

CHAPTER 11
UNINCORPORATED BUSINESS TAX

Authority

Unless otherwise expressly noted, all provisions of this Chapter 11 were adopted by the Director, Division of Taxation, Emergency Transportation Tax Bureau, pursuant to authority delegated at N.J.S.A. 54:11B-1 et seq. The Unincorporated Business Tax Act.

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SUBCHAPTER 1. DEFINITIONS

18:11-1.1 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Allocated gross receipts” means gross receipts allocated to this State as provided in N.J.A.C. 18:11-2.9; if no allocation is made of gross receipts capable of being so allocated, “allocated gross receipts” means total gross receipts as defined herein.

“Director” means the Director, Division of Taxation, in the Department of the Treasury, State of New Jersey.

“Gross receipts” means and includes all receipts of whatever kind and in whatever form, derived by an unincorporated business, without any deduction therefrom on account of any item of cost, expense or loss except that gross receipts does not include the sales price of property returned by customers to the extent that the sales price thereof is refunded either in cash or by credit. (See Sections 2.1 through 2.7 of this Chapter.) With respect to gross receipts received or accrued on and after January 1, 1975, and applicable to taxpayers reporting on the basis of the calendar year 1975 and fiscal years ending on and after December 31, 1974, and not later than June 30, 1976, retail dealers of motor fuels shall be entitled to a deduction of 100 per cent of the amount of Federal and New Jersey motor fuel taxes which were paid on motor fuel purchased by said dealers and which were included in the cost to the retail dealers on the purchase of said motor fuel. (See N.J.A.C. 18:11-2.1(c).)

“Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxpayer files a return for Federal income tax purposes. “Taxable year” means, in case of a return made for a fractional part of a year, the period for which such return is made.

1. “Calendar year” means an accounting period of 12 months which ends on the last day of December;
2. “Fiscal year” means an accounting period of 12 months ending on the last day of any month other than December.

“Taxpayer” means any person (individual or unincorporated entity) subject to the Unincorporated Business Tax.

“Total gross receipts” means gross receipts derived from all sources without regard to allocation to this State as provided in Subchapter 4 of this Chapter.

“Unincorporated business” means and includes any trade, business, profession or occupation conducted or practiced for profit in whole or in part within this State by an individual or other unincorporated entity not subject to the Corporation Business Tax Act (P.L. 1945, c.162) or the Financial Business Tax Law (P.L. 1946, c.174), except as provided in N.J.A.C. 18:11-2.11 through 18:11-2.22.

As amended, R.1976 d.173, eff. June 3, 1976.
See: 8 N.J.R. 259(c), 8 N.J.R. 356(c).

Statutory References

As to definitions, see N.J.S.A. 54:11B-2 and N.J.S.A. 54:11B-25.

SUBCHAPTER 2. GENERAL PROVISIONS

18:11-2.1 Gross receipts

(a) The term “gross receipts” is designed to include each and every business receipt derived by an unincorporated business, regardless of the kind of receipt or the form it may take.

(b) No deductions except as provided in subsection (c) of this Section are permitted in arriving at the calculation of gross receipts, since the tax is a gross tax and, therefore, the cost of items may not be deducted nor may any other item, such as, expenses or losses incurred.

Example: X, a cash basis calendar year taxpayer, is the owner of a retail grocery store operating as a sole proprietorship. The total of all the sales made for the year 1969 is \$125,000. The cost of the goods sold was \$110,000, operating expenses for the year \$2,000 in rent, \$500.00 for utilities and a loss of \$200.00. There were no other amounts received by him except \$150.00 in interest from savings in X's personal savings account. The amount of gross receipts to be reported by X for 1969, and upon which the tax is to be paid is \$125,000. X may not deduct any of the other expenses nor the loss incurred in the business. X need not include the \$150.00 of interest since this was not a business receipt on an account in the business name, but a personal nonbusiness item.

(c) Retail dealers of motor fuels shall be entitled to a deduction from gross receipts of 100 per cent of the amount of Federal and New Jersey motor fuel taxes which were paid on motor fuel purchased by said dealers and which were included in the cost to the retail dealers on the purchase of said motor fuel. The deduction shall be applicable with respect to gross receipts received or accrued on and after January 1, 1975, and shall be applicable to taxpayers reporting on the basis of the calendar year 1975 and fiscal years ending on and after December 31, 1974, and not later than June 30, 1976.

As amended, R.1976 d.173, eff. June 3, 1976.
See: 8 N.J.R. 259(c), 8 N.J.R. 356(c).

Statutory References

As to gross receipts, see N.J.S.A. 54:11B-2 and N.J.S.A. 54:11B-25.

18:11-2.2 Sales price of property returned is excluded from gross receipts

The sales price of property returned by customers for which a refund or a credit is granted is specifically excluded from gross receipts, but only up to the amount of the refund granted or the credit given. However, the use of any credit given, to purchase or acquire goods either within the taxable year or any other taxable year, must be included in gross receipts.

Example (1):

The same facts as stated in the example in Section 2.1 (Gross receipts) of this Chapter, except that X has had an item returned by Y and has given a refund or credit of \$500 to Y. X would exclude this receipt from the total of gross receipts for the year 1969.

Example (2):

The same facts as stated in the *Example* in Section 2.1 (Gross receipts) of this Chapter, except that X has had damaged goods returned and granted a credit of \$5.00 to Y. The same result as the previous *Example* of this Section, however, if Y returns in 1969 and purchases goods totaling \$5.00 in gross receipts. Likewise, if Y returns in any other taxable year, and uses the \$5.00 credit, X must include the \$5.00 in that taxable year.

18:11-2.3 Gross receipts of real estate brokers¹

(a) In the case of real estate brokers, gross receipts shall include the commissions and fees received by them for services rendered in promoting the purchase and sale of real property for others. A broker may exclude from gross receipts any commission refunded, paid or divided with another independent broker on account of a contract or purchase or sale initiated, executed or cleared in conjunction with such other independent broker except where one broker is the employee (as defined in Section 2.15 (Employees not subject to tax) of this Chapter) of another broker.

(b) In no event, may a broker exclude from gross receipts the salaries and/or commissions paid to employees or any other expense whatsoever. A broker may not exclude from gross receipts any commissions paid to a real estate salesman regardless of whether the salesman is an independent contractor.

(c) For the purpose of the Act, rentals, whether under a gross lease or a net lease, are deemed to be business income which must be included in gross receipts.

¹ Formerly Ruling 1, Division of Taxation filed December 1, 1967.

Statutory References

As to gross receipts derived from brokers and rental of real property, see N.J.S.A. 54:11B-2.

Case Notes

Partnership formed to acquire and net lease an office building held not a business within the context of the Unincorporated Business Tax Act; rule providing that gross lease rentals are business income considered not meritoriously challengeable. *Newark Building Associates v. Director, Div. of Taxation*, 128 N.J.Super. 535, 320 A.2d 867 (App.Div. 1974).

18:11-2.4 Taxpayers engaged in profession may exclude from gross receipts certain receipts¹

In any case where the taxpayer is engaged in the legal profession, the architectural profession, or a profession which involves the rendition of professional services, the taxpayers may exclude from their gross receipts the following receipts in accordance with Sections 2.5 (Legal profession), 2.6 (Architectural profession), 2.7 (Other profession) of this Chapter.

¹ Formerly Ruling 2 and 3 of the Division of Taxation, effective January 1, 1967.

