

GENERAL POLICIES AND PROCEDURES

CHAPTER 2

GENERAL POLICIES AND PROCEDURES

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.2008 d.223, effective July 2, 2008.
See: 40 N.J.R. 2101(a), 40 N.J.R. 4604(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 2, General Policies and Procedures, expires on December 29, 2015. See: 47 N.J.R. 1921(a).

Chapter Historical Note

Chapter 2, General Policies and Procedures, was adopted as R.1974 d.182, effective July 3, 1974. See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).

Subchapter 2, Penalties and Interest, was adopted as R.1975 d.284, effective September 25, 1975. See: 7 N.J.R. 439(d), 7 N.J.R. 490(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, expired on September 6, 1993, and was subsequently adopted as new rules by R.1993 d.542, effective November 1, 1993. See: 25 N.J.R. 3107(a), 25 N.J.R. 4927(b).

Subchapter 3, Requirements for Payment of Taxes by Electronic Funds Transfer, was adopted as R.1994 d.63, effective February 7, 1994. See: 25 N.J.R. 1078(a), 26 N.J.R. 824(a).

Subchapter 4, Postmark Rule, was adopted as R.1995 d.609, effective December 4, 1995. See: 27 N.J.R. 3589(a), 27 N.J.R. 4906(b).

Subchapter 5, Refunds, was adopted as R.1996 d.54, effective February 5, 1996. See: 27 N.J.R. 4163(a), 28 N.J.R. 892(a).

Subchapter 6, Confidentiality and Disclosure, was adopted as R.1995 d.610, effective December 4, 1995. See: 27 N.J.R. 3591(a), 27 N.J.R. 4907(a).

Subchapter 7, Recordkeeping and Retention Requirements, was adopted as R.1997 d.256, effective June 16, 1997. See: 28 N.J.R. 5156(a), 29 N.J.R. 2706(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, was readopted as R.1998 d.420, effective July 21, 1998. See: 30 N.J.R. 1919(b), 30 N.J.R. 3066(a).

Subchapter 8, Set-off of State Vendor Tax Debt, was adopted as R.1998 d.439, effective September 8, 1998. See: 30 N.J.R. 1920(a), 30 N.J.R. 3258(a).

Subchapter 9, Sale of Tax Indebtedness, was adopted as R.1999 d.147, effective May 3, 1999. See: 31 N.J.R. 593(a), 31 N.J.R. 1205(b).

Chapter 2, General Policies and Procedures, was readopted as R.2003 d.347, effective July 28, 2003. See: 35 N.J.R. 2164(a), 35 N.J.R. 3847(a).

Chapter 2, General Policies and Procedures, was readopted as R.2008 d.223, effective July 2, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 10, Tax Clearance for Business Assistance and Incentives, was adopted as new rules by R.2009 d.284, effective September 21, 2009. See: 41 N.J.R. 2450(a), 41 N.J.R. 3461(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 2, General Policies and Procedures, was scheduled to expire on July 2, 2015. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. FORMS

18:2-1.1 Reproduction of forms

SUBCHAPTER 2. PENALTIES AND INTEREST

18:2-2.1 Application
18:2-2.2 Tax laws affected
18:2-2.3 Failure to file return on time
18:2-2.4 Failure to pay on time; extensions of time to pay
18:2-2.5 Cost of collection defined
18:2-2.6 Assessment of tax
18:2-2.7 Abatement of penalty and interest
18:2-2.8 Criminal penalties
18:2-2.9 Part of assessment due to civil fraud; addition to tax
18:2-2.10 Credit for erroneous payments and collections
18:2-2.11 Prime rate defined

SUBCHAPTER 3. REQUIREMENTS FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

18:2-3.1 Purpose
18:2-3.2 Scope
18:2-3.3 Definitions
18:2-3.4 Payments required to be paid by electronic fund transfer
18:2-3.5 Specific requirements
18:2-3.6 Determination of prior year liability
18:2-3.7 Notice to taxpayers
18:2-3.8 Penalties and interest for late EFT payments
18:2-3.9 Failure to comply
18:2-3.10 Voluntary EFT payment
18:2-3.11 Effect of subchapter

SUBCHAPTER 4. POSTMARK RULE

18:2-4.1 Purpose
18:2-4.2 Definitions
18:2-4.3 Postmark date deemed date of filing or payment
18:2-4.4 Mailing requirements
18:2-4.5 United States postmark
18:2-4.6 Metered mail
18:2-4.7 Multiple postmarks
18:2-4.8 No postmark
18:2-4.9 Registered or certified mail deemed prima facie evidence of delivery
18:2-4.10 Registration or certification date deemed postmark date
18:2-4.11 Foreign postmark
18:2-4.12 Weekend and holiday
18:2-4.13 Express delivery

SUBCHAPTER 5. REFUNDS

18:2-5.1 Purpose
18:2-5.2 Claims for refund; when allowed
18:2-5.3 Claim not required or permitted until final determination
18:2-5.4 Credit against outstanding tax liabilities
18:2-5.5 Items previously assessed
18:2-5.6 Appeal
18:2-5.7 Extension of time; sales and use tax exception
18:2-5.8 Refund claim procedures
18:2-5.9 Interest on overpayments
18:2-5.10 Separate claims required

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

18:2-6.1 Records confidential

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

18:2-7.1 Purpose
18:2-7.2 Definitions
18:2-7.3 Recordkeeping requirements—general
18:2-7.4 Recordkeeping requirements—machine-sensible records
18:2-7.5 Records maintenance requirements
18:2-7.6 Access to machine-sensible records
18:2-7.7 Taxpayer responsibility and discretionary authority
18:2-7.8 Alternative storage media
18:2-7.9 Effect on hard-copy recordkeeping requirements

- 18:2-7.10 Records retention time period
- 18:2-7.11 Corporations

SUBCHAPTER 8. SET-OFF OF STATE VENDOR TAX DEBT

- 18:2-8.1 Definitions
- 18:2-8.2 Set-off of tax debts against contract payments due to vendors
- 18:2-8.3 Time for initiating set-off procedure
- 18:2-8.4 Set-off of tax liability of a member of a partnership or S corporation under contract with State
- 18:2-8.5 Notice of set-off

SUBCHAPTER 9. SALE OF TAX INDEBTEDNESS

- 18:2-9.1 Time for sale of indebtedness
- 18:2-9.2 Bidding and sale procedures
- 18:2-9.3 Disclosure to purchaser of tax indebtedness
- 18:2-9.4 Protest or appeal from sale of tax indebtedness

SUBCHAPTER 10. TAX CLEARANCE FOR BUSINESS ASSISTANCE AND INCENTIVES

- 18:2-10.1 Purpose and scope
- 18:2-10.2 Definitions
- 18:2-10.3 Requirements for Tax Clearance Certificate
- 18:2-10.4 Application for Tax Clearance Certificate
- 18:2-10.5 Interim Tax Clearance Certificate
- 18:2-10.6 No waiver of authority to resolve tax matters
- 18:2-10.7 No additional appeal rights

SUBCHAPTER 1. FORMS

18:2-1.1 Reproduction of forms

(a) Subject to conditions and requirements in (b) and (c) below, the Director will accept, for filing purposes, reproductions of printed return forms and privately designed and printed and/or computer-generated and computer-prepared forms, in lieu of the official forms printed and furnished by the Director.

(b) In order to be acceptable for filing purposes, privately designed and printed and/or computer-generated and computer-prepared forms shall be submitted to the Division of Taxation for approval prior to use. The proposed form shall be forwarded for consideration by letter to the Director, Division of Taxation. The Director may, within his or her discretion, approve a form that does not interfere with either Division of Revenue or Division of Taxation procedures in any way. If a reproduction does not meet with the Director's approval, an explanation of the areas in which the form was found to be deficient will be enclosed with the letter rejecting the reproduction. Approval of a reproduction of a tax form shall be valid for one tax year, unless neither the official tax form nor the reproduction has changed since the year of approval in any respect other than date changes and minor editorial changes, in which case approval shall be valid until the tax form or reproduction is changed in any other way. The submission of an unapproved reproduction shall not satisfy statutory return filing requirements.

(c) In order to be acceptable for filing purposes, reproductions of printed return forms must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official forms, for the proper tax period, produced by photo-offset, photoengraving, photocopying, computer, or other similar reproduction processes.

2. Reproductions must be on paper of substantially the same weight and texture, of a quality at least as good as that used in the official form and of any color.

3. Reproductions must be of the same size as that of the official form, both as to the overall dimensions of the paper and the image reproduced thereon.

4. Format of pages shall adhere to the following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable;

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each page and the fold must be the same as on the official form;

iii. Separate pages must be fastened together in numerical order;

iv. Each separate page must be clearly identified by listing at the top of the page the taxpayer's name, the Federal identification number and the appropriate New Jersey serial number.

5. The quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible.

6. The taxpayer's full and correct name and address and the identifying number as it appears on the form furnished by the Director must be typed or legibly printed on the reproduction.

7. Reproduction of forms may be made after insertion of the tax computations and the other required information. However, all signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process.

8. The Director does not approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all of the above conditions.

9. The Director does not approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white, with handwriting of satisfactory legibility.

R.1974 d.182, effective July 3, 1974.
See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).
Amended by R.1999 d.267, effective August 16, 1999.
See: 31 N.J.R. 1444(a), 31 N.J.R. 2369(a).

Rewrote (a); inserted a new (b); recodified former (b) as (c), deleted "flat," following "reproductions of" in the introductory paragraph, and inserted "computer," following "photocopying" in 1.

SUBCHAPTER 2. PENALTIES AND INTEREST

18:2-2.1 Application

The provisions on penalty and interest in this subchapter are applicable to penalty and interest impositions made on and after October 1, 1975, pursuant to P.L. 1975, c.177, approved August 4, 1975, and on all taxes subject to the State Tax Uniform Procedure Law, as amended by P.L. 1987, c.76 and P.L. 1992, c.175, approved December 10, 1992.

Amended by R.1997 d.98, effective March 17, 1997.
See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).
Inserted reference to P.L. 1992, c.175.

18:2-2.2 Tax laws affected

The provisions of the State Tax Uniform Procedure Law and this subchapter shall apply to any tax which is payable to or collectible by the Director of the Division of Taxation, unless the law imposing such tax specifically provides that the State Tax Uniform Procedure Law and this subchapter shall not apply, or unless the specific provisions of the law imposing such tax provide for penalty and interest which is different from the provisions of the State Tax Uniform Procedure Law and this subchapter.

18:2-2.3 Failure to file return on time

(a) On or before December 8, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$2.00 for each day that the return is delinquent; plus
2. A penalty of five percent per month or fraction thereof of the total tax liability not to exceed 25 percent of such tax liability.

(b) On and after December 9, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$100.00 per month or any part of a month that the return is delinquent; plus
2. A penalty of five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

(c) On and after September 14, 1998, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$100.00 per month or any part of a month that the return is delinquent; plus
2. A penalty of five percent per month or any part of a month of the underpayment not to exceed 25 percent of such underpayment; except that

3. If a return has not been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty shall accrue at five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

(d) The penalties set forth in (a), (b), and (c) above shall be imposed on the first day following the original due date of the return and the same calendar day of each succeeding month thereafter. The following are examples of penalty computations.

1. A corporate taxpayer filed its 1987 corporation business tax return with a due date of April 15, 1988 on June 1, 1988. The return is 47 days late. The taxpayer had a total tax liability for 1987 of \$10,000. In addition to the unpaid tax the taxpayer owes the following amounts.

