

Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7-13.8 Claims for refund; when allowed

(a) For claims accruing prior to July 1, 1993, the two-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For claims accruing on and after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two-year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:11.7(b)). For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.

(b) For claims accruing prior to July 1, 1993, the two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT-200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT-100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) (or a CBT-100-X) is an amended return.

(d) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the two-year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Divi-

sion. For claims accruing on and after July 1, 1993, the limitation period is four years from the date that the timely filed Form IRA-100 or CBT-100-X is filed with the Division. Unless the IRA-100 or CBT-100-X is filed in a timely fashion under N.J.A.C. 18:7-11.8(a), the refund claim will not be considered.

(e) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT-100). For claims accruing on and after July 1, 1993, the claim for refund must be filed within four years.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a copy of form CBT-100-X, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the Director is made on Form CBT-100-X and is addressed to:

Corporation Business Tax Refund Section
77 Carroll Street
PO Box 259
Trenton, NJ 08646-0259

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT-100. A penalty for late filing of the CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files a Form CBT-100-X claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days. N.J.S.A. 54:10A-13. If the CBT-100-X claiming a refund had not been filed within 90 days of filing the Form 1120X (see N.J.S.A. 54:10A-13), the refund would not be granted regardless of whether the claim was received prior to the expiration of the applicable refund statute of limitation period.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court within 90 days. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A-19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49-5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) or CBT-100-X relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Amended by R.1993 d.660, effective December 20, 1993.
See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Amended by R.1995 d.499, effective September 5, 1995.

See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Amended by R.1999 d.116, effective April 5, 1999.

See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

In (a), added the last sentence; in (d), inserted a reference to Form CBT-100-X in the second sentence; and in (i), changed name and address.

Statutory References

See N.J.S.A. 54:49-14 as to claims for refunds.

Case Notes

Corporation business tax refund period began to run from time of payment of tax upon filing of return and not time of payment of penalty and interest assessed by Division of Taxation; refund claim was time barred. *Don Dan Const. Co. v. Director, Div. of Taxation*, 14 N.J.Tax 569 (1995).

Limitations period for seeking refund of corporate taxes was not extended by furnishing IRS with extended return. *H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

Second corporate business tax return triggered limitations period for seeking refund of corporate taxes paid. *H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

Equitable considerations did not entitle corporate taxpayer to extension of limitations period for seeking refund of corporate taxes. 26 U.S.C.A. § 338; *N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation*, 12 N.J.Tax 60 (1991).

18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

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

(c) If the Director shall reject the claim for refund in whole or in part, he shall 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. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).