

**CHAPTER 9**

**BUSINESS PERSONAL PROPERTY TAX ACT**

**Authority**

N.J.S.A. 54:11A-19.

**Source and Effective Date**

R.1993 d.312, effective June 4, 1993.  
See: 25 N.J.R. 1485(b), 25 N.J.R. 2899(b).

**Executive Order No. 66(1978) Expiration Date**

Chapter 9, Business Personal Property Tax Act, expires on June 4, 1998.

**Chapter Historical Note**

All provisions of this chapter became effective prior to September 1, 1969.

1978 Revisions: Amendments became effective September 13, 1978 as R.1978 d.321. See: 10 N.J.R. 362(b), 10 N.J.R. 457(c).

1983 Revisions: In compliance with Executive Order 66(1978), this chapter was readopted effective August 12, 1983 as R.1983 d.354. See: 15 N.J.R. 1081(a), 15 N.J.R. 1487(a).

1988 Revisions: This chapter was readopted pursuant to Executive Order 66(1978) effective June 7, 1988 as R.1988 d.297. See: 20 N.J.R. 511(a), 20 N.J.R. 1570(c).

Pursuant to Executive Order No. 66(1978), Chapter 9 was readopted as R.1993 d.312. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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## SUBCHAPTER 1. BUSINESS PERSONAL PROPERTY TAX; GENERAL PROVISIONS

### 18:9-1.1 Definitions

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

“Director” means The Director of the Division of Taxation, Department of the Treasury.

“Original cost” means the actual cost or the fair market value of any business personal property, depending upon the circumstances in which that property is acquired. (See Section 4.2 (Original Cost) of this Chapter). (See N.J.S.A. 54:11A-2(c) as to definition and scope of “original cost.”)

“Person” means any individual, trust, estate, partnership, limited partnership, association, organization, company, joint stock company, corporation or other entity. (See N.J.S.A. 54:11A-2(e) as to definition and scope of “person.”)

“Personal property used in business” or “business personal property”—All tangible goods and chattels used or held for use in any business, transaction, activity, or occupation conducted for profit, except property not subject to the taxes as provided in Subchapter 3 of this Chapter. (See N.J.S.A. 54:11A-2(b) as to definition and scope of “personal property used in business.”)

“Pre-tax year” means the year immediately preceding the tax year in which the assessment for the tax year is made.

“Taxpayer” means any person subject to the Business Personal Property Tax Act. (See N.J.S.A. 54:11A-2(d) as to definition of “taxpayer.”)

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

#### Case Notes

Combustion turbine electricity generating unit owned by trustees and leased to electric utility held subject to business personal property tax, notwithstanding that the same unit owned by the utility would not be subject to the tax by virtue of the Gross Receipts Tax Act. *Atlantic City Electric Co. v. Taxation Div. Director*, 5 N.J. Tax 15 (Tax Ct. 1982).

## SUBCHAPTER 2. PERSONS AND PROPERTY SUBJECT TO THE TAX; EXCEPT WHEN ACQUIRED ON OR AFTER JANUARY 1, 1977

### 18:9-2.1 Persons subject to the tax

(a) Any person who is the owner of business personal property as defined in section 1.1 (Definition) of this chapter is subject to the tax.

(b) Lessors of tangible personal property engaged in whole or in part in the business of leasing that property to other persons including, but not limited to, governmental agencies, non-profit organizations or business holding property exempt under the Act, are subject to tax for all such property leased in New Jersey on October 1 of the pre-tax year.

1. Business personal property must be reported and the tax paid upon it by the owner, regardless of the terms and conditions of the lease agreement, the property's use or the person using the property;

2. Tangible personal property is deemed to be leased at the time the property is actually in the possession of the lessee under a contract of lease;

3. Any lessee of such property (who is required to file a return for his own business personal property), while not subject to the tax with respect to the leased property and must report on his return all the tangible personal property leased by him and located in New Jersey on October 1 of the pre-tax year, including the full name and address of the lessor and the quantity and description of each item of leased property.

#### Statutory References

See N.J.S.A. 54:11A-2 as to definitions of “business personal property”, “taxpayer” and “person” for purposes of the Act.

#### Case Notes

Combustion turbine electricity generating unit owned by trustees and leased to electric utility held subject to business personal property tax, notwithstanding that the same unit owned by the utility would not be subject to the tax by virtue of the Gross Receipts Tax Act. *Atlantic City Electric Co. v. Taxation Div. Director*, 5 N.J. Tax 15 (Tax Ct. 1982).

### 18:9-2.2 Personal property subject to the tax

(a) All tangible goods and chattels used or held for use in any business, transaction, activity or occupation conducted for profit within the State of New Jersey and not expressly exempt from taxation by the New Jersey State Constitution, the laws made pursuant to, or the express terms of the Act are subject to the Tax. For tangible goods and chattels acquired on or after January 1, 1977, see Section 3 of this subchapter; where leased after January 1, 1977, see N.J.A.C. 18:9-3.5.

(b) In general the terms business, transaction, activity or occupation mean all endeavors conducted for gain, profit or income, including but not limited to retailing, wholesaling, manufacturing, mining, personal service occupation, income producing property, whether operated on a part or full time basis and regardless of how limited in nature, size or scope.

*Example 1:*

Household furnishings employed in the rental of a single room or the operation of a rooming house are personal property used in business.

*Example 2:*

Tools and equipment other than small tools as described in section 3.4 (Small tools exempt from tax) of this chapter whether used by a manufacturer or by a tradesmen (carpenter, plumber, electrician, etc.) or other business or trade operated on a full or part-time basis are taxable.

*Example 3:*

A library used in the practice of law, medicine or other business or profession is deemed personal property used in business.

(c) The phrase "used or held for use in any business" in N.J.S.A. 54:11A-2(b) does not include the following personal property:

1. Machinery and equipment which is either under construction or being installed as a part of a new or existing plant or facility, and not in operation or capable of operating in the business for which it was acquired; or
2. Machinery and equipment located in a plant that has been permanently abandoned, and which are in the process of being disposed, provided that the taxpayer files a claim in writing with his return which sets forth the original cost of the machinery and equipment, the date the plant was abandoned, the date and the reason the machinery and equipment were no longer in operation in the business and the date the plant and the machinery and equipment were placed on the market for sale;

(d) The phrase "used or held for use in any business" includes the following:

1. Machinery and equipment idle for the purpose of overhauling or repairing or idle because of operations; or
2. Machinery and equipment located in a department or section of a plant which has been closed off or temporarily removed from production, unless the taxpayer can demonstrate to the satisfaction of the Director that the machinery and equipment is no longer capable of use in the business.

As amended, R.1978 d.321 eff. September 13, 1978.  
See: 10 N.J.R. 362(b), 10 N.J.R. 457(c).

**Statutory References**

See N.J.S.A. 54:11A-3 as to requirement that all personal property used in business in this State and not expressly exempted shall be taxable under the Act.

**Case Notes**

Subsection (c) specifically applies only to property taxed under the Business Personal Property Tax Act; purpose of the rule; rule affects only taxes collectible by the State, and does not lessen the taxes collectible by municipalities; term "used in business" in the law limiting personal taxes on telephone company goods and chattels means all property owned and held for use, rather than actually in use. *New Jersey Bell Telephone Co. v. Laurel Springs Boro.*, 1 N.J.Tax 619 (Tax Ct.1980).

