

Separate operating accounts does not refer to technically separate accounting records, but refer to truly independent, disconnected or unassociated operating accounts, from the standpoint of furnishing transportation service.

"Tangible personal property" means the rolling stock, cars, locomotives, ferryboats, all machinery, tools and other tangible personal property of a railroad company and also the locomotive and cars not belonging to such railroad company but built for its use and actually used in this State, or run under its control in this State by a sleeping car company or other company; but the rolling stock of other persons or corporations temporarily used on any such road, but not forming part of the equipment of such road, is not included in this term.

"Taxpayer" means any person, railroad or system subject to taxation under the provisions of the Act.

"Tax year" means the year in which the tax is payable under the Act.

"True value" means the market value of the property at a fair and bona fide sale at private contract on the assessment date.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Stylistic changes.  
Recodified from 18:23-1.1 by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

See N.J.S.A. 54:29A-2; 54:4-23.

## SUBCHAPTER 2. PROPERTY NOT SUBJECT TO NEW JERSEY RAILROAD PROPERTY TAX

### 18:23-2.1 Property not used for railroad purposes

(a) Property of a railroad company not used for railroad purposes, such as facilities and buildings leased or used for commercial purposes, is not subject to the Railroad Property Tax.

(b) Such property is assessed and taxed in the same manner and at the same rate as other property in the taxing district.

#### Statutory References

N.J.S.A. 54:29A-4.

### 18:23-2.2 Municipal assessments

Streets, sidewalks, sewers or other municipal improvements are not subject to assessment under the New Jersey

Railroad Property Tax; however, a municipality is not prohibited from assessing such benefits against the property of a railroad, operating in New Jersey, in the same manner as other property of individuals subject to local taxation.

#### Statutory References

N.J.S.A. 54:29A-5.

### 18:23-2.3 Grade crossing improvements

Grade crossing improvements required by a State Agency and/or a municipality to be made by a railroad are not included in the taxable valuations made under the Act; however, any improvements of grade crossings voluntarily made by a railroad are included in the valuation of property taxed under the Act.

#### Statutory References

N.J.S.A. 54:29A-10.

### 18:23-2.4 Improvements to capital facilities

The improvements to capital facilities undertaken by a railroad pursuant to the provisions of a contract with the New Jersey Department of Transportation or with a municipality, where such improvements were made after January 1, 1963, are not subject to valuation under the Act.

#### Statutory References

N.J.S.A. 54:29A-17.1.

### 18:23-2.5 (Reserved)

## SUBCHAPTER 3. PROPERTY SUBJECT TO NEW JERSEY RAILROAD PROPERTY TAX

### 18:23-3.1 Property taxable

All property used for railroad purposes, except main stem, tangible personal property, facilities used in passenger service, and Class II real property which passed out of railroad ownership subsequent to January 1 and before October 1 and not used for railroad purposes on October 1, is assessed by the Director.

#### Statutory References

N.J.S.A. 54:29A-7.

### 18:23-3.2 Leased property

Any property of a railroad leased to or operated by another corporation, foreign or domestic, and used for railroad purposes is assessed and taxed to the lessor (or railroad) in the same manner as other property subject to the Act.

**Statutory References**

N.J.S.A. 54:29A-8.

**18:23-3.3 Tax in lieu**

(a) Any property used for railroad purposes, including any main stem, tangible personal property and facilities used in passenger service, is not subject to any other State or local taxation.

(b) Any property not used for railroad purposes and therefore not subject to the Act is subject to taxation by the local taxing authorities of this State.

**Statutory References**

N.J.S.A. 54:29A-11.

**18:23-3.4 Railroad property assessed**

Property used for railroad purposes is assessed against each system or each railroad not part of a system in the manner provided by the Act.

**Statutory References**

N.J.S.A. 54:29A-12.

