

2. This rule provides the authority for an extension of time to file and is in no way to be considered an extension of time to pay the tax due. A taxpayer's tax liability is due, in full, by the original due date of the return. The taxpayer will be subject to interest and late filing penalty as described in (g) below if the full amount is not paid by the original due date of the return.

(b) A four month extension of time to file a New Jersey Gross Income Tax Return will be granted only if, by the original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with the Application for Extension of Time to File, at least 80 percent of the tax liability computed on the New Jersey Gross Income Tax Return when filed, and:

1. The taxpayer obtains a valid four month extension for Federal income tax purposes and attaches a copy of the application for automatic Federal extension to the final New Jersey Gross Income Tax Return when filed; or

2. If no Federal extension is requested, the taxpayer completes and submits Form NJ-630 by the original due date of the return.

(c) A taxpayer may obtain an additional extension of two months beyond the automatic four month extension authorized in (b) above if the taxpayer obtains a valid additional two month extension for Federal income tax purposes and attaches a copy of the additional two month Federal extension request to the New Jersey return when filed, or, if no additional extension is obtained for Federal purposes, by submitting Form NJ-630 no later than the extended due date of the original return.

(d) A taxpayer shall file Form NJ-630, Application for Extension of Time to File New Jersey Gross Income Tax Return, only if:

1. The taxpayer requires either a four month or additional two month extension for New Jersey purposes, but did not obtain one for Federal purposes; or

2. The taxpayer is required to remit payment to the Division of Taxation by the original due date of the return in order to meet the 80 percent requirement of (b) above.

(e) Failure to satisfy either the 80 percent payment requirement of (b) above by the original due date of the return, or to file the gross income tax return by the extended due date, will result in the retroactive denial of the extension as of the original due date of the return. In those cases, the taxpayer will be subject to interest, late filing penalties and late payment penalties from the original due date of the return, as described in (f) and (g) below.

(f) A taxpayer who has not satisfied the 80 percent payment requirement of (b) above, or who fails to file the gross income tax return by the extended due date, will be subject to the following late filing penalties (see N.J.S.A. 54:49-4):

1. \$100.00 per month or any fraction of a month that the return is delinquent; and

2. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any tax due with the return.

3. Both penalties set forth in (f)1 and 2 above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter.

(g) The extension authorized by N.J.S.A. 54A:8-1b and this section is an extension of time to file a gross income tax return. It is not an extension of time to pay any tax that may be due. Consequently, a taxpayer who makes a payment of tax after the original due date of the return, with or without an extension of time to file, will be subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4);

2. Interest on the unpaid tax calculated at the following rates:

i. For periods up to and including December 8, 1987, nine percent per annum;

ii. For periods on and after December 9, 1987, through July 1, 1993, at the annual rate of three percentage points above the prime rate effective on the first business day of the calendar quarter immediately preceding the quarter in which the liability became due, compounded daily on the amount that remains unpaid, calculated from the original due date of the return to the date of payment where the amount thereof is \$1.00 or more (see N.J.S.A. 54A:9-5(a)), provided that payment is made on or before the extended due date. For amounts which remain unpaid beyond the extended due date of the return, interest will be imposed at the annual rate of five percentage points above the prime rate compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment; and

iii. For periods ending on and after July 1, 1993, at three percentage points above the prime rate. Interest is imposed for each month (or a fraction thereof) on the unpaid balance of tax. At the end of each calendar year all tax, penalties, and interest remaining due will become part of the unpaid balance on which interest will be charged.

(h) A partnership which, pursuant to N.J.S.A. 54A:8-6(b), is required to file Form NJ-1065 may obtain an automatic extension of time to file by attaching a copy of the Federal application of time to file Federal Form 1065 (Federal Forms 8736 or 8800) to Form NJ-1065 when filed. If the partnership did not apply for a Federal extension of time to file Federal Form 1065 the partnership must submit

Federal Form 8736 or 8800 to the New Jersey Division of Taxation on or before the due date of Form NJ-1065.

Repeal and New Rule, R.1996 d.20, effective January 2, 1996.  
See: 27 N.J.R. 3136(a), 28 N.J.R. 176(b).

Repealed former section 1.18, "Extension of time to file New Jersey gross income tax return".

Recodified from N.J.A.C. 18:35-1.18 by R.1998 d.195, effective April 20, 1998.

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

#### Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

#### Case Notes

Penalties and interest; interest extension request denied due to failure to satisfy condition that 80% of income tax due be paid. Patel v. Director, Div. of Taxation, 13 N.J.Tax 509 (1993).

### 18:35-6.2 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The Director may request supporting information.

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.

Recodified from N.J.A.C. 18:35-1.26 by R.1998 d.195, effective April 20, 1998.

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

### 18:35-6.3 Signatures required on gross income tax return

(a) Each return shall carry a signature by the taxpayer certifying that all statements contained therein are true, under the same penalties as for perjury committed.

(b) A taxpayer or tax return preparer may transmit by telephone any tax return or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act.

(c) Taxpayers who file returns by telephone shall satisfy the signature requirement by voice identification.

(d) The signature requirement may be satisfied by voice identification of a tax return preparer, in accordance with this subsection. The tax return preparer shall provide, at the voice prompt, the name and Federal Identification Number of the preparer. The tax return preparer shall have and retain in his or her files a Division of Taxation Power of Attorney form which authorizes the preparer to file a return on behalf of the taxpayer.

(e) A taxpayer or tax return preparer who transmits an income tax return by telephone, or who transmits by telephone other information required to or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act, shall be treated for all purposes of the Act as having signed the return and certified to the accuracy of the information by providing a voice signature at the time and in the manner required by the instructions provided by the interactive voice computer.

(f) The assignment of a valid confirmation number by the interactive voice computer upon acceptance of any voice signature(s) transmitted and recorded by telephone is prima facie evidence that the document was signed for purposes of the New Jersey Gross Income Tax Act and that the eligible taxpayer or qualified tax return preparer authenticated and verified the voice signature as recorded by the interactive voice computer.

R.1982 d.258, effective August 16, 1982.

See: 14 N.J.R. 332(a), 14 N.J.R. 921(b).

Repealed by R.1988 d.299, effective July 5, 1988.

See: 20 N.J.R. 514(a), 20 N.J.R. 1571(a).

This section was "Exclusion of interest income on All-Savers Certificates".

New Rule, R.1997 d.406, effective October 6, 1997.

See: 29 N.J.R. 2808(a), 29 N.J.R. 4339(a).

Recodified from N.J.A.C. 18:35-1.16 by R.1998 d.195, effective April 20, 1998.

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

## SUBCHAPTER 7. WITHHOLDING AND REPORTING OF TAX

### 18:35-7.1 Employee defined

(a) For the purposes of N.J.A.C. 18:35-7.2, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following: