

18:2-2.3 Failure to file return on time

(a) On or before December 8, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$2.00 for each day that the return is delinquent; plus
2. A penalty of five percent per month or fraction thereof of the total tax liability not to exceed 25 percent of such tax liability.

(b) On and after December 9, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$100.00 per month or any part of a month that the return is delinquent; plus
2. A penalty of five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

(c) Both penalties set forth in (a) and (b) above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter. The following are examples of penalty computations.

1. A corporate taxpayer filed its 1987 corporation business tax return with a due date of April 15, 1988 on June 1, 1988. The return is 47 days late. The taxpayer had a total tax liability for 1987 of \$10,000.00. In addition to the unpaid tax the taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for two months	\$ 200.00
Late filing penalty: five percent per month of the tax liability	
5% × 2 months = 10 percent of \$10,000.00	\$ 1,000.00
Tax liability	<u>\$10,000.00</u>
Total	<u>\$11,200.00*</u>

* In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

2. An individual taxpayer filed the 1987 NJ-1040 due on or before April 15, 1988 on October 16, 1988. The return is six months and one day late. In addition to a \$1,200.00 outstanding tax liability on April 15, 1988, the taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for seven months	\$ 700.00
Late filing penalty: five percent per month of the tax liability not to exceed 25 percent	\$ 300.00
Tax Liability	<u>\$1,200.00</u>
Total	<u>\$2,200.00*</u>

* In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

18:2-2.4 Failure to pay on time; extensions of time to pay

(a) Any taxpayer failing to pay a tax within the time prescribed by the act imposing a particular tax shall pay, in addition to the unpaid tax, the following:

1. Interest on said tax at the rate of one percent for each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was originally due until October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975 to the date of actual payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest on the unpaid tax shall be charged at an annual rate of five percentage points above the prime rate, compounded daily upon the amount that remains unpaid, calculated from the date the tax was originally due until the date of payment. Interest on penalties which are assessed on and after December 9, 1987 shall be charged at the same rate from the date the penalty is assessed until the date of payment. On and after July 1, 1993, interest on the unpaid tax shall be charged at the rate of three percentage points above the prime rate assessed for each month or fraction thereof. On and after July 1, 1993, interest will be compounded annually at the end of each calendar year.

2. Unless any part of any underpayment of tax required to be shown on a return or report is shown to be unpaid due to reasonable cause, a sum equivalent to five percent of the tax shall be added to the amount of the tax as a penalty. The taxpayer has the affirmative obligation to show reasonable cause for the underpayment in order to avoid imposition of the penalty. See N.J.A.C. 18:2-2.7 for basis for a finding of reasonable cause.

(b) The following examples apply only to tax liabilities paid prior to December 9, 1987:

1. Taxpayer failed to pay a tax that was due on April 15, 1975. On January 15, 1976, the Division of Taxation imposed interest and penalty charges for such failure. Interest will be calculated from April 15, 1975, to October 1, 1975, at the rates in effect immediately prior to October 1, 1975, and at the rate of 1½ percent for each month or fraction thereof that the tax remained unpaid from

October 1, 1975, to the date of payment, plus a penalty of five percent of the balance of tax due.

2. In example 1, if taxpayer also failed to file his return (due April 15, 1975) until January 15, 1976, he would be subject to additional penalties set forth in Section 3 of this Subchapter.

3. On May 1, 1975, the division assessed the taxpayer for additional taxes due and at the same time imposed additional interest charges at the rate of one percent per month. On February 15, 1976, taxpayer offers to pay his unpaid taxes. Additional interest shall be calculated from April 15, 1975, to October 1, 1975, at the rate of one percent per month or fraction thereof, and from October 1, 1975, to February 15, 1976, (the date of payment) at the rate of 1½ percent per month or fraction thereof. In addition, a five percent penalty may be imposed on the balance of tax due.

(c) The following example applies only to tax liabilities paid on or after December 9, 1987:

1. Corporation X's Corporation Business Tax return was due and filed on April 15, 1988. A deficiency of \$50,000.00 is assessed by the Division. Payment is due on July 31, 1988.