Delinquency penalty: \$100.00 per month for two months	\$ 200.00
Late filing penalty: five percent per month of the tax liability	
Five percent x two months = 10 percent of \$10,000	\$1,000.00
Tax liability	<u>\$10,000.00</u>
Total	<u>\$11,200.00*</u>

2. A corporate taxpayer filed its 1999 corporate business tax return with a return due date of April 15, 2000, on May 1, 2000. The taxpayer had a total tax liability of \$100,000. The taxpayer sent a payment of \$80,000 with its payment. The taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for one month	\$ 100.00
Late filing penalty: five percent per month of the underpayment not to exceed 25 percent	
Five percent x \$20,000 x one month	\$ 1,000.00
Tax Liability	<u>\$20,000.00</u>
Total	<u>\$21,100.00*</u>

3. A corporate taxpayer filed its 1999 corporate business tax return with a return due date of April 15, 2000, on September 16, 2000. The taxpayer had a total tax liability of \$100,000. The taxpayer made a payment of \$80,000 on April 15, 2000. A Notice of Delinquency was sent to the taxpayer on May 16, 2000.

In addition to the unpaid tax, the taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for five months	\$ 500.00
Late filing penalty: five percent per month of the total tax liability not to exceed 25 percent	
Five percent x \$100,000.00 x five months	\$25,000.00
Tax Liability	<u>\$20,000.00</u>
Total	<u>\$45,500.00*</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. 54:49-9 and 9.1).

(e) A taxpayer that fails to provide or complete all of the reports, schedules or other documentation required to be submitted in a return or report, or omits information from a return or accompanying report, shall be subject to late filing penalties. Such omissions will be treated as a failure to file a return and/or a failure to file a return on time, and the taxpayer shall be liable for penalties and interest as set forth in (a), (b), (c) and (d) above. The only exception to this rule will be if authority to omit or to substitute information is expressly stated on the return form, in a statute or enabling regulation. The imposition of late filing penalties as provided under this subsection shall be governed by the State Uniform Tax Procedure Law, except as otherwise provided in pertinent State tax statutes or other chapters of this Code.

Example: CBT-100-R-P, Schedule A-4, lines 13 and 14 require historical information to be supplied. Failure to provide such information and related information on Schedule AM will be deemed a failure to file a return and/or failure to file a timely return, and applicable penalties will be imposed.

Amended by R.2004 d.247, effective July 6, 2004.
See: 35 N.J.R. 5526(a), 36 N.J.R. 3300(a).

Rewrote the section.

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 basis 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.

Total \$ 2,222.30
\$54,722.30

(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 subsequent to the entry of a certificate of debt 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.

(d) In the event that any State tax remains unpaid and the Director refers a taxpayer's account to a private person, company, association or corporation providing debt collection services prior to the entry of a certificate of debt, the Director may impose a referral cost recovery fee as follows:

1. In the amount of 10 percent of the amount referred for collection to the private debt collection service; or

2. If the contract for the private debt collection service has been publicly bid pursuant to N.J.S.A. 52:34-6 et seq., and the contract provides that the compensation to be paid by the State to the provider of private debt collection services is a specified percentage of the debt collected or to be collected, the referral cost recovery fee shall be equal to the percentage specified in the contract.

(e) In the event that the Director imposes an arbitrary assessment pursuant to N.J.S.A. 54:49-5 or 7, the Director

shall impose on the amount of the arbitrary assessment a fee for the cost of collection of 10 percent of the tax assessed, or \$200.00, whichever is greater.

(f) Any fees imposed as cost of collection or in lieu thereof or as a referral cost recovery fee shall be in addition to any interest or penalties, or both, otherwise provided by law, shall be payable to and recoverable by the Director, along with all penalties and interest as if they were part of the tax imposed.

(g) Interest or penalties shall not be assessed against any fees imposed as cost of collection or in lieu thereof or as a referral cost recovery fee; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date they are paid.

(h) For the purposes of calculating the percentage of the tax to be imposed in lieu of a fixed fee or the actual cost of collection, the tax shall mean: unpaid tax, penalties and interest.

Amended by R.2003 d.26, effective January 21, 2003.

See: 34 N.J.R. 2958(b), 35 N.J.R. 416(a).

In (a)6, inserted "subsequent to the entry of a certificate of debt" following "State of New Jersey"; added a new (d); recodified former (d) and (e) as (e) and (f) and inserted "or as a referral cost recovery fee" following "in lieu thereof"; recodified former (f) as (g).

Amended by R.2008 d.223, effective August 4, 2008.

See: 40 N.J.R. 2101(a), 40 N.J.R. 4604(a).

Added new (e); and recodified former (e) through (g) as (f) through (h).

18:2-2.6 Assessment of tax

(a) Upon audit or investigation of a return that has been filed, where it is determined that there is a deficiency with respect to the payment of any tax due, the additional taxes shall be assessed together with penalties of five percent of the additional tax and interest at the rate in effect immediately prior to 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 payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest shall be charged at the annual rate of five percentage points above the prime rate, compounded daily from the later of the date the tax was originally due or December 9, 1987, to the date of payment. On and after July 1, 1993, interest shall be charged 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, from the date the tax was originally due to the date of actual payment. Beginning January 1, 1993, tax, penalty and interest will be added together to become the basis for further calculations of interest. The taxpayer shall be given notice of such assessment and a demand made upon him for payment. The following are examples of interest and penalty liability:

1. On June 15, 1974, a taxpayer filed a return. On February 15, 1976, the taxpayer was notified of an additional assessment and a demand was made upon him for payment. The additional tax bears interest at the rate of one percent per month or fraction thereof from the date the tax

was originally due to October 1, 1975, and at the rate of 1½ percent per month or fraction thereof from October 1, 1975, to the date of payment. In addition, taxpayer is subject to penalties of five percent of the additional tax. This example applies only to tax liabilities incurred prior to January 1, 1987 and paid prior to December 8, 1987, the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76.

2. Corporation X was a fiscal year taxpayer whose year ended July 31, 1984. The final return was due and filed on November 15, 1984. Upon audit in July, 1987, it was determined that there was a \$1,000 deficiency with respect to tax due. If Corporation X pays the deficiency on the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76, which ends December 8, 1987, the following amounts would be due:

Deficiency assessed:	\$1,000.00
Simple interest calculated at nine percent per annum* from November 16, 1984 through December 8, 1987	<u>\$ 275.75</u>
Total due	<u>\$1,275.75</u>

* Through statutory interest to December 8, 1987 was 18 percent, P.L.1987, c. 76 mandates a nine percent rate for debts paid during the 90 day amnesty period.

3. Corporation X fails to pay the deficiency assessed within the amnesty period. When payment is made on May 6, 1988 the taxpayer remits \$1,746.63 which represents the following amounts:

Deficiency assessed:	\$1,000.00
Late payment penalty: five percent of the balance of tax due	\$ 50.00
Simple interest calculated at the rate of one and one-half percent per month from November 16, 1984 through December 8, 1987	<u>\$ 555.00</u>
	<u>\$1,655.00 PLUS</u>

Interest on \$1,655.00, calculated at an annual rate of the prime rate plus five percentage points compounded daily from December 8, 1987 until the date of payment (May 6, 1988). The applicable prime rate shall be the rates effective on July 1, 1987, October 1, 1987 and January 1, 1988. For the purposes of this example the prime rate is assumed to be:

July 1, 1987	8.25 percent	
October 1, 1987	8.75 percent	
January 1, 1988	9.00 percent	<u>\$ 91.63</u>
Total		<u>\$1,746.63</u>

4. Taxpayer's gross income tax return was due on April 15, 1994 and filed on October 24, 1994. A Notice and Demand is sent by the Division to the taxpayer on December 30, 1994. Payment is made on February 15, 1995. Interest will be calculated from April 15, 1994 to February 15, 1995 at the rate of three percent above the prime rate for each month or fraction thereof. Accrued interest computed for the period January 1, 1995, through February 15, 1995, shall be calculated on the total of the tax, penalty (if any) and accrued interest calculated from April 15, 1994

through December 31, 1994. In addition, late filing and late payment penalties may be imposed on the balance of the tax due.

(b) For tax liabilities accruing on and after July 1, 1993, no assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. Any unexpired fifth year of a five year period of limitation or unexpired extended period delineated by written consent of a taxpayer remaining on July 1, 1993 shall remain in full force and effect. If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consent in writing made before the expiration of the extended period. The consent of a taxpayer to extend the period of assessment shall extend the period in which the taxpayer may file a refund claim with respect to the identical taxes and tax periods for which the limitations periods have been expressly extended by written consent of the taxpayer. For purposes of this subsection, a return filed before the last day prescribed by law or by rules promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day. A return or refund claim is deemed filed with the Division of Taxation in the Department of the Treasury, unless a different agency is specified by law, pursuant to the postmark rule of N.J.S.A. 54:49-3.1 and N.J.A.C. 18:2-4.1.

(c) The Gross Income Tax Act provides for three year and six year periods of assessment.

1. Pursuant to N.J.S.A. 54A:9-4, additional gross income tax shall be assessed within three years after the return was filed, or deemed filed if filed prior to the date prescribed, whether or not such return was filed after the date prescribed. Additional gross income tax may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade tax, or the taxpayer fails to comply with N.J.S.A. 54A:8-7, in not reporting a change or correction in Federal taxable income as reported on the taxpayer's Federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for Federal income tax purposes, or in not filing an amended New Jersey return within 90 days of filing an amended Federal income tax return.

2. Additional gross income tax may be assessed at any time within six years after the return was filed if:

i. An individual omits from New Jersey income an amount properly includible therein which is in excess of 25 percent of the amount of New Jersey income stated in the return; or

ii. An estate or trust omits income from its return in an amount in excess of 25 percent of its income determined as if it were an individual, computing his or her New Jersey income under the Act. For purposes of this paragraph, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Director of the nature and amount of such item.

3. The period for assessment of gross income tax may be extended if the taxpayer amends or the Internal Revenue Service adjusts Federal taxable income, or if the taxpayer enters into a written agreement with the Division extending the time to make an assessment, or if an erroneous refund is made as a result of fraud or misrepresentation by the taxpayer. The period of assessment may be suspended under N.J.S.A. 54A:9-4(e). See N.J.S.A. 54A:9-4.

4. When the last day prescribed under N.J.S.A. 54A:8-1(a), 54A:9-4(a), 54A:9-4(b)(1) and 54A:9-4(d) for filing a gross income tax return or for assessing an additional tax after the return has been filed falls on a Saturday, Sunday or holiday, the performance of the act of filing or assessing shall be considered timely if it is performed by the taxpayer or the Director, as the case may be, on the next succeeding business day.

5. See N.J.A.C. 18:7-13.1 for assessment of corporation business tax.

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), added third and fourth sentences; inserted (a)4; and added (b) and (c).

18:2-2.7 Abatement of penalty and interest

(a) If the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director, he or she may abate the payment of the whole or any part of any penalty and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975 to the date of payment or December 8, 1987, whichever is earlier. On and after December 9, 1987, the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment on the entire existing liability including any tax, penalty, and/or accumulated interest charges. Pursuant to N.J.S.A. 54:49-11(a), after July 1, 1993, the Director may remit or waive the payment of the whole or any part of any penalty and may remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate including any such penalty or interest with respect to deficiency assessments made pursuant to N.J.S.A. 54:49-6.

(b) An abatement will be granted if the taxpayer can show reasonable cause for failure to file any return or pay any tax when due and makes full payment of the taxes due. All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay or pay over any tax due must be affirmatively shown in a written statement, containing a declaration that it is made under penalties of perjury, made by the taxpayer or other person against whom the penalty or penalties have been assessed or are assessable. Where the taxpayer or other person is unable to provide such statement or does not have a personal knowledge of such facts, a showing of reasonable cause may be made on behalf of the taxpayer or other person by an individual with a personal knowledge of such facts. In determining whether reasonable cause exists, in addition to an evaluation of such facts, the taxpayer's previous compliance record with respect to all of the taxes imposed may be taken into account.

(c) The following exemplify grounds for reasonable cause, where clearly established by or on behalf of the taxpayer or other person.

1. The death or serious illness of the taxpayer or a partner, officer, director, shareholder, employee or other representative of the taxpayer or such individual's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the applicable return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the death, illness or absence. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, doctor's reports and hospital insurance carrier reports.

Example: It was established that illness incapacitated the owner of a small business concern during the period of delinquency. The taxpayer further established that no other person had access to sufficient information which would enable such person to timely file the delinquent return and pay over the tax due. The return was filed and the tax due was paid over within a justifiable period of time after the owner returned to work. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

2. The destruction of the taxpayer's or the taxpayer's representative's place of business or business records by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, police accident reports and insurance claims and settlements.

Example: The place of business, together with the business records and the tax return, of a corporate taxpayer were destroyed by a documented casualty immediately prior to the date prescribed for filing the return and paying over the tax due. Within a justifiable period of time after the casualty took place the records of the taxpayer were reconstructed, a return was filed and the tax due was paid over. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

3. The inability, for reasons beyond the taxpayer's control, to timely obtain and assemble essential information required for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause provided a return is timely filed and the tax is timely paid or paid over on that portion of the tax liability which can be ascertained. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed return and when such liability is ascertained, and where applicable collected, an amended return must be immediately filed together with any additional tax due.

Example: Due to an inability to obtain certain records, a taxpayer was unable for reasons beyond its control to determine its proper tax liability prior to the prescribed date for paying its tax. The taxpayer timely filed a return and paid the tax due on that portion of the tax liability which was ascertainable. Attached to the return was a rider which explained in detail why the proper tax liability could not be determined prior to the due date. When the records in question were obtained and assembled, an amended return was immediately filed and the additional tax due was paid. This constitutes reasonable cause for failure to pay the tax due.

4. A pending conference with the Division of Taxation, or a pending action or proceeding for judicial determination may constitute reasonable cause, until the time in which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for a taxable period or periods the return or returns for which are due subsequent to the commencement of the conference proceeding, or the commencement of the judicial action or proceeding provided that:

- i. The action or proceeding involves a question or issue affecting whether or not the individual or entity is required to file a return and/or pay tax;
- ii. The action or proceeding is not based on a position which is frivolous; and
- iii. The facts and circumstances for such taxable period or periods are identical or virtually identical to those of the taxable period or periods covered by the action or proceeding.

Example: An individual is awaiting a determination, after a hearing, of the Tax Court of New Jersey regarding whether or not such individual was required to file a return and collect and remit tax in a prior taxable period. The petition on the matter to the Tax Court was filed prior to the due date for the return for the current taxable period. The facts and circumstances for the current taxable period are identical to those of the period covered by the petition. The individual's position is arguable and has merit based on case law or other recognized legal authority. This constitutes reasonable cause for failure to file a return and for failure to pay the tax due for the current period.

5. Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

Example 1: A manufacturer with production facilities throughout New Jersey has established an accrual accounting system to record purchases subject to use tax. The manufacturer, as the result of his first sales and use tax audit, owes additional use tax because of occasional misclassification of office supplies and equipment. After a review of a written statement, submitted by the taxpayer, containing all of the facts alleged as a basis for reasonable cause, it was determined that the taxpayer had made reasonable efforts to account for its use tax liabilities, that the understatement of tax was unintentional and that the manufacturer had otherwise substantially complied with the law. The audit findings established that willful neglect did not occur and reasonable cause existed. Therefore, penalty and interest in excess of the statutory minimum will be waived.

Example 2: A vendor who operates a large restaurant business has an accounting system which is devised in such a way that the tax to be remitted each quarter is based on the accumulated taxable sales. An overcollection test was performed on the guest checks which disclosed occasional miscalculation of tax by vendor's staff which resulted in an understatement of the tax due and paid. The taxpayer submitted a written statement containing all of the facts alleged as a basis for reasonable cause. The understatement of the tax due was not considered substantial, taking into account the size of the operation, volume of sales and an otherwise sound accounting system. The audit findings established that willful neglect did not occur and that reasonable cause existed. Therefore, the penalty and interest in excess of the statutory minimum would be waived.

(d) A failure to pay will be considered to be due to reasonable cause, to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of his assets and anticipated income will be insufficient to pay his tax, has not exercised ordinary business care and prudence in providing for the payment of his tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of his tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay his tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

1. In determining whether reasonable cause and good faith exist, the most important factor to be considered is the extent of the taxpayer's effort to ascertain the proper tax liability. In addition to any relevant grounds for reasonable cause as exemplified in (c) above, circumstances that indicate reasonable cause and good faith with respect to the substantial understatement or omission of tax, where clearly established by or on behalf of the taxpayer, may include the following:

- i. An honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer;
- ii. A computational or transcriptional error;

iii. Pursuant to N.J.S.A. 54:49-11b, the reasonable reliance by the taxpayer on erroneous written advice furnished by an officer or employee of the Division of Taxation acting in the officer's or employee's official capacity entitling that taxpayer to appropriate penalty and interest waivers permitted by law, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information to the officer or employee and provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such facts were erroneous. For purposes of this subparagraph, no officer or employee of the Division of Taxation is authorized to provide written advice which is binding on the Division of Taxation in the absence of a written request from a taxpayer; or

iv. The filing of an amended return which shows an additional amount of taxes due or which adequately discloses the tax treatment of an item which should have been adequately disclosed with the original return, provided the amended return is filed prior to the time the taxpayer is first contacted by the Division of Taxation concerning an audit or an examination of the return.

2. In determining if the taxpayer exercised ordinary business care and prudence in providing for the payment of his tax liability, consideration will be given to the nature of the tax which the taxpayer has failed to pay. Thus, for example, facts and circumstances which, because of the taxpayer's efforts to conserve assets in marketable form, may constitute reasonable cause for nonpayment of income taxes may not constitute reasonable cause for failure to pay over trust fund taxes such as sales and gross income withholding taxes.

(e) The provisions of this section shall apply to the extent pertinent where any taxpayer substantially understates the amount of taxes required to be shown on the return and such understatement or omission was due to reasonable cause and not due to willful neglect. Reasonable cause and the absence of willful neglect may be determined to exist only where the taxpayer has acted in good faith.

Amended by R.1991 d.528, effective November 4, 1991.

See: 23 N.J.R. 1899(a), 23 N.J.R. 3342(c).

Added new (b)-(e).

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), added last sentence; and substantially amended (d)liii.

Administrative correction.

See: 38 N.J.R. 4882(b).

Case Notes

Computation of interest mitigated by absence of fraud. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

18:2-2.8 Criminal penalties

(a) The State Tax Uniform Procedure Law contains criminal penalties for persons who violate the State tax laws

administered by the Division of Taxation. Criminal provisions are prescribed by law for the following acts or omissions:

1. Any of the following constitute a disorderly persons offense:

i. Failure to file any return or report required by any State tax law;

ii. Failure to pay over any tax required by any State tax law;

iii. Filing or causing to be filed, or made any return, certificate, affidavit, representation, information, testimony or statement, required or authorized by any State tax law, which is false;

iv. Failure to file a bond required to be filed by any State tax law;

v. Failure to file an application for registration, certification, or such data in connection therewith as the director by regulation or otherwise may require under any State tax law;

vi. Failure to display or surrender any certificate of authority as may be required by any State tax law;

vii. Assigning or transferring any certificate of authority in violation of any State tax law;

viii. Failure to charge any state tax as required by any State tax law;

ix. Failure to separately state or account for any State tax as required by any State tax law;

x. Failure to withhold any State tax as required by any State tax law; or

xi. Failure to keep any records required by any State tax law or rule of the Director issued thereunder.

2. The offenses provided in (a)1 above shall be in addition to any other penalties prescribed in P.L. 1987, c.76 or otherwise prescribed by law.

3. Any of the following constitute a fourth degree crime:

i. Intentionally providing false information to hinder an official investigation, inquiry examination or audit by the Division of Taxation (N.J.S.A. 54:52-7);

ii. Failure to license or register with the Division of Taxation and/or engaging in conduct which would require registration with the intention to evade tax (N.J.S.A. 54:52-13);

iii. Knowingly operating under a voided corporate charter (N.J.S.A. 54:52-16);

iv. Knowingly dealing with unlicensed persons and assisting such person in avoiding or evading any State tax (N.J.S.A. 54:52-17); or

v. Knowingly swearing to any false or fraudulent statement with an intention to evade or avoid any tax penalty or interest (N.J.S.A. 54:52-19).

4. Any of the following constitutes a third degree crime:

i. Failure to file a return or report with intention to evade or avoid tax, fee, penalty or interest pursuant to State Tax Uniform Procedure Law (N.J.S.A. 54:52-7);

ii. Failure to remit any sums collected for the benefit of the State with intent to evade or avoid tax, fee, penalty and interest (N.J.S.A. 54:52-9);

iii. Preparation of false or fraudulent return report or statement with intent to evade or avoid any tax, fee, penalty or interest (N.J.S.A. 54:52-10);

iv. Preparation or maintenance of fraudulent or false books or records with intention to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-11);

v. Failure to maintain books or records as required by State tax law with intent to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-12); or

vi. Failure to collect or withhold any State tax with intention not to make timely payment of tax, fee, penalty or interest (N.J.S.A. 54:52-13).

5. The intentional failure to remit taxes collected or withheld of \$75,000.00 or more shall be considered a second degree crime.

18:2-2.9 Part of assessment due to civil fraud; addition to tax

(a) If the Division determines that any part of an assessment is due to civil fraud, the Division shall add a penalty to the tax in an amount equal to 50 percent of the assessment, pursuant to N.J.S.A. 54:49-9.1. This amount shall be in lieu of the late filing and/or late payment penalties imposed by N.J.S.A. 54:49-4 and the penalty imposed under N.J.S.A. 54:49-9 for failure to timely pay an estimated or arbitrary assessment imposed pursuant to N.J.S.A. 54:49-5 or 54:49-7.

1. For the purposes of (a) above, the 50 percent penalty is assessed against the entire tax assessment.

2. For example, the Division makes an assessment of \$1,000 of tax consisting of \$750.00 of tax arising from additional interest income and \$250.00 of tax arising from an overstated deduction. The Division determines that the assessment for the business deduction was due to civil fraud. The portion of the assessment that relates to tax only is \$250.00, so the Division adds to the tax a civil fraud penalty of 50 percent of that amount, or \$125.00, plus applicable interest.

(b) In general, civil fraud is characterized by a taxpayer's intent to evade or avoid the payment of taxes known to be due to the State by conduct intended to conceal, mislead, or

otherwise prevent the administration and collection of the taxes imposed by the laws of this State.

(c) If a taxpayer files a false or fraudulent tax return with the intent to evade tax or fails to file a tax return, the Division of Taxation may make an assessment of tax at any time, pursuant to N.J.S.A. 54:49-6.b.

