

original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with the Application for Extension of Time to File, at least 80 percent of the tax liability computed on the New Jersey Gross Income Tax Return when filed, and:

1. The taxpayer obtains a valid six-month extension for Federal income tax purposes and attaches a copy of the application for automatic Federal extension to the final New Jersey Gross Income Tax Return when filed; or

2. If no Federal extension is requested, the taxpayer completes and submits Form NJ-630 by the original due date of the return.

(c) A taxpayer shall file Form NJ-630, Application for Extension of Time to File New Jersey Gross Income Tax Return, only if:

1. The taxpayer requires a six-month extension for New Jersey purposes, but did not obtain one for Federal purposes; or

2. The taxpayer is required to remit payment to the Division of Taxation by the original due date of the return in order to meet the 80 percent requirement of (b) above.

(d) Failure to satisfy either the 80 percent payment requirement of (b) above by the original due date of the return, or to file the gross income tax return by the extended due date, will result in the retroactive denial of the extension as of the original due date of the return. In those cases, the taxpayer will be subject to interest, late filing penalties and late payment penalties from the original due date of the return, as described in (e) and (f) below.

(e) A taxpayer who has not satisfied the 80 percent payment requirement of (b) above, or who fails to file the gross income tax return by the extended due date, will be subject to the following late filing penalties (see N.J.S.A. 54:49-4):

1. \$100.00 per month or any fraction of a month that the return is delinquent; and

2. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any tax due with the return.

3. Both penalties set forth in (e)1 and 2 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.

(f) The extension authorized by N.J.S.A. 54A:8-1b and this section is an extension of time to file a gross income tax return. It is not an extension of time to pay any tax that may be due. Consequently, a taxpayer who makes a payment of tax after the original due date of the return, with or without an extension of time to file, will be subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4);

2. Interest on the unpaid tax calculated at the following rates:

i. For periods ending on and after July 1, 1993, at three percentage points above the prime rate. Interest is imposed for each month (or a fraction thereof) on the unpaid balance of tax. At the end of each calendar year all tax, penalties, and interest remaining due will become part of the unpaid balance on which interest will be charged.

(g) A partnership which, pursuant to N.J.S.A. 54A:8-6(b), is required to file Form NJ-1065 may obtain an automatic extension of time to file by attaching a copy of the Federal application of time to file Federal Form 1065 (Federal Form 7004) to Form NJ-1065, when filed. If the partnership did not apply for a Federal extension of time to file Federal Form 1065, the partnership must submit Federal Form 7004 to the New Jersey Division of Taxation on or before the due date of Form NJ-1065.

Repeal and New Rule, R.1996 d.20, effective January 2, 1996.

See: 27 N.J.R. 3136(a), 28 N.J.R. 176(b).

Repealed former section 1.18, "Extension of time to file New Jersey gross income tax return".

Recodified from N.J.A.C. 18:35-1.18 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Amended by R.2006 d.155, effective May 1, 2006.

See: 38 N.J.R. 110(a), 38 N.J.R. 1859(b).

Amended the extension of time to file from four to six months; deleted (c); recodified (d) through (h) as (c) through (g) and made appropriate internal reference changes in (d) and (e)3; in (c)1, removed "either" and "or additional two month"; in (f), deleted 2i and ii and recodified iii as i; in (g), substituted "Federal Form 7004" for "Federal Forms 8736 or 8800" and "7004" for "8736 or 8800".

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

Case Notes

Penalties and interest; interest extension request denied due to failure to satisfy condition that 80% of income tax due be paid. Patel v. Director, Div. of Taxation, 13 N.J.Tax 509 (1993).

18:35-6.2 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The Director may request supporting information.

Emergency New Rule, R.1991 d.166, effective February 27, 1991 (Expires April 28, 1991).

See: 23 N.J.R. 908(a).

Adopted Concurrent Proposal, R.1991 d.273, effective June 3, 1991.

See: 23 N.J.R. 908(a), 23 N.J.R. 1806(a).

Provisions of emergency new rule R.1991 d.166 readopted without change.

Recodified from N.J.A.C. 18:35-1.26 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-6.3 Signatures required on gross income tax return

(a) Each return shall carry a signature by the taxpayer certifying that all statements contained therein are true, under the same penalties as for perjury committed.

(b) A taxpayer or tax return preparer who electronically transmits an income tax return, or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act, via the NJ TeleFile or WebFile systems shall be presented with the following statement: "New Jersey law requires that all income tax returns be signed before they are submitted." This statement will be followed with instructions prompting the taxpayer or tax return preparer as to the manner in which the taxpayer or tax preparer may satisfy this requirement via telephone or web-based medium.

(c) A taxpayer who wishes to transmit the return through electronic filing using the Federal/State e-file For Tax Professionals must satisfy the signature requirement in the manner prescribed by the Director.

R.1982 d.258, effective August 16, 1982.

See: 14 N.J.R. 332(a), 14 N.J.R. 921(b).

Repealed by R.1988 d.299, effective July 5, 1988.

See: 20 N.J.R. 514(a), 20 N.J.R. 1571(a).

This section was "Exclusion of interest income on All-Savers Certificates".

New Rule, R.1997 d.406, effective October 6, 1997.

See: 29 N.J.R. 2808(a), 29 N.J.R. 4339(a).

Recodified from N.J.A.C. 18:35-1.16 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Amended by R.2000 d.246, effective June 19, 2000.

See: 32 N.J.R. 1153(a), 32 N.J.R. 2258(c).

Rewrote (c) through (f).

Amended by R.2005 d.444, effective December 19, 2005.

See: 37 N.J.R. 429(a), 37 N.J.R. 5052(a).

Rewrote the section.

18:35-6.4 Electronic filing methods

(a) A taxpayer or tax return preparer may transmit electronically any income tax return or other information required or permitted to be filed with the Division for the purposes of the Gross Income Tax Act. Electronic transmissions may be made using applications provided by the Division, including the Division's telephonic application, NJTeleFile, and the Division's web-based application, NJWebFile, the Federally-approved electronic filing application known as Federal/State e-file For Tax Professionals or through any other electronic method made available by the Division or approved by the Division.

(b) Beginning with the 2004 taxable year, tax preparers that prepared or filed more than 200 individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(c) For the 2006 taxable year, preparers that have prepared or filed more than 100 individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable. As a result of

changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(d) For the 2007 and later taxable years, preparers that have prepared or filed more than 50 individual gross income tax resident returns for a prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(e) As used in this section, "tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under Title 54 or Title 54A of the New Jersey Statutes.

(f) If (b), (c), and/or (d) above are applicable to a tax preparer, and if a taxpayer chooses not to have his or her return electronically filed by his or her tax preparer, both the taxpayer and the preparer must complete an E-File Opt Out Request Form (NJ-1040-O). The tax preparer is required to

keep the completed and signed E-File Opt Out Request Form in his or her files and available for inspection by a representative of the New Jersey Division of Taxation.

New Rule by R.2005 d.444, effective December 19, 2005.
See: 37 N.J.R. 429(a), 37 N.J.R. 5052(a).

SUBCHAPTER 7. WITHHOLDING AND REPORTING OF TAX

18:35-7.1 Employee defined

(a) For the purposes of N.J.A.C. 18:35-7.2, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following: