

**CHAPTER 23**

**RAILROAD PROPERTY TAX**

**Authority**

N.J.S.A. 54:29A-6.

**Source and Effective Date**

R.1999 d.12, effective December 9, 1998.  
See: 30 N.J.R. 3612(a), 31 N.J.R. 56(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 23, Railroad Property Tax, expires on June 6, 2004. See: 35 N.J.R. 3483(a).

**Chapter Historical Note**

Chapter 23, Railroad Property Tax, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 23, Railroad Property Tax, was readopted as R.1984 d.100, effective April 2, 1984. See: 16 N.J.R. 233(b), 16 N.J.R. 747(c).

Pursuant to Executive Order No. 66(1978), Chapter 23, Railroad Property Tax, was readopted as R.1989 d.147, effective February 24, 1989. See: 21 N.J.R. 18(a), 21 N.J.R. 779(c).

Subchapter 7, Appeal and Review, was repealed and Subchapter 7, Appeal and Review, was adopted as new rules by R.1990 d.630, effective December 17, 1990. See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Railroad Property Tax, was readopted as R.1994 d.132, effective February 15, 1994. See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Railroad Property Tax, was readopted as R.1999 d.12, effective December 9, 1998. See: Source and Effective Date.

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#### APPENDIX I

#### SUBCHAPTER 1. PURPOSE AND DEFINITIONS

##### 18:23-1.1 Purpose; scope; history

(a) The first general New Jersey Railroad Tax Law dates back to 1884<sup>1</sup> when railroad property was assessed both by the State and local governments. Since that time, the tax rate and classification of property have been the subject of many statutory amendments. In 1941 the basic structure for the present tax law was adopted<sup>2</sup> and the previous statutes repealed. The new law provided for both a property tax and a franchise tax, based on net railway operating income allocated to New Jersey on the basis of a trackage formula. The Franchise Tax is not a tax on earnings but a Franchise Tax measured by net operating income allocated to New Jersey.<sup>3</sup> In 1948, the tax was extensively amended so as to adopt the present system of classifying railroad property and the current franchise rate of 10 percent of net railway operating income.<sup>4</sup> Again, in 1964 and 1966, the law was amended so as to exclude main stem and facilities used in passenger service.<sup>5</sup> Furthermore, the 1966 amendment eliminated local rates of taxation of property used for railroad purposes and substituted a uniform tax, collected by the State of New Jersey. The revenues collected are appropriated for payment to municipalities, in lieu of railroad property tax, plus additional sums appropriated as are required for replacement revenues to certain municipalities, in which railroad property is located, in accordance with a formula, known as State Aid, established by the New Jersey Legislature.

(b) The Act for which these rules are promulgated is the Railroad Tax Law of 1948. These rules are issued pursuant to N.J.S.A. 54:29A-6.

(c) These rules, insofar as they are identical in substance to existing rules relating to the same subject matter shall be construed as restatements and continuations and not new rules.

(d) Any reference in these rules to the "Act" or the "Tax Act" refers to the Railroad Tax Act of 1948 as amended, (N.J.S.A. 54:29A-1 et seq.).

(e) The Railroad Tax law of 1948 is administered by the Division of Taxation through Property Administration.

Amended by R.1979 d.48, effective February 6, 1979.

See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

Amended by R.1994 d.132, effective March 21, 1994.

See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

<sup>1</sup> P.L.1884, c. 101

<sup>2</sup> P.L.1941, c. 291

<sup>3</sup> Delaware, Lackawanna & W.R.R.N. Division of Tax Appeals, N.J. State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949); State Department of Taxation and Finance, 3 N.J. 27; 68 A.2d 749 (1949), appeal dismissed 338 U.S. 946.

<sup>4</sup> P.L.1948, c. 40, 41

<sup>5</sup> P.L.1964, c. 251 P.L.1966, c. 139

##### 18:23-1.2 Definitions

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

"Director" means the Director of the Division of Taxation, Department of the Treasury, State of New Jersey.

"Facilities Used in Passenger Service" means land, stations, terminals, roadbeds, tracks, appurtenances, ballast and all structures used in connection with rendering passenger service, including signal systems, power system, equipment storage, repair and service facilities.

"Main stem" means the roadbed not exceeding 100 feet in width, as measured horizontally at the elevation of the base of the rail, including the full embankment or excavated area, with slopes, slope ditches, retaining walls or foundations necessary to provide a width not to exceed 100 feet at base of rail, together with all tracks, appurtenances, ballast and all structures erected thereon and used in connection therewith, but not including passenger or freight buildings erected thereon.

"Pre-tax year" means the year immediately preceding the tax year.

"Railroad" means any common carrier by railroad engaged in, owning or constructing facilities for the transportation of persons or property in or through this State, including railroads not owning any rolling stock, other than a street railway or traction company using or occupying the public streets, highways, roads or other public places, the taxation of which is otherwise provided by law.

"System" means any independently operating railroad which operates its facilities and those of one or more other railroads as a single utility for furnishing transportation service. A system includes all companies, the property of which is so operated either by virtue of control through direct or indirect ownership of a majority or more of capital stock, or under lease, trackage rights or under any other form of contract, and for which separate operating accounts are not maintained.

Separate operating accounts does not refer to technically separate accounting records, but refer to truly independent, disconnected or unassociated operating accounts, from the standpoint of furnishing transportation service.

“Tangible personal property” means the rolling stock, cars, locomotives, ferryboats, all machinery, tools and other tangible personal property of a railroad company and also the locomotive and cars not belonging to such railroad company but built for its use and actually used in this State, or run under its control in this State by a sleeping car company or other company; but the rolling stock of other persons or corporations temporarily used on any such road, but not forming part of the equipment of such road, is not included in this term.

“Taxpayer” means any person, railroad or system subject to taxation under the provisions of the Act.

“Tax year” means the year in which the tax is payable under the Act.

“True value” means the market value of the property at a fair and bona fide sale at private contract on the assessment date.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Stylistic changes.  
Recodified from 18:23-1.1 by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

See N.J.S.A. 54:29A-2; 54:4-23.

## SUBCHAPTER 2. PROPERTY NOT SUBJECT TO NEW JERSEY RAILROAD PROPERTY TAX

### 18:23-2.1 Property not used for railroad purposes

(a) Property of a railroad company not used for railroad purposes, such as facilities and buildings leased or used for commercial purposes, is not subject to the Railroad Property Tax.

(b) Such property is assessed and taxed in the same manner and at the same rate as other property in the taxing district.

#### Statutory References

N.J.S.A. 54:29A-4.

### 18:23-2.2 Municipal assessments

Streets, sidewalks, sewers or other municipal improvements are not subject to assessment under the New Jersey

Railroad Property Tax; however, a municipality is not prohibited from assessing such benefits against the property of a railroad, operating in New Jersey, in the same manner as other property of individuals subject to local taxation.

#### Statutory References

N.J.S.A. 54:29A-5.

### 18:23-2.3 Grade crossing improvements

Grade crossing improvements required by a State Agency and/or a municipality to be made by a railroad are not included in the taxable valuations made under the Act; however, any improvements of grade crossings voluntarily made by a railroad are included in the valuation of property taxed under the Act.

#### Statutory References

N.J.S.A. 54:29A-10.

### 18:23-2.4 Improvements to capital facilities

The improvements to capital facilities undertaken by a railroad pursuant to the provisions of a contract with the New Jersey Department of Transportation or with a municipality, where such improvements were made after January 1, 1963, are not subject to valuation under the Act.

#### Statutory References

N.J.S.A. 54:29A-17.1.

### 18:23-2.5 (Reserved)

## SUBCHAPTER 3. PROPERTY SUBJECT TO NEW JERSEY RAILROAD PROPERTY TAX

### 18:23-3.1 Property taxable

All property used for railroad purposes, except main stem, tangible personal property, facilities used in passenger service, and Class II real property which passed out of railroad ownership subsequent to January 1 and before October 1 and not used for railroad purposes on October 1, is assessed by the Director.

#### Statutory References

N.J.S.A. 54:29A-17.

### 18:23-3.2 Leased property

Any property of a railroad leased to or operated by another corporation, foreign or domestic, and used for railroad purposes is assessed and taxed to the lessor (or railroad) in the same manner as other property subject to the Act.

**Statutory References**

N.J.S.A. 54:29A-8.

**18:23-3.3 Tax in lieu**

(a) Any property used for railroad purposes, including any main stem, tangible personal property and facilities used in passenger service, is not subject to any other State or local taxation.

(b) Any property not used for railroad purposes and therefore not subject to the Act is subject to taxation by the local taxing authorities of this State.

**Statutory References**

N.J.S.A. 54:29A-11.

**18:23-3.4 Railroad property assessed**

Property used for railroad purposes is assessed against each system or each railroad not part of a system in the manner provided by the Act.

**Statutory References**

N.J.S.A. 54:29A-12.

