayer and the Division sign an agreement to extend the time during which an assessment can be made, the taxpayer's refund application period is automatically extended until the last date by which the parties agree that any assessment of New Jersey taxes must be made. The refund application period only applies to the particular taxes and periods expressly included in the extension agreement. A taxpayer's opportunity to apply for a refund under such an agreement is extended to and includes the last date by which the parties agree that any assessment of New Jersey taxes must be made. An extension agreement will not receive refund application rights which expired prior to the agreement's execution. Thus, for example, if the Division makes an assessment by the last date permitted under the agreement but the taxpayer does not make an otherwise appropriate refund claim prior to the last permissible date for making an assessment under the agreement, the taxpayer has 90 days to protest the assessment only under N.J.S.A. 54:49-18a. Under N.J.S.A. 54:49-18a, a taxpayer has 90 days to protest any refund claim rejected pursuant to N.J.S.A. 54:49-15.

(b) Pursuant to N.J.S.A. 54:32B-12(c) of the Sales and Use Tax Act, sales or use tax refund claims may be filed up to six months after the last date by which the parties agree that any assessment of sales or use tax may be made. The refund application period only applies to sales or use tax overpayments made during periods expressly included in the extension agreement.

18:2-5.8 Refund claim procedures

(a) Procedures for filing for a refund after a return has been submitted are as shown in (b) through (e) below.

(b) For Gross Income Tax:

1. Employer refunds: If the taxpayer made an overpayment when remitting employee withholdings with a Return of Gross Income Tax Withheld (Form NJ-500), the taxpayer should make the adjustment on the next NJ-500 filed after the error is discovered. A written explanation should be attached, including a legible copy of the erroneous form NJ-500, any calculations, and the amount of tax remitted should be adjusted accordingly on the subsequently filed NJ-500 form. Alternatively, the taxpayer may apply for a refund of an overpayment when filing a Gross Income Tax Reconciliation of Tax Withheld (Form NJ-W-3) at the end of the calendar year along with the documents described above. If the error is discovered after all NJ-500 and the NJ-W-3 Forms are filed, the taxpayer should complete another NJ-W-3, write "Amended" across the top of the form, and submit it with the corrected information and supporting documentation.

2. Individual refunds: The taxpayer may amend a gross income tax return and request a refund by filing an Amended Income Tax Resident Return (Form NJ-1040X) for the year in question. There is no amended return for nonresident filers. Nonresident filers should complete an Income Tax Nonresident Return (form NJ-1040-NR) for the appropriate tax periods and write "Amended" across the top.

(c) For Corporation Business Tax, a corporate taxpayer may amend a corporation business tax return and request a refund by filing an Amended Corporation Business Tax Return (Form CBT-100-X). Any schedules which have changed since filing the original return should be attached. For refunds of Corporation Business Tax, see N.J.A.C. 18:7-13.8, 13.9 and 13.10.

(d) For Sales Tax:

1. Business refunds: If the person required to collect the tax overpaid sales tax on the Monthly Remittance (Form ST-51), the adjustment should be made on the Sales and Use Tax—Quarterly Return (Form ST-50). If the person required to collect the tax failed to adjust the quarterly return, a Claim for Refund (Form A-3730) and a New Jersey Sales Tax Amended Return (Form ST-607-A) should be completed for the appropriate tax period(s).

2. Individual refunds: If the taxpayer overpaid sales tax when making a retail purchase, the taxpayer may request a refund directly from the vendor from whom the purchase was made. However, if the vendor has already submitted the tax to the State, the taxpayer must complete a Claim for Refund (Form A-3730) and include supporting documents to substantiate the claim.

(e) If there is no established refund claim procedure or amended return for other State taxes overpaid in error, a Claim for Refund (Form A-3730) should be completed and submitted with a detailed explanation with supporting documentation.

18:2-5.9 Interest on overpayments

(a) For tax paid with respect to reports or returns due on and after January 1, 1994, interest shall be allowed and paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. "The date of the refund" shall be deemed the date set forth on the check or the documents authorizing electronic funds transfer (EFT). If interest must be paid, it will be calculated to accrue from the later of the date of the filing of a refund claim, the date the tax is paid, or the due date of the return. No interest shall be allowed or paid on an overpayment of less than one dollar; or on an overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return; or within six months after the return is filed, whichever is later. Interest will not be paid on overpayments where the taxpayer has requested that the overpayment be applied to the following year's tax liability.

(b) No interest will be paid on a refund of an overpayment issued pursuant to N.J.S.A. 54:49-16 unless and until six months after the taxpayer files a claim for refund. See N.J.A.C. 18:35-1.27.

Example 1: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Postmarked:	March 2
Return with overpayment received by the Division of Taxation:	March 12

A refund of overpaid taxes would accrue interest if not refunded by October 15 (six months after the due date of the return, April 15).

Example 2: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Return and overpayment (unknown to taxpayer at time return was filed) received by Division of Taxation:	April 15
Claim for refund received by Division of Taxation:	May 1

Interest would accrue on an overpayment not refunded by November 1 (six months after the claim for refund date of May 1).

Example 3: Same as above, except no claim filed. The Division of Taxation discovers the overpayment within two years of payment. No interest is due on the refund of the overpaid tax.

18:2-5.10 Separate claims required

For claims accruing on or after July 1, 1993, each taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted.

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.1995 d.610, effective December 4, 1995.

See: 27 N.J.R. 3591(a), 27 N.J.R. 4907(a).

18:2-6.1 Records confidential

(a) Division of Taxation records and files are confidential and privileged.

(b) Division officers and employees, former Division officers and employees, any Division employee engaged in the custody or administration of Division records, and any person who may have secured information from Division records, may not divulge, disclose or use for their own personal advantage any information obtained from Division records, from the examination or inspection of the property of any person, or any copy of a federal return or federal return information required to be attached to or included in any New Jersey return.

(c) The Division of Taxation is not required to produce any records or files for inspection of any person or use in any action or proceeding except when the records or files are shown to be directly involved in an action or proceeding under the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. or other State tax law, or where the determination of an action or proceeding will affect the validity or amount of State claims for taxes, or any lawful proceeding for the investigation and prosecution of violations of the criminal provisions of the State Tax Uniform Procedure Law or other State tax law.

(d) Violation of these provisions is a crime of the fourth degree.

(e) Requests for information from Division records, including requests for information pursuant to N.J.S.A. 54:50-9, should be directed to the Division of Taxation Office of Chief of Staff.

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.1997 d.256, effective June 16, 1997.
See: 28 N.J.R. 5156(a), 29 N.J.R. 2706(a).

18:2-7.1 Purpose

The purpose of this subchapter is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

18:2-7.2 Definitions

For purposes of this subchapter, the following terms shall be defined as follows:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

"Hard-copy" means any documents, records, reports or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

"Taxpayer" as used in the subchapter means any person owing or liable to pay any State tax or any person deemed by the Director to be so owing or liable.

18:2-7.3 Recordkeeping requirements—general

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records shall be made available on request by the Director or his or her authorized representatives. Such records shall include, but not be necessarily limited to, books of account, invoices, sales receipts or other documents required to be maintained by any specific tax statute or regulation of this State.

(b) If a taxpayer retains records required to be retained under this section in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Director in machine-sensible format upon request of the Director.

(c) If the machine-sensible or hard-copy records of the taxpayer are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from such records may be deemed to be incorrect or insufficient and the Director may determine the amount of tax due the State by using any information available, whether from the taxpayer's place of business or from any other source.

(d) Nothing in this section shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with (b) above.

18:2-7.4 Recordkeeping requirements—machine-sensible records

(a) General requirements pertaining to machine-sensible records are as follows:

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this section are met.

2. At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic data interchange requirements are as follows:

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records shall contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.