

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 (f) below, in the amount of \$200,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) 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 (f) below, in the amount of \$100,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) 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 (f) below, in the amount of \$50,000 or more shall remit all its State tax payments of all types, with certain exceptions in (f) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

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

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

(f) The EFT requirements of (a) through (d) 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.

(g) 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).

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 (e).

(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.

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(f), the provisions of N.J.S.A. 54:48-4.1 and these rules shall govern, unless the context clearly indicates otherwise.

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.