**18:23-3.5 Tax rate of railroad property**

Property used for railroad purposes except as noted in section 3.1 (Property taxable) of this chapter is assessed by the Director at the rate of \$4.75 per \$100.00 of true value of such property as determined on January 1 of the pre-tax year.

**Cross References**

For definition of true value, see N.J.A.C. 18:23-1.2.

**Statutory References**

N.J.S.A. 54:29A-7.

**Case Notes**

Determination as to whether property met "fairly anticipated use for railroad purposes" on particular date required evaluation of use for period of years. *N.Y. Susquehanna & Western Ry. Corp. v. Hardyston Tp.*, 8 N.J.Tax 626 (1987).

Property was exempt from local tax as it was used for railroad purposes. *N.Y. Susquehanna & Western Ry. Corp. v. Hardyston Tp.*, 8 N.J.Tax 626 (1987).

**18:23-3.6 Real property deemed to be in railroad use**

Real property shall be deemed to be in railroad use if such property is used for the transportation of persons or freight by a railroad, regardless of the ownership or possession of the real property.

New Rule, R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

**SUBCHAPTER 4. RAILROAD FRANCHISE TAX****18:23-4.1 Railroad franchise tax; rates, how computed**

(a) The New Jersey Railroad Franchise Tax is assessed against each railroad or system operating in the State of New Jersey at the rate of 10 per cent of its net railway operating income adjusted and allocated on the basis of the percentage of all track miles operated within the State to the total track miles operated everywhere by such railroad or system.

(b) The minimum franchise tax payable by any taxpayer is \$100.00 for taxpayers having total railway operating revenues of \$1,000,000.00 or less allocated to New Jersey for the pre-tax year; and \$4,000.00 for all other taxpayers.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

**18:23-4.2 Measurement of franchise tax**

(a) The New Jersey Railroad Franchise Tax is measured by a taxpayer's net railway operating income, which consists of the total operating revenues from all sources, including any revenue whatever, directly or indirectly derived from property which is used for railroad purposes, less the costs of railroad maintenance, operation, depreciation and amortization, railway tax accruals, uncollectible railway revenues, rentals (both debts and credits) for equipment leased for less than one year, interchanged and joint facility rents (both debts and credits).

(b) The amounts paid by the State of New Jersey or any county, municipality, agency, authority or subdivision thereof, pursuant to contracts for passenger service, are not included in such operating revenues.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.3 Deductions from operating revenues subject to regulation by Director**

Deductions from operating revenues for depreciation, additions and betterments, and compensation for personal services are subject to regulation by the Director, as to reasonableness of amount and appropriateness of accounting distribution.

**Statutory References**

N.J.S.A. 54:29A-14.

**18:23-4.4 Railway tax accruals; definition and method of computing**

(a) For the purposes of this chapter railway tax accruals mean the taxes due for the year which have been assessed by the State of New Jersey and other states, including the taxes due to the United States Federal Government, which have been recorded in the books and records of the taxpayer according to acceptable accounting methods.

**18:23-5.7 Property tax statement to be received by taxpayer**

Not later than December 15, of the pre-tax year, each taxpayer is to receive a detailed statement of the taxpayer's Class II property and a statement of the assessment of Railroad Property Tax payable in the tax year.

**Statutory References**

N.J.S.A. 54:29A-18.1.

**18:23-5.8 Franchise tax statement**

Within ten days after completing the computation of the New Jersey Railroad Franchise Tax, but in any event not later than June 10 of the tax year, each taxpayer is to receive a statement of the Railroad Franchise Tax assessed and the manner in which such tax was computed.

**Statutory References**

N.J.S.A. 54:29A-15, 21.

**18:23-5.9 Failure to receive tax statements does not relieve obligation to pay by due date**

The failure of any taxpayer to receive either of the tax statements in sections 5.7 and 5.8 of this chapter does not invalidate any assessment or the resulting lien, nor is the taxpayer relieved of his obligation to make timely payment of the tax when due.

**Statutory References**

N.J.S.A. 54:29A-21.

**18:23-5.10 through 18:23-5.11 (Reserved)****SUBCHAPTER 6. REASSESSMENT AND OMITTED PROPERTY****18:23-6.1 Reassessment; investigation and audit**

(a) The Director in his discretion may cause an examination of all the information submitted by any taxpayer, and if he deems it necessary cause an audit, investigation and reaudit of such taxpayer's books and records.

(b) If upon such audit, investigation or reaudit it is determined that there was a definite or excessive assessment made, the Director may correct such error by reassessing the tax or any part thereof.

**Statutory References**

N.J.S.A. 54:29A-25.

**18:23-6.2 Omitted property**

Whenever a taxpayer has omitted any property subject to the Act from his information return or otherwise failed to report such property, the Director may, upon discovering such omission, cause such property to be assessed for any omitted years, subject to section 6.3 (Credit for taxes paid locally on omitted property) of this chapter.

**Statutory References**

N.J.S.A. 54:29A-25.

**18:23-6.3 Credit for taxes paid locally on omitted property**

(a) Any taxpayer will be given credit against the assessment for the Railroad Property Tax for the local tax paid if he:

1. Has omitted property subject to the Act (section 6.2 of this chapter); and
2. Has been required to pay the Railroad Property Tax on the omitted property pursuant to section 6.2 of this chapter; and
3. Has paid to the local taxing district whatever local property tax was assessed against his omitted property; and
4. Has submitted satisfactory proof of such payment to the Director and to the Tax Court, if the matter is pending before it.

Amended by R.1990 d.630, effective December 17, 1990.

See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Railroad tax appeals go to Tax Court, in (a)4.

**Statutory References**

N.J.S.A. 54:29A-29.

**18:23-6.4 (Reserved)**

Repealed by R.1994 d.132, effective March 21, 1994.

See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

Section was "Period of limitations on assessment of omitted property".

**Statutory References**

N.J.S.A. 54:29A-27.

**18:23-6.5 Review of a reassessment or an assessment of omitted property available to taxpayer**

Where property omitted by a taxpayer is assessed under section 6.2 (Omitted property) of this chapter, or where the tax is reassessed under section 6.1 (Reassessment) of this chapter, notice thereof is immediately given to the taxpayer, who upon receipt of such notice may request an administrative review of such assessment or reassessment.

**Statutory References**

N.J.S.A. 54:29A-26.

**18:23-6.6 Review of reassessment or assessment; time and place**

(a) The review shall be held at the time and place specified by the Director, but in no event later than 20 days from the date the assessment or reassessment is determined.

(b) The time spent in the review of a matter may not exceed 30 days, including adjournments. (See sections 11.2 and 11.3 of the chapter.)

**18:23-6.7 Taxes reassessed or assessed; due date**

The amount of taxes determined to be due after a review, or where no review has been requested the amount of taxes due as determined by the assessment or reassessment, are due and payable on or before the 15th day following the time limited for review.

**Statutory References**

N.J.S.A. 54:29A-26.

**18:23-6.8 (Reserved)****SUBCHAPTER 7. APPEAL AND REVIEW****18:23-7.1 Appeals**

Any taxpayer desiring to contest the validity or amount of any assessment or reassessment of property or franchise tax made by the Director of the Division of Taxation under the railroad tax law may appeal to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. (See N.J.S.A. 54:51A-13.)

**18:23-7.2 Dual assessment; appeal to Tax Court**

(a) If property of a taxpayer has or shall have been, in any year, assessed by the local taxing district, and also has or shall have been classified as Class I or Class III property or classified and assessed by the Director of the Division of Taxation as Class II property, an appeal may be taken to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., which Court shall determine the character of the property and whether used for railroad purposes and by whom it has lawfully been assessed.

(b) Such determination shall be made whether the taxes in question have been paid or not and whether an appeal to review either assessment has been made or not.

**SUBCHAPTER 8. RETURNS; PAYMENTS; REFUNDS****18:23-8.1 Return of information**

(a) Every taxpayer must, on or before March 1 of the pretax year, file with Property Administration statements and/or schedules showing:

1. The character and value of real property owned or leased by the taxpayer on the first day of January of the pretax year;
2. The capitalization and the indebtedness of the taxpayer as of the same date.

(b) Property Administration has developed and maintains a perpetual inventory of all property owned by each railroad or system in the State of New Jersey and only changes in the ownership, character or value of such property are required to be reported annually. Such annual returns of information must be submitted to Property Administration on forms R.R.51 through R.R.45 which are available from said office.

(c) In addition to the statements and schedules above described, the taxpayer must submit a statement entitled, "Completion Reports and Plans". Such statement must include:

1. Progress reports on all projects involving real property undertaken during the pre-tax year; and
2. Completion reports on all projects completed during the pre-tax year.

(d) On or before April 1 of the tax year, each taxpayer must file with the Director, through Property Administration, at its own expense, a sworn and complete copy of its Railroad Annual Report for the pretax year, which has been filed or will be filed with the Interstate Commerce Commission or with the Department of Transportation of the State of New Jersey.