The taxpayer must submit the following amounts on or before July 31, 1988.

Late payment penalty: five percent of the balance of tax due	\$ 2,500.00
Deficiency assessed:	<u>\$50,000.00</u>
	<u>\$52,500.00</u>

Interest on tax, calculated at an annual rate of the prime rate plus five percentage points compounded daily from the original due date (April 15, 1988) until the date of payment (assume July 31, 1988), plus interest on penalty, calculated at the same rate from the date the penalty is assessed until the date of payment. The applicable prime rate shall be the rates effective on January 1, 1988 and April 1, 1988, which are assumed to be nine percent and nine and one-half percent, respectively, for the purposes of this example.

	<u>\$ 2,222.30</u>
Total	<u>\$54,722.30</u>

(d) Where the Director is authorized by law and grants an extension of time in which a tax shall be paid, the taxpayer shall be liable for the payment of interest on the unpaid tax at the rate of three percentage points above the prime rate, to be compounded daily from the date such tax was originally due to the date of actual payment. If any or all of such tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the annual rate of five percentage points above the prime rate, to be compounded daily from the date the tax was originally due to the date of actual payment. On and after July 1, 1993, where the Director grants an extension, interest on the unpaid tax shall be paid

at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year. If any tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year.

(e) On and after December 9, 1987, which is the first day immediately following the 90 day tax amnesty period authorized by P.L. 1987, c.76, for purposes of calculating interest unpaid tax shall mean the total of the following:

1. The actual unpaid tax liability;
2. All penalties accrued to that date; and
3. Interest accrued to that date.

(f) The following example applies only to tax liabilities paid on or after July 1, 1993:

1. Taxpayer failed to pay tax that was due April 15, 1994. On January 15, 1995, the Division issues a Notice and Demand which imposes interest and penalty. Interest will be calculated at the rate of three percent above the prime rate for each month or fraction thereof, commencing on the date that the tax was originally due, and shall continue to accrue until the date upon which payment is received. In addition, late payment penalty may be imposed. Beginning January 1, 1995, tax, penalty and interest are added together at the beginning of each calendar year to become the basis for further calculations of interest.

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

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

In (a)1, added last two sentences; in (a)2, inserted text "Unless any part ... due to reasonable cause," and added second and third sentences; in (d), added last two sentences; and added (f).

18:2-2.5 Cost of collection defined

(a) Cost of collection means the amount of expense incurred by the State with respect to the issuance of a certificate of debt for, and the collection of, any State tax not paid within the time prescribed by law. These expenses include, but are not limited to the following:

1. Cost of postage;
2. Cost of telephone;
3. Cost of photocopying;
4. State payroll hours used, including all associated overhead;
5. Cost of filing and prosecuting suit;

6. The cost of agents, contractors, subcontractors or others employed or otherwise engaged by the State of New Jersey for the efficient and expeditious collection of unpaid tax; and

7. Any other expense deemed by the Director to be reasonably related and necessary for the collection of any unpaid tax.

(b) The Director may, in his discretion, impose the actual cost of collection, or, in lieu of ascertaining and imposing the actual cost of collection, may impose a fee as follows:

1. In the event that any State tax is not paid within the time prescribed by law and the Director issues a certificate of debt pursuant to N.J.S.A. 54:49-12, the greater of five percent of the tax or \$100.00;

2. In the event that any State tax remains unpaid following the issuance of the certificate of debt and the Director takes any further collection action, including but not limited to, referral of the matter to the Attorney General, the greater of 10 percent of the tax or \$200.00;

3. In the event that any State tax remains unpaid and suit is instituted against the taxpayer for collection of the tax, the greater of 20 percent of the tax or \$500.00.

(c) In determining whether the Director shall impose the actual cost of collection or a fee in lieu thereof, the following factors shall be among those considered:

1. Whether the taxpayer fails to properly maintain books and records as required;

2. Whether the taxpayer fails to make books and records available for examination;

3. Whether the taxpayer fails to secure proper license or fails to register with the Division of Taxation as required;

4. Whether the taxpayer operates under a voided corporate charter or after the revocation of authority to do business in New Jersey;

5. Whether the taxpayer remits payment which subsequently became dishonored or defaults on a bond or other security posted with the Division or on a Deferred Payment Plan;

6. Whether the Director finds that a taxpayer intends to leave this State, or to remove therefrom possessions, or any property subject to any State tax; or that taxpayer does any other act tending to prejudice, delay or negate proceedings to assess, collect, or pay any State tax;

7. Whether the taxpayer fails to collect, or truthfully account for, or file a return or file any other information as required;

8. Whether the taxpayer's non-compliance induces the Division of Taxation to issue a Warrant for Execution.

(d) Any fees imposed as cost of collection or in lieu thereof shall be in addition to any interest or penalties, or both, otherwise provided by law, and shall be payable to and recoverable by the Director, along with all penalties and interest as if they were part of the tax imposed.

(e) Interest or penalties shall not be assessed against any fees imposed as cost of collection or in lieu thereof; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date they are paid.

(f) For the purposes of calculating the percentage of the tax to be imposed in lieu of a fixed fee or the actual cost of collection, the tax shall mean: unpaid tax, penalties and interest.

18:2-2.6 Assessment of tax

(a) Upon audit or investigation of a return that has been filed, where it is determined that there is a deficiency with respect to the payment of any tax due, the additional taxes shall be assessed together with penalties of five percent of the additional tax and interest at the rate in effect immediately prior to October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975, to the date of payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest shall be charged at the annual rate of five percentage points above the prime rate, compounded daily from the later of the date the tax was originally due or December 9, 1987, to the date of payment. On and after July 1, 1993, interest shall be charged at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year, from the date the tax was originally due to the date of actual payment. Beginning January 1, 1993, tax, penalty and interest will be added together to become the basis for further calculations of interest. The taxpayer shall be given notice of such assessment and a demand made upon him for payment. The following are examples of interest and penalty liability:

1. On June 15, 1974, a taxpayer filed a return. On February 15, 1976, the taxpayer was notified of an additional assessment and a demand was made upon him for payment. The additional tax bears interest at the rate of one percent per month or fraction thereof from the date the tax was originally due to October 1, 1975, and at the rate of 1½ percent per month or fraction thereof from October 1, 1975, to the date of payment. In addition, taxpayer is subject to penalties of five percent of the additional tax. This example applies only to tax liabilities incurred prior to January 1, 1987 and paid prior to December 8, 1987, the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76.

2. Corporation X was a fiscal year taxpayer whose year ended July 31, 1984. The final return was due and filed on November 15, 1984. Upon audit in July, 1987, it was determined that there was a \$1,000 deficiency with respect to tax due. If Corporation X pays the deficiency on the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76, which ends December 8, 1987, the following amounts would be due:

Deficiency assessed:	\$1,000.00
Simple interest calculated at nine percent per annum* from November 16, 1984 through December 8, 1987	<u>\$ 275.75</u>
Total due	<u>\$1,275.75</u>

* Through statutory interest to December 8, 1987 was 18 percent, P.L.1987, c. 76 mandates a nine percent rate for debts paid during the 90 day amnesty period.

3. Corporation X fails to pay the deficiency assessed within the amnesty period. When payment is made on May 6, 1988 the taxpayer remits \$1,746.63 which represents the following amounts:

Deficiency assessed:	\$1,000.00
Late payment penalty: five percent of the balance of tax due	\$ 50.00
Simple interest calculated at the rate of one and one-half percent per month from November 16, 1984 through December 8, 1987	<u>\$ 555.00</u>
	<u>\$1,655.00 PLUS</u>

Interest on \$1,655.00, calculated at an annual rate of the prime rate plus five percentage points compounded daily from December 8, 1987 until the date of payment (May 6, 1988). The applicable prime rate shall be the rates effective on July 1, 1987, October 1, 1987 and January 1, 1988. For the purposes of this example the prime rate is assumed to be:

July 1, 1987	8.25 percent	
October 1, 1987	8.75 percent	
January 1, 1988	9.00 percent	<u>\$ 91.63</u>
Total		<u>\$1,746.63</u>

4. Taxpayer's gross income tax return was due on April 15, 1994 and filed on October 24, 1994. A Notice and Demand is sent by the Division to the taxpayer on December 30, 1994. Payment is made on February 15, 1995. Interest will be calculated from April 15, 1994 to February 15, 1995 at the rate of three percent above the prime rate for each month or fraction thereof. Accrued interest computed for the period January 1, 1995, through February 15, 1995, shall be calculated on the total of the tax, penalty (if any) and accrued interest calculated from April 15, 1994 through December 31, 1994. In addition, late filing and late payment penalties may be imposed on the balance of the tax due.

(b) For tax liabilities accruing on and after July 1, 1993, no assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. Any unexpired fifth year of a five year period of limitation or unexpired extended period delineated by written consent of a taxpayer remaining on July 1, 1993 shall remain in full force and effect. If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consent in writing made before the expiration of the extended period. The consent of a taxpayer to extend the period of assessment shall extend the period in which the taxpayer may file a refund claim with respect to the identical taxes and tax periods for which the limitations periods have been expressly extended by written consent of the taxpayer. For purposes of this subsection, a return filed before the last day prescribed by law or by rules promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day. A return or refund claim is deemed filed with the Division of Taxation in the Department of the Treasury, unless a different agency is specified by law, pursuant to the postmark rule of N.J.S.A. 54:49-3.1 and N.J.A.C. 18:2-4.1.

(c) The Gross Income Tax Act provides for three year and six year periods of assessment.

1. Pursuant to N.J.S.A. 54A:9-4, additional gross income tax shall be assessed within three years after the return was filed, or deemed filed if filed prior to the date prescribed, whether or not such return was filed after the date prescribed. Additional gross income tax may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade tax, or the taxpayer fails to comply with N.J.S.A. 54A:8-7, in not reporting a change or correction in Federal taxable income as reported on the taxpayer's Federal income tax return, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for Federal income tax purposes, or in not filing an amended New Jersey return within 90 days of filing an amended Federal income tax return.

2. Additional gross income tax may be assessed at any time within six years after the return was filed if:

i. An individual omits from New Jersey income an amount properly includible therein which is in excess of 25 percent of the amount of New Jersey income stated in the return; or

ii. An estate or trust omits income from its return in an amount in excess of 25 percent of its income determined as if it were an individual, computing his or her New Jersey income under the Act. For purposes of this paragraph, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Director of the nature and amount of such item.

3. The period for assessment of gross income tax may be extended if the taxpayer amends or the Internal Revenue Service adjusts Federal taxable income, or if the taxpayer enters into a written agreement with the Division extending the time to make an assessment, or if an erroneous refund is made as a result of fraud or misrepresentation by the taxpayer. The period of assessment may be suspended under N.J.S.A. 54A:9-4(e). See N.J.S.A. 54A:9-4.

4. When the last day prescribed under N.J.S.A. 54A:8-1(a), 54A:9-4(a), 54A:9-4(b)(1) and 54A:9-4(d) for filing a gross income tax return or for assessing an additional tax after the return has been filed falls on a Saturday, Sunday or holiday, the performance of the act of filing or assessing shall be considered timely if it is performed by the taxpayer or the Director, as the case may be, on the next succeeding business day.

5. See N.J.A.C. 18:7-13.1 for assessment of corporation business tax.

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

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

In (a), added third and fourth sentences; inserted (a)4; and added (b) and (c).

18:2-2.7 Abatement of penalty and interest

(a) If the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director, he or she may abate the payment of the whole or any part of any penalty and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975 to the date of payment or December 8, 1987, whichever is earlier. On and after December 9, 1987, the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment on the entire existing liability including any tax, penalty, and/or accumulated interest charges. Pursuant to N.J.S.A. 54:49-11(a), after July 1, 1993, the Director may remit or waive the payment of the whole or any part of any penalty and may remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate including any such penalty or interest with respect to deficiency assessments made pursuant to N.J.S.A. 54:49-6.