

CHAPTER 2

GENERAL POLICIES AND PROCEDURES

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.2003 d.347, effective July 28, 2003.
See: 35 N.J.R. 2164(a), 35 N.J.R. 3847(a).

Chapter Expiration Date

Chapter 2, General Policies and Procedures, expires on July 28, 2008.

Chapter Historical Note

Chapter 2, General Policies and Procedures, was adopted as R.1974 d.182, effective July 3, 1974. See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).

Subchapter 2, Penalties and Interest, was adopted as R.1975 d.284, effective September 25, 1975. See: 7 N.J.R. 439(d), 7 N.J.R. 490(b).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, expired on September 6, 1993, and was subsequently adopted as new rules by R.1993 d.542, effective November 1, 1993. See: 25 N.J.R. 3107(a), 25 N.J.R. 4927(b).

Subchapter 3, Requirements for Payment of Taxes by Electronic Funds Transfer, was adopted as R.1994 d.63, effective February 7, 1994. See: 25 N.J.R. 1078(a), 26 N.J.R. 824(a). Subchapter 4, Postmark Rule, was adopted as R.1995 d.609, effective December 4, 1995. See: 27 N.J.R. 3589(a), 27 N.J.R. 4906(b). Subchapter 5, Refunds, was adopted as R.1996 d.54, effective February 5, 1996. See: 27 N.J.R. 4163(a), 27 N.J.R. 892(a). Subchapter 6, Confidentiality and Disclosure, was adopted as R.1995 d.610, effective December 4, 1995. See: 27 N.J.R. 3591(a), 27 N.J.R. 4907(a). Subchapter 7, Recordkeeping and Retention Requirements, was adopted as R.1997 d.256, effective June 16, 1997. See: 28 N.J.R. 5156(a), 29 N.J.R. 2706(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, General Policies and Procedures, was readopted as R.1998 d.420, effective July 21, 1998. See: 30 N.J.R. 1919(b), 30 N.J.R. 3066(a).

Subchapter 8, Set-off of State Vendor Tax Debt, was adopted as R.1998 d.439, effective September 8, 1998. See: 30 N.J.R. 1920(a), 30 N.J.R. 3258(a). Subchapter 9, Sale of Tax Indebtedness, was adopted as R.1999 d.147, effective May 3, 1999. See: 31 N.J.R. 593(a), 31 N.J.R. 1205(b).

Chapter 2, General Policies and Procedures, was readopted as R.2003 d.347, effective July 28, 2003. See, Source and Effective Date.

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SUBCHAPTER 1. FORMS

18:2-1.1 Reproduction of forms

(a) Subject to conditions and requirements in (b) and (c) below, the Director will accept, for filing purposes, reproductions of printed return forms and privately designed and printed and/or computer-generated and computer-prepared forms, in lieu of the official forms printed and furnished by the Director.

(b) In order to be acceptable for filing purposes, privately designed and printed and/or computer-generated and computer-prepared forms shall be submitted to the Division of Taxation for approval prior to use. The proposed form shall be forwarded for consideration by letter to the Director, Division of Taxation. The Director may, within his or her discretion, approve a form that does not interfere with either Division of Revenue or Division of Taxation procedures in any way. If a reproduction does not meet with the Director's approval, an explanation of the areas in which the form was found to be deficient will be enclosed with the letter rejecting the reproduction. Approval of a reproduction of a tax form shall be valid for one tax year, unless neither the official tax form nor the reproduction has changed since the year of approval in any respect other than date changes and minor editorial changes, in which case approval shall be valid until the tax form or reproduction is changed in any other way. The submission of an unapproved reproduction shall not satisfy statutory return filing requirements.

(c) In order to be acceptable for filing purposes, reproductions of printed return forms must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official forms, for the proper tax period, produced by photo-offset, photoengraving, photocopying, computer, or other similar reproduction processes.
2. Reproductions must be on paper of substantially the same weight and texture, of a quality at least as good as that used in the official form and of any color.
3. Reproductions must be of the same size as that of the official form, both as to the overall dimensions of the paper and the image reproduced thereon.
4. Format of pages shall adhere to the following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable;

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each page and the fold must be the same as on the official form;

iii. Separate pages must be fastened together in numerical order;

iv. Each separate page must be clearly identified by listing at the top of the page the taxpayer's name, the Federal identification number and the appropriate New Jersey serial number.

5. The quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible.

6. The taxpayer's full and correct name and address and the identifying number as it appears on the form furnished by the Director must be typed or legibly printed on the reproduction.