**18:9-2.3 Business personal property acquired on or after January 1, 1977**

(a) Any business personal property acquired on or after January 1, 1977, shall not be subject to assessment and taxation. For the purposes of this chapter, acquired means the first time such business personal property comes into possession, control or power of disposal by the owner obtained by purchase, exchange, bequest or gift.

1. Example 1: A machine purchased prior to January 1, 1977 is not exempt from taxation by reason of the provision of P.L. 1977, c.4, N.J.S.A. 54:11A-3.1. Whether such property will be subject to tax subsequently depends upon whether the property was in use or held for use on the assessment date, October 1 of the pre-tax year.

2. Example 2: A machine purchased, installed and capable of operating prior to January 1, 1977 is subject to tax.

3. Example 3: A machine purchased on or after January 1, 1977, irrespective of its use or nonuse, is not subject to tax.

4. Example 4: A machine is brought into New Jersey on or after January 1, 1977 by a company which acquired the property prior to January 1, 1977, out-of-state and used such property exclusively out-of-state. Where such property is used or held for use on the assessment date, October 1 of the pre-tax year, it is subject to tax since it was acquired prior to January 1, 1977.

As amended, R.1978 d.321, eff. September 13, 1978.  
See: 10 N.J.R. 362(b), 10 N.J.R. 457(c).

**18:9-2.4 Personal property leased prior to January 1, 1977**

Tangible personal property leased under a contract of lease made prior to January 1, 1977, is subject to assessment and taxation when in the possession of the lessee on October 1 of the pretax year. For example, a taxpayer (lessor) leases equipment on November 1, 1976. The lease term is for a period of five years. Since the equipment is in the possession of the lessee on October 1, 1977, the taxpayer is subject to tax in 1978 and each year thereafter until the

lease terminates. See N.J.A.C. 18:9-3.5 for leases entered into for the first time on or after January 1, 1977.

R.1978 d.321, eff. September 13, 1978.  
See: 10 N.J.R. 362(b), 10 N.J.R. 457(c).

#### Case Notes

Cable television company held liable for payment of sales and use tax on converters that it purchased; Cable Television Act did not exempt company from paying business personal property tax; failure to establish inclusion of any converters in inventory on relevant assessment dates renders all converters subject to tax. *Futurevision Cable Enterprises, Inc. v. Taxation Div. Director*, 6 N.J.Tax 149 (Tax Ct.1983).

### SUBCHAPTER 3. BUSINESS PERSONAL PROPERTY NOT SUBJECT OR EXEMPT FROM THE TAX

#### 18:9-3.1 Certain machinery and equipment exempt from tax

The machinery and equipment referred to in subsection (b) of section 2.2 (Personal property subject to tax) of this chapter is deemed not used or held for use in business.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business".

#### 18:9-3.2 Inventory and goods in process exempt from tax

All goods and chattels held as inventory, including raw materials, finished and partially finished products of manufacturers and processors are exempt from the tax.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business", and items thereunder exempt from tax.

#### 18:9-3.3 Supplies and materials not subject to tax

(a) Supplies and materials used or consumed in production are not subject to the tax and include:

1. Supplies representing auxiliary commodities which do not enter directly into finished products, but are necessary to the taxpayer's operation or production.

#### Example:

Grease and oils used to lubricate machinery, office expendables such as paper and pens, shipping necessities such as cardboard cartons represent such auxiliary commodities.

2. Materials are those items of expense which are directly applied to the cost of goods being manufactured are not classified as raw materials, but become part of the finished project.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business".

#### Case Notes

Copper rollers which were engraved with design or pattern to be printed on textiles and which formed a large and integral part of an operating printing machine held subject to the business personal property tax; engraving process performed on copper rollers held to constitute imprinting service subject to sales tax. *Allied Textile Printers Corp. v. Director, Div. of Taxation*, 145 N.J.Super. 456, 368 A.2d 375 (App.Div.1976), certification denied 74 N.J. 271, 377 A.2d 676 (1977).

#### 18:9-3.4 Small tools exempt from tax

(a) Any small tools which are manually operated, necessary but subordinate to the taxpayer's production, business or profession, and have a nominal original cost are exempt from the tax.

1. Those items which are deemed to be small tools are those items such as saws, planes, files or similar tools which are charged to the business as an expense and not capitalized.
2. Items such as electrically operated power tools which are usually reported as a capital investment are not considered small tools and hence taxable.
3. What constitutes a nominal original cost depends upon the facts and circumstances existing in each case since what may be deemed to be a nominal cost for small tools in one business may, in other businesses, represent a substantial portion of the taxpayer's total investment.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business", and items thereunder exempt from tax.

#### 18:9-3.5 Personal property held for leasing exempt until leased; first time leased on or after January 1, 1977 exempt

(a) Tangible personal property of a taxpayer held for leasing or which is to be furnished as part of a service contract is not subject to the tax until such property is in the actual possession of a lessee under a contract of lease. See N.J.A.C. 18:9-2.4 where leased prior to January 1, 1977.

(b) Tangible personal property of a taxpayer (lessor) which has not been leased for use prior to January 1, 1977, is exempt from tax when leased in New Jersey on or after January 1, 1977. For example:

1. A manufacturer of machinery completes its manufacturing process with respect to a particular machine on August 30, 1976. The completed machine remains in the manufacturer's warehouse until April 1, 1977, at which time the manufacturer in the normal course of business leases the machine to a New Jersey lessee which commences using the machine as part of its normal business. The machine is not subject to tax since the machine was inventory until April 1, 1977, and its first use occurred after January 1, 1977.

2. A manufacturer completed the manufacturing process with respect to a particular machine on August 30, 1976, at which time in the normal course of business the machine was leased to a lessee located within the State of New York. The lease continued until February 28, 1977, at which time the lessee returned the machine to the manufacturer/lessor. On April 1, 1977, the same machine was then leased to a New Jersey lessee for use within the State of New Jersey. The machine is subject to tax since it was first acquired prior to January 1, 1977.

3. A lessor of tangible personal property leases such property to a New Jersey lessee for use in New Jersey on August 30, 1976. The lease remains in effect until February 28, 1977, at which time the lease is terminated and the personal property is returned to the lessor. On April 1, 1977, such property is leased again to the same or another New Jersey lessee. The personal property is subject to tax since it was acquired by the taxpayer (lessor) prior to January 1, 1977.

As amended, R.1978 d.321, eff. September 13, 1978.  
See: 10 N.J.R. 362(b), 10 N.J.R. 457(c).

#### Statutory References

See N.J.S.A. 54:11A-2 (b) as to definition and scope of "personal property used in business", and items thereunder exempt from tax.

#### Case Notes

Cable television company held liable for payment of sales and use tax on converters that it purchased; Cable Television Act did not exempt company from paying business personal property tax; failure to establish inclusion of any converters in inventory on relevant assessment dates renders all converters subject to tax. *Futurevision Cable Enterprises, Inc. v. Taxation Div. Director*, 6 N.J.Tax 149 (Tax Ct.1983).

#### 18:9-3.6 Real property and fixtures exempt from tax

All real property and all personal property not severable or removable without material injury to the realty and so affixed to the realty as to become a part thereof is exempt from the tax.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) as to definition and scope of "personal property used in business", and items thereunder exempt from tax.