(e) Furthermore, all taxpayers must complete and file with Property Administration Forms R.R.551 through 556, together with such supplemental statements and schedules as may from time to time be required by the Director or the Assistant Director of Property Administration, acting in his behalf.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Administrative process updated.  
Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

N.J.S.A. 54:29A-44.

#### 18:23-8.2 Monthly statistics report

All taxpayers shall submit monthly reports of net railway operating income to Property Administration, as soon as such information is available or projected. Such report shall include the monthly net railway operating income, and the cumulative net railway operating income for the year up to the month reported.

As amended, R.1979, d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).  
Stylistic changes.  
Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

N.J.S.A. 54:29A-45.

#### 18:23-8.3 Certification of returns

(a) All returns must be signed and sworn to by the President, Vice-President, or other principal officer of the taxpayer, and also, by the Treasurer, Assistant Treasurer, or Chief Accounting Officer.

(b) Whenever a receiver, trustee or assignee is operating the property or business of a taxpayer, such receiver, trustee or assignee is to compute the returns in the same manner and form as required of the taxpayer. Returns not properly signed will be deemed improperly filed and delinquent.

#### Statutory References

N.J.S.A. 54:29A-45.

#### 18:23-8.4 Extension of filing time

(a) The Director, for good and sufficient cause shown may grant a reasonable extension of time for the filing of returns.

(b) However, he may require a taxpayer to submit any pertinent information necessary for the administration of the Act.

#### Statutory References

N.J.S.A. 54:29A-51.

#### 18:23-8.5 Payments; due dates

(a) Franchise tax. The full amount of the Railroad Franchise Tax assessed against a taxpayer is due and payable on June 15 of the tax year.

(b) Property tax. The full amount of the Railroad Property Tax assessed against a taxpayer is due and payable on December 1 of the tax year.

#### 18:23-8.6 Payment

All checks shall be made payable to the New Jersey State Treasurer, and mailed or delivered to the Division of Budget and Accounting, 33 West State Street, Trenton, New Jersey 08625.

Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).  
Address change.

#### Statutory References

N.J.S.A. 54:29A-46.

#### 18:23-8.7 Payment by person interested

(a) If a taxpayer is in default in the payment of any Railroad Property or Franchise Taxes, any person having an interest in a mortgage or other lien on the taxpayer's franchise or property may pay to the State Treasurer the amount of those taxes with interest thereon and receive from the Treasurer a certificate of such payment.

(b) The tax and interest shall continue to be a lien on the franchise and property of the taxpayer for the benefit of such party in interest until paid by the taxpayer from the sale of his franchise and property. Upon the sale of the franchise or property, such party in interest shall be entitled to reimbursement for the amount of taxes paid, plus interest at the rate of 18 percent per annum.

(c) Where an action has been commenced by the Attorney General to enforce payment of the taxes, any party in interest desiring to pay the tax and interest must also pay an additional amount as provided by the Superior Court for the reasonable expenses and services incurred in the proceeding.

As amended, R.1979 d.48, effective February 6, 1979:  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).

#### Statutory References

N.J.S.A. 54:29A-48.

#### 18:23-8.8 Payment pending litigation

(a) Any taxpayer may pay the entire amount of the tax assessed against him, notwithstanding the fact that there is pending litigation to determine the validity of the whole or any part of such tax.

(b) In the event it is determined through litigation that the whole or a part of such tax paid has been unlawfully assessed or imposed, credit shall be given to the taxpayer for such overpayment, against the taxes next legally levied and payable subsequent to such determination.

## Statutory References

N.J.S.A. 54:29A-49.

**18:23-8.9 Refunds; erroneous overpayment**

Where an erroneous overpayment of the taxes due under the Act has been determined, such overpayment is credited against the taxpayer for the taxes next levied and payable by such taxpayer subsequent to such determination.

## Statutory References

N.J.S.A. 54:49-16; 54:29A-49.

**18:23-8.10 (Reserved)**

## SUBCHAPTER 9. PENALTIES AND INTEREST

**18:23-9.1 Delinquent returns; civil penalty**

Any taxpayer who willfully neglects to file a return when due, is subject to any penalty not exceeding \$10,000.00, as a jury of the Superior Court of this State may determine. The Director shall certify to the Attorney General of this State any taxpayer so in default.

## Statutory References

N.J.S.A. 54:29A-52.