18:11-2.5 Taxpayers engaged in legal profession may exclude from gross receipts reimbursed disbursements and canon 34 payments

Taxpayers engaged in the legal profession may exclude from gross receipts the following:

(a) *Reimbursed disbursements.* A disbursement by the taxpayer which is reimbursed by the client, if all of the following conditions are satisfied:

1. The disbursement was actually made or liability for the disbursement actually incurred by the taxpayer;
2. The disbursement was made by the taxpayer on behalf of a specific client in connection with a specific matter of said client, as distinguished from a general overhead expense of the taxpayer; and
3. The disbursement is segregated from the fee for legal services in the invoice rendered to the client and particularized therein by category provided however, that this requirement shall not apply to any invoice rendered prior to January 1, 1968.

(b) *Canon 34 payments.* Any portion of the legal fee received by the taxpayer from a client which is actually paid by the taxpayer to a member of the Bar of any state, District of Columbia, territory or possession of the United States, foreign country or subdivision thereof based upon a division of service or responsibility, within the meaning of Canon 34 of the Canons of Professional Ethics of the American Bar Association.

18:11-2.6 Taxpayers engaged in architectural profession may exclude from gross receipts reimbursed disbursements and shared receipts

Taxpayers engaged in the architectural profession may exclude from gross receipts the following:

(a) *Reimbursed disbursements.* Disbursements by the taxpayer on behalf of his client for costs of official permits, filing fees, application fees and approvals paid to Municipal, County, State and Federal Agencies which are reimbursed by the client and all of the following conditions are satisfied:

1. The disbursement was actually made or liability for the disbursement actually incurred by the taxpayer;
2. The disbursement was made by the taxpayer on behalf of a specific client in connection with a specific matter of said client, as distinguished from a general overhead expense of the taxpayer; and
3. The disbursement is segregated from the fee for architectural services in the invoice rendered to the client, and particularized therein by category, provided, however, that this requirement shall not apply to any invoice rendered prior to January 1, 1968.

(b) *Shared receipts.* Where two or more architects are associated on a specific project and share the fees based upon a division of service and responsibility, and the total fee is paid by the client to one of the architects who dispenses proportionate shares to his associated architects in accordance with pre-established contractually agreed percentages, each architect shall report as gross receipts only his portion of the total fee.

18:11-2.7 Other professions may exclude advances or reimbursements from gross receipts

(a) In any case where the taxpayer is engaged in a profession or the rendition of other personal services other than the legal profession or architectural profession (see Sections 2.5 (Legal profession) 2.6 (Architectural profession) of this Chapter) gross receipts shall include all compensation received by him for services rendered in any capacity other than as an employee.

(b) A taxpayer may exclude from gross receipts money or credit received as an advance or as reimbursement. The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.

18:11-2.8 Production of records

In support of the exclusions from the gross receipts claimed under Sections 2.1 through 2.7 of this Chapter, the taxpayer shall upon request, produce books, records, papers, vouchers, accounts and documents as may pertain to such exclusions including:

1. Copies of invoices rendered to taxpayer's clients; and
2. Cancelled checks, receipts, or other written evidence, or written record made in the ordinary course of taxpayer's business, showing taxpayer's disbursements on behalf of his clients.

Statutory References

As to maintenance of documents, see N.J.S.A. 54:11B-10.

18:11-2.9 Allocated gross receipts

(a) The Act permits a taxpayer, maintaining a regular place of business as defined in Section 4.2 (Regular place of business) of this Chapter outside the State of New Jersey during a part or all of the taxable year, for which he files a return, to include in the computation of gross receipts only the following:

1. Sales of tangible personal property located within this State at the time of the receipt of or appropriation to the orders, where shipments are made to points within this State; (See Section 4.4 (Allocation of receipts) of this Chapter).
2. Sales of tangible personal property located outside the State at the time of the receipt of or appropriation to the orders, where shipments are made to points within this State; (See Section 4.5 (Sales of tangible personal property located out of New Jersey) of this Chapter).
3. Services performed within this State;
4. Rentals from property situated (or located) within this State, and, royalties from the use of patents or copyrights within this State; and,
5. All other business receipts earned within this State.

(b) In the case where a taxpayer maintains a regular place of business outside the State during a part of the taxable year for which a return is filed, allocation may be made only for that part of the taxable year during which the regular place of business outside the State was maintained.

(c) In the instance where a taxpayer is permitted to allocate gross receipts according to paragraph 1 of subsection (a) of this Section, and gross receipts are capable of being allocated with reasonable definiteness by the taxpayer but the taxpayer had made no such allocation within the time permitted for filing a return, allocated gross receipts shall mean the total gross receipts as defined herein.

18:11-2.10 Total gross receipts

(a) The term total gross receipts, means the sum of all gross receipts derived, regardless of the source and without regard to allocation except that the term does not include:

1. Any amounts derived as a result of personal investment by the taxpayer solely for his or its own account, unless hereinafter otherwise indicated; and

2. The receipts by a vendor derived from the sales of goods for export to foreign countries.

(b) For the purpose of the Act, total gross receipts includes the receipts from the sale of capital assets to the extent that the selling price of such capital assets exceeds the capital investment.

Example (1):

Mr. X., a cash basis calendar year taxpayer, is the sole owner of an unincorporated toy company located in New Jersey. For the calendar year 1969, the toy company had gross receipts of \$200,000 from sales made in New Jersey and \$175,000 of gross receipts from sales made to retailers out-of-state.

Further Mr. X received \$15,000 from the sale of stock he had purchased out of his personal funds held in his personal account, and the toy company sold a piece of land adjacent to the toy company factory in New Jersey for \$20,000 having paid \$12,000 for the property five years ago. The total gross receipts for the taxable year 1969 would be \$383,000, computed as follows: \$375,000 representing the gross receipts from sales made by the toy company and \$8,000 from the sale of real estate by the toy company. The \$15,000 received by Mr. X from the sale of stock is not a gross receipt since it represented a personal investment derived from Mr. X's personal account.

Example (2):

Same facts as example (1) of this Section except that the \$15,000 received from the sale of stock was received by the toy company, the funds used for investment belonged to the toy company and the account was in the toy company name. The total gross receipts for the taxable year 1969 would be \$398,000 instead of \$383,000 as this was not an investment of X's personal funds for his personal account.

Example (3):

Same facts as example (1) of this Section except that instead of \$200,000 in sales made in New Jersey there were \$150,000 in sales made in this State and \$50,000 in sales to dealers in foreign countries which were shipped for export from New Jersey. The total gross receipts for the taxable year 1969 would be \$333,000. The \$50,000 received from export sales are excluded.

Statutory References

As to total gross receipts, see N.J.S.A. 54:11B-2(d).

18:11-2.11 Unincorporated business

An unincorporated business includes any trade, business, profession or occupation conducted or practiced for profit in whole or in part within this State by any individual or any unincorporated entity not subject to the Corporation Business Tax Act (P.L. 1945, c.162) or the Financial Business Tax Law, (P.L.1946, c. 174).

1. The receipt of any rentals from any source within this State shall be considered the conduct of business;

2. The activities (operation) of an estate or trust shall be considered the conduct of a business in the same manner and to the same extent as an individual taxpayer hereunder.

Example (1):

Y, a calendar year cash basis taxpayer, is an employee of Z Company. Y has no other income except the receipt of rent totaling \$440 per month from a four family home which he owns individually. Y is considered to be in a business to the extent of the total rental receipts and therefore is liable for the payment of the tax under the Act up to the amount of all the rents collected (\$5,280.00).

Example (2):

T is a cash basis calendar year trust. For the calendar year 1969, T received the following amounts; \$10,000 in dividends from stock in its portfolio; \$15,000 in rent from the lease of a factory owned by the trust, and \$40,000 of tax exempt interest from its municipal bonds. T is considered to be conducting an unincorporated business to the extent of the rentals received and therefore, T would be liable for the tax under the Act to the extent of these rentals.