#### 18:9-3.7 Motor vehicles

(a) Those vehicles exempt from tax. Motor vehicles which are registered with the New Jersey Department of Motor Vehicles pursuant to Title 39 of the Revised Statutes and which are used primarily to transport persons or property from place to place are exempt from the tax. These include automobiles, trucks, buses, trailers, commercial trailers, semi-trailers and private utility trailers, including trailers used to haul machinery.

(b) Those vehicles liable to tax. Bulldozers, road building machinery, traction engines and other traction machinery used in business; vehicles which operate on general registra-

tion plates, transferable from vehicle to vehicle, and which identify the owner rather than the vehicle; house trailers, portable classroom trailers or other trailers used in business are not exempt from the tax.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) (3) as to motor vehicles registered in the State exempt from tax under the Act.

#### Case Notes

Trash receptacles designed to be used in conjunction with registered vehicles owned by public utilities were not exempt from the business personal property tax as integrated parts of a vehicle, where the majority of the useful life of the receptacles was spent on the customers' property and not attached to the vehicles, and where the receptacles were designed to be severable from the vehicles. *Browning-Ferris Industries of Elizabeth, New Jersey Inc. v. Director, Div. of Taxation*, 3 N.J.Tax 16 (Tax Ct.1981).

#### 18:9-3.8 Tax status of equipment mounted on vehicles

Equipment mounted on a vehicle is eligible for exemption only if it is an integral part of the basic vehicle, and the basic vehicle would lose its identity should the equipment be removed. If the equipment is not an integral part of the vehicle and can be severed from the vehicle, the equipment is not exempt.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) as to definition and scope of "personal property used in business", and items thereunder exempt from tax.

#### Case Notes

Trash receptacles designed to be used in conjunction with registered vehicles owned by public utilities were not exempt from the business personal property tax as integrated parts of a vehicle, where the majority of the useful life of the receptacles was spent on the customers' property and not attached to the vehicles, and where the receptacles were designed to be severable from the vehicles. *Browning-Ferris Industries of Elizabeth, New Jersey, Inc. v. Director, Div. of Taxation*, 3 N.J.Tax 16 (Tax Ct.1981).

#### 18:9-3.9 Certified vessels exempt from tax

Vessel for which tax exemption certificates issued pursuant to the New Jersey Boat Act of 1962 (P.L. 1962, c. 73 as amended, N.J.S.A. 12:7-34.47a) are not taxable.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) (4) as to vessels for which tax exempt certificates have been issued to be excluded from tax under the Act.

#### 18:9-3.10 Property of utilities exempt from tax

(a) Tangible personal property used in business by any person, partnership, association or corporation subject to taxation under Chapter 4 of the Laws of 1940 as amended (N.J.S.A. 54:30A-16 et seq.), regarding telephone, telegraph and other utilities is not subject to taxation under the Act.

(b) Personal property of a utility company, including street railway, traction, sewerage, water, gas and electric

light, heat and power corporations using or occupying the public streets, highways, roads or other public places and subject to the provisions of N.J.S.A. 54:30A-49 et seq., is not subject to taxation under the act.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) as to definition and scope of "personal property used in business," and items thereunder exempt from tax.

#### Case Notes

Combustion turbine electricity generating unit owned by trustees and leased to electric utility held subject to business personal property tax, notwithstanding that the same unit owned by the utility would not be subject to the tax by virtue of the Gross Receipts Tax Act. *Atlantic City Electric Co. v. Taxation Div. Director*, 5 N.J. Tax 15 (Tax Ct. 1982).

#### 18:9-3.11 Farming equipment exempt from tax

(a) Personal property used or held for use solely in the business of farming such as farm tractors, farm traction equipment, motor vehicles used exclusively as farm machinery and bulldozers used exclusively in farming is exempt from the tax. In order to be deemed exempt, the tangible personal property must be used directly and exclusively in farming operations such as, but not limited to, planting, cultivating and harvesting.

(b) All personalty used or held for use in the administration, marketing, shipping or other activities not directly and exclusively related to farming, is not exempt and therefore must be reported and the tax paid thereon.

#### Statutory References

See N.J.S.A. 54:11A-2 (b) as to definition and scope of "personal property used in business" and items thereunder exempt from tax.

#### 18:9-3.12 Personal property of life insurance companies exempt from this tax

The personal property of life insurance companies, domestic or foreign, which are subject to a tax on life insurance premiums collected under the provisions of Chapter 132, of the Laws of 1945 (N.J.S.A. 54:18A-1 et seq.), is exempt from the Business Personal Property Tax.

#### Statutory References

See N.J.S.A. 54:11A-2(b)(7) as to exemption from tax under the Act of any goods or chattels, held for use in business by life insurance companies.

#### 18:9-3.13 Personal property of non-profit organizations exempt from this tax

(a) Personal property used or held for use by any organization which is not conducted for profit is exempt.

1. An organization is deemed "not to be conducted for profit" if it is not organized and operated for profit; and

2. If the proceeds of the organization do not inure to the benefit of any private shareholder or individual.

(b) Tangible personal property owned by a private concessionaire which is used or held for use by him is not eligible for this exemption even though that property may be located on premises owned or occupied by an eligible non profit business. Tangible personal property owned and used by a profit making organization in a non profit activity or operation is not eligible for this exemption.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business" and items thereunder exempt from tax under act.

#### 18:9-3.14 Non-profit enterprises; claim for exemption

(a) If a person contends that his personal property is exempt from taxation by virtue of such property being used solely for the purpose of a non profit enterprise, such person must file a return on or before February 15 of the tax year and shall include the following information:

1. A detailed explanation of the nature of the enterprise including a complete explanation of the basis for the contention that the enterprise is not conducted for the pecuniary benefit of any private shareholder or individual;
2. A detailed explanation of the disposition of all proceeds which result from the conduct of such enterprise.

#### Statutory References

N.J.S.A. 54:11A-2(b).

#### 18:9-3.15 Other property not subject to the tax

The following items of personal property are exempt from the operation of the Act:

(a) *Aircraft.* Aircraft registered with the Department of Transportation, Division of Aeronautics in compliance with the "Aircraft Registration Act", N.J.S.A. 6:1-63 to 6:1-79 inclusive, is not taxable as Business Personal Property.

(b) *Banks.* Personal property of banking institutions the value of which is included in the company net worth as shown on its tax return filed pursuant to the Bank Stock Tax Act. N.J.S.A. 54:9-1 et seq., is not subject to taxation under the Act.

(c) *Cemeteries.* Personal property used in the operation of a cemetery is not subject to tax pursuant to Art. 8 Section 1 paragraph 2 of the New Jersey Constitution.

(d) *Financial business.* Personal property of a financial business the value of which is included in the company's net worth as shown on its tax return filed pursuant to the Financial Business Tax Law, N.J.S.A. 54:10B-1 et seq., is not subject to taxation under the Act.

(e) *Limited dividend housing.* Personal property of housing corporations created under the Limited Dividend Housing Corporation Law, L.1949, c.184, N.J.S.A. 55:16-1 *et seq.*, is not subject to the Act.

(f) *Pollution abatement equipment.* Personal property designed, constructed and installed primarily for the control or abatement of water or air pollution and so certified by the New Jersey State Commissioner of Health pursuant to N.J.S.A. 54:4-3.56, is exempt from taxation under the Act.

