

TITLE 18

DEPARTMENT OF TREASURY—TAXATION

CHAPTER 1

ORGANIZATION OF THE DIVISION OF TAXATION

Authority

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

Source and Effective Date

R.1994 d.503, effective October 3, 1994.
See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Organization of the Division of Taxation, expires on October 3, 1999.

Chapter Historical Note

Chapter 1, Organization of the Division of Taxation, an exempt organizational rule, was filed and became effective on July 21, 1989, as R.1989 d.437. See: 21 N.J.R. 2526(b). Subchapter 2, Petitions for Rules, was adopted as R.1990 d.287, effective June 4, 1990. See: 22 N.J.R. 160(a), 22 N.J.R. 1742(a).

Pursuant to Executive Order No. 66(1978), Chapter 1 expired on July 21, 1994, and subsequently was adopted as new rules by R.1994 d.503. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION

18:1-1.1 Organization of the Division of Taxation

(a) The Division consists of a Director of the Division of Taxation and such offices and other organizational units as are allowed by law and as are necessary to carry out the Division's statutory mandates.

(b) One or more Assistant Directors, designated deputies by the Director by a certificate filed with the Secretary of State, serves as Acting Director(s) during the Director's absence, disability or as otherwise provided for in N.J.S.A. 54:1-11.

(c) The following functional subunits exist under the Director and are headed by Assistant Directors:

1. Audit;
2. Processing/Administration Activity;
3. Compliance;
4. Property Administration; and
5. Planning and Policy.

(d) Beneath the level of Assistant Director, subunits as required are headed by Superintendents and Branch Chiefs.

(e) A detailed description of the organizational structure of the Division of Taxation is contained in the Annual Report of the Division of Taxation which is submitted annually to the Legislature and the Governor pursuant to N.J.S.A. 54:1-13.

Amended by R.1994 d.503, effective October 3, 1994.
See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

18:1-1.2 Public information and submissions or requests

(a) The public may obtain general information regarding their rights and responsibilities under the tax laws of the State of New Jersey by writing to the New Jersey Division of Taxation Taxpayer Services Branch, Office of Communications, CN 281, Trenton, NJ 08646-0281. The public may obtain specific information regarding their rights or responsibilities under one or more State tax laws by writing to the New Jersey Division of Taxation, Tax Services Branch, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

(b) The Division will provide an explanation of the audit and collection processes and of the taxpayer's rights pursuant to P.L. 1992, c.175 before or at interviews with taxpayers relating to the determination or collection of tax. For this purpose, a taxpayer may request or receive Publication TBR-P from the Division.

(c) To request New Jersey tax forms or publications, a taxpayer may call the Tax Hotline at 609-588-2200 or 800-323-4400 (touch-tone only), or write New Jersey Division of Taxation, Forms Distribution Section, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

Amended by R.1994 d.503, effective October 3, 1994.

See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

18:1-1.3 Background investigations

(a) The Division of Taxation may conduct background inquiries on applicants for Division positions to ensure that only qualified individuals of good character are appointed and that information contained on Taxation employment applications is accurate and complete. The inquiry will be conducted and the acquired information will be kept confidential in accordance with the Civil Service Act (N.J.S.A. 11A:1-1 et seq.) and any other applicable laws, and may include the following:

1. Appropriate checks of records of criminal convictions and pending criminal charges;
2. State of New Jersey tax filing and payment record check, to assure that the applicant has complied with State tax laws;
3. Credit checks, to compare an applicant's credit information with the following:
 - i. The information listed on the application for employment with the Division of Taxation; and
 - ii. The information obtained through the New Jersey tax filing and payment record check, authorized under (a)2 above;
4. Confirmation of employment and checking on the reasons for separation;
5. Contacting references, as required;
6. Confirmation of any education listed on a candidate's application; and
7. Other inquiries, including interviews, which stem from the above inquiries and which directly relate to criminal convictions or pending charges, tax compliance, financial responsibility, employment history, references, education, or other qualifications for the position sought.