7. Reproduction of forms may be made after insertion of the tax computations and the other required information. However, all signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process.

8. The Director does not approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all of the above conditions.

9. The Director does not approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white, with handwriting of satisfactory legibility.

R.1974 d.182, effective July 3, 1974.

See: 6 N.J.R. 250(c), 6 N.J.R. 328(a).

Amended by R.1999 d.267, effective August 16, 1999.

See: 31 N.J.R. 1444(a), 31 N.J.R. 2369(a).

Rewrote (a); inserted a new (b); recodified former (b) as (c), deleted "flat," following "reproductions of" in the introductory paragraph, and inserted "computer," following "photocopying" in 1.

SUBCHAPTER 2. PENALTIES AND INTEREST

18:2-2.1 Application

The provisions on penalty and interest in this subchapter are applicable to penalty and interest impositions made on and after October 1, 1975, pursuant to P.L. 1975, c.177, approved August 4, 1975, and on all taxes subject to the State Tax Uniform Procedure Law, as amended by P.L. 1987, c.76 and P.L. 1992, c.175, approved December 10, 1992.

Amended by R.1997 d.98, effective March 17, 1997.

See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).

Inserted reference to P.L. 1992, c.175.

18:2-2.2 Tax laws affected

The provisions of the State Tax Uniform Procedure Law and this subchapter shall apply to any tax which is payable

to or collectible by the Director of the Division of Taxation, unless the law imposing such tax specifically provides that the State Tax Uniform Procedure Law and this subchapter shall not apply, or unless the specific provisions of the law imposing such tax provide for penalty and interest which is different from the provisions of the State Tax Uniform Procedure Law and this subchapter.

(b) The failure of the Director to notify a taxpayer as required by (a) above shall not relieve a taxpayer from compliance with its EFT payment requirements. However, if the Division's records indicate that the Director failed to notify the taxpayer as required by (a) above, the Director may take the lack of notice into consideration with respect to any request for a waiver of penalty or interest.

(c) The Director will annually, on such date as is practicable, notify those taxpayers that do not meet the current

"prior year liability" threshold for being required to pay by EFT.

18:2-3.8 Penalties and interest for late EFT payments

(a) If an EFT payment is deposited later than the date required by N.J.A.C. 18:2-3.5(a), the Director shall, for the period between the required and the actual deposit date, assess late payment penalties and interest as provided under the State Tax Uniform Procedure Law or under the pertinent State tax law.

(b) If the availability of funds for EFT payment is delayed, and if the taxpayer shows, to the satisfaction of the Director, that the delay was due to reasons beyond the control of the taxpayer, the Director shall abate penalties and interest. Circumstances such as the taxpayer being in a poor financial condition will not, by itself, be deemed to be reasons beyond the control of the taxpayer.

18:2-3.9 Failure to comply

(a) If a taxpayer is required to remit a tax payment by EFT and the taxpayer pays (with sufficient funds) by check, draft or similar instrument, payment shall be deemed to have been made on the third business day after the date the Director receives the check, draft or similar paper instrument.

Example 1: Funds represented by a check on a bank seized by bank regulators are considered received when honored, rather than tendered, even though there were sufficient funds at the time of tender.

Example 2: A check drawn on sufficient funds is considered received when honored, rather than tendered, if honoring the check is delayed due to computer failure (other than a failure of the Division's computers).

(b) The Director will not consider any claim or assertion by a taxpayer that its check, draft or other instrument cleared prior to the date it was deemed to have been paid under (a) above.

Amended by R.1994 d.305, effective June 20, 1994.
See: 26 N.J.R. 1612(a), 26 N.J.R. 2591(a).

18:2-3.10 Voluntary EFT payment

(a) A taxpayer not required to remit payments by EFT may, upon written approval from the Director, use the ACH debit or ACH credit method for EFT payment for such types of taxes as the taxpayer elects.

(b) Once the Director has given written approval, a taxpayer must use the approved EFT method of payment unless the taxpayer gives the Director notice in writing at least 30 days prior to withdrawing from voluntary participation.

(c) Except as otherwise provided in this section, any taxpayer voluntarily remitting taxes by EFT must follow the EFT requirements of this subchapter and any pertinent guidelines prescribed by the Director.

18:2-3.11 Effect of subchapter

If the provisions of these rules conflict with the provisions of any other tax rule concerning the payment of State taxes, except those taxes excepted in N.J.A.C. 18:2-3.4(f), the provisions of N.J.S.A. 54:48-4.1 and these rules shall govern, unless the context clearly indicates otherwise.