1. This exemption must not exceed the original cost of the equipment as specified in the certificate issued by the New Jersey State Department of Health and is to continue only so long as the property is used as pollution abatement equipment, unless the certificate is sooner revoked.

2. The exemption is applicable for the tax year immediately following the year the certificate is issued. No claim for exemption will be recognized unless the number of each exemption certificate is indicated on a rider attached to the taxpayer's return.

18:9-3.16 through 18:9-3.17 (Reserved)

## SUBCHAPTER 4. COMPUTATION OF THE TAX

### 18:9-4.1 Property valuation

The tax is computed on the basis of the original cost of the business personal property, referred to in the law as the "fair value" of the property.

#### Statutory References

See N.J.S.A. 54:11A-2(b) as to definition and scope of "personal property used in business" and items thereunder exempt from tax under the Act.

### 18:9-4.2 Original cost

The original cost of business personal property is determined in the following manner:

(a) *Property acquired by purchase.* The original cost of business personal property acquired by purchase is the actual cost in money of that property to a taxpayer resulting from an arm's length transaction and includes not only the entire purchase price but also all the expenditures necessarily incurred in the preparation and installation of the property for operational use in the business.

1. The typical expenditures to be included in determining the actual cost of the property would be the cost of the property and any installation charges, freight charges, insurance in transit, sales tax and other charges related to the asset and usually capitalized for Federal Income Tax purposes;

2. In the case of business personal property acquired in a used condition, the actual cost thereof includes any expenditures made to restore the property, such as repairs or improvements.

(b) *Property fabricated.* In the case of business personal property fabricated and erected by the taxpayer for his own use, the original cost includes in addition to the cost of any goods which become a part of the finished property, all the direct and indirect costs of engineering, design, construction and erection.

(c) *Property acquired by exchange.* The original cost of business personal property acquired in an exchange for other property is:

1. The fair market value, at the time of the exchange, of the property transferred by the taxpayer; or,

2. If such property has no market value; the original cost of the property transferred.

#### Example:

The taxpayer acquires a file cabinet from B. In exchange taxpayer gives B an office desk. The original cost of the file cabinet so acquired is measured by the fair market value of the office desk transferred to B. If the office desk does not have a market value at the time of the exchange, then the original cost of the office desk to taxpayer will be deemed to be the original cost of the file cabinet acquired.

(d) *Property acquired from a decedent's estate.* The original cost of property acquired from a decedent's estate is the fair market value of the property at the time of the decedent's death.

(e) *Property acquired as a gift.* The original cost of property acquired as a gift is the original cost to the last owner of the property who acquired it for consideration.

(f) *Addition or improvements.* The original cost of any item of business personal property includes in addition to the actual cost of the property the cost of any capital expenditures made thereto by way of additions or improvements.

(g) *Value where no record of cost.* In any case where a taxpayer's books and records do not show the original cost of any business personal property subject to the tax, the taxpayer is required to estimate the original cost of the property from all the information in his possession, and file a statement with his return demonstrating the manner in which the estimate was determined. In the event a taxpayer fails to report the original cost of the property or make an estimate thereof, the Director from all the information available may estimate the cost and assess the tax thereon for the tax year.

(h) *Depreciation.* The original cost of any business personal property is to be determined without regard to any depreciation taken or present value. All property, even if fully depreciated on the taxpayer's book for Federal income tax purposes or otherwise, must be reported at its original cost if used or held for use in a business.

#### Statutory References

See N.J.S.A. 54:11A-2(c) as to definition and scope of "original cost" of items of personal property, and 11A-4 as to requirement that the fair value of business personal property shall, for the purposes of this Act, be computed on the basis of the original cost thereof.

#### Case Notes

Rule upheld as providing valid interpretation of statutory terms "original cost" and "actual cost": capitalized labor and overhead costs associated with the installation of cable on utility poles were properly included in the original cost of the cable, and were therefore subject to tax. *Futurevision Cable Enterprises, Inc. v. Taxation Div. Director*, 6 N.J.Tax 149 (Tax Ct.1983).

#### 18:9-4.3 Taxable value

The taxable value of business personal property is 50 per cent of the original cost thereof as provided in these regulations. (See Section 4.1 (Property valuation) of this Chapter). Taxable value is synonymous with assessed value.

#### Example:

A is the owner of business personal property having an original cost of \$2,000.00. Taxable value is determined by multiplying \$2,000.00 by 50 per cent = \$1,000.00.

#### Statutory References

See N.J.S.A. 54:11A-4 as to determination and reporting of original costs of business personal property so as to compute the fair value thereof, and 54:11A-5(a) as to computation of taxable value of business personal property at a rate of 50 per cent of its original cost.

#### 18:9-4.4 Tax rate

The rate at which the business personal property tax is assessed is \$1.30 per \$100.00 of taxable value or 1.3 per cent of taxable value.

#### Statutory References

See N.J.S.A. 54:11A-5(b) as to assessment and taxation of business personal property at rate of \$1.30 per \$100.00 of taxable value.

#### 18:9-4.5 Computation of tax

The tax for business personal property is determined by multiplying the tax rate (1.3 per cent) by the taxable value of all taxable property held by the taxpayer.

#### Example:

Original cost of property		\$2,000.00.
Taxable value	50% × \$2,000.00.	\$1,000.00.
Tax rate	1.3%	
Tax payable	1.3% × \$1,000.00.	\$13.00.

#### Statutory References

See N.J.S.A. 54:11A-5 (a), (b), (c) as to rates at which taxpayer shall compute the taxable value and the tax payable on the taxable value of his business personal property under the Act.

#### 18:9-4.6 Veterans' and widows' tax deduction

(a) *Definitions.* Terms have the meaning set forth below and no other:

"Active service in Southeast Asia" means active service at any time beginning January 1, 1961 and terminating on any future date as shall be determined by Proclamation of the President of the United States or concurrent resolution of the United States Congress. Such service includes service in any area in Southeast Asia in which armed conflict or warlike conditions exist as determined by the President and includes not only land based service in that area, but also service with the United States Navy and Air Force in that area regardless of where the individual's ship or unit is based.

"Active service in time of war" means active service at some time during one of the following periods:

- i. Civil War, April 15, 1861 to May 26, 1865;
- ii. Spanish-American War, April 21, 1898 to August 13, 1898;
- iii. World War I, April 6, 1917 to November 11, 1918;
- iv. World War II, December 7, 1941 to September 2, 1945;
- v. The Korean Conflict, June 23, 1950 to July 27, 1953;
- vi. Any subsequent war, during the period from the date of declaration of war to the date on which actual hostilities shall cease.

"Resident" means one legally domiciled within the State of New Jersey. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile within the State for the purposes of this Section.

- i. Absence from this State for a period of 12 months is deemed to be prima facie evidence of abandonment of domicile in this State.
- ii. The burden of establishing legal domicile within the State is upon the taxpayer.

"Veteran" means any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

(b) *Veterans.* A veteran may take, pursuant to N.J.S.A. 54:4-8.10 et seq., a maximum tax deduction of \$50.00 from the total business personal property tax due (See Section 5.9 (Payment of tax; dates due) of this Chapter), subject to the conditions set forth in subsection (d) of this Section and provided all of the following conditions are fulfilled;

1. The taxpayer is a resident of New Jersey;
2. The taxpayer is a veteran who has seen active service in time of war or active service in Southeast Asia (Vietnam);
3. The taxpayer submits a completed Form BPT-VE with his annual tax return;
4. The taxpayer submits with his tax return a photostatic copy of his Honorable Discharge or Release Under Honorable Circumstances, which is to remain on file in the Business Personal Property Tax Section of the Corporation Tax Bureau and need not be submitted with any subsequent claim.

