

CHAPTER 8

FINANCIAL BUSINESS TAX

Authority

N.J.S.A. 54:10B-22.

Source and Effective Date

R.1994 d.144, effective February 24, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

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Chapter 8, Financial Business Tax, expires on February 24, 1999.

Chapter Historical Note

Chapter 8, Financial Business Tax Law, was filed and became effective prior to September 1, 1969. Amendments were filed and became effective on February 6, 1979 as R.1979 d.46. See: 11 N.J.R. 41(a), 11 N.J.R. 151(a). Pursuant to Executive Order 66(1978), the chapter was readopted as R.1984 d.96, effective April 2, 1984. See: 16 N.J.R. 232(a), 16 N.J.R. 747(a). Pursuant to Executive Order No. 66(1978), Chapter 8 was readopted as R.1989 d.149, effective February 24, 1989. See: 21 N.J.R. 16(a), 21 N.J.R. 778(a).

Pursuant to Executive Order No. 66(1978), Chapter 8 was readopted as R.1994 d.144. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. TAXPAYERS SUBJECT TO TAX

18:8-1.1 General scope of tax

The New Jersey Financial Business Tax is an excise tax imposed upon net worth and is applicable to any partnership, limited partnership, limited partnership association or any other unincorporated association or individual doing a financial business in this State.

Statutory References

See N.J.S.A. 54:10B-2 as to definitions of "financial business", "net worth", and "taxpayer".

18:8-1.2 Taxpayer defined

(a) The term "taxpayer" means any partnership, limited partnership, or any other unincorporated association or individual required to report or to pay taxes, interest or penalties under the Act.

1. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court who conducts the business of a taxpayer is subject to the Act in the same manner and to the same extent as if the business were conducted by the agents or officers of the taxpayer.

Statutory References

See N.J.S.A. 54:10B-2(e) as to definition of taxpayer, and 10B-11 as to liability of receivers, referees, trustees, assignees, other fiduciaries and agents of court who conduct a taxpayer's business to the tax in same manner and extent as the taxpayer.

18:8-1.3 "Doing a financial business in New Jersey" defined

(a) A taxpayer is deemed to be doing financial business in this State if it is engaged in any business enterprise which:

1. Is in substantial competition with the business of national banks; and

2. Employs moneyed capital with the object of making profit by its use as money, through discounting and issuing promissory notes, drafts, bills of exchange and other evidence of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts, dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or political subdivision of the United States or of a corporate instrumentality of any of them.

Statutory References

See N.J.S.A. 54:10B-2(b) as to definition and scope of "financial business".

18:8-1.4 Acts and enterprises constituting "doing financial business"

Included as financial business taxpayers without limitation are businesses commonly known as dealers in commercial paper and acceptances, sales finance, personal finances, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks.

Statutory References

See N.J.S.A. 54:10B-2(b) as to definition and scope of "financial business".

18:8-1.5 Acts not constituting the doing of a financial business

(a) A partnership, limited partnership, or any other unincorporated association or individual is not deemed to be doing financial business by reason of:

1. The maintenance of cash balances with banks or trust companies in this State; or

2. The ownership of shares of stock or securities in this State if such shares or securities are pledged as collateral security; or

3. Shares or securities deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safe-keeping or custody accounts or kept in a safe deposit box; or

4. The taking of any action by such bank or trust company or broker which is incidental to the rendering of safekeeping or custodian service.

(b) The holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks is not deemed to be the conduct of a financial business.

Statutory References

See N.J.S.A. 54:10B-4 as to acts not constituting the doing of financial business.

18:8-1.6 Taxpayers ceasing to do financial business in New Jersey; conditions to be met

(a) A taxpayer is deemed to have ceased doing financial business in this State when it is no longer primarily engaged in an activity which:

1. Is in substantial competition with the business of national banks; and

2. Employs moneyed capital with the object of making a profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes of debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them.

(b) In no event, however, shall the last day of doing business be deemed to have occurred more than 30 days prior to the filing of a duly executed tax return with payment of the tax due for the tax year in which the business has ceased.

(c) Any taxpayer ceasing to do a financial business in this State is required to first file its return (Form FBT-1) and pay or secure the tax, interest and penalties due thereon for the preceding tax year and for the year in which the cessation occurs.

Statutory References

See N.J.S.A. 54:10B-2 as to definition of "financial business" and "tax year".

