

8. Examples:

i. The Division of Taxation issues an additional tax assessment for the taxpayer's year ended December 31, 1995. The taxpayer disagrees with the assessment but does not contest the assessment with the Division of Taxation or in the New Jersey Tax Court within 90 days of the issuance of the notice of additional tax assessment. The taxpayer pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the Division of Taxation by the New Jersey Tax Court in another case. The taxpayer then files a claim for refund. Since it did not contest the assessment in a timely fashion, and since the assessment was for a return period prior to the effective date of P.L. 1998, c.106, authorizing the procedure for refund set forth at (c) above, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

ii. The same facts as in (c)8i above except that the additional tax assessment was issued with respect to a return period commencing on or after January 1, 1999 and the taxpayer complies with all the requirements of (c)1 above. The claim for refund will not be denied on the ground that it was not timely filed.

iii. The Division of Taxation issues an additional corporation business tax assessment for the taxpayer's 2000 fiscal year which results from an adjustment to the property fraction of the allocation factor used by the taxpayer in its return for that year. The notice of additional tax assessment does not refer to any other reason for the assessment. The taxpayer follows the refund procedure prescribed in (c)1 above. It contends that it is entitled to a refund of the tax paid on the ground that the payroll fraction of the allocation factor that it used in its 2000 return was erroneous. Since the ground provided in the notice of assessment does not refer to the payroll fraction of the allocation factor, the Division of Taxation will not consider that ground in reviewing the claim for refund.

iv. The Division of Taxation issues an additional corporation business tax assessment which results from an adjustment to the taxpayer's net operating loss and to the payroll fraction of the allocation factor used in the taxpayer's fiscal 2000 corporation business tax return. The taxpayer protests the adjustment to the net operating loss but not the adjustment to the payroll factor. The taxpayer may not later pay the corporation business tax stemming from the adjustment to the payroll factor and seek a refund of that payment under (c)1 above.

v. The Division of Taxation issues an additional sales and use tax assessment to a taxpayer. The taxpayer protests the sales tax component of the assessment but not the use tax component. The taxpayer may not later pay the tax stemming from the use tax component

of the assessment and claim a refund of that payment under (c)1 above.

vi. The Division of Taxation issues an additional sales tax assessment and a corporation business tax assessment at the same time to a taxpayer. The taxpayer protests the sales tax assessment to the Conference and Appeals Branch but not the corporation business tax assessment. The protest, appeal or payment of the sales tax assessment does not preclude the taxpayer from using the procedure prescribed by (c)1 above with respect to payment of the corporation business tax assessment.

vii. An individual taxpayer residing in New Jersey fails to file a gross income tax return for the calendar year 1999. The taxpayer does not provide any information to the Division of Taxation concerning the taxpayer's 1999 income and expenses, although requested to do so. Thereafter, the Division of Taxation issues a delinquency gross income tax assessment for that year. As the assessment is not an additional tax assessment, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

viii. An individual taxpayer residing in New York files a gross income tax return for the calendar year 1999. The Division of Taxation reviews the return. The Division of Taxation requests the taxpayer to provide copies of Federal schedules and a detailed calculation of the income and deductions shown on the return. Thereafter, the Division of Taxation issues an arbitrary gross income tax assessment for that year, estimating the additional tax owed and assessing applicable penalty and interest charges. As the taxpayer did not supply the required report to the Division of Taxation, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

ix. The Division of Taxation issues an additional sales tax assessment to the taxpayer, who neither protests nor appeals the assessment and, instead, requests a payment plan. The Division of Taxation grants the taxpayer a three year period in which to pay the assessment. The taxpayer pays the assessment in full at the end of the three year period. The refund procedure prescribed in (c)1 above is not available to the taxpayer since the taxpayer did not pay the additional tax assessment in full within one year after the expiration of the statutory 90-day period for protesting the assessment to the Division of Taxation and of the statutory 90-day period for appealing the assessment to the New Jersey Tax Court.

x. A taxpayer protests an additional sales tax assessment to the Division of Taxation and takes no further action with respect to the assessment other than paying the tax within one year after the expiration of the statutory 90 day period in which to protest the assessment to the Division of Taxation. Since the taxpayer filed a protest with the Division of Taxation, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

xi. The Division of Taxation issues a notice of additional tax assessment reflecting assessments in corporation business tax and sales and use tax. A taxpayer using the refund procedure prescribed by (c)1 above is required to use a separate refund claim form with respect to a refund of a payment of the corporation business tax and to a refund of a payment of the sales and use tax.

xii. Taxpayer timely files a 2000 resident gross income tax return claiming a credit for taxes paid to other jurisdictions on wages taxed by both New York and New Jersey. Upon audit it is determined that the taxpayer failed to report a taxable distribution from a New Jersey S Corporation which also necessitates that their credit be amended. The taxpayer does not appeal the assessment within 90 days of the notice. Taxpayer files a claim for refund under (c)1 above amending their credit for taxes paid to other jurisdiction as a result of a New York audit increasing New York source wages. The taxpayer is precluded from claiming a refund under this provision in that the ground for the additional tax assessment is not the same ground for the taxpayer's refund request.

