

3. The individual was not a fiscal year filer;

4. The individual did not have income derived from or connected with New Jersey sources other than the income reported on this or any other composite return;

5. The individual waives the right to claim any New Jersey personal exemption, credit or deduction and agrees to have the tax calculated directly on such income at the highest tax rate in effect for single taxpayers for the tax year; and

6. The individual elects to be included in a composite return by completing and delivering to the filing entity a Form NJ-1080-E (Election to be included in a Composite Return), or a form substantially similar thereto, prior to the filing of the composite return by the filing entity, in accordance with the following:

i. Such election shall be made annually;

ii. Such election shall be binding on the participant's heirs, representatives, assigns, successors, executors and administrators;

iii. Such election shall be an express consent to personal jurisdiction in New Jersey for New Jersey personal income tax purposes; and

iv. A qualified electing nonresident participant shall not revoke an election to be included in the composite return or make an election to be included in the composite return after April 15 following the close of the taxable year.

(c) Each filing entity shall retain the completed and signed election forms (Form NJ-1080-E) submitted by the qualified electing nonresident participants. Such forms shall be made available to the Division of Taxation upon request.

(d) An individual may participate in more than one New Jersey gross income tax composite return, providing the requirements of (b)1 through 6 above are satisfied.

(e) Nonresident individuals who are not eligible to participate in the composite return because they do not satisfy all of the requirements of (b) above, or who do not wish to participate in the composite return, shall file a Form NJ-1040NR reflecting their income from all sources, as well as from New Jersey sources.

(f) The composite return shall be due on the 15th day of the fourth month following the close of the taxable year of the qualified electing nonresident participants. An extension of time to file will be granted on a composite basis only and shall be requested in accordance with N.J.A.C. 18:35-6.1. The request shall be made on Form NJ-630 and shall be made under the filing entity's Federal identification number.

(g) If the filing entity has filed a composite return previously and the amount which the filing entity estimates to be the total income tax liability for the composite return for

the current tax year exceeds \$100.00, the filing entity shall file a declaration of estimated tax and shall make quarterly estimated tax payments in accordance with N.J.S.A. 54A:8-4 and 54A:8-5, using Form 1040-ES. Credit shall not be given on the composite return for individual estimated tax payments made by, or on behalf of, any of the qualified electing nonresident participants.

(h) The tax due shall be calculated using the highest gross income tax rate in effect for single taxpayers for the tax year for which the composite return is being filed, without benefit of personal exemptions, deductions or credits.

(i) The filing of a composite return shall be considered to be a group of separate returns meeting the individual filing requirements for each qualified electing nonresident participant as imposed by the Gross Income Tax Act. N.J.S.A. 54A:1-1 et seq.

1. Each qualified electing nonresident participant shall be personally liable for the timely filing of returns and payment of such individual's liability, including, but not limited to, any assessment resulting from an audit of the composite return.

2. Each qualified electing nonresident participant adopts the statements contained in the filed composite return relating to the filing entity and to him or herself (but not as to statements made on the composite return relating solely to other participants), and shall take, under penalty of perjury, full responsibility for the truth of the statements contained in the filed composite return.

3. Each qualified electing nonresident participant adopts, as his or her own, any actions of the filing entity that may affect the composite return, including, but not limited to, a waiver of the statute of limitations for assessment or any decision to accept the results of an audit by the Division.

4. The Director retains the right to require the filing of an individual New Jersey Nonresident Gross Income Tax Return (Form NJ-1040NR) by any individual who participates in a composite return, when the Director deems that the filing of a separate return is necessary to acquire complete facts and information, or to enforce the provisions of the Gross Income Tax Act.

(j) Each composite return shall include the following, for each qualified electing nonresident participant:

1. The participant's name and address;

2. The participant's social security number;

3. The participant's share of income derived from or connected with New Jersey sources;

4. The New Jersey gross income tax attributable to the participant's share of income derived from or connected with New Jersey source; and

5. A copy of the following:

i. Schedule NJ-K-1, Form NJ-1065, if the filing entity is a partnership, limited liability company or limited liability partnership;

ii. Schedule NJ-K-1, Form CBT-100S, if the filing entity is a New Jersey electing S corporation;

iii. Schedule K-1, Federal Form 1041, if the filing entity is a trust or estate; or

iv. Form W-2, if the filing entity is a professional athletic team.

(k) Each return shall include the names, addresses, and social security numbers of all members of the filing entity who are not included in the composite return.

(l) Any composite return which is filed on behalf of 25 or more participants shall be filed on diskette or by using magnetic media.

(m) The composite New Jersey Nonresident gross income tax return (Form NJ-1080-C) shall be signed by:

1. The tax matters partner, if the filing entity is a general partnership, a limited partnership, or a limited liability partnership;

2. An officer of the corporation, if the filing entity is an S corporation;

3. The executor or administrator, if the filing entity is an estate;

4. A trustee, if the filing entity is a trust;

5. An authorized member, if the filing entity is a limited liability company; or

6. If the filing entity is a professional athletic team, the return shall be signed as required in (m)1 through 5 above, depending on the entity type of the team.

(n) If, after the final composite return has been filed, a qualified, electing, nonresident participant discovers income derived from or connected with New Jersey sources other than from the filing entity, such participant shall file a Nonresident New Jersey Gross Income Tax Return (Form NJ-1040NR) which includes all income derived from New Jersey sources (including the share of income reported on the composite return).

1. The participant's Form NJ-1040NR shall include a schedule indicating the name of the filing entity(s) for which the participant was included in a composite return, and showing the amount of income included on the participant's behalf for each composite return and the tax paid thereon.

2. Such participant shall be entitled to a credit on the Form NJ-1040NR for the gross income tax paid on behalf

of such participant on the composite return (Form NJ-1080-C).

(o) For members of general and limited partnerships and professional athletic teams this rule shall apply to all tax years beginning on or after January 1, 1995. For members of New Jersey electing S corporations, limited liability partnerships, limited liability companies, and estates and trusts this rule shall apply to all tax years beginning on or after January 1, 1996.

New Rule, R.1997 d.93, effective March 3, 1997.

See: 28 N.J.R. 1608(a), 29 N.J.R. 807(a).

Recodified from N.J.A.C. 18:35-1.30 by R.1998 d.195, effective April 20, 1998.

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

In (a) and (f), changed N.J.A.C. references.

## SUBCHAPTER 6. EXTENSION OF TIME TO FILE; RETURN REQUIREMENTS

### 18:35-6.1 Extension of time to file New Jersey gross income tax return

(a) A taxpayer may obtain an extension of time to file the New Jersey Gross Income Tax Return (Form NJ-1040, NJ-1040NR or NJ-1041) for a period of six months beyond the original due date, providing that the requirements of (b) below are satisfied. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

1. Exceptional circumstances can be demonstrated by establishing one of the following:

i. Medical evidence, such as a doctor's certification that the taxpayer is unable to file the return before the expiration of the six month extension period because of sickness or hospitalization;

ii. Proof that the taxpayer relied entirely on the advice and expertise of a tax preparer who failed to complete the return within the six month extension period; or

iii. Proof that, despite timely and diligent attempts, the taxpayer is unable to obtain or receive information from third parties which is necessary for the completion of the tax return.

2. This rule provides the authority for an extension of time to file and is in no way to be considered an extension of time to pay the tax due. A taxpayer's tax liability is due, in full, by the original due date of the return. The taxpayer will be subject to interest and late filing penalty as described in (f) below if the full amount is not paid by the original due date of the return.

(b) A six-month extension of time to file a New Jersey Gross Income Tax Return will be granted only if, by the

original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with the Application for Extension of Time to File, at least 80 percent of the tax liability computed on the New Jersey Gross Income Tax Return when filed, and:

1. The taxpayer obtains a valid six-month extension for Federal income tax purposes and attaches a copy of the application for automatic Federal extension to the final New Jersey Gross Income Tax Return when filed; or
2. If no Federal extension is requested, the taxpayer completes and submits Form NJ-630 by the original due date of the return.

(c) A taxpayer shall file Form NJ-630, Application for Extension of Time to File New Jersey Gross Income Tax Return, only if:

1. The taxpayer requires a six-month extension for New Jersey purposes, but did not obtain one for Federal purposes; or
2. The taxpayer is required to remit payment to the Division of Taxation by the original due date of the return in order to meet the 80 percent requirement of (b) above.

(d) Failure to satisfy either the 80 percent payment requirement of (b) above by the original due date of the return, or to file the gross income tax return by the extended due date, will result in the retroactive denial of the extension as of the original due date of the return. In those cases, the taxpayer will be subject to interest, late filing penalties and late payment penalties from the original due date of the return, as described in (e) and (f) below.

(e) A taxpayer who has not satisfied the 80 percent payment requirement of (b) above, or who fails to file the gross income tax return by the extended due date, will be subject to the following late filing penalties (see N.J.S.A. 54:49-4):

1. \$100.00 per month or any fraction of a month that the return is delinquent; and
2. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any tax due with the return.
3. Both penalties set forth in (e)1 and 2 above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter.

(f) The extension authorized by N.J.S.A. 54A:8-1b and this section is an extension of time to file a gross income tax return. It is not an extension of time to pay any tax that may be due. Consequently, a taxpayer who makes a payment of tax after the original due date of the return, with or without an extension of time to file, will be subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4);
2. Interest on the unpaid tax calculated at the following rates:

- i. For periods ending on and after July 1, 1993, at three percentage points above the prime rate. Interest is imposed for each month (or a fraction thereof) on the unpaid balance of tax. At the end of each calendar year all tax, penalties, and interest remaining due will become part of the unpaid balance on which interest will be charged.

(g) A partnership which, pursuant to N.J.S.A. 54A:8-6(b), is required to file Form NJ-1065 may obtain an automatic extension of time to file by attaching a copy of the Federal application of time to file Federal Form 1065 (Federal Form 7004) to Form NJ-1065, when filed. If the partnership did not apply for a Federal extension of time to file Federal Form 1065, the partnership must submit Federal Form 7004 to the New Jersey Division of Taxation on or before the due date of Form NJ-1065.

Repeal and New Rule, R.1996 d.20, effective January 2, 1996.  
See: 27 N.J.R. 3136(a), 28 N.J.R. 176(b).

Repealed former section 1.18, "Extension of time to file New Jersey gross income tax return".

Recodified from N.J.A.C. 18:35-1.18 by R.1998 d.195, effective April 20, 1998.

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

Amended by R.2006 d.155, effective May 1, 2006.

See: 38 N.J.R. 110(a), 38 N.J.R. 1859(b).

Amended the extension of time to file from four to six months; deleted (c); recodified (d) through (h) as (c) through (g) and made appropriate internal reference changes in (d) and (e)3; in (c)1, removed "either" and "or additional two month"; in (f), deleted 2i and ii and recodified iii as i; in (g), substituted "Federal Form 7004" for "Federal Forms 8736 or 8800" and "7004" for "8736 or 8800".

#### Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

#### Case Notes

Penalties and interest; interest extension request denied due to failure to satisfy condition that 80% of income tax due be paid. Patel v. Director, Div. of Taxation, 13 N.J.Tax 509 (1993).

#### 18:35-6.2 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse/civil union partner who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The Director may request supporting information.

Emergency New Rule, R.1991 d.166, effective February 27, 1991 (Expires April 28, 1991).

See: 23 N.J.R. 908(a).

Adopted Concurrent Proposal, R.1991 d.273, effective June 3, 1991.

See: 23 N.J.R. 908(a), 23 N.J.R. 1806(a).

Provisions of emergency new rule R.1991 d.166 readopted without change.

Recodified from N.J.A.C. 18:35-1.26 by R.1998 d.195, effective April 20, 1998.

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

Amended by R.2008 d.42, effective March 3, 2008.

See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

In (a), substituted "spouse/civil union partner" for "spouse".

### 18:35-6.3 Signatures required on gross income tax return

(a) Each return shall carry a signature by the taxpayer certifying that all statements contained therein are true, under the same penalties as for perjury committed.

(b) A taxpayer or tax return preparer who electronically transmits an income tax return, or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act, via the NJ TeleFile or WebFile systems shall be presented with the following statement: "New Jersey law requires that all income tax returns be signed before they are submitted." This statement will be followed with instructions prompting the taxpayer or tax return preparer as to the manner in which the taxpayer or tax preparer may satisfy this requirement via telephone or web-based medium.

(c) A taxpayer who wishes to transmit the return through electronic filing using the Federal/State e-file For Tax Professionals must satisfy the signature requirement in the manner prescribed by the Director.

R.1982 d.258, effective August 16, 1982.

See: 14 N.J.R. 332(a), 14 N.J.R. 921(b).

Repealed by R.1988 d.299, effective July 5, 1988.

See: 20 N.J.R. 514(a), 20 N.J.R. 1571(a).

This section was "Exclusion of interest income on All-Savers Certificates".

New Rule, R.1997 d.406, effective October 6, 1997.

See: 29 N.J.R. 2808(a), 29 N.J.R. 4339(a).

Recodified from N.J.A.C. 18:35-1.16 by R.1998 d.195, effective April 20, 1998.

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

Amended by R.2000 d.246, effective June 19, 2000.

See: 32 N.J.R. 1153(a), 32 N.J.R. 2258(c).

Rewrote (c) through (f).

Amended by R.2005 d.444, effective December 19, 2005.

See: 37 N.J.R. 429(a), 37 N.J.R. 5052(a).

Rewrote the section.

### 18:35-6.4 Electronic filing methods

(a) A taxpayer or tax return preparer may transmit electronically any income tax return or other information required

or permitted to be filed with the Division for the purposes of the Gross Income Tax Act. Electronic transmissions may, subject to the provisions of (e) below, be made using applications provided by the Division, including the Division's web-based application, NJWebFile, the Federally-approved electronic filing application known as Federal/State e-file For Tax Professionals or through any other electronic method made available by the Division or approved by the Division.

(b) Beginning with the 2004 taxable year, tax preparers that prepared or filed 200 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (f) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(c) For the 2006 taxable year, preparers that have prepared or filed 100 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in subsection (f) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(d) For the 2007 and later taxable years, preparers that have prepared or filed 50 or more individual gross income tax resident returns for a prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (e) and (f) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(e) A civil union couple may file joint State gross income tax returns for tax year 2007 and thereafter. Federal law, however, does not allow for a joint filing of Federal gross income tax returns by a civil union couple. Where joint State/Federal electronic joint filing is not possible, a civil union couple's tax preparer may file a civil union couple's joint State gross income tax paper return without penalty where electronic joint filing under the Federal return would be prohibited. Civil union couple joint filings shall count toward the thresholds established in (b), (c) and (d) above.

Nothing in this subsection shall prevent a civil union couple from filing a joint return as indicated in N.J.A.C. 18:35-4.3.

(f) As used in this section, "tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under Title 54 or Title 54A of the New Jersey Statutes.

(g) If (b), (c), and/or (d) above are applicable to a tax preparer, and if a taxpayer chooses not to have his or her return electronically filed by his or her tax preparer or for the reasons set forth in (e) above, is unable to file State and Federal joint returns electronically, both the taxpayer and the preparer must complete an E-File Opt Out Request Form (NJ-1040-O). The tax preparer is required to keep the completed and signed E-File Opt Out Request Form in his or her files and available for inspection by a representative of the New Jersey Division of Taxation. No tax preparer who is required to e-file returns shall be penalized under N.J.S.A. 54A:8-6.1(e) for paper returns filed due to the taxpayer opting-out of e-filing.

New Rule by R.2005 d.444, effective December 19, 2005.

See: 37 N.J.R. 429(a), 37 N.J.R. 5052(a).

Amended by R.2007 d.9, effective January 2, 2007.

See: 38 N.J.R. 3760(a), 39 N.J.R. 107(b).

In (b), substituted "200 or more" for "more than 200"; in (c), substituted "100 or more" for "more than 100"; and in (d), substituted "50 or more" for "more than 50".

Amended by R.2008 d.42, effective March 3, 2008.

See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

In (a), inserted "; subject to the provisions of (e) below," and deleted "the Division's telephonic application, NJTeleFile, and" following "including"; in (b), inserted "or as otherwise set forth in (f) below"; in (c), inserted "or as otherwise set forth in subsection (f) below"; in (d), inserted "or as otherwise set forth in (e) and (f) below"; added new (e); recodified former (e) as new (f) and former (f) as new (g); and in (g), inserted "or for the reasons set forth in (e) above, is unable to file State and Federal joint returns electronically" and inserted the last sentence.

