

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.2000 d.279, effective July 3, 2000.
See: 32 N.J.R. 745(a), 32 N.J.R. 2463(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Organization of the Division of Taxation, expires on July 3, 2005.

Chapter Historical Note

Chapter 1, Organization of the Division of Taxation, was adopted as R.1989 d.437, effective July 21, 1989. 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, Organization of the Division of Taxation, expired on July 21, 1994.

Chapter 1, Organization of the Division of Taxation, was adopted as new rules by R.1994 d.503, effective October 3, 1994. See: 26 N.J.R. 2752(a), 26 N.J.R. 4087(a). Pursuant to Executive Order No. 66(1978), Chapter 1 expired on October 3, 1999.

Chapter 1, Organization of the Division of Taxation, was adopted as new rules by R.2000 d.279, effective July 3, 2000. See: Source and Effective Date.

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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) The Deputy Director or one or more Assistant Directors, designated 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. Technical Services;
3. Compliance;
4. Property Administration; and
5. Technical Support Activity.

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

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, PO Box 281, Trenton, NJ 08695-0281. 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, Regulatory Services Branch, 50 Barrack Street, PO Box 269, Trenton, NJ 08695-0269.

(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 609-292-6400 or 800-323-4400 (touch-tone only), or write New Jersey Division of Taxation, Forms Distribution Section, 50 Barrack Street, PO Box 269, Trenton, NJ 08695-0269.

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.

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, 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; and
4. Form REG-1E, Application for Exempt Organization Permit.

(e) Requests for exemption opinions should be submitted to the Regulatory Services Branch, Division of Taxation, 50 Barrack Street, PO Box 269, Trenton, NJ 08695-0269.

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.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

3. The following concern collection of taxes after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. The filing of a complaint with the Tax Court shall not stay the collection of a liability consisting in whole or in part of arbitrary or estimated assessments of tax made pursuant to N.J.S.A. 54:49-5 or 54:49-7, unless security has been furnished to the Director pursuant to (d)4i below.

ii. Except in the case of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 54:49-7, the Director shall stay all activity to collect the tax in issue upon the filing of a complaint with the Tax Court where no security is required pursuant to (d)4i or ii below or where, pursuant to (d)4ii below, the Director has notified the taxpayer that such security is required and such security has actually been furnished to the Director.

iii. Any stay of collection activity provided for by this paragraph shall expire and be of no effect upon the entry of a judgment by the Tax Court determining that all or any part of the tax assessed is due and owing.

4. The following concern security for tax after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. Security shall be required in the case of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 54:49-7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii. Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer. Such security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall make a determination as to whether security is required and as to the form and amount of any security and give notice to the taxpayer of such determination. The provisions of (d)2ii(1) and (2)

above shall apply in construing the provisions of this subparagraph.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

5. The following concern the effect of stay of collection activity:

i. Any stay of collection activity by the Director pursuant to (d)1 or 3 above shall serve to extend the time period set forth in any statute of limitations which would otherwise require the Director to collect the tax within the time specified by the statute of limitations. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

ii. A declaratory judgment action, instituted in the Tax Court by a taxpayer alleging that an assessment should not be made, shall serve to extend any statute of limitations which would otherwise bar the Director from making an assessment of the tax in issue beyond the period set forth in the limitations statute. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

(e) 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.

(f) The taxpayer may have an attorney or accountant present at a conference. If the taxpayer intends to have an attorney and/or an accountant represent the taxpayer at a conference, the taxpayer shall complete a Power of Attorney form and the Division must receive the form, properly completed, prior to the interview. Unless otherwise instructed by the taxpayer in writing, the original final determination notice, plus any attachments, shall be mailed by certified mail to the taxpayer's last known address, with copies mailed by certified mail to the agent identified on the Power of Attorney form filed by the taxpayer.

(g) Taxpayers may record conferences with Division of Taxation employees. Taxpayers wishing to record a conference shall notify the Division within 14 days prior to the conference and the recording shall be made with the taxpayer's own equipment. The Division does not usually record conferences with taxpayers, but is permitted by statute to make such recordings. The Division may take testimony and may make recordings of testimony with taxpayers. The

Division shall notify the taxpayer of its intent to record a conference or take testimony 14 days prior to the conference. If the Division records a conference between a Division employee and a taxpayer, the taxpayer may obtain a copy of the recording at a cost of \$10.00 per copy.

(h) 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 Individual Tax Audit Branch, 50 Barrack Street, PO Box 249, Trenton, NJ 08695-0249. 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, PO Box 251, Trenton, NJ 08695-0251.

(i) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference and Appeals Branch, Division of Taxation, 50 Barrack Street, PO Box 198, Trenton, NJ 08695-0198. When using a delivery service, protest documents should be delivered to the Division of Taxation, Conference and Appeals Branch, Quakerbridge Plaza, Office Compliance, Building 5, 3rd Floor, Quakerbridge Road, Mercerville, New Jersey 08619. In order to determine the timeliness of receipt, the Conference and Appeals Branch follows N.J.A.C. 18:2-4.

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 or 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, offered by 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.

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 rulemaking and, if the proposal would impose reporting, recordkeeping, or other compliance requirements or 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) Petition shall be sent to the following address: Chief, Regulatory Services Branch, Division of Taxation, 50 Barrack Street, PO Box 269, Trenton, NJ 08695-0269.

(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.

**SUBCHAPTER 3. WARRANT TO LEVY AND
SELL REAL AND PERSONAL PROPERTY**

18:1-3.1 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 should 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.

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