

3. The individual was not a fiscal year filer;
4. The individual did not have income derived from or connected with New Jersey sources other than the income reported on this or any other composite return;
5. The individual waives the right to claim any New Jersey personal exemption, credit or deduction and agrees to have the tax calculated directly on such income at the highest tax rate in effect for single taxpayers for the tax year; and
6. The individual elects to be included in a composite return by completing and delivering to the filing entity a Form NJ-1080-E (Election to be included in a Composite Return), or a form substantially similar thereto, prior to the filing of the composite return by the filing entity, in accordance with the following:
- i. Such election shall be made annually;
 - ii. Such election shall be binding on the participant's heirs, representatives, assigns, successors, executors and administrators;
 - iii. Such election shall be an express consent to personal jurisdiction in New Jersey for New Jersey personal income tax purposes; and
 - iv. A qualified electing nonresident participant shall not revoke an election to be included in the composite return or make an election to be included in the composite return after April 15 following the close of the taxable year.
- (c) Each filing entity shall retain the completed and signed election forms (Form NJ-1080-E) submitted by the qualified electing nonresident participants. Such forms shall be made available to the Division of Taxation upon request.
- (d) An individual may participate in more than one New Jersey gross income tax composite return, providing the requirements of (b)1 through 6 above are satisfied.
- (e) Nonresident individuals who are not eligible to participate in the composite return because they do not satisfy all of the requirements of (b) above, or who do not wish to participate in the composite return, shall file a Form NJ-1040NR reflecting their income from all sources, as well as from New Jersey sources.
- (f) The composite return shall be due on the 15th day of the fourth month following the close of the taxable year of the qualified electing nonresident participants. An extension of time to file will be granted on a composite basis only and shall be requested in accordance with N.J.A.C. 18:35-6.1. The request shall be made on Form NJ-630 and shall be made under the filing entity's Federal identification number.

(g) If the filing entity has filed a composite return previously and the amount which the filing entity estimates to be the total income tax liability for the composite return for the current tax year exceeds \$100.00, the filing entity shall file a declaration of estimated tax and shall make quarterly estimated tax payments in accordance with N.J.S.A. 54A:8-4 and 54A:8-5, using Form 1040-ES. Credit shall not be given on the composite return for individual estimated tax payments made by, or on behalf of, any of the qualified electing nonresident participants.

(h) The tax due shall be calculated using the highest gross income tax rate in effect for single taxpayers for the tax year for which the composite return is being filed, without benefit of personal exemptions, deductions or credits.

(i) The filing of a composite return shall be considered to be a group of separate returns meeting the individual filing requirements for each qualified electing nonresident participant as imposed by the Gross Income Tax Act. N.J.S.A. 54A:1-1 et seq.

1. Each qualified electing nonresident participant shall be personally liable for the timely filing of returns and payment of such individual's liability, including, but not limited to, any assessment resulting from an audit of the composite return.

2. Each qualified electing nonresident participant adopts the statements contained in the filed composite return relating to the filing entity and to him or herself (but not as to statements made on the composite return relating solely to other participants), and shall take, under penalty of perjury, full responsibility for the truth of the statements contained in the filed composite return.

3. Each qualified electing nonresident participant adopts, as his or her own, any actions of the filing entity that may affect the composite return, including, but not limited to, a waiver of the statute of limitations for assessment or any decision to accept the results of an audit by the Division.

4. The Director retains the right to require the filing of an individual New Jersey Nonresident Gross Income Tax Return (Form NJ-1040NR) by any individual who participates in a composite return, when the Director deems that the filing of a separate return is necessary to acquire complete facts and information, or to enforce the provisions of the Gross Income Tax Act.

(j) Each composite return shall include the following, for each qualified electing nonresident participant:

1. The participant's name and address;
2. The participant's social security number;
3. The participant's share of income derived from or connected with New Jersey sources;

4. The New Jersey gross income tax attributable to the participant's share of income derived from or connected with New Jersey source; and

5. A copy of the following:

i. Schedule NJ-K-1, Form NJ-1065, if the filing entity is a partnership, limited liability company or limited liability partnership;

ii. Schedule NJ-K-1, Form CBT-100S, if the filing entity is a New Jersey electing S corporation;

iii. Schedule K-1, Federal Form 1041, if the filing entity is a trust or estate; or

iv. Form W-2, if the filing entity is a professional athletic team.

(k) Each return shall include the names, addresses, and social security numbers of all members of the filing entity who are not included in the composite return.

(l) Any composite return which is filed on behalf of 25 or more participants shall be filed on diskette or by using magnetic media.

(m) The composite New Jersey Nonresident gross income tax return (Form NJ-1080-C) shall be signed by:

1. The tax matters partner, if the filing entity is a general partnership, a limited partnership, or a limited liability partnership;

2. An officer of the corporation, if the filing entity is an S corporation;

3. The executor or administrator, if the filing entity is an estate;

4. A trustee, if the filing entity is a trust;

5. An authorized member, if the filing entity is a limited liability company; or

6. If the filing entity is a professional athletic team, the return shall be signed as required in (m)1 through 5 above, depending on the entity type of the team.