(c) *Veteran's widow.* The widow of a veteran may in the same manner as a veteran take a maximum deduction of \$50.00 from the total tax due, subject to the conditions set forth in subsection (d) of this Section, and provided all of the following conditions are fulfilled:

1. The widow is the only surviving lawful wife of a veteran who was a citizen and resident of the State of New Jersey;
2. The taxpayer continues to remain a widow and does not subsequently remarry. Once remarried the deduction will terminate;
3. The widow is a resident of New Jersey;
4. The widow submits a completed Form BPT-VE with her annual tax return;
5. The widow submits with her tax return a photostatic copy of the veteran's Honorable Discharge or Release Under Honorable Circumstances, which is to remain on file, as provided in paragraph 4. of subsection (b) of this Section, and need not be submitted with any subsequent claim;
6. The widow submits a copy of the marriage certificate with her tax return which is to remain on file with the other required documents and need not be submitted with any subsequent claim.

(d) *Total deduction.* The veteran's tax deduction is not allowed if that deduction has been applied to the taxpayer's local real property tax. If a veteran or widow of a veteran chooses to allocate the deduction between the real property and business personal property taxes, the total of the two deductions must not exceed \$50.00.

(e) *Veteran's tax deduction applied to partnerships.* The veteran's tax deduction may be applied to the tax due on business personal property owned by a partnership but only to the extent of the veteran's or widow's proportional interest therein or \$50.00, whichever is the lesser.

**Example:**

A, a veteran, and B are equal members of a partnership having business personal property with an original cost of \$100,000.00 (taxable value \$50,000.00) or a total tax due of \$650.00. A is entitled to deduct \$50.00 from the tax due since such amount is less than the tax due on his proportional interest in the partnership property. If the total tax due were only \$60.00, A could deduct only \$30.00 since in that case the tax due on his proportional interest would be less than the maximum amount permitted as a deduction.

(f) *Veteran's tax deduction applied to corporations.* No veteran's tax deduction is permitted to be taken from the business personal property tax due from a corporation even though one or more stockholders is a veteran or widow of a veteran.

**Statutory References**

See N.J.S.A. 54:4-8.10 as to definitions of key terms used in this Section, including but not limited to "active service in time of war", "honorably discharged", "resident", "veteran", and "widow", and Sections 8.11 through 8.23 as to regulations and procedures governing the application and claim for deduction by veterans' widows.

**18:9-4.7 Continuance of veterans' deduction**

(a) Once a claim for a veteran's tax deduction has been filed and allowed, it continues in force from year to year thereafter as long as the veteran or his widow remains entitled to the deduction.

1. However, a taxpayer seeking this deduction is required to file an application each year, and the Director may at any time require the filing of whatever proof he may deem necessary to establish the right of the veteran or widow to the deduction;

2. In the event there is any change in the status or property of a veteran or his widow which may affect the right to continuance of the deduction it is the duty of every such veteran or widow to inform the Director of such change.

(b) In any case where for good cause a claim for a veteran's tax deduction cannot be submitted at the date of filing of the business personal property tax return, the claim together with a statement indicating the reason for the delay may be filed at any time up to December 31 of the tax year.

1. No deduction is allowed until the proper claim application has been filed; and
2. Any failure of a veteran or his widow to file claim automatically causes a disallowance of the deduction.

**Statutory References**

N.J.S.A. 54:4-8.10 et seq.

**18:9-4.8 through 18:9-4.9 (Reserved)****SUBCHAPTER 5. RETURNS, PAYMENTS, REFUNDS****18:9-5.1 Persons required to file returns**

(a) Any person who is the owner of business personal property subject to tax and located in New Jersey on October 1 of the pre-tax year beginning with October 1, 1967 is required to prepare and file a Business Personal Property Tax Return with the Business Personal Property Tax Section, Corporation Tax Bureau, on or before February 15 of the tax year.

1. A return is required to be filed even though there is no tax due;
2. In addition to the return, any taxpayer may be required to file other reports or information as may be necessary for the proper administration of the Act.

**Statutory References**

See N.J.S.A. 54:11A-2 as to definitions of "business personal property", "taxpayer" and "person" for purposes of the Act, 54:11A-5 as to personal liability of persons assessed as taxpayers under the Act for payment of taxes, and 11A-7 as to the requirement that each person owning business personal property taxable under the Act file a verified return by the specified due date.

**18:9-5.2 Form of return**

(a) All returns are required to be made on Form BPT-1, which is the prescribed form, and must be filed on or before the due date.

1. The failure of a taxpayer to receive a form does not relieve him from filing the return when due;
2. A taxpayer failing to receive the necessary form of return should request the same from the Corporation Tax Bureau.

**Statutory References**

See N.J.S.A. 54:11A-7 as to the requirement that the taxpayer list on his return all taxable business personal property according to its original cost and that he verify such return; also as to the authority of the Director to prescribe any additions or modifications to the form or content of such returns.

**18:9-5.3 Filing of reproduced forms**

(a) Only the original of Form BPT-1 is considered a properly filed return. The filing of a reproduced return form, regardless of the process used, is not acceptable and is deemed to be an improperly filed return.

(b) Where a taxpayer has filed a reproduced return form, unless the original is filed on or before February 15 of the tax year a penalty for late filing will be assessed against the taxpayer.

**Cross References**

As to effect of delinquent returns see N.J.A.C. 18:9-8.1.

**18:9-5.4 Property to be included in return**

(a) Every person subject to the New Jersey Business Personal Property Tax is required to file a *single* return only, which is to include all the business personal property owned by the taxpayer on October of the pre-tax year, regardless of the number of different locations at which the property is situated in this State.

(b) Any taxpayer who files separate returns for each business location or division is deemed to have filed an incomplete return and may be subject to penalties for late filing if a single return is not filed on the due date.

**Statutory References**

See N.J.S.A. 54:11A-2(b) as to those tangible goods and chattels not includable in taxable business personal property.

**18:9-5.5 Certification of returns**

(a) All returns must be signed and verified by the owner of the business personal property or his authorized agent. Once the owner or his agent has affixed his signature to the return he is deemed to have verified the information contained therein and to have certified the information as true under penalty of perjury.

(b) An individual's name signed on a return is deemed to be prima facie evidence of the fact that the individual is authorized to sign and certify the return on behalf of the business entity.

(c) In the case of a business in liquidation or in the hands of a receiver or trustee the certification is to be made by the person responsible for the conduct and affairs of that business entity.

**Statutory References**

See N.J.S.A. 54:11A-7 as to requirement that the owner of business personal property or his authorized agent sign and verify tax return.

**18:9-5.6 Date return due**

All taxpayers are required to file returns with the Corporation Tax Bureau, Business Personal Property Tax Section on or before February 15 of the tax year.

**Statutory References**

See N.J.S.A. 54:11A-7 as to the due date for all tax returns under the Act.

**18:9-5.7 Secrecy of returns**

All returns filed with the Corporation Tax Bureau are deemed secret and confidential, and the information contained therein may not be disclosed except in the manner authorized by law.

