

Recodified from N.J.A.C. 18:35-1.10 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

In (h), changed N.J.A.C. reference.

#### 18:35-7.4 Summer payment plan

(a) Certain deferred payments, authorized under a so-called "summer payment plan" under N.J.S.A. 18A:29-3, whereby an amount equal to ten percent of the employee's salary is withheld and paid to the participant in the plan at a later date are subject to tax under the New Jersey Gross Income Tax Law, P.L. 1976, c.47 (N.J.S.A. 54A:1-1 et seq.), at the time withheld and not at the time paid, provided that a similar treatment is given under the Internal Revenue Code and regulations thereunder for Federal income tax purposes.

(b) Section 54A:8-3 of the New Jersey Gross Income Tax Act, P.L. 1976, c.47 (N.J.S.A. 54A:8-3), provides that a taxpayer's accounting method under this Act shall be the same as his accounting method for Federal income tax purposes. Therefore, if for Federal income tax purposes an employee who participates in such a deferral plan is deemed to have received the salary at the time that the salary was withheld and placed into a deferred salary escrow fund, such income will also be deemed to have been received and subject to tax for New Jersey gross income tax purposes at that time. Such salary would not then be subject to New Jersey gross income tax when the employee receives a payment from the deferred salary escrow fund.

R.1976 d.415, effective December 16, 1976.

See: 9 N.J.R. 52(a).

Recodified from N.J.A.C. 18:35-1.1 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

#### 18:35-7.5 Gambling winnings subject to withholding

(a) Every payor of New Jersey gambling winnings which are subject to withholding, as defined in (d) below, shall deduct and withhold New Jersey gross income tax thereon in an amount equal to three percent of payments made to both New Jersey residents and nonresidents as defined in N.J.S.A. 54A:1-2(m) and (n). Such withholding shall be required in all instances wherein the payor of such winnings is required to withhold for Federal income tax purposes under subsection (q) of section 3402 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 3402), as amended.

(b) The tax imposed under N.J.S.A. 54A:7-1(c) and this section shall not apply:

1. With respect to the payment of winnings from the New Jersey Lottery; and
2. With respect to a payment of winnings from a slot machine, or a keno or bingo game.

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing:

1. The name, address, and taxpayer identification (social security) number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or

2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.

3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed \$1,000; or

2. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:

- i. Exceed \$1,000; and

- ii. Are at least 300 times as large as the amount of the wager.

3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$1,000, are subject to withholding.

(e) Proceeds from a wager is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager.

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(f) Payments to any person of winnings subject to withholding under this section shall be treated as if they are wages paid by an employer to an employee under the provisions of N.J.S.A. 54A:7-2 through N.J.S.A. 54A:7-7; provided, however, that such payments shall be considered gambling winnings for all other purposes under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

New Rule, R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Recodified from N.J.A.C. 18:35-1.20 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

#### **18:35-7.6 Filing of withholding returns by professional athletic teams**

Any "professional athletic team" (as defined by N.J.A.C. 18:35-5.1(b)1) which pays compensation to a resident or nonresident individual for services rendered to the team within New Jersey shall be deemed to be an "employer" and shall be required to withhold New Jersey gross income tax return from that portion of the compensation attributable to "duty days" spent in New Jersey, as defined in N.J.A.C. 18:35-5.1(b)3.

Recodified from N.J.A.C. 18:35-1.22(c) and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Changed N.J.A.C. references.

#### **18:35-7.7 Commuter transportation benefits reporting by employer**

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (g) below showing the cost of commuter transportation benefits paid by the employer to the employee.

(b) Employer-provided commuter transportation benefits for using an alternate form of commuting (such as public transportation, carpools, etc.) are excluded from New Jersey gross income up to and including the limit per taxable year per employee. The limit per taxable year is as follows:

1. \$720.00 for the taxable years beginning on and after January 1, 1993 but before January 1, 1994;
2. \$735.00 for the taxable years beginning on and after January 1, 1994 but before January 1, 1995;
3. \$735.00 for the taxable years beginning on and after January 1, 1995 but before January 1, 1996;
4. \$755.00 for the taxable years beginning on and after January 1, 1996 but before January 1, 1997;
5. \$1,000 for the taxable years beginning on and after January 1, 1997 but before January 1, 1998;
6. \$1,105 for the taxable years beginning on and after January 1, 1998 but before January 1, 1999;
7. \$1,120 for the taxable years beginning on and after January 1, 1999 but before January 1, 2000;
8. \$1,145 for the taxable years beginning on and after January 1, 2000 but before January 1, 2001;
9. \$1,175 for the taxable years beginning on and after January 1, 2001 but before January 1, 2002;