(d) The Division of Taxation may impose the penalty provided for in (a) above where there is clear and convincing evidence of the taxpayer's intent to commit fraud as required by (b) above. Intent is distinguished from inadvertence, reliance on incorrect technical advice, honest difference of opinion, negligence, or carelessness.

(e) When making a determination as to whether any part of an assessment is due to civil fraud, the Division of Taxation may consider indicia of fraud that may include, but are not limited to:

1. A pattern of substantially understating income (or sales, in the case of sales tax);
2. A history of failing to maintain adequate books and records;
3. Implausible or inconsistent explanations of behavior;
4. Concealing or transferring assets;
5. Repeated or continuing failure to cooperate meaningfully and fully with the Division of Taxation;
6. Collecting and/or withholding any trust fund tax and failing to remit the tax funds collected to the Division of Taxation;
7. A pattern of failing to file tax returns, remit taxes, or report income or sales;
8. Destruction of records;
9. Making misrepresentations of material facts;
10. Accounting irregularities (two sets of books, false entries on documents);
11. Taking fictitious or improper deductions (for example, overstatement of deductions, personal items deducted as business expenses);
12. Engaging in illegal activities; and/or
13. Maintaining or presenting false or altered documents.

(f) Depending on the facts and circumstances of a matter, a finding of the existence of one or more indicia of civil fraud listed in (e) above, or other indicia not listed therein, may be sufficient to establish that any part of an assessment is due to civil fraud for the purposes of assessing the penalty provided for in (a) above.

(g) Whenever the Division of Taxation assesses the penalty provided for in (a) above, the Division shall advise the taxpayer in writing as to the reasons for the finding of civil fraud.

(h) When the Division of Taxation determines that any part of an assessment is due to civil fraud, such determination is a finding of the Director and the provisions of N.J.S.A. 54:49-18 will apply.

New Rule, R.2014 d.146, effective September 15, 2014.
See: 46 N.J.R. 595(a), 46 N.J.R. 1974(c).
Section was "(Reserved)".

18:2-2.10 Credit for erroneous payments and collections

(a) Where it is determined as a result of the audit of any taxpayer that a State tax has been erroneously or illegally collected from such taxpayer, or has been paid by such taxpayer under a mistake of law or fact, and where no questions of law or fact are involved, the Director may credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of a deficiency assessment. Such offsets will be made with the following limitations:

1. Credit for the erroneous payment must be made within the time in which a deficiency assessment must be made for such tax as provided by law; and
2. Credit shall only be applied in order to offset a liability for a period which is covered by the applicable assessment period; and
3. Credit for erroneous overpayments shall only be made to offset a deficiency assessment made by the Director under the same state tax law.

(b) An audit of a taxpayer can only be initiated by the Division and not at the request of a taxpayer.

18:2-2.11 Prime rate defined

For the purposes of determining the interest charge to be assessed against a taxpayer, prime rate shall mean the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter immediately preceding the quarter within which the tax or payment became due. The applicable rate shall be adjusted on the first business day of each quarter thereafter over the life of the debt. As to the calculation of interest accruing on and after July 1, 1993, prime rate means the rate quoted as of December 1 of the calendar year immediately preceding the calendar year in which the payment was due; provided, however, that if the Director determines that the prime rate quoted by commercial banks to large businesses varies by more than one percentage point from the rate otherwise determined, the Director shall redetermine the prime rate to be that quoted prime rate for subsequent calendar quarters of the calendar year in which payments become due.

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

SUBCHAPTER 3. REQUIREMENTS FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

18:2-3.1 Purpose

These rules enable the State to receive the actual tax monies from certain taxpayers, by the payment due date, because the taxpayers are required to pay their taxes by electronic funds transfer, instead of being allowed to pay by check or other similar instrument.

18:2-3.2 Scope

This subchapter establishes the bases for determining which taxpayers must pay taxes by electronic funds transfer (EFT), as well as the basic requirements for paying by EFT.

18:2-3.3 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

“ACH” (automated clearing house) means a Federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association (NACHA), which operates as a clearing house for transmitting or receiving entries between banks and bank accounts, and which authorizes an electronic transfer of funds between the banks or bank accounts.

“ACH credit” means a transaction in which the taxpayer, through its own bank, originates an entry crediting the State of New Jersey’s bank account and debiting its own bank account for the amount of the payment due.

“ACH debit” means a transaction in which the State of New Jersey, through its designated depository bank, originates an ACH transaction debiting the taxpayer’s bank account and crediting the State’s bank account for the amount of the payment due.

“Director” means the Director of the Division of Taxation in the Department of Treasury.

“EFT” (electronic funds transfer) means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.

“Prior year liability” means the total liability for any tax imposed on, collected by or withheld by the taxpayer in the calendar year or the fiscal or calendar privilege period, as determined under the specific law regarding that tax, ending before the calendar year or fiscal or calendar privilege period for which an electronic funds transfer payment is determined to be required.

“State tax” or “tax” means any tax, or any transitional energy facility or uniform transitional utility assessment, which is payable to or collectible by the Director.

“Taxpayer” means any person or entity owing or liable to pay any tax, or any person or entity deemed to be so owing or liable.

Amended by R.1998 d.192, effective April 20, 1998.
See: 30 N.J.R. 604(a), 30 N.J.R. 1425(c).
Rewrote “State tax”.

18:2-3.4 Payments required to be paid by electronic fund transfer

(a) Between March 1, 1993, and February 28, 1994, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$200,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(b) Between March 1, 1994, and February 28, 1995, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$100,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(c) Between March 1, 1995, and February 29, 1996, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$50,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(d) Between March 1, 1996, and July 1, 2004, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$20,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(e) Beginning July 2, 2004, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$10,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit or ACH credit method of EFT or such other EFT method of payment, such as credit card or electronic check, as may be authorized by the Director.

(f) The EFT requirements of (a) through (e) above apply to any estimated tax payments due from a taxpayer.

(g) The EFT requirements of (a) through (e) above do not apply to payments of the following types of taxes:

1. Transfer inheritance tax imposed pursuant to N.J.S.A. 54:33-1;
2. Estate tax imposed pursuant to N.J.S.A. 54:38-1;

3. Gross income tax payments of estimated or final tax liability imposed pursuant to N.J.S.A. 54A:8-5 and N.J.S.A. 54A:8-1, but not including withholding tax imposed pursuant to N.J.S.A. 54A:7-1 and 54A:7-1.1.

(h) Beginning January 1, 1998, any taxpayer that sells, stores, delivers, transports or generates natural gas or electricity shall remit the taxes and assessments listed in this subsection by using EFT, without regard to the lack of or amount of any prior year liability or estimated current year liability;

1. Any sales and use tax liability;
2. Any corporate business tax liability;
3. Any transitional energy facility assessment; and
4. Any uniform transitional utility assessment.

Amended by R.1998 d.192, effective April 20, 1998.
See: 30 N.J.R. 604(a), 30 N.J.R. 1425(c).

Added (g).

Amended by R.2006 d.71, effective February 21, 2006.
See: 37 N.J.R. 3633(a), 38 N.J.R. 1226(b).

Rewrote the section.

18:2-3.5 Specific requirements

(a) A taxpayer that is required to pay by EFT shall initiate the transfer and take whatever other steps are necessary so that any tax payment due is deposited in the State of New Jersey's account in the designated depository, on or before the date that the tax is due according to the pertinent law.

(b) A taxpayer shall make separate EFT transactions for each payment of each type of tax.

(c) A taxpayer may switch its choice of method to the other method of EFT for all its payments if the taxpayer gives the Director notice in writing 60 days in advance of using the other method.

(d) Whichever method (ACH credit or ACH debit) a taxpayer chooses for complying with its EFT requirements, the taxpayer shall use the same method for payment of all the types of taxes it is required to pay by EFT.

(e) If a taxpayer chooses the ACH debit payment option and the banking information necessary to generate ACH debits changes, the taxpayer shall give the Director notice in writing at least 60 days prior to the date the change will take effect.

18:2-3.6 Determination of prior year liability

(a) The Director will annually, on such date as is practicable, determine taxpayers' prior year liability for one or more types of taxes. If an actual prior year liability cannot be determined, the Director may make a determination according to an estimated prior year liability.

(b) For tax payments due between March 1, 1993 and February 28, 1994, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1992, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1992 and December 31, 1992, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(c) For tax payments due between March 1, 1994 and February 28, 1995, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1993, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1993 and December 31, 1993, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(d) For tax payments due between March 1, 1995 and February 29, 1996, the Director shall base "prior year liability" on:

1. The tax liability for calendar year 1994, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending between January 1, 1994 and December 31, 1994, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

(e) For tax payments due in March of 1996 and thereafter, the Director shall base "prior year liability" on:

1. The tax liability for the calendar year preceding the calendar year in which the Director makes the prior year liability determination, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on one or more calendar months, one or more calendar quarters or a calendar year; or

2. The tax liability for any fiscal year or privilege period ending in the calendar year preceding the calendar year in which the Director makes the prior year liability determination, if the Director is determining a prior year liability with regard to a type of tax for which liability is based on a fiscal year or privilege period.

18:2-3.7 Notice to taxpayers

(a) The Director will notify taxpayers of their EFT payment requirements at least 30 days prior to the date on which the Director first requires compliance with N.J.A.C. 18:2-3.4(a) through (f).

(b) The failure of the Director to notify a taxpayer as required by (a) above shall not relieve a taxpayer from compliance with its EFT payment requirements. However, if the Division's records indicate that the Director failed to notify the taxpayer as required by (a) above, the Director may take the lack of notice into consideration with respect to any request for a waiver of penalty or interest.

(c) The Director will annually, on such date as is practicable, notify those taxpayers that do not meet the current "prior year liability" threshold for being required to pay by EFT.

Amended by R.2006 d.71, effective February 21, 2006.
See: 37 N.J.R. 3633(a), 38 N.J.R. 1226(b).

In (a), rewrote cross reference to N.J.A.C. 18:2-3.4(e) as N.J.A.C. 18:2-3.4(f).

18:2-3.8 Penalties and interest for late EFT payments

(a) If an EFT payment is deposited later than the date required by N.J.A.C. 18:2-3.5(a), the Director shall, for the period between the required and the actual deposit date, assess late payment penalties and interest as provided under the State Tax Uniform Procedure Law or under the pertinent State tax law.

(b) If the availability of funds for EFT payment is delayed, and if the taxpayer shows, to the satisfaction of the Director, that the delay was due to reasons beyond the control of the taxpayer, the Director shall abate penalties and interest. Circumstances such as the taxpayer being in a poor financial condition will not, by itself, be deemed to be reasons beyond the control of the taxpayer.

18:2-3.9 Failure to comply

(a) If a taxpayer is required to remit a tax payment by EFT and the taxpayer pays (with sufficient funds) by check, draft or similar instrument, payment shall be deemed to have been made on the third business day after the date the Director receives the check, draft or similar paper instrument.

Example 1: Funds represented by a check on a bank seized by bank regulators are considered received when honored, rather than tendered, even though there were sufficient funds at the time of tender.

Example 2: A check drawn on sufficient funds is considered received when honored, rather than tendered, if honoring the check is delayed due to computer failure (other than a failure of the Division's computers).

(b) The Director will not consider any claim or assertion by a taxpayer that its check, draft or other instrument cleared

prior to the date it was deemed to have been paid under (a) above.

