

(b) After a determination is made that all information has been submitted and all taxes have been paid, a Certificate of Tax Clearance is issued. This certificate must be timely filed with the Division of Revenue together with payment of the applicable fee. Typically, the certificates are used in connection with dissolutions, withdrawals, reauthorizations, and mergers (when the survivor is a foreign non-authorized corporation). See also N.J.S.A. 54:50-15, N.J.A.C. 18:7-14.17, 18, 19 and 20.

(c) Additional information, applications and inquiries may be made by writing to the Division of Taxation, Tax Clearance Section, 77 Carroll Street, PO Box 277, Trenton, NJ 08695-0277.

#### 18:1-1.6 Status Section

(a) Requests for either Tax Lien Search or Release of Lien of Franchise Taxes may be initiated by completing an Application for Tax Lien Search, form CS-152R (\$25.00 fee) or an Application for Release of Lien (\$5.00 fee) and remitting the appropriate fee. Information required to complete such applications includes the name of the corporation, the corporate serial number, the Federal identification number, the State and date of incorporation, dates title was held (for conveyance of real property) and the reason for making such application. Typically, applications are made in connection with a conveyance of real property out of a corporate entity, to obtain funding, to release escrow funds or release existing liens on void or inactive corporations. When the intended use pertains to conveyance of real property, information as to the location of the property, such as block, lot, township, and metes and bounds description, must be included. See also N.J.S.A. 54:10A-29 and N.J.A.C. 18:7-13.13 for tax lien search, and N.J.S.A. 54:10A-30 and N.J.A.C. 18:7-13.12 for release of lien of franchise tax.

(b) Additional information, applications and inquiries may be made to the Status Section, Division of Taxation, 77 Carroll Street, PO Box 277, Trenton, NJ 08695-0277.

#### 18:1-1.7 Reinstatement Section

(a) Requests for reinstatement of voided corporate charters may be initiated by completing and submitting an Application for Reinstatement of Corporate Charter, Form C-9021. No fee is required with such application. Information required includes the name of the corporation, trade name (if applicable), business address, corporate serial number, Federal identification number, state and date of incorporation, date of voidance, nature of business and whether or not the corporation holds title to real property. All applications submitted should bear the signature of an authorized representative of the corporation.

(b) Certificates issued for corporation voided for nonpayment of taxes, accompanied by a notarized petition signed by a corporate officer and applicable fee, must be approved by the Attorney General's Office and certified by the Division of Revenue. This is accomplished after the Division of Taxation has determined all outstanding taxes including any penalty and interest have been paid in full.

(c) Certificates issued for corporations voided for nonfiling or non-payment of annual reports will be processed upon receipt of missing annual reports and the fees due thereon. This certificate will be issued after the Division of Taxation has determined that all outstanding taxes including any penalty and interest has been paid in full.

(d) Additional information, applications and inquiries may be made to the Reinstatement Section, Division of Taxation, 77 Carroll Street, PO Box 277, Trenton, NJ 08646-0277.

#### 18:1-1.8 Conference and Appeals Branch

(a) A Conference and Appeals Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director, except administrative hearings and reviews of findings of transfer inheritance and estate taxes which are conducted by the Transfer Inheritance Tax Branch. See N.J.A.C. 18:26-12.5 through 12.10. A protest, and a request for hearing, if any, by a taxpayer to the Conference and Appeals Branch must be made within the time mandated by the appropriate taxing statute, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made pursuant to N.J.S.A. 54:49-18 within 90 days of the giving of the notice or the action of the Director sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to N.J.S.A. 54:51A-14 and 54A:9-10. The 90 day period for appeals to the Tax Court cannot be relaxed.

(b) Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1. The taxpayer's name, address, telephone number and social security or tax identification number;
2. The name, address and telephone number of taxpayer's representative, if any, for the purpose of the protest. In such case, a written power of attorney (Form M-5008) shall be filed with the notice of protest;
3. The type of tax and period(s) under protest;
4. A copy of the notice at issue;
5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested;

6. A statement of grounds upon which the protest is based. To permit the Division to consider and rule upon as many claims for reducing or vacating a finding or assessment as possible, the statement of grounds filed in support of the protest should set forth all claims and assertions which support the taxpayer's challenge to the protested assessment, including all alternative grounds which the taxpayer may assert;

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 90 day period, the Division will, upon written request, extend the time for complying with this submission for an additional 90 days); and

8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest, if any, that is due.

(c) A submission which, in particular, does not set forth the information in (b)5, 6 and 7 above will not be considered a valid protest and will not result in a hearing or review. If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held. The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.