18:8-1.7 Exempt business units

(a) "Financial business" does not include:

1. National banks;
2. Production credit associations organized under the Farm Credit Act of 1933;
3. Stock and mutual insurance companies duly authorized to transact business in this State;
4. Security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks; or
5. Any of the following entities organized under the laws of this State:
 - i. Credit unions;
 - ii. Savings banks;
 - iii. Savings and loan and building and loan associations;
 - iv. Pawnbrokers, and;
 - v. State banks and trust companies.

Statutory References

See N.J.S.A. 54:10B-2(b) as to definition and scope of "financial business".

18:8-1.8 General nature of tax

(a) The Act imposes an annual excise tax upon every partnership, limited partnership, or any other unincorporated association or individual doing a financial business in this State as defined in sections 3 and 4 of this subchapter.

(b) The tax is imposed at the rate of 1½ per cent upon the taxpayer's net worth, less the deductions allowed, as of the close of the preceding calendar year, but in no event less than \$25.00.

Statutory References

See N.J.S.A. 54:10B-3 as to requirement that all corporations pay annual excise tax on personal property entering into the determination of net worth, according to specified rates.

18:8-1.9 Tax in lieu of other State taxes

The tax imposed under the Act is in lieu of any State franchise tax or any State or local taxation upon or measured by personal property entering into the determination of net worth.

Statutory References

See N.J.S.A. 54:10B-3 as to imposition of this tax in lieu of State or local tax, upon personal property entering into the determination of net worth.

18:8-1.10 Application of tax; proration, when allowed

(a) The New Jersey Financial Business Tax is imposed upon each taxpayer doing a financial business, as provided in section 2.3 (Net worth defined) of this chapter, for each calendar year during which business is conducted in this State.

(b) Where a taxpayer does financial business in this State for a period less than a full calendar year, it is not permitted to prorate the tax in filing a short period return for the initial period of subjectivity. The tax for such period is to be measured by the taxpayer's allocable net worth, if allocation is applicable under section 3.1 (Allocation of net worth; basis for assessing) of this chapter.

(c) Where a taxpayer does financial business in this State for a period less than a full calendar year by reason of the dissolution, liquidation or withdrawal of the business in this State, the provisions of section 9.1 (Dissolution or liquidation of taxpayer; return and payment of tax) of this chapter, covering proration on the final return apply.

Statutory References

See N.J.S.A. 54:10B-2 as to definitions of "financial business", "net worth", "tax year", and "taxpayer".

18:8-1.11 Tax year and calendar year; how applied to filing time

(a) The term "tax year" means the calendar with respect to which the tax is measured pursuant to the Act.

(b) The term "calendar year" means an accounting period ending on December thirty-first.

(c) All taxpayers subject to the Act must file on a calendar year basis.

Statutory References

See N.J.S.A. 54:10B-2(d) as to definition of "tax year", and 10B-3 as to requirement that the tax under this Act be paid annually.

18:8-1.12 (Reserved)**SUBCHAPTER 2. COMPUTATION OF TAX****18:8-2.1 Basis of computation**

(a) The New Jersey Financial Business Tax is computed by:

1. First determining the taxpayer's net worth as defined in section 3 (Net worth defined) of this subchapter, or where a taxpayer is entitled to allocate his allocable net worth as provided in sections 3.1 (Allocation of net worth; basis for assessing) and 3.2 (Allocating and non-allocating taxpayers defined) of this chapter; and

2. Multiplying the result by 1½ per cent.

(b) In no event, however, may the tax be less than \$25.00.

Statutory References

See N.J.S.A. 54:10B-2(c) as to definition and scope of "net worth", and 10B-3 as to rates of taxation imposed upon net worth.

18:8-2.2 Method of accounting

The method of accounting used by a taxpayer in reporting the tax due under the Act is to be the same as that used in reporting his Federal Income Tax, that is, cash or accrual.

Statutory References

See N.J.S.A. 54:10B-2(e) as to definition of "taxpayer"; 10B-3 as to requirement that tax under the Act be annually paid; and 10B-14 as to due dates for filing returns.

18:8-2.3 Net worth defined

(a) "Net worth" shall mean one of the following:

1. In the case of an individual proprietorship, partnership, joint venture or any other unincorporated association: The aggregate of the values disclosed by the books of the taxpayer on December 31, of the tax year for capital and undivided profits; without any deduction from assets of debts owing to partners, proprietors or members, as of the close of the tax year.

Statutory References

See N.J.S.A. 54:10B-2(c) For definitions of net worth for partnerships and other unincorporated associations.

Case Notes

Rule definition of net worth held in accord with definition provided in the Financial Business Tax Law; issue of whether Director's utilization of "tax reserve concept" was a sound accounting principle held not an issue properly disposable on summary judgment. *United Jersey Mortgage Co. v. Taxation Div. Director*, 3 N.J.Tax 287 (Tax Ct.1981).