**Statutory References**

N.J.S.A. 54:50-8.9.

**18:9-5.8 Extension of filing time; requirement for obtaining**

In the event that a taxpayer is unable to file a complete tax return (Form BPT-1) on or before February 15 of the tax year the Director may grant an extension of time to file, provided the taxpayer complies with all the following conditions:

(a) The taxpayer submits by return mail Form BPT-1 supplied by the Director and indicates thereon in the space provided that an extension of filing time till April 15 of the tax year is necessary. Extensions beyond April 15 will not be granted under any circumstances;

(b) The request for extension is filed on or before February 15 of the tax year. If not so filed, the request will not be granted;

(c) The tax return Form BPT-1 is properly completed, including the taxpayer's correct name, mailing address, identification number, and signature, except that the tax computation is omitted;

(d) The taxpayer estimates his total business personal property tax for the year and submits a remittance of at least 50 per cent of the estimated tax with his request for extension. A request for extension not accompanied by this remittance will not be considered;

(e) The taxpayer must submit a brief explanation of the facts and circumstances necessitating an extension of time.

1. If the taxpayer's request is granted, the Director will supply a final return Form BPT-1F, receipt of which will confirm the approval of the extension of time to file. Payment of the tax will be made in accordance with Section 5.10 (Payment after extension granted) of this Chapter;

2. If the taxpayer's request is denied, he will be so notified before April 15 of the tax year and the completed return and tax payable will become immediately due.

(f) No return Form other than the final Form BPT-1F may be filed on April 15 of the tax year when an extension has been granted. The filing of any other form will either be rejected and regarded as not filed, or deemed a regular return without an extension having been granted.

**Statutory References**

See N.J.S.A. 54:11A-13 as to right of Director to prescribe rules and regulations for filing for extension of time for payment.

**18:9-5.9 Payment of tax; due dates**

(a) The business personal property tax is payable in two equal installments. The first installment represents 50 per cent of the total due for the tax year and is payable on or before February 15 of the tax year and is to be accompanied by the tax return. The second installment is payable on or before September 15 of the tax year;

1. The Business Personal Property Tax Section in advance of the due date of the second installment forwards to each taxpayer an invoice for that installment which is due September 15 of the tax year;

2. Failure to receive the invoice does not excuse the taxpayer from paying the installment when due.

(b) A taxpayer may remit the entire amount of tax due for the year on or before February 15 of the tax year.

(c) If a taxpayer fails to pay the tax or any part thereof when due, the penalties and interest provided in Section 8.2 (Effect of delinquent payments) of this Chapter will be assessed.

1. Any taxpayer lawfully assessed shall be personally liable for the payment of the tax computed and assessed if he fails to pay by the due date;

2. Where the estimated tax paid as the first installment is less than 35 per cent of the total tax due for the year as shown on the final return, the difference between the amount of estimated tax which should have been paid and the amount actually remitted is subject to a penalty of five per cent of the difference and interest at the rate of one per cent per month or fraction thereof from February 15 of the tax year up to the date of payment.

**Statutory References**

See N.J.S.A. 54:11A-5 as to personal liability of persons assessed for the payment of taxes due, 11A-7 as to the due date for payment which is required to be met by all persons so assessed, 11A-8 as to personal liability for delinquency penalties, and 11A-13 as to power of Director to grant taxpayer an extension for filing returns or payments.

**18:9-5.10 Payment after extension granted**

(a) Where a taxpayer has been granted an extension of time to file pursuant to Section 5.8 (Extension of time for filing; requirements for obtaining) of this Chapter, the final return (Form BPT-1F) is to be completed and filed on or before April 15 of the tax year and accompanied by a remittance covering the balance, if any, of the first installment due on February 15. The balance is the difference between the amount paid with the estimated return, on February 15 and the amount of tax due (50 per cent of the total tax) on the first installment including interest on such balance at the rate of six per cent from the original due date (February 15) till the date of payment.

(b) In any case where the remittance made on February 15 with the estimated return exceeds the amount payable in the first installment but does not exceed the total tax due for the tax year, no refund is granted. The overpayment is applied against the tax due for the second installment.

(c) In any case where the amount paid in the first installment exceeds the total tax due for the tax year an appropriate refund will be made, provided the taxpayer files a claim for refund in accordance with Section 5.11 (Claim for refund) of this Chapter.

(d) If a taxpayer has been granted an extension of time to file and fails to file a return on April 15 or fails to pay the tax due on or before that date, the penalty and interest charges provided for in Section 8.3 (Effect of delinquent payment after time extension) of this Chapter will be assessed against the tax due.

#### Statutory References

See N.J.S.A. 54:11A-13 as to power of Director to prescribe procedures for granting an extension of time, and as to rate of interest to be levied upon that portion of tax unpaid at the original due date, despite the granting of an extension of time for payment subsequent thereto.

#### 18:9-5.11 Claim for refund

(a) Any taxpayer may within the period prescribed in Section 5.13 (Time limit for refund) of this Chapter file with the Director a claim for refund on Form BPT-RC, which is a statement under oath setting forth in detail the grounds for claiming a refund and outlining in detail all the pertinent circumstances relating thereto.

(b) No claim for refund is required or permitted to be filed after a protest has been filed with the Director or after any proceedings on appeal have been commenced, until that protest or appeal has been finally determined.

(c) Form BPT-RC is the only form permitted to be used in making a claim for refund and may be obtained upon request from the New Jersey Corporation Tax Bureau, Business Personal Property Tax Section, Trenton, New Jersey 08625.

#### 18:9-5.12 Refund for erroneous payments

(a) Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time within two years of overpayment and upon making a record in writing stating the reasons therefor, certify to the State Treasurer that a taxpayer is entitled to a particular refund.

(b) The Treasurer shall then authorize the payment of the refund from the appropriation for that purpose.

#### Statutory References

See N.J.S.A. 54:49:14 as to right of taxpayer within prescribed time limits to appeal for a refund to the Division of Tax Appeals from any order, finding, assessment or action of the Director in regard to payment of the tax under this Act and 54:11A-16 as to remedies of levy and sale available to Director should a taxpayer neglect or refuse to pay taxes, penalties or interest due under the Act.

#### 18:9-5.13 Time limit for refund

All claims for refund must be filed with the Director within two years after the payment of any original or additional tax assessed against the taxpayer.

#### Statutory References

N.J.S.A. 54:49-14.

#### Case Notes

Taxpayer held not entitled to refunds for claims filed beyond the two-year limit: execution of consent granting Director five years within which to make additional assessments did not extend the refund claim period; claim for offset of business personal property tax overpayment against sales tax liability not supported by transactional nexus. *Pantastote, Inc. v. Director, Div. of Taxation*, 8 N.J.Tax 160 (Tax Ct.1985).

#### 18:9-5.14 Payment of refunds; rejection of claims

(a) If upon examination of a claim for refund the Director determines that there has been an overpayment of the tax, the amount of the overpayment is credited against any liability of the taxpayer under any state tax law.

(b) If there exists no liability the taxpayer is entitled to a refund of the overpaid amount. If the Director rejects the claim for refund in whole or in part he will make an order accordingly and serve a notice upon the taxpayer.

#### Statutory References

See N.J.S.A. 54:49-15 as to procedure required of the Director should he determine, subsequent to taxpayer's filing of a claim for refund, that either a refund for overpayment should be made or that the claim should be rejected.

