

1. The relationship which the parties believe they have created;
2. The extent of control exercisable by the person receiving the benefit of the services over the manner and method of performance. It is not necessary that the employer actually direct or control the manner of performance, but it is sufficient if he has the right to do so;
3. Whether the person rendering the service undertook substantial costs to perform the service;
4. Whether the service required special training or skill, and whether the person receiving the benefit of the services provided such special training;
5. The duration of the relationship between the parties;
6. Whether the person rendering the service had a risk of loss;
7. Whether the person who received the benefit of the services could discharge without cause the person who performed the services;
8. The method of payment, such as by time or by job;
9. Whether the person rendering services regularly performs the same services for other persons and is not protected to any degree from competition;
10. Whether the person for whom services are performed furnishes tools, equipment, support staff and a place to work to the individual rendering the services;
11. Whether the individual rendering the services is eligible for employer provided benefits such as pension, bonuses, paid vacation days and sick pay;
12. Whether the person receiving the benefits of the services rendered carries workmen's compensation insurance on the individual performing the services;
13. Whether the Internal Revenue Service determines that an individual performing services is an employee; and
14. Any other information deemed to be relevant by the Division.

(c) No single factor in (b) above shall necessarily be conclusive in determining whether an individual is an employee or self-employed. The final determination as to whether an individual is either an employee or self-employed shall be based upon the review of the circumstances of the entire relationship and the evaluation of any special facts in a particular case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee shall be immaterial, including designation as a partner,

co-adventurer, agent, independent contractor, or similar designations or descriptions.

(e) All classes or grades of employees shall be included within the relationship of employer and employee, including Superintendents, managers, and other supervisory personnel:

1. An officer of a corporation shall be considered an employee of the corporation, except that an officer of a corporation who as such does not perform any services, or performs only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration shall not be considered an employee of the corporation.

2. A director of a corporation in his capacity as such shall not be considered an employee of the corporation.

New Rule, R.1988 d.419, effective September 6, 1988.

See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

Recodified from N.J.A.C. 18:35-1.21 and amended by R.1998 d.195, effective April 20, 1998.

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

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

18:35-7.2 Requirement of withholding from employees

(a) Any employer that maintains an office or transacts business within this State, and that makes payment of any wages subject to New Jersey gross income tax to a resident or nonresident individual, shall deduct and withhold tax from such wages paid to each employee (as defined in N.J.A.C. 18:35-7.1) for each payroll period.

(b) The withholding of tax from the employee's wages must be in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT).

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

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

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

18:35-7.3 Quarterly filing of withholding returns accelerated payments; exceptions

(a) All employers who are required to deduct and withhold any amount of gross income tax are required to file a quarterly return with the Division of Taxation and pay the tax due therewith on or before October 31, 1996, and quarterly thereafter on or before the last day of the month following the quarter covered by the return. In calculating the amount of tax to be remitted to the Division for the quarterly period, the employer shall be entitled to a credit in the amount of tax remitted during the quarter covered by the quarterly return.

1. If no tax was withheld during a calendar quarter, a return is still required to be filed for such quarter.

(b) Effective July 1, 1996, except as provided in (c) below, for any calendar month in which the amount of gross income tax that an employer is required to deduct and withhold is \$500.00 or more such employer is required to remit such taxes to the Division of Taxation on or before the 15th day of the month following the close of such month. Any payment due with respect to the calendar months ending on March 31, June 30, September 30 or December 31 shall be paid with the quarterly return filed for the quarter in which such month falls.

1. A monthly payment need not be made for any month in which the amount of tax deducted and withheld is less than \$500.00. Such amount shall be paid with the quarterly return filed for the quarter in which such month falls.

2. Example: Company A withholds \$200.00 in January, \$350.00 in February and \$600.00 in March. Company A need not make monthly payments and will remit the total tax withheld no later than April 30th, when the first quarter return is filed.

3. Example: Company B withholds \$200.00 in April, \$600.00 in May and \$350.00 in June. Company B need not make the monthly payment for April, must remit the \$600.00 withheld in May no later than June 15th and will remit the \$200.00 withheld in April and the \$350.00 withheld in June no later than July 31st, when the second quarter return is filed.