Example (3):

Same facts as example (2), except that the factory is owned by a partnership, in which T is a partner. T would not be subject to the Unincorporated Business Tax, however, the partnership would be subject and must file a return.

18:11-2.12 Exemptions for unincorporated business

(a) A trust organized under Sections 401(a) and 501(a) of the Internal Revenue Code which operates an employee pension, profit sharing or stock bonus plan qualified and exempt by the United States Treasury Department is not subject to the Act. The trust, in order to qualify for exemption under the Act, however, must file a copy of the United States Treasury ruling determining its exempt status, with the Director, and upon receipt of the ruling the trust will no longer be required to file a return for any year in which it remains an exempt trust for Federal Income Tax purposes.

(b) An unincorporated entity which qualifies as an exempt, nonprofit organization under Section 501 (c) of the Internal Revenue Code, shall be exempt from the provisions of the Act upon filing a copy of the United States Treasury ruling determining its exempt status, with the Director. Nothing herein contained, however shall be considered to exempt such organization from the provisions of the Act with respect to its "unrelated business gross receipts."

18:11-2.13 Definition of "unrelated business gross receipts"

"Unrelated business gross receipts" means, in the case of an exempt, nonprofit organization, any gross receipts derived from the conduct of any trade or business which is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501 (c) of the Internal Revenue Code, except that the term does not include any trade or business:

1. In which substantially all the work in carrying on trade or business is performed for the organization without compensation; or,
2. Which is carried on, in the case of a charitable or educational organization or in the case of a college or university by the organization primarily for the convenience of its members, students, patients, officers, or employees; or,
3. The selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

Statutory References

As to Gross Receipts, see N.J.S.A. 54:11B-2 (b).

18:11-2.14 Determination of unrelated business gross receipts

Whether or not an organization has unrelated business gross receipts shall be determined, in a particular case, upon the facts and circumstances involved.

18:11-2.15 Joint venture not subject to tax

(a) A joint venture which, for purposes of the Act, means a profit seeking business medium formed to carry out a specific purpose or a single transaction for a limited period of time by two or more individuals, (including corporations or partnerships), shall not be considered, in itself, an unincorporated entity so as to be subject to the provisions of the Tax Act. However, the business gross receipts derived from a joint venture are taxable, under the Act, to each individual member of the joint venture according to his respective interest and includible in the individual's return for the taxable year for which such individual files a return.

(b) Whether or not a business medium constitutes a joint venture will depend on the facts and circumstances in a particular case.

18:11-2.16 Employees not subject to tax

(a) Any individual performing services in the capacity of an employee is not deemed to be conducting an unincorporated business, and, therefore, is excluded from the Act.

(b) An individual shall be considered an "employee" if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

(c) Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient if he has the right to do so. In addition to the above, the following factors and other pertinent information shall be considered in determining the status of an individual as an employee:

1. Selection and engagement of the individual;
2. Payment of wages, salaries or other compensation;
3. Power to discharge;
4. Furnishing of tools and/or place of work;
5. Payment of social security, unemployment compensation taxes and withholding of Federal income taxes.

18:11-2.17 Fiduciaries, officers or directors not subject to tax

(a) Any fiduciary, (receiver, referee, trustee, assignee or any officer or agent appointed by any court to conduct the business or conserve the assets of any taxpayer) or officers or directors of a corporation is not deemed to be conducting an unincorporated business as such under the Act. However, if these services are regularly performed by any individuals in these capacities as a result of regular solicitation for such services and a substantial portion of time is spent in the performance of these services, then the services shall be deemed to constitute a business regularly carried on by the individual as a principal.

(b) Any receiver, referee, trustee, assignee or other fiduciary or any officer or agent whether or not appointed by any court, entrusted with the conduct of a business or the conservation of the assets of any taxpayer, shall be responsible, for the filing of a return in the name of the taxpayer or unincorporated entity and the payment of the tax as provided by the Act.

Example (1):

Mr. L is a cash basis calendar year attorney. During 1969 he received commissions totaling \$8,000 for services as a trustee, executor and receiver. These commissions are subject to the Act and are to be included in the total gross receipts for the year since Mr. L is deemed to be in business and these services constitute a part of the business.

Example (2):

Same facts as example (1) except that Mr. L is not an attorney but solicits for services as a trustee, is regularly appointed a trustee and spends a substantial portion of his time engaged in the activity. In these circumstances Mr. L is deemed to be conducting a business as a principal so that all the receipts received from the activity are subject to the Act.

18:11-2.18 Positions regarded as within status of employee

(a) For purposes of the Act, real estate salesmen are deemed to be employees and are not required to report commissions received by them as their share for negotiating the sale or lease of property.¹

(b) Remuneration paid for services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duty required by the order.

1. Service performed by a minister in the exercise of his ministry includes ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of the organizations) under the authority of a religious body constituting a church or church denomination;

2. If a minister is performing the service in the conduct of religious worship or the ministration of sacerdotal functions, this service is in the exercise of his ministry whether or not it is performed for a religious organization.

¹ Formerly Ruling 1 of the Division of Taxation filed December 1, 1967.

18:11-2.19 Single isolated transactions not equivalent to conduct of business

(a) In addition to the rule stated in subsection (a) of Section 2.10 (Total gross receipts) of this Chapter, the purchase, sale or exchange of property by an individual or unincorporated entity solely for his or its own account and not as part of a business regularly carried on by the taxpayer or unincorporated entity shall not be deemed to be the conduct of an unincorporated business by such individual or unincorporated entity.

(b) The term property as used in this Section does not include:

1. Stock in trade of the taxpayer or unincorporated entity, or other property of a kind which would properly be included in the inventory of the taxpayer or unincorporated

entity if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his or its trade or business;

2. All real or personal property used in his or its trade or business;

3. Accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph 1 of this subsection.

(c) This Section shall not apply to any unincorporated entity which is taxable as a corporation for Federal Income Tax purposes.

(d) The taking of a mortgage by an individual or unincorporated entity in a single mortgage transaction shall not be deemed to constitute engaging in an unincorporated business. Where a mortgage has receipts from several mortgages, it will be a question of fact to be determined on the basis of the surrounding facts and circumstances whether his or its mortgage activities constitute the conduct of an unincorporated business.¹

(e) The purchase, sale or exchange of property in a single transaction is not deemed to constitute the conduct of a business. However, where an individual or unincorporated entity has several receipts from the purchase, sale or exchange, it will be a question of fact as to whether the individual is conducting a business. Determination shall be made on the basis of the facts and circumstances in a particular case.

Example (1):

Mr. F, an individual operates a hardware store as a sole proprietorship, he also owns a vacant lot near his home under his own name which he bought several years ago and sold during 1969. The sale of this lot would not be deemed a business and therefore the proceeds received from the sale would not be subject to the Act.

Example (2):

Same facts as example (1), except that instead of Mr. F the property was owned by A.B., a partnership. The sale would be includible in the gross receipts of the partnership as this is deemed a receipt of the business and therefore a business receipt.

Example (3):

Same facts as Example (1), except that the business and the land and building occupied by Mr. F in the conduct of his hardware store were sold. The proceeds of the sale would not be includible in gross receipts.

Example (4):

T, a trust had two parcels of property as a part of the corpus. During 1969, T sold one parcel. None of the proceeds of this sale would be considered a business gross receipt nor would T be considered to have been engaged in a business based solely on the sale.

Example (5):

T owned 20 parcels of land which formed a substantial portion of the trust corpus. During 1969, T sold all the parcels by advertising them, and placing signs on the property. It would be a question of fact to be determined by further information whether these sales would be deemed the conduct of a business and the proceeds received, business receipts.

¹Formerly Ruling 1 of the Division of Taxation filed December 1, 1967.

18:11-2.20 Taxpayer with two or more unincorporated businesses under identical ownership

(a) For the purposes of the Act, if a taxpayer is engaged in the conduct of two or more unincorporated businesses having identical ownership, all such businesses are treated as one unincorporated business.

(b) If a single individual conducts two or more unincorporated businesses under his sole ownership, those businesses are deemed to be one business so that the total gross receipts of all his businesses are combined and regarded as the total gross receipts of a single business.

Example (1):

A, an individual, is the sole owner of the "X Contracting Company", the "Y Plumbing Company", and the "Z Grocery Company", no one other than A has any proprietary interest in these businesses. The gross receipts of X Company, Y Company and Z Company, must be combined on a single return and reported as one business.

Example (2):

Same facts as example (1) except that the "Z Grocery Company" is owned by A, and B, his wife. The total gross receipts of Z Company are now to be reported as a separate business on a separate return.

Statutory References

As to Unincorporated Business, see N.J.S.A. 54:11B-2(e).

18:11-2.21 Unincorporated entity with two or more unincorporated businesses

In the case of an unincorporated entity which carries on two or more unincorporated businesses under the same ownership, the rule stated in subsection (b) of Section 2.20 (Two or more unincorporated businesses) of this Chapter is also applied so that the total gross receipts of all such businesses must be consolidated and reported on one return as in the instance of a single unincorporated business.

Example (1):

A and B, partners, each own $\frac{1}{2}$ the total interest on several unincorporated businesses under the names of "A and B Hardware Company", "T Realty Company", and "P Exterminating Company". The total gross receipts of all these business must be reported on a single return for the partnership. If B owned 30 per cent of the "P Company", the total gross receipts of this business is to be excluded from the partnership return and reported on a separate partnership return.

Example (2):

Same facts as example (1), however, A, B and C own equal interests in "T Company". As a result the total gross receipts of "T Company" must be reported on a separate return.

Statutory References

As to Unincorporated Business, see N.J.S.A. 54:11B-2(e).

18:11-2.22 Taxpayer with two or more unincorporated businesses not under identical ownership

Where a taxpayer carries on two or more unincorporated businesses neither of which has the identical ownership of the other, each such unincorporated business is regarded as a separate and distinct business and a separate return must be filed for each business.

Statutory References

As to Unincorporated Business, see N.J.S.A. 54:11B-2(e).

18:11-2.23 through 18:11-2.26 (Reserved)**SUBCHAPTER 3. TAX IMPOSED****18:11-3.1 Computation of tax**

(a) Under the Act, any taxpayer engaged in the conduct of an unincorporated business is subject to an annual excise tax at the rate of one quarter of one per cent on the gross receipts allocated to this State for the taxable year.

Example (1):

Mr. "B", a cash basis calendar year taxpayer, owns and operates "B" company. During 1969, total gross receipts were \$30,000 as follows: \$22,000 in receipts from his Newark Office; \$8,000 in receipts from his Plainfield Office; the tax to be paid by Mr. "B" for 1969 will be \$75.00 (\$30,000 x .0025).

Example (2):

Mr. A, a cash basis calendar year taxpayer, owns and operates the "Z Truck Leasing Company" as a sole proprietorship. During 1969 his total gross receipts were \$30,000 as follows: \$22,000 in receipts from his New Jersey Office, \$8,000 in cash receipts from the New York State branch office which has its own trucks, is an unincorporated sole proprietorship under the same name and wholly owned by Mr. A. The tax to be paid by Mr. A for 1969 will be \$55.00 ($\$22,000 \times .0025$) since Mr. A is entitled to allocate the receipts from the New York branch office.

(b) In addition to the tax imposed above by Section 3 of P.L. 1966, c.137 (c. 54:11B-3), there is imposed a temporary tax for the use of the State upon every individual or other unincorporated entity engaged in an unincorporated business an annual excise tax, measured by the gross receipts of such unincorporated business, and allocated to the State as hereinafter provided at the rate of 1/8 of one per cent.

(c) The tax imposed by the supplementary act shall be applicable with respect to gross receipts received or accrued on and after January 1, 1975, and shall be applicable to taxpayers reporting on the basis of the calendar year 1975 and fiscal years ending on and after December 31, 1974, and not later than June 30, 1976, and shall expire June 30, 1976.

(d) For 1975 calendar year taxpayers, the amount of tax due shall be computed by multiplying the amounts of gross receipts by 0.00375 (3/8 of one per cent).

(e) For fiscal year taxpayers the amount of tax due shall be computed by multiplying the amount of gross receipts by the appropriate rate in the table below which applies to your fiscal period:

| Fiscal period ending date: | Rate: |
|---------------------------------------|---------|
| January 31, 1975 | .002604 |
| February 28, 1975 | .002708 |
| March 31, 1975 | .002813 |
| April 30, 1975 | .002917 |
| May 31, 1975 | .003021 |
| June 30, 1975 | .003125 |
| July 31, 1975 | .003229 |
| August 31, 1975 | .003333 |
| September 30, 1975 | .003438 |
| October 31, 1975 | .003542 |
| November 31, 1975 | .003646 |
| December 31, 1975 to June 30, 1976 | .003750 |

As amended, R.1976 d.173, eff. June 3, 1976.
See: 8 N.J.R. 259(c), 8 N.J.R. 356(c).

Statutory References

As to Imposition of Tax, see N.J.S.A. 54:11B-3 and N.J.S.A. 54:11B-24 to N.J.S.A. 54:11B-28.

18:11-3.2 Method of accounting

(a) For purposes of the Act, gross receipts shall be reported upon the same basis, that is cash or accrual basis,

as is used in the computation of tax by the taxpayer for Federal Income Tax purposes.

(b) Every taxpayer shall use the same calendar or fiscal year accounting period upon which the taxpayer reports to the United States Treasury Department for Federal Income Tax purposes.

(c) In the event a taxpayer's taxable year or method of accounting is changed for Federal Income Tax purposes, the taxable year or method of accounting under the Act shall be similarly changed and adjusted.

(d) The tax herein is imposed upon each taxpayer beginning with January 1, 1967 and ending at the close of the taxpayer's accounting period first terminating during 1967 and for each calendar year thereafter.

18:11-3.3 Exemptions based on amount of gross receipts

The Act provides a minimum base from which the incidents of the tax shall operate in any taxable year.

(a) *Total gross receipts under \$5,000.00.* Any taxpayer otherwise subject to the Act, who has total gross receipts in any taxable year which do not exceed \$5,000.00 is exempt in the taxable year from the tax imposed. In addition, the taxpayer is exempt from the requirements of reporting and filing a return under the Act for the taxable year.

Example:

"Z Realty Co.", a partnership has \$4,950.00 in total gross receipts from rentals for the fiscal year of the partnership ending June 30, 1969. "Z Realty Co.", is exempt from the payment of the tax and from a filing a return for the taxable year. If the total gross receipts had been \$5,050.00, "Z Co.", would have had to file a return and pay a tax of \$12.63 ($\$5,050. \times .0025$).

(b) *Total allocated receipts under \$5,000.00.* Any taxpayer otherwise subject to the Act, who has total gross receipts in any taxable year which exceed \$5,000.00 and is entitled under Subchapter 4 of this Chapter to allocate part of the total gross receipts so that the allocated gross receipts for any taxable year do not exceed \$5,000.00, is exempt from the tax imposed. In this case, however, the taxpayer is required to report his or its total gross receipts and file a return for the taxable year as provided by the Act.

Example:

Mr. A is the owner of an unincorporated business which owns several two family homes, one in New Jersey and three in New York. For the taxable year 1969 Mr. A. had total gross receipts of \$21,000.00; \$4,800 from the home in New Jersey and \$16,200.00 from the New York property. He had no other gross receipts. Mr. A is not subject to the Unincorporated Business Tax for the taxable year 1969, however, Mr. A

is required to report and file a return for the taxable year.

Statutory References

As to Imposition and Measure of Tax, see N.J.S.A. 54:11B-3.4.

18:11-3.4 Taxpayers subject to tax

Any taxpayer whose total gross receipts exceed \$5,000.00 for the taxable year and has allocated gross receipts for the taxable year in excess of \$5,000.00 shall be required to report and file a return showing the total gross receipts for the taxable year. However, the tax imposed by the Act, shall be measured only by the allocated gross receipts for the taxable year.

Example:

A and B, partners, carry on an unincorporated business under the name of "A and B Grocery Co." located in New Jersey with a branch office located in Pennsylvania. During the 1969 taxable year the gross receipts of the grocery business in New Jersey was \$50,000.00 and the gross receipts of the branch office in Pennsylvania was \$65,000.00. A and B are required to report and file a return for 1969 showing their total gross receipts of \$115,000.00, however, the tax payable is only \$125.00 (\$50,000.00 x .025) based upon the gross receipts allocated for New Jersey.

Statutory References

As to Taxpayers Subject to Tax, see N.J.S.A. 54:11B-3.

18:11-3.5 (Reserved)

SUBCHAPTER 4. ALLOCATION

18:11-4.1 General provisions

No taxpayer subject to the provisions of the Unincorporated Business Tax is entitled to allocate any part of the total gross receipts derived from an unincorporated business during the taxable year covered by the return, unless the taxpayer has maintained a regular place of business outside the State (other than a statutory office) for all or a part of the taxable year.

Statutory References

As to Allocation, see N.J.S.A. 54:11B-4.

18:11-4.2 Regular place of business

A "regular place of business" is any bona fide office other than a mere statutory office, factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied, and used in carrying on his or its business and in which one or more regular employees are in attendance.

(a) Where as a regular course of business, property of the taxpayer is stored by him or it, in a public warehouse in another state until it is shipped to customers, the warehouse is not considered a regular place of business of the taxpayer.

(b) Where, as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor in another state to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of the independent contractor is not considered a regular place of business of the taxpayer.

(c) A taxpayer is not deemed to have a regular place of business outside New Jersey solely by consigning goods to an independent factor outside New Jersey for sale at the direction of either the consignee or consignor.

Statutory References

As to Regular Place of Business, see N.J.S.A. 54:11B-4.

18:11-4.3 Method of accounting

Any taxpayer entitled to allocate a portion of his or its total gross receipts, must compute his or its allocated gross receipts according to the same method of accounting (cash or accrual) used by the taxpayer in the computation of his or its net income for Federal Income Tax purposes.

(a) *Cash basis.* Under the cash receipts method in the computation of allocated gross receipts, all items which constitute gross receipts (whether in the form of cash, property, or services) are to be included for the taxable year in which actually or constructively received.

(b) *Accrual basis.* Under an accrual method allocated gross receipts are to be included for the taxable year when all the events have occurred which fix the right to receive such gross receipts and the amount can be determined with reasonable accuracy. For example, a taxpayer engaged in a manufacturing business may include those receipts for sales of his product when the goods are shipped, when the product is delivered or accepted, or when title to the goods passes to the customer, whether or not billed, depending upon the method regularly employed in keeping his or its books.

Statutory References

As to Method of Accounting, see N.J.S.A. 54:11B-4.

18:11-4.4 Allocation of receipts

Any taxpayer entitled to allocate his or its total gross receipts in any taxable year shall use as a measure of the tax imposed by the Act those receipts allocable to New Jersey arising from the following:

(a) All of the receipts from sales of tangible personal property located in New Jersey (whether or not at a regular place of business maintained by the taxpayer), at the time of the receipt of or appropriation to the orders, where a shipment is made to points within the State, are allocable to New Jersey, irrespective of where the orders are received or accepted.

(b) An order for the purchase of tangible personal property is received when it reaches any principal, employee or other agent of the taxpayer authorized to solicit or receive the order on behalf of the taxpayer, irrespective of whether the agent has authority to make a binding acceptance of the order.

1. Thus, an order mailed to the taxpayer's factory or office is received by the taxpayer when it is delivered;

2. An order given to a salesman or other agent of the taxpayer is immediately received by the taxpayer.

(c) Tangible personal property is appropriated to an order when it is set aside or earmarked for or associated with the order by the taxpayer, irrespective of when title passes to the purchaser.

(d) Receipts from the sales of tangible personal property located in New Jersey at the time of the receipt of or appropriation to the orders, where shipment is made to points outside the State, are not allocable to New Jersey.

(e) In the case of receipts from sales of tangible personal property by an independent factor on behalf of the taxpayer, where the goods are located in New Jersey at the time of the receipt of the factor's orders by the taxpayer or at the time the goods were shipped or otherwise appropriated to the factor's orders by the taxpayer and shipment is made to a point within this State, all of the receipts from such sales are allocable to New Jersey.

(f) If a taxpayer has a lump sum receipt which represents payment for services rendered in New Jersey and for materials or other tangible personal property, such receipt must be reasonably apportioned between services and goods. The portion attributable to services performed in New Jersey is to be included in that part of the return (Schedule C) so designated; that portion attributed to materials or other property is to be included in that part of Schedule C of the return so indicated.

Example (1):

A & B, a partnership which maintains its principal business office in New York City, its warehouse in New Jersey and their manufacturing plant in Connecticut. An order for a refrigerator is given to the A & B's salesman in New York State and forwarded to A & B's office in New York City, where it is accepted. The order is filled from a stock of goods maintained at A & B's warehouse in New Jersey. If shipment is made to a destination in New Jersey the receipt is allocable to

New Jersey. If shipment is made to a point outside New Jersey, the receipt is not subject to the tax.

Example (2):

Z is an independent factor in Philadelphia, T-P is a New York based partnership maintaining a warehouse in New Jersey. P receives an order from Z for goods through its Newark branch office. The goods are shipped from the warehouse in this State to Z's warehouse in Pennsylvania. The receipt is not allowable to New Jersey. If the goods had been shipped to Z in Trenton, the receipt would be allocable to this State.

Example (3):

B M, a partnership with its principal business office in New York, sells and services business machines. Orders are received from its salesmen in New Jersey and forwarded to New York for acceptance. Upon acceptance it makes shipment from its New Jersey warehouse to its customer C in this State. Upon delivery B M's representative makes installation and instructs C in the operation of the machine. B M bills C for sale and services \$500.00. The \$500.00 receipt is allocable to New Jersey. However, B M is obliged to apportion the receipt on the return which is Schedule C, line 9 and 11, and show the portion allocated to the sale of the machine and the part attributed to services rendered.

Statutory References

As to Allocation of Receipts, see N.J.S.A. 54:11B-4.

18:11-4.5 Sales of tangible personal property located outside New Jersey

(a) All the receipts from sales of tangible personal property located outside New Jersey (whether or not at a regular place of business maintained by a taxpayer) at the time of the receipt of or appropriation to the orders, where shipment made to a point within this State, are allocable to New Jersey, irrespective of where the orders are received or accepted. Where shipment is made to a point outside this State, such receipts are not allocable to New Jersey.

(b) Receipts from the sale of goods for a taxpayer by an independent factor are subject to the same rules for allocation as if sold by the taxpayer.

(c) The same rules with regard to receipt of or appropriation to an order, and lump-sum receipts, stated in Section 4.4 (Allocation of receipts) of this Chapter are applicable to this regulation.

Example:

A-B, a partnership, maintain its principal office in Chicago. The warehouse used to supply the greater metropolitan area is located in Philadelphia. Z, a New Jersey customer, orders a television set through A-B's representative. The order is sent to Chicago for acceptance and the television is shipped from Philadelphia to Z in New Jersey. The receipt from such sale is allocated to New Jersey.

Statutory References

As to Sales of Tangible Personal Property Outside New Jersey, see N.J.S.A. 54:11B-4.

18:11-4.6 Compensation for services

Receipts from services performed within New Jersey are allocable to New Jersey, irrespective of whether such services are performed by employees or agents of the taxpayer, by subcontractors, or by any other persons. It is immaterial where these amounts are payable or where they are actually received.

Statutory References

As to Compensation for Services, see N.J.S.A. 54:11B-4.

18:11-4.7 Commissions

Commissions received by a taxpayer are allocable to New Jersey if the services for which the commission is paid is performed in New Jersey. If the services for which commissions are paid are performed for the taxpayer by salesmen attached to or working out of the taxpayer's New Jersey office the taxpayer's services will be deemed to have been performed in New Jersey.

18:11-4.8 Determination of payment for services performed

Where a lump sum is received by a taxpayer representing payment for services performed within and without New Jersey, the amount attributable to the services performed in New Jersey is to be determined on the basis of the relative values of, or amounts of time spent in the performance of these services within and without this State, or by any other reasonable method. Full details must be submitted with the taxpayer's return.

Statutory References

As to Services Performed Within the State, see N.J.S.A. 54:11B-4(d).

18:11-4.9 Taxpayer receiving lump sum in payment for services

In the event a taxpayer receives a lump sum in payment for services and for materials or other property, the sum received must be apportioned on a reasonable basis. That part allocable to services performed in this State is includable as receipts for services and that part allocable to materials or other property is includable as receipts from sales. Full details must be submitted with the taxpayer's return.

Example (1):

Atlantic Company, an unincorporated entity is engaged in the business of advertising and sales promotion, maintaining offices in New York and New Jersey. During the taxable year they service clients in New Jersey and New York having total gross receipts of \$250,000.00; \$100,000.00 from services rendered in New Jersey. For the taxable year Atlantic must allocate the \$100,000.00 to New Jersey.

Example (2):

Same facts as example (1) except that the total gross receipts represent services performed within and without New Jersey for both the New York and New Jersey clients. Atlantic must allocate the receipts from services performed in this State on the basis of time spent performing services in New Jersey or any other method which clearly reflects the amount of receipts attributable to services performed in this State.

Statutory References

As to Services Performed Within the State, see N.J.S.A. 54:11B-4(d).

18:11-4.10 Rents and royalties

Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use of patents or copyrights in this State are allocable to New Jersey.

(a) Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.

(b) Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not these patents or copyrights were originally issued to or are owned by the taxpayer.

(c) A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

Example (1):

Mr. A, who maintains a regular place of business outside New Jersey, owns five, four-family dwellings which he rents. Three of these are located in New Jersey, the others are located in Pennsylvania. The rentals received from the dwellings in New Jersey are allocable to this State. If Mr. A did not own the land and buildings but leased the same from the owner, the same result would occur.

Example (2):

X Manufacturing Company, an unincorporated business in New Jersey, maintaining a regular place of business outside the State, is the owner of several patents on products it manufactures in this State. The company's products are shipped to and sold in New York, Connecticut, Delaware and Virginia. The company also receives royalties on its patents from other manufacturers in Idaho, California and Florida. None of the royalties are allocable to New Jersey as they are received from activities carried on outside this State. Moreover, X Company receives no royalties from its operation in New Jersey since it is the sole manufacturer in this State.

Statutory References

As to Rents and Royalties, see N.J.S.A. 54:11B-4(e).

18:11-4.11 Other business receipts

Allocation, is not limited to sales of tangible personal property, services, rents and royalties, but encompasses all business receipts derived within New Jersey by a taxpayer.

Statutory References

As to Other Business Receipts, see N.J.S.A. 54:11B-4(f).

18:11-4.12 Discretionary adjustment of allocation by Director

The Director has the authority to adjust the allocation of gross receipts, by employing any method which will effect a reasonable and constitutional apportionment of gross receipts, if it should appear that the method provided by the Act does not adequately or properly reflect the activity, business, transaction and receipts of a taxpayer constitutionally and reasonably attributable to this State.

Statutory References

As to Adjustment of Allocation of Gross Receipts, see N.J.S.A. 54:11B-5.

18:11-4.13 through 18:11-4.14 (Reserved)**SUBCHAPTER 5. FILING-PAYMENT****18:11-5.1 Due date for filing**

(a) Any taxpayer liable for the tax imposed by the Act must file a return on or before April 15 following the close of the calendar year if the taxpayer's accounting period is reported on the calendar year basis. In the instance of a taxpayer whose accounting period is based on a fiscal year, the return must be filed on or before the 15th day of the fourth month following the close of the fiscal year. For example, if a taxpayer's accounting period ends on February 28, the return must be filed on or before June 15. The full amount of the tax due must be paid on or before the date on which a return is filed.

(b) For purposes of the Act, a return shall be regarded as timely filed if it is properly stamped, addressed and post-marked not later than midnight of the last day on which the return may be filed.

(c) The form to be used by all taxpayers filing a return under the Act, is Form UBT-102 or UBT-102M.

(d) The place to which a return is to be sent is the address indicated on the return form.

Statutory References

As to filing returns, see N.J.S.A. 54:11B-8.

18:11-5.2 Extension of time for filing; interest

(a) The Director upon application made by a taxpayer before the date on which a return is due, may grant a reasonable extension of time within which to file a return or pay the tax or both. However, any such extension of time may not exceed a period of more than three months from the date the return is due.

(b) In any case where an extension of time for filing is granted, payment of the tax or any portion due and unpaid shall be automatically extended to the date fixed under the extension on which the return must be filed.

Statutory References

As to Extension of Time for Filing, see N.J.S.A. 54:11B-16.

18:11-5.3 Automatic extension of time to file

(a) Any taxpayer granted an extension of time to file his or its Federal income tax return is automatically entitled to a similar extension of time to file his or its Unincorporated Business tax return, without application, provided a copy of the approved Federal extension or a statement showing:

1. The extended due date of the Federal return;
2. The office of the District Director of Internal Revenue in which the return is filed; and
3. The office of the District Director of Internal Revenue which granted the extension, if other than the office in which the return is filed is included.

(b) Any such extension, however, may not exceed a period of more than three months from the date the return is due under Section 5.1 (Due date for filing) of this Chapter.

Statutory References

As to Extension of Time for Filing, see N.J.S.A. 54:11B-16.

18:11-5.4 Interest imposed on unpaid tax

(a) Where an extension of time for filing has been granted and the tax or any portion remains unpaid, interest is imposed at the rate of six per cent per annum on any unpaid balance of the tax, from the time when the return was originally required to be filed until the date of actual payment under the extension.

(b) In the event the tax or any portion thereof is not paid within the time fixed under the extension for filing a return, there is imposed an interest in the amount of one per cent per month or any part thereof on any unpaid balance of the tax from the date the tax was originally due to the date of actual payment. (As to penalties involved, see Sections 8.1 through 8.4 of this Chapter.)

Statutory References

As to Interest Imposed for Unpaid Balance of tax, see N.J.S.A. 54:11B-16.