Amended by R.1994 d.305, effective June 20, 1994.
See: 26 N.J.R. 1612(a), 26 N.J.R. 2591(a).

18:2-3.10 Voluntary EFT payment

(a) A taxpayer not required to remit payments by EFT may, upon written approval from the Director, use the ACH debit or ACH credit method for EFT payment for such types of taxes as the taxpayer elects.

(b) Once the Director has given written approval, a taxpayer must use the approved EFT method of payment unless the taxpayer gives the Director notice in writing at least 30 days prior to withdrawing from voluntary participation.

(c) Except as otherwise provided in this section, any taxpayer voluntarily remitting taxes by EFT must follow the EFT requirements of this subchapter and any pertinent guidelines prescribed by the Director.

18:2-3.11 Effect of subchapter

If the provisions of these rules conflict with the provisions of any other tax rule concerning the payment of State taxes, except those taxes excepted in N.J.A.C. 18:2-3.4(g), the provisions of N.J.S.A. 54:48-4.1 and these rules shall govern, unless the context clearly indicates otherwise.

Amended by R.2006 d.71, effective February 21, 2006.
See: 37 N.J.R. 3633(a), 38 N.J.R. 1226(b).

Rewrote reference to N.J.A.C. 18:2-3.4(f) as N.J.A.C. 18:2-3.4(g).

SUBCHAPTER 4. POSTMARK RULE**18:2-4.1 Purpose**

This subchapter provides rules for the interpretation and administration of N.J.S.A. 54:49-3.1, which requires that a timely postmark shall be deemed a timely filing or remittance, and that the use of registered or certified mail shall be deemed prima facie evidence of delivery.

18:2-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Document" means any return, report, declaration of estimated tax, claim, statement, notice, application, affidavit, petition, protest or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of the tax laws. However, such term does not include any document that is required under any provision of the tax laws or the regulations to be filed or delivered by any method other than mailing.

"Payment" means any payments required to be made within a prescribed period or on or before a prescribed date under the authority of any provision of the tax laws. However, the term does not include any remittance unless the amount thereof is actually received by the Division. For example, if a check is used as a form of payment, this section does not apply if such check is not received, or if received, is not honored upon presentment. Furthermore, such term does not include any payment that is required under any provision of the tax laws or regulations to be made by any method other than mailing.

18:2-4.3 Postmark date deemed date of filing or payment

For documents required to be filed with or payments to be made to the director generally, and except as otherwise provided, the date of the United States postmark as stamped on the envelope or other wrapper in which such document or payment is contained will be deemed to be the date of filing or payment. Where delivery is made by courier, delivery messenger or similar service, the date of receipt by the Division, as evidenced by an authentic Division of Taxation date stamp, will be deemed to be the date of filing or payment.

18:2-4.4 Mailing requirements

(a) Documents and/or payments shall not be considered to be timely filed or timely paid unless mailed in accordance with all of the following requirements:

1. The documents or payment must be contained in an envelope or other appropriate wrapper properly addressed to the address designated by the Division of Taxation.

2. The envelope or wrapper containing the document or payment must be deposited in the mail of the United States within the prescribed period on or before the prescribed date with sufficient postage prepaid. For this purpose, such document or payment is considered to be deposited in the mail of the United States when it is deposited with the domestic mail service of the United States Postal Service. The domestic mail service of the United States Postal Service includes mail transmitted within, among, and between the United States, its territories and possessions, and Army Air Force (APO) and Navy (FPO) post offices.

18:2-4.5 United States postmark

If the postmark on the envelope or wrapper containing the documents or payments is made by the United States Postal Service, to be timely such postmark must bear a date stamped by the United States Postal Service which is within the prescribed period or on or before the prescribed date for filing or paying (including any extensions of time granted for filing or paying). If the postmark stamped by the United States Postal Service on the envelope or wrapper does not bear a date which falls within such prescribed period or on or before

such prescribed date for filing or paying, the document or payment will not be considered to be timely filed or paid, regardless of when the envelope or wrapper was deposited in the mail. Accordingly, the sender assumes the risk that the envelope or wrapper will not bear a postmark date stamped by the United States Postal Service within the prescribed period or on or before the prescribed date for filing or paying (including any extensions of time granted for filing or paying). See N.J.A.C. 18:2-4.9 with respect to the use of registered mail or certified mail to avoid this risk. Furthermore, if the postmark made by the United States Postal Service on the envelope or wrapper containing the document or payment is not legible, the provisions of N.J.A.C. 18:2-4.6 shall apply.

Example 1: 3rd Quarter Sales and Use Tax Return

Due Date:	October 20
Postmarked:	October 20
Received by Division of Taxation	October 24

The return would be considered timely filed.

Example 2: 3rd Quarter Sales and Use Tax Return

Due Date:	October 20
Postmarked:	October 21
Received by Division of Taxation	October 26

The return would be considered filed on October 26.

18:2-4.6 Metered mail

Documents and payments not postmarked by the United States Postal Service shall be deemed to be mailed and postmarked three days prior to the date upon which such documents and payments are received by the Division.

18:2-4.7 Multiple postmarks

If the envelope or wrapper containing the document or payment has a postmark made by the United States Postal Service in addition to a postmark made other than by the United States Postal Service (for example, metered mail), the postmark which was made by the United States Postal Service will be determinative of the filing date.

18:2-4.8 No postmark

If the envelope or wrapper containing the document or payment bears sufficient prepaid United States postage but is missing any postmark whatsoever, the document shall be deemed filed, or the payment shall be deemed paid, three days prior to its receipt by the Division of Taxation.

18:2-4.9 Registered or certified mail deemed prima facie evidence of delivery

If any document or payment is sent by United States registered or certified mail, such registration or certification shall be prima facie evidence that the document was delivered to the director, bureau, office, officer or person to which or to

whom addressed. The timeliness of such document or payment delivered as evidenced by such registration or certification shall be determined under the provisions of N.J.A.C. 18:2-4.10.

18:2-4.10 Registration or certification date deemed postmark date

(a) If an envelope or wrapper containing a document or payments is sent by United States registered mail, the date of such registration is treated as the postmark date and the date of filing or paying.

(b) If an envelope or wrapper containing a document or payment is sent by United States certified mail and the sender's receipt for certified mail is postmarked by the postal employee to whom such envelope or wrapper is presented, the date of the postmark on such receipt for certified mail is treated as the postmark date and the date of filing or paying.

(c) If an envelope or wrapper containing a document or payment is sent by United States certified mail and the sender's receipt for certified mail is not postmarked by the postal employee to whom such envelope or wrapper is presented, the document shall be deemed filed or the payment shall be deemed paid, three days prior to its receipt by the Division.

18:2-4.11 Foreign postmark

If the envelope or wrapper containing the document or payment is mailed from a foreign country and received by the Division, the date of the official postmark stamped on the envelope or wrapper will be deemed to be the date of filing or payment. The envelope or wrapper must be properly addressed, have sufficient postage prepaid and bear a date stamped by such foreign country's official postal service which is within the prescribed period or on or before the prescribed date for filing or paying (including any valid extensions of time).

18:2-4.12 Weekend and holiday

For purposes of this subchapter, when the last day prescribed (including any extensions of time) for filing a document, making a payment, or performing any act falls on a Saturday, Sunday or a day which is a legal holiday in the State of New Jersey, the performance of such acts will be considered timely if performed on the next succeeding business day.

18:2-4.13 Express delivery

Where delivery of documents and payments is made by Federal Express, United Parcel Service, or similar service, such documents shall be deemed filed, or the payments shall be deemed paid, one day prior to the date upon which such documents and payments are received by the Division of Revenue. Such documents or payments shall be delivered to the Division of Revenue, 160 South Broad Street (Livingston Street entrance), Trenton, New Jersey 08646.

New Rule, R.1999 d.217, effective July 19, 1999.
See: 31 N.J.R. 1166(a), 31 N.J.R. 1941(a).

SUBCHAPTER 5. REFUNDS

18:2-5.1 Purpose

This subchapter provides rules for the administration of refund procedures pursuant to the applicable provisions of

the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

18:2-5.2 Claims for refund; when allowed

(a) Taxpayers may claim a refund for overpayment of taxes by filing a return or a Claim for Refund (Form A-3730), except that with respect to a claim for refund of a payment of an additional tax assessment as permitted by N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(b)1, taxpayers are to use Form A-1730.

(b) For claims accruing prior to July 1, 1993, any taxpayer may file a claim for refund within two years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is imposed by the law imposing a particular tax statute.

(c) For claims accruing on and after July 1, 1993, any taxpayer may file a claim for refund within four years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is fixed by the law imposing a particular tax statute. All claims barred by the applicable statute of limitations on July 1, 1993 shall continue to be barred.

(d) The statute of limitations period for filing a claim for refund of gross income tax is three years after the return is filed or two years after the tax is paid, whichever is later.

(e) The Transfer Inheritance Tax Law generally provides for a three year statute of limitations on applications for refunds. See N.J.A.C. 18:26-10.12.

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

18:2-5.3 Claim not required or permitted until final determination

(a) No claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director, or after appeal proceedings have been commenced, until such protest or appeal has been finally determined. Should the protest or appeal with respect to a tax paid be finally determined in favor of the taxpayer, then the refund claim shall be processed by the Director in accordance with the Director's final determination after protest or the judgment of the Tax Court upon appeal.

(b) The provision in (a) above, not permitting or requiring refund claims to be filed, does not apply to any tax paid which is not implicated by, or the subject of, a protest duly filed with the Director, or appeal proceedings duly commenced in the Tax Court. In the case of such taxes paid, a refund claim may be filed pursuant to N.J.S.A. 54:49-14 and N.J.A.C. 18:2-5.2.

18:2-5.4 Credit against outstanding tax liabilities

(a) In examining a claim for refund, if it is determined that there has been an overpayment of tax, the amount of the overpayment and interest on the overpayment, if any, will be credited against any outstanding State tax liability of the taxpayer. If there is no outstanding State tax liability, the taxpayer will be entitled to a refund of the overpayment and interest on the overpayment, if any.

(b) Refunds or credits of erroneous or illegal tax payments for which no refund claims have been filed will be made strictly according to the provisions of N.J.S.A. 54:49-16.

18:2-5.5 Items previously assessed

(a) The following terms, when used in this section, shall have the following meanings:

1. "Delinquency tax assessment" or "arbitrary tax assessment" or "estimated tax assessment" each mean an assessment made pursuant to N.J.S.A. 54:49-5, or any substantially similar provision under a specific State tax statute, whereby the taxpayer has failed to file a return or report as required under any tax law, and the Director has estimated and assessed the taxes, fees, penalties and interest due from the taxpayer.

2. "Additional tax assessment" means an assessment of additional tax made pursuant to N.J.S.A. 54:49-6, Deficiency assessment in certain cases, or any substantially similar provision under a specific State tax statute, whereby the taxpayer has filed a tax return or report, and the Director determines that there is a deficiency with respect to the payment of tax due because the amount of tax shown due on the report or return is less than the amount of tax due after adjustment of the amount due upon examination or audit of the return or report by the Director. The assessment of additional tax shall include interest and penalty imposed under any State tax law. For purposes of this section, the term "additional assessment" does not include an assessment issued because the amount of tax actually paid is less than the amount due as shown on the taxpayer's return or report.

3. "Jeopardy tax assessment" means an assessment made under the circumstances set forth at N.J.S.A. 54:49-7, 54A:9-14, or any substantially similar provision under a specific State tax statute.

