

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

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

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

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

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

18:35-1.27 Interest on overpayments

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

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or

2. The date the return, whether original or amended, requesting the refund is actually filed.

(b) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation prior to July 1, 1993, shall be calculated at the rate of six percent per annum.

(c) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation after June 30, 1993, shall be calculated at the rate of six percent per annum up until June 30, 1993. Any interest accruing to the taxpayer after that date will be calculated on the total amount due on June 30, 1993, at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(d) Interest paid pursuant to (a) above on refunds which are claimed after June 30, 1993 shall be calculated at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(e) When interest is to be paid pursuant to (a) above, it will be calculated beginning from one day after the later of the last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file, or the date the return, whether original or amended, requesting the refund is actually filed. Interest will continue to accrue to a date (to be determined by the Director) preceding the date of the refund check by not more than 30 days.

(f) An overpayment of gross income tax is deemed to occur on the last date for filing a gross income tax return, as prescribed by statute or permitted by an approved application for extension of time to file, or on the date the return, whether original or amended, requesting the refund is actually filed.

(g) No interest will be paid on any overpayment of gross income tax refunded within six months of the dates indicated in (a)1 and (a)2, above.

(h) For the purposes of this section, a gross income tax return is not considered to be filed unless and until it contains sufficient required information to permit the mathematical verification of tax liability and the resulting overpayment shown on the return. All required schedules and attachments must be submitted in order for the return to be deemed filed.

(i) This section shall take effect immediately and apply to all tax years beginning after December 31, 1990, as well as any other return filed (within the applicable statute of limitations) after April 15, 1992 which results in an overpayment.

New Rule, R.1994 d.133, effective March 21, 1994.

See: 26 N.J.R. 112(a), 26 N.J.R. 1372(b).

18:35-1.28 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 (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of \$720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of \$720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest \$5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending before the taxable year. Notice of the adjusted limit shall be published in the New Jersey Register. Amounts received by the employee not exceeding \$720.00 shall not be included in the employee's gross income.

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

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

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

Public Notice: Commuter transportation benefit limit for 1995.

See: 27 N.J.R. 4737(a).

Public Notice: Commuter transportation benefit limit for 1996.

See: 28 N.J.R. 2639(a).

18:35-1.29 Compensation received by nonresident professional athletes

(a) The New Jersey source income of a nonresident individual who is a member of a professional athletic team includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which the number of duty days spent within New Jersey rendering services for the team in any manner during the taxable year bears to the total

number of duty days spent both within and without New Jersey during the taxable year.

(b) For purposes of this section:

1. "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.

2. "Member of a professional athletic team" includes those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers and trainers.

3. "Duty days" means, except as provided in (b)3iii and iv below, all days including the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service to a team on a date which does not fall within the period described in this paragraph (for example, participation in instructional leagues, the "Pro Bowl" or promotional caravans). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

iii. For any person who joins a team during the season, total duty days shall begin on the day such person joins the team. For any person who leaves a team during the season, total duty days shall end on the day such person leaves the team. When a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team.

iv. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

v. Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team shall not be considered duty days spent in New Jersey. However, all days that a team member is on the disabled list are considered to be included in total duty days spent within and without New Jersey.

vi. Travel days which involve a game, required practice, meeting or other service in this State shall be considered duty days spent in New Jersey. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event in this State shall not be considered duty days spent in New Jersey. However, such travel days shall be included in total duty days spent within and without New Jersey.

vii. The provisions of this paragraph can be illustrated by the following examples:

Example 1: Player A, a member of a professional athletic team, is a nonresident of New Jersey. Player A's contract for such team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming Player A receives \$550,000 from such contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of such compensation received by Player A for taxable year 2, attributable to New Jersey, is determined by multiplying the compensation Player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is that total number of duty days Player A spends rendering services for the team in New Jersey during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of Player A's duty days spent both within and without New Jersey for the entire taxable year.

Example 2: Player B, a member of a professional athletic team, is a nonresident of New Jersey. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic in New Jersey, B's team travels to New Jersey for a game. The number of days B's team spends in New Jersey for practice, games and meetings while B is present at such clinic in New Jersey shall not be considered duty days spent in New Jersey for Player B for that tax year, but such days are considered to be included within total duty days spent within and without New Jersey.