18:8-2.4 Right of Director to independently compute net worth

If in the Director's opinion, the books of a taxpayer do not disclose fair valuations, the Director may require information to determine net worth in accordance with sound accounting principles. This determination shall be used in computing the taxpayer's net worth under the Act.

Statutory References

See N.J.S.A. 54:10B-5 as to right of Director to require additional information so as to more accurately determine taxpayer's net worth.

Case Notes

Director's power in determining net worth under the Financial Business Tax Law; issue of whether Director's utilization of "tax reserve concept" was a sound accounting principle held not an issue properly disposable on summary judgment. *United Jersey Mortgage Co. v. Taxation Div. Director*, 3 N.J.Tax 287 (Tax Ct.1981).

18:8-2.5 Indebtedness includible in net worth

(a) In determining the net worth of a taxpayer pursuant to section 3 (Net worth defined) of this subchapter, there is to be included the following:

1. In the case of an unincorporated entity:

i. All indebtedness owing to any partner, individual proprietor or association member; and

ii. All indebtedness owing to any creditor holding such indebtedness on behalf of or in trust for any partner, individual proprietor or association member.

Statutory References

See N.J.S.A. 54:10B-2(c) as to definition of net worth unincorporated associations.

18:8-2.6 Valuation of securities

(a) In calculating net worth, any securities held by a taxpayer are to be included at their fair value as of December 31 of the tax year determined according to the following rules:

1. The fair value of any stocks, bonds or other securities listed on any exchange or in the over-the-counter market is the mean between the lowest and highest selling prices prevailing on the valuation date, December 31.

i. Where there are no sales on the valuation date the mean between the highest and lowest selling prices on the nearest date, within a reasonable time, is to be used;

ii. Where there are no actual selling prices available within a reasonable time the bona fide bid and asked prices on the valuation date, or the nearest date within a reasonable time, are to be used.

2. The fair value of any stocks, bonds or other securities not listed on an exchange or in the over-the-counter market is to be thus ascertained:

i. In the case of shares of stock, on the basis of the issuing corporation's net worth, earning power, book value, dividends paid, and any other relevant factors; and

ii. In the case of bonds or other securities, by giving consideration to various factors including the face value, the soundness of the security, and the interest yield and the date of the maturity.

3. In all cases where the actual selling prices or the bona fide bid and asked prices within a reasonable time are not available, or whereby reason of the character or extent of the taxpayer's investment or for any other reason such prices are not indicative of value, the fair value is to be thus ascertained:

i. In the case of shares of stock, on the basis of the issuing corporation's net worth, earning power, book value, dividends paid and any other relevant factors; and

ii. In the case of bonds or other securities, by giving consideration to various factors including the face value, the soundness of the security, the interest yield and the date of maturity.

Statutory References

See N.J.S.A. 54:10B-2(c) as to definition and scope of "net worth"; 10B-3 as to rate of tax to be imposed on net worth under the Act; and 10B-5 as to right of Director to require additional information so as to more accurately determine the fair value of taxpayer's assets.

18:8-2.7 Governmental obligations and securities

In ascertaining a taxpayer's net worth, the value as of December 31 of the tax year of any governmental obli-

gations and securities, Federal, State and Municipal, are to be included.

Statutory References

See N.J.S.A. 54:10B-3 as to requirement for annual payment of tax upon net worth under the Act, and 10B-5 as to right of Director to require additional information and redetermine taxpayer's net worth, if it appears inaccurate as filed.

18:8-2.8 Inventories

The net worth of a taxpayer must include the value of any tangible personal property in which the taxpayer deals in its normal course of trade, including but not limited to repossessed chattels.

Statutory References

See N.J.S.A. 54:10B-2(c) as to definition and scope of "net worth", 10B-3 as to requirement for annual payment of tax upon net worth under the Act, and 10B-5 as to right of Director to require additional information and to redetermine taxpayer's net worth if it appears inaccurate as filed.

18:8-2.9 Deductions from net worth; stock value

(a) In the determination of net worth, a taxpayer is permitted to deduct the average aggregate value of the following, held by it during the tax year:

1. Shares of stock taxable under the bank stock tax;
2. Shares of stock in domestic insurance companies;
3. Shares of stock in railroads or other public utilities or in corporations taxable under the Act.