(d) Appeals to the Conference and Appeals Branch may be made before or after payment. The filing of any protest shall not abate penalties and interest for nonpayment. For criteria for abatements of penalty and interest, see N.J.A.C. 18:2-2.7.

1. The following concern collection of taxes while a finding or assessment is being protested to the Director:

i. In the case of an arbitrary or estimated assessment for which security is required pursuant to (d)2i below, and where such security has not been furnished to the Director, the Director may take any action permitted by statute for the purpose of collecting the tax in issue, including, without limitation, the filing of a certificate of debt or a levy on and sale of the taxpayer's property, even though the taxpayer may have protested the finding or assessment to the Director. The Director may institute collection activity at any time prior to the furnishing of the required security, whether or not the taxpayer has requested the form and amount of security that would be required to stay collection activity by the Director. The Director shall immediately stay all collection activity upon the furnishing of the security required by (d)2i or ii below.

ii. Where no security is required pursuant to (d)2ii or iii below, or where, pursuant to (d)2ii below, the Director has notified the taxpayer that such security is required and where such security actually has been furnished to the Director, the Director shall stay any action to collect the tax in issue while a finding or assessment is being protested to the Director.

iii. Any stay of collection activity provided for by this paragraph shall expire and be of no effect 90 days after the final determination of the protest is issued by the Director, except as provided pursuant to (d)3 below.

2. The following concern security for tax while a finding or assessment is being protested to the Director:

i. Security shall be required in the case of a protest to the Director of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 54:49-7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii. Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer. Such security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall make a determination as to whether security is required and as to the form and amount of any such security and give notice to the taxpayer of such determination.

(1) "Taxpayer compliance history" shall be construed to include any and all information obtained and/or maintained by the Director with respect to any State tax accounts of the taxpayer, including, but not limited to, information that the taxpayer has under reported or failed to report income.

(2) The Director may determine a taxpayer's financial condition by reference to a number of factors, including, but not limited to, the following: income/employment data of taxpayer, spouse and dependents; Federal and State filing and payment histories; fixed monthly expenses; loans payable; assets and liabilities; real estate owned and/or being purchased under contract; life insurance policies; real and personal property owned by spouse and dependents valued in excess of \$200.00; all transfers of property made in the preceding three years (including cash); status as a party to any lawsuit, trustee, executor or administrator; holders of any money on taxpayer's behalf; likelihood of receiving an inheritance; or the receipt or expectation of receipt of any benefits from any trust, compensation claim, damage claim, or contingent or future interest.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

3. The following concern collection of taxes after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. The filing of a complaint with the Tax Court shall not stay the collection of a liability consisting in whole or in part of arbitrary or estimated assessments of tax made pursuant to N.J.S.A. 54:49-5 or 54:49-7, unless security has been furnished to the Director pursuant to (d)4i below.

ii. Except in the case of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 54:49-7, the Director shall stay all activity to collect the tax in issue upon the filing of a complaint with the Tax Court where no security is required pursuant to (d)4i or ii below or where, pursuant to (d)4ii below, the Director has notified the taxpayer that such security is required and such security has actually been furnished to the Director.

iii. Any stay of collection activity provided for by this paragraph shall expire and be of no effect upon the entry of a judgment by the Tax Court determining that all or any part of the tax assessed is due and owing.

4. The following concern security for tax after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. Security shall be required in the case of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 54:49-7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii. Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer. Such security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall make a determination as to whether security is required and as to the form and amount of any security and give notice to the taxpayer of such determination. The provisions of (d)2ii(1) and (2)

above shall apply in construing the provisions of this subparagraph.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

5. The following concern the effect of stay of collection activity:

i. Any stay of collection activity by the Director pursuant to (d)1 or 3 above shall serve to extend the time period set forth in any statute of limitations which would otherwise require the Director to collect the tax within the time specified by the statute of limitations. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

ii. A declaratory judgment action, instituted in the Tax Court by a taxpayer alleging that an assessment should not be made, shall serve to extend any statute of limitations which would otherwise bar the Director from making an assessment of the tax in issue beyond the period set forth in the limitations statute. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

(e) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference and Appeals Branch's soonest available date. A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled conference.

(f) The taxpayer may have an attorney or accountant present at a conference. If the taxpayer intends to have an attorney and/or an accountant represent the taxpayer at a conference, the taxpayer shall complete a Power of Attorney form and the Division must receive the form, properly completed, prior to the interview. Unless otherwise instructed by the taxpayer in writing, the original final determination notice, plus any attachments, shall be mailed by certified mail to the taxpayer's last known address, with copies mailed by certified mail to the agent identified on the Power of Attorney form filed by the taxpayer.

