

**CHAPTER 2
GENERAL POLICIES AND PROCEDURES**

Authority

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

Source and Effective Date

R.2003 d.347, effective July 28, 2003.
See: 35 N.J.R. 2164(a), 35 N.J.R. 3847(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, General Policies and Procedures, expires on January 24, 2009. See: 40 N.J.R. 2101(a).

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, Source and Effective Date.

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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.

2. In the event that any State tax remains unpaid following the issuance of the certificate of debt and the Director takes any further collection action, including but not limited to, referral of the matter to the Attorney General, the greater of 10 percent of the tax or \$200.00;

3. In the event that any State tax remains unpaid and suit is instituted against the taxpayer for collection of the tax, the greater of 20 percent of the tax or \$500.00.

(c) In determining whether the Director shall impose the actual cost of collection or a fee in lieu thereof, the following factors shall be among those considered:

1. Whether the taxpayer fails to properly maintain books and records as required;

2. Whether the taxpayer fails to make books and records available for examination;

3. Whether the taxpayer fails to secure proper license or fails to register with the Division of Taxation as required;

4. Whether the taxpayer operates under a voided corporate charter or after the revocation of authority to do business in New Jersey;

5. Whether the taxpayer remits payment which subsequently became dishonored or defaults on a bond or other security posted with the Division or on a Deferred Payment Plan;

6. Whether the Director finds that a taxpayer intends to leave this State, or to remove therefrom possessions, or any property subject to any State tax; or that taxpayer does any other act tending to prejudice, delay or negate proceedings to assess, collect, or pay any State tax;

7. Whether the taxpayer fails to collect, or truthfully account for, or file a return or file any other information as required;

8. Whether the taxpayer's non-compliance induces the Division of Taxation to issue a Warrant for Execution.

(d) In the event that any State tax remains unpaid and the Director refers a taxpayer's account to a private person, company, association or corporation providing debt collection services prior to the entry of a certificate of debt, the Director may impose a referral cost recovery fee as follows:

1. In the amount of 10 percent of the amount referred for collection to the private debt collection service; or

2. If the contract for the private debt collection service has been publicly bid pursuant to N.J.S.A. 52:34-6 et seq., and the contract provides that the compensation to be paid by the State to the provider of private debt collection services is a specified percentage of the debt collected or to be collected, the referral cost recovery fee shall be equal to the percentage specified in the contract.

(e) Any fees imposed as cost of collection or in lieu thereof or as a referral cost recovery fee shall be in addition to any interest or penalties, or both, otherwise provided by law, shall be payable to and recoverable by the Director, along with all penalties and interest as if they were part of the tax imposed.

(f) Interest or penalties shall not be assessed against any fees imposed as cost of collection or in lieu thereof or as a referral cost recovery fee; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date they are paid.

(g) For the purposes of calculating the percentage of the tax to be imposed in lieu of a fixed fee or the actual cost of collection, the tax shall mean: unpaid tax, penalties and interest.

Amended by R.2003 d.26, effective January 21, 2003.

See: 34 N.J.R. 2958(b), 35 N.J.R. 416(a).

In (a)6. inserted "subsequent to the entry of a certificate of debt" following "State of New Jersey"; added a new (d); recodified former (d) and (e) as (e) and (f) and inserted "or as a referral cost recovery fee" following "in lieu thereof"; recodified former (f) as (g).

18:2-2.6 Assessment of tax

(a) Upon audit or investigation of a return that has been filed, where it is determined that there is a deficiency with respect to the payment of any tax due, the additional taxes shall be assessed together with penalties of five percent of the additional tax and interest at the rate in effect immediately prior to October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975, to the date of payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest shall be charged at the annual rate of five percentage points above the prime rate, compounded daily from the later of the date the tax was originally due or December 9, 1987, to the date of payment. On and after July 1, 1993, interest shall be charged at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year, from the date the tax was originally due to the date of actual payment. Beginning January 1, 1993, tax, penalty and interest will be added together to become the basis for further calculations of interest. The taxpayer shall be given notice of such assessment and a demand made upon him for payment. The following are examples of interest and penalty liability:

1. On June 15, 1974, a taxpayer filed a return. On February 15, 1976, the taxpayer was notified of an additional assessment and a demand was made upon him for payment. The additional tax bears interest at the rate of one percent per month or fraction thereof from the date the tax was originally due to October 1, 1975, and at the rate of 1½ percent per month or fraction thereof from October 1, 1975, to the date of payment. In addition, taxpayer is subject to penalties of five percent of the additional tax. This example applies only to tax liabilities

incurred prior to January 1, 1987 and paid prior to December 8, 1987, the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76.