(b) The items contained in subsection (a) of this section are deductible only in the same proportion that the issuing corporation's total net worth, income or gross receipts, enters into the determination of a tax base under the New Jersey Financial Business Tax Law, or any other law of this State, less such proportion of the total liabilities of the taxpayer (as of the close of the tax year) as the ratio of the average aggregate value bears to the total assets of the taxpayer (as of the close of the tax year).

(c) However, the average aggregate value of any shares of stock described in subsection (a) of this section held by a taxpayer for more than five years prior to the tax year may be fully deducted from net worth.

(d) Provided further, that no deduction shall be made or permitted for any shares described in subsection (a) of this section where any indebtedness has been incurred with the intent or for the purpose of acquiring, holding or controlling such stock.

Statutory References

See N.J.S.A. 54:10B-2(c) as to definition and scope of "net worth", 10B-3 as to requirement for annual payment of tax upon net worth under the Act, and 10B-5 as to right of Director to require additional information and to redetermine taxpayer's net worth if it appears

inaccurate as filed, and 10B-6(a) as to deductions from net worth allowable for stocks held by taxpayer.

18:8-2.10 Deductions from net worth; assessed realty value

(a) The taxpayer is permitted to deduct from its net worth the assessed value of any real estate taxable in this State; but such deduction may not exceed the amount of the taxpayer's equity in the real estate which is included in net worth.

(b) For the purpose of this subsection, the assessed value of real estate owned in any taxing district by a taxpayer is to be fixed at the same percentage of true value as that applied in the base year in fixing the assessed value of that real estate in that taxing district.

1. As used in this section, "base year" means any one of the years 1957, 1958, 1959 or 1960, as the assessor in that taxing district elects;

2. A base year once elected may not be changed.

Statutory References

See N.J.S.A. 54:10B-6(b) as to deductions allowable from net worth for the assessed value of realty in this State.

18:8-2.11 (Reserved)

18:8-2.12 Evading tax; power of Director to determine tax

(a) Whenever it appears to the Director that any taxpayer maintains a place of business outside this State, or that any agreement, understanding or arrangement exists between a taxpayer and any corporation, person or firm, for the purpose of evading the tax under the Act, or where the activity, business, receipts or net worth of a taxpayer is distorted for that purpose, the Director may, in his discretion and in whatever manner he may determine, adjust any item of net worth, gross business within and without the State and the allocation of net worth, or make other adjustments in any tax report or tax return as may be necessary for a true and correct determination of the tax.

(b) In addition, the Director may require any person or corporation to submit information under oath, or to permit examination of its books, papers and documents, as may be necessary to enable him to determine the existence, nature or extent of any agreement, understanding or arrangement to which this section relates whether or not the person or corporation in question is subject to the tax imposed by the Act.

Statutory References

See N.J.S.A. 54:10B-10 as to power of Director to independently determine the tax due under the Act for any taxpayer he determines is evading payment.

18:8-2.13, 18:8-2.14 (Reserved)

SUBCHAPTER 3. ALLOCATION OF NET WORTH

18:8-3.1 Allocation of net worth; basis for assessing

(a) For purposes of the Act all of a taxpayer's gross income is deemed to be derived from the conduct of business in this State and therefor not subject to allocation, unless:

1. The taxpayer is actually engaged in the conduct of business outside New Jersey.

(b) The mere ownership of assets outside New Jersey is not deemed to constitute the conduct of business outside this State or as to entitle a taxpayer to allocate its net worth.

Statutory References

See N.J.S.A. 54:10B-8 as to those taxpayers allowed to allocate the value of their net worth under the Act.

18:8-3.2 Allocating and non-allocating taxpayers defined

(a) A taxpayer which allocates a portion of its entire gross receipts outside this State, is referred to as an "allocating" taxpayer.

(b) A taxpayer which does not allocate any part of its gross receipts outside this State is referred to as a "non-allocating" taxpayer.

18:8-3.3 Taxpayer doing business in more than one State; allocating value of net worth

(a) A taxpayer doing business in more than one state is entitled to allocate the value of its net worth (after the allowable deductions) within this State. The allocated value is to be the measure of its tax pursuant to the Act, according to the proportion of its gross business in this State to its gross business everywhere during the tax year, determined as the sum of the following five items divided by their aggregate amount possessed by the taxpayer everywhere:

1. Fees, commissions or other compensation for financial services rendered within this State;

2. Gross profits from trading in stocks, bonds, or other securities managed within this State;

3. Interest and dividends received on loans, stocks, bonds, and other securities managed within this State;

4. Interest charged to customers at places of business maintained within this State for carrying debit balances or margin accounts without deduction of any costs incurred in carrying such accounts; and

5. Any other items of gross income resulting from the operation of financial business within this State.

(b) Except as may be otherwise provided by law where a taxpayer is entitled to allocate, the gross items of receipts attributable to place of business situated within the State of New Jersey are deemed to include all business receipts generated or originated from transactions made or solicited or services rendered by officers, employees, salesmen and other representatives who work in, or from, or attached to places of business situated within this State.

