

CHAPTER 33

CLOSING AGREEMENTS AND COMPROMISES

Authority

N.J.S.A. 54:50-1 and 54:53-1 et seq.

Source and Effective Date

R.2006 d.415, effective October 27, 2006.
See: 38 N.J.R. 3287(a), 38 N.J.R. 5176(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 33, Closing Agreements and Compromises, expires on October 27, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 33, Closing Agreements and Compromises, was adopted as R.1978 d.29, effective January 27, 1978. See: 10 N.J.R. 41(a), 10 N.J.R. 127(d).

Chapter 33, Closing Agreements and Compromises, was readopted as R.2006 d.415, effective October 27, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. CLOSING AGREEMENTS

18:33-1.1 General provisions

(a) The Director of the Division of Taxation or any of his delegated representatives may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect to any State tax administered by the Director of the Division of Taxation for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if

good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the director that the State of New Jersey will sustain no disadvantage through consummation of such an agreement.

(b) A closing agreement may be executed even through under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

18:33-1.2 Taxable periods

(a) Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to any or more separate items affecting the tax liability of the taxpayer, as, for example, the amount of gross receipt, deduction items, other income items, statutory deductions or exclusions, statutory additions to income, the year in which an item of income is to be included in gross receipts or income, the year in which an item is to be deducted, or the value of property on a specific date.

(b) Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

18:33-1.3 Finality; determination of fraud

(a) A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

1. The case shall not be reopened as to the matters agreed upon or the agreement modified by an officer, employee, or agent of the State of New Jersey; and

2. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement so recited.

(b) Execution and approval of closing agreement does not preclude an additional inspection of taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists as to execution of agreement.

18:33-1.4 Procedure with respect to closing agreements

(a) A request for a closing agreement, which relates to a prior taxable period may be submitted at any time before a

case with respect to the tax liability involved is filed in the New Jersey Tax Court. All closing agreements shall be executed on forms prescribed by the Director of the Division of Taxation.

(b) Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

Amended by R.2006 d.415, effective December 4, 2006.
See: 38 N.J.R. 3287(a), 38 N.J.R. 5176(b).

In (a), substituted "New Jersey Tax Court" for "Division of Tax Appeals".

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. *Black Whale, Inc. v. Director, Division of Taxation*, 15 N.J.Tax 388 (1995).

18:33-1.5 Applicability and coverage; policy

(a) The Director of the Division of Taxation or any Division of Taxation officer or employee authorized in writing by the director, can enter and approve written closing agreements with any person. Such agreement can relate to the liability of such person (or the taxpayer represented by him), for any State tax administered by the Division of Taxation for any taxable period. The agreement can cover either the total liability of taxpayer or one or more of separate items affecting the liability, if it embraces a tax period ending before the date of the agreement; or one or more separate items affecting tax liability. There can be a series of agreements covering a single tax period.

(b) A closing agreement may be entered into when it appears advantageous to have the case permanently closed; or where the taxpayer shows sufficient reason for desiring a closing agreement, and there would be no disadvantage to the State of New Jersey in entering into it. Closing agreements can be entered into, although under the agreement taxpayer is not liable for tax for the period covered.

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. *Black Whale, Inc. v. Director, Division of Taxation*, 15 N.J.Tax 388 (1995).

18:33-1.6 Procedures

(a) A request to enter into a closing agreement is executed on prescribed forms and submitted, processed and approved under prescribed procedure. If the proposed agreement relates to a prior taxable period, it must be submitted before a case with respect to the tax liability is filed in the New Jersey Tax Court or in any Federal court.

(b) Where parties entered into a stipulation, on trial, or any matter regarding taxpayer's liability, and the action is dismissed with prejudice, taxpayer shall not be permitted to repudiate the agreement because a closing agreement was not executed by the Director of the Division of Taxation.

(c) Taxpayer's acceptance of a determination of additional tax under which an assessment of additional tax was made and paid, does not preclude the director from determining an additional deficiency for the year.

(d) The Director of the Division of Taxation is not estopped from issuing a deficiency assessment. Acceptance of a sum submitted with an amended return does not discharge a taxpayer from further liability; a deficiency assessment is not a closing agreement.