#### 18:9-5.15 through 18:9-5.16 (Reserved)

### SUBCHAPTER 6. ASSESSMENT, REVISION, REVIEW

#### 18:9-6.1 Assessment date

(a) Business personal property in New Jersey, is assessed as of October 1 of the pre-tax year, which is the assessment date with respect to the taxes payable during the tax year.

(b) For purposes of assessment, exemption, location and valuation, the tax status of personal property and the original cost thereof is fixed as of the assessment date. Any business personal property found in this State on the assessment date is taxable for the tax year, even though subsequently removed, abandoned or otherwise disposed of and regardless of the manner in which such property is subsequently held.

(c) For the purposes of the Act, the tax is deemed to be due on October 1 of the pre-tax year, although payable in the manner and at the times provided in Section 5.9 (Payment of tax; due dates) of this Chapter.

#### Statutory References

See N.J.S.A. 54:11A-6 as to establishment of October 1 of each year as the assessment date for taxes payable in the following calendar year.

### 18:9-6.2 Assessment of omitted property

(a) Where any taxpayer has omitted from his return or otherwise failed to report any business personal property subject to the tax, the Director may upon the discovery of the omission cause that property to be assessed for any omitted years as provided in these regulations.

1. In assessing the tax on any omitted business personal property, the Director may from any information in his possession or available to him determine the value of the property and thereupon assess the tax due.

2. The assessment of any omitted business personal property may be made at any time within five years following the year in which the property was omitted from assessment.

#### Statutory References

See N.J.S.A. 54:11A-9 as to authority of Director to assess omitted property any time within five years following the year of its omission from assessment.

### 18:9-6.3 Audit; investigation; reassessment

(a) After a taxpayer has filed the final tax return, computed the tax due and remitted amount payable, an examination of his return is made and if necessary an audit, investigation and reaudit is conducted.

(b) If upon audit and investigation it is determined that there is a deficiency with respect to the tax due, the Director may assess or reassess any additional tax, including any penalty and interest due the State, give notice of the assessment or reassessment to the taxpayer and demand payment.

1. In the event of discovery of any deficiency there is added to the amount of that deficiency interest at the rate of one per cent per month or fraction thereof from the date the tax was originally due and payable until the date of actual payment.

2. If the Director is satisfied that the deficiency was not due to fraud or evasion, he may remit or waive the

payment of any interest charge in excess of the rate of  $\frac{1}{2}$  of one per cent per month.

(c) The Director may at any time within five years from the filing of a return or amended return assess any deficiency and collect the additional tax due.

1. A return filed before the due date is for the purpose of this subsection, deemed filed on the due date. A return filed after the due date is for the purposes of this subsection deemed filed on that later date;

2. At any time within five years from the date a return is filed a taxpayer may consent in writing that the period be extended. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

#### Statutory References

See N.J.S.A. 54:11A-12 (a) as to right of Director to audit and investigate a taxpayer's final return; the right to assess any additional taxes, penalties or interest should the return be found to be deficient; and his right to waive any additional penalty or interest above  $\frac{1}{2}$  of one per cent per month should he determine the deficiency was not due to fraud or evasion by the taxpayer.

### 18:9-6.4 Fraudulent filing, failure to file; arbitrary assessment

In the case of a willfully false or fraudulent return with intent to evade the tax, or where no return has been filed, the Director may at any time assess the tax due and where no return has been filed, value the business personal property on the basis of any information available.

#### Statutory References

See N.J.S.A. 54:11A-10 as to power of Director upon notice to examine under oath any person or corporate official, or to require the production of books or other records so as to determine the truth in a claim for exemption under the Act.

### 18:9-6.5 Examination of persons, books and papers

(a) *Examination.* The Director may at any time, upon notice, examine under oath any person or officer of a corporation regarding the business personal property of that person, corporation or other taxpayer or the truth of any matters contained in a claim for exemption. The Director may compel the attendance of those persons or witnesses and the production of books and papers in furtherance of the examination.

(b) *Notice.* Notice is to be given by means of an order by the Director designating the time and place for attendance and production of books and papers. Notice shall be served at least two days prior to the examination, either personally or by leaving it at the residence of the person or witness or at the office of the corporation.

**Statutory References**

See N.J.S.A. 54:11A-10 as to power of Director upon notice to examine under oath any person or corporate official, or to require the production of books or other records so as to determine the truth in a claim for exemption under the Act.

**18:9-6.6 Effect of failure to comply with order for examination**

In the event of any failure to comply with the Director's order, pursuant to N.J.A.C. 18:9-6.5, the Director may apply ex parte to the Superior or County Court to compel any person or witness to comply.

**Statutory References**

See N.J.S.A. 54:11A-10 as to the right of the Director to apply ex parte for an order to compel attendance or production by any person or corporate official should the latter fail to comply with the Director's order to do so.

**18:9-6.7 Protests**

(a) Any taxpayer aggrieved by any finding or assessment of the Director may within 30 days of receipt of notice thereof file a protest in writing, in the form and manner prescribed in N.J.A.C. 18:1-1.8.

(b) The filing of a protest does not abate the penalties for nonpayment nor stay the right of the Director to collect the tax in any manner provided by law unless the taxpayer shall furnish security of the kind and in the amount satisfactory to the Director.

Amended by R.1991 d.23, effective January 22, 1991.  
See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Reference to N.J.A.C. 18:1-1.8 added; (b) and (d) deleted; (c) recodified to (b).

**Statutory References**

See N.J.S.A. 54:49-18 as to procedures and time limits for filing a protest against any assessment under the Act, and the right of the taxpayer to demand a hearing thereon.

**18:9-6.8 Hearing; format**

Hearings before the Conference Branch are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

Amended by R.1991 d.23, effective January 22, 1991.  
See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Corporation Tax Bureau changed to Conference Branch.

**Statutory References**

See N.J.S.A. 54:49-18 as to the right of taxpayer to seasonably request a hearing in regard to any assessment, order, or action of the Director under the Act.

**18:9-6.9 Right to appeal finding of Director**

Any aggrieved taxpayer may within 90 days after any decision, order, finding, assessment or action of the Director appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

Amended by R.1991 d.23, effective January 22, 1991.

See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Reference to State Tax Uniform Procedure Law added; (b) deleted.

**Statutory References**

See N.J.S.A. 54:11A-14 (a) as to procedures and time limits for taxpayer choosing to file an appeal from an order, finding assessment or action of the Director to the Division of Tax Appeals.

**18:9-6.10 (Reserved)**

Repealed by R.1991 d.23, effective January 22, 1991.

See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Text on right to review decision of Division of Tax Appeals deleted.

**18:9-6.11 through 18:9-6.12 (Reserved)****SUBCHAPTER 7. SALES, TRANSFER OR ASSIGNMENT OF BUSINESS ASSETS****18:9-7.1 Bulk sales; notice**

(a) Whenever a person subject to the New Jersey Business Personal Property Tax makes a sale, transfer, or assignment in bulk of any part or the whole of his business personal property otherwise than in the ordinary course of business, the purchaser, transferee, or assignee is required to notify the Director in writing by registered mail of the proposed sale stating the price, terms and conditions thereof.

1. *Time of notice.* The required notice must be tendered at least ten days before taking possession of or paying for the property in question.