18:11-5.5 Tax paid prior to liquidation

Before a taxpayer shall liquidate a business, or make a liquidation or dissolution, the taxpayer must first file a return under the Act and pay or secure full payment of the tax. This must include any interest or penalties due for both the taxable year preceding the year in which the dissolution or liquidation is effected and for the period subsequent to the taxable year up to and including the last day in which the taxpayer conducts a business in this State. In addition, the taxpayer must pay or secure the payment of all delinquent taxes, interest and penalties due under the Act.

Statutory References

As to Payment of Tax before Liquidation, see N.J.S.A. 54:11B-13.

18:11-5.6 (Reserved)**SUBCHAPTER 6. RETURNS****18:11-6.1 Form of returns**

(a) The form of return approved and promulgated by the Director is Form UBT-102 and UBT-102M. Each return is to be made upon the oath or affirmation of the taxpayer.

(b) In the case where a taxpayer is in the process of liquidation or receivership, the receiver or trustee charged with the conduct of the taxpayer's affairs is required to make the oath or affirmation on behalf of the taxpayer.

(c) A taxpayer is not relieved from the obligation of filing a return under the Act by the failure to receive a form from the State.

Statutory References

As to Forms of Returns, see N.J.S.A. 54:11B-15.

18:11-6.2 Copies of returns, information returns

(a) The Director is authorized to request from any taxpayer by general rule or special notice, copies or extracts of a taxpayer's Federal Income Tax return or any other tax return which the taxpayer has filed with any Federal or any State agency of this or any other state. This includes any statement or registration made to any agency under any state or Federal law dealing with securities.

(b) The Director, by general rule or special notice, may require any taxpayer to make and file an information return, under oath, stating facts deemed relevant to the determination of the tax or to establish liability for the tax.

Statutory References

N.J.S.A. 54:11B-10(a), (c).

18:11-6.3 (Reserved)**SUBCHAPTER 7. ASSESSMENT****18:11-7.1 Limitation of assessment**

Except as otherwise provided herein, the amount of any tax imposed by the Act, including deficiency or reassessment thereof, shall be assessed within five years from the date of the filing of the return.

Statutory References

As to Limitation on Assessment, see N.J.S.A. 54:11B-17.

18:11-7.2 Time return deemed filed

For purposes of the Act, a return for the tax imposed by the Act, filed before the last day prescribed by law for the filing of the return, shall be considered as filed on the last day.

Example:

Mr. A, a calendar year taxpayer, filed his return on March 1 instead of April 15; in determining the five year limitation, the return will be deemed to have been filed on April 15.

18:11-7.3 Exceptions to rules of assessment

(a) *False return.* In the case of a willfully false or fraudulent return with the intent to evade the tax, the tax may be assessed at any time.

(b) *Willful attempt to evade tax.* In case of a willful attempt in any manner to defeat or evade the tax imposed by the Act, the tax may be assessed at any time. (As to Exceptions to Assessment, see N.J.S.A. 54:11B-17.)

(c) *No return.* In the case of a failure to file a return, the tax may have been assessed at any time.

18:11-7.4 Extension by agreement

(a) The time prescribed by the Act for the assessment of the tax may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the Director or his delegate.

(b) The extension becomes effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Statutory References

As to Extensions by Agreement, see N.J.S.A. 54:11B-17.

18:11-7.5 Deficiency assessment notice; interest

(a) Upon the filing of a final return, the Director shall, if the same be deemed necessary, cause an audit, investigation or reaudit to be made. If it is determined that a deficiency exists with respect to the payment of the tax, the taxpayer shall be given notice of assessment or reassessment stating the amount of the deficiency determined including a demand for immediate payment.

(b) Interest.

1. In a case where a deficiency assessment has been determined, there shall be added to the assessment or reassessment interest at the rate of one per cent per month or any part thereof from the date the tax was due (without regard to any extension) to the date of actual payment;

2. In a case where a deficiency has been assessed against a taxpayer and the Director is satisfied that said deficiency was not due to fraud or willful evasion, any charge for interest in excess of $\frac{1}{2}$ of one per cent per month may be waived or remitted.

Statutory References

As to Deficiency Assessment Notice and Interest, see N.J.S.A. 54:11B-17.

18:11-7.6 Protests, appeals

(a) If any taxpayer shall be aggrieved by any finding or assessment of the Director, he may, within 30 days of the giving of the Notice of Assessment or finding, file a protest in writing, signed by himself or his duly authorized agent, under oath and shall set forth the reason, and may request a hearing.

1. The Director shall grant a hearing to the taxpayer if the same shall be requested;

2. At the hearing, the Director may make an order confirming, modifying, or vacating any such finding or assessment.

(b) The filing of any protest shall not abate the penalties for nonpayment of the tax, nor shall it stay the right of the Director to collect the tax in any manner provided by law, unless the taxpayer shall furnish security of the kind and in the amount set by the Director.

Statutory References

As to Protests and Appeals, see N.J.S.A. 54:49-18.

18:11-7.7 Hearings

(a) All hearings before the Emergency Transportation Tax Bureau are to be conducted on an informal basis, with

or without representation on behalf of the taxpayer or other party in interest.

(b) The time for appeal or review shall not be extended by the filing of any protest unless a hearing is requested and then the time in which an appeal may be taken shall be extended only for the period between the filing of the protest and the final determination by the Director.

Statutory References

As to Hearings, see N.J.S.A. 54:49-18.

18:11-7.8 through 18:11-7.9 (Reserved)**SUBCHAPTER 8. PENALTIES****18:11-8.1 Civil penalties for failure to file return**

In case of failure to file a return on or before the date prescribed for filing (determined with regard to any extension of time for filing), there shall be added to the tax and made a part of the tax, a penalty of \$2.00 for each day of delinquency, unless the failure to file the return within the prescribed time is shown to the satisfaction of the Director to be due to reasonable, excusable cause and not willful neglect.

Statutory References

As to Failure to File Return, see N.J.S.A. 54:11B-9.

18:11-8.2 Failure to pay tax

(a) If any part of the tax remains unpaid after the date prescribed for payment, there shall be added to the tax and made a part thereof, a penalty of five per cent of any unpaid balance of the tax due unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the Director to be due to reasonable, excusable cause and not willful neglect.

(b) In addition, there shall be added to the tax and made a part thereof, interest at the rate of one per cent per month from the date the tax is due until the date of actual payment.

(c) For purposes of Section 8.1 (Civil penalties) of this Chapter and subsections (a) and (b) of this Section, a fraction of a month shall constitute a whole month in the calculation of any interest added to the tax.

Statutory References

As to Failure to Pay Tax, see N.J.S.A. 54:11B-9.

18:11-8.3 Showing of reasonable, excusable cause

(a) A taxpayer who wishes to avoid the addition to the tax for failure to file a return or pay the tax when due must make an affirmative showing of all facts alleged as a reasonable and/or excusable cause for his failure to file or pay on time in the form of a written statement containing a declaration that it is made under penalties of perjury.

(b) This statement should be filed with the Director.

(c) If the Director determines that the delinquency was due to a reasonable and/or excusable cause, and not to willful neglect, the addition to the tax may be entirely or partially abated or remitted.

Statutory References

As to Satisfactory Excuse for Failure to Comply with Rules of this Section, see N.J.S.A. 54:11B-9.

18:11-8.4 Criminal penalties for willful failure to file

(a) Any taxpayer who willfully fails to file a return, or files or causes to be filed, or makes or causes to be made, or gives or causes to be given any return, representation, information, testimony or statement required or authorized by the Act, which is willfully false or willfully violates any requirement imposed by the Act or any rule or regulation herein shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000.00 or imprisoned for not more than one year or both.

