

CHAPTER 2**GENERAL POLICIES AND PROCEDURES****Authority**

N.J.S.A. 54:50-1.

Source and Effective Date

R.1998 d.420, effective July 21, 1998.
See: 30 N.J.R. 1919(b), 30 N.J.R. 3066(a).

Executive Order No. 66(1978) Expiration Date

Chapter 2, General Policies and Procedures, expires on July 21, 2003.

Chapter Historical Note

Chapter 2, General Policies and Procedures, was adopted as R.1974 d.182, effective July 3, 1974. See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).

Subchapter 2, Penalties and Interest, was adopted as R.1975 d.284, effective September 25, 1975. See: 7 N.J.R. 439(d), 7 N.J.R. 490(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, expired on September 6, 1993, and was subsequently adopted as new rules by R.1993 d.542, effective November 1, 1993. See: 25 N.J.R. 3107(a), 25 N.J.R. 4927(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, was readopted as R.1998 d.420, effective July 21, 1998. See: Source and Effective Date.

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SUBCHAPTER 1. FORMS**18:2-1.1 Reproduction of forms**

(a) Subject to conditions and requirements hereinafter described, the Director will accept, for filing purposes, reproductions of flat, printed return forms in lieu of the official forms printed and furnished by the Director. Card or tab-type return forms may not be reproduced.

(b) In order to be acceptable for filing purposes, reproductions of flat, printed return forms must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official forms, for the proper tax period, produced by photo-offset, photoengraving, photocopying or other similar reproduction processes.

2. Reproductions must be on paper of substantially the same weight and texture, of a quality at least as good as that used in the official form and of any color.

3. Reproductions must be of the same size as that of the official form, both as to the overall dimensions of the paper and the image reproduced thereon.

4. Format of pages shall adhere to the following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable;

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each page and the fold must be the same as on the official form;

iii. Separate pages must be fastened together in numerical order;

iv. Each separate page must be clearly identified by listing at the top of the page the taxpayer's name, the Federal identification number and the appropriate New Jersey serial number.

5. The quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible.

6. The taxpayer's full and correct name and address and the identifying number as it appears on the form furnished by the Director must be typed or legibly printed on the reproduction.

7. Reproduction of forms may be made after insertion of the tax computations and the other required information. However, all signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process.

8. The Director does not approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all of the above conditions.

9. The Director does not approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white, with handwriting of satisfactory legibility.

R.1974 d.182, effective July 3, 1974.

See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).

SUBCHAPTER 2. PENALTIES AND INTEREST

18:2-2.1 Application

The provisions on penalty and interest in this subchapter are applicable to penalty and interest impositions made on and after October 1, 1975, pursuant to P.L. 1975, c.177, approved August 4, 1975, and on all taxes subject to the State Tax Uniform Procedure Law, as amended by P.L. 1987, c.76 and P.L. 1992, c.175, approved December 10, 1992.

Amended by R.1997 d.98, effective March 17, 1997.
See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).
Inserted reference to P.L. 1992, c.175.

18:2-2.2 Tax laws affected

The provisions of the State Tax Uniform Procedure Law and this subchapter shall apply to any tax which is payable to or collectible by the Director of the Division of Taxation, unless the law imposing such tax specifically provides that the State Tax Uniform Procedure Law and this subchapter shall not apply, or unless the specific provisions of the law imposing such tax provide for penalty and interest which is different from the provisions of the State Tax Uniform Procedure Law and this subchapter.

18:2-2.3 Failure to file return on time

(a) On or before December 8, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$2.00 for each day that the return is delinquent; plus
2. A penalty of five percent per month or fraction thereof of the total tax liability not to exceed 25 percent of such tax liability.

(b) On and after December 9, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$100.00 per month or any part of a month that the return is delinquent; plus
2. A penalty of five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

(c) Both penalties set forth in (a) and (b) 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. The following are examples of penalty computations.

1. A corporate taxpayer filed its 1987 corporation business tax return with a due date of April 15, 1988 on June 1, 1988. The return is 47 days late. The taxpayer had a total tax liability for 1987 of \$10,000.00. In addition to the unpaid tax the taxpayer owes the following amounts:

* In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

Delinquency penalty: \$100.00 per month for two months	\$ 200.00
Late filing penalty: five percent per month of the tax liability	
5% × 2 months = 10 percent of \$10,000.00	\$ 1,000.00
Tax liability	<u>\$10,000.00</u>
Total	<u>\$11,200.00*</u>

1. The vendor is under contract to provide goods or services or engage in a construction project for the State of New Jersey, or any of its branches, or any of its agencies or instrumentalities;

2. The vendor is entitled to payment from the State for such goods, services or construction project; and

3. The vendor is indebted for any State tax, or, where the vendor is a partnership or S-corporation, any partner or shareholder of the vendor-entity is indebted for such tax.

18:2-8.3 Time for initiating set-off procedure

(a) The Division of Taxation may initiate procedures to set off the tax debt of a specific vendor upon the expiration of 90 days after either:

1. The issuance by the Division of a notice and demand for payment of any State tax owed by the taxpayer; or

2. The issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit determination.

18:2-8.4 Set-off of tax liability of a member of a partnership or S corporation under contract with State

When a partnership or an S corporation is a vendor, the Division may also seek to reduce the contract payment due to that vendor by the amount of the State tax indebtedness of any of that vendor's partners or shareholders. The amount set off shall not exceed the individual partner's or shareholder's proportionate share of the contract payment due to the vendor-partnership or vendor-S corporation.

Example 1: A vendor-partnership earns \$10,000 providing consulting services to the State. The partnership has two equal partners, one of whom has a \$100.00 gross income tax debt.

The debtor-partner's share of the contract payment due to the vendor-partnership is \$5,000. However the partner's tax debt is only \$100.00. Since the individual's tax debt (\$100.00) does not exceed his proportionate one-half share of the contract payment (\$5,000), the contract payment will

be set off by the full \$100.00 debt owed by the debtor-partner.

The vendor-partnership will receive a \$9,900 contract payment. The debtor partner's gross income tax debt will be satisfied through the set-off.

Example 2: A vendor-S corporation earns \$10,000 providing electrician services to the State. The S corporation has 10 equal shareholders, one of whom has a \$10,000 gross income tax debt.

The debtor-shareholder's one-tenth proportionate share of the \$10,000 contract payment is \$1,000. Therefore, although his individual tax debt is \$10,000, the portion of that tax debt that can be used to offset the contract payment due to the full S corporation is limited to \$1,000, that is, the debtor-shareholder's proportionate share of the contract payment.

The vendor-S corporation will receive a contract payment of \$9,000. The debtor-shareholder will have a remaining gross income tax indebtedness of \$9,000.

18:2-8.5 Notice of set-off

(a) The Division shall give notice both to the vendor, and to the taxpayer, if the taxpayer is a partner or shareholder of the vendor-entity, as soon as the Division takes set-off action under this chapter.

(b) The notice shall:

1. Specify the contract payment due to the vendor that is being sent to the Division of Taxation to offset the taxpayer's tax debt; and

2. Provide the vendor with an opportunity to protest the set-off action by filing a written protest within 30 days of the date of the notice.

(c) A written protest shall conform to the requirements N.J.A.C. 18:1-1.8.

(d) The filing of a protest shall not stay the collection of the indebtedness.