(g) Taxpayers may record conferences with Division of Taxation employees. Taxpayers wishing to record a conference shall notify the Division within 14 days prior to the conference and the recording shall be made with the taxpayer's own equipment. The Division does not usually record conferences with taxpayers, but is permitted by statute to make such recordings. The Division make take testimony and may make recordings of testimony with taxpayers. The

Division shall notify the taxpayer of its intent to record a conference or take testimony 14 days prior to the conference. If the Division records a conference between a Division employee and a taxpayer, the taxpayer may obtain a copy of the recording at a cost of \$10.00 per copy.

(h) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10 and may be scheduled by contacting the Individual Tax Audit Branch, 50 Barrack Street, PO Box 249, Trenton, NJ 08695-0249. Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3 and may be scheduled by contacting Property Administration, 50 Barrack Street, PO Box 251, Trenton, NJ 08695-0251.

(i) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference and Appeals Branch, Division of Taxation, 50 Barrack Street, PO Box 198, Trenton, NJ 08695-0198. When using a delivery service, protest documents should be delivered to the Division of Taxation, Conference and Appeals Branch, Quakerbridge Plaza, Office Compliance, Building 5, 3rd Floor, Quakerbridge Road, Mercerville, New Jersey 08619. In order to determine the timeliness of receipt, the Conference and Appeals Branch follows N.J.A.C. 18:2-4.

#### 18:1-1.9 Training for special agents

(a) The Office of Criminal Investigation shall require the successful completion of certain educational and training programs for those persons appointed by the Director as special agents. The requirements shall be designed to insure the health, safety and welfare of the citizens of New Jersey by maintaining high standards or proficiency in law enforcement. The requirements shall include:

1. The completion of the "Basic Training Course for State Investigators" of the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, as established by the New Jersey Police Training Commission, pursuant to N.J.S.A. 52:17B-66 et seq.;

2. Completion of the twice annual firearms qualification program as established by the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General and administered by the Division of Taxation certified supervising firearms instructor/range master; and

3. Completion of criminal tax fraud investigation training, offered by the U.S. Treasury, Internal Revenue Service, Criminal Investigation Division, as offered at the Federal Law Enforcement Training Center, Glynco, Georgia.

(b) The Director will grant exemptions from the training requirements to any person who has successfully completed a training course of another law enforcement agency, provided that the requirements are equivalent to the training requirements established pursuant to (a)1 and 3 above.

## SUBCHAPTER 2. PETITIONS FOR RULES; RULEMAKING NOTICE

### 18:1-2.1 Scope

N.J.A.C. 18:1-2.1 through 2.3 shall apply to all petitions made by interested persons for the adoption, amendment, or repeal of any existing rule by the Division of Taxation pursuant to N.J.S.A. 52:14B-4(f). N.J.A.C. 18:1-2.4 and 2.5 concern Division notice of proposed rulemaking and sufficient public interest in such notice to require a 30-day comment period extension or a public hearing.

Amended by R.2002 d.180, effective June 17, 2002.

See: 34 N.J.R. 653(a), 34 N.J.R. 2045(b).

Rewrote the section.

### 18:1-2.2 Form of petition

(a) A petition for the adoption, amendment or repeal of an existing rule shall be in writing, shall be legible and comprehensible, shall be signed by the petitioner, and shall be captioned "Petition for Rulemaking Action."

(b) Any such petition shall state clearly and concisely:

1. The full name and address of the petitioner and of those on whose behalf the petitioner may be acting in a particular instance;

2. The reasons for the request;

3. A description of the substance or nature of the rulemaking which is requested and a draft text of the proposed rule or rules;

4. A description or analysis of the economic impact of adoption of the request;

5. A description or analysis of the social impact of adoption of the request;

6. The class or group affected by the proposed rulemaking and, if the proposal would impose reporting, recordkeeping, or other compliance requirements or small businesses, a description of the methods to be used to minimize any adverse economic impact on small businesses;

7. A complete disclosure of petitioner's interest in the request, including without limitation, any relevant organizational affiliation or economic interest and the financial effect upon petitioner if the request were brought into effect; and

8. The statutory authority under which the Division may take the requested action.

(c) Petition shall be sent to the following address: Chief, Regulatory Services Branch, Division of Taxation, 50 Barrack Street, PO Box 269, Trenton, NJ 08695-0269.