New Rule, R.1993 d.82, effective February 16, 1993.

See: 24 N.J.R. 4240(a), 25 N.J.R. 711(b).

Amended by R.1994 d.503, effective October 3, 1994.

See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

18:1-1.4 Exemption opinions

(a) To be considered for exempt status pursuant to the Corporation Business Tax Act, N.J.S.A. 54:10A-3(e), as a nonprofit corporation, the applicant organization shall submit the following:

1. An affidavit, signed by an officer of the corporation, indicating that the corporation is:
 - i. A nonprofit corporation that is not operated to make a profit, without regard as to whether there is profit or loss for a particular year;
 - ii. Organized without capital stock;

iii. Incorporated under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes of New Jersey or under a special charter or under any similar general or special law of this or any other state; and

iv. Not conducted for the pecuniary profit or benefit of any private shareholder or individual;

2. A copy of the organization's Certificate of Incorporation; and

3. A copy of the organization's bylaws.

(b) If the operations or activities of the corporation should change, the Division of Taxation must be notified. Unless the operations or activities make the taxpayer a profit making corporation, no further corporation business tax returns or Federal returns are required to be filed with the Division of Taxation. The Division of Taxation does not require the filing of a copy of Federal Form 990.

(c) A nonprofit organization properly exempted from filing corporation business tax returns may have other filing requirements with other agencies of the State of New Jersey including, for example, the following:

1. Responsibilities under the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq. and N.J.A.C. 13:48; or

2. The responsibility to file annual reports with the Office of the Secretary of State, N.J.S.A. 15A:4-5.

(d) To be considered for exempt status pursuant to the Sales and Use Tax Act, an application should be submitted containing information requested at N.J.A.C. 18:24-8.4 or, in lieu thereof, the following information:

1. A copy of the Certificate of Incorporation, constitution or other organizing document;

2. A copy of the Bylaws;

3. A copy of the IRC 501(c)(3) determination letter from the Internal Revenue Service;

4. Form ST-5B, Application for Exempt Organization Permit; and

5. Form CIS-1, Application for Registration.

(e) Requests for exemption opinions should be submitted to the Tax Services Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

New Rule, R.1990 d.288, effective June 4, 1990.

See: 22 N.J.R. 159(a), 22 N.J.R. 1740(c).

Amended by R.1994 d.503, effective October 3, 1994.

See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

Administrative Change.

See: 27 N.J.R. 3794(b).

18:1-1.5 Tax Clearance Section

(a) Requests for Tax Clearance Certificates may be initiated by completing and submitting an Application for Tax Clearance, Form A-5088-TC. A \$25.00 payment is required with such application. An Estimated Summary Tax Return for the current tax year, Form A-5052-TC, bearing the signature of a corporate officer, as well as the appropriate deposit payment, may accompany this form. Delinquent tax returns, tax payment, penalty and interest due are also required. Instructions with the original application form detail the tax information necessary for completion of the application.

(b) After a determination is made that all information has been submitted and all taxes have been paid, a Certificate of Tax Clearance is issued. This certificate may be timely filed with the Secretary of State's Office together with payment of the applicable fee. Typically, the certificates are used in connection with dissolutions, withdrawals, reauthorizations, and mergers (when the survivor is a foreign non-authorized corporation). See also N.J.S.A. 54:50-15, N.J.A.C. 18:7-14.17, 18, 19 and 20.

(c) Additional information, applications and inquiries may be made by writing to the Division of Taxation, Tax Clearance Section, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

New Rule, R.1990 d.228, effective June 4, 1990.
See: 22 N.J.R. 159(a), 22 N.J.R. 1740(c).

