CHAPTER 33

CLOSING AGREEMENTS AND COMPROMISES

Authority

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 54:50–1 et seq. and were filed and became effective on January 27, 1978, as R.1978 d.29. See: 10 N.J.R. 41(a), 10 N.J.R. 127(d).

Chapter Expiration Date

Chapter 33, Closing Agreements and Compromises, expires on July 1, 2006.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. CLOSING AGREEMENTS

18:33–1.1 General provisions
18:33–1.2 Taxable periods
18:33–1.3 Finality; determination of fraud
18:33–1.4 Procedure with respect to closing agreements
18:33–1.5 Applicability and coverage; policy
18:33–1.6 Procedures

SUBCHAPTER 2. COMPROMISES

18:33–2.1 General provisions
18:33–2.2 Scope of compromise agreement
18:33–2.3 Effect of compromise agreement
18:33–2.4 Procedure with respect to offers in compromise
18:33–2.5 Stay of collection
18:33–2.6 Acceptance
18:33–2.7 Withdrawal or rejection
18:33–2.8 Record
18:33–2.9 Requirement with respect to statutes of limitations
18:33–2.10 Allocation of tax, penalty and interest
18:33–2.11 Appellate hearings board

SUBCHAPTER 1. CLOSING AGREEMENTS

18:33–1.1 General provisions

(a) The Director of the Division of Taxation or any of his delegated representatives may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect to any State tax administered by the Director of the Division of Taxation for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the director that the State of New Jersey will sustain no disadvantage through consummation of such an agreement.

(b) A closing agreement may be executed even through under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

18:33–1.2 Taxable periods

(a) Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to any or more separate items affecting the tax liability of the taxpayer, as, for example, the amount of gross receipt, deduction items, other income items, statutory deductions or exclusions, statutory additions to income, the year in which an item of income is to be included in gross receipts or income, the year in which an item is to be deducted, or the value of property on a specific date.

(b) Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

18:33–1.3 Finality; determination of fraud

(a) A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, expect upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

1. The case shall not be reopened as to the matters agreed upon or the agreement modified by an officer, employee, or agent of the State of New Jersey; and

2. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement so recited.

(b) Execution and approval of closing agreement does not preclude an additional inspection of taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists as to execution of agreement.

18:33–1.4 Procedure with respect to closing agreements

(a) A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed in the Division of Tax Appeals. All closing agreements shall be executed on forms prescribed by the Director of the Division of Taxation.

New Jersey State Library

(b) Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. Black Whale, Inc. v. Director, Division of Taxation, 15 N.J.Tax 388 (1995).

18:33–1.5 Applicability and coverage; policy

(a) The Director of the Division of Taxation or any Division of Taxation officer or employee authorized in writing by the director, can enter and approve written closing agreements with any person. Such agreement can relate to the liability of such person (or the taxpayer represented by him), for any State tax administered by the Division of Taxation for any taxable period. The agreement can cover either the total liability of taxpayer or one or more of separate items affecting the liability, if it embraces a tax period ending before the date of the agreement; or one or more separate items affecting tax liability. There can be a series of agreements covering a single tax period.

(b) A closing agreement may be entered into when it appears advantageous to have the case permanently closed; or where the taxpayer shows sufficient reason for desiring a closing agreement, and there would be no disadvantage to the State of New Jersey in entering into it. Closing agreements can be entered into, although under the agreement taxpayer is not liable for tax for the period covered.

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. Black Whale, Inc. v. Director, Division of Taxation, 15 N.J.Tax 388 (1995).

18:33–1.6 Procedures

(a) A request to enter into a closing agreement is executed on prescribed forms and submitted, processed and approved under prescribed procedure. If the proposed agreement relates to a prior taxable period, it must be submitted before a case with respect to the tax liability is filed in the Division of Tax Appeals or in any Division of the Superior Court of New Jersey or in any Federal court.

(b) Where parties entered into a stipulation, on trial, or any matter regarding taxpayer's liability, and the action is dismissed with prejudice, taxpayer shall not be permitted to repudiate the agreement because a closing agreement was not executed by the Director of the Division of Taxation.

(c) Taxpayer's acceptance of a determination of additional tax under which an assessment of additional tax was made and paid, does not preclude the director from determining an additional deficiency for the year.

(d) The Director of the Division of Taxation is not estopped from issuing a deficiency assessment. Acceptance of a sum submitted with an amended return does not discharge a taxpayer from further liability; a deficiency assessment is not a closing agreement.

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. Black Whale, Inc. v. Director, Division of Taxation, 15 N.J.Tax 388 (1995).

SUBCHAPTER 2. COMPROMISES

18:33–2.1 General provisions

(a) The Director of the Division of Taxation may compromise any civil or criminal liability arising under any State tax laws administered by the Director of the Division of Taxation prior to reference of a case involving such liability to the Attorney General for prosecution or defense. Any such liability may be compromised only upon one or both of the following two grounds:

1. Doubt as to liability (including the amount of liability); or

2. Doubt as to collectibility. No such liability will be compromised if the liability has been established by a valid judgment of a court of competent jurisdiction, and there is no doubt as to the ability of the State to collect the amounts owing with respect to such liability.

18:33–2.2 Scope of compromise agreement

A compromise agreement may relate to a civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision, or a related statute in Title 54 or Title 56 of the Revised Statutes, and then only if such violation was not deliberately committed with intent to defraud.

18:33–2.3 Effect of compromise agreement

(a) A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the State shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of the following: