

2. An individual taxpayer filed the 1987 NJ-1040 due on or before April 15, 1988 on October 16, 1988. The return is six months and one day late. In addition to a \$1,200.00 outstanding tax liability on April 15, 1988, the taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for seven months	\$ 700.00
Late filing penalty: five percent per month of the tax liability not to exceed 25 percent	\$ 300.00
Tax Liability	<u>\$1,200.00</u>
Total	<u>\$2,200.00*</u>

* In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

18:2-2.4 Failure to pay on time; extensions of time to pay

(a) Any taxpayer failing to pay a tax within the time prescribed by the act imposing a particular tax shall pay, in addition to the unpaid tax, the following:

1. Interest on said tax at the rate of one percent for each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was originally due until October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975 to the date of actual payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest on the unpaid tax shall be charged at an annual rate of five percentage points above the prime rate, compounded daily upon the amount that remains unpaid, calculated from the date the tax was originally due until the date of payment. Interest on penalties which are assessed on and after December 9, 1987 shall be charged at the same rate from the date the penalty is assessed until the date of payment. On and after July 1, 1993, interest on the unpaid tax shall be charged at the rate of three percentage points above the prime rate assessed for each month or fraction thereof. On and after July 1, 1993, interest will be compounded annually at the end of each calendar year.

2. Unless any part of any underpayment of tax required to be shown on a return or report is shown to be unpaid due to reasonable cause, a sum equivalent to five percent of the tax shall be added to the amount of the tax as a penalty. The taxpayer has the affirmative obligation to show reasonable cause for the underpayment in order to avoid imposition of the penalty. See N.J.A.C. 18:2-2.7 for bases for a finding of reasonable cause.

(b) The following examples apply only to tax liabilities paid prior to December 9, 1987:

1. Taxpayer failed to pay a tax that was due on April 15, 1975. On January 15, 1976, the Division of Taxation imposed interest and penalty charges for such failure. Interest will be calculated from April 15, 1975, to October 1, 1975, at the rates in effect immediately prior to October 1, 1975, and at the rate of 1½ percent for each month or fraction thereof that the tax remained unpaid from

October 1, 1975, to the date of payment, plus a penalty of five percent of the balance of tax due.

2. In example 1, if taxpayer also failed to file his return (due April 15, 1975) until January 15, 1976, he would be subject to additional penalties set forth in Section 3 of this Subchapter.

3. On May 1, 1975, the division assessed the taxpayer for additional taxes due and at the same time imposed additional interest charges at the rate of one percent per month. On February 15, 1976, taxpayer offers to pay his unpaid taxes. Additional interest shall be calculated from April 15, 1975, to October 1, 1975, at the rate of one percent per month or fraction thereof, and from October 1, 1975, to February 15, 1976, (the date of payment) at the rate of 1½ percent per month or fraction thereof. In addition, a five percent penalty may be imposed on the balance of tax due.

(c) The following example applies only to tax liabilities paid on or after December 9, 1987:

1. Corporation X's Corporation Business Tax return was due and filed on April 15, 1988. A deficiency of \$50,000.00 is assessed by the Division. Payment is due on July 31, 1988.

The taxpayer must submit the following amounts on or before July 31, 1988.

Late payment penalty: five percent of the balance of tax due	\$ 2,500.00
Deficiency assessed:	<u>\$50,000.00</u>
	<u>\$52,500.00</u>

Interest on tax, calculated at an annual rate of the prime rate plus five percentage points compounded daily from the original due date (April 15, 1988) until the date of payment (assume July 31, 1988), plus interest on penalty, calculated at the same rate from the date the penalty is assessed until the date of payment. The applicable prime rate shall be the rates effective on January 1, 1988 and April 1, 1988, which are assumed to be nine percent and nine and one-half percent, respectively, for the purposes of this example.	<u>\$ 2,222.30</u>
Total	<u>\$54,722.30</u>

(d) Where the Director is authorized by law and grants an extension of time in which a tax shall be paid, the taxpayer shall be liable for the payment of interest on the unpaid tax at the rate of three percentage points above the prime rate, to be compounded daily from the date such tax was originally due to the date of actual payment. If any or all of such tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the annual rate of five percentage points above the prime rate, to be compounded daily from the date the tax was originally due to the date of actual payment. On and after July 1, 1993, where the Director grants an extension, interest on the unpaid tax shall be paid

at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year. If any tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year.