SUBCHAPTER 4. POSTMARK RULE

Authority

N.J.S.A. 54:49-12.5 and 54:50-1.

Source and Effective Date

R.1995 d.609, effective December 4, 1995.
See: 27 N.J.R. 3589(a), 27 N.J.R. 4906(b).

18:2-4.1 Purpose

This subchapter provides rules for the interpretation and administration of N.J.S.A. 54:49-3.1, which requires that a timely postmark shall be deemed a timely filing or remittance, and that the use of registered or certified mail shall be deemed prima facie evidence of delivery.

18:2-4.2 Definitions

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

"Document" means any return, report, declaration of estimated tax, claim, statement, notice, application, affidavit, petition, protest or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of the tax laws. However, such term does not include any document that is required under any provision of the tax laws or the regulations to be filed or delivered by any method other than mailing.

"Payment" means any payments required to be made within a prescribed period or on or before a prescribed date under the authority of any provision of the tax laws. However, the term does not include any remittance unless the amount thereof is actually received by the Division. For example, if a check is used as a form of payment, this section does not apply if such check is not received, or if received, is not honored upon presentment. Furthermore, such term does not include any payment that is required under any provision of the tax laws or regulations to be made by any method other than mailing.

18:2-4.3 Postmark date deemed date of filing or payment

For documents required to be filed with or payments to be made to the director generally, and except as otherwise provided, the date of the United States postmark as stamped on the envelope or other wrapper in which such document or payment is contained will be deemed to be the date of filing or payment. Where delivery is made by courier, delivery messenger or similar service, the date of receipt by the Division, as evidenced by an authentic Division of Taxation date stamp, will be deemed to be the date of filing or payment.

18:2-4.4 Mailing requirements

(a) Documents and/or payments shall not be considered to be timely filed or timely paid unless mailed in accordance with all of the following requirements:

1. The documents or payment must be contained in an envelope or other appropriate wrapper properly addressed to the address designated by the Division of Taxation.

2. The envelope or wrapper containing the document or payment must be deposited in the mail of the United States within the prescribed period on or before the prescribed date with sufficient postage prepaid. For this purpose, such document or payment is considered to be deposited in the mail of the United States when it is deposited with the domestic mail service of the United States Postal Service. The domestic mail service of the United States Postal Service includes mail transmitted within, among, and between the United States, its territories and possessions, and Army Air Force (APO) and Navy (FPO) post offices.

18:2-4.5 United States postmark

If the postmark on the envelope or wrapper containing the documents or payments is made by the United States Postal Service, to be timely such postmark must bear a date stamped by the United States Postal Service which is within the prescribed period or on or before the prescribed date for filing or paying (including any extensions of time granted for filing or paying). If the postmark stamped by the United States Postal Service on the envelope or wrapper does not bear a date which falls within such prescribed period or on or before such prescribed date for filing or paying, the document or payment will not be considered to be timely filed or paid, regardless of when the envelope or wrapper was deposited in the mail. Accordingly, the sender assumes the risk that the envelope or wrapper will not bear a postmark date stamped by the United States Postal Service within the prescribed period or on or before the prescribed date for filing or paying (including any extensions of time granted for filing or paying). See N.J.A.C. 18:2-4.9 with respect to the use of registered mail or certified mail to avoid this risk. Furthermore, if the postmark made by the United States Postal Service on the envelope or wrapper containing the document or payment is not legible, the provisions of N.J.A.C. 18:2-4.6 shall apply.

Example 1: 3rd Quarter Sales and Use Tax Return

Due Date:	October 20
Postmarked:	October 20
Received by Division of Taxation	October 24

The return would be considered timely filed.

Example 2: 3rd Quarter Sales and Use Tax Return

Due Date:	October 20
Postmarked:	October 21

Received by Division of Taxation October 26

The return would be considered filed on October 26.

18:2-4.6 Metered mail

Documents and payments not postmarked by the United States Postal Service shall be deemed to be mailed and postmarked three days prior to the date upon which such documents and payments are received by the Division.

18:2-4.7 Multiple postmarks

If the envelope or wrapper containing the document or payment has a postmark made by the United States Postal Service in addition to a postmark made other than by the United States Postal Service (for example, metered mail), the postmark which was made by the United States Postal Service will be determinative of the filing date.

18:2-4.8 No postmark

If the envelope or wrapper containing the document or payment bears sufficient prepaid United States postage but is missing any postmark whatsoever, the document shall be deemed filed, or the payment shall be deemed paid, three days prior to its receipt by the Division of Taxation.

18:2-4.9 Registered or certified mail deemed prima facie evidence of delivery

If any document or payment is sent by United States registered or certified mail, such registration or certification shall be prima facie evidence that the document was delivered to the director, bureau, office, officer or person to which or to whom addressed. The timeliness of such document or payment delivered as evidenced by such registration or certification shall be determined under the provisions of N.J.A.C. 18:2-4.10.

18:2-4.10 Registration or certification date deemed postmark date

(a) If an envelope or wrapper containing a document or payments is sent by United States registered mail, the date of such registration is treated as the postmark date and the date of filing or paying.

(b) If an envelope or wrapper containing a document or payment is sent by United States certified mail and the sender's receipt for certified mail is postmarked by the postal employee to whom such envelope or wrapper is presented, the date of the postmark on such receipt for certified mail is treated as the postmark date and the date of filing or paying.

(c) If an envelope or wrapper containing a document or payment is sent by United States certified mail and the sender's receipt for certified mail is not postmarked by the postal employee to whom such envelope or wrapper is presented, the document shall be deemed filed or the payment shall be deemed paid, three days prior to its receipt by the Division.

18:2-4.11 Foreign postmark

If the envelope or wrapper containing the document or payment is mailed from a foreign country and received by the Division, the date of the official postmark stamped on the envelope or wrapper will be deemed to be the date of filing or payment. The envelope or wrapper must be properly addressed, have sufficient postage prepaid and bear a date stamped by such foreign country's official postal service which is within the prescribed period or on or before the prescribed date for filing or paying (including any valid extensions of time).

18:2-4.12 Weekend and holiday

For purposes of this subchapter, when the last day prescribed (including any extensions of time) for filing a document, making a payment, or performing any act falls on a Saturday, Sunday or a day which is a legal holiday in the State of New Jersey, the performance of such acts will be considered timely if performed on the next succeeding business day.

18:2-4.13 Express delivery

Where delivery of documents and payments is made by Federal Express, United Parcel Service, or similar service, such documents shall be deemed filed, or the payments shall be deemed paid, one day prior to the date upon which such documents and payments are received by the Division of Revenue. Such documents or payments shall be delivered to the Division of Revenue, 160 South Broad Street (Livingston Street entrance), Trenton, New Jersey 08646.

New Rule, R.1999 d.217, effective July 19, 1999.
See: 31 N.J.R. 1166(a), 31 N.J.R. 1941(a).

SUBCHAPTER 5. REFUNDS**Authority**

N.J.S.A. 54:50-1 and 54:49-12.5.

Source and Effective Date

1996 d.54, effective February 5, 1996.
See: 27 N.J.R. 4163(a), 27 N.J.R. 892(a).

18:2-5.1 Purpose

This subchapter provides rules for the administration of refund procedures pursuant to the applicable provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

18:2-5.2 Claims for refund; when allowed

(a) Taxpayers may claim a refund for overpayment of taxes by filing a return or a Claim for Refund (Form A-3730), except that with respect to a claim for refund of a payment of an additional tax assessment as permitted by N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(b)1, taxpayers are to use Form A-1730.

(b) For claims accruing prior to July 1, 1993, any taxpayer may file a claim for refund within two years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is imposed by the law imposing a particular tax statute.

(c) For claims accruing on and after July 1, 1993, any taxpayer may file a claim for refund within four years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is fixed by the law imposing a particular tax statute. All claims barred by the applicable statute of limitations on July 1, 1993 shall continue to be barred.

(d) The statute of limitations period for filing a claim for refund of gross income tax is three years after the return is filed or two years after the tax is paid, whichever is later.

(e) The Transfer Inheritance Tax Law generally provides for a three year statute of limitations on applications for refunds. See N.J.A.C. 18:26-10.12.

Amended by R.2002 d.153, effective May 20, 2002.

See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).

Rewrote (a).

18:2-5.3 Claim not required or permitted until final determination

(a) No claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director, or after appeal proceedings have been commenced, until such protest or appeal has been finally determined. Should the protest or appeal with respect to a tax paid be finally determined in favor of the taxpayer, then the refund claim shall be processed by the Director in accordance with the Director's final determination after protest or the judgment of the Tax Court upon appeal.