(b) Except as provided by (c)1 below, and N.J.A.C. 18:2-5.7, no claim for refund shall be permitted for items which were previously the subject of an assessment by the Director where the taxpayer was permitted 90 days to protest the assessment pursuant to N.J.S.A. 54:49-18, or similar provisions of any particular tax statute. Failure to timely protest the assessment shall be deemed a waiver of the taxpayer's right for review of that item.

(c) The extended refund request period exception is as follows:

1. For a return period beginning on or after January 1, 1999, a taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax, or in the case of a decedent dying on or after January 1, 1999, a taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to Transfer Inheritance Tax or Estate Tax, if the taxpayer:

i. Neither has protested the additional tax assessment to the Director in compliance with the applicable statutory protest period nor appealed the additional tax assessment to the New Jersey Tax Court in compliance with the statutory appeal period;

ii. Pays the additional tax assessment in full, including all penalty and interest imposed thereon for which the taxpayer had received notice, within one year after the date the applicable statutory protest period has expired;

iii. Files a claim for refund of the payment made pursuant to (c)1ii above, on the refund claim form prescribed by the Director (Form A-1730) within 450 days after the date the protest period described in (c)1ii above expires;

iv. Uses a separate refund claim form for each type of tax paid for which a refund is sought, whether or not the notice of additional tax assessment included more than one tax and whether or not the taxpayer used only one check to pay two or more tax assessments; and

v. Explains in the refund claim form the ground(s) upon which the refund is claimed, limited to the ground(s) for the additional tax assessment provided in the notice of assessment, in accordance with the requirements of N.J.A.C. 18:2-5.8(g). However, a taxpayer who has already protested one or more grounds for an additional tax assessment but not another ground or who has already protested one or more periods of a multi-period additional tax assessment but not another period is not eligible to use the procedure prescribed by (c)1 above with respect to the ground(s) or period(s) that the taxpayer did not previously protest.

2. The Director will not consider the claim for refund if any of the requirements in (c)1 above are not met. No extensions of time to meet any such requirement will be allowed.

3. A refund will not be granted unless the taxpayer demonstrates that the ground(s) provided by the Division of Taxation in the notice of additional tax assessment is (are) erroneous as a matter of fact or law. The Division of Taxation will not consider any other ground(s) in reviewing the claim.

4. The maximum amount that may be refunded is the amount that is paid pursuant to (c)1ii above.

5. The procedures prescribed by (c)1 above does not apply to refunds of payments of costs of collection, delinquency, estimated or arbitrary tax assessments, jeopardy tax assessments when no return has been filed for the period(s) at issue, payments of penalty and interest without payment of an underlying additional tax assessment, and payments of penalty and interest imposed without assessment of an additional tax.

6. Payment of an additional tax assessment is due within the time established by the Uniform Procedure Law and the provisions of (c)1 above do not extend the due date of the payments of any additional assessment. Such assessment shall be due as set forth in N.J.S.A. 54:49-6, 54A:9-2(b), or any other similar provision of an applicable specific State tax statute.

7. An additional tax assessment is paid whether paid voluntarily by the taxpayer or involuntarily as a result of collection efforts undertaken by the Division of Taxation.

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) 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.
See: 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-27(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.

Administrative correction.
See: 45 N.J.R. 1965(b).

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

New Jersey Sales Tax Amended Return (Form ST-607-A) should be completed for the appropriate tax period(s).

2. Individual refunds: If the taxpayer overpaid sales tax when making a retail purchase, the taxpayer may request a refund directly from the vendor from whom the purchase was made. However, if the vendor has already submitted the tax to the State, the taxpayer must complete a Claim for Refund (Form A-3730) and include supporting documents to substantiate the claim.

3. Refund claims of Sales and Use Tax shall include documentation of all transactions to substantiate the tangible personal property or service that is the subject of the refund claim and the amount requested. Documentation required is as follows:

i. The refund claim (A-3730, shall be filed with documents, such as invoices, receipts, proof of payment of tax, and exemption certificates. These documents must be provided in a format suitable to determine the correctness of the grounds for the refund and the amount of the refund or credit. Acceptable formats include photocopies or in lieu of paper copies, imaged documents. Imaged documents, which can be read with universal readable software such as Adobe PDF and presented on CD may be submitted if first:

(1) The taxpayer submits a proposed plan for the submission to the Sales Tax Refund Section and received a written approval; and

(2) In claims of 25 or more transactions, the images of the documents are presented in an organized manner, which permits examination of the documents together with an electronic spreadsheet listing the transaction (see (d)4 below) and the taxpayer retains the original invoices for Division examination;

ii. All sales/purchase documentation must clearly identify the seller, purchaser, invoice number, invoice date, description of the transaction, amount of the invoice excluding the tax, and the amount of sales tax billed for the transaction. For those transactions exempt from sales tax by the tendering of an exemption certificate, the documentation relevant to all transactions with the issuer of the exemption certificate must clearly identify the purchaser. Cash receipts, register tapes or other receipts that do not identify the purchaser are not acceptable;

iii. Proof of payment for sales/use tax remitted.

(1) Proof of sales tax remitted to vendors is required and the Division will accept copies of canceled checks. A request for use of an alternative proof of payment must be requested in writing to the Sales and Use Tax Refund Section and written approval received by the claimant prior to submission of such alternative proof of tax payment in support of the refund claim. Any approved alternate proof of payment must provide a trail between the documents

presented by use of notation, highlighting or other identification of the particular matching transactions.

(2) Proof of use tax accrual and remittance is required and the Division will accept copies of detailed journal entries or detailed listings previously prepared by the taxpayer in determining the use tax liability as reported on the ST-50 Quarterly Return, an ST-18 Use Tax Return, an ST-18B Annual Business Use Tax Return, or on the Gross Income Tax Individual Return NJ-1040. Payment of use tax will be confirmed from Division records;

iv. When the basis of a claim for refund is the receipt of an exemption certificate from the customer after the seller has remitted the tax on their ST-50 return, then copies of the following documents are required:

(1) The exemption certificate;

(2) The initial invoice showing the amount of tax billed; and

(3) Credit memoranda or proof of repayment of the tax to the customer; and

v. Amended quarterly returns are required for any period where the claim for refund results in the change of any of the figures previously reported. The amended return(s) should be filed online at the time of submitting a refund claim.

4. Refund claims of Sales and Use Tax with 25 or more separate transactions or credit memoranda shall be filed with a computer spreadsheet (A-3730-SU-1). A computer spreadsheet is a computer program that arranges numerical and textual data into a table of rows and columns. The computer spreadsheet shall display information for each transaction that is included as the subject of the refund claim.

i. The spreadsheet shall include, but is not limited to:

(1) The names of vendor and customer;

(2) The location of the transaction (for example, delivered to Pennsylvania, shipped by carrier or customer pickup);

(3) The invoice number;

(4) The invoice date;

(5) The item sold/purchased;

(6) The amount of the sale/purchase subject to refund;

(7) The amount of sales tax or use tax claimed for refund; and

(8) A statement of the grounds for the claimed refund.

ii. The computer spreadsheet should be edit-locked and, for the purposes of this section, the Division will

accept computer spreadsheets created with Excel or any other .xls file compatible computer spreadsheet application. The computer spreadsheet shall be submitted with the refund claim on a compact disc or similar medium in common use. Receipt of a computer spreadsheet without simultaneous or prior filing of the form A-3730 does not constitute the filing of a claim for purposes of statute of limitations.

(e) A taxpayer requesting a refund of a payment of an additional assessment of Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Transfer Inheritance Tax, Estate Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax pursuant to N.J.S.A. 54:49-14.b is required to use Form A-1730.

(f) If there is no other established refund claim procedure or amended return for other State taxes paid in error, a Claim for Refund (Form A-3730) should be completed and submitted with a detailed explanation with supporting documentation.

(g) The refund claim shall set forth the taxpayer's name, address, identifying number, signature and a full narrative description of the claim. The narrative description shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Division of the exact basis thereof. Citations to relevant statutes, regulations and case law are not required but may be included if known. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. A refund claim must include documentation sufficient to establish an overpayment that entitles the taxpayer to a refund. If a refund claim does not contain sufficient information, the Division will provide the taxpayer with guidance on the information required to demonstrate an overpayment. If the taxpayer does not respond to the Division's request for documentation within 30 days of receipt of such guidance, the Division will deny the claim. The taxpayer may refile the claim, with documentation to substantiate the claim, within the applicable statute of limitations for filing refund claims, or file an appeal of the denial of the claim with the Conference and Appeals Branch within 90 days pursuant to N.J.S.A. 54:49-18. Alternatively, the taxpayer may file a direct appeal to the Tax Court of New Jersey within 90 days pursuant to N.J.S.A. 54:32B-21 and R.8:4-1.

Amended by R.1999 d.295, effective September 7, 1999.
See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).

Added (f).

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

Added a new (e); recodified former (e) as (f) and inserted "other" preceding "established refund"; recodified former (f) as (g).
Amended by R.2007 d.386, effective December 17, 2007.

See: 39 N.J.R. 3728(a), 39 N.J.R. 5368(a).

In the introductory paragraph of (d), inserted "(other than urban enterprise zone refunds)"; added (d)3 and (d)4; and in (g), substituted "for filing" for "on"; "or the statute of limitations for the computation of" for "and" following "54A:9-8", "that are not paid within six months from the last date prescribed, or permitted by extension of time for filing the return, or within six months after the return is filed, whichever is

later, pursuant to" for "under" following "late refunds", and "the applicable requirements of this section" for "this subsection".

Amended by R.2011 d.194, effective July 18, 2011.

See: 43 N.J.R. 609(a), 43 N.J.R. 1602(a).

Rewrote (g).

Case Notes

Where supermarket customers asserted violations of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 through 56:8-20, with regard to supermarkets overcharging the customers for sales tax by calculating the sales tax based on the regular price of the items purchased rather than on the reduced or discounted sales price actually charged for the items, the exclusive remedy available to the customers for a refund of any overpaid sales tax once the tax had been paid over to the Director was N.J.S.A. 54:32B-20(a), and therefore the customers' claims, including those under the CFA, were dismissed. *Kawa v. Wakefern Food Corp. Shoprite Supermarkets, Inc.*, 24 N.J. Tax 39, 2008 N.J. Tax LEXIS 8 (Tax Ct. 2008).

Director of the Division of Taxation had exclusive jurisdiction as to the assessment, collection, and refund of any tax under the Sales and Use Tax Act, N.J.S.A. 54:32B-1 through 54:32B-29, and N.J.S.A. 54:32B-18 makes clear that vendors have the obligation to pay over any overpaid tax monies to the Director with their returns; the Director is then authorized to determine the amount of tax due and, upon proper application, refund any tax erroneously, illegally, or unconstitutionally collected, pursuant to N.J.S.A. 54:32B-20(a). *Kawa v. Wakefern Food Corp. Shoprite Supermarkets, Inc.*, 24 N.J. Tax 39, 2008 N.J. Tax LEXIS 8 (Tax Ct. 2008).

No evidence exists that, with the enactment of N.J. Laws 2005, c. 126, the New Jersey Legislature intended to create or permit a common law cause of action or an action under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 through 56:8-20, where tax has already been paid over to the Director of the Division of Taxation. N.J.S.A. 54:32B-20(c) is intended only to add a provision requiring written notice to a seller in connection with the only refund claim that can be made against a seller under existing law, that is, where a refund is claimed prior to the seller's report to and remittance of the tax to the Director. *Kawa v. Wakefern Food Corp. Shoprite Supermarkets, Inc.*, 24 N.J. Tax 39, 2008 N.J. Tax LEXIS 8 (Tax Ct. 2008).