1. All items of income, whether within or without this State, are to be reported on a gross basis without any deductions for costs, operating expenses, etc.;

2. It is to be noted that the amounts of receipts, whether within or without New Jersey, are not taxable as such but are merely employed to arrive at the allocation percentage factor which will in turn be applied against the taxpayer's net worth.

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a); 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:10B-8 as to how allocating taxpayer must compute the value of its net worth remaining after allowable deductions and allocation to New Jersey.

18:8-3.4 Method of arithmetic computation required

In the computation of allocation percentages a taxpayer is required to carry the division to six decimal places.

Statutory References

See N.J.S.A. 54:10B-8 as to method of computing allocation percentages where taxpayer is entitled to allocate its net worth.

18:8-3.5, 18:8-3.6 (Reserved)

18:8-3.7 Allocation of New Jersey business among New Jersey municipalities

Those taxpayers maintaining places of business in more than one municipality in this State are to apportion their net worth to each municipality in which a place of business is maintained in the same manner as is required by this Act for apportionment within and without the State.

Statutory References

See N.J.S.A. 54:10B-9 as to the requirement that corporations maintaining places of business in more than one New Jersey municipality must so apportion their net worth, in the same manner as required by taxpayers allocating within and without the State.

18:8-3.8 Taxpayer doing business among several municipalities must so indicate

(a) In every case a taxpayer doing a financial business in this State as set forth in sections 1.3 (Doing a financial business in New Jersey defined) and 1.4 (Acts and enterprises constituting "doing financial business") of this chapter, upon filing a completed return must submit the name of each taxing municipality in which it has done business and

indicate whether the taxing district is a city, town, borough, or township, the street address where business is conducted and the county in which the municipality is located.

(b) Any taxpayer maintaining a place of business in more than one municipality in this State must also indicate the proportion of New Jersey income derived from business done in each municipality the total of which is equal to 100 percent.

Statutory References

See N.J.S.A. 54:10B-9 as to requirement that taxpayers maintaining places of business in more than one New Jersey municipality must so apportion their net worth.

18:8-3.9 (Reserved)

SUBCHAPTER 4. RETURNS; PAYMENTS AND PENALTIES

18:8-4.1 Entities required to file returns

(a) An annual return is required to be filed by:

1. Every partnership, limited partnership, or any other unincorporated association or individual subject to the tax, irrespective of the amount of its net worth; and

2. Every receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court to conduct business or conserve the assets of any business unit subject to tax under the Act. For business units subject to tax, see sections 1.2 (Taxpayer defined), 1.3 ("Doing a financial business in New Jersey" defined), and 1.4 (Acts and enterprises constituting "doing financial business") of this chapter.

Statutory References

See N.J.S.A. 54:10B-2(b) as to definition and scope of "financial business"; 10B-2(c) as to definition of "net worth", and 10B-4 as to personal liability of receivers, trustees, other such fiduciaries or agents of the court for payment of tax under the Act.

18:8-4.2 Forms of returns

(a) All taxpayers are required to file their returns on Form FBT-1.

1. In addition to the return any taxpayer may be required to file such other reports or information as may be necessary for the proper administration of the Act.

(b) All returns are to be made upon the oath or affirmation of the partner, proprietor or member of an association in the case of other taxpayers.

1. 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, swear or affirm the return on behalf of the taxpayer;

2. In the case of a taxpayer in liquidation or in the hands of a receiver, or trustee, the swearing or affirmation is to be made by the person responsible for the conduct of the affairs of such taxpayer.

(c) The Division of Taxation, in advance of the due date, forwards to each taxpayer a return form which is due on April 15, next succeeding the tax year. Failure to receive the return form does not excuse the taxpayer from filing a return and paying the tax when due.

Statutory References

See N.J.S.A. 54:10B-17 as to right of Director to determine the content of tax return forms and his duty to provide those forms to each taxpayer upon application therefor.

18:8-4.3 Time for filing returns; payment of tax

The annual Financial Business Tax return (Form FBT-1) must be filed and the tax due paid on or before April 15th, next succeeding the tax year, which is the preceding calendar year.

Statutory References

N.J.S.A. 54:10B-14.

18:8-4.4 Place for filing returns and payment of tax

All returns, together with checks for the amount of tax due made payable to the "State of New Jersey", are to be forwarded to the New Jersey Division of Taxation, Trenton, New Jersey 08646. A separate remittance is required to be made with each return.

Statutory References

See N.J.S.A. 54:10B-14 as to requirement that all tax returns and tax payments be made to the Director.

18:8-4.5 Extension of time; interest extensions

(a) The Director may, for good cause shown, grant a reasonable extension of time for the filing of returns or the payment of tax or both. However, an extension may not be granted beyond the first day of December of the year in which the tax is due.

(b) Any taxpayer desiring an extension of time to file a return or pay the tax or both, must at any time before the due date:

1. Make a request in writing, stating the reasons for requesting an extension;

2. File a tentative return, showing the taxpayer's full name and address and the amount of estimated tax liability on the schedule provided for the computation of the tax; and

3. Remit the amount of estimated tax shown on the tentative return.

(c) Where an extension of time to file a return has been granted and payment is made within the time fixed under the extension, any portion of the tax in excess of the amount paid by the original due date shall bear interest at the rate of nine percent per annum from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of three percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

(d) Where payment of the tax is made after the time fixed under the extension of time to file a return, any portion of the tax remaining unpaid shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987 at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year from the date the tax was originally due to the date of actual payment.

(e) Where the estimated tax remitted with the tentative return is less than 75 percent of the tax liability shown on the final return and less than the amount of tax paid for the preceding year, the unpaid portion of the tax in excess of the amount estimated and remitted shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 at the annual rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date the tax was originally due until the date of actual payment.

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Amended by R.1994 d.144, effective March 21, 1994.

See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:10B-15 as to procedures and time limits involved in applying for an extension for filing or payment and the rate of interest applied to the unpaid portion of tax for the period between the original due date and the extended due date. See N.J.S.A. 54:49-3 as to the rate of interest applied to delinquent taxes.

18:8-4.6 Failure to file return or make payment when due

For the effect or failure to file a return or make payments when due, see N.J.A.C. 18:8-4.5 (Extension of time; interest extensions), 4.10 (Delinquent payments; interest) and 4.13 (Deficiency assessments; interest).

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

18:8-4.7 Secrecy of returns

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

Statutory References

See N.J.S.A. 54:50-8 as to prohibition against Director or any employee of the Division of Taxation divulging, disclosing, or permitting another to inspect any records or files pertaining to the administration of the tax under this Act, and N.J.S.A. 54:50-9 as to excepted officials and statistical publications who may so inspect those records and files for certain specified purposes.

18:8-4.8 (Reserved)**18:8-4.9 Copies of tax returns or other information required**

(a) In addition, the Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of any of the following:

1. Its Federal income tax returns; or
2. Any other tax return made to any agency of the Federal Government or of this or any other state; or
3. Any statement or registration made pursuant to any State or Federal law pertaining to the regulation of the business of the taxpayer.

Statutory References

See N.J.S.A. 54:10B-13 as to right of the Director to require a taxpayer to submit copies of or extracts from certain Federal or State tax returns.

18:8-4.10 Delinquent payments; interest

Any taxpayer who fails to pay the tax when due is subject to interest in addition to the tax at the rate of one and one-half percent per month or fraction thereof computed from the date the tax was originally due to the date of actual payment, and on and after December 9, 1987, at the rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment, and on and after July 1, 1993 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 year from the date the tax was originally due until the date of actual payment.

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:49-3 as to rate of interest applied against delinquent taxes under the Act.

18:8-4.11 Arbitrary assessment where taxpayer withholds report

(a) Where a taxpayer fails to file its return when due, the Director may from any information obtainable:

1. Estimate the amount of tax due from such taxpayer and,
2. Based upon that estimate:
 - i. Assess the taxes, fees and interest due the State;
 - ii. Give notice of the assessment to the taxpayer; and
 - iii. Make demand upon him for payment.

Statutory References

See N.J.S.A. 54:49-5 as to right of Director to make independent assessment of tax liability of a taxpayer who fails to report under the Act.

18:8-4.12 Arbitrary assessment where taxpayer intends absconding; concealment; immediate payment demanded

(a) Where the Director finds that a taxpayer intends to depart from this State or to remove his property, or any property subject to tax from this State, or to conceal himself or his property, or any other property, or to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffectual proceedings to assess or collect this tax, and it thus becomes important that proceedings be brought without delay, the Director may immediately make an arbitrary assessment as provided in N.J.S.A. 54:49-5 whether or not any return is then due by law.