Amended by R.2002 d.153, effective May 20, 2002.
See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).
Rewrote the section.

18:2-5.6 Appeal

The taxpayer will be notified if a claim for refund is rejected. The taxpayer may appeal a refund determination under the procedures of N.J.A.C. 18:1-1.8.

18:2-5.7 Extension of time; sales and use tax exception

(a) If a taxpayer and the Division sign an agreement to extend the time during which an assessment can be made, the taxpayer's refund application period is automatically extended until the last date by which the parties agree that any assessment of New Jersey taxes must be made. The refund application period only applies to the particular taxes and periods expressly included in the extension agreement. A taxpayer's opportunity to apply for a refund under such an agreement is extended to and includes the last date by which the parties agree that any assessment of New Jersey taxes must be made. An extension agreement will not receive refund application rights which expired prior to the agreement's execution. Thus, for example, if the Division makes an assessment by the last date permitted under the agreement but the taxpayer does not make an otherwise appropriate refund claim prior to the last permissible date for making an assessment under the agreement, the taxpayer has 90 days to protest the assessment only under N.J.S.A. 54:49-18a. Under N.J.S.A. 54:49-18a, a taxpayer has 90 days to protest any refund claim rejected pursuant to N.J.S.A. 54:49-15.

(b) Pursuant to N.J.S.A. 54:32B-12(c) of the Sales and Use Tax Act, sales or use tax refund claims may be filed up to six months after the last date by which the parties agree that any assessment of sales or use tax may be made. The refund application period only applies to sales or use tax overpayments made during periods expressly included in the extension agreement.

18:2-5.8 Refund claim procedures

(a) Procedures for filing for a refund after a return has been submitted are as shown in (b) through (e) below.

(b) For Gross Income Tax:

1. Employer refunds: If the taxpayer made an overpayment when remitting employee withholdings with a Return of Gross Income Tax Withheld (Form NJ-500), the taxpayer should make the adjustment on the next NJ-500 filed after the error is discovered. A written explanation should be attached, including a legible copy of the erroneous form NJ-500, any calculations, and the amount of tax remitted should be adjusted accordingly on the subsequently filed NJ-500 form. Alternatively, the taxpayer may apply for a refund of an overpayment when filing a Gross Income Tax Reconciliation of Tax Withheld (Form NJ-W-3) at the end of the calendar year along with the documents described above. If the error is discovered after all NJ-500 and the NJ-W-3 Forms are filed, the taxpayer should complete another NJ-W-3, write "Amended" across the top of the form, and submit it with the corrected information and supporting documentation.

2. Individual refunds: The taxpayer may amend a gross income tax return and request a refund by filing an Amended Income Tax Resident Return (Form NJ-1040X) for the year in question. There is no amended return for nonresident filers. Nonresident filers should complete an Income Tax Nonresident Return (form NJ-1040-NR) for the appropriate tax periods and write "Amended" across the top.

(c) For Corporation Business Tax, a corporate taxpayer may amend a corporation business tax return and request a refund by filing an Amended Corporation Business Tax Return (Form CBT-100-X). Any schedules which have changed since filing the original return should be attached. For refunds of Corporation Business Tax, see N.J.A.C. 18:7-13.8, 13.9 and 13.10.

(d) For Sales Tax:

1. Business refunds: If the person required to collect the tax overpaid sales tax on the Monthly Remittance (Form ST-51), the adjustment should be made on the Sales and Use Tax—Quarterly Return (Form ST-50). If the person required to collect the tax failed to adjust the quarterly return, a Claim for Refund (Form A-3730) and a New Jersey Sales Tax Amended Return (Form ST-607-A) should be completed for the appropriate tax period(s).

2. Individual refunds: If the taxpayer overpaid sales tax when making a retail purchase, the taxpayer may request a refund directly from the vendor from whom the purchase was made. However, if the vendor has already submitted the tax to the State, the taxpayer must complete a Claim for Refund (Form A-3730) and include supporting documents to substantiate the claim.

(e) A taxpayer requesting a refund of a payment of an additional assessment of Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Transfer Inheritance Tax, Estate Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax pursuant to N.J.S.A. 54:49-14.b is required to use Form A-1730.

(f) If there is no other established refund claim procedure or amended return for other State taxes paid in error, a Claim for Refund (Form A-3730) should be completed and submitted with a detailed explanation with supporting documentation.

(g) The refund claim or amended return shall set forth the taxpayer's name, address, identifying number, signature, and a full narrative description of the claim. The narrative description shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Division of the exact basis thereof. Citations to relevant statutes, regulations, and case law are not required but may be included if known. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. If a refund claim or amended return does not contain sufficient information, the Division will return the claim or amended return with guidance to the taxpayer. For purposes of the statute of limitations on claims for refunds under N.J.S.A. 54:49-14 and 54A:9-8, and interest payments on late refunds under N.J.S.A. 54:49-15.1, the refund claim will not be deemed complete until the required information is submitted. A claim which does not comply with this subsection shall not be considered for any purpose as a claim for refund or credit. (See also N.J.A.C. 18:2-5.9, Interest on overpayments.)

Amended by R.1999 d.295, effective September 7, 1999.
See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).
Added (f).

Amended by R.2002 d.153, effective May 20, 2002.
See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).

Added a new (e); recodified former (e) as (f) and inserted "other" preceding "established refund"; recodified former (f) as (g).

18:2-5.9 Interest on overpayments

(a) For tax paid with respect to reports or returns due on and after January 1, 1994, interest shall be allowed and paid on overpayments of tax 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 calendar year, from the date that such interest commences to accrue to the date of the refund. "The date of the refund" shall be deemed the date set forth on the check or

the documents authorizing electronic funds transfer (EFT). If interest must be paid, it will be calculated to accrue from the later of the date of the filing of a refund claim, the date the tax is paid, or the due date of the return. No interest shall be allowed or paid on an overpayment of less than one dollar; or on an overpayment 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. Interest will not be paid on overpayments where the taxpayer has requested that the overpayment be applied to the following year's tax liability.

(b) No interest will be paid on a refund of an overpayment issued pursuant to N.J.S.A. 54:49-16 unless and until six months after the taxpayer files a claim for refund. See N.J.A.C. 18:35-1.27.

Example 1: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Postmarked:	March 2
Return with overpayment received by the Division of Taxation:	March 12

A refund of overpaid taxes would accrue interest if not refunded by October 15 (six months after the due date of the return, April 15).

Example 2: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Return and overpayment (unknown to taxpayer at time return was filed) received by Division of Taxation:	April 15
Claim for refund received by Division of Taxation:	May 1

Interest would accrue on an overpayment not refunded by November 1 (six months after the claim for refund date of May 1).

Example 3: Same as above, except no claim filed. The Division of Taxation discovers the overpayment within two years of payment. No interest is due on the refund of the overpaid tax.

(c) No interest shall be paid on a refund of an overpayment unless the claim for refund or amended return contains:

1. The taxpayer's name, address, and identifying number and the required signatures; and
2. Sufficient information (whether on the refund claim, amended return and necessary attachments) to permit the verification of the claim, including a full narrative description of the basis for the claim. (See also N.J.A.C. 18:2-5.8, Refund claim procedures.)

Amended by R.1999 d.295, effective September 7, 1999.
See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).

Added (c).

18:2-5.10 Separate claims required

For claims accruing on or after July 1, 1993, each taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted.

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

18:2-6.1 Records confidential

(a) Division of Taxation records and files are confidential and privileged.

(b) Division officers and employees, former Division officers and employees, any Division employee engaged in the custody or administration of Division records, and any person who may have secured information from Division records, may not divulge, disclose or use for their own personal advantage any information obtained from Division records, from the examination or inspection of the property of any person, or any copy of a federal return or federal return information required to be attached to or included in any New Jersey return.

(c) The Division of Taxation is not required to produce any records or files for inspection of any person or use in any action or proceeding except when the records or files are shown to be directly involved in an action or proceeding under the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. or other State tax law, or where the determination of an action or proceeding will affect the validity or amount of State claims for taxes, or any lawful proceeding for the investigation and prosecution of violations of the criminal provisions of the State Tax Uniform Procedure Law or other State tax law.

(d) Violation of these provisions is a crime of the fourth degree.

(e) Requests for information from Division records, including requests for information pursuant to N.J.S.A. 54:50-9, should be directed to the Division of Taxation Office of Chief of Staff.

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

18:2-7.1 Purpose

The purpose of this subchapter is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

18:2-7.2 Definitions

For purposes of this subchapter, the following terms shall be defined as follows:

“Database management system” means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

“Electronic data interchange” or “EDI technology” means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

“Hard-copy” means any documents, records, reports or other data printed on paper.

“Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

“Storage-only imaging system” means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

“Taxpayer” as used in the subchapter means any person owing or liable to pay any State tax or any person deemed by the Director to be so owing or liable.

18:2-7.3 Recordkeeping requirements—general

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records shall be made available on request by the Director or his or her authorized representatives. Such records shall include, but not be necessarily limited to, books of account, invoices, sales receipts or other documents required to be maintained by any specific tax statute or regulation of this State.

(b) If a taxpayer retains records required to be retained under this section in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Director in machine-sensible format upon request of the Director.

(c) If the machine-sensible or hard-copy records of the taxpayer are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from such records may be deemed to be incorrect or insufficient and the Director may determine the amount of tax due the State by using any information available, whether from the taxpayer's place of business or from any other source.

(d) Nothing in this section shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with (b) above.

18:2-7.4 Recordkeeping requirements—machine-sensible records

(a) General requirements pertaining to machine-sensible records are as follows:

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this section are met.

2. At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic data interchange requirements are as follows:

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records shall contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.