2. *Form of notice.* The required notice is to be filed in triplicate with the Corporation Tax Bureau, Business Personal Property Section, Trenton, New Jersey 08625 and is to contain in detail all the information requested in this Section.

**Case Notes**

Sale of business equipment necessary for bakery business held a bulk sale within the meaning of the Sales and Use Tax and Business Personal Property Tax Acts; equipment purchaser personally liable for seller's delinquent taxes due to purchaser's failure to notify Director at least 10 days prior to taking possession of equipment. *Bunting v. Director, Div. of Taxation*, 1 N.J.Tax 189, 176 N.J.Super. 262, 422 A.2d 815 (Tax Ct.1980).

**18:9-7.2 Effect of failure to notify the Director**

(a) Whenever the purchaser, transferee or assignee fails to give notice as required by Section 7.1 (Bulk sales; notice) of this Chapter whenever the Director informs the purchaser, transferee or assignee that a possible claim for taxes exists, any sums of money, property, choses in action, or other consideration which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor is subject to a first priority right and lien for any taxes determined to be due from the seller, transferor or assignor to the State.

1. The purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any sums of money, property or choses in action to the extent of the amount of the State's claim;
2. The proceeds of any business bulk sales are also subject to a first priority lien for the taxes due.

**18:9-7.3 First priority lien on property until taxes paid**

(a) In the event the Director notifies the purchaser prior to transfer that a possible claim for taxes exists, sufficient moneys must be held in escrow to satisfy the claim.

1. Release of these moneys is prohibited until a statement is issued by the Director confirming payment of the tax;
2. Since notice by the Director constitutes a first priority lien against the assets, proper notice of the transfer submitted by the purchaser does not relieve the purchaser of the obligation under the statute to provide the necessary funds in escrow.

**Statutory References**

See N.J.S.A. 54:11A-15 as to requirement that a purchaser, transferee, or assignee of a taxpayer's business assets give timely notice to the Director of the transaction, and as to a first priority lien in favor of the State for any taxes therefor or thereafter determined to be due on such transferred property.

**18:9-7.4 Personal liability for failure to notify**

The purchaser's failure to notify the Director of his intention to buy a business or assets in bulk or to set aside sufficient moneys in escrow if properly notified subjects him to personal liability for any Business Personal Property Taxes owed by the seller.

**Statutory References**

See N.J.S.A. 54:11A-15 as to personal liability for a purchaser, transferee, or assignee of business personal property for taxes due against the seller, should that purchaser, transferee, or assignee have failed to give the required timely notice of the transfer to the Director.

**18:9-7.5 (Reserved)****SUBCHAPTER 8. PENALTIES AND INTEREST****18:9-8.1 Effect of delinquent returns**

Any taxpayer who fails to file his tax return on the due date or any extension thereof or who files an incomplete or otherwise improper return on or before such due date is subject to a penalty of \$2.00 per day for each day of delinquency from the date the return is due up to the day of receipt by the Director.

**Statutory References**

See N.J.S.A. 54:11A-17 as to penalties imposed for delinquent returns under the Act.

**18:9-8.2 Effect of delinquent payments**

Any taxpayer who fails to pay the tax when due is subject to a penalty of five per cent of the tax due and payable and, in addition, interest at the rate of one per cent per month or fraction thereof computed from the date payment is due up to the date payment is received by the Director.

**Statutory References**

See N.J.S.A. 54:11A-17 as to rate of interest to be imposed upon delinquent taxes for the period between the due date and the date upon which final payment is made.

**18:9-8.3 Delinquent payment after time extension**

(a) If an extension of time to file a return or pay the tax is granted, any unpaid portion of the tax in excess of the amount estimated and remitted is subject to interest at the rate of six percent per annum if paid within the time fixed under the extension.

(b) If the tax is paid after the time permitted under the extension, interest will be charged at the rate of one per cent per month or fraction thereof from the date the tax was originally due to the date of payment.

(c) If a final return is not filed within the extended period the penalties for delinquent filing will be applied, pursuant to Section 8.1 (Delinquent returns) of this Chapter, as if no extension has been granted.

**Statutory References**

See N.J.S.A. 54:11A-13 as to requirement that interest still be paid upon the portion of tax unpaid after the original due date, regardless of any extension of time for payment having been granted, and 11A-17 as to additional penalties and interest to be assessed for failure to pay within the extended time period granted.

**18:9-8.4 Sufficiency of estimated tax**

If the estimated tax remitted is less than 35 percent of the total tax liability shown on the final return payable for the full year, the difference between the amount of estimated tax which should have been paid under Section 5.8 (Extension of time for filing; requirements for obtaining) of this Chapter and the amount actually remitted is subject to a penalty of five percent of such difference and interest on such difference at the rate of one percent per month or fraction thereof from February 15 of the tax year to the date of payment.

**Statutory References**

See N.J.S.A. 54:11A-13 as to the rate of interest to be imposed upon that portion of tax unpaid after original due date, regardless of extension granted. See N.J.S.A. 54:11A-17 as to rate of interest to be imposed upon taxpayer who fails to file when due and fails to seek or obtain an extension period for so filing.

**18:9-8.5 (Reserved)**

Repealed by R.1988 d.407, effective September 6, 1988.  
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Section was "criminal penalties for failure to file, fraudulent filing".

**18:9-8.6 (Reserved)**

Repealed by R.1988 d.407, effective September 6, 1988.  
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Section was "penalty for false swearing".

**18:9-8.7 (Reserved)**

Repealed by R.1988 d.407, effective September 6, 1988.  
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Section was "penalty for keeping false books and records".

**18:9-8.8 Levy and sale of property**

(a) If any person liable for the payment of the New Jersey Business Personal Property Tax, any addition thereto, or penalty or interest thereon, neglects or refuses to pay his liability, the Director may as an additional or alternative remedy issue a warrant for the levy and sale of any real or personal property of the delinquent taxpayer.

(b) The warrant is to be issued to the Sheriff of any county in this State ordering him to levy and sell all the real and personal property of the delinquent taxpayer which may be found in his county so as to satisfy the tax due as well as any penalties, interest and the cost of executing the warrant.

(c) Within five days of the receipt of the warrant, the Sheriff is to file a copy of the warrant with the County Clerk who shall enter the name of the taxpayer, the amount of tax due including penalties and interest, and the date the copy is filed in the judgment docket so that the warrant thus docketed constitutes a lien on all the real and personal property of the delinquent taxpayer.

(d) Once the warrant is docketed the Sheriff may proceed to execute upon the warrant in the same manner as he would the judgment of a court of record of this State; he is entitled to the same fees for the collection.

(e) The Director may in his discretion issue a warrant of like terms, force and effect to any officer or employee of the Division of Taxation who shall have all powers conferred by law upon Sheriffs, except that he is not entitled to a fee or compensation in excess of the actual expenses paid in performing his duty.

(f) The Sheriff shall return the warrant, together with any moneys collected, to the Director within 60 days of receipt.

(g) In the event a warrant is returned partially or wholly unsatisfied, the Director may from time to time issue new warrants and avail himself of the same remedies in collecting the amount due as the State has when a judgement is recovered and execution thereon has been returned unsatisfied.

**Statutory References**

See N.J.S.A. 54:11A-16 as to right of Director to issue a warrant directing a levy against and sale of personal or real property of any person who has neglected or refused to pay taxes, penalties, or interest due under the Act.