**18:23-3.5 Tax rate of railroad property**

Property used for railroad purposes except as noted in section 3.1 (Property taxable) of this chapter is assessed by the Director at the rate of \$4.75 per \$100.00 of true value of such property as determined on January 1 of the pre-tax year.

**Cross References**

For definition of true value, see N.J.A.C. 18:23-1.2.

**Statutory References**

N.J.S.A. 54:29A-7.

**Case Notes**

Determination as to whether property met "fairly anticipated use for railroad purposes" on particular date required evaluation of use for period of years. N.Y. Susquehanna & Western Ry. Corp. v. Hardyston Tp., 8 N.J.Tax 626 (1987).

Property was exempt from local tax as it was used for railroad purposes. N.Y. Susquehanna & Western Ry. Corp. v. Hardyston Tp., 8 N.J.Tax 626 (1987).

**18:23-3.6 Real property deemed to be in railroad use**

Real property shall be deemed to be in railroad use if such property is used for the transportation of persons or freight by a railroad, regardless of the ownership or possession of the real property.

New Rule, R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

**SUBCHAPTER 4. RAILROAD FRANCHISE TAX****18:23-4.1 Railroad franchise tax; rates, how computed**

(a) The New Jersey Railroad Franchise Tax is assessed against each railroad or system operating in the State of New Jersey at the rate of 10 per cent of its net railway operating income adjusted and allocated on the basis of the percentage of all track miles operated within the State to the total track miles operated everywhere by such railroad or system.

(b) The minimum franchise tax payable by any taxpayer is \$100.00 for taxpayers having total railway operating revenues of \$1,000,000.00 or less allocated to New Jersey for the pre-tax year; and \$4,000.00 for all other taxpayers.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

**18:23-4.2 Measurement of franchise tax**

(a) The New Jersey Railroad Franchise Tax is measured by a taxpayer's net railway operating income, which consists of the total operating revenues from all sources, including any revenue whatever, directly or indirectly derived from property which is used for railroad purposes, less the costs of railroad maintenance, operation, depreciation and amortization, railway tax accruals, uncollectible railway revenues, rentals (both debts and credits) for equipment leased for less than one year, interchanged and joint facility rents (both debts and credits).

(b) The amounts paid by the State of New Jersey or any county, municipality, agency, authority or subdivision thereof, pursuant to contracts for passenger service, are not included in such operating revenues.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.3 Deductions from operating revenues subject to regulation by Director**

Deductions from operating revenues for depreciation, additions and betterments, and compensation for personal services are subject to regulation by the Director, as to reasonableness of amount and appropriateness of accounting distribution.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.4 Railway tax accruals; definition and method of computing**

(a) For the purposes of this chapter railway tax accruals mean the taxes due for the year which have been assessed by the State of New Jersey and other states, including the taxes due to the United States Federal Government, which have been recorded in the books and records of the taxpayer according to acceptable accounting methods.

(b) Where the taxes due other states or the Federal Government have been accrued in prior years and there has been a change in the amount of such taxes due for such, for the purposes of the New Jersey Railroad Franchise Tax, such change is to be reflected and adjusted in the taxpayer's net railway operating income for the year in which the taxpayer first receives notice of such change.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

**18:23-4.5 Depreciation and amortization; limitation on amount claimed**

In determining the net railway operating income of a railroad for the pre-tax year, the depreciation and amortization charges cannot exceed those amounts permitted by the Interstate Commerce Commission as a deduction for such charges.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.6 Net railway operating income allocation**

The net railway operating income of each system or railroad not part of a system used to determine the measure of the franchise tax is to be allocated to this State in the same proportion as the total number of miles of all track over which the railroad or system operates in this State bears to the total number of miles of all track over which it operates.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.7 Assessment of railroad franchise tax; dates when computed; when due**

The New Jersey Railroad Franchise Tax is computed and assessed against each taxpayer on or before June 1, of the tax year and is due and payable on June 15 of the tax year.

**Statutory References**

N.J.S.A. 54:29A-15.

