

## 8. Examples:

i. The Division of Taxation issues an additional tax assessment for the taxpayer's year ended December 31, 1995. The taxpayer disagrees with the assessment but does not contest the assessment with the Division of Taxation or in the New Jersey Tax Court within 90 days of the issuance of the notice of additional tax assessment. The taxpayer pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the Division of Taxation by the New Jersey Tax Court in another case. The taxpayer then files a claim for refund. Since it did not contest the assessment in a timely fashion, and since the assessment was for a return period prior to the effective date of P.L. 1998, c.106, authorizing the procedure for refund set forth at (c)1 above, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

ii. The same facts as in (c)8i above except that the additional tax assessment was issued with respect to a return period commencing on or after January 1, 1999 and the taxpayer complies with all the requirements of (c)1 above. The claim for refund will not be denied on the ground that it was not timely filed.

iii. The Division of Taxation issues an additional corporation business tax assessment for the taxpayer's 2000 fiscal year which results from an adjustment to the property fraction of the allocation factor used by the taxpayer in its return for that year. The notice of additional tax assessment does not refer to any other reason for the assessment. The taxpayer follows the refund procedure prescribed in (c)1 above. It contends that it is entitled to a refund of the tax paid on the ground that the payroll fraction of the allocation factor that it used in its 2000 return was erroneous. Since the ground provided in the notice of assessment does not refer to the payroll fraction of the allocation factor, the Division of Taxation will not consider that ground in reviewing the claim for refund.

iv. The Division of Taxation issues an additional corporation business tax assessment which results from an adjustment to the taxpayer's net operating loss and to the payroll fraction of the allocation factor used in the taxpayer's fiscal 2000 corporation business tax return. The taxpayer protests the adjustment to the net operating loss but not the adjustment to the payroll factor. The taxpayer may not later pay the corporation business tax stemming from the adjustment to the payroll factor and seek a refund of that payment under (c)1 above.

v. The Division of Taxation issues an additional sales and use tax assessment to a taxpayer. The taxpayer protests the sales tax component of the assessment but not the use tax component. The taxpayer may not later pay the tax stemming from the use tax component of the

assessment and claim a refund of that payment under (c)1 above.

vi. The Division of Taxation issues an additional sales tax assessment and a corporation business tax assessment at the same time to a taxpayer. The taxpayer protests the sales tax assessment to the Conference and Appeals Branch but not the corporation business tax assessment. The protest, appeal or payment of the sales tax assessment does not preclude the taxpayer from using the procedure prescribed by (c)1 above with respect to payment of the corporation business tax assessment.

vii. An individual taxpayer residing in New Jersey fails to file a gross income tax return for the calendar year 1999. The taxpayer does not provide any information to the Division of Taxation concerning the taxpayer's 1999 income and expenses, although requested to do so. Thereafter, the Division of Taxation issues a delinquency gross income tax assessment for that year. As the assessment is not an additional tax assessment, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

viii. An individual taxpayer residing in New York files a gross income tax return for the calendar year 1999. The Division of Taxation reviews the return. The Division of Taxation requests the taxpayer to provide copies of Federal schedules and a detailed calculation of the income and deductions shown on the return. Thereafter, the Division of Taxation issues an arbitrary gross income tax assessment for that year, estimating the additional tax owed and assessing applicable penalty and interest charges. As the taxpayer did not supply the required report to the Division of Taxation, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

ix. The Division of Taxation issues an additional sales tax assessment to the taxpayer, who neither protests nor appeals the assessment and, instead, requests a payment plan. The Division of Taxation grants the taxpayer a three year period in which to pay the assessment. The taxpayer pays the assessment in full at the end of the three year period. The refund procedure prescribed in (c)1 above is not available to the taxpayer since the taxpayer did not pay the additional tax assessment in full within one year after the expiration of the statutory 90-day period for protesting the assessment to the Division of Taxation and of the statutory 90-day period for appealing the assessment to the New Jersey Tax Court.

x. A taxpayer protests an additional sales tax assessment to the Division of Taxation and takes no further action with respect to the assessment other than paying the tax within one year after the expiration of the statutory 90 day period in which to protest the assessment to the Division of Taxation. Since the taxpayer filed a protest with the Division of Taxation, the refund

procedure prescribed in (c)1 above is not available to the taxpayer.

xi. The Division of Taxation issues a notice of additional tax assessment reflecting assessments in corporation business tax and sales and use tax. A taxpayer using the refund procedure prescribed by (c)1 above is required to use a separate refund claim form with respect to a refund of a payment of the corporation business tax and to a refund of a payment of the sales and use tax.

xii. Taxpayer timely files a 2000 resident gross income tax return claiming a credit for taxes paid to other jurisdictions on wages taxed by both New York and New Jersey. Upon audit it is determined that the taxpayer failed to report a taxable distribution from a New Jersey S Corporation which also necessitates that their credit be amended. The taxpayer does not appeal the assessment within 90 days of the notice. Taxpayer files a claim for refund under (c)1 above amending their credit for taxes paid to other jurisdiction as a result of a New York audit increasing New York source wages. The taxpayer is precluded from claiming a refund under this provision in that the ground for the additional tax assessment is not the same ground for the taxpayer's refund request.

Amended by R.2002 d.153, effective May 20, 2002.  
Sec: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).  
Rewrote the section.

#### 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 (other than urban enterprise zone refunds):

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