(b) The Director may proceed under such arbitrary assessment to collect the tax, or compel security for its payment, and thereafter cause notice of his finding to be given the taxpayer in question, together with a demand for an immediate return and immediate payment of the tax.

Statutory References

See N.J.S.A. 54:49-7 as to right of Director to make an arbitrary assessment should the taxpayer conceal himself or his property, or abscond.

18:8-4.13 Deficiency assessments; interest

(a) After a return is filed under the provisions of the Act, the Director shall cause it to be examined and may make

whatever future audit or investigation he may deem necessary.

1. If upon audit or investigation he determines that there is a deficiency with respect to the payment of the tax due, he shall assess the additional tax due including interest; and
2. Make demand upon the taxpayer for payment.

(b) In addition to the amount of any deficiency, the assessment or reassessment is subject to interest at the rate of one and one-half percent per month or fraction thereof, to be computed from the date the tax was originally due until the date of actual payment, and on and after December 9, 1987 at the rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due to the date of payment, and on and after July 1, 1993 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 year from the date the tax was originally due until the date of actual payment.

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:49-6 as to right of Director to investigate, then assess additional taxes should taxpayer's return be deficient.

18:8-4.14 Payment of special assessment; 15-day period

The taxes and interest assessed pursuant to the provisions of N.J.S.A. 54:49-5 and 54:49-7 dealing with arbitrary assessments are to be paid within 15 days after notice and demand for payment have been mailed to the taxpayer.

Statutory References

See N.J.S.A. 54:49-8 as to time limits for payment of special assessments, penalty and interest fees resulting from delinquent or deficient returns under the Act.

18:8-4.15 Penalty for nonpayment of special assessment

Where the taxes and interest assessed pursuant to N.J.S.A. 54:49-5 and 54:49-7 dealing with arbitrary and deficient assessments are not paid within the 15 days, there is to be added to the amount of assessment, in addition to the interest provided in N.J.A.C. 18:8-4.10, a sum equivalent to five per cent of the tax.

Statutory References

See N.J.S.A. 54:49-9 as to penalty imposed for nonpayment of special tax assessment.

18:8-4.16 Interest and penalties recoverable as tax

The penalties and interest provided in this Act are recoverable by the Director in the same manner as if they were a part of the tax imposed.

Statutory References

See N.J.S.A. 54:49-10 as to right of Director to move or recover penalty and interest fees due as if they were part of the tax imposed under the Act.

18:8-4.17 Waiver of penalty and abatement of interest

(a) The Director may, for good cause shown, remit or waive:

1. The payment in whole or in part of any penalty; and
2. The payment of any interest in excess of the rate of three percentage points above the prime rate. (See N.J.A.C. 18:2-2.7 for rules on abatements.)

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:49-11 as to right of Director to waive with good cause, payment in whole or in part of penalties or interest imposed for nonpayment or delinquent payment of the tax under the Act.

18:8-4.18 Penalties

Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law.

New Rule, R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

18:8-4.19 (Reserved)

SUBCHAPTER 5. PROTESTS AND APPEALS

18:8-5.1 Protests, hearings; procedures

(a) Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the giving of notice thereof, file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8.

(b) Hearings before the Division of Taxation 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).

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

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

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 to a hearing thereon.

18:8-5.2 Appeal

(a) Any aggrieved taxpayer may within 90 days after any final decisions, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, 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.

Statutory References

See N.J.S.A. 54:51-1 as to right of taxpayer to file notice of appeal from any ruling of the Director, subject to the rules, procedures, and time limitations prescribed by the Division of Tax Appeals.

18:8-5.3 Service of notice on taxpayers

(a) Any notice required to be given by the Director may be served personally or by mail upon the person for whom it is intended, addressed to that person at the address given in the last report filed by him or, if no report has been filed, then to whatever address may be obtainable;

(b) The mailing of the notice is deemed to be presumptive evidence of its receipt by the person to whom it was addressed.

Statutory References

See N.J.S.A. 54:50-6 as to form of service of notice required of the Director to be given to taxpayer.

18:8-5.4 (Reserved)

SUBCHAPTER 6. REFUNDS; LIEN OF TAX; INJUNCTION

18:8-6.1 Claim for refund

(a) Any taxpayer may within the period prescribed in N.J.A.C. 18:8-6.3 file with the Director a claim for refund, under oath, setting forth in detail the grounds for the claim and outlining in detail all pertinent circumstances.

(b) No claim for refund is required or permitted to be filed after the 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.

Statutory References

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

18:8-6.2 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 the overpayment and upon making a record in writing stating the reasons therefor, certify to the State Treasurer that a taxpayer is entitled to a refund.

