

18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment on December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to the date of actual payment, and on or after July 1, 1993 at the rate of

three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) For penalties in case of failure to pay tax when due see N.J.A.C. 18:7-14.1 and 14.2.

Amended by R.1986 d.284, effective July 21, 1986.
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).

(a) substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substantially amended (a).

Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7-13.8 Claims for refund; when allowed

(a) For claims accruing prior to July 1, 1993, the two-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For claims accruing on and after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two-year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:11.7(b)). For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.

(b) For claims accruing prior to July 1, 1993, the two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT-200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT-100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) (or a CBT-100 X for periods ending on or before June 30, 1994) or a Form CBT-100 or CBT-100S for the appropriate tax year, with the words "AMENDED RETURN" clearly written on the front page of the form, is an amended return.

(d) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminu-

tion of entire net income for any year, the two-year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Division. For claims accruing on and after July 1, 1993, the limitation period is an additional four years from the date that taxable income is finally changed or corrected by the Internal Revenue Service. Such claims for refund must be filed with the Division on Form IRA-100. The Division may require additional information in order to properly determine the operative date of the Internal Revenue Service change or correction.

(e) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT-100). For claims accruing on and after July 1, 1993, the claim for refund must be filed within four years.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of an additional assessment or final determination and the taxpayer pays the assessment, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim, unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(c)1.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed returns its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a claim for refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the Director was made on

Form CBT-100 X for periods ended on or before June 30, 1994. To claim a refund and amend CBT-100 or CBT-100S returns for subsequent accounting periods, the Form CBT-100 (or the Form CBT-100S for New Jersey S corporations) for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly written on the front page of the form, and it shall be mailed to:

Corporation Business Tax Refund Section
77 Carroll Street
PO Box 259
Trenton, NJ 08646-0259

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT-100. A penalty for late filing of the CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the form 1120X, taxpayer files an amended tax return claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days, N.J.S.A. 54:10A-13. The periods of limitation to make deficiency assessments under N.J.S.A. 54:49-6 and to file claims for refund under N.J.S.A. 54:49-14 shall commence to run for additional four-year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

Example 3: Taxpayer receives an additional tax assessment with which it disagrees. It does not contest the assessment with the Division or in the Tax Court within 90 days. It pays the assessment within one year after the end of the 90-day protest period and 90-day appeal period and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment but beyond 450 days after the 90-day protest period expires. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:49-14.a or follow the refund procedure established by N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(c)1, the claim must be rejected.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49-5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) or a CBT-100 marked "AMENDED RETURN" relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Amended by R.1993 d.660, effective December 20, 1993.

See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(a).

Amended by R.1994 d.186, effective April 18, 1994.

See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Amended by R.1995 d.499, effective September 5, 1995.

See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Amended by R.1999 d.116, effective April 5, 1999.

See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

In (a), added the last sentence; in (d), inserted a reference to Form CBT-100-X in the second sentence; and in (i), changed name and address.

Amended by R.2000 d.21, effective January 18, 2000.

See: 31 N.J.R. 2862(a), 32 N.J.R. 311(a).

Rewrote (c)3 and (d); in (h), substituted a reference to claim for refund for a reference to form CBT-100-X; and in (i), rewrote the introductory paragraph and Example 2, and substituted a reference to CBT-100 for a reference to CBT-100-X in Example 4.

Amended by R.2002 d.153, effective May 20, 2002.

See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).

In (g), substituted "assessment" for "additional" preceding "the taxpayer may" and inserted "unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(c)1" following "refund claim"; in (i), rewrote Example 3.

Statutory References

See N.J.S.A. 54:49-14 as to claims for refunds.

Case Notes

Corporate taxpayer's refund claims relating to abandonment losses, to the extent those losses were allowed in connection with an audit by the Division of Taxation, were not refund claims based on changes by Internal Revenue Service (IRS) in the computation of the corporation's taxable income, for purposes of statute entitling taxpayer to relief based on IRS change, even though revenue agent's report discussed and allowed the abandonment losses. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Even though revenue agent's report (RAR) did not directly change tax corporate taxpayer's liability for certain tax years, the Internal Revenue Service (IRS) changes relating to reallocation of basis necessarily carried over to later years for which returns were filed before the IRS acceptance of the RAR and, thus, by filing timely reports of changes made by the IRS in the computation of its taxable income, taxpayer qualified for the two-year extended refund claim period as to its refund claims for those years based on the IRS changes contained in RAR. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Increase in the amount of corporate taxpayer's abandonment loss resulting from an Internal Revenue Service (IRS) revenue agent's report qualified under statute entitling taxpayer to relief based on IRS change and statute granting extension of the refund claim period. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Regulation requiring compliance with an express statutory filing requirement, as a part of interpreting the statute to extend the time period for refund claims based on changes made by the Internal Revenue Service (IRS) in computation of corporation's taxable income, is inherently reasonable. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Tax Court would not exercise its equitable jurisdiction and treat corporate taxpayer's reports of changes made by the Internal Revenue Service (IRS) in the computation of corporation's taxable income, which were filed one day late, as timely, where taxpayer completed its reports of changes in a timely fashion, and had the opportunity to file them with the Director of Division of Taxation within the applicable 90-day period, but failed to exercise diligence by electing to use regular certified mail instead of hand or overnight delivery. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Taxpayer failed to carry its burden of demonstrating that there was no conceivable state of facts which would have supported provision of regulation requiring corporate taxpayer's timely filing of reports of changes made by the Internal Revenue Service (IRS) in the computation of its taxable income and, therefore, regulation was valid and barred the corporate taxpayer from prosecuting its refund claims. *Lenox Incorporated v. Division of Taxation*, 19 N.J.Tax 437 (2001).

Corporation business tax refund period began to run from time of payment of tax upon filing of return and not time of payment of penalty and interest assessed by Division of Taxation; refund claim was time barred. *Don Dan Const. Co. v. Director, Div. of Taxation*, 14 N.J.Tax 569 (1995).

Limitations period for seeking refund of corporate taxes was not extended by furnishing IRS with extended return. *H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

Second corporate business tax return triggered limitations period for seeking refund of corporate taxes paid. *H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

Equitable considerations did not entitle corporate taxpayer to extension of limitations period for seeking refund of corporate taxes. 26 U.S.C.A. § 338; *N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) If the Director shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than \$1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).