

CHAPTER 2

GENERAL POLICIES AND PROCEDURES

Authority

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

Source and Effective Date

R. 2008 d.223, effective July 2, 2008.
See: 40 N.J.R. 2101(a), 40 N.J.R. 4604(a).

Chapter Expiration Date

Chapter 2, General Policies and Procedures, expires on July 2, 2013.

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).

Subchapter 3, Requirements for Payment of Taxes by Electronic Funds Transfer, was adopted as R.1994 d.63, effective February 7, 1994. See: 25 N.J.R. 1078(a), 26 N.J.R. 824(a).

Subchapter 4, Postmark Rule, was adopted as R.1995 d.609, effective December 4, 1995. See: 27 N.J.R. 3589(a), 27 N.J.R. 4906(b).

Subchapter 5, Refunds, was adopted as R.1996 d.54, effective February 5, 1996. See: 27 N.J.R. 4163(a), 28 N.J.R. 892(a).

Subchapter 6, Confidentiality and Disclosure, was adopted as R.1995 d.610, effective December 4, 1995. See: 27 N.J.R. 3591(a), 27 N.J.R. 4907(a).

Subchapter 7, Recordkeeping and Retention Requirements, was adopted as R.1997 d.256, effective June 16, 1997. See: 28 N.J.R. 5156(a), 29 N.J.R. 2706(a).

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: 30 N.J.R. 1919(b), 30 N.J.R. 3066(a).

Subchapter 8, Set-off of State Vendor Tax Debt, was adopted as R.1998 d.439, effective September 8, 1998. See: 30 N.J.R. 1920(a), 30 N.J.R. 3258(a).

Subchapter 9, Sale of Tax Indebtedness, was adopted as R.1999 d.147, effective May 3, 1999. See: 31 N.J.R. 593(a), 31 N.J.R. 1205(b).

Chapter 2, General Policies and Procedures, was readopted as R.2003 d.347, effective July 28, 2003. See: 35 N.J.R. 2164(a), 35 N.J.R. 3847(a).

Chapter 2, General Policies and Procedures, was readopted as R.2008 d.223, effective July 2, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. FORMS

18:2-1.1 Reproduction of forms

(a) Subject to conditions and requirements in (b) and (c) below, the Director will accept, for filing purposes, reproductions of printed return forms and privately designed and printed and/or computer-generated and computer-prepared forms, in lieu of the official forms printed and furnished by the Director.

(b) In order to be acceptable for filing purposes, privately designed and printed and/or computer-generated and computer-prepared forms shall be submitted to the Division of Taxation for approval prior to use. The proposed form shall be forwarded for consideration by letter to the Director, Division of Taxation. The Director may, within his or her discretion, approve a form that does not interfere with either Division of Revenue or Division of Taxation procedures in any way. If a reproduction does not meet with the Director's approval, an explanation of the areas in which the form was found to be deficient will be enclosed with the letter rejecting the reproduction. Approval of a reproduction of a tax form shall be valid for one tax year, unless neither the official tax form nor the reproduction has changed since the year of approval in any respect other than date changes and minor editorial changes, in which case approval shall be valid until the tax form or reproduction is changed in any other way. The submission of an unapproved reproduction shall not satisfy statutory return filing requirements.

(c) In order to be acceptable for filing purposes, reproductions of 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, computer, 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).

Amended by R.1999 d.267, effective August 16, 1999.

See: 31 N.J.R. 1444(a), 31 N.J.R. 2369(a).

Rewrote (a); inserted a new (b); recodified former (b) as (c), deleted "flat," following "reproductions of" in the introductory paragraph, and inserted ", computer," following "photocopying" in 1.

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.

SUBCHAPTER 9. SALE OF TAX INDEBTEDNESS

18:2-9.1 Time for sale of indebtedness

(a) The State Treasurer is authorized to sell, transfer, or assign all right, title, and interest in any State tax indebtedness only when the following conditions have been satisfied:

1. The underlying State tax indebtedness is fixed and final and not subject to protest or appeal pursuant to the State Tax Uniform Procedure Law or the New Jersey Gross Income Tax Act; and

2. A certificate of debt stating the amount of the indebtedness has been filed with the Clerk of the Superior Court.

18:2-9.2 Bidding and sale procedures

(a) Public advertisement for bids and sale of tax indebtedness to bidders shall be conducted by the Division of Property Management and Construction, which has been designated by the Treasurer to carry out the Treasurer's responsibilities pursuant to N.J.S.A. 54:50-30.

(b) Pursuant to and consistent with the authority granted by N.J.S.A. 54:30-35 and 54:30-29b, the Director of the Division of Taxation shall have the right to approve any specifications and invitations for bids and any forms of contract drafted by the Treasurer's designee pursuant to this section.

18:2-9.3 Disclosure to purchaser of tax indebtedness

Notwithstanding the provisions of N.J.S.A. 54:50-8, pursuant to N.J.S.A. 54:50-32 the Director of the Division of Taxation may provide a purchaser, transferee or assignee of a taxpayer's indebtedness with all information contained in the certificate of debt and with any additional information the Director deems necessary in order for the purchaser to collect the indebtedness represented by the certificate. However, the Director may not make any disclosure to the purchaser, transferee or assignee of the indebtedness that would violate the provisions of 26 U.S.C. § 6103(a).

18:2-9.4 Protest or appeal from sale of tax indebtedness

(a) A protest to the Director or an appeal to the Tax Court from the sale of tax indebtedness may be brought only on the ground that the underlying indebtedness was not fixed and final at the time of the sale, or that there was a technical ministerial error in the certificate of debt, including, but not limited to, incorrect identification of taxpayer, insufficient notice of certificate of debt, incorrect calculation of unpaid balance of a debt paid in part or in full.

(b) A taxpayer who challenges the underlying indebtedness after the tax debt has been sold has the burden of proving by clear and convincing evidence that the State's claim was not fixed and final at the time of sale.

(c) In any appeal by a taxpayer to the Tax Court challenging the underlying tax indebtedness, made pursuant to N.J.S.A. 54:50-29 et seq., the Director of the Division of Taxation shall be the primary party in interest, and the purchaser of the lien shall also be joined with the Director as a defendant. Such challenge shall first have been brought to the Director by protest under N.J.S.A. 54:49-18, in which protest the purchaser shall also have been joined.

(d) Notwithstanding the purchaser's joinder in any action or proceeding brought to challenge the underlying indebtedness, the Director shall have the sole authority to determine, in the case of a protest, and advocate, in the case of an appeal, whether the matter is fixed and final, whether the certificate of debt is correct and properly entered, and whether and to what extent any relief should be afforded to the taxpayer.