(b) The provision in (a) above, not permitting or requiring refund claims to be filed, does not apply to any tax paid which is not implicated by, or the subject of, a protest duly filed with the Director, or appeal proceedings duly commenced in the Tax Court. In the case of such taxes paid, a refund claim may be filed pursuant to N.J.S.A. 54:49-14 and N.J.A.C. 18:2-5.2.

18:2-5.4 Credit against outstanding tax liabilities

(a) In examining a claim for refund, if it is determined that there has been an overpayment of tax, the amount of the overpayment and interest on the overpayment, if any, will be credited against any outstanding State tax liability of the taxpayer. If there is no outstanding State tax liability, the taxpayer will be entitled to a refund of the overpayment and interest on the overpayment, if any.

(b) Refunds or credits of erroneous or illegal tax payments for which no refund claims have been filed will be made strictly according to the provisions of N.J.S.A. 54:49-16.

18:2-5.5 Items previously assessed

(a) The following terms, when used in this section, shall have the following meanings:

1. "Delinquency tax assessment" or "arbitrary tax assessment" or "estimated tax assessment" each mean an assessment made pursuant to N.J.S.A. 54:49-5, or any substantially similar provision under a specific State tax statute, whereby the taxpayer has failed to file a return or report as required under any tax law, and the Director has estimated and assessed the taxes, fees, penalties and interest due from the taxpayer.
2. "Additional tax assessment" means an assessment of additional tax made pursuant to N.J.S.A. 54:49-6, Deficiency assessment in certain cases, or any substantially similar provision under a specific State tax statute, whereby the taxpayer has filed a tax return or report, and the Director determines that there is a deficiency with respect to the payment of tax due because the amount of tax shown due on the report or return is less than the amount of tax due after adjustment of the amount due upon examination or audit of the return or report by the Director. The assessment of additional tax shall include interest and penalty imposed under any State tax law. For purposes of this section, the term "additional assessment" does not include an assessment issued because the amount of tax actually paid is less than the amount due as shown on the taxpayer's return or report.
3. "Jeopardy tax assessment" means an assessment made under the circumstances set forth at N.J.S.A. 54:49-7, 54A:9-14, or any substantially similar provision under a specific State tax statute.

(b) Except as provided by (c)1 below, and N.J.A.C. 18:2-5.7, no claim for refund shall be permitted for items which were previously the subject of an assessment by the Director where the taxpayer was permitted 90 days to protest the assessment pursuant to N.J.S.A. 54:49-18, or similar provisions of any particular tax statute. Failure to timely protest the assessment shall be deemed a waiver of the taxpayer's right for review of that item.

(c) The extended refund request period exception is as follows:

1. For a return period beginning on or after January 1, 1999, a taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax, or in the case of a decedent dying on or after January 1, 1999, a taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to Transfer Inheritance Tax or Estate Tax, if the taxpayer:
 - i. Neither has protested the additional tax assessment to the Director in compliance with the applicable statutory protest period nor appealed the additional tax assessment to the New Jersey Tax Court in compliance with the statutory appeal period;

- ii. Pays the additional tax assessment in full, including all penalty and interest imposed thereon for which the taxpayer had received notice, within one year after the date the applicable statutory protest period has expired;

- iii. Files a claim for refund of the payment made pursuant to (c)1ii above, on the refund claim form prescribed by the Director (Form A-1730) within 450 days after the date the protest period described in (c)1ii above expires;

- iv. Uses a separate refund claim form for each type of tax paid for which a refund is sought, whether or not the notice of additional tax assessment included more than one tax and whether or not the taxpayer used only one check to pay two or more tax assessments; and

- v. Explains in the refund claim form the ground(s) upon which the refund is claimed, limited to the ground(s) for the additional tax assessment provided in the notice of assessment, in accordance with the requirements of N.J.A.C. 18:2-5.8(g). However, a taxpayer who has already protested one or more grounds for an additional tax assessment but not another ground or who has already protested one or more periods of a multi-period additional tax assessment but not another period is not eligible to use the procedure prescribed by (c)1 above with respect to the ground(s) or period(s) that the taxpayer did not previously protest.

2. The Director will not consider the claim for refund if any of the requirements in (c)1 above are not met. No extensions of time to meet any such requirement will be allowed.

3. A refund will not be granted unless the taxpayer demonstrates that the ground(s) provided by the Division of Taxation in the notice of additional tax assessment is (are) erroneous as a matter of fact or law. The Division of Taxation will not consider any other ground(s) in reviewing the claim.

4. The maximum amount that may be refunded is the amount that is paid pursuant to (c)1ii above.

5. The procedures prescribed by (c)1 above does not apply to refunds of payments of costs of collection, delinquency, estimated or arbitrary tax assessments, jeopardy tax assessments when no return has been filed for the period(s) at issue, payments of penalty and interest without payment of an underlying additional tax assessment, and payments of penalty and interest imposed without assessment of an additional tax.

6. Payment of an additional tax assessment is due within the time established by the Uniform Procedure Law and the provisions of (c)1 above do not extend the due date of the payments of any additional assessment. Such assessment shall be due as set forth in N.J.S.A. 54:49-6, 54A:9-2(b), or any other similar provision of an applicable specific State tax statute.

7. An additional tax assessment is paid whether paid voluntarily by the taxpayer or involuntarily as a result of collection efforts undertaken by the Division of Taxation.

2. Individual refunds: If the taxpayer overpaid sales tax when making a retail purchase, the taxpayer may request a refund directly from the vendor from whom the purchase was made. However, if the vendor has already submitted the tax to the State, the taxpayer must complete a Claim for Refund (Form A-3730) and include supporting documents to substantiate the claim.

(e) A taxpayer requesting a refund of a payment of an additional assessment of Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Transfer Inheritance Tax, Estate Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax pursuant to N.J.S.A. 54:49-14.b is required to use Form A-1730.

(f) If there is no other established refund claim procedure or amended return for other State taxes paid in error, a Claim for Refund (Form A-3730) should be completed and submitted with a detailed explanation with supporting documentation.

(g) The refund claim or amended return shall set forth the taxpayer's name, address, identifying number, signature, and a full narrative description of the claim. The narrative description shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Division of the exact basis thereof. Citations to relevant statutes, regulations, and case law are not required but may be included if known. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. If a refund claim or amended return does not contain sufficient information, the Division will return the claim or amended return with guidance to the taxpayer. For purposes of the statute of limitations on claims for refunds under N.J.S.A. 54:49-14 and 54A:9-8, and interest payments on late refunds under N.J.S.A. 54:49-15.1, the refund claim will not be deemed complete until the required information is submitted. A claim which does not comply with this subsection shall not be considered for any purpose as a claim for refund or credit. (See also N.J.A.C. 18:2-5.9, Interest on overpayments.)

Amended by R.1999 d.295, effective September 7, 1999.
See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).

Added (f).

Amended by R.2002 d.153, effective May 20, 2002.
See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).

Added a new (e); recodified former (e) as (f) and inserted "other" preceding "established refund"; recodified former (f) as (g).

18:2-5.9 Interest on overpayments

(a) For tax paid with respect to reports or returns due on and after January 1, 1994, interest shall be allowed and paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. "The date of the refund" shall be deemed the date set forth on the check or

the documents authorizing electronic funds transfer (EFT). If interest must be paid, it will be calculated to accrue from the later of the date of the filing of a refund claim, the date the tax is paid, or the due date of the return. No interest shall be allowed or paid on an overpayment of less than one dollar; or on an overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return; or within six months after the return is filed, whichever is later. Interest will not be paid on overpayments where the taxpayer has requested that the overpayment be applied to the following year's tax liability.

(b) No interest will be paid on a refund of an overpayment issued pursuant to N.J.S.A. 54:49-16 unless and until six months after the taxpayer files a claim for refund. See N.J.A.C. 18:35-1.27.

Example 1: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Postmarked:	March 2
Return with overpayment received by the Division of Taxation:	March 12

A refund of overpaid taxes would accrue interest if not refunded by October 15 (six months after the due date of the return, April 15).

Example 2: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Return and overpayment (unknown to taxpayer at time return was filed) received by Division of Taxation:	April 15
Claim for refund received by Division of Taxation:	May 1

Interest would accrue on an overpayment not refunded by November 1 (six months after the claim for refund date of May 1).

Example 3: Same as above, except no claim filed. The Division of Taxation discovers the overpayment within two years of payment. No interest is due on the refund of the overpaid tax.

(c) No interest shall be paid on a refund of an overpayment unless the claim for refund or amended return contains:

1. The taxpayer's name, address, and identifying number and the required signatures; and
2. Sufficient information (whether on the refund claim, amended return and necessary attachments) to permit the verification of the claim, including a full narrative description of the basis for the claim. (See also N.J.A.C. 18:2-5.8, Refund claim procedures.)

Amended by R.1999 d.295, effective September 7, 1999.

See: 31 N.J.R. 1583(a), 31 N.J.R. 2626(a).
Added (c).

18:2-5.10 Separate claims required

For claims accruing on or after July 1, 1993, each taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted.

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.1995 d.610, effective December 4, 1995.
See: 27 N.J.R. 3591(a), 27 N.J.R. 4907(a).

18:2-6.1 Records confidential

(a) Division of Taxation records and files are confidential and privileged.

(b) Division officers and employees, former Division officers and employees, any Division employee engaged in the custody or administration of Division records, and any person who may have secured information from Division records, may not divulge, disclose or use for their own personal advantage any information obtained from Division records, from the examination or inspection of the property of any person, or any copy of a federal return or federal return information required to be attached to or included in any New Jersey return.

(c) The Division of Taxation is not required to produce any records or files for inspection of any person or use in any action or proceeding except when the records or files are shown to be directly involved in an action or proceeding under the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. or other State tax law, or where the determination of an action or proceeding will affect the validity or amount of State claims for taxes, or any lawful proceeding for the investigation and prosecution of violations of the criminal provisions of the State Tax Uniform Procedure Law or other State tax law.

(d) Violation of these provisions is a crime of the fourth degree.

(e) Requests for information from Division records, including requests for information pursuant to N.J.S.A. 54:50-9, should be directed to the Division of Taxation Office of Chief of Staff.

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.1997 d.256, effective June 16, 1997.
See: 28 N.J.R. 5156(a), 29 N.J.R. 2706(a).

18:2-7.1 Purpose

The purpose of this subchapter is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

18:2-7.2 Definitions

For purposes of this subchapter, the following terms shall be defined as follows:

"Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

"Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

"Hard-copy" means any documents, records, reports or other data printed on paper.

"Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

"Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

"Taxpayer" as used in the subchapter means any person owing or liable to pay any State tax or any person deemed by the Director to be so owing or liable.

18:2-7.3 Recordkeeping requirements—general

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records shall be made available on request by the Director or his or her authorized representatives. Such records shall include, but not be necessarily limited to, books of account, invoices, sales receipts or other documents required to be maintained by any specific tax statute or regulation of this State.

(b) If a taxpayer retains records required to be retained under this section in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Director in machine-sensible format upon request of the Director.

(c) If the machine-sensible or hard-copy records of the taxpayer are determined to be incorrect or insufficient, the return(s) filed on the basis of the information obtained from such records may be deemed to be incorrect or insufficient and the Director may determine the amount of tax due the State by using any information available, whether from the taxpayer's place of business or from any other source.

(d) Nothing in this section shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with (b) above.

18:2-7.4 Recordkeeping requirements—machine-sensible records

(a) General requirements pertaining to machine-sensible records are as follows:

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-

sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this section are met.

2. At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic data interchange requirements are as follows:

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records shall contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.

1. The vendor is under contract to provide goods or services or engage in a construction project for the State of New Jersey, or any of its branches, or any of its agencies or instrumentalities;

2. The vendor is entitled to payment from the State for such goods, services or construction project; and

3. The vendor is indebted for any State tax, or, where the vendor is a partnership or S-corporation, any partner or shareholder of the vendor-entity is indebted for such tax.

18:2-8.3 Time for initiating set-off procedure

(a) The Division of Taxation may initiate procedures to set off the tax debt of a specific vendor upon the expiration of 90 days after either:

1. The issuance by the Division of a notice and demand for payment of any State tax owed by the taxpayer; or

2. The issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit determination.

18:2-8.4 Set-off of tax liability of a member of a partnership or S corporation under contract with State

When a partnership or an S corporation is a vendor, the Division may also seek to reduce the contract payment due to that vendor by the amount of the State tax indebtedness of any of that vendor's partners or shareholders. The amount set off shall not exceed the individual partner's or shareholder's proportionate share of the contract payment due to the vendor-partnership or vendor-S corporation.

Example 1: A vendor-partnership earns \$10,000 providing consulting services to the State. The partnership has two equal partners, one of whom has a \$100.00 gross income tax debt.

The debtor-partner's share of the contract payment due to the vendor-partnership is \$5,000. However the partner's tax debt is only \$100.00. Since the individual's tax debt (\$100.00) does not exceed his proportionate one-half share of the contract payment (\$5,000), the contract payment will be set off by the full \$100.00 debt owed by the debtor-partner.

The vendor-partnership will receive a \$9,900 contract payment. The debtor partner's gross income tax debt will be satisfied through the set-off.