Amended by R.2006 d.415, effective December 4, 2006.

See: 38 N.J.R. 3287(a), 38 N.J.R. 5176(b).

In (a), substituted "New Jersey Tax Court" for "Division of Tax Appeals or in any Division of the Superior Court of New Jersey".

Case Notes

Tax investigator's agreement that vessel was exempt from sales and use tax was outside his authority and therefore did not estop Division of Taxation from assessing taxes on the vessel; there was no compliance with statutes authorizing closing agreements and compromises. *Black Whale, Inc. v. Director, Division of Taxation*, 15 N.J.Tax 388 (1995).

SUBCHAPTER 2. COMPROMISES

18:33-2.1 General provisions

(a) The Director of the Division of Taxation may compromise any civil or criminal liability arising under any State tax laws administered by the Director of the Division of Taxation prior to reference of a case involving such liability to the Attorney General for prosecution or defense. Any such liability may be compromised only upon one or both of the following two grounds:

1. Doubt as to liability (including the amount of liability); or
2. Doubt as to collectibility. No such liability will be compromised if the liability has been established by a valid judgment of a court of competent jurisdiction, and there is no doubt as to the ability of the State to collect the amounts owing with respect to such liability.

18:33-2.2 Scope of compromise agreement

A compromise agreement may relate to a civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision, or a related statute in Title 54 or Title 56 of the Revised Statutes, and then only if such violation was not deliberately committed with intent to defraud.

18:33-2.3 Effect of compromise agreement

(a) A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the State shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of the following:

1. Falsification or concealment of assets by the taxpayer; or
2. Mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside.

(b) However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does

acceptance of an offer in compromise of a criminal liability remit a civil liability.

18:33-2.4 Procedure with respect to offers in compromise

(a) Offers in compromise shall be submitted on forms prescribed by the Director of the Division of Taxation which may be obtained from the Division of Taxation and should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. Remittance shall be in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the manner as provided above.

(b) The offer shall be accompanied by the taxpayer's income and financial statement for the last two years (or the taxpayer's Federal income tax returns filed for the last two years), net worth statements for the nearest month preceding the offer and also the prior year's annual net worth statement. There shall be attached an affidavit containing a declaration by the taxpayer that there have been no fraudulent transfers within the past two years preceding the date of the offer.

(c) Compromises regarding trust fund statutes such as the Sales and Use Tax, the Emergency Transportation Tax, and the Transportation Benefits Tax, shall have annexed to the offer of compromise personal affidavits and personal income and net worth statements of the officers responsible for the collection of any such taxes for the same periods as required from the taxpayer.

18:33-2.5 Stay of collection

The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred only if the interests of the State shall not be jeopardized thereby.

18:33-2.6 Acceptance

An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the State.

18:33-2.7 Withdrawal or rejection

An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

18:33-2.8 Record

(a) Except as otherwise provided in this section, if an offer in compromise is accepted, there shall be placed on file in the office of the director, the opinion of the Attorney General or his designee with respect to such compromise,

with his reasons therefor, and including a statement of the following:

1. The amount of tax assessed;
2. The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and
3. The amount actually paid in accordance with the terms of the compromise. However, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$5,000.

18:33-2.9 Requirement with respect to statutes of limitations

No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter. A criminal liability may be compromised only if it involves a regulatory provision of any applicable statute or law, and is not a violation deliberately committed with intent to defraud.

18:33-2.10 Allocation of tax, penalty and interest

Allocation of tax, penalty, and interest in case of payments made pursuant to offer accepted in compromise of taxes will be made as specified in the agreement. If no allocation is specified in the offer or agreement, or if no agreement has been accepted and the amount of accepted offer exceeds combined tax and penalties, payments received (whether installment or lump sum) will be applied to tax, penalty, and interest in that order, beginning with earliest year.

18:33-2.11 Appellate hearings board

(a) There shall be appointed by the director an appellate hearings board consisting of three members, one of which will be a chairman, with all three members having the same voting right.

(b) This board shall have the authority to execute compromise and closing agreements. The director shall have 60 days to overrule, modify or affirm the determinations of the appellate hearings board. After the expiration of 60 days from the determination of the appellate hearings board, their decision shall be final unless approved, modified or overruled by the director.