

## 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:

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>

\* 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).

**18:2-4.11 Foreign postmark**

If the envelope or wrapper containing the document or payment is mailed from a foreign country and received by the Division, the date of the official postmark stamped on the envelope or wrapper will be deemed to be the date of filing or payment. The envelope or wrapper must be properly addressed, have sufficient postage prepaid and bear a date stamped by such foreign country's official postal service which is within the prescribed period or on or before the prescribed date for filing or paying (including any valid extensions of time).

**18:2-4.12 Weekend and holiday**

For purposes of this subchapter, when the last day prescribed (including any extensions of time) for filing a document, making a payment, or performing any act falls on a Saturday, Sunday or a day which is a legal holiday in the State of New Jersey, the performance of such acts will be considered timely if performed on the next succeeding business day.

**SUBCHAPTER 5. REFUNDS****Authority**

N.J.S.A. 54:50-1 and 54:49-12.5.

**Source and Effective Date**

1996 d.54, effective February 5, 1996.  
See: 27 N.J.R. 4163(a), 27 N.J.R. 892(a).

**18:2-5.1 Purpose**

This subchapter provides rules for the administration of refund procedures pursuant to the applicable provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

**18:2-5.2 Claims for refund; when allowed**

(a) Taxpayers may claim a refund for overpayment of taxes by filing a return or a Claim for Refund form (A-3730).

(b) For claims accruing prior to July 1, 1993, any taxpayer may file a claim for refund within two years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is imposed by the law imposing a particular tax statute.

(c) For claims accruing on and after July 1, 1993, any taxpayer may file a claim for refund within four years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is fixed by the law imposing a particular tax statute. All claims barred by the applicable statute of limitations on July 1, 1993 shall continue to be barred.

(d) The statute of limitations period for filing a claim for refund of gross income tax is three years after the return is filed or two years after the tax is paid, whichever is later.

(e) The Transfer Inheritance Tax Law generally provides for a three year statute of limitations on applications for refunds. See N.J.A.C. 18:26-10.12.

**18:2-5.3 Claim not required or permitted until final determination**

(a) No claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director, or after appeal proceedings have been commenced, until such protest or appeal has been finally determined. Should the protest or appeal with respect to a tax paid be finally determined in favor of the taxpayer, then the refund claim shall be processed by the Director in accordance with the Director's final determination after protest or the judgment of the Tax Court upon appeal.

(b) The provision in (a) above, not permitting or requiring refund claims to be filed, does not apply to any tax paid which is not implicated by, or the subject of, a protest duly filed with the Director, or appeal proceedings duly commenced in the Tax Court. In the case of such taxes paid, a refund claim may be filed pursuant to N.J.S.A. 54:49-14 and N.J.A.C. 18:2-5.2.

**18:2-5.4 Credit against outstanding tax liabilities**

(a) In examining a claim for refund, if it is determined that there has been an overpayment of tax, the amount of the overpayment and interest on the overpayment, if any, will be credited against any outstanding State tax liability of the taxpayer. If there is no outstanding State tax liability, the taxpayer will be entitled to a refund of the overpayment and interest on the overpayment, if any.

(b) Refunds or credits of erroneous or illegal tax payments for which no refund claims have been filed will be made strictly according to the provisions of N.J.S.A. 54:49-16.

**18:2-5.5 Items previously assessed**

Except as provided by N.J.A.C. 18:2-5.7, no claim for refund shall be permitted for items which were previously the subject of an assessment by the Director where the taxpayer was permitted 90 days to protest the assessment pursuant to N.J.S.A. 54:49-18, or similar provisions of any particular tax statute. Failure to timely protest the assessment shall be deemed a waiver of the taxpayer's right for review of that item.

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