10. \$1,200 for the taxable years beginning on and after January 1, 2002; and

11. In the case of any taxable year beginning in a calendar year after 2002, the Director shall adjust the limit for inflation in parallel with the adjustment pursuant to paragraph (6) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 132, so that the taxable year limit pursuant to this paragraph is equal to 12 times the adjusted Federal monthly limit pursuant to subparagraph (A) of paragraph (2) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986.

(c) The income tax exclusion shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee.

(d) State and local government employers may offer qualified transportation fringe benefits to their own employees as an employee set-aside program. The State and local employees shall choose to have the benefit deducted from their salary, receive any combination of benefits or continue to receive the amount as salary. The amount of any reduction will continue to be treated as regular compensation including the calculation of pension contributions and the amount of any retirement allowance, but, to the extent permitted under the Federal Internal Revenue Code as extended under the Federal Transportation Equity Act for the 21st Century (Title IX of Pub.L. 105-178), will not be included in the computation of Federal taxes withheld from the employee's salary.

(e) Qualified parking, as provided under IRC Section 132, at or near the employer's business premises or a location from which the employee commutes to work by mass transit or hired commuter vehicle is excludible for New Jersey gross income tax purposes. Commuter transportation benefits also includes the cost of parking by employees at park-and-ride lots. Any parking on or near the employer's residence is not qualified parking.

1. Acceptance of the cash value of qualified parking on the part of one employee of an employer in place of qualified parking fringe benefits provided to the other employees of the employer in addition to and not in lieu of compensation, shall not cause the qualified parking fringe to become a taxable benefit for employees who did not accept the cash value.

(f) Notice of the adjusted limit shall be published in the New Jersey Register.

(g) The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on a W-2 form or other written information statement showing the amount of such benefits.

New Rule, R.1995 d.19, effective January 3, 1995.

See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).

Public Notice: Commuter transportation benefit limit for 1995.  
 See: 27 N.J.R. 4737(a).  
 Public Notice: Commuter transportation benefit limit for 1995.  
 See: 28 N.J.R. 2639(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 28 N.J.R. 5510(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 29 N.J.R. 813(c).  
 Recodified from N.J.A.C. 18:35-1.28 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Public Notice: Commuter transportation benefit limit for 1998.  
 See: 30 N.J.R. 2533(a).  
 Public Notice: Commuter transportation benefit limit for 1999.  
 See: 31 N.J.R. 1112(b).  
 Public Notice: Commuter transportation benefit limit for 2000.  
 See: 32 N.J.R. 1088(a).  
 Public Notice: Commuter transportation benefit limit for 2001.  
 See: 33 N.J.R. 903(b).  
 Public Notice: Commuter transportation benefit limit for 2002.  
 See: 34 N.J.R. 1058(a).  
 Public Notice: Commuter transportation benefit limit for 2002. Corrected inflation adjustment.  
 See: 34 N.J.R. 1749(b).  
 Public Notice: Commuter transportation benefit limit for 2003.  
 See: 35 N.J.R. 1963(b).  
 Amended by R.2003 d.285, effective July 21, 2003.  
 See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).  
 Rewrote the section.  
 Public Notice: Commuter Transportation Benefit Limits Inflation Adjustments.  
 See: 36 N.J.R. 1838(a).

#### 18:35-7.8 Information of employer withholding from new employees

(a) The New Jersey Economic Development Authority shall submit data to the Director no later than April 1 of each year, for the preceding grant year, setting forth information regarding businesses applying for a grant under either the Business Employment Incentive Program Act (P.L. 1996, c.26) or the Business Relocation Assistance Act (P.L. 1996, c.25) (both referred to as "Act"). This information shall set forth the following relative to said business.