## SUBCHAPTER 7. WITHHOLDING AND REPORTING OF TAX

### 18:35-7.1 Employee defined

(a) For the purposes of N.J.A.C. 18:35-7.2, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following:

## SUBCHAPTER 11. FILING FEE PAYMENTS BY PARTNERSHIPS

**18:35-11.1 Definitions**

For the purposes of this subchapter only, the following terms shall have the following meanings:

“Common trust fund” means a fund maintained by a bank, which fund is subject to Internal Revenue Code Section 584 and which is free from New Jersey taxation pursuant to N.J.S.A. 17:9A-44.

“Income” means income, loss, gain, or expense.

“Partner” means, and includes without necessarily being limited thereto, each entity that receives a K-1 or NJ-K1 from a partnership. For the purposes of this section, a “partner” refers to the definition in this section, although a “partner” can at the same time also be a partner in a civil union.

“Partnership” means any entity classified as a partnership for Federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive nontaxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds. For the purposes of this section, a “partnership” shall not mean partners of a civil union couple.

“Investment club” means an entity that is classified as a partnership for Federal income tax purposes and, all of whose owners are individuals. All of the entity’s assets must be securities, cash, or cash equivalents, and its assets must be valued on a consistent basis at the lower of cost or fair market value. In calculating assets for a privilege period, a quarterly average must be used, and the total value must be less than \$60,000. See also N.J.A.C. 18:35-1.3. To illustrate, an investment club is formed when a group of friends, neighbors, business associates, or others pool their money to invest in stock or other securities. The club may or may not have a written agreement, a charter, or bylaws.

Usually the group operates informally, with members pledging to pay a regular amount into the club, monthly. Some clubs have a committee that gathers information on securities, selects the most promising securities, and recommends that the club invest in them. Other clubs rotate these responsibilities among all their members. Most clubs require all members to vote for or against all investments, sales, trades, and other transactions.

Amended by R.2008 d.42, effective March 3, 2008.  
See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

In definitions “Partner” and “Partnership”, added the last sentences.

**18:35-11.2 Apportionment of the partnership fee**

(a) For privilege periods beginning on or after January 1, 2002 each partnership, regardless of any Internal Revenue Code 761(a) election, having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150.00 for each owner of an interest in the entity, provided that the payment shall not exceed \$250,000.

(b) If a partnership includes nonresident partners, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the partnership filing fee may be used, provided that the partnership has an office outside New Jersey.

(c) The total apportioned partnership fee is equal to the sum of:

1. The number of resident partners multiplied by \$150.00; plus
2. The number of nonresident partners with physical nexus to New Jersey multiplied by \$150.00; plus
3. The number of nonresident partners without physical nexus to New Jersey multiplied by \$150.00 and the resulting product multiplied by the corporate allocation factor of the partnership.
  - i. The corporate allocation factor includes property, payroll and double weighted receipts fractions.
  - ii. For purposes of this section only, if one or both of the fractions are missing in the allocation factor, or if a partnership is unable to allocate because it lacks an office outside the State, the partnership may allocate its nonresident partners without nexus using the receipts fraction only.

Amended by R.2003 d.370, effective September 15, 2003.  
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).  
Added (c)3ii.

**18:35-11.3 Annual return; payment of tax or fee due; extensions of time to file tentative return; estimated payment**

(a) A partnership having a resident New Jersey owner of an interest in the entity or having any income derived from New Jersey sources is required to file a partnership return Form NJ-1065 on or before the 15th day of the fourth month after the end of the tax year. See N.J.A.C. 18:35-1.3.

(b) Any partnership having a liability for a filing fee payment pursuant to N.J.S.A. 54A:8-6 or having tax due pursuant to N.J.S.A. 54:10A-15.11 must file Form PART-100, “Partnership Return Voucher,” and Form NJ-1065. The applicable payment must accompany Form PART-100. Form PART-100 must be postmarked on or before the original due date for the return.