**18:23-9.2 Fraudulent returns; criminal penalties**

Any person who fails to file any report under the Act, or files or causes to be filed with the Director any false or fraudulent report or statement, or aids or abets another in filing with the Director any false or fraudulent report or statement, with the intent to defraud the State or evade the payment of any tax, fee, penalty or interest, or any part thereof, which is due under the Act, is guilty of a misdemeanor and, upon conviction, is subject to a fine, not to exceed \$1,000.00 or imprisonment, not to exceed three years, or both, at the discretion of the court.

## Statutory References

N.J.S.A. 54:29A-70.

**18:23-9.3 Delinquent payment; interest**

Any taxpayer who fails to pay either the railroad franchise tax or the railroad property tax when due is subject to interest at the rate of "prime rate" plus three percent, computed on the amount of tax due, from and including the date the payment was due up to the date payment is actually received by the Director of the Division of Budget and Accounting.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

## Statutory References

N.J.S.A. 54:29A-53.

**18:23-9.4 (Reserved)**

## SUBCHAPTER 10. COLLECTION OF DELINQUENT TAXES

**18:23-10.1 Lien on tax**

The taxes imposed by the Act constitute a lien on all of the revenue, and real and personal property owned, used or controlled by the taxpayer in this State on and after January 1 of the tax year.

## Statutory References

N.J.S.A. 54:29A-54.

**18:23-10.2 Tax a debt**

(a) In addition to constituting a lien, the taxes imposed by the Act constitute and remain a debt of the taxpayer preferred in the event of insolvency and recoverable by the State on an action at law.

(b) No court by writ or order may stay the payment of the taxes assessed or to be assessed under the Act.

## Statutory References

N.J.S.A. 54:29A-55, 56.

**18:23-10.3 Additional remedy available to Director**

(a) As an additional or alternative remedy, the Director of Budget and Accounting may issue a certificate, stating the amount to which a taxpayer is indebted under the Act, to the Clerk of the Superior Court, who thereupon shall enter upon the docket the name of the taxpayer and the State, the amount of the debt, the name of the tax and the date of such entry.

(b) Such entry upon the docket shall have the same force and effect as the entry of a docketed judgment and shall be subject to the same remedies for collection thereof as may be taken upon the recovery of a judgment, but without prejudice to the taxpayer's right of appeal.

## Statutory References

N.J.S.A. 54:29A-57.

**18:23-10.4 Enforcement of lien**

Where a taxpayer refuses or neglects to pay any tax assessed under the Act, and it has become necessary to seize and sell the property and rights to property (real and personal) of the taxpayer, the Director, of the Division of Budget and Accounting may request the Attorney General to commence an action in the Superior Court to enforce the State's lien upon the taxpayer's property or subject such property to the payment of the tax.

## Statutory References

N.J.S.A. 54:29A-58.

**18:23-10.5 Parties to proceedings**

In any action to enforce the collection of the taxes assessed under the Act, any person having a lien upon or claiming an interest in the property or rights to property of a taxpayer, are to be made a party to the proceeding.

## Statutory References

N.J.S.A. 54:29A-59.

**18:23-10.6 Determination of rights; direction of sale by court**

In any proceeding instituted for the collection of the taxes assessed under the Act, the court is required to determine the claims and liens to the property in question, and where the claim or interest of the State is established, direct the sale of such property and rights to property and a distribution of such proceeds in conformity to its findings.

## Statutory References

N.J.S.A. 54:29A-60.

**18:23-10.7 Receivership**

In any proceeding provided in section 10.6 (Determination of rights) of this chapter, the court may, at the insistence of the Attorney General appoint a receiver to enforce the State's lien, or upon certification by the Director, Division of Budget and Accounting that it is in the public interest, appoint a receiver with all the powers of a receiver in equity.

## Statutory References

N.J.S.A. 54:29A-61.

**18:23-10.8 Release of property from lien**

(a) The Director, Division of Budget and Accounting, upon written application and payment of a fee of \$5.00, may release any property from the lien of any tax, interest or penalty imposed by the Act, or of any certificate, judgment or levy procured by him, provided:

1. Payment is made to the said Director in such sum as he deems adequate for the release; or
2. A bond is filed in an amount the said Director deems necessary to secure the payment of any debt evidenced by the lien of such tax, interest, penalty, certificate, judgment or levy sought to be released; or
3. The said Director is satisfied that payment of the tax is sufficiently provided for.

(b) The application for such release is to be in the form prescribed by the Director, Division of Budget and Accounting and must contain an accurate description of the property

to be released together with such other information which the Director may require.