1. A list of the names, job titles and job locations of existing employees of said business not subject to a grant under the Act;

2. A list of the names and date hired and/or the date each new employee began employment at the project of said business in an eligible position for grant purposes under the Act, their base salary, overtime and bonuses paid, and the amount of New Jersey gross income tax withheld from each new employee and their city and state of residence;

3. The aggregate amount of payroll and withholdings for all employees in New Jersey;

4. The percentage and term of any grant pursuant to the Business Employment Incentive Program Agreement;

5. The amount of the grant to be disbursed to the business pursuant to the Business Relocation Assistance Act requiring the Treasurer's certification and the percentage upon which the grant is based;

6. The percentage and term of the grant to be disbursed to the business pursuant to the Business Employment Incentive Program Agreement requiring the Treasurer's certification;

7. A statement as to whether the applicant business has followed the criteria as set forth in guidelines promulgated by Economic Development Authority under the Act; and

8. A list of eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(b) The Director, upon receipt of the information referred to in (a) above, shall send to each business awarded a grant under the Act, a Declaration of Annual Withholding Information for Purposes of the Business Employment Incentive Program, Form NJ-9000, to be completed and returned not later than May 7 to New Jersey Division of Taxation c/o EDA, PO Box 990, Trenton, NJ 08625-0990.

(c) Form NJ-9000 shall consist of a certification setting forth:

1. The number of new employees, as referred to in (a)2 above, together with their city/state residence, base salary, overtime and bonuses paid to them, withholding tax paid for each new employee during the preceding grant year and date hired or transferred. Each business shall also submit a copy of each Federal W-2 form for all said new employees;

2. The aggregate amount of payroll and withholdings for all employees in New Jersey; and

3. The amount and type of each grant, other than a grant under the Act, that the applicant business received by operation of State law during the preceding grant year.

(d) Each business shall annually submit to the Division of Taxation a Release Authorization authorizing the Division of Taxation to review the businesses tax history to determine if there are any tax delinquencies.

(e) Upon receipt of Form NJ-9000 from the business, the Director shall certify to the Treasurer, who in turn will certify to the New Jersey Economic Development Authority, the aggregate amount, as set forth on Form NJ-9000, of the withholdings received in that year from the business for new employees in eligible positions under the Act and whether same equals or exceeds the amount of the proposed grant to be given to said business under the Act.

(f) The Director shall also verify to the New Jersey Economic Development Authority on an annual basis any outstanding tax delinquencies for each business awarded a grant under the Act.

(g) The issuance of the certifications by the Division as set forth in (d) above is conditional upon the receipt by the

Director of proper information as set forth on Form NJ-9000.

Recodified from N.J.A.C. 18:35-3.1 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Administrative change.

See: 34 N.J.R. 1425(b).

**18:35-7.9 Treasurer's approval of a business to receive a grant from both the Business Employment Incentive Program Act and the Business Relocation Assistance Act**

(a) In determining whether to recommend the approval or disapproval of a business to receive a grant under both the Business Employment Incentive Program Act and the Business Relocation Assistance Act, the Treasurer shall consider the following criteria:

1. The number of eligible positions created for new employees and the expected duration of those positions;
2. The total number of existing employees of the business;
3. The type of contribution the business can make to the long term growth of the State's economy;
4. The total dollar investment the business is contributing to the project;
5. The type of industry that the business is involved in;
6. The location of the project;
7. The type of jobs to be created and the associated wages; and
8. Such other factors as are presented by a specific applicant.

(b) In determining whether to recommend the approval or disapproval of a business receiving a grant under either the Business Employment Incentive Program Act or the Business Relocation Assistance Act and any other grant under operation of State law, which, when combined, exceeds 80 percent of its withholdings, the Treasurer shall consider the same criteria set forth in (a) above.

Recodified from N.J.A.C. 18:35-3.2 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

**18:35-7.10 Domestic employees**

(a) Employers of domestic workers shall report and remit gross income tax withholding and unemployment and disability insurance for these employees on an annual basis on Form NJ-927H; the Employer's Annual Report.

(b) A domestic worker is considered to be an employee working in the private home of an employer; such domestic workers include, without limitation: a babysitter, nanny, health aide, nurse, maid or yard worker, etc.

(c) Effective January 1, 2001, employers of domestic workers must file the "Employer Report of Wages Paid" (Form WR-30) on an annual basis. For the calendar year ending December 31, the report would be due January 31 following the closing of the calendar year.

(d) The following concern taxpayer identification numbers:

1. Employers having both domestic employees and business employees shall have two separate taxpayer identification numbers—one for domestic employees and the other for business employees. Such employers file using Form NJ-927H for their domestic employees and Form NJ-927 for their business employees.