(c) A partnership seeking an extension of time to file NJ-1065 may file a copy of its application for a Federal extension with its New Jersey return. The box at the top of Form NJ-1065 labeled "Application for Federal Extension is attached" shall be checked. If a Federal extension has not been obtained, a request for a State extension may be made by filing Federal Form 8736 or 8800 with the Division of Revenue on or before the due date of the State return. In addition, Form Part 200 T, "Partnership Tentative Return and Application for Extension of Time to File," must be postmarked on or before the original due date of the return. An extension of time to file Form NJ-1065 does not extend the time to pay the filing fee or tax due. It also does not extend the time for filing the tax return or returns of the partners.

#### 18:35-11.4 Installment payment

(a) Each entity required to make a payment of the partnership filing fee shall, on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the current fiscal year.

(b) In the year a partnership dissolves a 50 percent repayment of the filing fee liability for the succeeding year is not required.

1. For example, if a partnership having a taxable year beginning on or after January 1, 2002 dissolves during the calendar year 2002, the 50 percent prepayment of the \$150.00 per partner filing fee for the 2003 year is not required, provided the partnership properly marks its 2002 Form NJ-1065 signifying it is a final return.

#### 18:35-11.5 Penalty and interest

For purposes of tax administration, tax and filing fees are payments subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Unless such provisions are superceded by specific sections of the Gross Income Tax Act such as N.J.S.A. 54A:9-5 and 54A:9-6, collection of the tax and filing fee shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

#### 18:35-11.6 Partnership examples of the imposition of the filing fee

(a) The following are examples of the application of the filing fee to a variety of situations.

Example 1: A limited partnership operates a profitable shopping center in Middlesex County, New Jersey. It has 20 partners. All reside in New Jersey. The partnership is liable for a partnership filing fee of \$3,000 (20 x \$150.00) plus an installment payment of 50 percent of the current year's fee (\$1,500) for the succeeding year.

Example 2: A Connecticut partnership with an office in New Haven sells small tables. Ten partners reside in New Jersey and ten reside in Connecticut. The New Jersey customers of the business purchase \$200,000 worth of tables per year. Four Connecticut partners remain outside New Jersey, but six Connecticut resident partners work in the partnership's New Jersey office.

Since the partnership includes nonresident partners, the apportionment methodology for the partnership filing fee may be used. The partnership's allocation factor is assumed to be 0.4.

The fee is calculated as follows:

The number of New Jersey resident partners is multiplied by \$150.00.

$$10 \times \$150.00 = \$1,500$$

The number of nonresident partners with physical nexus with New Jersey multiplied by \$150.00.

$$6 \times \$150.00 = \$900.00$$

The number of nonresident partners without physical nexus to New Jersey is multiplied by \$150.00 and the result is multiplied by the allocation factor.

$$4 \times \$150.00 = \$600.00$$

$$\$600.00 \times 0.4 = \$240.00$$

The total fee for 2002 is:

$$\$1,500 + \$900.00 + \$240.00 = \$2,640$$

The prepayment for 2003 is

$$\$2,640 \times 50 \text{ percent} = \$1,320$$

Example 3: A limited partnership, East, L.P., is organized and has an office in New Jersey. It has 10 limited partners and two general partners. One of the limited partners is a California limited partnership, West, L.P., having 15 partners all of whom are based in an office in Los Angeles. Certain

property belonging to West, L.P., is stored at East, L.P.'s office in New Jersey. The Los Angeles limited partnership received a \$1,000,000 distribution in 2002 from the New Jersey partnership. West, L.P.'s apportionment formula is 10 percent or 0.1.

First, in 2002 the New Jersey partnership pays a fee of (12 x \$150.00) \$1,800 for 2002 since all its partners had a presence in New Jersey plus a prepayment of \$900.00 (50 percent x \$1,800) for 2003.

Second, since the California partnership derives income from New Jersey, it is also responsible for the partnership fee. Its fee is calculated as follows:

0 Resident partners = \$0

0 Non-resident partners with physical nexus = \$0

15 Non-resident partners without physical nexus to New Jersey

$$15 \times \$150.00 = \$2,250$$

\$2,250 x 0.1 = \$225.00 which is the fee for the California partnership.

Example 4: A family limited partnership is organized so that two general partners receive K-1s and two limited partners that receive no income from the partnership do not receive K-1s.

The partnership fee is 4 x \$150.00. There are four owners of the partnership and the partnership directory discloses them as such. The fact that two partners do not receive K-1s is not material, and they are still counted toward the fee total since they are also owners of the partnership.