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

Statutory References

See N.J.S.A. 54:49-16 as to right of Director within two years of occurrence to certify to State Treasurer that taxpayer has overpaid, if such be the case, and duty of the comptroller to authorize appropriate refund.

18:8-6.3 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. For payments made on or after July 1, 1993, claims for refunds must be filed within four years after the payments of any original or additional tax assessed against the taxpayer.

Amended by R.1994 d.144, effective March 21, 1994.

See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

See N.J.S.A. 54:49-16 as to right of the Director to order a refund of tax overpaid at any time within two years, and 49-14 as to an exception in the case of proceedings on appeal there in progress in regard to such alleged overpayment.

18:8-6.4 Payment of refunds; rejection of claims; interest on overpayments

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

(b) If there is no liability the taxpayer is entitled to a refund of the tax overpaid and the interest on the overpayment if any.

(c) 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.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue

on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than \$1.00.

Amended by R.1994 d.144, effective March 21, 1994.
See: 26 N.J.R. 333(a), 26 N.J.R. 1369(a).

Statutory References

N.J.S.A. 54:49-15.

18:8-6.5 Lien of tax; duration

(a) The tax imposed by the Act constitutes a lien on all of the taxpayer's property and franchises on and after January 1 of the year in which it is due and payable.

(b) All interest, penalties, and costs of collection which thereafter fall due or accrue are added to and become a part of the lien.

(c) Notwithstanding the provisions of any other law, all such taxes, interest, penalties and costs imposed or incurred under the Act, whether levied or assessed or not, unless sooner paid continue as a lien on all of the taxpayer's property and franchises, until the expiration of ten years after January 1 of the year in which they become due and payable.

Statutory References

See N.J.S.A. 54:10B-16 as to duration of lien imposed upon taxpayer's property due to nonpayment of taxes, penalty fees, and interest thereon.

18:8-6.6 Action to restrain transaction of business until tax and penalties paid

(a) In addition to any other remedies for the collection of the tax imposed by the Act, the Attorney General may of his own motion or upon the request of the Director, whenever any tax is due or has remained in arrears for a period of three months after the tax becomes payable, bring an action in the Superior Court in the name of the State against the delinquent taxpayer for an order or judgment to restrain that taxpayer from the exercise of any franchise, or the transaction of any business within this State until the payment of whatever tax and penalties and interest due thereon, and the costs of the action, as fixed by the court.

(b) The court may proceed in the action in a summary manner or otherwise, and may grant injunctive relief should a proper case appear.

(c) Upon the granting and service of the order or judgment giving injunctive relief, it shall be unlawful for the enjoined taxpayer to subsequently exercise any franchise or transact any business in this State until the injunction is dissolved.

Statutory References

See N.J.S.A. 54:10B-19 as to power of the Attorney General to maintain an action to restraining transaction of business of delinquent taxpayer until taxes and penalties due are paid.

18:8-6.7 (Reserved)

SUBCHAPTERS 7 THROUGH 8. (RESERVED)

Subchapter Historical Note

Pursuant to authority of N.J.S.A. 54:10B-22, Subchapter 8, Criminal Penalties, became effective April 2, 1984 as R.1984 d.96. See: 16 N.J.R. 232(a), 16 N.J.R. 747(a). Repealed by R.1988 d.407, effective September 6, 1988. See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

SUBCHAPTER 9. DISSOLUTION

18:8-9.1 Dissolution or liquidation of taxpayer; return and payment of tax

(a) No taxpayer may dissolve, liquidate or distribute any assets in dissolution or liquidation without having first duly filed its return under the Act and paid or secured the tax, interest and penalties due thereon for the preceding tax year and for the year in which such dissolution or liquidation occurs, as well as all delinquent taxes, interest, and penalties then due.

(b) For the purpose of determining the tax due with respect to the year in which dissolution or liquidation occurs, the tax year is deemed to have closed on the last day of the month in which the taxpayer ceases to do a financial business in this State.

(c) The amount of tax due is deemed to be such proportion of the tax for a full tax year as the number of months in the tax year so determined is to 12.

(d) In no event shall the last day of doing business be deemed to have occurred more than 30 days prior to the filing of a duly executed tax return and the payment of the tax due as shown therein for the tax year in which the dissolution, liquidation, or withdrawal occurs.

Statutory References

See N.J.S.A. 54:10B-12 as to prohibition against dissolution or liquidation by any taxpayer prior to payment of taxes under the Act and as to the proportion of tax payable up until the date of such dissolution or liquidation.