**18:23-4.8 (Reserved)****SUBCHAPTER 5. ASSESSMENT AND DISPOSITION OF THE RAILROAD PROPERTY AND FRANCHISE TAXES****18:23-5.1 Classification of railroad property**

(a) On or before November 1 of the pre-tax year all real property used for railroad purposes in this State is classified as Class I, Class II or Class III railroad property for tax purposes.

1. Class I real property consists of the length of main stem (roadbed not exceeding 100 feet in width) of each railroad in this State;

2. Class II real property consists of all real property used for railroad purposes in each taxing district which is not classified as Class I or Class III;

3. Class III real property consists of facilities used in passenger service in this State.

(b) In the event any railroad property is used for both freight and passenger service, such property is apportioned between Class II and Class III property in the manner provided in this subchapter.

Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

**Statutory References**

N.J.S.A. 54:29A-17.

**18:23-5.2 Valuation of Class II property; how and when determined**

(a) On or before November 1 of the pre-tax year, the true value, as of January 1 of such year of all Class II property used for railroad purposes in this State is determined.

(b) Any Class II property passing out of railroad ownership subsequent to January 1, and before October 1, of the pre-tax year and not used for railroad purposes on October 1, is excluded.

**18:23-5.3 Statement of classification and valuation to be forwarded to taxpayer**

Detailed statements, as to the classification of all railroad property and the valuation of Class II railroad property, are forwarded to each taxpayer not later than November 10 of the pre-tax year.

**Statutory References**

N.J.S.A. 54:29A-17.

**18:23-5.4 Identification of facilities used in passenger service**

"Facilities used in passenger service" (Class III) are not subject to the annual property tax levied upon railroad property. The term, "Facilities used in passenger service" is restricted to those facilities actually in use in connection with passenger service rendered by a railroad. Railroad property used partially for exempt passenger service (Class III) and used partially as taxable Class II railroad property, must be apportioned between the two classes before applying the tax rate to the Class II property and determining the tax payable thereon.

**18:23-5.5 Apportionment of facilities used in passenger service**

The portion of railroad property actually in use in connection with passenger service rendered by a railroad is to be determined according to the following provisions:

**(a) Property used exclusively in rendering passenger service:**

1. Where land is used exclusively in rendering passenger service, the measured land area involved is to be classified as Class III railroad property;
2. Where track is used exclusively in rendering passenger service, the lineal measure of track and its appurtenances is to be classified as Class III railroad property;
3. Where a structure is used exclusively in rendering passenger service, the entire structure is to be classified as Class III railroad property.

**(b) Property used partially in rendering passenger service:**

1. Where track is used partially in rendering passenger service and partially for other railroad uses:
  - i. That portion of the value of track and its appurtenances to be allocated to Class III railroad property is to be calculated by multiplying such total value of the track and its appurtenances by a factor equivalent to the ratio of the number of locomotive units using the track to render passenger service to the total number of locomotive units using the track;
  - ii. The value of the land supporting such track and its appurtenances allocated to Class III is to be calculated by applying the ratio employed in subparagraph i of this section to the total value of such land area.

2. Where a structure is used partially in rendering passenger service and partially for other railroad uses, the value of such structure allocated to Class III railroad property is to be determined as follows:

i. In the case of a station building, the portion of the total value thereof allocated to Class III railroad property is to be calculated by multiplying the total value thereof by a factor equivalent to the ratio of the measured floor area used in rendering passenger service to the total measured floor area of the station building;

ii. In the case of a general railroad office (offices used in connection with the operation of the railroad as a whole), the portion of the total value thereof allocated to Class III railroad property is to be calculated by multiplying the total value thereof by a factor, equivalent to the ratio of gross passenger operating revenues of the railroad to the gross system operating revenues of the railroad;

iii. In the case of a repair facility, the portion of the total value thereof allocated to Class III railroad property is to be calculated by multiplying the total value thereof by a factor equivalent to the ratio of the operating costs expended in repairing equipment used in a passenger service at the facility to the total operating costs expended in repairing all equipment at such facility;