(e) On and after December 9, 1987, which is the first day immediately following the 90 day tax amnesty period authorized by P.L. 1987, c.76, for purposes of calculating interest unpaid tax shall mean the total of the following:

1. The actual unpaid tax liability;
2. All penalties accrued to that date; and
3. Interest accrued to that date.

(f) The following example applies only to tax liabilities paid on or after July 1, 1993:

1. Taxpayer failed to pay tax that was due April 15, 1994. On January 15, 1995, the Division issues a Notice and Demand which imposes interest and penalty. Interest will be calculated at the rate of three percent above the prime rate for each month or fraction thereof, commencing on the date that the tax was originally due, and shall continue to accrue until the date upon which payment is received. In addition, late payment penalty may be imposed. Beginning January 1, 1995, tax, penalty and interest are added together at the beginning of each calendar year to become the basis for further calculations of interest.

Amended by R.1997 d.98, effective March 17, 1997.
See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).

In (a)1, added last two sentences; in (a)2, inserted text "Unless any part ... due to reasonable cause," and added second and third sentences; in (d), added last two sentences; and added (f).

18:2-2.5 Cost of collection defined

(a) Cost of collection means the amount of expense incurred by the State with respect to the issuance of a certificate of debt for, and the collection of, any State tax not paid within the time prescribed by law. These expenses include, but are not limited to the following:

1. Cost of postage;
2. Cost of telephone;
3. Cost of photocopying;
4. State payroll hours used, including all associated overhead;
5. Cost of filing and prosecuting suit;
6. The cost of agents, contractors, subcontractors or others employed or otherwise engaged by the State of New Jersey for the efficient and expeditious collection of unpaid tax; and

7. Any other expense deemed by the Director to be reasonably related and necessary for the collection of any unpaid tax.

(b) The Director may, in his discretion, impose the actual cost of collection, or, in lieu of ascertaining and imposing the actual cost of collection, may impose a fee as follows:

1. In the event that any State tax is not paid within the time prescribed by law and the Director issues a certificate of debt pursuant to N.J.S.A. 54:49-12, the greater of five percent of the tax or \$100.00;

2. In the event that any State tax remains unpaid following the issuance of the certificate of debt and the Director takes any further collection action, including but not limited to, referral of the matter to the Attorney General, the greater of 10 percent of the tax or \$200.00;

3. In the event that any State tax remains unpaid and suit is instituted against the taxpayer for collection of the tax, the greater of 20 percent of the tax or \$500.00.

(c) In determining whether the Director shall impose the actual cost of collection or a fee in lieu thereof, the following factors shall be among those considered:

1. Whether the taxpayer fails to properly maintain books and records as required;

2. Whether the taxpayer fails to make books and records available for examination;

3. Whether the taxpayer fails to secure proper license or fails to register with the Division of Taxation as required;

4. Whether the taxpayer operates under a voided corporate charter or after the revocation of authority to do business in New Jersey;

5. Whether the taxpayer remits payment which subsequently became dishonored or defaults on a bond or other security posted with the Division or on a Deferred Payment Plan;

6. Whether the Director finds that a taxpayer intends to leave this State, or to remove therefrom possessions, or any property subject to any State tax; or that taxpayer does any other act tending to prejudice, delay or negate proceedings to assess, collect, or pay any State tax;

7. Whether the taxpayer fails to collect, or truthfully account for, or file a return or file any other information as required;

8. Whether the taxpayer's non-compliance induces the Division of Taxation to issue a Warrant for Execution.