(n) If, after the final composite return has been filed, a qualified, electing, nonresident participant discovers income derived from or connected with New Jersey sources other than from the filing entity, such participant shall file a Nonresident New Jersey Gross Income Tax Return (Form NJ-1040NR) which includes all income derived from New Jersey sources (including the share of income reported on the composite return).

1. The participant's Form NJ-1040NR shall include a schedule indicating the name of the filing entity(s) for which the participant was included in a composite return, and showing the amount of income included on the participant's behalf for each composite return and the tax paid thereon.

2. Such participant shall be entitled to a credit on the Form NJ-1040NR for the gross income tax paid on behalf of such participant on the composite return (Form NJ-1080-C).

(o) For members of general and limited partnerships and professional athletic teams this rule shall apply to all tax years beginning on or after January 1, 1995. For members of New Jersey electing S corporations, limited liability partnerships, limited liability companies, and estates and trusts this rule shall apply to all tax years beginning on or after January 1, 1996.

New Rule, R.1997 d.93, effective March 3, 1997.

See: 28 N.J.R. 1608(a), 29 N.J.R. 807(a).

Recodified from N.J.A.C. 18:35-1.30 by R.1998 d.195, effective April 20, 1998.

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

In (a) and (f), changed N.J.A.C. references.

SUBCHAPTER 6. EXTENSION OF TIME TO FILE; RETURN REQUIREMENTS

18:35-6.1 Extension of time to file New Jersey gross income tax return

(a) A taxpayer may obtain an extension of time to file the New Jersey Gross Income Tax Return (Form NJ-1040, NJ-1040NR or NJ-1041) for a period of four months beyond the original due date, providing that the requirements of (b) below are satisfied. If the taxpayer is unable to file the return within the four month extension period, the taxpayer may obtain an additional two month extension, for a total of six months. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

1. Exceptional circumstances can be demonstrated by establishing one of the following:

i. Medical evidence, such as a doctor's certification that the taxpayer is unable to file the return before the expiration of the six month extension period because of sickness or hospitalization;

ii. Proof that the taxpayer relied entirely on the advice and expertise of a tax preparer who failed to complete the return within the six month extension period; or

iii. Proof that, despite timely and diligent attempts, the taxpayer is unable to obtain or receive information from third parties which is necessary for the completion of the tax return.

2. This rule provides the authority for an extension of time to file and is in no way to be considered an extension of time to pay the tax due. A taxpayer's tax liability is due, in full, by the original due date of the return. The taxpayer will be subject to interest and late filing penalty as described in (g) below if the full amount is not paid by the original due date of the return.

(b) A four month extension of time to file a New Jersey Gross Income Tax Return will be granted only if, by the original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with the Application for Extension of Time to File, at least 80 percent of the tax liability computed on the New Jersey Gross Income Tax Return when filed, and:

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

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

(c) A taxpayer may obtain an additional extension of two months beyond the automatic four month extension authorized in (b) above if the taxpayer obtains a valid additional two month extension for Federal income tax purposes and attaches a copy of the additional two month Federal extension request to the New Jersey return when filed, or, if no additional extension is obtained for Federal purposes, by submitting Form NJ-630 no later than the extended due date of the original return.

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

1. The taxpayer requires either a four month or additional two month extension for New Jersey purposes, but did not obtain one for Federal purposes; or

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

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

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

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

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

3. Both penalties set forth in (f)1 and 2 above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter.

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

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

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

i. For periods up to and including December 8, 1987, nine percent per annum;

ii. For periods on and after December 9, 1987, through July 1, 1993, at the annual rate of three percentage points above the prime rate effective on the first business day of the calendar quarter immediately preceding the quarter in which the liability became due, compounded daily on the amount that remains unpaid, calculated from the original due date of the return to the date of payment where the amount thereof is \$1.00 or more (see N.J.S.A. 54A:9-5(a)), provided that payment is made on or before the extended due date. For amounts which remain unpaid beyond the extended due date of the return, interest will be imposed at the annual rate of five percentage points above the prime rate compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment; and

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

(h) A partnership which, pursuant to N.J.S.A. 54A:8-6(b), is required to file Form NJ-1065 may obtain an automatic extension of time to file by attaching a copy of the Federal application of time to file Federal Form 1065 (Federal Forms 8736 or 8800) to Form NJ-1065 when filed. If the partnership did not apply for a Federal extension of time to file Federal Form 1065 the partnership must submit Federal

Form 8736 or 8800 to the New Jersey Division of Taxation on or before the due date of Form NJ-1065.

Repeal and New Rule, R.1996 d.20, effective January 2, 1996.
See: 27 N.J.R. 3136(a), 28 N.J.R. 176(b).

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A taxpayer or tax return preparer who electronically transmits an income tax return, or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act, via the NJ TeleFile or WebFile systems shall be presented with the following statement: "New Jersey law requires that all income tax

returns be signed before they are submitted." This statement will be followed with instructions prompting the taxpayer or tax return preparer as to the manner in which the taxpayer or tax preparer may satisfy this requirement via telephone or web-based medium.

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (c) through (f).

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

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

Rewrote the section.

18:35-6.4 Electronic filing methods

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

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

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