Example 2: A vendor-S corporation earns \$10,000 providing electrician services to the State. The S corporation has 10 equal shareholders, one of whom has a \$10,000 gross income tax debt.

The debtor-shareholder's one-tenth proportionate share of the \$10,000 contract payment is \$1,000. Therefore, al-

though his individual tax debt is \$10,000, the portion of that tax debt that can be used to offset the contract payment due to the full S corporation is limited to \$1,000, that is, the debtor-shareholder's proportionate share of the contract payment.

The vendor-S corporation will receive a contract payment of \$9,000. The debtor-shareholder will have a remaining gross income tax indebtedness of \$9,000.

18:2-8.5 Notice of set-off

(a) The Division shall give notice both to the vendor, and to the taxpayer, if the taxpayer is a partner or shareholder of the vendor-entity, as soon as the Division takes set-off action under this chapter.

(b) The notice shall:

1. Specify the contract payment due to the vendor that is being sent to the Division of Taxation to offset the taxpayer's tax debt; and

2. Provide the vendor with an opportunity to protest the set-off action by filing a written protest within 30 days of the date of the notice.

(c) A written protest shall conform to the requirements N.J.A.C. 18:1-1.8.

(d) The filing of a protest shall not stay the collection of the indebtedness.

SUBCHAPTER 9. SALE OF TAX INDEBTEDNESS

Authority

N.J.S.A. 54:50-1 and 54:50-35.

Source and Effective Date

R.1999 d.147, effective May 3, 1999.

See: 31 N.J.R. 593(a), 31 N.J.R. 1205(b).

18:2-9.1 Time for sale of indebtedness

(a) The State Treasurer is authorized to sell, transfer, or assign all right, title, and interest in any State tax indebtedness only when the following conditions have been satisfied:

1. The underlying State tax indebtedness is fixed and final and not subject to protest or appeal pursuant to the State Tax Uniform Procedure Law or the New Jersey Gross Income Tax Act; and

2. A certificate of debt stating the amount of the indebtedness has been filed with the Clerk of the Superior Court.

18:2-9.2 Bidding and sale procedures

(a) Public advertisement for bids and sale of tax indebtedness to bidders shall be conducted by the Division of Property Management and Construction, which has been designated by the Treasurer to carry out the Treasurer's responsibilities pursuant to N.J.S.A. 54:50-30.

(b) Pursuant to and consistent with the authority granted by N.J.S.A. 54:30-35 and 54:30-29b, the Director of the Division of Taxation shall have the right to approve any specifications and invitations for bids and any forms of contract drafted by the Treasurer's designee pursuant to this section.

18:2-9.3 Disclosure to purchaser of tax indebtedness

Notwithstanding the provisions of N.J.S.A. 54:50-8, pursuant to N.J.S.A. 54:50-32 the Director of the Division of Taxation may provide a purchaser, transferee or assignee of a taxpayer's indebtedness with all information contained in the certificate of debt and with any additional information the Director deems necessary in order for the purchaser to collect the indebtedness represented by the certificate. However, the Director may not make any disclosure to the purchaser, transferee or assignee of the indebtedness that would violate the provisions of 26 U.S.C. § 6103(a).

18:2-9.4 Protest or appeal from sale of tax indebtedness

(a) A protest to the Director or an appeal to the Tax Court from the sale of tax indebtedness may be brought only on the ground that the underlying indebtedness was not fixed and final at the time of the sale, or that there was a technical ministerial error in the certificate of debt, including, but not limited to, incorrect identification of taxpayer, insufficient notice of certificate of debt, incorrect calculation of unpaid balance of a debt paid in part or in full.

(b) A taxpayer who challenges the underlying indebtedness after the tax debt has been sold has the burden of proving by clear and convincing evidence that the State's claim was not fixed and final at the time of sale.

(c) In any appeal by a taxpayer to the Tax Court challenging the underlying tax indebtedness, made pursuant to N.J.S.A. 54:50-29 et seq., the Director of the Division of Taxation shall be the primary party in interest, and the purchaser of the lien shall also be joined with the Director as a defendant. Such challenge shall first have been brought to the Director by protest under N.J.S.A. 54:49-18, in which protest the purchaser shall also have been joined.

(d) Notwithstanding the purchaser's joinder in any action or proceeding brought to challenge the underlying indebtedness, the Director shall have the sole authority to determine, in the case of a protest, and advocate, in the case of an appeal, whether the matter is fixed and final, whether the certificate of debt is correct and properly entered, and whether and to what extent any relief should be afforded to the taxpayer.