2. Corporation X was a fiscal year taxpayer whose year ended July 31, 1984. The final return was due and filed on November 15, 1984. Upon audit in July, 1987, it was determined that there was a \$1,000 deficiency with respect to tax due. If Corporation X pays the deficiency on the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76, which ends December 8, 1987, the following amounts would be due:

Deficiency assessed:	\$1,000.00
Simple interest calculated at nine percent per annum* from November 16, 1984 through December 8, 1987	<u>\$ 275.75</u>
Total due	<u>\$1,275.75</u>

* Through statutory interest to December 8, 1987 was 18 percent, P.L.1987, c. 76 mandates a nine percent rate for debts paid during the 90 day amnesty period.

3. Corporation X fails to pay the deficiency assessed within the amnesty period. When payment is made on May 6, 1988 the taxpayer remits \$1,746.63 which represents the following amounts:

Deficiency assessed:	\$1,000.00
Late payment penalty: five percent of the balance of tax due	\$ 50.00
Simple interest calculated at the rate of one and one-half percent per month from November 16, 1984 through December 8, 1987	<u>\$ 555.00</u>
	<u>\$1,655.00 PLUS</u>

Interest on \$1,655.00, calculated at an annual rate of the prime rate plus five percentage points compounded daily from December 8, 1987 until the date of payment (May 6, 1988). The applicable prime rate shall be the rates effective on July 1, 1987, October 1, 1987 and January 1, 1988. For the purposes of this example the prime rate is assumed to be:

July 1, 1987	8.25 percent	
October 1, 1987	8.75 percent	
January 1, 1988	9.00 percent	<u>\$ 91.63</u>
Total		<u>\$1,746.63</u>

4. Taxpayer's gross income tax return was due on April 15, 1994 and filed on October 24, 1994. A Notice and Demand is sent by the Division to the taxpayer on December 30, 1994. Payment is made on February 15, 1995. Interest will be calculated from April 15, 1994 to February 15, 1995 at the rate of three percent above the prime rate for each month or fraction thereof. Accrued interest computed for the period January 1, 1995, through February 15, 1995, shall be calculated on the total of the tax, penalty (if any) and accrued interest calculated from April 15, 1994 through December 31, 1994. In addition, late filing and late payment penalties may be imposed on the balance of the tax due.

(b) For tax liabilities accruing on and after July 1, 1993, no assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. Any unexpired fifth year of a five year period of limitation or unexpired extended period delineated by written consent of a taxpayer remaining on July 1, 1993 shall remain in full force and effect. If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consent in writing made before the expiration of the extended period. The consent of a taxpayer to extend the period of assessment shall extend the period in which the taxpayer may file a refund claim with respect to the identical taxes and tax periods for which the limitations periods have been expressly extended by written consent of the taxpayer. For purposes of this subsection, a return filed before the last day prescribed by law or by rules promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day. A return or refund claim is deemed filed with the Division of Taxation in the Department of the Treasury, unless a different agency is specified by law, pursuant to the postmark rule of N.J.S.A. 54:49-3.1 and N.J.A.C. 18:2-4.1.

(c) The Gross Income Tax Act provides for three year and six year periods of assessment.

1. Pursuant to N.J.S.A. 54A:9-4, additional gross income tax shall be assessed within three years after the return was filed, or deemed filed if filed prior to the date prescribed, whether or not such return was filed after the date prescribed. Additional gross income tax may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade tax, or the taxpayer fails to comply with N.J.S.A. 54A:8-7, in not reporting a change or correction in Federal taxable income as reported on the taxpayer's Federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for Federal income tax purposes, or in not filing an amended New Jersey return within 90 days of filing an amended Federal income tax return.

2. Additional gross income tax may be assessed at any time within six years after the return was filed if:

i. An individual omits from New Jersey income an amount properly includible therein which is in excess of 25 percent of the amount of New Jersey income stated in the return; or