(c) Any such release is to be given under the seal of the Director, Division of Budget and Accounting, and may be recorded in any office in which conveyances of real estate are filed.

## Statutory References

N.J.S.A. 54:29A-77.

**18:23-10.9 through 18:23-10.11 (Reserved)****SUBCHAPTER 11. ADMINISTRATION AND PROCEDURES****18:23-11.1 Audits and investigations**

(a) The Director may in his discretion at any time make or cause to be made by any employee, an audit, examination, or investigation of the books, records, papers, vouchers, accounts, and documents of any taxpayer and all field surveys, and inspections and examinations of all bonds and physical property.

1. Whenever an audit or investigation is ordered, it shall be the duty of every taxpayer and of every director, officer, agent or employee of such taxpayer to exhibit and make available to the Director, all the books, records, papers, vouchers, accounts, and documents requested and to facilitate any audit, examination, field examination, or investigation as much as possible.

2. The Director, or any employee designated by him, may take the oath of any person signing an application, deposition, statement or report which has been requested by the Director in administering the Act.

3. Where a taxpayer fails to file a return, the Director may, by any convenient method, assert any necessary facts from the best information obtainable, including his personal knowledge and judgment.

## Statutory References

N.J.S.A. 54:29A-63, 64.

**18:23-11.2 Taxpayer's right to informal conference**

Where, under N.J.A.C. 18:23-5.6, a taxpayer requests an informal hearing, a conference will be held before Property Administration to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).

Stylistic change.  
Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

N.J.S.A. 54:29A-62.

### 18:23-11.3 Taxpayer's right to formal hearing

(a) Where, under N.J.A.C. 18:23-6.5 (Review of reassessment or assessment), a taxpayer requests an administrative review, such review will be granted by means of a formal hearing, in the following manner:

1. All evidence at a formal hearing shall be taken before a court recorder and the parties shall not be bound by common law or statutory rules of evidence. All testimony having reasonable probative value shall be admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded. Every party shall have the right to present their case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required to a full, true disclosure of the facts;

2. After all parties have been given the opportunity of presenting all the evidence in support of the issues, Property Administration shall take the matter under advisement and reach a determination on the record and facts disclosed;

3. Upon reaching a determination, Property Administration shall notify the taxpayer or other party in interest or his representative by mail of the determination made;

4. The Director or any employee of the Division of Taxation he may designate, may conduct hearings, administer oaths to, and examine under oath, any taxpayer and the directors, officers, agents, and employees of any taxpayer, and all other witnesses relative to the liability of the taxpayer for any taxes pursuant to the provisions of the act.

(b) The Attorney General, or any deputy he may appoint, will attend any formal hearing on behalf of the State.

As amended, R.1979 d.48, effective February 6, 1979.  
See: 11 N.J.R. 43(a), 11 N.J.R. 151(c).  
Amended by R.1990 d.630, effective December 17, 1990.  
See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a).  
Correction to (a)4 to add "any taxpayer ... of the act."  
Amended by R.1994 d.132, effective March 21, 1994.  
See: 26 N.J.R. 110(a), 26 N.J.R. 1371(a).

#### Statutory References

N.J.S.A. 54:29A-64.  
N.J.S.A. 54:29A-68.

### 18:23-11.4 Power of Director to issue subpoenas

The Director has the power to issue subpoenas compelling the attendance of witnesses and the production of books and papers.

#### Statutory References

N.J.S.A. 54:29A-65.

### 18:23-11.5 Power of Director to administer oaths

The Director has the power to administer oaths in order to ascertain any facts necessary in the administration of the Act; and may reduce the statements of any person sworn, to writing, and require such person to swear and subscribe thereto.

#### Statutory References

N.J.S.A. 54:29A-64.

### 18:23-11.6 Power of Director to apply for order to compel

The Director is authorized to apply, ex parte, to the Superior Court of this State and obtain an order compelling any person who has failed to comply with a subpoena to submit to examination.

#### Statutory References

N.J.S.A. 54:29A-65.

### 18:23-11.7 Effect of false swearing

Any person who swears to, affirms, or verifies any false or fraudulent statement with the intent to evade the payment of any tax or who being under oath, testifies falsely at any hearing held pursuant to the Act, is guilty of perjury.

#### Statutory References

N.J.S.A. 54:29A-71.

### 18:23-11.8 Use of Director's personal knowledge for valuation

The Director and any person delegated by him, to value and assess railroad property, is entitled to use his personal knowledge and judgment in the valuation of any property subject to assessment or review of assessment.