2. If the employer is a sole proprietor and files under one taxpayer identification number, the employer is permitted to combine both the domestic employees and the business employees on Form NJ-927 and file it quarterly.

New Rule, R.2003 d.285, effective July 21, 2003.

See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

**SUBCHAPTER 8. INFORMATION RETURNS**

**18:35-8.1 Information furnished at source; 1977 and subsequent returns**

(a) Under N.J.S.A. 54A:1-1 et seq., information returns which shall include the amounts paid to or credited to the accounts of all recipients for any calendar year beginning with January 1, 1977, are required to be provided to the Director, New Jersey Division of Taxation, by:

1. Payers of interest and dividends, including banks, savings and loan associations, building and loan associations, and savings banks; and

2. All payers including those who are required to file Federal Internal Revenue Service form 1099 or any of the form 1099 designations, which shall include lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(b) Such information returns must be filed on or before February 15 following the close of each calendar year, with the Division of Taxation, PO Box 248, Trenton, New Jersey 08646-0248, where the amount paid or credited is \$1,000 or more.

(c) The requirements of (b) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099 for the full calendar year, edited to delete all listings of recipients of less than \$1,000; or
2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting recipients of less than \$1,000; or
3. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year on amounts of \$1,000 or more (either an additional carbon or photocopy of the form 1099); or
4. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year.

(d) Beginning with real estate transactions occurring after December 31, 1995, each person required to report the proceeds from real estate transactions to the Internal Revenue Service on Federal Form 1099-S (or any other form which the Internal Revenue Service may designate) pursuant to Section 6045(e) of the Federal Internal Revenue Code is required to submit all such reports to the Division of Taxation when the real estate being sold or exchanged is partially or entirely located in New Jersey.

1. All information returns required by this subsection must be filed on or before February 15 following the close of each calendar year, beginning with February 15, 1997. Information returns attributable to real estate transactions must be sent to: Division of Taxation, PO Box 187, Trenton, New Jersey 08646-0187, where the amount paid or credited is \$1,000 or more.

2. If any person required to file information returns under this subsection is also required to submit information returns pursuant to (b) above, such person shall send the information returns attributable to real estate transactions to the address specified in (d)1 above, and shall send all other information returns to the address specified in (b) above.

(e) The requirements of (d) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099-S for the full calendar year, edited to delete all listings of real estate transactions with gross proceeds of less than \$1,000;
2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting real estate transactions with gross proceeds of less than \$1,000;

3. Copies of all forms 1099-S submitted to the Internal Revenue Service for the full calendar year for real estate transactions with gross proceeds of \$1,000 or more (either an additional carbon or photocopy of the form 1099-S); or

4. Copies of all forms 1099-S submitted to the Internal Revenue Service for the full calendar year.

R.1977 d.460, effective December 6, 1977.

See: 10 N.J.R. 45(a).

Amended by R.1996 d.550, effective December 2, 1996.

See: 28 N.J.R. 2517(a), 28 N.J.R. 5079(b).

Recodified from N.J.A.C. 18:35-1.8 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

## SUBCHAPTER 9. INTEREST AND PENALTIES

### 18:35-9.1 Negligence and fraud penalties

(a) If any part of a deficiency is due to the taxpayer's negligence or an intentional disregard of any provision of the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or the rules applicable thereto, there shall be added to the tax, penalties and interest as provided for in State Tax Uniform Procedure Law plus an amount equal to 10 percent of the deficiency, provided however that there was no intent to defraud.

(b) If a deficiency is assessed against a taxpayer and it is determined that any part of such assessment is due to civil fraud, there shall be added to the tax an amount equal to 50 percent of the assessment. This addition to the tax shall be in lieu of any other additions to the tax imposed for late filing and nonpayment of special assessment as provided for in N.J.S.A. 54:49-9.

Emergency New Rule, R.1986 d.169, effective April 15, 1986 (expires May 15, 1986).

See: 18 N.J.R. 999(a).

Public Notice: This rule Extension of time to file a residential property tax credit application expired May 15, 1986.

See: 19 N.J.R. 890(b).

New Rule, R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Recodified from N.J.A.C. 18:35-1.19 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

### 18:35-9.2 Interest on overpayments

(a) Interest will be paid on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or
2. The date the return, whether original or amended, requesting the refund is actually filed.