(d) Any document submitted to the Division of Taxation which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

Amended by R.2002 d.180, effective June 17, 2002.  
See: 34 N.J.R. 653(a), 34 N.J.R. 2045(b).

In (a), substituted "adoption" for "promulgation, inserted "an existing" preceding "rule"; in (b), substituted "state clearly and concisely" for "contain and set forth all of the following information".

### 18:1-2.3 Procedures of the Division

(a) Within 15 days of receipt of a petition in compliance with N.J.A.C. 18:1-2.2, the Division will file a Notice of Petition with the Office of Administrative Law for publication in the New Jersey Register (Register) in accordance with N.J.A.C. 1:30-4.1(c). The notice will include the following:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 60 days of receiving the petition, the Division will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include the following:

1. The name of the petitioner;
2. The Register citation for the Notice of Petition, if that notice appeared in a previous Register;
3. Certification by the Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Division's action upon the petition; and
5. A brief statement of reasons for the Division's action.

(c) Within 60 days following receipt of any such petition, the Division shall either:

1. Deny the petition, giving a written statement of its reasons;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of granting the petition; or
3. Refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the Division shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rulemaking proceeding within 90 days. The results of these further deliberations will be

mailed to the petitioner and submitted to the Office of Administrative Law for publication in the Register.

Amended by R.2002 d.180, effective June 17, 2002.  
See: 34 N.J.R. 653(a), 34 N.J.R. 2045(b).

In (a), amended the N.J.A.C. reference in the introductory paragraph; in (b), substituted "60" for "30" in the introductory paragraph; rewrote (c).

### 18:1-2.4 Sufficient public interest; notice to be given

(a) The Division, by notice at least 30 days prior to the adoption, amendment, or repeal of any rule, shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, pursuant to N.J.S.A. 52:14B-4.

1. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon.

2. The notice shall be:

i. Mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice by law shall be published in the New Jersey Register;

ii. Distributed to the news media maintaining a press office to cover the State House Complex; and

iii. Made available at the Division of Taxation's website at <http://www.state.nj.us/treasury/taxation/>.

3. The Division, prior to the adoption, amendment, or repeal of any rule as required by N.J.S.A. 52:14B-4(a)(1), shall publicize notice of the intended action in newspapers of general circulation.

(b) If, within 30 days of the publication of the proposed rule, sufficient public interest is demonstrated in an extension of the time for submissions, the Division shall provide an additional 30-day period for the receipt of submissions by interested parties. No proposed rule shall be adopted until after the end of this 30-day extension.

(c) For purposes of this section, sufficient public interest for granting an extension of the public comment period exists when 100 or more individuals have:

1. Communicated the need for the extension of the public comment period in writing, legible and intelligible, to the Division of Taxation;

2. At least 50 of the individuals shall have specified in their written communications, an objection to at least one provision of the proposed rule; and

3. All written communications have been directed to the individual who has been designated, on behalf of the Division of Taxation, to receive comments in the notice of a rule proposal.

New Rule, R.2002 d.180, effective June 17, 2002.  
See: 34 N.J.R. 653(a), 34 N.J.R. 2045(b).

See: 34 N.J.R. 653(a), 34 N.J.R. 2045(b).

#### 18:1-2.5 Sufficient public interest; public hearings

(a) The Division shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the Division within 30 days following publication of the proposed rule in the Register pursuant to N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-5.5.

(b) For purposes of this section, sufficient public interest to require a public hearing exists when 100 or more individuals have:

1. Communicated in writing, legible and intelligible, the need for a public hearing on the rule proposal; and
2. At least 50 of the individuals shall each have specified in their written communications, an objection to at least one provision of the proposed rule, and the objection neither relates to proposed rule provisions that are required by law, nor to matters not reflected in the provisions.

New Rule, R.2002 d.180, effective June 17, 2002.

### SUBCHAPTER 3. WARRANT TO LEVY AND SELL REAL AND PERSONAL PROPERTY

#### 18:1-3.1 Warrant to levy and sell real and personal property

(a) The Director is authorized by N.J.S.A. 54:49-13a to issue a warrant, directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property of any person liable for any State tax.

(b) In the discretion of the Director, a warrant may be issued and directed to any officer or employee of the Division of Taxation, and in the execution thereof such officer or employee should have all the powers conferred by law upon sheriffs to levy upon assets of any person liable for any State tax and to seize and sell property of the debtor at public auction. The warrant may be issued and executed in person or by mail.

(c) See N.J.S.A. 54:49-13a for information on collection procedures.