18:2-5.9 Interest on overpayments

(a) For tax paid with respect to reports or returns due on and after January 1, 1994, interest shall be allowed and paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. "The date of the refund" shall be deemed the date set forth on the check or the documents authorizing electronic funds transfer (EFT). If interest must be paid, it will be calculated to accrue from the later of the date of the filing of a refund claim, the date the tax is paid, or the due date of the return. No interest shall be allowed or paid on an overpayment of less than one dollar; or on an overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return; or within six months after the return is filed, whichever is later. Interest will not be paid on overpayments where the taxpayer has requested that the overpayment be applied to the following year's tax liability.

(b) No interest will be paid on a refund of an overpayment issued pursuant to N.J.S.A. 54:49-16 unless and until six

months after the taxpayer files a claim for refund. See N.J.A.C. 18:35-1.27.

Example 1: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Postmarked:	March 2
Return with overpayment received by the Division of Taxation:	March 12

A refund of overpaid taxes would accrue interest if not refunded by October 15 (six months after the due date of the return, April 15).

Example 2: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Return and overpayment (unknown to taxpayer at time return was filed) received by Division of Taxation:	April 15
Claim for refund received by Division of Taxation:	May 1

Interest would accrue on an overpayment not refunded by November 1 (six months after the claim for refund date of May 1).

Example 3: Same as above, except no claim filed. The Division of Taxation discovers the overpayment within two years of payment. No interest is due on the refund of the overpaid tax.

(c) No interest shall be paid on a refund of an overpayment unless the claim for refund or amended return contains:

1. The taxpayer's name, address, and identifying number and the required signatures; and
2. Sufficient information (whether on the refund claim, amended return and necessary attachments) to permit the verification of the claim, including a full narrative description of the basis for the claim. (See also N.J.A.C. 18:2-5.8, Refund claim procedures.)

Amended by R.1999 d.295, effective September 7, 1999.
See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).
Added (c).

18:2-5.10 Separate claims required

For claims accruing on or after July 1, 1993, each taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted.

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

18:2-6.1 Records confidential

(a) Division of Taxation records and files are confidential and privileged.

(b) Division officers and employees, former Division officers and employees, any Division employee engaged in the custody or administration of Division records, and any person who may have secured information from Division records, may not divulge, disclose or use for their own personal advantage any information obtained from Division records, from the examination or inspection of the property of any person, or any copy of a federal return or federal return information required to be attached to or included in any New Jersey return.

(c) The Division of Taxation is not required to produce any records or files for inspection of any person or use in any action or proceeding except when the records or files are shown to be directly involved in an action or proceeding under the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. or other State tax law, or where the determination of an action or proceeding will affect the validity or amount of State claims for taxes, or any lawful proceeding for the investigation and prosecution of violations of the criminal provisions of the State Tax Uniform Procedure Law or other State tax law.

(d) Violation of these provisions is a crime of the fourth degree.

(e) Requests for information from Division records, including requests for information pursuant to N.J.S.A. 54:50-9, should be directed to the Division of Taxation Office of Chief of Staff.

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

18:2-7.1 Purpose

The purpose of this subchapter is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

18:2-7.2 Definitions

For purposes of this subchapter, the following terms shall be defined as follows:

“Database management system” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

“Electronic data interchange” or “EDI technology” means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

“Hard-copy” means any documents, records, reports or other data printed on paper.

“Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

“Storage-only imaging system” means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

“Taxpayer” as used in the subchapter means any person owing or liable to pay any State tax or any person deemed by the Director to be so owing or liable.

18:2-7.3 Recordkeeping requirements—general

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records shall be made available on request by the Director or his or her authorized representatives. Such records shall include, but not be necessarily limited to, books of account, invoices, sales receipts or other documents required to be maintained by any specific tax statute or regulation of this State.

(b) If a taxpayer retains records required to be retained under this section in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Director in machine-sensible format upon request of the Director.

(c) If the machine-sensible or hard-copy records of the taxpayer are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from

such records may be deemed to be incorrect or insufficient and the Director may determine the amount of tax due the State by using any information available, whether from the taxpayer’s place of business or from any other source.

(d) Nothing in this section shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with (b) above.

18:2-7.4 Recordkeeping requirements—machine-sensible records

(a) General requirements pertaining to machine-sensible records are as follows:

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this section are met.

2. At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic data interchange requirements are as follows:

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records shall contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy (b)1 above at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established.

Example: A taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (that is, they contain only codes for that information), the taxpayer shall also retain other records, such as its vendor master file and product code description lists and makes them available to the Director. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(c) Electronic data processing accounting systems requirements are as follows:

1. The requirements for an electronic data processing accounting system shall be similar to that of a manual accounting system, in that an adequately designed accounting system shall incorporate methods and records that will satisfy the requirements of this subchapter.

(d) Business process information requirements are as follows:

1. Upon the request of the Director, the taxpayer shall provide a description of the business process that created the retained electronic records. Such description shall include the relationship between the electronic records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer shall be capable of demonstrating:

i. The functions being performed as they relate to the flow of data through the system;

ii. The internal controls used to ensure accurate and reliable processing; and

iii. The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this subchapter:

- i. Record formats or layouts;
- ii. Field definitions (including the meaning of all codes used to represent information);
- iii. File descriptions (for example, data set name); and
- iv. Detailed charts of accounts and account descriptions.

18:2-7.5 Records maintenance requirements

The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

18:2-7.6 Access to machine-sensible records

(a) The manner in which the Director is provided access to machine-sensible records as required in N.J.A.C. 18:2-7.3(b) may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Access pursuant to (a) above shall be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the Director with the hardware, software and personnel resources to access the machine-sensible records;

2. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records;

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the Director, including copies of files, on a magnetic medium that is agreed to by the Director; and/or

4. The taxpayer and the Director may agree on other means of providing access to the machine-sensible records.

18:2-7.7 Taxpayer responsibility and discretionary authority

(a) In conjunction with meeting the requirements of N.J.A.C. 18:2-7.4, a taxpayer may create files solely for the use of the Director. For example, if a data base management system is used, it is consistent with this section for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of N.J.A.C. 18:2-7.4. The taxpayer shall document the process that created the separate file to show the relationship between that file and the original records as required by N.J.A.C. 18:2-7.6(d).

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this subchapter.

18:2-7.8 Alternative storage media

(a) For purposes of storage and retention, taxpayer may convert hard-copy documents received or produced in the normal course of business and required to be retained under this subchapter to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but

are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sale invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

1. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system shall be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

2. Procedures shall be established for the effective identification, processing, storage and preservation of the stored documents and for making them available for the period they are required to be retained under N.J.A.C. 18:2-7.10.

3. Upon request by the Director, a taxpayer shall provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

4. When displayed on such equipment or reproduced on paper, the documents shall exhibit a high degree of durability and legibility.

5. All data stored on microfilm, microfiche or other storage-only imaging systems shall be maintained and arranged in a manner that permits the location of any particular record.

18:2-7.9 Effect on hard-copy recordkeeping requirements

(a) Except as otherwise provided in this section, the provisions of this subchapter do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in N.J.A.C. 18:2-7.8.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (for example, when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a credit or debit card transaction shall be retained unless all the details necessary to determine correct tax liability relating to this

transaction are subsequently received and retained by the taxpayer in accordance with this subchapter. Such details include those listed in N.J.A.C. 18:2-7.4(b)1.

(d) Nothing in this section shall prevent the Director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

18:2-7.10 Records retention time period

See the statute and/or regulations of specific tax laws for applicable records retention requirements.

18:2-7.11 Corporations

(a) Corporations are required to maintain all records used to determine their tax liabilities and such other records as the Director of the Division of Taxation may require, pursuant to N.J.S.A. 54:10A-14.1. Corporations that are required to collect Sales and Use Tax shall keep records of every purchase, purchase for lease, sale or amusement charge or occupancy of all amounts paid, charged or due thereon pursuant to N.J.S.A. 54:32B-16, including contemporaneous sales records, such as cash register tapes and journals, sales slips, invoices, receipts or memoranda of price (see N.J.A.C. 18:24-2). Corporations that operate primarily on a cash basis and that deal primarily in cash purchases and sales, including, but not limited to, family-owned restaurant corporations, must maintain sufficient records for the determination of the corporation's Corporation Business Tax and Sales and Use Tax liabilities.

(b) If a corporation has not maintained records adequate to classify the corporation's income for purposes of establishing tax liabilities, the Division may make an audit determination that certain amounts of unreported income have been distributed to shareholders of the corporation, in the form of salary or dividends. Amounts that cannot be identified as arising from some aspect of the operations of the business will first be deemed to have been distributed to the shareholders as reasonable salary, and includable in the income of the shareholders for purposes of the Gross Income Tax pursuant to N.J.S.A. 54A:5-1a. Amounts beyond salary will be deemed to have been distributed to the shareholders as a dividend, and includable in the income of the shareholders for purposes of the Gross Income Tax pursuant to N.J.S.A. 54A:5-1f. The Division will utilize commonly accepted accounting audit practices to make these determinations. Examples of commonly accepted accounting audit practices are comparisons with other similarly situated businesses and analyses of information provided by vendors to the business.

New Rule, R.2010 d.202, effective September 20, 2010.
See: 42 N.J.R. 901(a), 42 N.J.R. 2273(a).

SUBCHAPTER 8. SET-OFF OF STATE VENDOR TAX
DEBT**18:2-8.1 Definitions**

As used in this subchapter, the following words shall have the following meanings:

“Set-off” shall mean a reduction in the contract payment due to a vendor by the amount of that vendor’s State tax indebtedness or, in the case of a vendor-partnership or vendor-S corporation, by the amount of State tax indebtedness of any member-partner or shareholder of the partnership or S corporation, respectively.

“State” shall mean the State of New Jersey, including the executive, legislative and judicial branches, or any agencies or instrumentalities of the State of New Jersey.

“State tax” shall mean any tax imposed by Titles 54 and 54A of New Jersey Statutes, on individuals or business entities, and collected by the Division of Taxation.

“Taxpayer” shall mean any vendor who is required to pay or remit a State tax, or, when the vendor is a partnership or S corporation, any partner or shareholder of the vendor-entity who is required to pay or remit a State tax.

“Vendor” shall mean any individual or entity under contract to provide goods or services to the State, or under contract for construction projects of the State.

18:2-8.2 Set-off of tax debts against contract payments due to vendors

(a) The Division of Taxation may seek to set off all or part of a contract payment due to a State vendor in order to satisfy a tax indebtedness owed to the State whenever:

1. The vendor is under contract to provide goods or services or engage in a construction project for the State of New Jersey, or any of its branches, or any of its agencies or instrumentalities;
2. The vendor is entitled to payment from the State for such goods, services or construction project; and
3. The vendor is indebted for any State tax, or, where the vendor is a partnership or S-corporation, any partner or shareholder of the vendor-entity is indebted for such tax.

18:2-8.3 Time for initiating set-off procedure

(a) The Division of Taxation may initiate procedures to set off the tax debt of a specific vendor upon the expiration of 90 days after either:

1. The issuance by the Division of a notice and demand for payment of any State tax owed by the taxpayer; or
2. The issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit determination.

18:2-8.4 Set-off of tax liability of a member of a partnership or S corporation under contract with State

When a partnership or an S corporation is a vendor, the Division may also seek to reduce the contract payment due to that vendor by the amount of the State tax indebtedness of any of that vendor's partners or shareholders. The amount set off shall not exceed the individual partner's or shareholder's proportionate share of the contract payment due to the vendor-partnership or vendor-S corporation.

Example 1: A vendor-partnership earns \$10,000 providing consulting services to the State. The partnership has two equal partners, one of whom has a \$100.00 gross income tax debt.

The debtor-partner's share of the contract payment due to the vendor-partnership is \$5,000. However the partner's tax debt is only \$100.00. Since the individual's tax debt (\$100.00) does not exceed his proportionate one-half share of the contract payment (\$5,000), the contract payment will be set off by the full \$100.00 debt owed by the debtor-partner.

The vendor-partnership will receive a \$9,900 contract payment. The debtor partner's gross income tax debt will be satisfied through the set-off.

Example 2: A vendor-S corporation earns \$10,000 providing electrician services to the State. The S corporation has 10 equal shareholders, one of whom has a \$10,000 gross income tax debt.

The debtor-shareholder's one-tenth proportionate share of the \$10,000 contract payment is \$1,000. Therefore, although his individual tax debt is \$10,000, the portion of that tax debt that can be used to offset the contract payment due to the full

S corporation is limited to \$1,000, that is, the debtor-shareholder's proportionate share of the contract payment.

The vendor-S corporation will receive a contract payment of \$9,000. The debtor-shareholder will have a remaining gross income tax indebtedness of \$9,000.

18:2-8.5 Notice of set-off

(a) The Division shall give notice both to the vendor, and to the taxpayer, if the taxpayer is a partner or shareholder of the vendor-entity, as soon as the Division takes set-off action under this chapter.

(b) The notice shall:

1. Specify the contract payment due to the vendor that is being sent to the Division of Taxation to offset the taxpayer's tax debt; and
2. Provide the vendor with an opportunity to protest the set-off action by filing a written protest within 30 days of the date of the notice.

(c) A written protest shall conform to the requirements N.J.A.C. 18:1-1.8.

(d) The filing of a protest shall not stay the collection of the indebtedness.

SUBCHAPTER 9. SALE OF TAX INDEBTEDNESS

18:2-9.1 Time for sale of indebtedness

(a) The State Treasurer is authorized to sell, transfer, or assign all right, title, and interest in any State tax indebtedness only when the following conditions have been satisfied:

1. The underlying State tax indebtedness is fixed and final and not subject to protest or appeal pursuant to the State Tax Uniform Procedure Law or the New Jersey Gross Income Tax Act; and
2. A certificate of debt stating the amount of the indebtedness has been filed with the Clerk of the Superior Court.

18:2-9.2 Bidding and sale procedures

(a) Public advertisement for bids and sale of tax indebtedness to bidders shall be conducted by the Division of Property Management and Construction, which has been designated by the Treasurer to carry out the Treasurer's responsibilities pursuant to N.J.S.A. 54:50-30.

(b) Pursuant to and consistent with the authority granted by N.J.S.A. 54:30-35 and 54:30-29b, the Director of the Division of Taxation shall have the right to approve any specifications and invitations for bids and any forms of contract drafted by the Treasurer's designee pursuant to this section.

18:2-9.3 Disclosure to purchaser of tax indebtedness

Notwithstanding the provisions of N.J.S.A. 54:50-8, pursuant to N.J.S.A. 54:50-32 the Director of the Division of Taxation may provide a purchaser, transferee or assignee of a taxpayer's indebtedness with all information contained in the certificate of debt and with any additional information the Director deems necessary in order for the purchaser to collect the indebtedness represented by the certificate. However, the Director may not make any disclosure to the purchaser, transferee or assignee of the indebtedness that would violate the provisions of 26 U.S.C. § 6103(a).

18:2-9.4 Protest or appeal from sale of tax indebtedness

(a) A protest to the Director or an appeal to the Tax Court from the sale of tax indebtedness may be brought only on the ground that the underlying indebtedness was not fixed and final at the time of the sale, or that there was a technical ministerial error in the certificate of debt, including, but not limited to, incorrect identification of taxpayer, insufficient notice of certificate of debt, incorrect calculation of unpaid balance of a debt paid in part or in full.

(b) A taxpayer who challenges the underlying indebtedness after the tax debt has been sold has the burden of proving by clear and convincing evidence that the State's claim was not fixed and final at the time of sale.

(c) In any appeal by a taxpayer to the Tax Court challenging the underlying tax indebtedness, made pursuant to N.J.S.A. 54:50-29 et seq., the Director of the Division of Taxation shall be the primary party in interest, and the purchaser of the lien shall also be joined with the Director as a defendant. Such challenge shall first have been brought to the Director by protest under N.J.S.A. 54:49-18, in which protest the purchaser shall also have been joined.

(d) Notwithstanding the purchaser's joinder in any action or proceeding brought to challenge the underlying indebtedness, the Director shall have the sole authority to determine, in the case of a protest, and advocate, in the case of an appeal, whether the matter is fixed and final, whether the certificate of debt is correct and properly entered, and whether and to what extent any relief should be afforded to the taxpayer.

SUBCHAPTER 10. TAX CLEARANCE FOR BUSINESS ASSISTANCE AND INCENTIVES

18:2-10.1 Purpose and scope

(a) This section describes the procedure for the application and issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interests and fees have been paid or provided for, which is required prior to an award of business assistance or incentive by a department or agency of the State government,

including independent authorities and instrumentalities of the State.

(b) The procedures provided within this subchapter, including the fees that are imposed, only apply in relation to a request by a person or business entity applying for tax clearance in order to benefit from business assistance or incentives offered by a New Jersey department or agency including independent authorities and instrumentalities of the State as defined in N.J.A.C. 18:2-10.2. These rules, including the imposition of an application filing fee of \$75.00 and an expedited processing fee of \$200.00, are separate and distinct from any other tax clearance procedures that may be established in other provisions of New Jersey law or within other sections of the New Jersey Administrative Code.

18:2-10.2 Definitions

The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise:

"Business assistance or incentive" means monetary or financial assistance in any form, other than a tax credit or tax exemption pursuant to a claim made on a tax return filed with the Division of Taxation in the Department of the Treasury, including, but not limited to, a grant, loan, loan guarantee, or other monetary or financial benefit awarded to a person by a department or agency of the State government, including independent authorities and instrumentalities of the State to assist the person or business entity in the conduct or operation of a business, occupation, trade or profession in the State, in connection with the following programs:

1. Business employment incentive program established pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et al.);
2. The business retention and relocation program established pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.);
3. The customized training services provided pursuant to section 5 of P.L. 1992, c. 43 (N.J.S.A. 34:15D-5);
4. The business, commercial and industrial components of the clean energy program administered by the Board of Public Utilities;
5. The business grant, loan, and loan guarantee programs administered by:
 - i. The Economic Development Authority;
 - ii. The Housing and Mortgage Finance Authority; and
 - iii. The Casino Reinvestment Development Authority;
6. The science and technology grants provided by or through the New Jersey Commission on Science and Technology; and

7. Any other similar State program that confers a significant monetary or financial benefit upon a business or businesses, as prescribed by the State Treasurer pursuant to rules promulgated pursuant to the Administrative Procedure Act, P.L. 1968, c. 140 (N.J.S.A. 52:1B-1 et seq.).

“Business entity” means a person as referenced in P.L. 2007, c. 101 (N.J.S.A. 54:50-39), corporation, partnership or limited liability company, or sole proprietor, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction, which is subject to taxation under any state tax law. All persons and business entities must be registered to operate a business, occupation, trade or profession in this State.

“Taxes” means all reports, returns, documents, taxes, fees, penalties, interest and costs required under any tax law of the State of New Jersey which are required to be paid or remitted to or collectible by the Director.

18:2-10.3 Requirements for Tax Clearance Certificate

(a) The person or business entity applying for business assistance or incentive shall apply to the Director for a Tax Clearance Certificate and provide the information necessary for the Director to make a determination that the applicant is compliant with New Jersey tax laws and has satisfied all requirements for filing State tax and information returns, and for paying State taxes for which the applicant has been liable as a taxpayer or collector of tax.

(b) A Tax Clearance Certificate may be issued when the following has occurred:

1. An Application for Tax Clearance Certificate has been completed and submitted along with a nonrefundable fee of either \$75.00 or \$200.00, as appropriate;
2. The applicant taxpayer’s account and the accounts of related entities (for example, subsidiaries, officers, partners) that will directly benefit from the assistance requested have been reviewed to determine tax compliance; and
3. All taxes and reports required by the applicant taxpayer or related entities are current.

18:2-10.4 Application for Tax Clearance Certificate

(a) A completed application form requires applicant information including name, business location and mailing address, New Jersey tax registration number, business type, names and addresses of officers or partners and related entities that will benefit from the assistance; and information about the agency issuing the assistance or incentives including agency name, the name of the assistance program applied for, and agency contact information. A signed certification is required by an authorized representative. The application may be down-

loaded from the following web site address: <http://www.state.nj.us/treasury/taxation/pdf/busasstTaxClear.pdf>.

(b) The application must be properly completed and submitted to the Division of Taxation accompanied by a statutory fee of \$75.00, or an expedited fee of \$200.00. All fees related to the application must be paid with the initial Application for Tax Clearance Certificate in the form of a check or money order payable to the “State of New Jersey” or by electronic means, if the Director deems electronic means are appropriate.

1. Each application is specific to a particular agency or department’s business assistance or incentive program. Each certificate is dated and becomes null and void 90 days after the issue date unless a renewal is requested.
2. A Tax Clearance Certificate that is issued to satisfy an application for an award of business assistance or incentive by a State agency or department may be renewed an additional three times within a 365-day period.
3. No additional fee is required for the renewal of a certificate for the same agency or department assistance or incentive program that is requested within a 365-day period.
4. Any fees paid in conjunction with this application process are nonrefundable.

18:2-10.5 Interim Tax Clearance Certificate

(a) If the Director determines that the person or business entity has not filed all of the required tax and information returns or has not paid all tax, penalties, interest, or fees due, the Director shall issue a notice of delinquency or deficiency listing unfiled returns or balances due. The Director may require a person to resolve all delinquencies and deficiencies before a Tax Clearance Certificate is issued, or upon review of the total circumstances, the Director may issue an Interim Tax Clearance Certificate if it has been established to the satisfaction of the Director that the person or entity will resolve all such delinquencies or deficiencies within a specified time period.

1. The issuance of an Interim Tax Clearance Certificate is solely at the discretion of the Director based upon the receipt and confirmation of information that will allow the Director to determine that it is in the best economic interest of the State to allow the applicant to be granted the assistance or incentive it is applying for prior to receiving tax clearance so as not to impede economic commerce.
2. Prior to an interim certificate being issued to an applicant who may have tax issues to resolve, the Director shall determine and demand a pre-payment of tax liabilities to be held in escrow.

18:2-10.6 No waiver of authority to resolve tax matters

The issuance of a regular or an interim Tax Clearance Certificate shall not constitute a waiver of authority to demand resolution of all deficiencies and delinquencies and shall not prevent further audit or the assessment of additional taxes, penalties, interest, fees or costs as may be provided by law.

18:2-10.7 No additional appeal rights

There is no additional right to protest or appeal the State tax indebtedness, filing deficiency, or penalties created for any person or business entity that applies for tax clearance pursuant to the provisions within this subchapter.