iv. In the case of a locomotive servicing facility, the portion of the total value allocated to Class III railroad property is to be calculated by multiplying the total value by a factor equivalent to such ratio of the number of passenger locomotive units serviced at the facility to such total number of locomotive units serviced at such facility;

v. In the case of a power facility, the portion of the total value thereof allocated to Class III railroad property is to be calculated by multiplying the total value by a factor equivalent to the ratio of the output power used in rendering passenger service to the total output power transmitted by such facility.

3. The value of the land supporting any facility described in paragraph 2 of this subsection and allocated to Class III railroad property is to be calculated by applying the pertinent ratio for such facility to the total value of the land area.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

**Historical Note**

Prior Regulation—P.U.T. 1.

**Statutory References**

N.J.S.A. 54:29A-17.

**18:23-5.6 Inspection of classifications and valuations; conference; appeal**

(a) Any taxpayer may, prior to December 1, of the pre-tax year, inspect the Director's classification and valuations of such taxpayer's railroad property used in the pre-tax year.

(b) Any taxpayer may request an informal conference with the Director regarding the correctness of such classifications and valuations, which is to be held on or before December 1, of the pre-tax year.

(c) Any matters not corrected at such time are not given further administrative review and may be corrected only by appeal to the Tax Court in accordance with applicable law.

Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Railroad tax appeals go to Tax Court, in (c).

#### Statutory References

N.J.S.A. 54:29A-18.

#### 18:23-5.7 Property tax statement to be received by taxpayer

Not later than December 15, of the pre-tax year, each taxpayer is to receive a detailed statement of the taxpayer's Class II property and a statement of the assessment of Railroad Property Tax payable in the tax year.

#### Statutory References

N.J.S.A. 54:29A-18.1, 21.

#### 18:23-5.8 Franchise tax statement

Within ten days after completing the computation of the New Jersey Railroad Franchise Tax, but in any event not later than June 10 of the tax year, each taxpayer is to receive a statement of the Railroad Franchise Tax assessed and the manner in which such tax was computed.

#### Statutory References

N.J.S.A. 54:29A-21.

#### 18:23-5.9 Failure to receive tax statements does not relieve obligation to pay by due date

The failure of any taxpayer to receive either of the tax statements in sections 5.7 and 5.8 of this chapter does not invalidate any assessment or the resulting lien, nor is the taxpayer relieved of his obligation to make timely payment of the tax when due.

#### Statutory References

N.J.S.A. 54:29A-15.

#### 18:23-5.10 through 18:23-5.11 (Reserved)

### SUBCHAPTER 6. REASSESSMENT AND OMITTED PROPERTY

#### 18:23-6.1 Reassessment; investigation and audit

(a) The Director in his discretion may cause an examination of all the information submitted by any taxpayer, and if

he deems it necessary cause an audit, investigation and reaudit of such taxpayer's books and records.

(b) If upon such audit, investigation or reaudit it is determined that there was a definite or excessive assessment made, the Director may correct such error by reassessing the tax or any part thereof.

#### Statutory References

N.J.S.A. 54:29A-25.

#### 18:23-6.2 Omitted property

Whenever a taxpayer has omitted any property subject to the Act from his information return or otherwise failed to report such property, the Director may, upon discovering such omission, cause such property to be assessed for any omitted years, subject to section 6.3 (Credit for taxes paid locally on omitted property) of this chapter.

#### Statutory References

N.J.S.A. 54:29A-25.

#### 18:23-6.3 Credit for taxes paid locally on omitted property

(a) Any taxpayer will be given credit against the assessment for the Railroad Property Tax for the local tax paid if he:

1. Has omitted property subject to the Act (section 6.2 of this chapter); and
2. Has been required to pay the Railroad Property Tax on the omitted property pursuant to section 6.2 of this chapter; and
3. Has paid to the local taxing district whatever local property tax was assessed against his omitted property; and
4. Has submitted satisfactory proof of such payment to the Director and to the Tax Court, if the matter is pending before it.

Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Railroad tax appeals go to Tax Court, in (a)4.

#### Statutory References

N.J.S.A. 54:29A-29.

#### 18:23-6.4 (Reserved)

Repealed by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

Section was "Period of limitations on assessment of omitted property".

#### Statutory References

N.J.S.A. 54:29A-27.

**18:23-6.5 Review of a reassessment or an assessment of omitted property available to taxpayer**

Where property omitted by a taxpayer is assessed under section 6.2 (Omitted property) of this chapter, or where the tax is reassessed under section 6.1 (Reassessment) of this chapter, notice thereof is immediately given to the taxpayer, who upon receipt of such notice may request an administrative review of such assessment or reassessment.

**Statutory References**

N.J.S.A. 54:29A-26.

**18:23-6.6 Review of reassessment or assessment; time and place**

(a) The review shall be held at the time and place specified by the Director, but in no event later than 20 days from the date the assessment or reassessment is determined.

(b) The time spent in the review of a matter may not exceed 30 days, including adjournments. (See sections 11.2 and 11.3 of the chapter.)

**18:23-6.7 Taxes reassessed or assessed; due date**

The amount of taxes determined to be due after a review, or where no review has been requested the amount of taxes due as determined by the assessment or reassessment, are due and payable on or before the 15th day following the time limited for review.

**Statutory References**

N.J.S.A. 54:29A-26.

**18:23-6.8 (Reserved)****SUBCHAPTER 7. APPEAL AND REVIEW****18:23-7.1 Appeals**

Any taxpayer desiring to contest the validity or amount of any assessment or reassessment of property or franchise tax made by the Director of the Division of Taxation under the railroad tax law may appeal to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. (See N.J.S.A. 54:51A-13.)

**18:23-7.2 Dual assessment; appeal to Tax Court**

(a) If property of a taxpayer has or shall have been, in any year, assessed by the local taxing district, and also has or shall have been classified as Class I or Class III property or classified and assessed by the Director of the Division of Taxation as Class II property, an appeal may be taken to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., which Court shall determine the character of the property and whether used for railroad purposes and by whom it has lawfully been assessed.

(b) Such determination shall be made whether the taxes in question have been paid or not and whether an appeal to review either assessment has been made or not.

**SUBCHAPTER 8. RETURNS; PAYMENTS; REFUNDS****18:23-8.1 Return of information**

(a) Every taxpayer must, on or before March 1 of the pretax year, file with Property Administration statements and/or schedules showing:

1. The character and value of real property owned or leased by the taxpayer on the first day of January of the pretax year;
2. The capitalization and the indebtedness of the taxpayer as of the same date.

(b) Property Administration has developed and maintains a perpetual inventory of all property owned by each railroad or system in the State of New Jersey and only changes in the ownership, character or value of such property are required to be reported annually. Such annual returns of information must be submitted to Property Administration on forms R.R.51 through R.R.45 which are available from said office.

(c) In addition to the statements and schedules above described, the taxpayer must submit a statement entitled, "Completion Reports and Plans". Such statement must include:

1. Progress reports on all projects involving real property undertaken during the pre-tax year; and
2. Completion reports on all projects completed during the pre-tax year.

(d) On or before April 1 of the tax year, each taxpayer must file with the Director, through Property Administration, at its own expense, a sworn and complete copy of its Railroad Annual Report for the pretax year, which has been filed or will be filed with the Interstate Commerce Commission or with the Department of Transportation of the State of New Jersey.

(e) Furthermore, all taxpayers must complete and file with Property Administration Forms R.R.551 through 556, together with such supplemental statements and schedules as may from time to time be required by the Director or the Assistant Director of Property Administration, acting in his behalf.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).