(c) Effective July 1, 1996, where the aggregate amount of gross income tax required to be deducted and withheld by any employer in the prior tax year is \$20,000 or more, the employer shall be an accelerated payor and shall remit payment of withheld taxes using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3, on or before the Wednesday of the week following the week containing the payday on which the taxes were withheld.

1. For the purposes of this subsection, a week shall run from Sunday through Saturday.

2. Example: Effective July 1, 1996, Company A, which had withholdings of \$35,000 during 1995, pays its employees on Tuesday of Week 1. Company A must remit the tax withheld from its Week 1 payroll by electronic funds transfer on or before Wednesday of Week 2.

(d) Effective July 1, 1996, an employer who is required to make all tax payments using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3 because of a prior tax year liability of \$20,000 or more for a tax other than the gross income tax, shall remit gross income taxes deducted and withheld on either a quarterly or monthly basis as provided in (a) and (b) above.

(e) Effective for the semiannual period beginning on January 1, 1979, through the semiannual period ending on June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer is less than \$25.00 in a calendar month and the aggregate for the semiannual period ending on June 30 or December 31 can reasonably be expected to be less than \$150.00, the employer return and payment of withheld taxes for such period may be made on or before July 31 for the semiannual period ending on June 30 and on or before January 31 for the semiannual period ending on December 31.

(f) Effective for the calendar quarter beginning on January 1, 1979, through the calendar quarter ending on June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer is \$200.00 or less in each month of the calendar quarter and the aggregate for the quarterly period ending on March 31, June 30, September 30, or December 31 can reasonably be expected to be less than \$600.00, the employer return and payment of withheld taxes for such period may be made on a quarterly basis on or before the 15th day of the month following the close of the calendar quarter period ending on March 31, June 30 or September 30. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(g) Effective January 1, 1979, through June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer exceeds \$200.00 in a calendar month, the employer return and payment of withheld taxes for such monthly period and for prior months in a calendar quarter must be made on or before the 15th day of the month following the close of such month or months during the calendar quarter period. In the event an employer monthly return and payment of withheld taxes is not required, an employer return and payment of withheld taxes for the quarterly period ending on March 31, June 30, or September 30, may be made on or before the 15th day of the month following the close of such quarter. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(h) For the period beginning on January 1, 1979, and ending on June 30, 1996, (e), (f) and (g) above shall not apply to an employer engaged in a business operating seasonally. Consecutive returns for each calendar month accounting for all tax withheld must be filed by a seasonal employer who is required to report monthly. Where the amount required to be deducted can reasonably be expected to be \$18,000 or more for a semiannual period, a seasonal employer shall file semimonthly employer returns with payment of the taxes withheld as provided under this section. If no tax was withheld during a particular month, a return is still required to be filed for such month with the reason for nonwithholding stated on the back, the date of the last payment of wages, and the date when the employer expects to resume paying taxes.

Recodified from N.J.A.C. 18:35-1.10 and amended by R.1998 d.195, effective April 20, 1998.
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).
 In (h), changed N.J.A.C. reference.

18:35-7.4 Summer payment plan

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

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

R.1976 d.415, effective December 16, 1976.
 See: 9 N.J.R. 52(a).
 Recodified from N.J.A.C. 18:35-1.1 by R.1998 d.195, effective April 20, 1998.
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-7.5 Gambling winnings subject to withholding

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

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

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

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

1. The name, address, and taxpayer identification (social security) number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or
2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.
3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

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

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed \$1,000; or
2. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:
 - i. Exceed \$1,000; and
 - ii. Are at least 300 times as large as the amount of the wager.
3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$1,000, are subject to withholding.

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

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.
2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

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

New Rule, R.1988 d.407, effective September 6, 1988.
 See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).
 Recodified from N.J.A.C. 18:35-1.20 by R.1998 d.195, effective April 20, 1998.
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

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

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

Recodified from N.J.A.C. 18:35-1.22(c) and amended by R.1998 d.195, effective April 20, 1998.
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).
 Changed N.J.A.C. references.

18:35-7.7 Commuter transportation benefits reporting by employer

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

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

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

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

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

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

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

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

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

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

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

New Rule, R.1995 d.19, effective January 3, 1995.
 See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).