18:1-1.6 Status Section

(a) Requests for either Tax Lien Search or Release of Lien of Franchise Taxes may be initiated by completing an Application for Tax Lien Search, Form CS-152R (\$25.00 fee) or an Application for Release of Lien (\$5.00 fee) and remitting the appropriate fee. Information required to complete such applications includes the name of the corporation, the corporate serial number, the Federal identification number, the State and date of incorporation, dates title was held (for conveyance of real property) and the reason for making such application. Typically, applications are made in connection with a conveyance of real property out of a corporate entity, to obtain funding, to release escrow funds or release existing liens on void or inactive corporations. When the intended use pertains to conveyance of real property, information as to the location of the property, such as block, lot, township, and metes and bounds description, must be included. See also N.J.S.A. 54:10A-29 and N.J.A.C. 18:7-13.13 for tax lien search, and N.J.S.A. 54:10A-30 and N.J.A.C. 18:7-13.12 for release of lien of franchise tax.

(b) Additional information, applications and inquiries may be made to the Status Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

New Rule, R.1990 d.228, effective June 4, 1990.
See: 22 N.J.R. 159(a), 22 N.J.R. 1740(c).

18:1-1.7 Reinstatement Section

(a) Requests for reinstatement of voided corporate charters may be initiated by completing and submitting an Application for Reinstatement of Corporate Charter, Form C-9021. No fee is required with such application. Information required includes the name of the corporation, trade name (if applicable), business address, corporate serial number, federal identification number, state and date of incorporation, date of voidance, nature of business and whether or not the corporation holds title to real property. All applications submitted should bear the signature of an authorized representative of the corporation.

(b) Such certificates must be approved by the Attorney General's Office and certified by the Secretary of State, and payment must be made of the applicable fee. This is accomplished after the Division of Taxation has determined all back taxes have been paid in full and a notarized petition of reinstatement has been signed by a corporate officer. See also N.J.S.A. 54:11-5, 54:49-13.1, and N.J.A.C. 18:7-14.8 and 18:7-14.9.

(c) Additional information, applications and inquiries may be made to the Reinstatement Section, Division of Taxation, 420 East State Street, CN 277, Trenton, NJ 08646-0277.

New Rule, R.1990 d.228, effective June 4, 1990.
See: 22 N.J.R. 159(a), 22 N.J.R. 1740(c).

18:1-1.8 Conference and Appeals Branch

(a) A Conference and Appeals Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director, except administrative hearings and reviews of findings of transfer inheritance and estate taxes which are conducted by the Transfer Inheritance Tax Branch. See N.J.S.A. 18:26-12.5-12.10. A protest, and a request for hearing, if any, by a taxpayer to the Conference and Appeals Branch must be made within the time mandated by the appropriate taxing statute, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made pursuant to N.J.S.A. 54:49-18 within 90 days of the giving of the notice or the action of the Director sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to N.J.S.A. 54:51A-14 and 54A:9-10. The 90 day period for appeals to the Tax Court cannot be relaxed.

(b) Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1. The taxpayer's name, address, telephone number and social security or tax identification number;
2. The name, address and telephone number of taxpayer's representative, if any, for the purpose of the protest. In such case, a written power of attorney (Form M-5008) shall be filed with the notice of protest;
3. The type of tax and period(s) under protest;
4. A copy of the notice at issue;
5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested;
6. A statement of grounds upon which the protest is based;
7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 90 day period, the Division will, upon written request, extend the time for complying with this submission for an additional 90 days.); and
8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest, if any, that is due.

(c) A submission which, in particular, does not set forth the information in (b)5, (b)6 and (b)7 above will not be considered a valid protest and will not result in a hearing or review. If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held. The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.

(d) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference and Appeals Branch's soonest available date. A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled conference.

(e) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10 and may be scheduled by contacting the Transfer Inheritance Tax Branch, 50 Barrack Street, Trenton, NJ 08646. Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3 and may be scheduled by contacting Property Administration, 50 Barrack Street, Trenton, NJ 08646.

(f) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference and Appeals Branch, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646-0269.

New Rule, R.1991 d.23, effective January 22, 1991.
See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).
Amended by R.1994 d.503, effective October 3, 1994.
See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a).

18:1-1.9 Training for special agents

(a) The Office of Criminal Investigation shall require the successful completion of certain educational and training programs for those persons appointed by the Director as special agents. The requirements shall be designed to insure the health, safety and welfare of the citizens of New Jersey by maintaining high standards of proficiency in law enforcement. The requirements shall include:

1. The completion of the "Basic Training Course for State Investigators" of the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, as established by the New Jersey Police Training Commission, pursuant to N.J.S.A. 52:17B-66 et seq.;
2. Completion of the twice annual firearms qualification program as established by the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General and administered by the Division of Taxation certified supervising firearms instructor/range master; and
3. Completion of criminal tax fraud investigation training, as is required for special agents of the U.S. Treasury, Internal Revenue Service, Criminal Investigation Division, as offered at the Federal Law Enforcement Training Center, Glynco, Georgia.

(b) The Director will grant exemptions from the training requirements to any person who has successfully completed a training course of another law enforcement agency, provided that the requirements are equivalent to the training requirements established pursuant to (a)1 and 3 above.

New Rule, R.1995 d.131, effective March 6, 1995.
See: 27 N.J.R. 56(a), 27 N.J.R. 935(a).

SUBCHAPTER 2. PETITIONS FOR RULES

18:1-2.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment, or repeal of any rule by the Division of Taxation pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.2 Form of petition

(a) A petition for the promulgation, amendment or repeal of a rule shall be in writing, shall be legible and comprehensible, shall be signed by the petitioner, and shall be captioned "Petition for Rulemaking Action."

(b) Any such petition shall contain and set forth all of the following information:

1. The full name and address of the petitioner and of those on whose behalf the petitioner may be acting in a particular instance;
2. The reasons for the request;
3. A description of the substance or nature of the rulemaking which is requested and a draft text of the proposed rule or rules;
4. A description or analysis of the economic impact of adoption of the request;
5. A description or analysis of the social impact of adoption of the request;
6. The class or group affected by the proposed rule-making and, if the proposal would impose reporting, recordkeeping, or other compliance requirements on small businesses, a description of the methods to be used to minimize any adverse economic impact on small businesses;
7. A complete disclosure of petitioner's interest in the request, including without limitation, any relevant organizational affiliation or economic interest and the financial effect upon petitioner if the request were brought into effect; and
8. The statutory authority under which the Division may take the requested action.

(c) Petitions shall be sent to the following address: Chief Tax Counselor, Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646.

(d) Any document submitted to the Division of Taxation which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

18:1-2.3 Procedures of the Division

(a) Within 15 days of receipt of a petition in compliance with N.J.A.C. 18:1-2.2, the Division will file a Notice of

Petition with the Office of Administrative Law for publication in the New Jersey Register (Register) in accordance with N.J.A.C. 1:30-3.6(a). The notice will include the following:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Division will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include the following:

1. The name of the petitioner;
2. The Register citation for the Notice of Petition, if that notice appeared in a previous Register;
3. Certification by the Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Division's action upon the petition; and
5. A brief statement of reasons for the Division's action.

(c) The Division's action on a petition may include the following:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the Register.

18:1-2.4 Warrant to levy and sell real and personal property

(a) The Director is authorized by N.J.S.A. 54:49-13a to issue a warrant, directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property of any person liable for any State tax.

(b) In the discretion of the Director, a warrant may be issued and directed to any officer or employee of the Division of Taxation, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs to levy upon assets of any person liable for any State tax and to seize and sell property of the debtor at

public auction. The warrant may be issued and executed in person or by mail.

New Rule, R.1995 d.132, effective March 6, 1995.
See: 26 N.J.R. 4975(a), 27 N.J.R. 935(b).

(c) See N.J.S.A. 54:49-13a for information on collection procedures.