#### Statutory References

N.J.S.A. 54:29A-67.

### 18:23-11.9 Offenses deemed committed at Trenton

(a) The failure to perform any act required under the provisions of the Act is deemed an act committed in part at the office of the Director in Trenton.

(b) The certificate of the Director stating that a taxpayer has failed to perform an act required under the Act, is prima facie evidence that such act has not been done.

#### Statutory References

N.J.S.A. 54:29A-72.

## APPENDIX I

## CALENDAR OF TAX EVENTS

## PRE-TAX YEAR

January 1	Property valuations: Determined as of this date. (See N.J.A.C. 18:23-5.2, 5.3)
March 1 (On or before)	Property report: Railroads shall make reports to the Director, Division of Taxation, of their property as it existed on January 1, preceding. (See N.J.A.C. 18:23-8.1)
Second Monday of June (On or before)	Reports of local assessors: Local assessors, if required to do so by the Director, Division of Taxation, shall report to the Director the description and valuation of railroad property not used for railroad purposes. (See N.J.S.A. 54:29A-16)
November 1 (On or before)	Valuations to be fixed: The Director, Division of Taxation, will determine the true value of Class II property used for railroad purposes. (See N.J.A.C. 18:23-5.2, 5.3)
November 10 (Not later than)	Statement of valuations to taxpayer: The Director, Division of Taxation, shall deliver a detailed statement of Class II property valuations to each taxpayer. (See N.J.A.C. 18:23-5.2, 5.3)
December 1 (Prior to)	Taxpayer may confer with Director concerning valuations: Any taxpayer may inspect the Director's valuations and confer with the Director concerning these valuations. (See N.J.A.C. 18:23-5.6)
December 1	Due date property tax: Property taxes are due and delinquent on this date. (See N.J.A.C. 18:23-8.5, 8.6)
December 10 (On or before)	Certify changes in base value to county boards of taxation: The Director, Division of Taxation, shall certify any changes in base value to the several county boards of taxation for use in determining equalized valuation for the succeeding year. (See N.J.S.A. 54:29A-24.6)
December 15 (Not later than)	Deliver statement of amount of State aid payable to each municipality for the following year: The Director, Division of Taxation, shall deliver to each municipality entitled to State aid a statement of the amount of State aid payable for the following year. (See N.J.S.A. 54:29A-24.5)

December 15 (Not later than)	Deliver detailed statement of Class II property and property tax to taxpayers: The Director, Division of Taxation, shall deliver to each taxpayer a detailed statement of the Class II property and the tax for the property for the following year. (See N.J.A.C. 18:23-5.7, 5.8, 5.9)
December 15 (After)	Certify property tax to Director, Division of Budget and Accounting: The Director, Division of Taxation, shall report and certify property tax assessments to the Director, Division of Budget and Accounting. (See N.J.S.A. 54:29A-22)
TAX YEAR	
January 1	Property tax lien date: Taxes become a lien as of this date. (See N.J.A.C. 18:23-10.1)
January 1	Franchise Tax lien date: Taxes become a lien as of this date. (See N.J.A.C. 18:23-10.1)
April 1 (On or before)	Operating income reports to be filed: Railroads to make reports to the Director, Division of Taxation, showing their railway operating revenues of the pre-tax year, all deductions therefrom, and the net railway operating income remaining after such deductions. (See N.J.A.C. 18:23-10.7)
June 1 (On or before)	Franchise tax assessment date: The Director, Division of Taxation, shall compute and assess the franchise tax. (See N.J.A.C. 18:23-4.7)
June 1 (After)	Franchise tax certified to the Director, Division of Budget and Accounting: The Director, Division of Taxation, shall certify his franchise assessments and the statements thereof to the Director, Division of Budget and Accounting. (See N.J.S.A. 54:29A-22)
June 10 (On or before)	Franchise tax bills to taxpayers: The Director, Division of Taxation, shall certify the amount of franchise tax and the manner of computation thereof to each taxpayer within ten days after the completion of his assessment of franchise tax. (See N.J.A.C. 18:23-5.7, 5.8, 5.9)
June 15	Due date franchise tax: Franchise taxes are due and delinquent on this date. (See N.J.A.C. 18:23-8.5, 8.6)
Amended by R.1990 d.630, effective December 17, 1990. See: 22 N.J.R. 2250(a), 22 N.J.R. 3762(a). Administrative Changes reflected.	