(b) The penalty provided for in subsection (a) of this Section hereof is in addition to all the other penalties provided for in Sections 8.1 through 8.3 of this Chapter.

Statutory References

As to Penalty for Failure to File, see N.J.S.A. 54:11B-21.

18:11-8.5 Penalty; personal debt

Any tax, fee, interest and penalty imposed by the Act is a personal debt of the taxpayer as of the date when the tax is due and recoverable in any court of competent jurisdiction by the State. However, the debt is not a lien on the personal or real property of the taxpayer until the entry of a final judgment or the filing of a certificate of debt as provided by law.

Statutory References

As to a Penalty as a Personal Debt, see N.J.S.A. 54:11B-11.

18:11-8.6 (Reserved)**SUBCHAPTER 9. AGREEMENTS****18:11-9.1 General provisions**

The Director may enter into a written agreement with any taxpayer regarding the liability of such taxpayer for any tax, fee, penalty or interest imposed by the Act.

Statutory References

As to Director Entering into Agreements, see N.J.S.A. 54:11B-14.

18:11-9.2 Finality of agreements

The execution of an agreement in writing shall be final and conclusive, and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon nor shall the agreement be modified by any officer, employee or agent of this State.

Statutory References

As to Finality of Agreements, see N.J.S.A. 54:11B-14.

18:11-9.3 Legal proceedings

In the event any suit, action or proceeding is brought, the agreement, or any determination, assessment, collection, payment, abatement, refund or credit made pursuant to the agreement, shall not be annulled, modified, set aside or disregarded.

Statutory References

As to legal proceedings, see N.J.S.A. 54:11-14.

18:11-9.4 (Reserved)**SUBCHAPTER 10. APPEALS****18:11-10.1 Appeals; general provisions**

(a) Within three months from the date of any decision, order, finding, assessment or action made by the Director pursuant to the provisions of the Act, any aggrieved taxpayer may appeal to the Division of Tax Appeals by filing a petition in the manner and form prescribed by the Division of Tax Appeals.

(b) For purposes of appeal the date of any decision, order, finding, assessment or action made by the Director shall be the date of mailing as stamped on the decision, order, finding, assessment or action.

(c) Any taxpayer who appeals to the Division of Tax Appeals is required to give security approved by the Director conditioned to pay the tax levied with interest and costs, if the same remains unpaid.

Statutory References

As to appeals, see N.J.S.A. 54:11B-18.

18:11-10.2 Security to stay collection

No appeal shall operate as a stay of collection or enforcement by an entry of judgment of any tax, unless an order for the stay of collection or entry of judgment is made by the Division of Tax Appeals, and then only after the taxpayer has furnished security for the payment of the tax to the Director and the security has been approved by him.

Statutory References

As to security to stay collection, see N.J.S.A. 54:11B-18.

18:11-10.3 through 18:11-10.4 (Reserved)**SUBCHAPTER 11. REFUNDS****18:11-11.1 Refunds; general provisions**

Any taxpayer, at any time within two years after the payment of any original or additional tax assessed against him or it, may file with the Director a claim for refund in the form of a statement under oath setting forth, in detail, the grounds therefore and outlining, in detail, all pertinent circumstances relating to it. 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 proceedings on appeal have been commenced until the protest or appeal has been finally determined.

Statutory References

As to claim for refund, see N.J.S.A. 54:49-14.

18:11-11.2 Payment of refunds; rejection of claims

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment shall be credited against any liability of the taxpayer under any state tax law.

(b) If there be no such liability the taxpayer shall be entitled to a refund of the tax so overpaid.

(c) If the Director shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

Statutory References

As to payment of refunds, see N.J.S.A. 54:49-15.

18:11-11.3 Refund of erroneous payments

Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time, within two years of

payment, upon making a record in writing of his reasons, certify to the State Treasurer that the taxpayer is entitled to a refund. Thereupon the Treasurer shall authorize the payment thereof from the appropriation for that purpose.

Statutory References

As to refund of erroneous payments, see N.J.S.A. 54:49-16.

18:11-11.4 through 18:11-11.5 (Reserved)**SUBCHAPTER 12. POWERS OF DIRECTOR****18:11-12.1 Power to make regulations**

The Director is empowered to make, adopt and amend rules and regulations deemed appropriate to carry out the purposes of the Act.

Statutory References

As to powers of Director, see N.J.S.A. 54:11B-20.

18:11-12.2 General extension of time for filing¹

The Director may, for cause shown, extend by general regulation, the time for filing any return for a period not exceeding six months on terms and conditions as he may require. In the case of a general regulation, the Director shall have authority to waive interest.

¹By general regulation dated May 12, 1967 and May 6, 1968, the Director has extended the time for filing under the Act.

Statutory References

As to powers of Director, see N.J.S.A. 54:11B-20.

18:11-12.3 Adjustment and allocation to clearly reflect receipts

(a) The Director may in his discretion and in the manner as he may determine, adjust and redetermine gross receipts or adjust items of allocation within and without the State and allocate gross receipts.

(b) He may make other adjustments in any tax report or tax return as may be necessary for a true and correct determination of the tax, if it should appear to the Director that any taxpayer:

1. Conducts his or its business or maintains his or its records in a manner as either directly or indirectly distorts his or its true gross receipts under the Act or the proportion of gross receipts properly allocable to this State; or,

2. Maintains a place of business, outside this State for the purpose of evading the tax under the Act; or,

3. Has made any agreement or arrangement, or has reached any understanding with any other person, firm or

corporation for the purpose of evading the tax under the Act; or,

4. Improperly or inaccurately reflects the activity, transactions, business receipts or other pertinent records of his or its business.

Statutory References

As to adjustment of gross receipts, see N.J.S.A. 54:11B-12.

18:11-12.4 Submission of information to Director

The Director may require any person, firm, association, copartnership or corporation, whether or not any such entity or corporation is subject to the tax imposed by the Act, to submit any information under the oath or to permit an examination of the entity or corporation's books, papers and documents, as he may deem necessary to ascertain any fact pertinent to the determination of the tax, liability for the tax, or the existence, nature or extent of any agreement, arrangement or understanding made for the purpose of evading the tax under the Act.

Statutory References

As to submission of information to Director, see N.J.S.A. 54:11B-12.

18:11-12.5 Maintenance of books and records

Every taxpayer liable for the tax imposed by the Act, shall keep records and books of account, render statements, make returns and comply with all rules and regulations the Director may from time to time prescribe. Whenever in the judgment of the Director it is deemed necessary, he may require from any taxpayer, by notice or by regulation, the production of books, records, papers, documents or other data in order to provide or secure information pertinent to the determination, enforcement or collection of the tax imposed by the Act.

Statutory References

As to records and documents, see N.J.S.A. 54:11B-10.

18:11-12.6 Form of records

(a) The records required to be kept by Section 12.5 (Books and records) of this Chapter, shall be kept accurately, but no particular form is required for keeping the records.

(b) The forms and systems of accounting shall be used as will enable the Director to ascertain whether liability for the tax is incurred and, if so, the amount of it.

Statutory References

As to records and documents, see N.J.S.A. 54:11B-10.

18:11-12.7 Copies of returns, schedules and statements

Every taxpayer subject to the provisions of the Act, shall keep a copy of any return, schedule, statement or other document filed pursuant to the Act as part of his record.

Statutory References

As to records and documents, see N.J.S.A. 54:11B-10.

18:11-12.8 Retention of records, place

All records required to be kept by a taxpayer shall be retained so long as its contents may become material in the administration of the Act and shall be kept at one or more convenient and safe locations accessible to the revenue officers of this State, and shall be at all times available for inspection by these officers.

Statutory References

As to records and documents, see N.J.S.A. 54:11B-10.